

**YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION**

FILED

JUN 29 2000

**KIM M. EATON
YAKIMA COUNTY CLERK**

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

REPORT OF REFEREE

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

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

REPORT OF REFEREE - VOLUME 43, PART I

14514

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KIM M. EATON
YAKIMA COUNTY CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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) No. 77-2-01484-5
7 THE PROVISIONS OF CHAPTER 90.03,)
8 THE STATE OF WASHINGTON,) REPORT OF REFEREE
9 DEPARTMENT OF ECOLOGY,) Re: Subbasin No. 9
10) (Wilson-Naneum)
11)
12 Plaintiff,)
13)
14 v.)
15)
16 James J. Acquavella, et al.,)
17)
18 Defendants.)
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To the Honorable Judge of the above-entitled Court, the following report is respectfully submitted:

I. BACKGROUND

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

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

Report of Referee
Subbasin No. 9

II. FIELD INVESTIGATIONS

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

III. WATER DUTY

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

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

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

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

16 IV. STIPULATIONS

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

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

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

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

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

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

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

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

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

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

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

10 V. LAND DESCRIPTIONS

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

15 VI. WATER RIGHT PRIORITIES

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

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VII. SPECIAL ISSUES

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A. Major Claimants

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

B. Relinquishment

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

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

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

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

20
21 **C. Existing Decrees**

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

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

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

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

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

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

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

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

4 Olive Sander, et al., v. Charles Bull and Kate Bull, et al., Decree No. 4121
5 (1911) was a judgment against the defendants determining that Olive Sander and
6 Ellensburg Water Supply Co. are entitled to the prior right to use 1280 inches
7 from the combined flow of Wilson and Naneum Creeks, through Wilson Creek
8 (Ellensburg Water Supply Co. entitled to 225 inches and the remainder belonging
9 to Olive Sander), Thomas and Vanche Haley are entitled to 200 inches of water
10 through the same channel. The decree did not determine the ranking of the
11 rights between the three plaintiffs. The rights of 13 Intervenors were also
12 specifically determined, but no priority was assigned to the rights, just that
13 they were prior to the rights of the defendants. The rights of the defendants
14 were not determined in this proceeding. The decree specified that an inch of
15 water was under four inch pressure, which would equal 0.02 cubic foot per
16 second. Although the rights of the defendants in this case were not determined,
17 the Referee believes that it is reasonable to conclude that if a person was a
18 defendant in this case, they were making some use of waters from either Wilson
19 or Naneum Creeks. However, this decree does not establish the priority or the
20 extent of the right, nor does it show where any water was used by the
21 defendants. That must still be proven in the Acquavella proceeding. It is
22 clear that the rights of the plaintiffs and the intervenors were determined to
23 be senior to those of the defendants.

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

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1 Creek and Wilson Creek. Olive Sander was dismissed from the case because there
2 had been a prior action that determined the rights of the plaintiff against
3 Olive Sander. C. R. and Grace Hovey were determined to have a senior right to
4 10 inches of water from Wilson Creek to be diverted above the head of Lyle Creek
5 and conveyed to the Hovey property. William Rader was determined to have a
6 right to 60 inches of water, junior to the 10 inches for Hovey, but senior to
7 the rights of all other defendants. Exact priority dates for the Rader and
8 Hovey rights were not established. The defendants were enjoined from interfering
9 with that water. The decree did not identify the lands owned by William Rader,
10 nor did it determine the rights of any of the defendants, except Hovey.

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

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1 Mary and Lelias Lawrence v. Fred D. Adams, et al., Decree No. 8402 (1933),
2 ordered the defendants and the Supervisor of Hydraulics (predecessor to Ecology)
3 to be perpetually prohibited from diverting or allowing to be diverted through
4 the Adams Ditch any of the water owned or claimed by James Ferguson or Henry
5 Wager under Decree No. 2607. They were also prohibited from diverting the water
6 from any other point above the lands of the plaintiffs.

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

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

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

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

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

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

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

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

5
6 VIII. TESTIMONY AND REFEREE'S ANALYSES

7 Plaintiff Testimony

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

10 The State introduced into evidence the following generic exhibits:

11 Number Description

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

18 Claimant Testimony

19 242 defendants filed statements of claim or notices of appearance. All
20 claimants and their legal counsel, if so represented, are as follows:

21 Court 22 Claim 23 <u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
24 01958	A.C.X. Trading, Inc. 25 2350 W. 17th Street 26 Long Beach, CA 90813	27 Jeff Slothower, Attorney 28 Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	335 592

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1	02298	Charles Adams 141 W. 8th Street Ajo, AZ 85321-1703	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	46, 591
2				
3				
4	05072	Don Akehurst & Barbara Akehurst 2151 Brick Mill Road Ellensburg, WA 98926		49, 645 589
5				
6	01823	Paul Alderman & Paula Alderman 100 South Pfenning Road Ellensburg, WA 98926	F. Steven Lathrop, Attorney PO Box 1088 Ellensburg, WA 98926	51, 591
7				
8				
9	01974	Alfred Anderson 2208 Judge Ronald Road Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	53, 591
10				
11	00666	Gerald E. Anderson & Janis Anderson 1671 Thomas Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926	56, 592
12				
13				
14	01004	Harold W. Anderson 410 Game Farm Road Ellensburg, WA 98926		587 591
15				
16	01233	Jim Anspach & Paige Anspach 4220 Hungry Junction Road Ellensburg, WA 98926		56, 591
17				
18	02297	Joseph Antonich 1941 Lyons Road Ellensburg, WA 98926	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	58, 589 600
19				
20				
21	01155	Glen Armistead		60, 589
22	01156	Bonnie Spurrier		705-707
23	01158	131 Woodhouse Road Ellensburg, WA 98926-8493		

REPORT OF REFEREE
Re: Subbasin No. 9

1	01006	Ida Joseph Nason Aronica c/o Allen Aronica 12381 Naneum Road Ellensburg, WA 98926		63, 589 598
2				
3	00575	Don H. Bacon & Gabriella R. Bacon Bacon Family Trust 1492 Thomas Road Ellensburg, WA 98926		66, 589 591
4				
5				
6	01879	Dimitri Bader & Lenora Bader 2602 Judge Ronald Road Ellensburg, WA 98926-9393		67, 591
7				
8				
9	00552	Stanley J. Baker and Gena L. Baker 330 McCullough Road Ellensburg WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	70, 591
10				
11	00903	Everett O. Barney	Vernon E. Fowler, Jr.	72, 205
12	00928	& Lanita M. Barney P. O. Box 11081 Yakima, WA 98909-2081	Peters & Fowler 115 S Second St. Selah WA 98942	589, 670 671
13				
14	00708	E. Eugene Barnhart, Jr. 1850 Colockum Road Ellensburg, WA 98926		75, 703
15				
16	00708	Kenneth E. Barnhart	J. Jay Carroll, Attorney	75, 78
17	00968	& Susan Barnhart 2441 Schnebly Road Ellensburg, WA 98926	Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	601, 703
18				
19	00708	Estate of May S. Barnhart c/o E. Eugene Barnhart 1790 Colockum Road Ellensburg, WA 98926		75, 703
20				
21	01831	Frank J. Beard		81, 589
22	(A)05373	& Charlot M. Beard 7490 Naneum RD Ellensburg, WA 98926		686
23				
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REPORT OF REFEREE
Re: Subbasin No. 9

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

1	12929	Jeff T. Brunson 1585 Tjossem Road Ellensburg, WA 98926		100 591
2				
3	01955	Curtis B. Bull & Lucille E. Bull 1215 E. Mountain View Avenue Ellensburg, WA 98926		108 591
4				
5	01944	John A. Bull, Jr., et al. c/o Walter T. Bull 670 Berry Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	108 591
6				
7				
8	01955	Thomas W. Bull, II & Jonelle M. Bull 43 Red Mountain Drive Ellensburg, WA 98926		108 591
9				
10	00886	Bull Canal Company, Inc. (A) 04207 1585 Tjossem Road Ellensburg, WA 98926	Lawrence E. Martin Halverson & Applegate, P.S. PO Box 22730 Yakima WA 98907-2715	101 591
11				
12				
13	00185	U.S. Department of the Interior (A) 00824 Bureau of Land Management (A) 02484 1103 N. Fancher 00900 Spokane WA 99212-1275		91, 254 591
14				
15	01181	Alan Burke (A) 06158 201 Church Street Newark, NY 14513	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	111 644
16				
17	02295	Peter Burkholder 1500 Sanders Road Ellensburg, WA 98926		116 591
18				
19	00726	Shird J. Burks & Audrey E. Burks 199 2nd Ave S Baxter, TN 38544-5129	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	565 631
20				
21				
22	00103	Burlington Northern Railroad 3800 Continental Plaza 777 Main St Fort Worth, TX 76102	Elizabeth Hill, Attorney	118 591
23				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	00857	Orren Busby Ruth Busby PO Box 414 Ellensburg WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	119 589 646
2				
3	00185	Central Washington University		91
4	(A) 00824	400 E. 8TH AVENUE		591
5	(A) 02484	Ellensburg, WA 98926-7474		
6	01832	Ron G. Carlson & Toni D. Carlson 661 Carlson Road Ellensburg, WA 98926		121 700
7				
8	00612	James F. Carmody & Dorothy Carmody 1312 Sanders Road Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	125 635 691
9				
10	00967	D. Winslow Charlton & Anna Charlton 4451 Naneum RD Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	138 589 591
11				
12	00481	Larry L. Charlton 8191 Wilson Creek Road Ellensburg, WA 98926	James K. Adams, Attorney Wagner & Luloff 110 N. 5th Ave. Ste. 200 Yakima, WA 98902-2642	134 591
13				
14	02174	Larry L. Charlton & Marilyn Charlton 8191 Wilson Creek Road Ellensburg, WA 98926	James K. Adams, Attorney Wagner & Luloff 110 N. 5th Ave. Ste. 200 Yakima, WA 98902-2642	130 591
15				
16	00481	Estate of Naomi Charlton c/o Larry L. Charlton 8191 Wilson Cr. Road Ellensburg, WA 98926	James K. Adams, Attorney Wagner & Luloff 110 N. 5th Ave. Ste. 200 Yakima, WA 98902-2642	134 696
17				
18	00967	Ralph G. Charlton & Nancy L. Charlton 3151 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	138 589 601 625
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REPORT OF REFEREE

Re: Subbasin No. 9

1	02232	Ralph G. Charlton 3151 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	554 591
2				
3				
4	00724	Fred Christen & Mollie Christen 3580 Vantage HWY Ellensburg, WA 98926		586 591
5				
6	01451	Fred Christen 3580 Vantage HWY Ellensburg, WA 98926		587 591
7				
8	00253	Dick Colasurdo		214
9	(A)02103	& Anna Colasurdo		591
10	(A)02104	15440 SE May Valley Road Renton, WA 98059		
11	00884	Charles W. Cole & Ethel M. Cole 18450 Summitview Road Tieton, WA 98947		143 589 678
12				
13	01209	Curtis S. Conner & Ruth J. Conner 2471 Ferguson Road North Ellensburg, WA 98926		145 589 609
14				
15				
16	00740	Gwendolyn Cooke & Robert Cooke 2281 Ferguson Road North Ellensburg, WA 98926		153 626
17				
18	01454	Gwendolyn Cooke	Kenneth D. Beckley,	147
19	(A)04171	2281 Ferguson Road North Ellensburg, WA 98926	Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	610
20				
21	00819	Guy F. Couture & Judy A. Couture 1613 E Capitol Avenue Ellensburg, WA 98926		155 679
22				
23	02270	Robert Dean PO Box 377 Elma, WA 98541-0377		588 591
24				
25				

REPORT OF REFEREE
Re: Subbasin No. 9

1	00766	Robert G. Dier & Diane C. Dier 2815 Wilson Creek Road Ellensburg, WA 98926	586 592	
2				
3	00603	Harvey L. Dodge 1150 Lyons RD Ellensburg, WA 98926	157 589 629	
4				
5	00396	Larry Douglass & Denece Douglass 500 Cherry Lane Apt. C-1 Ellensburg, WA 98926-3867	160 592	
6				
7				
8	00726	John Scott Downey 3590 Wilson Creek Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901	565 589 602
9				
10	02035	Gordon L. Dudley & Anita M. Dudley PO Box 645 Ellensburg, WA 98926-0645	161 592	
11				
12				
13	02035	Stefan Dudley PO Box 2508 Redmond, OR 97756-0560	161 592	
14				
15	01785	Maurice L. Dufault & Florence J. Dufault 1306 Vista Road Ellensburg, WA 98926	587 592	
16				
17	01891	Beulah M. Dunn	587	
18	(A)01892	3308 W Birchfield Road Yakima, WA 98901	592	
19	02279	Alvia S. Dunnagun & Janet G. Dunnagun 3250 Kris Kringle Drive North Pole, AK 99705-6352	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926	545 592
20				
21				
22	00598	Jeanne M. Dunning 3880 Brick Mill Road Ellensburg WA 98926	401 589 683	
23				
24				
25				
26	REPORT OF REFEREE			
27	Re: Subbasin No. 9			
28				

1	00166	Lorne T. Dunning		167, 589
	(A)12208	& Jeanne M. Dunning		623, 701
2		3990 Brick Mill RD		702
		Ellensburg, WA 98926		
3	00504	Darrel Eason	Hugh M. Spall, Attorney	173
		& Janet Rae Eason	PO Box 831	592
4		371 McCullough RD	Ellensburg, WA 98926	
		Ellensburg, WA 98926		
5				
6	01254	Jack Eaton		177
		12771 State Route 821		589
7		Ellensburg, WA 98926		592
8	00634	John N. Eaton	John P. Gilreath,	179
		& Christi Eaton	Attorney	589
9		473 Thrall Road	PO Box 499	592
		Ellensburg, WA 98926	Ellensburg WA 98926-0499	
10	00635	Timothy E. Eckert	Jeff Slothower, Attorney	182
		Marcia N. Eckert	Lathrop Firm	624
11		3451 Lyons Road	PO Box 1088	
		Ellensburg WA 98926	Ellensburg, WA 98926-1088	
12				
13	00461	Ron Elkins		430
		& Peggy Elkins		592
14		2660 Wilson Creek DR		
		Ellensburg, WA 98926-7235		
15	05283	Ronald D. Elkins		430
		& Marguerite A. Elkins		592
16		2660 Wilson Creek Road		
		Ellensburg, WA 98926-7235		
17				
18	02085	Ellensburg; City of	Paul E. Sullivan, Jr.	185
		109 E Third Suite 2	Ellensburg City Attorney	592
19		Ellensburg, WA 98926	420 N Pearl Street	
			Ellensburg WA 98926-3112	
20	00786	William E. Erickson		190
		& Glenda L. Erickson		592
21		6980 Wilson Creek RD		
		Ellensburg, WA 98926		
22				
23	00984	Farmers Home Administration	Charles E. O'Connell Jr.	414
		1606 Perry Street Suite #D	Unites States Dept. of Justice	592
24		Yakima, WA 98902	PO Box 44378	
			Washington DC 20026-4378	

REPORT OF REFEREE
 Re: Subbasin No. 9

1	02275	Walter L. Farrar		532
2	02282	& Gail Farrar		592
		1650 Game Farm Road		
		Ellensburg, WA 98926-7277		
3	01815	Harry Ferguson		193
4	(A)02786	& Concetta Ferguson		592
5		714 East 5th Ave		
		Ellensburg, WA 98926		
6	00480	Ralph Fields		586
7		& Gwyla A. Fields		592
		Box 141		
		Ellensburg, WA 98926		
8	01171	Charles R. Fischer		194
9		& Ellen Fischer		592
10		9580 Thorp Highway North		
		Thorp, WA 98946		
11	00536	Joseph C. Fitterer	John P. Gilreath,	196
12		& Bettie E. Fitterer	Attorney	592
		1706 E Capitol Avenue	PO Box 499	
		Ellensburg, WA 98926	Ellensburg WA 98926-0499	
13	01028	Ruth Floyd		587
14		603 East Tacoma		592
		Ellensburg, WA 98926		
15	06016	David Arnold Fogle		198
16		& Linda Rose Fogle		592
17		123 E Idaho Street		
		Ellensburg, WA 98926		
18	01777	Gerald French		200
19		& Maxine French		589
		917 Sanders Road		691
		Ellensburg, WA 98926		
20	02232	Ronald J. Freytag		554
21		& Mary Styron Freytag		589
22		6728 Cliffbrook DR		599
		Dallas, TX 75240-7904		687
23	00900	G.R. Hughes; Enterprises LP		254
24		625 SW 155th Suite B-2		592
		Seattle, WA 98166		

REPORT OF REFEREE
 Re: Subbasin No. 9

1	00778	Gary Melvin Galbraith	202
	(A)06178	& Jacquelyn J. Galbraith	692
2		1090 Thomas Road	
		Ellensburg, WA 98926	
3	00903	Estate of Charles Gearheart	205
		PO Box 115	592
4		LaCrosse, WA 99143	
5	00903	Leona Gearheart	205
		PO Box 115	592
6		LaCrosse, WA 99143	
7	00884	Fred K. Gerlach	143
		& Shirley E. Gerlach	589
8		PO Box 1026	678
9		Ellensburg, WA 98926-1026	
10	00605	Stephen K. German	481
	(A)01749	& Donna German	652
11		11040 Fairview Road	
		Ellensburg, WA 98926	
12	01607	Howard L. Gibson	587
		& Ruth A. Gibson	592
13		17506 32nd Avenue E	
14		Tacoma, WA 98446	
15	02130	Earl T. Glauert	209
		& Ellen E. Glauert	603
16		1112 N B STREET APT 2	
		Ellensburg, WA 98926-2590	
17	01870	Terry E. Goodrich	213
		& Carol Goodrich	589
18		PO Box 2148	604
19		Mattawa, WA 99349-0902	
20	00253	Jay Gorman	216
	(A)02103	104 S Pearl	592
21		(A)02104 Ellensburg, WA 98926	
22	01945	Jeff Gorman	218
		& Sheryl Gorman	592
23		130 Lawrence Road	
		Ellensburg, WA 98926-9788	

REPORT OF REFEREE

Re: Subbasin No. 9

1	01232	Gary Griffith 22806 NE 64th Street Redmond, WA 98053		290 592
2				
3	01531	Allan R. Grigg & Teresa M. Grigg 161 Canyon View Lane Ellensburg, WA 98926		220 589 592
4				
5	02268	Bill Haberman & Bill Haberman, Jr. 2730 Hungry Junction RD Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	223 592
6				
7				
8	00620	Dale Haberman & Kathy Haberman 1950 Lyons Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901-2416	225 589 647 693
9				
10	00620	George Haberman & Ruby Haberman 408 W. 12th Avenue Ellensburg, WA 98926-2416	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901-2416	225 589 647 693
11				
12				
13	01232	Haidas Ranches, LLC 2041 Kimberly Lane Ellensburg, WA 98926		225, 589 647, 693
14				
15	01941	Larry Hansen 6214 Watchtower Road Tacoma, WA 98422	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	485 592
16				
17	01559	Patrice Hardisty 615 Wanapum DR LaConner, WA 98257-9527		587 592
18				
19	00903	Carol Hartlaub PO Box 1135 Ellensburg, WA 98926-1135		205 589 680
20				
21	01649	Thomas Haven & Sara Haven 1006 E. 4th Avenue Ellensburg, WA 98926-3530		230 589 648
22				
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REPORT OF REFEREE

Re: Subbasin No. 9

1	02214	Betty Hawk & Randy Hawk 270 Meadowlark Lane Ellensburg, WA 98926	588 592
2			
3	02264	Alice A. Henderson 100 Naneum Camp Lane Ellensburg, WA 98926	233 589 699
4			
5	02264	James Henderson & Karen Henderson 14101 Naneum RD Ellensburg, WA 98926	233 589 699
6			
7			
8	02264	Le Moyne Henderson 100 Naneum Camp Lane Ellensburg, WA 98926	233 589 699
9			
10	00663	Herbert J. Herbert & Rita Herbert 4890 Brick Mill Road Ellensburg, WA 98926	235 662
11			
12			
13	02296	Mark Herbert & Kathy Herbert 3441 Rader Road Ellensburg, WA 98926	239 592
14			
15	02172	Charles L. Hiatt, Sr. & Carolyn M. Hiatt 1900 Brooklane St. Apt. I-5 Ellensburg, WA 98926-2259	588 592
16			
17			
18	05820 (A) 05906	Richard M. Hilliard 830 Lyons Road Ellensburg, WA 98926	243 592
19			
20	02296	Lyndell G. Hobbs & Vicki Diehl-Hobbs 10511 Fairview Road Ellensburg, WA 98926	239 592
21			
22	06006	Wm. Ralph Hooper & Patricia Julia Hooper 310 Rosebriar Lane Ellensburg, WA 98926	245 589 592
23			
24			
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REPORT OF REFEREE
Re: Subbasin No. 9

1	00661	Kenneth R. Huber & Sharon L. Huber (no address available)	246 589 635
2			
3	01721	John Hultquist & Nancy Hultquist 11041 Naneum RD Ellensburg, WA 98926	249 589 655
4			
5	02294	Mary Hundley 851 Prairie Lane Cle Elum, WA 98922	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939
6			252 592
7			
8	00568 (A) 05601	HMH Enterprises Inc. 150 - 4th St SW Brewster, OH 44613	254 592
9			
10	00606	Gerhard Jansen & Bertha Jansen 4761 Number 6 Road Ellensburg, WA 98926	257 592
11			
12	00930	Harold W. Jenkins & Gladys D. Jenkins 6181 Wilson Creek RD Ellensburg, WA 98926	259, 589 605, 648 662, 711
13			
14			
15	00932	Patrick M. Jenkins & Vicki K. Jenkins 6221 Wilson Creek Road Ellensburg, WA 98926	259, 589 618, 656
16			
17	01463	Gary Lee Johnson 810 Stone Road Ellensburg, WA 98926	587 592
18			
19	02374	Ralph Johnson & Cecile Johnson	589 592
20			
21	02374	Walter R. Kaminski 11043 Naneum RD Ellensburg, WA 98926-9307	588 592
22			
23			
24			
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REPORT OF REFEREE
Re: Subbasin No. 9

1	01234	Sam Kayser	James K. Adams	284
	(A)06380	& Lonni Kayser	Wagner & Luloff	650
2	01263	Sam Kayser	110 N 5th Ave. Ste. 200	281
		12141 Fairview Road	Yakima WA 98902-2642	661
3		Ellensburg, WA 98926		
4	00991	Kayser Ranch, Inc.		271, 589, 605
		12260 Fairview Road		635, 636, 649
5		Ellensburg, WA 98926		650, 696
6	00667	Robert O. Kelley		288, 589
		& Paula K. Kelley		619, 627
7		PO Box 782		
		Ellensburg, WA 98926		
8	01232	Bobby F. Kennedy		290
		802133 Crooked River Highway		589
9		Prineville, OR 97754		592
10	02128	Barry C. Kent, et ux.		588
		411 SW 200th		592
11		Seattle, WA 98166		
12	01732	Kittitas County	David A. Pitts	587
		205 W 5th	Prosecuting Attorney	592
13		Ellensburg, WA 98926	205 W 5TH, ROOM 213	
14			Ellensburg, WA 98926	
15	01128	Daniel S. Kivi		293
		3181 North Ferguson Road		611
16		Ellensburg, WA 98926-8102		
17	00818	Adolph Kjelmlyhr		296
		Merle D. Lott		625
18		4370 Brick Mill Road		
		Ellensburg, WA 98926-9528		
19	00662	Robert B. Klindworth		297
		& Linda W. Klindworth		683
20		1605 E Capitol		
21		Ellensburg, WA 98926		
22	00256	Les S. Knudsen	J. Jay Carroll, Attorney	300
		& Barbara J. Knudsen	Velikanje, Moore & Shore	589
23		1003 E 11th	405 E Lincoln Avenue	631
		Ellensburg, WA 98926	Yakima WA 98901	

REPORT OF REFEREE

Re: Subbasin No. 9

1	01954	Ray Knudson & Linda Knudson 3791 Brown Road Ellensburg, WA 98926	302 593	
2				
3	01601	Frances Knutson 908 S 40th Avenue Yakima, WA 98909-3801	587 589 593	
4				
5	01138	Pamela Sue Kollman 451 Lewis Lane Ellensburg, WA 98926	302 593	
6				
7	01960	Conrad Kraft PO BOX 1345 ALLYN, WA 98524-1345	494 593	
8				
9	01939	Fabian Kuchin, Jr. 1404 W Dry Creek Road Ellensburg, WA 98926	Jeff Slothower, Attorney PO Box 1088 Ellensburg WA 98926	303 596 628
10				
11	00909	Roberta D. Lamb & Estate of Harold F. Lamb 802 E Mountain View Ave Apt 234 Ellensburg, WA 98926-4804	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	306 593 594
12				
13	00784	Dale Lee & Sandy Lee 1101 N Columbia Street Ellensburg, WA 98926	545 593	
14				
15	00784	Steven Lee & Debbie Lee 3090 Kilmore Road Ellensburg, WA 98926-7837	545 593	
16				
17	00952	David M. Leffert & J. Christine Leffert 8300 Naneum Road Ellensburg, WA 98926	311 589 663	
18				
19	(A)04815			
20	01960	John Libenow 1111 Howard Rd Ellensburg, WA 98926	494 593	
21				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	00621	Myron Linder & Sandy Linder 4961 Naneum Road Ellensburg, WA 98926		315 589 688
2				
3	00904	John H. Ludwick & Anne C. Ludwick c/o Fitch and Ludwick 900 - 4th Avenue, Suite 4104 Seattle, WA 98164		318 593
4				
5				
6	00175	Brian Luque & Teresa Luque 1306 Greenwood Lane CENTRALIA, WA 98531-1633		321 645
7				
8				
9	01970	Kenneth R. MacRae & Sandra MacRae 1800 Vantage Highway Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	324 593
10				
11	02245	Madeleine Villa, Inc. 5925 47th Avenue NE Marysville, WA 98270	James P. Hutton, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	327 651
12				
13				
14	01416	Louaine A. Magnuson & Kevin Halley 10681 Naneum Road Ellensburg WA 98926		331 656
15				
16				
17	01958	Brian Maier & Sheila Maier mail to attorney only	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	335 593
18				
19	05297	Nick A. Mandelas 10620 Naneum Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	336 593
20				
21	02175	William R. Marquiss & Billie R. Marquiss 608 E Tacoma Ellensburg, WA 98926		589 593
22				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	00769	Bernard L. Martin & Marlene F. Martin 1300 Brick Mill RD Ellensburg, WA 98926		340 589 606 619
2				
3	02354	John F. Marvich 437 S. 181st Seattle, WA 98148		588 593
4				
5	01707	Don E. Mays & Paula Mays 5323 Wilson Creek RD Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	343 590 606
6				
7				
8	02268	Kevin McDowell & Becky McDowell PO Box 1082 Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg, WA 98926-1088	223 593
9				
10				
11	01747	Art W. McFarland 1109 Anderson Road Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	544 590 593
12				
13	02035	Ronald P. McGee & Joy A. McGee 2231 Thomas Road Ellensburg, WA 98926-9369	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	161 590 657
14				
15				
16	00495	Estate of Byrl A. McNeil 1411 Alford RD Ellensburg, WA 98926		346 590 607
17				
18	00484 (A) 04498	Mark McWhorter 6821 Ravensgate Way Yakima, WA 98908	Bryan Myre Lyon Law Office P.O. Box 1689 Yakima, WA 98907	350, 590 620, 621 655, 657 658, 659
19				
20	01202	Grace M. Menig 240 Woodhouse LP Ellensburg, WA 98926		357 709
21				
22	01814	Jeffrey Chris Merrick c/o A.G. Connolly, custodian 8765 Battle Point Drive NE Bainbridge Island, WA 98110		587 593
23				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	01669	Howard Miles 1942 Bar 14 Road Ellensburg, WA 98926		359 590
2				
3	01801	Andrew J. Mills & Stephanie Mills 1150 Thomas Road Ellensburg, WA 98926		363 590 693
4				
5	02289	James M. Mills DEH Area 6 APO San Francisco, CA 96271		366 593
6				
7	00951	Vernon Mills & Lorraine Mills 24315 NE Redmond Fall City Road Redmond, WA 98053-5418		368 593
8				
9				
10	00899	Donna Minielly 2320 W Sylvester Street, Apt. 16 Pasco, WA 99301-4572		370 590 616
11				
12	01718	Floyd A. (Buck) Minor & Merna Minor 7411 Wilson Creek Road Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926	372 590 636 682
13				
14	01717	Jean G. Minor 5490 Smithson Rd Ellensburg, WA 98926-8879	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926	376 637
15				
16	05349	Ron Mitchell 1351 Naneum Road Ellensburg, WA 98926-6967	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	379 637
17				
18	02133	Michael Kelly Moeur, Sr.	John P. Gilreath, Attorney	380
19	02134	& Michael Kelly Moeur, Jr.	PO Box 499	590
20	02135	181 Ringer Loop	Ellensburg WA 98926-0499	683
21	02136	Ellensburg, WA 98926		704
22	02137			
23				
24	01263	Chet Morrison & Judy Morrison Morrison Ranches 2607 Judge Ronald Road Ellensburg, WA 98926		281 593
25				
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REPORT OF REFEREE

Re: Subbasin No. 9

1	01263	Thomas V. Morrison & Ginger D. Morrison 1607 W Dollar Way Road Ellensburg, WA 98926		281 593
2				
3	01264	Morrison Ranches	Jeff Slothower, Attorney	389, 394
4	01265	2607 Judge Ronald Road	Lathrop Firm	396, 398
5	01266	Ellensburg, WA 98926	PO Box 1088	590, 593
6	01267		Ellensburg WA 98926	612, 628
7				642, 689, 708
8	00460	Joe Morrow 391 Lyons Road Ellensburg, WA 98926		586 593
9	01252	N. N. Eaton & Sons 12771 State Route 821 Ellensburg, WA 98926		401 593
10	00598	Estate of Dorothy R. Nelson & Estate of Paul Nelson c/o Jeanne Dunning 3880 Brick Mill Road Ellensburg WA 98926		401 590 684
11				
12	01866	G. Jay Nelson, et al. Crown J. Cattle Company 5380 Wilson Creek Road Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	404 590 651 684
13				
14	02289	Mr. & Mrs. George Nelson 721 Willett RD Ellensburg, WA 98926		366 593
15				
16	00672	Leonard L. Newman & Loree Newman 802 E. Mountain View Ave. Apt. #112 Ellensburg, WA 98926-3874		410 593
17				
18	02232	Harriett Nichols 1001 S. Chestnut St., Unit 124 Ellensburg, WA 98926-4800		554, 590 599, 689
19				
20	00866	Sarah Nickel 406 Oak Street Ellensburg, WA 98926		435 593
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REPORT OF REFEREE
Re: Subbasin No. 9

1	01575	Brian Norelius 791 Grindrod Road Ellensburg, WA 98926-7048	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	411 708
2				
3	01956	Northwest Rainier c/o Kennedy-Wilson Properties Ltd PO Box 52850 Bellevue, WA 98015-2850		416 593
4				
5	01895	Clinton A. Noyes & Laverne Noyes 1105 E 2nd Ellensburg, WA 98926		588 593
6				
7				
8	00968	Joseph J. O'Leary & Mary E. O'Leary 4091 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	78 590 593
9				
10				
11	00984	Timothy P. O'Neill & Deborah S. O'Neill (no address available)		416 593
12				
13	01701	Patrick R. O'Shaughnessy & Marilyn O'Shaughnessy PO Box 598 Ellensburg, WA 98926		587 593
14				
15	00899	Maurice Olney & Ruth Ann Olney 40428 - 202nd AVE SE Enumclaw, WA 98022		370 590 616
16				
17				
18	01208	Gene Panattoni & Sally Panattoni 570 Thorp Highway South Ellensburg, WA 98926		587 593
19				
20	00535	David Papineau 440 Ringer Loop Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	419 593
21				
22	00825	Nick Parsel & Kim Parsel 791 Look Road Ellensburg, WA 98926		92, 590 617, 632 695
23				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	01724	Pautzke Bait Company, Inc. PO Box 36 Ellensburg, WA 98926-0036	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	422 593
2				
3	01836	David T. Pearson & Marguerite L. Pearson 2110 N Reecer Creek Road Ellensburg, WA 98926		425 590 593
4				
5	01702	John M. Pearson & Julie Ann Pearson 801 Sanders Road Ellensburg, WA 98926		425 593
6				
7				
8	01182	Dorothy Pease & Estate of Murl Pease PO Box 655 Ellensburg, WA 98926		427 593
9				
10	01247	Jill M. Perry 1093 Gillete Lane Ronan, MT 59864		428 590 593
11				
12	00461	Robert Perry 206 W. Tacoma Ave. Ellensburg, WA 98926-3615		430 593
13				
14	01451	William R. Peterson 862 Alford Road Ellensburg, WA 98926		587 593
15				
16	01952	Carol W. Phelps & Joy M. Turner 27637 43rd Place S Auburn, WA 98001		588 593
17				
18				
19	01129	Frank W. Phelps P.O. Box 13469 Burton, WA 98013-0469	Roger K. Garrison, Attorney PO Box 269 Sunnyside WA 98944-0269	432 590 698
20				
21	00866	Gerald E. Platt, et al. 306 Oak Street Ellensburg, WA 98926		435 593
22				
23	02178	Ponderosa Properties, Inc. PO Box 460 Ellensburg, WA 98926		437 593
24				

REPORT OF REFEREE

Re: Subbasin No. 9

1	02380	Herman R. Potts & Janet A. Potts 812 Anderson Road Ellensburg, WA 98926	437 593	
2				
3	00717	James A. Powell & Joyce Powell 411 N Mount Stuart Ellensburg, WA 98926	586 593	
4				
5				
6	00739	Kay E. Powers 1041 Thomas Road Ellensburg, WA 98926	439 590 665	
7				
8	01454 (A) 04171	Terry Powers 2691 Ferguson Road North Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore 405 E Lincoln Avenue Yakima WA 98901	147 613
9				
10	00782	Chas. A. Priebe & Carrie Priebe 510 E Bender Road Ellensburg, WA 98926	446 593	
11				
12				
13	00356	M. Joanne Pugh & Estate of Durward Pugh c/o Greg Pugh 208 South Sprague Street Ellensburg, WA 98926-3718	447 593	
14				
15				
16	01329	Merton Purnell 7151 Brick Mill RD Ellensburg, WA 98926	448, 660 697, 701	
17				
18	00969	Larry Raap 3301 Fairview Road Ellensburg, WA 98926	453 590 614	
19				
20	00825	Katherine M. Rasmussen 25293 Gallup Circle Laguna Hills, CA 92653-6125	92, 590 617, 632 695	
21				
22	00577	William W. Razey & Donna Razey PO Box 1084 Ellensburg, WA 98926-1084	586 587 593	
23				
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25				
26	REPORT OF REFEREE			
27	Re: Subbasin No. 9			
28				

1	01236	Gayle V. Redd & Karen K. Redd 1202 N Cora Street Ellensburg, WA 98926-9461	456 594
2			
3	00892	Ronald C. Rees	457, 461
4	01981	11034 - 131st Avenue N.E. Kirkland, WA 98033	590, 594 638, 664
5	00461	John Ressler & Diana Ressler PO Box 296 Palm Springs, CA 92263-0296	430 594
6			
7			
8	01163	Kent D. Richards & Carolyn E. Richards 561 Rader RD Ellensburg, WA 98926	463 590 639
9			
10	02232	Charles Rimer & Faye Rimer 1200 Tibbling Road Selah, WA 98942-9722	554 590 599 689
11			
12			
13	01818	Gerald R. Rimpler & Janet L. Rimpler 3510 Vantage Highway Ellensburg, WA 98926	587 594
14			
15	01048	Merle Ringer	Jeff Slothower, Attorney
16		5971 Number 6 Road Ellensburg, WA 98926	465 590 616
17			Ellensburg, WA 98926
18	00461	James S. Ritter 1625 - 108th Avenue NE Bellevue, WA 98004	430 594
19			
20	04349	Doss Roberts & Edra Roberts 3080 Thomas Road Ellensburg, WA 98926	468 590 594
21			
22	00495	Arlene Rosenburg 1411 Alford Road Ellensburg, WA 98926	346 590 607
23			
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REPORT OF REFEREE
Re: Subbasin No. 9

1	02117	Keith S. Rowbotham & Margaret I. Rowbotham 540 Tipton Road Ellensburg, WA 98926		588 594
2				
3	01677	Sam Rust & Diane Rust 1581 Game Farm RD Ellensburg, WA 98926		587 594
4				
5				
6	00396	Lonnie Sala & Kathleen J. Sala 1003 N Water Street Ellensburg, WA 98926		160 594
7				
8	01444	Schaake Packing Company PO Box 128 Ellensburg WA 98926-0128	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	470 590 699
9				
10	02301	Evan A. Scheik 1020 Woodhouse Loop Ellensburg, WA 98926		475 594
11				
12	00577	Andrew J. Schmidt William D. Schmidt & Melva M. Schmidt 1131 Wilson Creek Road Ellensburg, WA 98926		586 594
13				
14				
15	00979	Fred Schnebly (A) 04783 6451 Fairview Road (A) 05073 Ellensburg, WA 98926		477 594
16				
17	00979	Henry J. Schnebly, et al. (A) 04783 6281 Brick Mill RD (A) 05073 Ellensburg, WA 98926		477 594
18				
19	00979	Jim Schnebly (A) 04783 4500 Brick Mill Road (A) 05073 Ellensburg, WA 98926		477 594
20				
21	00605	Albert F. Scott (A) 01749 & Dorothy Scott PO Box 2085 North Bend, WA 98045-2085	Richard T. Cole, Attorney PO Box 499 Ellensburg, WA 98926-0499	480 652
22				
23				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	02232	Robert Shannon & Cathy Shannon 1241 Charlton Road Ellensburg, WA 98926-7381		554 590 599 690
2				
3	02270	Mel Shenyer & Jodee Shenyer c/o Richard T. Cole	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	588 594
4				
5	01977	Melvin Shenyer PO Box 722 Ellensburg, WA 98926	Richard T. Cole, Attorney PO Box 499 Ellensburg WA 98926-0499	588 594
6				
7	01941	Jack G. Sikes & Ada M. Sikes c/o Jack Sikes, Jr. 23233 East Settler Drive Liberty Lake, WA 99019-8524		484 594
8				
9				
10	01130	John L. Silva & Janet E. Silva 3451 Game Farm Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	486 590 653
11				
12				
13	01552	George Simpson & Barbara Simpson 806 E Sanders Ellensburg, WA 98926		488 594
14	(A)08870			
15				
16	02232	Don C. Smith & Jane K. Smith 7644 SE 22ND ST MERCER ISLAND, WA 98040-2119		554 590 600 690
17				
18	02262	Patrick Smith PO Box 611 Ellensburg, WA 98926	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	491 590 621
19				
20				
21	01960	William Z. Smith & Jean Smith 14108 W. Casa Linda Drive Sun City West, AZ 85375-5507		494 594
22				
23	00366	Richard A. Snowden 190 Umptanum RD Ellensburg, WA 98926	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	496 590 594
24				
25				

REPORT OF REFEREE
Re: Subbasin No. 9

1	00529	Howard P. Sorensen & Bernice H. Sorensen 802 E Mountain View Ave Apt 240 Ellensburg, WA 98926-4805	Lawrence E. Martin Halverson & Applegate, P.S. PO Box 22730 Yakima WA 98907-2715	500 594
2				
3	00673	Morris P. Sorensen & Patricia E. Sorensen 1360 Berry RD Ellensburg, WA 98926		507 594
4				
5				
6	01081	Anita Sorenson 500 5th Avenue W Apt 56 Seattle, WA 98119-3935		587 594
7				
8	00462	Wallace M. Stampfly	Ken Beckley, Attorney	508
9	00355	Walter & Thelma Stampfly 2453 Charlton Road Ellensburg WA 98926	Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926	694 697
10				
11	01975	Jane Stark 309 N 9th Avenue Holbrook, AZ 86025-2316		588 594
12				
13	00497	Robert G. Stewart & Shirley D. Stewart 1140 140th Avenue NE #D Bellevue, WA 98005-2905	John P. Gilreath, Attorney PO Box 499 Ellensburg WA 98926-0499	513 704
14				
15	02311	Chester Vernon Stokes	Vernon E. Fowler, Jr.	518, 590
16	02312	& Roma B. Stokes	Peters & Fowler	608, 684
17	02313	9720 Wilson Creek RD Ellensburg, WA 98926	115 S Second Street Selah WA 98942	693
18				
19	02314	Chester Vernon Stokes 9720 Wilson Creek RD Ellensburg, WA 98926	Vernon E. Fowler, Jr. 115 S Second Street Selah WA 98942	518 685
20				
21	01870	Ralph D. Strand & Kathryn A. Strand 1171 Brickmill RD Ellensburg, WA 98926-7216		213 590 604
22				
23	02275	Charles Strickland & Linda Strickland 26957 Ice Harbor Drive Burbank, WA 99323-9725	Kenneth D. Beckley, Law Office of Ken Beckley 701 N Pine Street Ellensburg WA 98926-2939	532 594
24				
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REPORT OF REFEREE
Re: Subbasin No. 9

1	01957	Steven T. Sturdevant & Debi L. Sturdevant 236 Hololani Street Pukalani, HI 96788	588 594
2			
3	05934	Clint Swanstrum & Becky Swanstrum 8521 Wilson Creek Road Ellensburg, WA 98926	534 590 685
4			
5			
6	01052 (A) 05592	James C. Swayze & Dianne Morrison 513 N. Front Street, Ste. I Yakima, WA 98901-2351	537 590 640
7			
8	01861	Robert Swedberg & Lorene Swedberg 10870 Naneum RD Ellensburg, WA 98926	541 590 643
9			
10			
11	01862	Taco Bell Corporation c/o PepsiCo Real Estate 17901 Von Karman Irvine, CA 92714	588 594
12			
13	01747	Vivian I. Teter (no address available)	544, 501 594
14			
15	00739	Sandra Thomas	147, 439
16	01454	P.O. Box 512	590, 615
17	(A) 04171	308 South Chestnut Ellensburg, WA 98926	666
18	02035	Arthur Tirota & Susan Tirota 10541 Naneum Road Ellensburg, WA 98926	161 590 660
19			
20	02279	Robert Tobin & Linda Tobin 6631 Crooked Tree Drive Anchorage, AK 99516	545 594
21			
22			
23			
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REPORT OF REFEREE
Re: Subbasin No. 9

1	00967	Donald G. Toman & Cynthia R. Toman 3631 Brick Mill Road Ellensburg, WA 98926	J. Jay Carroll, Attorney Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	138 590 594
2				
3				
4	01952	Estate of Glenn Turner (no address available)		588 594
5				
6	00784	Jerry Tyler 1890 Wood House Loop Ellensburg, WA 98926	Jeff Slothower, Attorney Lathrop Firm PO Box 1088 Ellensburg WA 98926-1088	545 594
7				
8	01520	Dick Van de Graaf, Jr. & Maxine Van de Graaf 1695 Midvale Road Sunnyside, WA 98944	Lawrence E. Martin Halverson & Applegate P.S. PO Box 22730 Yakima WA 98907-2715	549 594
9				
10	00661	Jim Vasquez 4781 Vantage Highway Ellensburg, WA 98926		246 590 635
11				
12	00866	Ron Voshall PO Box 1018 Ellensburg, WA 98926		435 594
13				
14	00990	Steve Wallace & Deborah L. Wallace 11011 Fairview RD Ellensburg, WA 98926		551 654
15				
16				
17	00986	David W. T. Watt & Dorothy A. Watt 1775 Lakeshore DR Sagle, ID 83860-9768		586 594
18				
19	01575	Kevin & Gail Weyand 541 Tjossem Road Ellensburg WA 98926		411 594
20				
21	02232	John L. Whittaker & Barbara Whittaker (no address available)		554 594
22				
23	00377	Jessie E. Wikstrom 9426 S "A" Street Tacoma, WA 98444		586 594
24				
25				

REPORT OF REFEREE
Re: Subbasin No. 9

1	00582	J. Marilyn Wilkinson		559
2	05055	13621 Wilson Creek RD		594
		Ellensburg, WA 98926		
3	00726	Stephan A. Willard		565
4		& Ruby Willard		590
5		2000 124th Avenue NE		597
		Suite B 100		622
		Bellevue, WA 98005		
6	06737	Stephan A. Willard	Richard T. Cole, Attorney	564
7		Son Vida I	PO Box 499	594
8		2000 124th Avenue NE	Ellensburg WA 98926	
		Suite B 100		
		Bellevue, WA 98005		
9	00893	Barbara Williams		571
10		406 W 15th		594
		Ellensburg, WA 98926		
11	00461	Gerry Williams		430
12		& Laura Williams		594
		PO Box 36		
		Ellensburg, WA 98926		
13	00351	Keith Williams	John P. Gilreath, Attorney	586
14		& Margaret Williams	PO Box 499	594
15		PO Box 36	Ellensburg WA 98926-0499	
		Ellensburg, WA 98926		
16	01806	Mark G. Williams		587
17		& Kathleen S. Williams		594
		1013 W Dry Creek Road		
		Ellensburg, WA 98926		
18	01681	Philip C. Wilson		574
19		1607 B Street		594
		Ellensburg, WA 98926		
20	01552	Ken Wolfe		488
21	(A)08870	2420 Airport Road		594
		Ellensburg, WA 98926		
22	05316	William P. Woods	John P. Gilreath, Attorney	575
23		& Priscilla A. Woods	PO Box 499	590
24		350 Bar 14 Road	Ellensburg WA 98926-0499	641
		Ellensburg, WA 98926-7200		

REPORT OF REFEREE
 Re: Subbasin No. 9

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

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

16 COURT CLAIM NO. 02298 -- Charles Adams

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

22 Mr. Adams owns that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 lying east of the
23 Naneum Creek Road and the westerly 840 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, which
24 consists of a total of 40 acres. He is irrigating 37 acres of hay and pasture
25

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

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

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

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

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

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

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

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

19 Ira Burton received a patent for the NW $\frac{1}{4}$ of Section 20, T. 18 N.,
20 R. 19 E.W.M. on August 18, 1888. Mr. Burton filed a statement of water right in
21 1890 stating that he had constructed a ditch from "Lile" Creek and had initially
22 appropriated 100 inches and then enlarged the ditch in 1883 and then
23 appropriated an additional 75 inches. In 1903 Mr. Burton sold the land to Frank
24 Bailey and the deed mentioned existing water rights and ditches. In 1909 Mr.
25 Bailey sold the E $\frac{1}{2}$ NW $\frac{1}{4}$ to William Copeland together with ditches and water rights

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

4 The Referee believes that the 41 inches referenced in the deeds is part of
5 a right awarded to I. L. Burton in the Sander v. Jones decree. In that decree
6 Burton was awarded a right to 82 inches of water for the NW¼ of Section 20. The
7 Findings of Fact that preceded the decree stated that the appropriation was
8 initiated in 1880 and increased until 82 inches were being appropriated in
9 1889. The deeds associated with the E½NW¼ of Section 20 show that one-half of
10 that quantity went with each half of the NW¼. The Sander v. Jones decree
11 awarded one inch of water for each acre irrigated through June 30 and one-half
12 inch per acre irrigated from July 1 through the remainder of the irrigation
13 season. Therefore, the E½NW¼ of Section 20 had a right to use 41 inches for the
14 irrigation of 41 acres.

15 Pursuant to the requirements of RCW 90.14, E. F. Wheeler filed Water Right
16 Claim No. 124002 asserting a right to use 2 cfs, 1200 acre-feet per year from
17 Wilson Creek for the irrigation of 40 acres and stock watering in the SE¼NW¼ of
18 Section 20, T. 18 N., R. 19 E.W.M. The diversion described is the point where
19 Lyle Creek separates from Wilson Creek. This claim would seem to indicate that
20 Mr. Wheeler was using his water from Wilson Creek (or Lyle Creek) only on the
21 SE¼NW¼ of Section 20. The ditch that Mr. Akehurst drew on State's Exhibit SE-2
22 is mid-way into the NW¼.

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

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1 what is today called Lyle Creek. Lyle Creek separates from Wilson Creek in the
2 SW¼SE¼ of Section 8, T. 18 N., R. 19 E.W.M., at the point described in the water
3 right claim. The line of questioning by Ecology implies an uncertainty about
4 whether Lyle Creek is a natural creek or a ditch. The historical record does
5 not help. The water right document filed by Ira Burton called the source of
6 water "Lile Creek", yet Sander v. Jones confirms a right to Wilson Creek.

7 The Referee recommends that a right be confirmed with a June 30, 1880, date
8 of priority for the diversion from Lyle Creek, a branch of Wilson Creek, of
9 0.82 cubic foot per second from April 1 through June 30 and 0.41 cubic foot per
10 second from July 1 through October 15, 200 acre-feet per year for the irrigation
11 of 40 acres in the SE¼NW¼ of Section 20, T. 18 N., R. 19 E.W.M.

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

16
17 COURT CLAIM NO. 01823 -- Paul Alderman
18 & Paula Alderman

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

22 The Aldermans own approximately 2 acres in the SE¼NE¼NE¼ of Section 1,
23 T. 17 N., R. 18 E.W.M., which is riparian to Lyle Creek They irrigate 0.75
24 acre of lawn, garden and landscape plantings. Water is diverted from Lyle Creek

25
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1 and piped to a pond. Water is then withdrawn from the pond using a 1½ HP pump
2 to a sprinkler system.

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

12 Water Right Claim No. 124382 was filed by James and Lois Cobb pursuant to
13 the requirements of RCW 90.14. It asserts a right to use 2 cubic feet per
14 second, 65 acre-feet per year from Lyle Creek for the irrigation of 4 acres.
15 The place of water use includes the land now owned by the Aldermans. The
16 Referee notes that the form states that water was first put to use in April of
17 1954. If that date is accurate, it is over 20 years later than necessary to
18 establish a water right. The claimant did not address Water Right Claim No.
19 124382 or the actual date of first water use.

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

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1 COURT CLAIM NO. 01974 -- Alfred Anderson

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

6 The Cobains are asserting rights for two separate and distinct pieces of
7 property. Each will be addressed separately. One parcel lies in the NE¹/₄NE¹/₄SW¹/₄
8 of Section 31, T. 18 N., R. 19 E.W.M. and is located on Lyle Creek. A right is
9 being asserted for stock watering and the irrigation of 3 acres. Water is
10 diverted from Lyle Creek to a pond on the property. A pump withdraws water from
11 the pond for a sprinkler irrigation system. There are remnants of a rill
12 irrigation system on the property. Mr. Cobain testified that part of the water
13 that is used is from Cascade Irrigation District, however, he did not indicate
14 whether he was a patron of the district. Cascade is a Major Claimant in this
15 proceeding whose rights are being determined through the Major Claimant
16 pathway. Therefore, the right to use any water delivered by the district will
17 not be addressed herein.

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

23 Mr. Cobain provided very little information about the history of water use
24 on the land. There was not sufficient information provided to determine whether
25

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

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

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

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

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1 NW¼SW¼, S¼SW¼ and SW¼SE¼ of Section 32, T. 19 N., R. 19 E.W.M. The decree did
2 not specify which of the Bennett lands the water right was appurtenant. The
3 right was addressed again in W. R. Thomas v. James T. Roberts, et al., Decree
4 No. 5653, which was signed on March 1, 1924. This decree clarified that the 30
5 inches was appurtenant to the "Rogers Tract", which was settled by Rogers in
6 1885. The Rogers Tract was further identified as being the S¼SW¼ and SW¼SE¼ of
7 Section 32, land that is not owned by the Cobains. The claimants have not
8 directed the Referee to any other water right addressed in Ferguson that might
9 cover their land.

10 The second decree referred to by the claimants was Philip Lawrence v. Bynum
11 E. Roberts, Decree No. 11044 entered on December 7, 1944. This decree settled a
12 dispute between the parties over use of a spring in the SE¼SE¼ of Section 32,
13 which the claimants contend is the spring they are using. This decree, however,
14 addressed use of the spring within Government Lot 1 of Section 5, T. 18 N.,
15 R. 19 E.W.M., which is not the claimants' property. This decree does not assist
16 in establishing that a water right exists for the claimants' property.

17 Mrs. Cobain's testimony leads the Referee to conclude that the water use on
18 their property has only very recently been developed. They have owned the
19 property since 1973 and it appears that their water use began not long before
20 the evidentiary hearing. If, in fact, there were a water right for the
21 property, it appears that it would have relinquished due to the long period of
22 nonuse, see RCW 90.14. Additionally, the Referee cannot identify a water right
23 claim filed pursuant to RCW 90.14 that would be appurtenant to the claimants'
24 property. The State's Investigation Report references Water Right Claims No.
25 117401 and 117402, however, those claims describe lands in the SW¼ of

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

4
5 COURT CLAIM NO. 00666 -- Gerald E. Anderson
& Janis Anderson

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

15
16 COURT CLAIM NO. 01233 -- Jim Anspach
& Paige Anspach

17
18 Lester and Beverly Sperline submitted a statement of claim to the Court
19 asserting a right to use Whiskey Creek and an unnamed drain for irrigation and
20 stock watering. On February 19, 1997, Jim and Paige Anspach were substituted as
21 claimants in this proceeding. The Sperlines were still active claimants at the
22 time of the evidentiary hearing and were represented by Attorney Hugh Spall.
23 Mr. Sperline testified at the hearing.

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

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

11 Water Right Claim No. 096698 was filed by Lester Sperline in response to
12 RCW 90.14. It asserts a right to divert 5 cfs, 500 acre-feet per year from
13 Whiskey Creek for the irrigation of 90 acres and stock watering in the NW¼ of
14 Section 23.

15 The claimant put into the record three deeds showing transfer of portions
16 of the land. The Northern Pacific Railroad sold the N½NW¼ of Section 23 to
17 Pauline Kreidel on September 25, 1915. The S½NW¼ of Section 23 was sold by J.
18 C. Hubbell to William Spurling on May 16, 1905. There is nothing in the record
19 to show how long J. C. Hubbell owned it or how he acquired the land. However,
20 since NPRR owned the N½NW¼, it is reasonable to assume they also at one time
21 owned the S½NW¼. Little else is known about the ownership of the land until 1965
22 when the Sperlines acquired the entire NW¼ of Section 23. Mr. Sperline points
23 to a Water Right Affidavit as evidence that a water right was established for
24 the NW¼ of Section 23. W. W. Spurling, R. A. Maple and Lyman S. Burrell filed
25 an affidavit on May 1, 1885, stating that on May 20, 1884, they constructed a

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1 ditch from a branch of Wilson Creek, beginning near the west quarter corner of
2 Section 13, T. 18 N., R. 18 E.W.M. and running in a southwesterly direction to
3 the northeast corner of Section 22. The ditch capacity was 225 inches (4.5
4 cfs), which was appropriated in 1884 and used on Section 22. The claimant
5 suggests that since the ditch ended at the northeast corner of Section 22, which
6 is also the northwest corner of Section 23, it must have been used to also
7 irrigate the NW¼ of Section 23. Additionally, Spurling, named in the affidavit
8 at one time owned a portion of the claimants' land. William Spurling did own
9 the S½NW¼ of Section 23. However, he acquired it almost 20 years after the
10 affidavit was filed and the water appropriated. The affidavit states that the
11 entire flow in the ditch was used to irrigate Section 22. If that is the case,
12 in order to serve the lands in Section 23 the ditch would have had to be
13 enlarged. There is no evidence that occurred. Additionally, there is no
14 evidence of when water was first used on the claimants' land. When Mr. Sperline
15 testified in support of the Dippel Brothers claim he stated that he first moved
16 into the area in 1949, so his knowledge of the area cannot precede that date.
17 He did not testify to any knowledge of actual water use on the land prior to his
18 purchase.

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

21
22 COURT CLAIM NO. 02297 -- Joseph Antonich

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

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1 The claimant's land lies in the NW¼ of Section 28, T. 18 N., R. 19 E.W.M.
2 and he is asserting a right to irrigate 155 acres with water diverted from
3 Naneum Creek. Water is diverted from the creek at five different locations,
4 most of which are on the claimant's property. One diversion is into the
5 Ferguson Ditch, which diverts from Naneum Creek in the SE¼SW¼ of Section 16,
6 T. 18 N., R. 19 E.W.M. and carries water through several sections. Mr. Antonich
7 then diverts from the Ferguson Ditch at two locations as it goes through his
8 property. Most of the claimant's land is planted in Timothy hay, with about 15
9 acres around the buildings in pasture. Mr. Antonich rill irrigates the fields
10 and usually after getting two cuttings of hay will put livestock in to graze the
11 hay stubble. The livestock raised include 400 sheep and 100 head of cattle. The
12 livestock drink directly from Naneum Creek or one of its branches that flows
13 through the property. The land is also assessed by the KRD and district water
14 is used in addition to creek water to irrigate the 155 acres.

15 Mr. Antonich did not know much about the history of the property. He
16 acquired it in 1976 and has continued the irrigation practice of his
17 predecessor. Review of the Ferguson decree reveals that the NW¼ of Section 28
18 was owned by Elijah M. Topliff at the time of the decree. The findings of fact
19 that preceded the decree stated that the land was settled in April of 1872 by
20 McDonald, who appropriated water from Naneum Creek to irrigate the land that
21 same year. The Ferguson decree awarded Topliff a Class 2 right, which would
22 have an 1872 date of priority, for 160 inches, or 3.20 cubic feet per second.
23 The decree provided that quantity could in May and June and half of that
24 quantity could be used the rest of the year.

25
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1 Water Right Claim No. 06546 was filed by a predecessor in compliance with
2 the requirements of RCW 90.14. WRC No. 06546 asserts a right to divert 2 cubic
3 feet per second, 800 acre-feet per year from Naneum Creek for the irrigation of
4 154 acres and stock watering within the NW¼ of Section 28, T. 18 N.,
5 R. 19 E.W.M. The claim identified only one point of diversion, that being 1340
6 feet east of the northwest corner of Section 28. The diversion into the
7 Ferguson Ditch and the four other diversions within the claimant's property were
8 not described. The Referee does not know whether the other diversions were
9 added after the claim was filed and an error was made when the form was being
10 completed. Regardless of the reason, the Referee can only recommend that the
11 right confirmed include the one diversion described in WRC No. 06546.

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

17
18 COURT CLAIM NO. 01155 -- Glen Armistead
19 01156 Bonnie Spurrier
20 01158

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

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

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

25
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1 Water Right Claim No. 120775 was filed by Merle M. Schmith pursuant to the
2 requirements of RCW 90.14. It asserts a right to divert 0.5 cfs, 300 acre-feet
3 per year from a pond for the irrigation of 2 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
4 Section 13, T. 17 N., R. 18 E.W.M.

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

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

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

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

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

6 The property described in Court Claim No. 01006 is the W $\frac{1}{2}$ of Section 28,
7 T. 19 N., R. 19 E.W.M. Mrs. Aronica, and her son Allen, are enrolled members of
8 the Yakama Indian Nation. The NW $\frac{1}{4}$ of Section 28 is held in trust by the United
9 States for Mrs. Aronica and her family and is identified as Yakima Public Domain
10 Allotment HA355. The United States initially intended to put on evidence in
11 support of this portion of the claim through the Federal Reserved Rights Pathway
12 in this proceeding. However, the Court determined it would be more appropriate
13 for the evidence in support of this claim be presented as part of the subbasin
14 proceedings. On April 11, 1991, the Court entered an Order Amending Pretrial
15 Order No. 8 to allow consideration of the claims for public domain Indian trust
16 allotments to be made in the Subbasin Pathway. The United States intends to
17 address the claim for Allotment HA355 during the exception phase and
18 supplemental hearing for Subbasin No. 9.

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

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

9 The SW¼ of Section 28 was settled on by Charley Nason, who received a
10 patent on January 18, 1887. Although Mr. Nason was not a party to any of the
11 cases involving Wilson and Naneum Creek, the Ferguson decree recognized that he
12 had the superior water right to Naneum Creek for 25 inches (0.50 cfs) with a use
13 initiated prior to 1872. This indicates to the Referee that Nason had settled
14 on the land prior to 1872. Mrs. Aronica, who is Charley Nason's
15 daughter-in-law, was 100 years old at the time of the evidentiary hearing and
16 not available to testify. Exhibit DE-141 was presubmitted on behalf of the
17 claim. It contains a statement from Mrs. Aronica that summarizes her memory of
18 the history of the land and its development. Mr. Nason gave permission to
19 construct the Adams and Charlton Ditches across his land and how he helped with
20 construction of the ditches. Initially a small garden area was irrigated near
21 the house and then pasture land was developed. The claimant's land is riparian
22 to Naneum Creek and the priority for the water right would be the date the land
23 was settled, which is when steps were first taken to sever the land from Federal
24 ownership. Based on Mrs. Aronica's statement it would appear that members of
25 her family were on the land prior to the first white settlers. However, "prior

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

7 Mrs. Aronica is claiming an 1855 priority date based on the Treaty with the
8 Yakama Indian Nation. However, there has been no evidence presented to show
9 that the claimant's ownership of the SW¼ of Section 28 is related to the Treaty
10 or that it would enjoy a right based on the Treaty. Charley Nason received
11 title to the land through a homestead certificate.

12 Mrs. Aronica is also asserting a right to a 10 cfs instream flow in Naneum
13 Creek for religious practices and traditional water use for growing traditional
14 foods and medicines along the riparian gallery adjacent to the creek. The claim
15 includes use of the creek as a usual and accustomed fishery resource. This
16 claim would be based on provisions in the Yakama Treaty for taking fish at all
17 usual and accustomed places. The Referee believes this instream flow claim
18 would best be addressed as part of the claim for the trust land in the NW¼ of
19 Section 28, since both are based on the Treaty and Federal reserved rights,
20 rather than state rights. The United States will be addressing the potential
21 existence of a Federal reserved right for the NW¼ of Section 28 and should also
22 address the claim for the instream flow right, that appears to also be based on
23 a Federal reserved right.

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

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1 600 acre-feet per year from Naneum Creek for the irrigation of 95 acres and
2 stock watering in the SW¼ of Section 28. The diversion into the Adams Ditch
3 (#1) is described in this claim. WRC No. 004140 asserts a right to divert 2
4 cfs, 400 acre-feet per year from Naneum Creek for the irrigation of 90 acres in
5 the SW¼ of Section 28. The diversion into Nason Ditch (#2) is described in this
6 claim. It is obvious that since only 115 acres are being irrigated, there is
7 some duplication in the acreage described in the two claims. Although the two
8 water right claims jointly assert a right to 4 cubic feet per second, Mrs.
9 Aronica is only asserting a right to divert 2.5 cfs in this proceeding.

10 Based on the evidence in the record, the Referee recommends that a right be
11 confirmed under the Riparian Doctrine with a June 30, 1871, date of priority for
12 the diversion of 2.5 cubic feet per second, 575 acre-feet per year for the
13 irrigation of 115 acres and stock watering in that portion of the SW¼ of
14 Section 28, T. 19 N., R. 19 E.W.M. lying east of Naneum Creek and below the
15 Carlson Ditch. Since the two water right claims filed only describe two points
16 of diversion, only those diversions will be authorized. It may be necessary for
17 the claimant to contact Ecology concerning the process for adding the other
18 three points of diversion.

19
20 COURT CLAIM NO. 00575 -- Don H. Bacon
& Gabriella R. Bacon

21 The claimants filed Claim No. 00575 with the Court asserting a right to use
22 waters from Naneum Creek for stock watering. Mr. Bacon appeared and testified
23 at the evidentiary hearing.
24
25

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28

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

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

20
21 COURT CLAIM NO. 01879 -- Dimitri Bader
& Lenora Bader

22 Richard W. and Marilyn J. Hemstad submitted a claim to the Court for use of
23 waters from Whiskey Creek for irrigation and stock watering. Mrs. Hemstad,
24 Carol Rasmussen, a prior owner of the property, Victor Munz, a neighboring
25

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

4 The claimants' property lies in the SW¼ of Section 23, T. 18 N.,
5 R. 18 E.W.M. lying north and east of the Cascade Canal. According to the
6 testimony, approximately 50 acres is irrigated. The crops over the years have
7 varied somewhat, but have predominately been hay, pasture and grain. The land
8 has been flood irrigated, but is now rill irrigated. Mr. Moeur kept
9 approximately 60 cow-calf pairs on the land and the livestock drink directly
10 from the creek. Mr. Moeur estimated that an average of 2 cubic feet per second
11 is used, with a maximum of 5 cubic feet per second and up to 8 acre-feet per
12 acre irrigated.

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

19 The claimants point to a deed from Hubert Jonas to Henry Kleinberg
20 conveying the SW¼ of Section 23, "together will all water rights appurtenant
21 thereto.", as evidence of the existence of water rights for the property.
22 Unfortunately, the Referee has found this language to often appear on deeds when
23 there are in fact no water rights. However, Mr. Munz's testimony clearly
24 establishes that the claimants' property was being irrigated with water from
25 Whiskey Creek as early as the 1920's. The land is riparian to Whiskey Creek.

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

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

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

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

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

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

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

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

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

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1 for 9.25 acres. Although Mr. Baker testified to never having called for EWC
2 water, the Referee does not know if Mr. Eason might have. The channel that Mr.
3 Baker calls Little Naneum Creek is not named on State's Exhibit No. SE-2. It
4 does not seem to connect at all with Naneum Creek, which makes the Referee
5 wonder whether it really is a branch of the Naneum Creek. It seems to be
6 immediately below the Cascade Canal in the S½ of Section 32, T. 18 N.,
7 R. 19 E.W.M. and flows south. Mr. Baker did testify that there is water in the
8 channel after the irrigation ditches turn off and it continues to flow until the
9 weather is so cold the water in the channel freezes. During the presentation of
10 evidence for EWC, the company's manager testified to using Lower Naneum Creek
11 (distinguished from Naneum Creek) for delivery of EWC water. The Referee
12 wonders if Lower Naneum Creek and Little Naneum Creek are the same water course.

13 The Bakers were not able to present any evidence of historic water use
14 during the time frame necessary to show that a water right was established. The
15 historical evidence for their land is limited to a copy of the patent that John
16 T. Greenwood received on February 23, 1889, for the SW¼ of Section 8, T. 17 N.,
17 R. 19 E.W.M. The Bakers put in evidence of a water right for the NW¼ of
18 Section 8, and suggested that their land would have been developed and irrigated
19 at about the same time. However, there is no evidence to support that
20 position.

21 Water Right Claim No. 042450 was filed by Stanley J. Baker pursuant to the
22 requirements of RCW 90.14. It asserts a right to divert 40 gpm, 4 acre-feet per
23 year from a unnamed stream for the irrigation of 10 acres and stock watering in
24 the NE¼NW¼SW¼ of Section 8, T. 17 N., R. 19 E.W.M. The date of first water use

25
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1 shown on the claim form is March of 1967. The inconsistency between this date
2 and the priority date asserted by the claimant (1880), was not addressed.

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

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

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

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

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

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

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

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1 Section 5, T. 18 N., R. 19 E.W.M. Government Lot 1 lies where the NE¹/₄NE¹/₄ would
2 be in Section 5. Water Right Claim No. 124000 asserted a right to use 1 cubic
3 foot per second, 700 acre-feet per year from Wilson Creek for the irrigation of
4 40 acres and stock watering, also within the NE¹/₄NE¹/₄ of Section 5. There does
5 not appear to be an RCW 90.14 claim for use of the unnamed spring.

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

25
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1 report and the Court's Amended Order Re: Non-Diversionsary Stockwater Rights and
2 that use can continue.

3
4
5 COURT CLAIM NO. 00708 -- Estate of May S. Barnhart
6 & E. Eugene Barnhart, Jr.
7 Kenneth E. Barnhart
8 & Susan Barnhart

9 A Statement of Claim was filed with the Court by May S. Barnhart and E.
10 Eugene Barnhart, Jr., for the use of waters from Naneum Creek and Coleman
11 Creek. Coleman Creek is located in Subbasin No. 10, Kittitas, and rights to the
12 use of that water will be addressed in the Report of Referee for Subbasin No.
13 10. The Barnharts were represented by Attorney Willima Almon and Eugene
14 Barnhart testified at the evidentiary hearing. Mr. Almon has since withdrawn as
15 their attorney. On April 28, 1998, Kenneth E. and Susan Barnhart were joined as
16 additional parties to this claim.

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

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1 Mr. Barnhart entered into evidence two Affidavits of Water Right as the
2 basis for his claim. The first affidavit was filed on May 30, 1890, by Larson
3 and Keister asserting a right to 16 cfs from Naneum Creek conveyed in ditches
4 constructed in June of 1880 for use on lands in Sections 2 and 11 and the NE¼ of
5 Section 3, owned by Keister, and Sections 2, 3 and 10, on lands owned by
6 Larson. The affidavit did not specify exactly which portion of the sections
7 cited were owned. Keister and Larson were parties to Ferguson and the Court's
8 findings described the lands owned by Keister as the N¼NW¼ and SW¼NW¼ of
9 Section 11, the SE¼SW¼ of Section 2 and the NE¼ of Section 3, and the lands
10 owned by Larson as the W¼SW¼ and W¼NW¼ of Section 2 and the S¼SE¼ of Section 3,
11 none of which are owned by the Barnharts. Therefore, the Referee can only
12 conclude that this affidavit does not establish a water right for the Barnhart
13 property.

14 The second affidavit was filed by Philip H. Schnebly and Peter Kuchen on
15 May 23, 1890, claiming a right to waters from Naneum Creek from a point in
16 Section 28 for a ditch running through Sections 28, 33 and 34, into Section 2,
17 T. 18 N., R. 19 E.W.M. The ditch was constructed in May 1887 and used to
18 irrigate 320 acres. P. H. Schnebly was a defendant in Ferguson and, according
19 to the Court's findings owned and irrigated since 1887 the E¼NW¼ and the W¼NE¼
20 of Section 3, also lands not owned by the Barnharts. There is no indication
21 that Peter Kuchen was a party to Ferguson or that he ever owned the claimants'
22 land.

23 A patent issued on June 12, 1882, to F. D. Schnebly for the S¼SE¼, NW¼SE¼
24 and NE¼SW¼ of Section 2. During the various suits to determine the water rights
25 for Naneum Creek the NE¼SW¼ was owned either by F. D. Schnebly or Charles P.

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

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

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

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

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

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

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

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

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1 continue to divert from Naneum Creek for stock watering while they have cattle
2 on the property. They use the diversion that is located in the SE¼SW¼ of
3 Section 16. The land is rill and flood irrigated with concrete ditches.
4 Neither of these two claimants testified to the quantity of water that is
5 diverted and used to irrigate their land, but agreed that 8 acre-feet per year
6 is needed.

7 Water Right Claim (WRC) No. 119177 was filed by Ralph Charlton asserting a
8 right to use 2.2 cfs, 440 acre-feet per year for the irrigation of 110 acres and
9 stock watering in the east 1800 feet of the NE¼ of Section 21, T. 18 N.,
10 R. 19 E.W.M. The point of diversion described is in the SE¼SW¼ of Section 16.
11 The place of use on WRC No. 119177 only includes the Barnhart land and does not
12 include the land owned by the O'Learys. Failure to file a claim waives and
13 relinquishes any right that may have existed, RCW 90.14.071.

14 The claimants are basing their claim on the Ferguson decree, which awarded
15 a Class 2 right, which would have an 1872 date of priority, to John Olding, John
16 Malcolm and Charles Einkemeier for the use of 320 inches of water on the N¼ of
17 Section 21, T. 18 N., R. 19 E.W.M. However, in December of 1911, John G. and
18 Elizabeth Olding, J. M. and Nettie Galvin and H. W. and Eugenia Wager sold to P.
19 H. and Bertha Adams all of their water rights. At that time the Oldings owned
20 the N¼NE¼ and the NW¼ of Section 21, T. 18 N., R. 19 E.W.M., except for a ten
21 acre parcel owned by the Galvins. The Galvins also sold their water rights to
22 the Adams. Exhibit No. DE-1268 was put into the record by Kayser Ranch, who are
23 successors to the Adams. The Oldings, Galvins and Wagers were selling their
24 water rights to Naneum Creek in anticipation of construction of the KRD canal,
25 which would serve their lands after it was constructed. This agreement was

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

11 In light of the rights awarded in the Ferguson decree having been
12 transferred to P. A. Adams in 1911 and there being no evidence offered to show
13 that other water rights had been established for the land, the Referee cannot
14 recommend that a water right be confirmed for the Barnhart property that lies in
15 the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21. A right can be recommended for the Barnharts for the
16 54 acres they own in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21. The decree allowed for the use of
17 1 inch of water (or 0.02 cfs) for each irrigated acre in May and June and
18 one-half inch (or 0.01 cfs) for each acre the rest of the year. A maximum of 5
19 acre-feet per acre can be diverted based on that instantaneous quantity.
20 Therefore, a right with a June 30, 1872, date of priority is recommended, for
21 the diversion of 1.08 cubic foot per second in May and June, 0.54 cubic foot per
22 second in April and July 1 through October 15, 270 acre-feet per year for the
23 irrigation of 54 acres in the east 1800 feet of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21,
24 T. 18 N., R. 19 E.W.M. Mr. Barnhart testified to diverting water after the
25 irrigation season for stock watering, however, he did not testify to how much

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

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

15
16 COURT CLAIM NO. 01831 -- Frank J. Beard
(A)05373 & Charlot M. Beard

17 The referenced court claim, as amended, asserts a right to irrigate land in
18 the NE¼ of Section 9, T. 18 N., R. 19 E.W.M. with water diverted from Naneum
19 Creek. Charlot M. Beard testified at the evidentiary hearing.

20 The Beards own all of the NE¼ of Section 9, but are asserting a right to
21 irrigate with water from Naneum Creek only that portion lying north of the
22 Kittitas Reclamation District (KRD) Highline Canal. They own 35 acres north of
23 the canal and, according to a map they submitted and the State's Investigation
24 Report, irrigate 32 of those 35 acres. The land is pasture and they have
25

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

17 The Beard property was originally patented to the Northern Pacific Railroad
18 and was then sold to James E. Burke on January 18, 1892. J. E. Burke was a
19 defendant in Ferguson and the Findings of Fact and Conclusions of Law stated
20 that he owned the NE¼ of Section 9, T. 18 N., R. 19 E.W.M. and had 100 acres in
21 cultivation and water had been diverted from Naneum Creek for irrigation
22 beginning in 1884. A Class 13 right was awarded to J. E. Burke for 100 inches,
23 consistent with the Court's findings that one inch of water was sufficient for
24 the irrigation of one acre until July 1, when one-half inch of water would then
25 be sufficient.

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

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

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

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

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1 confirmed right will authorize a diversion only during the irrigation season.
2 It will contain a provision that shows that stock watering from the channel
3 continues during the winter as the channel accumulates return flow and perhaps
4 some naturally occurring, but unquantified water.

5
6 COURT CLAIM NO. 14379 -- Joyce L. Bloxham

7 On March 14, 2000, Joyce L. Bloxham filed a claim with the Court asserting
8 a right to use waters from Naneum Creek. The Court issued an Order Granting
9 Further Processing of Claim No. 14379 Relating to Subbasin No. 9 on May 11,
10 2000. This claim will be scheduled for presentation of evidence when the
11 supplemental hearing for Subbasin No. 9 is set.

12
13 COURT CLAIM NO. 02206 -- Boise Cascade Corporation
14 (A) 03119
(A) 05238

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Several other pump chance locations are identified on the map, however, there are no RCW 90.14 claims identified for the source or that particular diversion from the source. Part of Exhibit DE-1522 suggests that the claimant is attempting to amend a RCW 90.14 claim to cover these locations, however, amendments can only be made pursuant to RCW 90.14.065, not by the Referee. Following is a list of those pump chance locations (some have been numbered by Boise Cascade, and if so, that number is included):

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

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

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

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

9 For the water sources in Section 33, T. 21 N., R. 19 E.W.M. and Sections 3,
10 7 11, 15, 19, 23, and 31, T. 10 N., R. 19 E.W.M., Sections 5 and 9, T. 19 N.,
11 R. 19 E.W.M. and Section 1, T. 18 N., R. 19 E.W.M. (all former Northern Pacific
12 Railroad land) the priority date shall be May 24, 1884, which is the date the
13 map of definite location in Kittitas County was filed by NPRR. The priority
14 date for the water right on Pearson Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 20 N.,
15 R. 19 E.W.M. shall be November 13, 1895; the priority date for the unnamed
16 stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 19 N., R. 19 E.W.M. shall be March 4,
17 1909; the priority date for Dot Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 20 N.,
18 R. 19 E.W.M. shall be April 25, 1910, (the Referee recognizes the last two dates
19 are after the 1905 Federal withdrawal, however, this comports with the Courts
20 prior rulings concerning de minimis water uses established after the Federal
21 withdrawal in the Yakima basin).

22
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1 COURT CLAIM NO. 00185 -- Victor Boykiw
2 (A) 00824 & Darlene Boykiw
3 (A) 02484 Central Washington University
4 U.S. Department of the Interior

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

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

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cannot recommend that a water right be confirmed under Court Claim No. 00185.
Mr. Boykiw was advised by the Referee and the Court in this adjudication that if
an exception was filed to this Report of Referee, the claim could be scheduled
for presentation of evidence at the supplemental hearing. The parties that have
recently been joined to the claim have the same ability. If at the supplemental
hearing any of the parties joined to this claim wish to rely on George Maddox's
expert written testimony, Mr. Maddox must be available for cross-examination.

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

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

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

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

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

22 All of the land described in Court Claim No. 0825 was owned by Carl A.
23 Sander in the late 1800's, however, independent water rights were established as
24 different parcels were settled. William H. Snyder settled on the E $\frac{1}{2}$ SE $\frac{1}{4}$ and
25 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 on October 1, 1873, and received a patent for the land on

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

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

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

12 Although L. D. Rasmussen did not appear at the evidentiary hearing,
13 sufficient evidence was presented to show that a water right was established for
14 that portion of the property and beneficial use has continued. The Referee's
15 preference would be to award a proportionate share of the water right to each of
16 the parties that have been joined to Court Claim No. 0825, however, that is not
17 possible. Due to the manner in which the claimant's land was settled, the
18 Referee concludes that three separate water rights were established with three
19 different priority dates. One right and priority date would be for the lands in
20 the SW $\frac{1}{4}$ NE $\frac{1}{4}$, a second right and priority date would be for the lands in the
21 SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$, with a third for the NE $\frac{1}{4}$ SE $\frac{1}{4}$. The Referee knows that the
22 Bridges and Morgan now own Parcel A of the survey and Rasmussen owns Parcel B of
23 the survey. However, without a copy of the survey, the Referee cannot tell how
24 the parcels lie in the section. Mr. Parsel roughly drew it on the exhibit map,
25

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

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

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

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

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

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

4
5 COURT CLAIM NO. 02124 -- Gerald F. Brunner
& Ruth Ann Brunner

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

10 Although Court Claim No. 02124 identifies the place of use as being a
11 portion of the NW~~1~~/~~4~~ of Section 8, T. 18 N., R. 19 E.W.M., evidence presented
12 at the hearing shows that the Brunners also own a portion of the SW~~1~~/~~4~~ of
13 Section 8. The record shows that they own the S~~1~~/~~2~~NW~~1~~/~~4~~ and the north 790 feet
14 of the west 507.3 feet of the SW~~1~~/~~4~~ of Section 8. Within that area they are
15 irrigating 18 acres of pasture with water diverted from Wilson Creek. The
16 diversion from Wilson Creek is located near the northeast corner of the SE~~1~~/~~4~~SW~~1~~/~~4~~
17 of Section 5, T. 18 N., R. 19 E.W.M. The land is flood irrigated. Mrs. Brunner
18 testified that she had never measured the amount of water diverted, but assumed
19 it was between 1.5 and 2 cfs. They are asserting a right to use 2 cfs, 120
20 acre-feet per year. Mrs. Brunner testified that as far as she knew that land
21 was being irrigated in much the same manner when her husband acquired it in
22 1964.

23 Gerald Brunner filed WRC No. 143469 pursuant to the requirements of RCW
24 90.14. It asserts a right to divert 2 cfs, 72 acre-feet per year from Dry Creek

25
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1 (a branch of Wilson Creek) for the irrigation of 18 acres and livestock water.
2 The point of diversion is described as being in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5 and
3 the place of use is the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8. The point of
4 diversion described is not where the Brunners divert their water from Wilson
5 Creek, but instead is a point where Wilson Creek branches.

6 The portion of the Brunner land located in the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8 is
7 part of the land homesteaded by James Jude, who received a patent on August 12,
8 1890, for the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M.
9 James Jude was a defendant in Sander v. Jones. The decree awarded James Jude 20
10 inches of water and indicated that the water was appropriated between 1883 and
11 1887. The decree provided that one inch of water was sufficient for the
12 irrigation of one acre, therefore, the 20 inches of water awarded to Jude would
13 have been sufficient for 20 acres. The Jude property was riparian to Wilson
14 Creek. There are two other claimants in this adjudication who are asserting a
15 right based on being successors to Jude. Ronald Rees, under Court Claim No.
16 00892, and William Wood, under Court Claim No. 05316, own and are asserting
17 rights for lands within the NW $\frac{1}{4}$ of Section 8. Mr. Rees is irrigating 12 acres
18 within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and Mr. Wood is asserting a right to 20 acres in the
19 N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$. Rights are being asserted for the irrigation of a total of 52 acres,
20 but the extent of the right based on the decree is 20 acres. There has been no
21 evidence offered to show that an additional right beyond that awarded in Decree
22 No. 96 is appurtenant to the property. Mr. Rees owns a total of approximately
23 40 acres within the area for which a right was awarded, Mr. Wood owns 20 acres
24 and Mr. Brunner owns 20 acres. There is insufficient evidence to show where the
25 20 acre right was being exercised within the Jude land when the right was

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

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

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

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

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

10 The Referee recommends that a right be confirmed under the Riparian
11 Doctrine to Gerald and Ruth Ann Brunner with a June 30, 1877, date of priority
12 for the diversion of 0.10 cfs from May 1 to June 30 and 0.05 cfs in April and
13 from July 1 through October 15; 26 acre-feet per year for the irrigation of 5
14 acres and 0.5 acre-foot per year for stock water in the S~~1~~²/₄NW~~1~~⁴/₄ of Section 8,
15 and with a May 8, 1884, date of priority a right for the diversion of 0.18 cubic
16 foot per second, 46.8 acre-feet per year for the irrigation of 9 acres and 1
17 acre-foot per year for stock watering in the north 790 feet of the west 507.3
18 feet of the SW~~1~~⁴/₄ of Section 8.

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

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

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

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

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

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

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1 asserted in this proceeding for lands south of Coleman Creek. Historically, the
2 canal has served 1210 acres, but at this time is serving 980 acres and that is
3 the number of acres the canal company is seeking a right to irrigate. The lands
4 served at the time of the evidentiary hearing lie in the SW¼ of Section 12,
5 Section 13, east of the Canyon Road, both in T. 17 N., R. 18 E.W.M. and Sections
6 18 and 19 of T. 17 N., R. 19 E.W.M. All of the irrigated land lies below the
7 Bull Canal, except a 7.6 acre field owned by the Sorensens in the SW¼ of
8 Section 12. This field is also the only area served that lies north of
9 Interstate 90. A legal description for the proposed place of use for Bull Canal
10 Company was not placed in the record. The claimant appears to be relying on two
11 maps to delineate its place of use. A map was attached to Court Claim No. 00886
12 and a map was included in the Bain report.

13 Bull Canal Company was formed in the late 1800's, although the exact date
14 is not clear. The Articles of Incorporation were dated March 26, 1898, and the
15 State of Washington issued a License to the company on May 14, 1898. The first
16 minutes of the company are also dated 1898. However, attached to the Court
17 claim is a copy of what appear to be right of way agreements for the Bull Canal.
18 The handwriting is difficult to read and the edges of the agreements did not
19 copy, but the Referee believes they are agreements related to construction of
20 the Bull Canal and they are dated 1885. The evidence shows that Bull Canal was
21 originally constructed beginning with a diversion from Wilson Creek in the NE¼
22 of Section 11. The claimant asserts this right was established in 1885 and the
23 right of way agreements attached to the Court claim would support that
24 assertion. Sometime after that a ditch was constructed from the Yakima River to
25 Wilson Creek. The date this occurred is not clear. The claimant's counsel

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

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

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

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

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

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

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

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

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

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

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

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1 diversion location, as the map attached to the claim places the diversion in the
2 NE¼ of Section 11.

3 WRC No. 029323 asserts a right to divert 8 cfs, 2880 acre-feet per year
4 from Nanum Creek for the irrigation of 320 acres. The point of diversion is
5 1250 feet north and 640 feet west of the southeast corner of Section 18, which
6 is the approximate location of the currently used point of diversion. WRC No.
7 029324 asserts a right to divert 3 cfs, 1080 acre-feet per year from Nanum Creek
8 for the irrigation of 320 acres. The point of diversion described is 2200 feet
9 west and 2075 feet north of the southeast corner of Section 19, being within the
10 SE¼ of Section 19. The diversion from the second branch of Nanum Creek is
11 actually in the SE¼ of Section 18. The Referee does not know if an error was
12 made in completing the water right claim or if there has been some change in the
13 diversion point or flow of this branch of Nanum Creek. WRC No. 029325 asserts a
14 right to divert 6 cfs, 2160 acre-feet per year from Coleman Creek for the
15 irrigation of 160 acres. The claimant is no longer asserting a right to use
16 waters from Coleman Creek. Attached to all of the claims is the same map
17 intended to depict the place of use of the water delivered by the Bull Canal
18 Company, Inc.

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

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

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

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

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

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

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

11 The Bull land in that portion of the SE¼ of Section 12 lying south of
12 Interstate 90 was originally part of the parcel just discussed. Construction of
13 I-90 separated this piece from the larger parcel. It is 8.08 acres in size,
14 with 7.5 acres being irrigated, also with water delivered by Ellensburg Water
15 Company. There was no evidence presented to show the existence of a water right
16 for use of Lyle Creek. Water Right Claim No. 033160 was filed by Thomas Bull
17 pursuant to the requirements of RCW 90.14. It asserts a right to use 5 cfs,
18 1000 acre-feet per year from Lyle Creek for irrigation of 200 acres in the SE¼
19 and W¼NE¼ of Section 12, T. 17 N., R. 18 E.W.M.

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

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

3 The parcel of land in the S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 17 N., R. 18 E.W.M. is
4 approximately 8 acres in size, with four acres being irrigated with water
5 diverted from Lyle Creek. Livestock are also raised on this piece, drinking
6 directly out of the creek. Mr. Bull did not provide any evidence of how much
7 water is used to irrigate this parcel. Water Right Claim No. 033164 filed
8 pursuant to RCW 90.14 asserts a right to use 1 cubic foot per second, 50
9 acre-feet per year from Lyle Creek for the irrigation of 10 acres within this
10 parcel. Mr. Bull testified to his belief that the land has been irrigated since
11 1888, but provided no foundation for this belief.

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

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

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

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

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

13 Dr. Burke is asserting a right to divert water from Naneum Creek for the
14 irrigation of 70 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32 and the west 500 feet of the
15 north 2400 feet of Section 33. The land is in pasture and up to 200 head of
16 cattle and a few horses graze on it. The livestock drink directly from Naneum
17 Creek as it flows through the fields. This type of non-diversionary stock water
18 use is covered by the stock water stipulation discussed on page 4 of this report
19 and no other water right will be confirmed for this use. The pasture is flood
20 irrigated with water diverted from Naneum Creek at two points. One diversion is
21 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21 and carried in a ditch that is about one and
22 half miles long. This ditch is primarily used to irrigate the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 32. A second diversion is near the northwest corner of Section 33 and
24 is used to irrigate the land in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33. Mr. Minor marked a
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1 diversion location on the map, however, that appears to be on the ditch that
2 carries water after it is diverted from the creek. The Referee believes the
3 diversion from the creek is just a few feet south and east of the northwest
4 corner of Section 33. Mr. Minor estimated that between 2 and 3 cubic foot per
5 second is used when available. The creek flow diminishes after early June and
6 generally is not available.

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

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

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1 claim in this proceeding under Court Claim No. 05349. Mr. Mitchell, who
2 ironically is also represented by Attorney Richard T. Cole, is asserting a right
3 to irrigate 90 acres. The basis for his claim is also the 100 inches awarded to
4 McDonald in the Ferguson decree. Between the two claimants in the NW¼ of
5 Section 33, a right is being asserted for the irrigation of 120 acres. The
6 Ferguson decree awarded one inch of water for each acre irrigated, therefore,
7 there exists a right to irrigate 100 acres. Mr. Cole did not address this
8 obvious conflict between his clients. However, the Referee is not able to
9 recommend that a water right be confirmed to Ron Mitchell due to a lack of RCW
10 90.14 claim for his land. See page 379 for a full discussion of the Mitchell
11 claim.

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

17 The NE¼NE¼ of Section 32 was settled by Leroy L. Holcomb, who received a
18 patent on March 25, 1891, for the N¼NE¼, NE¼NW¼, and the SW¼NE¼ of Section 32,
19 T. 18 N., R. 19 E.W.M. Holcomb filed a Claim to Water Right in 1890 attesting
20 to having constructed three ditches from Naneum Creek for irrigating land in the
21 NE¼ of Section 32. Construction of the first ditch began on April 15, 1883,
22 with a diversion near the southeast corner of Section 29. The remaining two
23 ditches had diversions in the W¼ of Section 28, with construction of the last
24 ditch being finished on April 15, 1889. One ditch carried 15 inches, one 25
25 inches and the last one 60 inches. The claimant points to the Ferguson decree

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

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

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1 presented for the NE¼ of Section 31, no other information about the history of
2 the property was provided. Mr. Minor was only able to testify about water use
3 on the property during the three years he owned it and observations of the
4 Burkes irrigation practices during their ownership. The Burkes acquired the
5 property in 1953 and there was no testimony about the condition of the land at
6 that time. In order for the Referee to recommend that a right be confirmed for
7 this land, there must be evidence that water was diverted from Wilson Creek and
8 used to irrigate the land in the late 1800's or early 1900's. That evidence is
9 lacking.

10 Two water right claims were filed pursuant to RCW 90.14 for the Section 31
11 land. WRC No. 145062 asserted a right to divert 2 cfs, 800 acre-feet per year
12 from an unnamed drain for the irrigation of 18 acres and stock water in the
13 N¼NW¼NE¼ of Section 31. The claim says water was first used in 1915. WRC No.
14 137488 was filed for use of Wilson Creek. It asserts a right to use 0.50 cfs,
15 90 acre-feet per year for irrigation of pasture and hay land and stock watering
16 on a portion of the NW¼NE¼ and NE¼NW¼ of Section 31. A riparian right is
17 claimed with date of first use prior to 1915. Although a riparian right is
18 asserted, the described land is not riparian to Wilson Creek.

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

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1 COURT CLAIM NO. 02295 -- Peter Burkholder

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

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

22 The claimants land is part of the land owned by Carl and Olive Sanders.
23 Carl Sander settled on the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 on May 8, 1877. The
24 land was owned by Northern Pacific Railroad at that time. Sander remained on
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1 the land under license from the railroad until he purchased it on July 15,
2 1887. The Sander v. Jones decree awarded Carl Sanders 450 inches of water to be
3 used on lands he settled or had acquired from Chapman and Snyder. The Referee
4 believes that the land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 would share an
5 1877 date of priority. Sander v. Jones awarded 1 miners inch of water for each
6 acre irrigated in May and June and one-half inch the rest of the year.

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

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

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

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

12
13 COURT CLAIM NO. 00103 -- Burlington Northern Railroad Co.

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

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

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

6 The claimants' land is in the E½E½SE¼ of Section 29, T. 18 N.,
7 R. 19 E.W.M. They irrigate the land that lies west of Taylor Creek with water
8 from the creek. The land is planted in pasture and is rill irrigated. The area
9 east of the creek is used as a feedlot. Pens for the cattle are built with
10 narrow strips intersecting the creek so that the cattle can drink directly from
11 the creek. This type of non-diversionary stock water use is covered by the
12 stock water stipulation discussed on page 4 of this report. Two wells are also
13 used for stock watering. Neither the claimant, nor the ranch manager, have
14 measured the quantity of water diverted from the creek, but a right to divert 1
15 cfs on a continuous basis is being asserted. Mr. Berger has been the ranch
16 manager for seven years prior to the hearing and testified that he continued the
17 irrigation practice that was in place.

18 At the time of the Ferguson decree, the claimants' land was part of that
19 which was owned by F. A. Ploeger, who owned all of the SE¼ of Section 29,
20 T. 18 N., R. 19 E.W.M. The Findings of Fact stated that Ploeger's land was
21 first occupied in 1880 and in 1883 water was diverted from the West Branch of
22 Naneum Creek and used for irrigation. It also stated that 100 acres were under
23 cultivation. The decree awarded Ploeger a Class 13 right to use 100 inches of
24 water. The SE¼ of Section 29 is riparian to the West Branch of Naneum Creek;

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

13 Water Right Claim No. 064729 was filed by Orren Busby pursuant to the
14 requirements of RCW 90.14. It asserts a right to use 1 cubic foot per second,
15 430 acre-feet per year from Naneum Creek for the irrigation of 30 acres in the
16 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N., R. 19 E.W.M. The claimant irrigates
17 approximately 15 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 and irrigates an additional
18 15 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29. As far as the Referee can determine,
19 there was no water right claim filed for lands within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29.
20 The Referee does not know whether Mr. Busby made an error in completing the form
21 when he described the lands on which water was used as being only in the NE $\frac{1}{4}$ SE $\frac{1}{4}$
22 or whether at that time he owned the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 and was irrigating 30
23 acres in that subdivision. The inconsistency between the description where
24 water was being used on WRC No. 064729 the description of lands for which a
25 right is being asserted was not addressed at the evidentiary hearing. Failure

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

4 The Referee, therefore, can only recommend that a water right be confirmed
5 for that portion of the claimants property lying in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29.
6 The Referee recommends that a right be awarded under Court Claim No. 00857 with
7 a June 30, 1880, date of priority for the diversion of 0.30 cubic foot per
8 second in May and June and 0.15 cubic foot per second in April and July 1
9 through October 15, 75 acre-feet per year for the irrigation of 15 acres in that
10 portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N., R. 19 E.W.M. lying west of
11 Taylor Creek.

12
13 COURT CLAIM NO. 01832 -- Ron G. Carlson
& Toni D. Carlson

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

19 The Carlsons own the W $\frac{1}{2}$ W $\frac{1}{2}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34 and the E $\frac{1}{2}$ E $\frac{1}{2}$ and the
20 E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$, except the south 426 feet, of Section 33, T. 19 N., R. 19 E.W.M. They
21 are asserting a right to irrigate 360 acres with water diverted from
22 Wilson-Naneum Creek. The land is planted in hay, grain and pasture and 250
23 cow/calf pairs are generally on the land. The livestock are watered from the
24 irrigation ditches and two springs on the property. Stock water is carried in
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1 the ditches during the winter months. The claimants have owned the land since
2 1974 and during their ownership they have gradually upgraded the irrigation
3 system from dirt ditches to gated pipe. The claimants obtained the land from
4 Mr. Carlson's father, who got it from his own father. The documents show that
5 Ron Carlson's grandfather acquired the land in 1932 from C. H. Kresge, who had
6 owned it since 1909.

7 The Carlsons pointed to the Order Pendente Lite and the Maddox report that
8 preceded the order in Department of Ecology v. Carlson to support their claim.
9 The Pendente Lite Order recognized a Class 19 "right" with a 1916 priority date
10 for 3.0 cfs for irrigation and livestock on 280 acres of land in the E½E½ of
11 Section 33 and the W½W½ of Section 34, T. 19 N., R. 19 E.W.M. According to the
12 Maddox report, Art Carlson had testified to irrigating 280 acres and the 1916
13 priority date was based on Art Carlson's earliest memory of the land being
14 irrigated. Neither the NE¼SW¼ of Section 34 or the E¼W¼SE¼ of Section 32 were
15 included in the lands for which a right was addressed in the Pendente Lite
16 Order. Ron Carlson acquired the E¼W¼SE¼ of Section 32 from the Sorensens after
17 the Pendente Lite Order was entered. The Sorensens do not appear in either the
18 Maddox report or the Pendente Lite Order, nor was there any other evidence
19 presented about the history of the land or water use prior to the Carlsons
20 acquiring it.

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

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1 The claimants indicated the land had not been addressed in any of the prior
2 decrees. However, at the time of the Sander v. Bull case, the E½E½ of
3 Section 33 and the W½W½ of Section 34 were owned by C. H. Kresge. Charles
4 Kresge was one of the named defendants in Sander v. Bull. That decree did not
5 determine or even identify the rights of the defendants. It recited the rights
6 of the Plaintiffs as against the defendants and ordered that the defendants
7 restrain from hindering or interfering with the use and enjoyment of the
8 plaintiffs of the amounts of water awarded to the plaintiffs. Although the
9 rights of the defendants were not identified, it is clear that the defendants
10 were using water from Wilson and/or Naneum Creeks at the time of the judgement.
11 Kayser Ranch entered Exhibit DE-1526, which is a copy of the Transcript of
12 Testimony and Proceedings for Sander v. Bull. Mr. Almon pointed the Referee to
13 the pages where Charles Kresge testified about his use of the land after he had
14 acquired it and the testimony of John Filer, whose mother owned the property in
15 the late 1800's. According to Mr. Kresge's testimony he was irrigating 160
16 acres in 1911 with water diverted from Naneum Creek and carried in the Wilkins
17 Ditch and an unnamed ditch that diverted upstream of the Wilkins Ditch. John
18 Filer testified that in 1891, when his mother owned the land, he constructed a
19 ditch from the Wilkins Ditch to her property and irrigated about 65 acres. He
20 was aware that later another ditch was used to irrigate additional land. He did
21 not know when that second ditch was built and first used.

22 It is clear from the evidence in the record that in 1911, 160 acres within
23 the E½E½ of Section 33 and the W½W½ of Section 34 were being irrigated with
24 water diverted from Naneum Creek and carried through two ditches. It is also
25 apparent that since that time, more land has been irrigated and additional

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

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

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

13 The Referee does recommend that a right be confirmed to the Carlsons with a
14 June 30, 1891, date of priority for the diversion of 3.20 cubic feet per second
15 in May and June and 1.60 cubic feet per second in April and July 1 through
16 October 15, 800 acre-feet per year from Wilson-Naneum Creeks for the irrigation
17 of 160 acres and stock watering and 1.60 cubic feet per second, 5 acre-feet per
18 year from October 16 through March 31 for stock watering in the E~~1~~/~~2~~E~~1~~/~~2~~ of
19 Section 33 and the W~~1~~/~~2~~W~~1~~/~~2~~ of Section 34, T. 19 N., R. 19 E.W.M.

20
21 COURT CLAIM NO. 00612 -- James F. Carmody
& Dorothy Carmody

22 James F. and Dorothy Carmody filed a Statement of Claim asserting a right
23 to use waters from Wilson Creek for irrigation and stock watering. The Carmody's
24 are represented by Attorney John P. Gilreath and Mr. Carmody testified at the
25

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evidentiary hearing.

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

18 This portion of the claimants land is part of the land formerly owned by
19 Carl and Olive Sander. Carl Sander settled on the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
20 25 on May 8, 1877. The land was owned by Northern Pacific Railroad at that
21 time. Sander remained on the land under license from the railroad until he
22 purchased it on July 15, 1887. The Sander v. Jones decree awarded Carl Sanders
23 450 inches of water to be used on lands he settled or had acquired from Chapman
24 and Snyder (which is in the E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 and the W $\frac{1}{2}$ NE $\frac{1}{4}$ and
25 W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M.). The Referee believes that the

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1 land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 would share an 1877 date of
2 priority. Sander v. Jones awarded 1 miners inch of water for each acre
3 irrigated in May and June and one-half inch the rest of the season. The
4 claimants are asserting that in spite of the decree allowing a maximum of one
5 inch per acre, they should have a right to 1.22 inches of water based on the
6 Sanders having a right to 1075 inches for irrigating 880 acres according to the
7 "King Summary" (the Referee believes the "King Summary" is the schedule of
8 rights for Sanders that was prepared sometime after the decree was entered).
9 The claimant has presented no evidence to show that the language in the "King
10 Summary" should prevail over the clear language in the decree. Therefore, the
11 Referee will limit the right to one inch per acre May through June and one-half
12 inch in April and July 1 through October. The claimants assert a right to use
13 46.25 acre-feet per year, which is based on 1.22 inches of water being used
14 April through June. The decree, however, only allows for using one-half inch of
15 water in April. If a continuous diversion is made of one inch per acre in May
16 and June and one-half inch the rest of the irrigation season, a maximum of 35.26
17 acre-feet per year can be diverted and used from Dry Creek.

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

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

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

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

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

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

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

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

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

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

19
20 COURT CLAIM NO. 02174 -- Larry L. Charlton
& Marilyn Charlton

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

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

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

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

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

5 In support of his position that a water right exists for the land, Mr.
6 Charlton pointed to a Statement of Water Right filed by J. W. Coon on May 17,
7 1890 (DE-588 submitted by Chester Stokes). In the document, Mr. Coon states he
8 is the owner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, has a NPRR contract for the N $\frac{1}{2}$ NE $\frac{1}{4}$ and
9 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7 (both in T. 18 N., R. 19 E.W.M.), and that he has a valid
10 claim and the enjoyment of 100 inches of water from Dry Creek for agricultural
11 and domestic purposes carried to his ranch in three separate ditches. The
12 document describes the three ditches and states that since March of 1888 he has
13 appropriated 50 inches of water on his ranch through ditches one and two and
14 prior to April of 1890 constructed the third ditch that carries 50 inches.

15 The statement clearly establishes a water right from Dry Creek for
16 irrigating the Coon land described in the document, the N $\frac{1}{2}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
17 Section 7 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6. However, the land owned by the Charltons
18 lies in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, an area not described in the J. W. Coon
19 statement. According to the documents submitted by the Charltons as part of
20 DE-1220, the Coon family owned discrete portions of the NE $\frac{1}{4}$ of Section 7. Prior
21 to 1890, J. W. Coon owned the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7 and in 1890 sold it to William
22 Coon. Likewise, prior to 1890 William Coon owned the rest of the NE $\frac{1}{4}$ of
23 Section 7 and sold in to J. W. Coon.

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

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

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

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

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

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

8
9
10 COURT CLAIM NO. 00481 -- Estate of Naomi Charlton
& Larry L. Charlton

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

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

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

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

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

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

14 The Charltons are now asserting a right for 100 inches for the irrigation
15 of 100 acres. During the testimony for this proceeding, there was no evidence
16 presented to show that an additional water right was legally established. The
17 Referee was referred to the Department of Ecology v. Carlson Pendente Lite
18 Order, as a basis for the quantity of water for which they are asserting a
19 right. That Order contained a schedule of rights and priorities recognized at
20 that time. Naomi Charlton was listed as having an 1887 right for 1.40 cfs for
21 the irrigation of 70 acres and a 1912 right for 0.60 cfs for the irrigation of
22 30 acres, all in the W $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34. However, there was no
23 basis shown for the 1912 "right". The testimony given in 1973 was very vague
24 with respects to the second right, with most of the testimony revolving around

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

3 The Referee notes that by 1912 the United States had withdrawn all of the
4 unappropriated surface waters in the Yakima River Basin in order to pursue
5 design and construction of the Yakima Irrigation Project. During the
6 withdrawal, water rights could not be established unless the water intended for
7 use was released by the Federal government, RCW 90.40. This Court has ruled
8 that rights to de minimis water uses that would not have an affect on the
9 project could have been established. The Referee does not consider a right to
10 irrigate 30 acres to be de minimis. In order for the Referee to consider
11 recommending that a water right be confirmed for the additional 30 acres (and
12 0.60 cfs) there must be evidence presented to show when this use was initiated
13 and if it occurred after 1905 that a release was obtained from the Federal
14 government or the Federal government felt the use would not have an affect on
15 the project.

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

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

7 Ralph G. and Nancy L. Charlton filed Court Claim No. 00967 asserting a
8 right to use waters from Naneum Creek for the irrigation of 220 acres in the NW¼
9 of Section 21 west of Naneum Road and the W½SW¼ of Section 21, T. 18 N.,
10 R. 19 E.W.M. On April 18, 1989, Donald and Cynthia Toman and D. Winslow and
11 Anna Charlton were joined to the claim. J. Jay Carroll represented all of the
12 claimants associated with the claim at the evidentiary hearing. Ralph G.
13 Charlton and Don Toman testified at the evidentiary hearing.

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

23 The W½SW¼ of Section 21 is now owned by his son, Ralph Charlton, III and
24 his ex-wife Nancy. It is 80 acres in size and is irrigated with a diversion
25 from Naneum Creek in the SE¼NW¼ of Section 21. The land is rill irrigated and
26 is planted in hay and pasture. Up to 100 head of cattle have been raised on the

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1 land and the livestock drink from the creek. Mr. Charlton did not testify to
2 the quantity of water being used to irrigate the land, but is seeking a right to
3 8 acre-feet per irrigated acre, or 640 acre-feet for this parcel. It also
4 receives KRD water.

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

10 Mr. Charlton cited to the Ferguson decree as the basis for the water right
11 for this land. The decree awarded a Class II right, with an 1872 date of
12 priority for 320 inches to Elijah M. Topliff, who owned the NW $\frac{1}{4}$ of Section 28
13 and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 21 and to F. R. Clement a Class IV right with an 1875
14 date of priority for 160 inches for lands in the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 21. The S $\frac{1}{2}$ of
15 Section 21 then had 320 inches, which would result in the SW $\frac{1}{4}$ having 160 inches
16 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ having 80 inches, 40 inches of Class II and 40 inches of Class
17 IV. The testimony indicates that this water has continued to be used over the
18 years. The decree provided for one inch of water in May and June for each acre
19 irrigated and one-half inch of water the rest of the year. One inch equals 0.02
20 cfs.

21 The land in the SW $\frac{1}{4}$ of Section 21 was owned by H. W. Wagar by 1911, when he
22 sold the water rights from Naneum Creek to P. H. Adams. The water rights for
23 the creek were sold in anticipation of construction of the KRD canal. The sale
24 occurred in 1911, but the actual transfer of the water right was not to occur
25

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

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

14 Ralph Charlton continues to own the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$
15 lying west of the Naneum Road, all in Section 21, T. 18 N., R. 19 E.W.M. He
16 irrigates a total of 50 acres within those two parcels with water diverted from
17 Naneum Creek or one of its branches. Of the 50 irrigated acres, 23 are assessed
18 by KRD. Three diversions on either Naneum Creek or a branch of Naneum Creek are
19 used. One is located on the north section line of Section 21, at approximately
20 the northwest corner of Section 21; the second is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
21 Section 21, approximately 550 feet south and 1100 feet west of the north quarter
22 corner of Section 21; and the third is located at the northwest corner of the
23 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21. The first two diversions serve most of the land, with the
24 third being used to irrigate about 3 acres around the home and to fill a pond
25

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

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

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

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

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

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

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

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

4
5 COURT CLAIM NO. 00884 -- Charles W. Cole
6 & Ethel M. Cole
7 Fred K. Gerlach
8 & Shirley E. Gerlach

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

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

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

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

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

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

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

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

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

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

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

23 The Conners property is a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 17 N.,
24 R. 19 E.W.M. It is 18.6 acres in size with approximately 18.5 acres irrigated
25

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

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

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

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

7 The Referee recommends that a right be confirmed under Court Claim No.
8 01209 with a July 5, 1872, date of priority for the diversion of 0.372 cubic
9 foot per second in May and June and 0.186 cubic foot per second in April and
10 July 1 through October 15, 92.5 acre-feet per year for the irrigation of 18.5
11 acres and stock watering. Livestock drinking directly from the creek are also
12 covered by the non-diversionary stock water stipulation discussed on page 4 of
13 this report. The point of diversion that will be described in the right shall
14 be that authorized in Certificate of Change recorded in Volume 2, page 882.

15
16
17 COURT CLAIM NO. 01454 -- Gwendolyn Cooke
18 (A) 04171 Terry Powers
Sandra Thomas

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

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

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

12 All of the land described in Court Claim No. 01454 lies in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of
13 Section 4, T. 18 N., R. 19 E.W.M. and it shares a common history. James
14 Ferguson was the plaintiff in Ferguson v. United States National Bank of
15 Portland, Oregon, (Ferguson) and the Findings of Fact that preceded the decree
16 indicated that he settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4,
17 T. 17 N., R. 19 E.W.M. on July 5, 1872 and Ferguson first cultivated and
18 diverted water from Nanum Creek for irrigation of those lands in 1873. The
19 testimony of Mrs. Thomas and Mrs. Cooke would indicate they understood that
20 their grandfather settled on the land in 1871. However, the Referee will not
21 disturb the date that was used to establish priority of rights in the Ferguson
22 decree. The land was riparian to Naneum Creek when the water rights were
23 established and the Riparian Doctrine would apply, even though because of the
24 land being subdivided, portions of it are no longer riparian to the creek. The
25 Ferguson decree awarded a right for 160 inches of water for the Ferguson land.

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

5 Ben Ferguson filed Water Right Claim (WRC) No. 062609 asserting a right to
6 divert 3.3 cubic feet per second, 2400 acre-feet per year from Naneum Creek for
7 the irrigation of 160 acres. The place of water use attached to the claim
8 includes the land owned by the claimants. Additionally, Certificate of Change
9 of Point of Diversion, recorded in Volume 2, page 882 authorized several
10 individuals, including Ben Ferguson, to change their point of diversion from a
11 point in the NE¼SW¼ of Section 16 to a point in the SE¼SW¼ of Section 16, both
12 in T. 18 N., R. 19 E.W.M. Mrs. Thomas testified to the need for this change as
13 a result of actions taken by the owner of the land where the original point of
14 diversion was located. The first point of diversion was on the main Naneum
15 Creek channel and the newly authorized point of diversion was on a branch of
16 Naneum Creek called Neally Creek. The point of diversion authorized in
17 Certificate of Change 882 serves the lands owned by Terry Powers, Gwendolyn
18 Cooke and the five acre parcel owned by Edith Thomas immediately south of Frank
19 Phelps' land.

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

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

11 Terry Powers owns approximately 10 acres that is planted to either hay or
12 used for pasture, depending on the expectations for water each year. The ground
13 is flood irrigated. Up to 30 head of cattle are raised. During the irrigation
14 season, the livestock can drink from the irrigation ditch. The livestock also
15 have access to the creek through Mr. Powers' grandmother's land. Mr. Powers' 10
16 acres would have a right to 0.20 cubic foot per second during May and June and
17 0.10 cubic foot per second the rest of the irrigation season.

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

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

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1 0.265 cubic foot per second in April and July 1 through October 15, 135.68
2 acre-feet per year for the irrigation of 26.5 acres. The place of use shall be:
3 That portion of the NW¼ of Section 4, T. 17 N., R. 19 E.W.M. described as
4 follows: Beginning at the south quarter corner of said Section 4, thence N
5 1°50' W 3871.68 feet along the centerline of the county road; thence S 86°52'40"
6 W 759.79 feet to the true point of beginning; thence N 6°22'40" E 119.54 feet;
7 thence S 86°17'00" W 688.66 feet; thence S 6°35'40" W 1354.00 feet; thence N
8 87°38'50" E 691.15 feet; thence N 6°22'40" E 1250.30 feet to the true point of
9 beginning. AND the north 300 feet of the following described parcel: Beginning
10 at the south quarter corner of said Section 4; thence N 1°0' W 3671.61 feet
11 along the centerline of the county road to the true point of beginning; thence S
12 86°2'40" W, 729.79 feet; thence S 6°22'40" W, 1250.30 feet; thence N 87°38'50"
13 E, 907.65 feet to the centerline of the county road; thence N 1°50' W to the
14 True Point of Beginning, EXCEPT the county road.

15 The Referee recommends that a right be confirmed to Gwendolyn Cooke with a
16 July 5, 1872, date of priority for the diversion of 0.20 cubic foot per second
17 in May and June and 0.10 cubic foot per second in April and July 1 through
18 October 15, 51.2 acre-feet per year for the irrigation of 10 acres in the S½ of
19 that portion of the NW¼ of Section 4, T. 19 N., R. 19 E.W.M. bounded by a line
20 described as follows: beginning at the south quarter corner of Section 4;
21 thence N 1°50' W along the centerline of the county road 2601.68 feet; thence S
22 87°06' W, 30 feet to the true point of beginning; thence S 87°06' W 912.90 feet;
23 thence N 6°30' E 14.32 feet; thence N 6°22'40" E to a point which is S 86°52'40"
24 W of a point on said county road which latter point is 3576.68 feet N 1°50' W
25 from the said south quarter corner of said section; thence N 86°52'40" E to the

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

3 The Referee recommends that a right be confirmed to Terry Powers with a
4 July 5, 1872, date of priority for the diversion of 0.20 cubic foot per second
5 in May and June and 0.10 cubic foot per second in April and July 1 through
6 October 15, 51.2 acre-feet per year for the irrigation of 10 acres in the N½ of
7 that portion of the NW¼ of Section 4, T. 19 N., R. 19 E.W.M. bounded by a line
8 described as follows: beginning at the south quarter corner of Section 4;
9 thence N 1°50' W along the centerline of the county road 2601.68 feet; thence S
10 87°06' W, 30 feet to the true point of beginning; thence S 87°06' W 912.90 feet;
11 thence N 6°30' E 14.32 feet; thence N 6°22'40" E to a point which is S 86°52'40"
12 W of a point on said county road which latter point is 3576.68 feet N 1°50' W
13 from the said south quarter corner of said section; thence N 86°52'40" E to the
14 west right-of-way line of the county road; thence S 1°50' W along said
15 right-of-way line to the point of beginning.

16 The point of diversion that shall be authorized for all of these rights is
17 the diversion described in Certificate of Change recorded in Volume 2, page
18 882. If the diversion used on the Sandra Thomas property was added after the
19 certificate of change issued, compliance with RCW 90.03.380 (the section of the
20 surface water code that addresses changes in points of diversion) was necessary.
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1 COURT CLAIM NO. 00740 -- Gwendolyn Cooke
2 & Robert Cooke

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

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

12 According to Mrs. Cooke's testimony the land was originally settled by a
13 Mr. McEwen in 1871 and Mrs. Cooke's grandmother (Elizabeth Ferguson) bought it
14 in 1911. Mr. McEwen was Mrs. Ferguson's brother. Mrs. Cooke thought McEwen's
15 first name was William, however, a Notice of Appropriation of Water that was put
16 in the record was filed by a James W. McEwen. That notice states that McEwen
17 was claiming a right to 100 inches of water for irrigation. The water is taken
18 from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. and is
19 conveyed by ditch in a southeasterly direction through his land. The ditch was
20 one-half mile long. The notice stated that the water had been used by McEwen
21 for about 17 years prior to the notice being filed on February 20, 1892. That
22 would place the date of first water use as being 1875. The claimants did not
23 put into the record a chain of title or any other documents to show what lands
24 Mr. McEwen owned between 1875 and 1892. DE-55 is a series of documents that
25

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

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

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

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

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

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

8
9 COURT CLAIM NO. 00819 -- Guy F. Couture
& Judy A. Couture

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

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

25
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1 Water is diverted from Lyle Creek at a point in the NW~~SW~~1/4 of Section 6,
2 T. 17 N., R. 19 E.W.M. and carried in a ditch that passes through the Couture
3 property. Water is withdrawn from the ditch into a sprinkler system that is
4 used to irrigate the land. Mr. Couture estimated that 20 gallons per minute is
5 used to irrigate. Although livestock have been raised on the property before,
6 since the Coutures acquired the land in the early 1970's there have not been
7 stock on the land and water has not been used for that purpose. Any
8 diversionary stock water right that may have existed has relinquished due to
9 more than five successive years of non-use, see RCW 90.14.160.

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

21 Water Right Claim No. 051309 was filed by Guy and Judy Couture pursuant to
22 the requirements of RCW 90.14. It asserts a right to use 10 gallons per minute,
23 1.0 acre-feet per year from Lyle Creek for the irrigation of 1 acre and stock
24 watering from March 15 to April 15 and October 15 to December 15.

25
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1 The claimants did not present much information to establish the priority
2 date. The affidavits show that water was being used as early as 1912. Mr.
3 Couture referenced an earlier court case that might provide additional
4 information, but that case is not in the record. Lyle Creek flows through the
5 E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 1, but not through the Couture property. Neighboring
6 claimants, Paul and Paula Alderman, whose land is also in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
7 Section 1, submitted into evidence the chain of title for the NE $\frac{1}{4}$ of Section 1.
8 It shows that Northern Pacific Railroad originally acquired the entire NE $\frac{1}{4}$ of
9 Section 1 and then conveyed it to John Smithson. It was in Smithson ownership
10 until 1944. The priority date for riparian rights on former railroad land is
11 May 24, 1884, the date the map of definite location was filed with Kittitas
12 County.

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

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

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

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

8 The claimant's property lies in the NE¼ of Section 29, T. 18 N.,
9 R. 19 E.W.M. A total of 122 acres is owned and irrigated. The northerly
10 portion is irrigated with water delivered by the Kittitas Reclamation District
11 (KRD) and the southerly portion is irrigated with water diverted from Naneum
12 Creek or one of its branches and water delivered by KRD. Since KRD is a major
13 claimant in this proceeding whose rights were determined in the major claimant
14 pathway, that water will not be addressed further. The claimants land is
15 planted in Timothy hay, alfalfa hay, pasture and grain. It was first acquired
16 by the Haberman family in 1925 and had been irrigated in much the same manner
17 since then. At one time a dairy was on the property and later beef cattle were
18 raised. Livestock on the property drink from the water sources that flow
19 through the property. That type of non-diversionary stock water use is covered
20 by the stock water stipulation discussed on page 4 of this report.

21 Water Right Claim No. 002188 was filed by John Haberman pursuant to the
22 requirements of RCW 90.14. It asserts a right to divert 0.64 cubic foot per
23 second, 200 acre-feet per year for the irrigation fo 122 acres in the NE¼ of
24 Section 29.

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

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

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

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

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

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

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

24
25
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1 Mr. Douglass filed Water Right Claim No. 093873 pursuant to RCW 90.14
2 asserting a right to divert 10 gallons per minute, 2 acre-feet per year from
3 Mercer Creek for the irrigation of one-half of lawn and garden. Mr. Sala was
4 under the impression that this filing by Mr. Douglass established a water right
5 for the property. Unfortunately, that is not the case. The intent of RCW 90.14
6 was to have water right claims filed for uses of water that were initiated prior
7 to adoption of the Surface Water Code in 1917 or the Ground Water Code in 1945.
8 The water use initiated by Mr. Douglass clearly was not prior to 1917. At the
9 time that Mr. Douglass began diverting water from Mercer Creek (1971) the only
10 mechanism to establish a water right was through the permitting process spelled
11 out in RCW 90.03, which is the Surface Water Code. There is no evidence that
12 Mr. Douglass followed that process and obtained a permit.

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

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

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

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

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

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

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

4 The McGees property was part of land that was conveyed by the Federal
5 Government to Northern Pacific Railroad. John Cate made application to NPPR in
6 1882 to purchase the land, but NPPR ultimately conveyed to Josiah L. Bennett the
7 W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M. Mrs. J. L.
8 Bennett was a defendant in the Ferguson case. The Findings of Fact that
9 preceded the decree stated that she owned the SE $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32,
10 the NW $\frac{1}{4}$ SW $\frac{1}{4}$, the S $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. and
11 that about 30 acres were irrigated with waters from Naneum Creek. The decree
12 awarded Mrs. Bennett a Class 11 right for the use of 30 inches of water, or 0.60
13 cfs. The legal description in the Findings of Fact for the Bennett land does
14 not include the McGee land. Neighboring landowners, John and Nancy Hultquist
15 and Louaine A. Magnuson, a neighboring landowner, contend that the copy of the
16 Findings of Fact that several claimants have put into the record contains a
17 typographical error in the paragraph that describes the lands owned by Mrs.
18 Bennett. The claimants point out that there is no evidence that the Bennetts
19 owned land in the SW $\frac{1}{4}$ of Section 32 and that the legal description as written
20 describes the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32 twice. Chester Vernon Stokes, Andrew Mills
21 and Gary Galbraith are claimants who own land in the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
22 Section 32. The evidence they put in the record in support of their claims
23 shows that property as being owned by W. R. Thomas at the time of the Ferguson
24 case. W. R. Thomas was a named defendant in Ferguson, but did not assert a
25 claim in the proceeding. The Thomas rights were determined in Thomas v. Roberts

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

10 The Referee concludes that sufficient evidence has been placed in the
11 record to show that a typographical error was made on the version of the
12 Findings of Fact in the record and that the 30-inch Bennett water right is
13 appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of
14 Section 33. There are no claims filed in this proceeding for the former Bennett
15 lands in Section 32.

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

25
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1 Water Right Claims No. 126772 and 126773 were filed by Gordon and Anita
2 Dudley and describes the land they owned in the SW¼ of Section 33. Between the
3 two claims a right is asserted for using 20 gallons per minute, 55 acre-feet per
4 year for the irrigation of 11 acres.

5 Arthur and Susan Tirotta bought 11.02 acres from the Dudleys in 1986 and
6 are asserting a right to irrigate 10 acres with water diverted from Wilson
7 Creek. There is six acres of pasture irrigated from the Wilson Ditch and 4
8 acres of pasture irrigated from the Wilkins Ditch. They irrigate approximately
9 2½ days each week and divert a total of 85 acre-feet during the irrigation
10 season. Mrs. Tirotta estimated that half of the diverted water is used for
11 conveyance. They raise horses on the property and had 8 at the time of the
12 hearing. They were expecting to have 12 the next year.

13 A portion of the property is in the south 300 feet of the NE¼SW¼ and a
14 portion is in the south 300 feet of the NW¼SW¼ of Section 33. The land in the
15 NW¼SW¼ has a different ownership history than that in the NE¼SW¼ of Section 33.
16 The NW¼SW¼ has the same history as the land owned by the McGees (see earlier
17 discussion). Therefore, it would have a proportionate share of the 30 inch
18 Bennett water right. The Referee estimates that approximately 4.5 acres are
19 irrigated from the J. I. Wilson Ditch within the NW¼SW¼ of Section 33, the
20 remaining 5.5 acres are in the NE¼SW¼ of Section 33.

21 The NE¼SW¼ of Section 33 is part of a larger parcel that George W. Gilkey
22 obtained from the Northern Pacific Railroad in 1904. Gilkey then immediately
23 sold to John Filer who in 1906 sold to Elizabeth Drake. None of the deeds
24 referenced water rights. The land stayed in the Drake family until 1937 and the
25 deed that year included the language, "together with all water rights and

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1 irrigation ditches." Part of the Tirotta's exhibits is an Affidavit by Howard
2 Thomas dated December 18, 1933, stating he was 30 years old and for the past 25
3 years (since he was five years old) he had been familiar with the E½SW¼ and
4 W½SE¼ of Section 33. That ever since he could remember John Filer used ten
5 inches of water of the 11th class under the Ferguson decree and used that for
6 irrigation until 1920 when Fred C. Drake purchased 35 inches in the 14th Class
7 from Oliver Fields and since then had used both the 10 inches and the 35
8 inches. The Affidavit also states that the water was diverted from Naneum Creek
9 through two ditches, one having its intake in the SW¼SW¼ of Section 28, known as
10 the Keister Ditch and the other having it intake in the SW¼NW¼ of Section 33.
11 The second was also used to serve land owned by G. A. Nylén, who takes out 20
12 inches of water for his farm in the W½SW¼ of Section 33. A copy of document
13 conveying water from Oliver Fields to Fred C. Drake is also part of the record.

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

25
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1 Due to these deficiencies, the Referee cannot recommend that a water right
2 be confirmed to the Tirottas for irrigating their land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
3 Section 33. The Referee does recommend that water rights be confirmed to the
4 Tirottas for their parcel in the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 and the McGees for
5 parcel 2, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 as follows:

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

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

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

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

19 The Dunnings own four parcels of land described in Court Claim No. 00166
20 and each will be addressed separately. Mr. Dunning also testified about a
21 parcel of land in the N $\frac{1}{2}$ of Section 29, for which Court Claim No. 00598 was
22 filed. Water Rights for that parcel are addressed separately under Claim No.
23 00598. First to be considered is Section 19, T. 19 N., R. 19 E.W.M..
24 Section 19 is riparian to Wilson Creek. The Dunnings own all of this section,
25

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1 except 10 acres lying in the SE¼SE¼ of the section. Section 19 is riparian
2 to Wilson Creek. They are asserting a right to irrigate five acres in the
3 portion of the SE¼SE¼ of Section 19 they still own.

4 According to the evidence, C. R. Hovey acquired Section 19 from the
5 Northern Pacific Railroad pursuant to a contract signed on May 22, 1902. The
6 deed transferring the property was signed in 1907. Mr. Hovey also owned the
7 W¼SW¼ of Section 20, the NE¼ and NE¼SE¼ of Section 30 and the west 280 feet of
8 the NW¼ of Section 29. Mr. Hovey testified as part of the proceedings in
9 Sanders v. Bull that he began irrigating a 20 acre orchard in 1907 and had 40
10 acres in cultivation. In Rader v. Sander, C. R. Hovey was decreed to have a
11 right to 10 inches of water senior to all other parties to that case. Mr.
12 Dunning can find evidence of a 10 acres of orchard having been irrigated in the
13 SE¼SE¼ of Section 19. He has maintained irrigation on five acres of the
14 orchard. Water is diverted from Wilson Creek in the NE¼SE¼ of Section 18,
15 T. 19 N., R. 19 E.W.M., which is marked with a "1" on State's Exhibit Map SE-2.
16 Sufficient water is received to keep the trees alive, but not to produce a
17 crop. Mr. Dunning did not testify to the quantity of water that is used to
18 irrigate the five acres.

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

24 The second parcel addressed by Mr. Dunning is the NW¼ of Section 20,
25 T. 19 N., R. 19 E.W.M., which is riparian to Wilson Creek. This parcel was

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1 settled by Byron Chisholm, who filed a homestead application on December 12,
2 1894. Frank M. Stanley acquired the property in 1898 and at that time 10 to 12
3 acres were being irrigated with water diverted from Wilson Creek. At the time
4 of testimony during the Sanders v. Bull proceeding 35 to 40 acres were being
5 cultivated, part of which was an orchard. The Dunnings are asserting a right to
6 irrigate 19 acres within the NW¼ of Section 20. Mr. Dunning testified that he
7 uses 100 acre-feet to irrigate those 19 acres, but needs 150 acre-feet to do
8 justice to the crop. He did not testify to the instantaneous quantity he
9 diverts from the creek. Rights being confirmed in this case are based on the
10 evidence of historic beneficial use within the laws of this state. The Referee
11 can only recommend confirmation of a right consistent with beneficial use, not
12 based on potential need in addition to that being used. Most of the decrees
13 that were entered for use of Wilson and Naneum Creeks identified that 1 miners
14 inch of water under four inch pressure (or 0.02 cubic foot per second) was
15 sufficient to irrigate each acre. The Referee proposes to use that quantity
16 herein.

17 Frank M. Stanely was a defendant in the Sanders v. Bull case. The water
18 rights of the defendants in that case were not determined, only those of the
19 plantiffss. The 1973 Order Pendente Lite from Carlson identified a right with a
20 1915 date of priority for Mr. Dunning for the diversion of 1.68 cubic feet per
21 second for the irrigation of 84.32 acres in the W½ and SE¼ of Section 20,
22 T. 19 N., R. 19 E.W.M..

23 The States Exhibit No. SE-5, which contain copies of the RCW 90.14 claims
24 registered with Ecology does not contain a claim for the NW¼ of Section 20.
25 However, Ecology has offered copies of several water right claims that were

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1 filed with the Kittitas County Superior Court in 1972 and 1973, during the
2 Ecology v. Carlson proceeding. One such claim was filed on behalf of Lorne T.
3 Dunning, Jr., asserting a right to divert 1 cubic foot per second 250 acre-feet
4 per year from Wilson Creek for the irrigation of 11 acres in the NW¼ of
5 Section 20, T. 19 N., R. 19 E.W.M.. The circumstances under which these claims
6 were filed with Kittitas County Superior Court are not entirely clear to the
7 Referee. Some claimants have asserted that the claims were given to the
8 Assistant Attorney General representing Ecology in Ecology v. Carlson with the
9 assurance that they would be properly registered.

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

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1 second, 100 acre-feet per year for the irrigation of 19 acres in that portion of
2 the NW¼NW¼ of Section 20 lying north and west of Wilson Creek.

3 The third parcel owned by the Dunnings is the E½SW¼ and W½SE¼ of
4 Section 20, T. 19 N., R. 19 E.W.M.. They are asserting a right to irrigate 70
5 acres with water diverted from Wilson Creek. A Homestead patent issued to
6 William Sherman on November 25, 1892, for this land. Mr. Sherman testified in
7 Sanders v. Bull that he had 60 to 70 acres of land in cultivation that was
8 irrigated from two ditches out of Wilson Creek. He testified that it took one
9 inch per acre to irrigate the land. William Sherman was also a named defendant
10 in Sanders v. Bull. Mr. Dunning testified to using 400 acre-feet per year to
11 irrigate the 70 acres, but that he needed 750 acre-feet per year to do a good
12 job.

13 Two water right claim forms were filed with Kittitas County Superior Court
14 on February 15, 1972, on behalf of Lorne T. Dunning, Jr., that describe the
15 Dunning land in the S½ of Section 20 (See previous discussion on this issue).
16 One asserted a right to divert 1 cubic foot per second, 250 acre-feet per year
17 from Wilson Creek for the irrigation of 35 acres in the W½ of Section 20 and a
18 portion of the E½ of Section 20. The described point of diversion is in the NW¼
19 of Section 20. The second claim asserted a right to divert 2 cubic feet per
20 second, 500 acre-feet per year from Wilson Creek for the irrigation of 85 acres
21 in the W½ of Section 20 and a portion of the E½ of Section 20. The point of
22 diversion is described as being in the NE¼ of Section 19. Both claims also
23 assert a right for stock watering. Mr. Dunning testified that livestock on the
24 property drink directly from Wilson Creek, which is covered by the stock water
25 stipulation discussed on page 4 of this report.

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

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

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

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

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

8 Based on the foregoing, the Referee recommends that a right be confirmed to
9 Lorne T. and Jeanne M. Dunning, under Court Claim No. 00166 with a June 30,
10 1874, date of priority for the diversion of 0.70 cubic foot per second in May
11 and June and 0.35 cubic foot per second in April and July 1 through October 15,
12 175 acre-feet per year for the irrigation of 35 acres from April 1 through
13 October 15.

14
15 COURT CLAIM NO. 00504 -- Darrel Eason
& Janet Rae Eason

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

19 The Easons' property is the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T. 17 N., R. 19 E.W.M.,
20 within which they irrigate 39 acres. Three acres are pasture and lawn area
21 around their home and the remaining 36 acres is planted in Timothy hay with a
22 grain rotation. They irrigate with water diverted from what they call a drain
23 that flows through their property. The drain is fed by a spring that appears in
24 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 17 N., R. 19 E.W.M., return flow from irrigated
25

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

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

17 The claimants' land was settled on by Clinton H. King, who received a
18 patent for the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T. 17 N., R. 19 E.W.M. on
19 May 23, 1889. There are two documents in the record that deal with water rights
20 for the King property. DE-1661 is a Water Ditch Agreement between Gustav
21 Walters and C. H. King dated May 12, 1884. The agreement addresses a ditch
22 intended to carry water to Walters land in the SE $\frac{1}{4}$ of Section 7. The ditch will
23 cross the land of King and it was agreed that King could take water out of the
24 ditch as necessary to irrigate his land below the ditch. The course of the
25 ditch was not discussed, so the Referee does not know which of the King lands

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

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

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

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

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

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

13
14 COURT CLAIM NO. 01254 -- Jack Eaton

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

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

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

8 Mr. Eaton was aware that the land was first settled by Emil Pederson, who
9 received a patent for the W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 17 N.,
10 R. 18 E.W.M. on March 25, 1891. On April 3, 1900, Pederson sold all of the land
11 to Joel Clarke. A neighboring landowner and claimant in this case, Judith
12 Nickerson, put in the record Exhibit DE-1597, which included a statement by
13 Albert Tjossem made on October 31, 1933, concerning operation of the Tjossem
14 Ditch and the Steen McLeod and Clark Ditch. He indicated who the users on the
15 Clark branch of the Steen McLeod and Clark Ditch were at that time, and one user
16 was Almina Adams, who according to records submitted by Grace Menig, owned the
17 W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24 (Grace Menig owns a small portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
18 Section 24). The statement also indicates that the users on the Clark Branch
19 were successors to Joel Clark, who was one of the prior owners of the claimant's
20 property. The record is not clear about when the Steen McLeod and Clark Ditch
21 was built. Attachments to DE-1597 clearly show that it was constructed prior to
22 October 1902, when agreement was made to consolidate the upper portion of the
23 ditch with the Tjossem Ditch. It would appear that a water right was
24 established to irrigate the land described in Court Claim No. 01254 from the
25 Yakima River. However, according to Mr. Eaton's testimony, water from the

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

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

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

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

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

19 The Eatons own that portion of the E½ of Section 30, T. 17 N., R. 19 E.W.M.
20 lying west of Interstate 82. They irrigate approximately 80 acres from a
21 diversion on Wilson Creek located in SW¼NW¼NE¼ of Section 30 and a second
22 diversion located in the SW¼SE¼ of Section 30. The diversion in the NE¼ of
23 Section 30 is immediately above where the combined flows of Naneum Creek and
24 Coleman Creek flow into Wilson Creek and the diversion in the SE¼ of Section 30
25

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

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

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

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

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

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

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

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

24
25
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1 The Eckerts' property is the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.
2 They are asserting a right to irrigate 80 acres and water livestock with waters
3 diverted from Naneum Creek and Spring Creek. Spring Creek lies in Subbasin
4 No. 10 (Kittitas) and the rights to use Spring Creek will be addressed in the
5 Report of Referee for Subbasin No. 10. Water is diverted from Naneum Creek in
6 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M., carried east along the south
7 line of Section 16, to the northwest corner of Section 22, where the ditch turns
8 south along the west line to the west quarter corner of Section 22 where a ditch
9 goes east along the north line of Dr. Herbert's property, then turning south
10 along the east property line into Section 27. This ditch borders the Eckerts'
11 east property line and is used to irrigate the easterly portion of their
12 property. A second ditch goes south along the west line of Section 22 into
13 Section 27. It continues south along the claimants' west property line. This
14 ditch is used to irrigate the westerly portion of the property. The "ditch"
15 along the east property line appears to be a continuation of Spring Creek. That
16 relationship will be pursued further during consideration of the claim for
17 Spring Creek water in the Subbasin No. 10 Report of Referee. The testimony
18 indicated that water could also be diverted from a branch of Naneum Creek in the
19 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, which would reduce the distance the water is conveyed in a
20 ditch. It is not clear whether this diversion is used or to what extent it is
21 used.

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

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

8 At the time of the Ferguson decree the land was owned by Elijah M. Topliff
9 who was awarded a Class 4 right, which would have an 1874 date of priority, for
10 the use of 160 inches in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 28 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27,
11 both in T. 18 N., R. 19 E.W.M. The proportionate share of the right the Eckert
12 property would enjoy is 80 inches or 1.6 cubic feet per second. The decree
13 provided that quantity could be used in May and June and one-half that quantity,
14 or 0.80 cubic foot per second the rest of the year.

15 Water Right Claim No. 063562 was filed by Eugene and Sally Eckert pursuant
16 to the requirements of RCW 90.14. It asserts a right to use 3 cfs, 160
17 acre-feet per year from Naneum Creek for the irrigation of 80 acres and stock
18 watering in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.

19 The Referee recommends that a right be confirmed under Court Claim No.
20 00635 to the Eckerts with a June 30, 1874, date of priority for the use of 1.6
21 cubic feet per second in May and June and 0.80 cubic foot per second in April
22 and July 1 through October 31, 370 acre-feet per year for the irrigation of 80
23 acres and stock watering in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.
24 Since the claimant testified that 370 acre-feet per year is the maximum that is
25 used from Naneum Creek and Spring Creek, the right will contain a provision

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

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

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

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

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

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27 Re: Subbasin No. 9

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

6 The land owned by the city separated from Federal ownership on April 21,
7 1891, when a patent issued to Caspar B. Fetters. The record includes documents
8 showing the transfer of the land over the years between 1893 and 1920, when it
9 was sold to Ellensburg Gas and Water Company. The city also put in the record a
10 Notice of Appropriation of Water filed by John A. Shoudy on June 6, 1910,
11 however, the Referee does not believe this document supports the city's
12 assertion of a water right. The notice was filed for use of 100 cubic feet of
13 water per second from Naneum Creek for the irrigation of lands in Section 2 and
14 3, T. 18 N., R. 18 E.W.M. and Sections 24, 34, and 35, T. 19 N., R. 18 E.W.M.,
15 which, of course, is not the city land for which they are asserting a water
16 right. The only reference to Section 20 is the that the point of diversion
17 being used by Mr. Shoudy is in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 20.

18 The City of Ellensburg filed Water Right Claim (WRC) No. 005764 pursuant to
19 the requirements of RCW 90.14 asserting a right to divert 4.5 cfs, 3,285
20 acre-feet per year from Naneum Creek for municipal supply in the City of
21 Ellensburg. The date of first water use is September 23, 1911, and based the
22 claim on Court Decree No. 4121, May 15, 1911, Superior Court of Kittitas
23 Washington. The city also filed WRC No. 116736, which asserted a right to
24 divert 3.2 cfs, 800 acre-feet per year from Wilson Creek for the irrigation of
25 196 acres. The place of water use identified on this water right claim is

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

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

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

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1 resulted from an appeal of a Kittitas County Superior Court ruling upholding a
2 change in point of diversion by Ellensburg Gas and Water Company for supplying
3 water to the City of Ellensburg. A predecessor to Ellensburg Water Supply
4 Company, was awarded 225 inches of water in Sanders v. Jones, et al., which was
5 used to supply the city of Ellensburg. Water was diverted from Wilson Creek
6 several miles downstream from where the city's property is located on Naneum
7 Creek. In November of 1911, the water company changed its point of diversion to
8 Naneum Creek (at the current location of the city property in the NE¼ of Section
9 20) and diverted 225 inches of water to the City of Ellensburg's reservoir and
10 into the city. After the change was accomplished and the water company made
11 preparations to remove the original diversion works, the appellants brought an
12 action to prevent the change in point of diversion from Wilson Creek to Naneum
13 Creek above the lands of the appellant. No temporary restraining order was
14 applied for or issued by the Court, therefore, the diversion was changed and the
15 original diversion works removed and water was being supplied to the city. The
16 Supreme Court ruled that as a public service corporation, the only remedy that
17 the appellants had was for damages and allowed the change in point of diversion
18 to stand.

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

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

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

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

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

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

19 The Erickson's property is a portion of the S½SW¼ of Section 8, T. 18 N.,
20 R. 19 E.W.M. lying east of Wilson Creek Road. They own 18 acres and irrigate
21 all of the land, except where there are buildings. The irrigated land is
22 pasture, on which they raise cattle. Generally there are 12 cow/calf pairs and
23 12 yearlings on the property. The livestock drink from the irrigation ditches
24 and from springs that are in the pasture. Water from the springs is not
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1 diverted, the livestock drink directly from the source. This type of stock
2 water use is covered by the stock water stipulation discussed on page 4 of this
3 report and no additional right is needed for that use.

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

16 Water rights for the SW $\frac{1}{4}$ of Section 8 were addressed in the Sander v. Jones
17 decree. Mary A. Thomas acquired the SW $\frac{1}{4}$ of Section 8 from James R. Van Alstine
18 who received a patent for the land in 1889. She also purchased the N $\frac{1}{2}$ SE $\frac{1}{4}$ of
19 Section 7 from the Northern Pacific Railroad Company in 1887. Mary Thomas
20 appropriated 225 inches of water, or 4.5 cubic feet per second in 1889 for use
21 on her lands in Sections 7 and 8. The record shows that James R. Van Alstine
22 had been in possession of the land since 1877. The SW $\frac{1}{4}$ of Section 8 is riparian
23 to Wilson Creek, so under the Riparian Doctrine the priority of the right would
24 be 1877, when steps were first taken to acquire the land. There are several
25 other claimants who own land and are asserting rights within the area covered by

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

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

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

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

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

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

21 Mr. Weikal attempted to filed a water right claim for the property pursuant
22 to RCW 90.14. Exhibit DE-1697 is the water right claim he attempted to file,
23 the envelope it was mailed in and a letter from the Department of Ecology
24 returning the form. The claim form was returned to Mr. Weikal because the
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1 postmark on the envelope was July 1, 1974. RCW 90.14 as it read in 1974,
2 required that water right claims be filed no later than June 30, 1974.
3 According to the letter, water right claims were accepted after June 30, 1974,
4 if they were postmarked by June 30. The claim form was dated June 28, 1974 and
5 the check that accompanied the form was dated June 28, 1974. Mr. Weikal
6 testified to putting the form in the mail before July 1 and could not understand
7 why it was postmarked July 1. The letter returning the claim form directed the
8 recipient to the Department of Ecology's regional office if the use of water was
9 other than for domestic purposes. Mr. Weikal did not testify whether he
10 contacted the regional office.

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

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

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

21 The claimants property lies in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 17 N.,
22 R. 18 E.W.M. and is a total of 1.66 acres in size. There are three rental units
23 on the property and two outbuildings. The rest of the land is irrigated. A 2
24 HP pump is placed on the creek and feeds a sprinkler system. A portion has an
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1 underground system and the rest is irrigated with garden hoses. The claimants
2 bought the property from Mr. Fischer's parents, who had bought it from Irene
3 Witner. Ms. Witner owned it in the late 1940's or early 1950's. At that time
4 it was a slough and Ms. Witner brought in fill material and reclaimed the land.
5 Mr. Fischer testified to a large amount of fill material being brought onto the
6 land. Although not specifically stated, it is apparent that the land was not
7 irrigated until after it had been reclaimed sometime around 1950.

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

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

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

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

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

17 Mr. Fitterer filed Water Right Claim No. 119597 pursuant to the
18 requirements of RCW 90.14. It asserts a right to use 0.03 cfs per acre, 6
19 acre-feet per year per acre for the irrigation of 10 acres and stock watering.
20 The source of water is described as "withdrawal". However, the point of
21 diversion described is on Lyle Creek, very near the point where the State's
22 Investigation Report shows the diversion currently being used. The legal
23 description of lands on which the water is used states "see enclosed
24 description". Unfortunately, there is no description attached to the copy of
25

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

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

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

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

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

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

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

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

3 The Fogles are asserting a right to use waters from Mercer Creek for
4 irrigation of 22 acres. Their property lies within a portion of the NW¼SE¼ and
5 NE¼SW¼SE¼ of Section 26, T. 18 N., R. 18 E.W.M. A complete legal description of
6 the property was not provided. In the past water has been diverted from Mercer
7 Creek at a point approximately 1320 feet south and 2115 feet east of the
8 northwest corner of Section 25. The ditch carried water to the west and south
9 through the NE¼ of Section 26 into the SE¼ of Section 26. This water was used
10 by W. D. Strong in the NE¼ and several other landowners in the SE¼ of
11 Section 26, including Charles Priebe. Only Mr. Priebe and Mr. Fogle are
12 claimants in this proceeding and Mr. Priebe has decided not to pursue his claim,
13 see page 447 of this report.

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

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

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1 landowners in the SE¼ of Section 26. Mr. Strong apparently complied with the
2 order and water has not been diverted since then. Mr. Fogle testified to his
3 belief that his land was irrigated from Mercer Creek prior to the airport being
4 built and likely prior to the Cascade Canal being built. However, he did not
5 provide any evidence to support this belief. Mr. Fogle did not provide the
6 names of any of the prior owners of his land.

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

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

17
18 COURT CLAIM NO. 01777 -- Gerald French
& Maxine French

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

22 The French's property lies in the SE¼NW¼ of Section 25, T. 18 N.,
23 R. 18 E.W.M. Approximately 32 acres of pasture are irrigated with water
24 diverted from Mercer Creek. The pasture is flood irrigated and up to 30 head of
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1 cattle are raised on the land. The livestock drink from the irrigation ditches
2 and a pond on the claimants property. During the winter when the pond freezes,
3 the claimant's domestic well is used for stock watering. The claimants also
4 receive Kittitas Reclamation District water for 12 acres. That water is usually
5 used beginning in August when the flow in the creek diminishes. Mr. French
6 explained that the prior owners only got 12 acres of KRD water because only 12
7 acres were planted in crops and farmed when KRD was being built and the rest of
8 the land was in pasture. So, KRD water was only bought for the cropland. At
9 some point one of the prior owners put the entire acreage in pasture. Mr.
10 French did not testify to how much water is used on his land.

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

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

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

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

19
20 COURT CLAIM NO. 00778 -- Gary Melvin Galbraith
(A)06178 & Jacquelyn J. Galbraith

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

24
25
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1 The Galbraiths' property is approximately five acres in size and lies
2 within a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. They
3 irrigate 2.5 acres with water diverted from Wilson Creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
4 Section 32. A portion of the land is pasture irrigated with surface ditches and
5 a portion is sprinkler irrigated hay. A small pond is on the property and
6 Wilson Creek water is run into the pond and then pumped into the sprinkler
7 system. Livestock drink from the pond and the surface ditches during irrigation
8 season. Mr. Galbraith did not testify to the number of stock, but the State's
9 Investigation Report mentioned two cows were observed on the property. When Mr.
10 Galbraith bought the property in 1972, it was all pasture that was irrigated
11 with ditches.

12 The Galbraith property is part of a larger parcel for which William Rogers
13 received a patent on January 13, 1893. The Rogers homestead consisted of the
14 S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. By August of 1901 the
15 land, along with other land in the area, was owned by W. R. Thomas and remained
16 in the Thomas family until 1950. Water rights for the Thomas property was
17 addressed in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 signed on
18 March 1, 1924. In the Findings of Fact for that decree, it was stated that W.
19 R. Thomas owned the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.,
20 known as the Rogers Tract, and that Rogers settled on the land in 1886 and water
21 was first diverted for irrigating this tract in 1885. The amount of water that
22 had been diverted and was being used was 30 inches. This decree identified
23 other water rights that are appurtenant to other lands owned by W. R. Thomas.
24 Besides the Galbraiths, Andrew J. and Stephanie Mills and Chester Vernon & Roma
25 B. Stokes own land within the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 and are asserting a

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

13 A reading of the Findings of Fact that preceded the Ferguson decree would
14 suggest that another right is appurtenant to lands that include the S $\frac{1}{2}$ SW $\frac{1}{4}$ and
15 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. The Findings of Fact state that Mrs. J. L. Bennett owned
16 the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, with 30 acres being
17 irrigated. However, the evidence presented by Mr. Stokes clearly shows that
18 Mrs. Bennett did not own the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. Claimants in the
19 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, (Tirota and Magnuson) have put into the record evidence to
20 show that Bennett owned the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, not Section 32. See
21 pages 161 and 331 of this report for discussion of their claims.

22 Water Right Claim No. 050563 was filed by Gary and Jacquelyn Galbraith
23 pursuant to the requirement of RCW 90.14. It asserts a right to divert 1 inch
24 per acre from Wilson Creek for the irrigation of 5 acres. The place of use is
25

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1 the Galbraith property and the point of diversion described is in the NW¼SE¼ of
2 Section 32.

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

8 The Referee recommends that a right be confirmed under Court Claim No.
9 00778 with a June 30, 1885, date of priority for the diversion of 0.045 cubic
10 foot per second in May and June, 0.0225 cubic foot per second in April and
11 July 1 through October 15, 11.35 acre-feet per year for the irrigation of 2.27
12 acres and 0.5 acre-foot per year for stock watering. The point of diversion
13 shall be in the NW¼SE¼ of Section 32.

14
15
16 COURT CLAIM NO. 00903 -- Leona Gearheart
17 & Estate of Charles Gearheart
18 Everett O. Barney
19 & Lanita M. Barney
20 Carol Hartlaub

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

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

28
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1 originally owned 25 acres and have sold 10 acres to the Barneys and 15 acres to
2 Ms. Hartlaub. Mrs. Gearheart has stayed attached to the claim as she is
3 carrying the contract on the land. The Gearhearts acquired the land in 1975, at
4 which time it was flood irrigated with water diverted from Wilson Creek. Mr.
5 Gearheart installed a new system in order to make it more efficient. He piped
6 the water from Wilson Creek to a pond and then pumped from the pond into a
7 handline sprinkler system. Initially a 25 HP pump was used, but that was
8 replaced with a 10 HP pump. The diversion used is in Government Lot 2 of
9 Section 5, just north of the claimants' property. Alfalfa and Timothy hay was
10 raised on the east ten acres and pasture on the rest of the land. At the time
11 Ecology conducted the field inspection summarized in its investigation reports,
12 Mr. Gearheart had died and the land was not being irrigated. Subsequently, the
13 land was leased and then sold and irrigation resumed. Mrs. Gearheart estimates
14 that 21 of the 25 acres are irrigated. They have raised up to 10 head of cattle
15 and 5 horses, which are watered from the creek.

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

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

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

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

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

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

9 Milton Lewis was a party to Ecology v. Carlson and was identified in the
10 Order Pendente Lite as having a right with an 1872 date of priority for use of
11 0.67 cubic foot per second. Review of the report shows that this award was
12 based on the Affidavit of Water Right discussed in the previous paragraph. Mr.
13 Maddox in his report chose to assume that the water right was appurtenant to all
14 of the irrigated lands in Sections 5, 6 and 7, irrespective of whether there was
15 any evidence that water had actually been delivered to the land in the late
16 1800's and early 1900's. This Referee will not make that assumption.

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

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

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

16
17 COURT CLAIM NO. 02130 -- Earl T. Glauert
& Ellen E. Glauert

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

22 The Glauerts own approximately 20 acres in a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
23 Section 18 and a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.
24 They are asserting rights to an unnamed stream that flows through their property
25

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

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

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1 stream, springs and ponds. One map contains a statement from Mrs. N. J.
2 Stonebraker, daughter of John B. Jones, in which she says that several springs
3 located north of the house were used for household, stock and irrigation
4 purposes during the years her family owned the property. Lastly, WRC No. 144872
5 was filed by C. L. Malone asserting a right to use 5 cfs, 1800 acre-feet per
6 year from Wilson Creek for the irrigation of 300 acres in the S½ of Section 18,
7 T. 18 N., R. 19 E.W.M.

8 The Glauerts home is built where the original John B. Jones homestead was
9 located. Jones was a defendant in Sander v. Jones (the Jones in the title of
10 the case). The Decision that preceded the decree stated that Mr. Jones owned
11 the S½SE¼ of Section 18 and the N½NE¼ of Section 19, both in T. 18 N.,
12 R. 19 E.W.M. and had a possessory right to the NE¼NW¼ of Section 19 under
13 contract to purchase with the Northern Pacific Railroad. It further identified
14 that Jones and his predecessor, Jordin, had begun appropriating water from
15 Wilson Creek in 1872 and by 1885 had appropriated 60 inches and since 1885 Jones
16 appropriation had been 60 inches. The decree then confirmed a right to Jones
17 for the use of 60 inches. The decree also stated that one inch of water was
18 sufficient to irrigate one acre until the end of June and after than one-half
19 inch of water was sufficient for each acre. Therefore, the Referee concludes
20 that Jones had a right to use 60 inches of water for the irrigation of 60
21 acres.

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

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

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

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

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

7 The Referee recommends that a right be confirmed under Court Claim No.
8 02130 with a June 30, 1872, date of priority for the diversion of 0.136 cubic
9 foot per second from May 1 through June 30 and 0.068 cubic foot per second, 34
10 acre-feet per year in April and from July 1 through October 15, for irrigation
11 of 6.8 acres and stock watering in a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and the
12 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19.

13
14
15 COURT CLAIM NO. 01870 -- Terry E. Goodrich
16 & Carol Goodrich
Ralph D. Strand
& Kathryn A. Strand

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

21 According to Mr. Strand's testimony, he and his wife acquired the land in
22 1990 from Farmers Home Administration. The Goodriches had owned it since 1979,
23 when it was bought from Charles Malone. The Strands own a total of 198 acres
24 lying in Government Lots 1 and 2, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, most of the S $\frac{1}{2}$ NE $\frac{1}{4}$ lying west of
25

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

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

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

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

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

18 Two water right claims (WRC) were filed pursuant to the requirements of RCW
19 90.14 by C. L. Malone, who owned the Strand land during the filing period. One
20 claim, WRC No. 144873 asserts a right to use 5 cubic feet per second, 1800
21 acre-feet per year from Wilson Creek for the irrigation of 300 acres and stock
22 water in the N½ of Section 19, T. 18 N., R. 19 E.W.M., with a date of first
23 water use prior to 1900.

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

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

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

7
8 COURT CLAIM NO. 00253 -- Jay Gorman
9 (A) 02103 Dick Colasurdo
(A) 02104 & Anna Colasurdo

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

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

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

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

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

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

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

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

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

18 The Gorman's property lies in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T. 18 N.,
19 R. 18 E.W.M. It is 3.5 acres in size. The southerly two acres has been sold to
20 Balbir Singh and the Gormans continue to own the northerly 1.5 acres. Mr. Singh
21 has not been joined to the claim, in spite of the Referee advising that it
22 should be done. Whiskey Creek, diverted near the northeast corner of the land,
23 is used to irrigate both the land retained by the Gormans and that bought by Mr.
24 Singh. Alfalfa hay is planted and the land is rill irrigated.

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

8 Water Right Claim (WRC) No. 023890 was filed by Melvin Wippel pursuant to
9 the requirements of RCW 90.14. It asserts a right to divert 0.06 cfs, 12
10 acre-feet per year from Whiskey Creek for the irrigation of 3 acres. The place
11 of water use described on the claim is the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$. The section, township and
12 range are not identified. However, the point of diversion is described as being
13 780 feet north and 12 feet west of the south quarter corner of Section 27,
14 T. 18 N., R. 18 E.W.M. It would not be unreasonable to conclude that the place
15 of use is also in Section 27. As noted, the described place of use would then
16 be the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27. The land Gorman/Singh land is in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
17 Section 27, which is not described on the claim. Additionally, a right is being
18 asserted by Dick and Anna Colasurdo under Court Claim No. 00253 for the
19 irrigation of 12 acres and WRC No. 023890 is the only RCW 90.14 claim that could
20 possibly cover their use. That results in rights being asserted for the
21 irrigation of 15 acres with a right only being asserted in the 90.14 claim for 3
22 acres. The inconsistency between WRC No. 023890 and the right being asserted in
23 this proceeding were not addressed at the hearing.

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

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

3
4 COURT CLAIM NO. 01531 -- Allan R. Grigg
5 & Teresa M. Grigg

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

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

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

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

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

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1 diverting from Wilson Creek in the SW¼ of Section 19. There does seem to be two
2 diversions in the NW¼ of Section 19 and a diversion near the southwest corner of
3 Section 18, labeled Fitterer #1 and Fitterer #2. F. G. Fitterer sold Government
4 Lots 1, 2 and 3 of Section 19, which would include the Grigg land in 1909 to
5 Luttrell and McIntire together with one share of the Bull Canal Stock. No other
6 water rights are mentioned. The Fitterer family apparently got the land back
7 and Frank Fitterer sold Government Lots 1, 2 and 3 of Section 19, along with a
8 portion of the SE¼NE¼ of Section 24, along with one share of Bull Ditch stock
9 and 20 inches of water in the McLeod, Clark and Stein Ditch. The Referee
10 believes that the water from the McLeod, Clark and Stein Ditch were appurtenant
11 to the described lands in Section 24. Also in the record as part of the Moeur
12 claim is DE-1627 which is three statements that address the Tjossem Ditch and
13 the Steen (Stein) McLeod and Clark Ditch. These statements identify those
14 individuals using the ditch, that they are all successors to Joel Clark, and the
15 sections where their land lies. The Griggs are not successors to Clark and
16 their land does not lie in the identified sections, which includes Section 24.
17 The Stein McLeod and Clark Ditch carries water diverted from the Yakima River
18 and the Griggs are not asserting a right to the Yakima River and have offered no
19 evidence to show that Yakima River has ever been used on their land.

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

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

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

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

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

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

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1 NE¼SE¼ and are asserting a right to irrigate ten acres in that parcel with water
2 diverted from Whiskey Creek.

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

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

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

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

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

4
5 COURT CLAIM NO. 00620 -- George Haberman
6 & Ruby Haberman
Dale Haberman
& Kathy Haberman

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

14 The George Habermans are asserting a right to irrigate 140 acres in the
15 S½SE¼ of Section 31, T. 19 N., R. 18 E.W.M. and Government Lots 1 and 2 in
16 Section 6, T. 18 N., R. 18 E.W.M. with water diverted from Whiskey Creek.
17 According to Mr. Haberman's testimony, this land has been in the Haberman family
18 since 1896.

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

25
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1 She recalls there being a small orchard, two or three acres in size, and
2 irrigated alfalfa fields behind the orchard. At that time the land was owned by
3 the Habermans, who would later become her in-laws. The statement provided no
4 specifics on number of acres or source of water being used to irrigate the
5 land. The exhibit indicates that the Lovelace farm was in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
6 Section 6.

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

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

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

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1 the land has been irrigated since his family acquired it, however, nothing has
2 been offered to show that water rights were established for the lands in
3 Section 31. The affidavits of water rights, along with Mrs. Haberman's
4 statement do show establishment of a right and beneficial use of water on the
5 lands in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 6, but that type of evidence is lacking for the
6 lands in Section 31.

7 Of the 140 acres irrigated, the Referee estimates that 60 irrigated acres
8 lie below the ditch in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31 and that all of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
9 Section 6 is irrigated. Mr. Haberman testified to efforts to measure water and
10 to his belief that at least 3 cubic feet per second is used to irrigate the
11 land. The flow in the creek declines over the summer and the creek is pretty
12 much dry by mid-July. After that they only use water periodically as it is
13 available. He did not testify to the annual quantity of water used on the
14 property. A maximum of 50 cow/calf pairs are kept on the land for up to 120
15 days each year. One acre-foot of water per year would be sufficient for that
16 number of stock.

17 Water Right Claim No. 002481 was filed pursuant to the requirements of RCW
18 90.14 asserting a right to divert 2 cubic feet per second, 600 acre-feet per
19 year from Whiskey Creek for the irrigation of 120 acres and stock water in the
20 S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 6. The 2 cubic feet per second is
21 consistent with the Lovelace Affidavit of Water Right. The 600 acre-feet per
22 year identified on the claim for the irrigation of 120 acres is 5 acre-feet per
23 year per acre irrigated, which is not unreasonable for this area. Lacking
24 definitive testimony of the annual quantity of water used, the Referee will use
25 5 acre-feet per year per acre irrigated.

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

9 The Referee cannot recommend confirmation of a water right for the lands in
10 the $S\frac{1}{2}SE\frac{1}{4}$ of Section 32 because there has been no evidence presented to show
11 that a water right was legally established.

12 The claimants also own and irrigate 155 acres of land in the $SW\frac{1}{4}$ of
13 Section 28, T. 18 N., R. 19 E.W.M. The land is planted in Timothy hay, pasture
14 and grain, all of which is irrigated with a combination of open ditches, rills
15 and gated pipe. Up to 90 head of cattle are raised on the land and drink from
16 Naneum Creek as it flows through the property. This type of non-diversionary
17 stock water use is covered by the stock water stipulation discussed on page 4 of
18 this report. George and Ruby Haberman acquired the land in 1941, however, the
19 family's knowledge of the land preceded that date as other members of the
20 Haberman family owned and farmed land in the $NE\frac{1}{4}$ of Section 29. Water is
21 diverted from Naneum Creek at three points; the northern most is into the
22 Ferguson Ditch in the $SE\frac{1}{4}SW\frac{1}{4}$ of Section 16, a second diversion is in the
23 $SE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ of Section 28, on the Antonich property and a third diversion is on
24 the claimants' land in the $NW\frac{1}{4}SW\frac{1}{4}$ of Section 28. There was no testimony about
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1 the quantity of water diverted from the creek for use on the land, however, the
2 claimant is asserting a right to 1240 acre-feet per year.

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

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

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

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1 the SW¼ of Section 28. Since John Silva is also asserting a right in this
2 proceeding, it would not be appropriate to award the entire 100 acre water right
3 to the Habermans. Therefore, the Referee shall recommend that the Habermans and
4 Mr. Silva each receive a proportionate share of the right. The Referee
5 recommends that a right be confirmed to the Habermans under Court Claim No.
6 00620 with a June 30, 1880, date of priority a right for the diversion of 1.94
7 cubic feet per second in May and June and 0.97 cubic foot per second in April
8 and July 1 through October 15, 388 acre-feet per year for the irrigation of 97
9 acres in the E½SW¼ and NW¼SW¼ of Section 28. The Referee is awarding 4
10 acre-feet per year per acre irrigated based on Mr. Haberman's testimony that in
11 conjunction with deliveries from KRD, 4 acre-feet per acre would be sufficient
12 to adequately irrigate the land.

13
14 COURT CLAIM NO. 01649 -- Thomas Haven
& Sara Haven

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

17 The claimants' property mostly lies within that portion of the SW¼SW¼ of
18 Section 17, T. 18 N., R. 19 E.W.M. lying west of Wilson Creek Road. A small
19 portion of their property is also within the NE¼SE¼SE¼ of Section 18, T. 18 N.,
20 R. 19 E.W.M., however, State's Exhibit SE-2 shows the irrigated land to be
21 within Section 17, as does the investigation report prepared for this claim.
22 The Havens own approximately 5 acres and irrigate less than 1.5 acres with water
23 diverted from Wilson Creek. A portion of the land is pasture and the rest of
24 the irrigated land is lawn, garden and a few fruit trees. A 1HP pump on the
25

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

3 Mr. Haven pointed to the evidence put into the record by Earl Glauert, who
4 is a neighboring landowner in the SE¼SE¼ of Section 18. However, since the
5 irrigated land primarily lies within the SW¼ of Section 17, the evidence put in
6 the record by G. Jay Nelson, et al., is more informative.

7 Water rights for the S½ of Section 17 were addressed in both the Ferguson
8 decree and in Sander v. Jones. According to the Findings of Fact and
9 Conclusions of Law from the Ferguson case, J. H. Crawford owned the S½ of
10 Section 17, T. 18 N., R. 19 E.W.M. and in 1882 diverted and used water from
11 Naneum Creek for the irrigation of 100 acres. Crawford was awarded a Class 12
12 right to 100 inches (2 cfs). Since the land is not riparian to Naneum Creek,
13 1882 would be the priority date of the right. The Havens are not asserting a
14 right to use waters from Naneum Creek, so the right awarded in the Ferguson
15 decree will not be addressed further.

16 J. H. Crawford was also awarded water rights to Wilson Creek in Sander v.
17 Jones. The Findings of Fact states that the allegations by J. H. Crawford in
18 his answer are true, except that it does not appear that he diverted water over
19 all his land. It does not describe the lands owned, however, since by 1901,
20 when the Ferguson case was filed he owned the S½ of Section 17, the Referee
21 believes it is not unreasonable to conclude he would have owned the same lands
22 in 1890. Beginning in 1880 water was diverted from Wilson Creek, in steadily
23 increasing quantities until by 1889 he was diverting 80 inches of water.

24 Water Right Claim No. 004574 was filed pursuant to the requirements of RCW
25 90.14 by James L. Bridge, Jr., who must have owned the S½ of Section 17 during

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1 the claims registration period. It asserts a right to divert 2 cfs, 1460
2 acre-feet per year from Lyle Creek (Wilson) for the irrigation of 110 acres in
3 the S½ of Section 17, T. 18 N., R. 19 E.W.M. The described point of diversion
4 is 2300 feet south and 2000 feet west from the northeast corner of Section 17,
5 which would be in the SW¼NE¼ of Section 17.

6 The right that was confirmed in the Sander v. Jones decree must be divided
7 between the Nelsons who own most of the S½ of Section 17 and the Havens. The
8 proportionate share that the Havens would be entitled to is sufficient water to
9 irrigate one acre. The decree awarded one inch of water (or 0.02 cfs) for each
10 acre irrigated in May and June and one-half inch of water for each acre the rest
11 of the year.

12 Therefore the Referee recommends that a right be confirmed under Court
13 Claim No. 01649 for the use of 0.02 cfs in May and June and 0.01 cfs in April
14 and July 1 through October 15, 5 acre-feet per year for the irrigation of 1 acre
15 and stock water. The diversion currently used by the landowner is a pump on
16 Wilson Creek as it flows by the property. Historically, the S½ of Section 17 has
17 been served by a diversion on Lyle Creek near the center of Section 17. There
18 is no evidence that approval to add the point of diversion was obtained through
19 the provisions of RCW 90.03.380. Therefore, the Referee must recommend that the
20 right be confirmed on Lyle Creek at the historic point of diversion. The
21 claimant should contact Ecology's Central Regional Office about the procedure to
22 seek a change in point of diversion.

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

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

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

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

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

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

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

15 Mr. Henderson did not testify to the instantaneous quantity of water being
16 diverted from the creek, however, if 3 acre-feet per acre irrigated is
17 sufficient, it is very likely that no more than 0.02 cfs per acre irrigated is
18 being diverted. The Referee recommends that a right be confirmed under the
19 Riparian Doctrine with an April 21, 1891, date of priority for the diversion of
20 0.20 cfs, 30 acre-feet per year for the irrigation of 10 acres in that part of
21 the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 lying south of Naneum Creek Road.

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

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

4 Mr. Henderson presented very little evidence of historic water use for the
5 NE¼ of Section 28. However, evidence provided by other claimants shows that the
6 Charlton Ditch was constructed between 1886 and 1888 to serve lands in Sections
7 27, 28 and 34. The ditch crosses the southwest corner of the Henderson property
8 and when livestock are grazing in this area drink from the ditch. The Referee
9 believes this is a permissive use and incidental to the delivery of irrigation
10 water to the lands intended to be served from the ditch. There is no evidence
11 that the ditch was intended to be used to deliver stock water to the Henderson
12 property. Neither the claimant nor Ecology identified a RCW 90.14 claim that
13 was filed for this specific purpose. The Referee does not believe it would be
14 appropriate to recommend that a water right be confirmed for stock watering,
15 however, it is recognized that as long as this ditch continues to be used to
16 convey irrigation water and the land continues to be used for cattle grazing,
17 the livestock will drink from the ditch.

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

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

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

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

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

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

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

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1 There is nothing in the record to show that a water right claim was filed
2 pursuant to RCW 90.14 for the claimants' lands in the NE¼SE¼ of Section 21.
3 Ecology generally researches potentially applicable water right claims and
4 references them on the investigation report prepared for the claim. However,
5 the Court Claim No. 00663 did not assert a water right for the NE¼SE¼ of
6 Section 21, so it is possible that the state's investigation report also did not
7 address that land. The record is not clear in that regard. The claimant did
8 not point the Referee to a water right claim that might be appurtenant to the
9 NE¼SE¼ of Section 21. The Referee did review the summary list of water right
10 claims that is part of SE-5, but could only find WRC No. 071282 filed by Dr.
11 Herbert. If the Herberts did not own the land at the time of the claims
12 registration, a claim might be in another name, however, that information also
13 was not provided to the Referee. Failure to file a claim relinquishes any right
14 that may have existed, RCW 90.14.071.

15 Due to the lack of a water right claim pursuant to RCW 90.14 for the NE¼SE¼
16 of Section 21, the Referee cannot recommend that a water right be confirmed for
17 that land. The Referee does recommend that a right be confirmed with a June 30,
18 1875, date of priority for the diversion from Naneum Creek of 1.6 cubic feet per
19 second in May and June and 0.80 cubic foot per second in April and July 1
20 through October 15, 410.20 acre-feet per year for the irrigation of 80 acres and
21 stock watering in the W¼SW¼ of Section 22, T. 18 N., R. 19 E.W.M.

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

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

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

14 According to Mr. Hobbs testimony, he acquired the land from Emil Stampfly
15 in 1968. The Stampfly family had owned the land since at least the early 1920's
16 and were parties to the Thomas v. Roberts decree. Mr. Hobbs testified about two
17 water courses on his property. One enters his property from the west and was
18 described as a natural water course. The second enters his property from the
19 north and he believes it is called Wilkins Ditch, which diverts from Naneum
20 Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M. Mr. Hobbs did not
21 testify to actually using water from the westerly water course, but that
22 testimony was not entirely clear. Water is used from the Wilkins Ditch. A
23 total of 210 acres are being irrigated within the property described in Court
24 Claim No. 02296, although a right is being asserted for use of Naneum Creek to
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1 irrigate approximately 50 acres. The land is also assessed by and receives
2 water from the Kittitas Reclamation District (KRD). Creek water and KRD water
3 is mixed and creek water is not used on discrete portions of his land.

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

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

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

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

14 Most of the property described in Court Claim No. 02174 was addressed in
15 both the Ferguson and Thomas v. Roberts decrees. The Ferguson decree awarded
16 100 inches of water for lands owned by Edwin and Lois Cooke, who owned the NW $\frac{1}{4}$,
17 the SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M. The Findings of Fact
18 that preceded the decree stated that 300 acres were in cultivation, with 100
19 acres irrigated with water from Naneum Creek. It did not identify how that 100
20 inches was distributed within the 360 acres described. Diversion of water to
21 these land began between 1880 and 1886, but the exact date was not known. The
22 Thomas v. Roberts decree did identify somewhat how the water was distributed
23 within the described lands and stated that the water was first used in 1882. In
24 that decree 50 inches of water was identified as being for the W $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$
25 of Section 10, lands not described in Court Claim No. 2296; 25 inches were for

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

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

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

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1 COURT CLAIM NO. 05820 -- Richard M. Hilliard
2 (A) 05906

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

9 The claimant's land is a 100 foot wide strip of land along the west line of
10 the NW¼SE¼ of Section 29, T. 18 N., R. 19 E.W.M., consisting of slightly less
11 than 2 acres. A right is being asserted to irrigate approximately 1.5 acres of
12 pasture with water from Wilson Creek. Ms. Reukauf and Ms. Tracy bought the
13 property for people named Newman, who had not irrigated the land during their
14 ownership. A neighboring landowner flood irrigates his fields and the runoff
15 from his field would also to a degree irrigate the claimant's land. The prior
16 owners apparently did not find it necessary to irrigate. There were irrigation
17 ditches on the property indicating that the land had previously been irrigated.
18 The claimants' intend to place a pump on the ditch that runs along the property
19 and pump into a sprinkler system. The land is pasture and Ms. Reukauf testified
20 to an intent to raise horses and perhaps a few cattle in the future so stock
21 water would also be needed. The claimants are asking for a right to use 1.5
22 inches of water, or 0.03 cubic foot per second. The testimony did not indicate
23 how long it had been since the land had been irrigated. If it had been five or
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1 more successive years, the any right that might have existed may have
2 relinquished for nonuse, see RCW 90.14.160.

3 The claimant's land is part of a larger piece (the entire SE¼ of
4 Section 29) that was bought from the Northern Pacific Railroad by Fredrick A.
5 Ploeger on October 6, 1891. Mr. Ploeger was a party to the Ferguson decree and
6 was awarded a Class 13 water right for the use of 100 inches of water. The
7 Findings of Fact that preceded the decree indicated that within his 160 acre
8 ownership, 100 acres were being irrigated with water diverted from a branch of
9 Naneum Creek. The SE¼ of Section 29 is riparian to the West Branch of Naneum
10 Creek; the west branch is also called Taylor Creek. The Class 13 designation
11 was based on water not being used until 1883. However under the Riparian
12 Doctrine the priority date for the right is set when the land is settled, which
13 for this land would be 1880, rather than 1883. The only other claimant in this
14 proceeding that is claiming a portion of the Ploeger water right is Orren Busby,
15 who is asserting a right for 30 acres. The Referee concludes that the claimants
16 land would enjoy a right to 1.5 inches of water (0.03 cfs) for the irrigation of
17 1.5 acres as part of the Ploeger land.

18 However, the Referee cannot find a water right claim filed pursuant to RCW
19 90.14 that would preserve that right. RCW 90.14 required the filing of a water
20 right claim for any use of water under a right initiated prior to adoption of
21 the Surface Water Code in 1917 or the Ground Water Code in 1945. The water
22 right for the claimant's property clearly fits that requirement. A prior owner
23 of the land, Pete Stobbe filed Water Right Claim No. 147720, which asserted a
24 right to use water from a well for domestic supply. Attached to the claim is a
25 map of the property showing the location of the well on the property, along with

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

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

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

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

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

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

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

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

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

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

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

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

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1 continue to have a statement that one-half of the Sliger water right transferred
2 with the land. Based on that language, it is reasonable to conclude that the
3 claimants' land, along with the west 1789.6 feet of the SW¼ of Section 33 south
4 of the canal is entitled to 50 inches of water. The decree provided that one
5 inch of water was sufficient for one acre. Therefore, there exists a right to
6 irrigate 50 acres. The only other claim in this proceeding asserting to have a
7 portion of the Sliger water right is Court Claim No. 01052 (James C. Swayze &
8 Dianne Morrison), which is asserting a right to irrigate 25 acres or less.

9 Pursuant to the requirements of RCW 90.14, Raymond Razey filed Water Right
10 Claim No. 100012 asserting a right to divert 50 inches of water from Naneum
11 Creek for the irrigation of 32 acres. The point of diversion described on the
12 claim is in the SW¼NW¼ of Section 33. A very poor copy of the claim is in the
13 record and the portion of the claim which asks for the legal description of
14 lands on which the water is used is either blank or ink was so light it did not
15 copy. However, it is clear that he is asserting a right for the 50 inches from
16 the Ferguson decree that is appurtenant to lands that include the claimants and
17 the Razey family did in the past own the claimants land. The record from the
18 Swayze claim indicates that the mid-1970's is when the Razey family began
19 selling their land. The Referee believes it is reasonable to conclude that the
20 intent of Mr. Razey when he filed the claim was to cover the lands to which the
21 50 inch water right was appurtenant. The Referee concludes that WRC No. 100012
22 complied with the requirements of RCW 90.14 for the Mills/Vasquez land.

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

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

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

6
7 COURT CLAIM NO. 01721 -- John Hultquist
8 & Nancy Hultquist

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

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

23 The Hultquists had Richard C. Bain, Jr., a consulting engineer, measure the
24 flow in the ditch as it entered the claimant's property in May and August of
25 1990. The flow in the ditch in May was 0.80 cubic foot per second and in August

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

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

10 The record shows that the claimants' land was part of a larger parcel owned
11 by J. L. Bennett in the late 1800's. Mr. Bennett acquired the W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and
12 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M. from the Northern Pacific Railroad
13 by deed dated June 25, 1890. Bennett also homesteaded and received a patent for
14 the S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. Mr. Bennett's widow was a party to the
15 Ferguson case and was awarded a Class 11 right for the use of 30 inches of water
16 from Naneum Creek. The Findings of Fact that preceded the decree described the
17 lands owned by Mrs. Bennett and to which the water right would be appurtenant.
18 The Hultquists and Louaine A. Magnuson, a neighboring landowner, contend that
19 the copy of the Findings of Fact that several claimants have put into the record
20 contains a typographical error in the paragraph that describes the lands owned
21 by Mrs. Bennett. The description is "The persons described in paragraphs XLV
22 hereof (the heirs to J. L. Bennett) are the owners of the southeast quarter of
23 the northeast quarter and the east half of the southeast quarter of Section 32,
24 the northwest quarter of the southwest quarter, the south half of the southwest
25 quarter and the southwest quarter of the southeast quarter of Section 32,

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

20 The Referee concludes that sufficient evidence has been placed in the
21 record to show that a typographical error was made on the version of the
22 Findings of Fact in the record and that the 30 inch Bennett water right is
23 appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of
24 Section 33. There were no claims filed in this proceeding for the lands in
25 Section 32. The claimants in this proceeding who own portions of the land in

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

7 Mr. Hultquist is asserting a right for more water than the Referee is
8 recommending for confirmation. However, the quantity is limited by the Ferguson
9 decree, see page 7 of this report for a discussion of the decrees. The Referee
10 recommends that a right be confirmed to John and Nancy Hultquist with a June 30,
11 1882, date of priority for the diversion of 0.20 cubic foot per second in May
12 and June, 0.10 cubic foot per second in April and July 1 through October 15, 50
13 acre-feet per year for the irrigation of 10 acres and stock watering.

14
15 COURT CLAIM NO. 02294 -- Mary Hundley

16 Mary Hundley submitted a Claim to the Court asserting a right to use waters
17 from Mercer Creek for irrigation. Ms. Hundley, represented by Attorney Michael
18 Bauer, testified at the evidentiary hearing.

19 Most of the claimant's property has been sold to Pautzke Bait Company who
20 is asserting rights for the property they acquired under Court Claim No. 1724.
21 Ms. Hundley still owns approximately 4.8 acres and she is asserting a right to
22 irrigate most of that land. Prior to the time of the hearing Ms. Hundley had
23 leased the land to Glenn Gregory, so she had little knowledge about water use on
24 the property. Mr. Gregory passed away just before the hearing. Ms. Hundley's
25 land lies in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 17 N., R. 18 E.W.M. An exact legal

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1 description is not in the record. It is not clear to the Referee what source of
2 water is being used on the property. Initially Ms. Hundley testified to using
3 Mercer Creek, but then also indicated that water from the Kline-Coble Ditch is
4 used. While Mercer Creek lies within Subbasin No. 9 and is appropriately
5 considered in this report, the Kline-Coble Ditch diverts water from the Yakima
6 River in Subbasin No. 7. Water rights for lands served by that ditch were
7 addressed in the Subbasin No. 7 Report of Referee. However, review of that
8 report indicates that Ms. Hundley did not testify at the Subbasin No. 7
9 hearing. The only investigation report that is in the record for this claim was
10 entered as part of the Subbasin No. 7 exhibits and states that the land retained
11 by Ms. Hundley is irrigated from Mercer Creek.

12 Ms. Hundley provided little historical information about the property,
13 except that she and her husband bought it in 1952 from Clarence and Hazel
14 Anderson and that water was being used on the land when they bought it. The
15 Anderson owned considerable acreage in the area, raising hay crops. The
16 claimant asked that the Referee refer to the evidence placed in the record by
17 Pautzke Bait Company, as the history for their land in Section 2 should be the
18 same. Pautzke Bait did put in historical evidence for Section 2. William
19 Merrill received a patent on August 15, 1888, for the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, which
20 is riparian to Mercer Creek. Under the Riparian Doctrine, were there evidence
21 of when water was first used for irrigation, the patents could be used to
22 establish a priority date since there is not specific information of when the
23 settlers first took action to sever the land from Federal ownership.

24 Neither Ms. Hundley or Pautzke Bait put into evidence any information
25 showing that a water right was actually established for use of Mercer Creek. At

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1 this point in the basin, Mercer Creek is below the KRD canal, Cascade Canal and
2 Town Ditch. All three use Mercer Creek as a mechanism to deliver their water.
3 In order to show that there is a water right to use Mercer Creek, the claimant
4 not only has to show water use prior to December 31, 1932, the date by which
5 riparian rights could be established through beneficial use of water, but the
6 claimant also needs to show that natural creek flow is being used.

7 Documentation of a right being established or actual water use prior to
8 construction of the canals or testimony of use prior to when the canals begin
9 operating each season, if the use is prior to 1932 would be helpful.

10 A second issue must be addressed by the claimant. There is no evidence in
11 the record that a claim was filed pursuant to RCW 90.14 for use of Mercer Creek
12 water on this land. At the time that claims were to be filed, the land was
13 owned by the Hundley family. The Referee could find no claim filed in that name
14 for Mercer or Wilson Creek. Failure to file a claim relinquishes any right that
15 may have existed. RCW 90.14.170.

16 Due to the lack of evidence to show that a water right was established for
17 the land and lack of a water right claim filed pursuant to RCW 90.14, the
18 Referee cannot recommend that a water right be confirmed to Mary Hundley under
19 Court Claim No. 02294.

20
21 COURT CLAIM NO. 00568 -- HMH Enterprises Inc.
22 (A) 05601

23 Robert H. and Shirley A. Lindberg filed a claim with the Court asserting a
24 right to use Wilson Creek for irrigation of 30 acres. On August 20, 1990, they
25

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1 amended their claim to add the Yakima River as a source of non-diversionary
2 stock watering. Mr. Lindberg testified at the evidentiary hearing. On
3 January 6, 1994, HMH Enterprises, Inc., was substituted as claimant.

4 The property lies in the very southerly tip of Subbasin No. 9 and does not
5 appear on the State's Exhibit Map, SE-2. The Lindbergs owned Government Lot 5
6 and the SE¼NW¼ of Section 6, T. 16 N., R. 19 E.W.M. They are asserting a right
7 to irrigate 30 acres with water diverted from Wilson Creek. The basis for this
8 assertion is Surface Water Certificate No. 470 which issued to Carl E. Noll, a
9 prior owner of their property. With a April 23, 1923, date of priority, it
10 authorized the diversion of 0.60 cfs from Wilson Creek for the irrigation of 30
11 acres in Lot 5 and the SE¼NW¼ of Section 6, T. 16 N., R. 19 E.W.M. Apparently
12 when this right was established, there was a diversion from Wilson Creek just
13 above the confluence of Wilson Creek with the Yakima River. A ditch carried
14 water to the claimant's property. In 1957 a flood destroyed the intake and
15 changed the channel of both Wilson Creek and the Yakima River. Since then,
16 Wilson Creek has not been used to irrigate the claimant's land.

17 Mr. Lindberg testified to irrigating a total of 145 acres with water
18 delivered by the Kittitas Reclamation District (KRD). He wished to maintain the
19 water right to Wilson Creek for years when he does not receive sufficient water
20 from KRD. He irrigates hay and pasture. The pasture is between the county road
21 and the Yakima River and the livestock grazing on the pasture drink directly
22 from the river. The non-diversionary stock water stipulation discussed on page
23 4 of this report covers this use.

24 It is clear that a water right for use of Wilson Creek was established and
25 is documented in Surface Water Certificate No. 470. However, that right has not

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1 been exercised for over 30 years. RCW 90.14.180 provides that any person
2 entitled to divert water through an appropriation authorized under RCW
3 90.03.330, who voluntarily fails for a period of five successive years to use
4 the water relinquishes that right. The Referee finds that the right embodied in
5 Surface Water Certificate No. 470 has relinquished and recommends that a water
6 right not be confirmed under Court Claim No. 00568. The Referee also recommends
7 that Certificate No. 470 be made null and void by the Department of Ecology at
8 the conclusion of this case.

9 This determination does not have affect on the claimant's use of water
10 delivered by KRD.

11
12 COURT CLAIM NO. 00900 -- G.R. Hughes; Enterprises LP
13 U.S. Department of the Interior

14 Court Claim No. 00900 was originally field by Calvin and Rhonda Jansen and
15 asserted rights to use waters from Coleman Creek on land in Sections 17 and 20,
16 T. 17 N., R. 19 E.W.M. and Farrell Slough on land in Section 25, T. 17 N.,
17 R. 18 E.W.M. On February 10, 1989, G. R. Hughes Enterprises, LP were
18 substituted for the Jansens for the land in Section 25, T. 17 N., R. 18 E.W.M.
19 and on January 17, 1995, the U. S. Department of Interior, Bureau of Land
20 Management were joined to that portion of the claim. Farrell Slough lies within
21 Subbasin No. 9, however, there was no appearance at the Subbasin No. 9
22 evidentiary hearing in support of that claim. Therefore, the Referee cannot
23 recommend that a water right be confirmed under Court Claim No. 00900.

24
25
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1 The Jansens retain the portion of the land described in Court Claim No.
2 0900 that lies along Coleman Creek. Rights to the use of Coleman Creek will be
3 addressed in the Report of Referee for Subbasin No. 10 (Kittitas).

4
5 COURT CLAIM NO. 00606 -- Gerhard Jansen
& Bertha Jansen

6 The Jansens submitted a claim to the Court for use of waters from Naneum
7 Creek. Calvin Jansen, their son, testified at the evidentiary hearing.

8 The Jansens own the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 17 N., R. 19 E.W.M. and
9 irrigate most of the land with water diverted from Naneum Creek or delivered by
10 Bull Canal Company or Ellensburg Water Company (EWC). Mr. Jansen testified that
11 28 acres are irrigated with water from Naneum Creek and there are 34 acres of
12 Bull Ditch water and 8 acres of Town Ditch water. Town Ditch is part of the EWC
13 delivery system. The Jansen delivery system consists of a cement ditch and gated
14 pipe, with a small section of open ditch. A 1 HP pump is used in conjunction
15 with a buried sprinkler system for lawn and garden irrigation around the house.
16 It is not clear whether the pump is on the ditch or on the creek. Mr. Jansen
17 testified that he irrigates approximately 100 days each irrigation season and
18 uses between 1 and 2 cubic feet per second from the creek. He also testified to
19 using 240 acre-feet per year. Livestock are on the property a portion of the
20 year and drink directly from the creek. Non-diversionary stock watering, such
21 as this, is covered by the stock water stipulation discussed on page 4 of this
22 report. No other right is necessary for this use.

23 The claimants' property is part of that which John L. Amlin received a
24 patent on March 12, 1887. The patent issued for the S $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
25

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1 Section 18, T. 17 N., R. 19 E.W.M. Prior to the patent issuing, Amlin sold all
2 of his land to Janey Amy Laurendeau. On December 22, 1894, all of the land sold
3 at public auction to satisfy a debt that resulted from a lawsuit. The
4 certificate of sale following the auction mentioned that the land was conveyed
5 to the purchaser together with all irrigation ditches and water rights. Mr.
6 Jansen points to this language to show that by 1894, water rights were
7 appurtenant to the property. Mr. Jansen also related that a prior owner of the
8 property, Ed Clerf, had told him that the land had been irrigated in the late
9 1800's.

10 Water Right Claim No. 048981 was filed by Ed Clerf as a result of the
11 requirements of RCW 90.14, the Claims Registration Act. It asserted a right to
12 use 2 cfs, 1200 acre-feet per year from Naneum Creek for the irrigation of 30
13 acres in the SE~~1~~/~~4~~SE~~1~~/~~4~~ of Section 18, T. 17 N., R. 19 E.W.M. The point of
14 diversion described on the claim is within the NE~~1~~/~~4~~SE~~1~~/~~4~~ of Section 18, at about
15 the same location as described in the State's Investigation Report for this
16 claim.

17 Although the 1894 certificate of sale shows the existence of irrigation
18 ditches and water rights on the land being sold, the Referee does not believe
19 there has been sufficient evidence presented to show the existence of a valid
20 water right to use waters from Naneum Creek. Construction of the Town Ditch
21 began in 1885 and was completed prior to 1894 and Bull Canal Company began
22 construction of its canal also in 1885. It is just as likely that the ditches
23 and water rights referred to in the certificate of sale related to EWC and Bull
24 Canal Company as Naneum Creek. Nothing has been offered into the record to show
25 that a water right was established pursuant to the Riparian Doctrine for Naneum

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1 Creek through water use prior to 1932. Until that proof is presented, the
2 Referee cannot recommend that a water right be confirmed to the Jansens under
3 Court Claim No. 00606.

4
5 COURT CLAIM NO. 00930 -- Harold W. Jenkins
& Gladys D. Jenkins

6 COURT CLAIM NO. 00932 -- Patrick M. Jenkins
7 & Vicki K. Jenkins

8 Harold and Gladys Jenkins submitted Court Claim No. 00930 asserting a right
9 to use several surface water sources in Subbasin No. 9. Patrick and Vicki
10 Jenkins filed Court Claim No. 00932 for use of waters from Naneum Creek. The
11 lands described in both Court claims are farmed together and the evidence was
12 jointly presented for both claims, therefore, the Referee will address both
13 claims in one analysis. The Jenkins were represented by Attorney Hugh Spall at
14 the evidentiary hearing. Mr. Spall has since withdrawn as their attorney.
15 Harold Jenkins, Patrick Jenkins and Glenn Cooke testified at the hearing in
16 support of the claim. Richard C. Bain, Jr., a consulting engineer hired by the
17 claimants prepared an Engineering Report for the Jenkins Ranches, which is
18 Exhibit DE-1517. This report provides information about water use on the
19 Jenkins land.

20 The Jenkins claim covers several different sections of land that have
21 different ownership and water right histories. The Referee will deal with each
22 segment separately.

23 The first to be addressed will be the lands referred to by the Jenkins as
24 the Home Place. It lies in the S½SE¼ of Section 7 and the NE¼ of Section 18,
25 T. 18 N., R. 19 E.W.M. Although the deeds show that the Jenkins own the S½SE¼

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1 of Section 7 and the Bain report indicates that the Home Place is in Sections 7
2 and 18, the testimony only addressed water use in Section 18. Additionally, the
3 State's Investigation Reports only indicate irrigation of lands in Section 18.
4 It may be that the Home Place does in fact include the S½SE¼ of Section 7, but
5 all of the irrigated land is in the NE¼ of Section 18. Although Mr. Bain's
6 report indicates that the Home Place is 200 acres in size, with 166 acres being
7 irrigated, the NE¼ of Section 18 is only 160 acres.

8 The irrigated land on the Home Place is either Timothy hay (90 acres) or
9 irrigated pasture. The claimants raise 50 cow/calf pairs and 8 horses on the
10 land and these animals are there all year. Neither the Jenkins nor Mr. Bain's
11 report indicated whether diversionary stock watering continues after the end of
12 the irrigation season. The NE¼ of Section 18 is riparian to Wilson Creek, so
13 the livestock could drink directly from the creek during the winter months.
14 Non-diversionary stock watering is covered by the stock water stipulation
15 discussed on page 4 of this report. Mr. Bain's report indicates that 4 acre-feet
16 per year would be needed for stock watering. Lacking information to do
17 otherwise, the Referee will presume that half of that is used during irrigation
18 season and half the remainder of the year.

19 Two diversions from Wilson Creek are used to serve the Home Place. One
20 diversion (TO-1) is located in the SW¼SW¼ of Section 8 and the second (TO-2) is
21 in the NW¼NW¼ of Section 17, both in T. 18 N., R. 19 E.W.M. Mr. Bain measured
22 the flow in the ditch fed from TO-1 in Section 8 in April of 1990 at 2.5 cubic
23 feet per second. TO-2 was not measured.

24 Several water right claim (WRC) forms were filed by Harold Jenkins pursuant
25 to RCW 90.14. The following claims are for the Home Place and assert rights to

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1 use waters from Wilson Creek: WRC No. 096638 asserts a right to use 3.0 cfs, 50
2 acre-feet per year for the irrigation of 10 acres in the NE¼ of Section 18,
3 T. 18 N., R. 19 E.W.M. The point of diversion described is in the SE¼NE¼ of
4 Section 18. Mr. Bain's report did not address this diversion, nor did the
5 testimony at the hearing. WRC No. 096639 asserts a right to divert 1.0 cfs, 50
6 acre-feet per year for the irrigation of 10 acres in the NE¼ of Section 18. The
7 point of diversion is in the NW¼NW¼ of Section 17 (at TO-2). WRC No. 096640
8 asserts a right to divert 2.40 cfs, 800 acre-feet per year for the irrigation of
9 160 acres in the NE¼ of Section 18. The point of diversion is in the SW¼SW¼ of
10 Section 8 (TO-1). None of the claims include Section 7 within the described
11 place of water use.

12 Water rights for the NE¼ of Section 18 were addressed in the Sander v.
13 Jones decree. The Decision that preceded the decree stated that I. M. Thomas
14 owned the NE¼ of Section 18, that he had settled on the land in 1880, and
15 received a patent on May 23, 1889. The Decision identified that use of water
16 began in 1880 and by 1887 Thomas was using 65 inches of water. The decree then
17 awarded I. M. Thomas a right to use 65 inches of water (or 1.30 cubic feet per
18 second). The decision stated that one inch of water was sufficient to irrigate
19 one acre in May and June, and half that quantity was sufficient the rest of the
20 year. Therefore, a right to use 65 inches of water would be sufficient to
21 irrigate 65 acres. There was no evidence presented to show that an additional
22 water right was established beyond the 65 inches awarded in the Sander v. Jones
23 decree.

24 Therefore the Referee can only recommend that a right be confirmed
25 consistent with the decree. It is noted that KRD assesses the Jenkins for 128

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1 acres, which would allow for the irrigation of additional land beyond that for
2 which a right to Wilson Creek exists. The Referee recommends that a right be
3 confirmed to Harold D. and Gladys W. Jenkins with a June 30, 1880, date of
4 priority for the diversion of 1.30 cubic feet per second in May and June and
5 0.65 cubic foot per second in April and July 1 through October 15, 325 acre-feet
6 per year for the irrigation of 65 acres and an additional 2 acre-feet per year
7 for stock watering in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T. 19 N., R. 19 E.W.M.

8 The next land to be dealt with is called the Bar 14 Ranch, which lies in
9 the S $\frac{1}{2}$ NE $\frac{1}{4}$, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of Section 5, the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
10 Section 4, that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 north of the KRD canal and
11 that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9 north of the KRD canal, all in T. 18 N.,
12 R. 19 E.W.M. The Jenkins own a total of 353 acres in these sections and
13 irrigate approximately 300 acres with water diverted from Wilson Creek and
14 Naneum Creek, along with reuse of return flows captured within the ranch. The
15 land is irrigated pasture for raising cattle and is rill irrigated with dirt
16 ditches and gated pipe. Approximately 250 cow/calf pairs are raised each year.
17 The land in Section 5 is riparian to Wilson Creek and the land in Sections 4 and
18 9 are riparian to Naneum Creek. There was no testimony about diversion of water
19 during the winter for livestock and since most of the land is riparian, the
20 Referee will presume that during the remainder of the year the livestock drink
21 directly from the creeks and there is no diversionary stock water use. The
22 stock water stipulation discussed on page 4 of this report covers
23 non-diversionary stock watering. Mr. Bain's report indicates that a total of 20
24 acre-feet per year is needed for stock watering. The Referee will award half of
25 that or 10 acre-feet per year during the irrigation season and part of the

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1 diversionary right with the expectation that the remaining will be a
2 non-diversionary use.

3 Water Right Claim No. 090378 was filed by Ralph C. Klein pursuant to the
4 requirements of RCW 90.14. Mr. Klein filed a "short form" stating a claim to
5 use Naneum Stream and Wilson Stream for stock watering and irrigation (lawn and
6 garden) within the S $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4; the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of
7 Section 5; that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8 and that portion of the W $\frac{1}{2}$
8 Section 9 lying north and above the right of way of North Branch Canal of
9 Kittitas Reclamation District. The short form was specifically provided for in
10 RCW 90.14.051 for any claim for those uses described in the exemption from the
11 permit requirements of RCW 90.44.050. Those uses were stock watering, watering
12 of a lawn or noncommercial garden not exceeding one-half acre in size, single or
13 group domestic supply or industrial use not exceeding 5,000 gallons per day.
14 The short form only required the name of the claimant, the source of water,
15 purpose of use and legal description. It did not require that the person filing
16 the claim identify a point of diversion, quantity of water being used or date by
17 which water was first used, as the other water right claim form required. Mr.
18 Klein included on the form a Note that stated: "This water right claim refers
19 to Order Pendente Lite No. 18145 in the Superior Court of the State in 1973;
20 Note: the claimant's number which Richard C. Klein, owner, and Ralph C. Klein,
21 is power of attorney, recorded in Kittitas County, is shown under the former
22 owners name of Lawrence A. Manly. Claimant No 16, on page 5; Claimant No. 16 on
23 page 9; Claimant No 16 on page 8; Claimant No 16 on page 10; No 16 on page
24 14;". The purpose of RCW 90.14, as stated in Section 90.14.010, is to provide
25 adequate records for efficient administration of the state's waters, . . .

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1 Although the short form itself did not provide sufficient information about the
2 extent of the right being asserted to meet the stated purpose of RCW 90.14, it
3 referred to a document that would provide that information. The Order Pendente
4 Lite referred to on the form resulted from an action initiated by Ecology to
5 determine the valid water rights in the Wilson-Naneum drainage basin. It is
6 part of Ecology's records and the evidence indicates it was used by Ecology for
7 regulatory purposes in the basin. Since WRC No. 090378 specifically referred to
8 claimant number and page number in the Pendente Lite Order so that the extent of
9 the right being asserted could be easily determined, the Referee finds that the
10 claimant substantially complied with the requirements of RCW 90.14.

11 The Bar 14 Ranch itself consists of parts of several different homesteads
12 with different ownership histories and distinct water rights. The Referee finds
13 three different water rights, with three different priority dates appurtenant to
14 portions of what is now Bar 14 Ranch. Because the testimony and evidence of
15 irrigation usage was put in for the ranch as a whole, the Referee will attempt
16 to determine how many acres are being irrigated within each of the historic
17 ownerships. If the claimants do not agree with the conclusions reached by the
18 Referee, exception should be taken so that the differences can be addressed.

19 Water rights for the NE~~1~~/~~4~~NE~~1~~/~~4~~ of Section 8 were addressed in the Ferguson
20 decree. At the time of that action, John Bloomquist owned the N~~1~~/~~2~~NE~~1~~/~~4~~ and SE~~1~~/~~4~~NE~~1~~/~~4~~
21 of Section 8 and the SW~~1~~/~~4~~SE~~1~~/~~4~~ of Section 5. The Findings of Fact that preceded
22 the decree stated that he had the entire 160 acres under cultivation and that
23 water was diverted beginning in 1873. A water right was awarded to Bloomquist
24 in the decree for use of 160 inches. The Referee estimates there are 25 acres
25 irrigated in that portion of the NE~~1~~/~~4~~NE~~1~~/~~4~~ of Section 8 lying north of the KRD

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1 canal and 28 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5. Therefore, the Referee
2 recommends that a right be confirmed with a June 30, 1873, date of priority on
3 Naneum Creek for 1.06 cubic feet per second in May and June, 0.53 cubic foot per
4 second in April and July 1 through October 15, 265 acre-feet per year for the
5 irrigation of 53 acres and 1 acre-foot per year for stock watering in that
6 portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 north of the KRD canal and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
7 Section 5, except the westerly 400 feet thereof. The point of diversion is in
8 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5.

9 The portion of the Bar 14 Ranch in the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 4 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
10 Section 9 were part of land that was owned by George Cooke at the time of the
11 Ferguson decree. The Findings of Fact states that Cooke owned the S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$
12 of Section 4 and the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, consisting of 320
13 acres and all of that land was cultivated with water first diverted from Naneum
14 Creek in 1882. The Referee estimates that there are 90 acres in Section 4 and
15 15 acres in Section 9 that are irrigated. Although the decree awarded a right
16 to use water from Naneum Creek, it appears that water from Wilson Creek is also
17 used to irrigate some of this land. The point of diversion from Naneum Creek
18 that is used is in the southwest corner of Government Lot 4. The Referee
19 recommends that a right be confirmed to the Jenkins with a June 30, 1882, date
20 of priority for the diversion of 2.10 cubic feet per second in May and June and
21 1.05 cubic foot per second in April and July 1 through October 15, 525 acre-feet
22 per year for the irrigation of 105 acres and 3.5 acre-feet per year for stock
23 watering in that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9 north of the KRD canal, the
24 W $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M.

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1 Most of the rest of the lands owned by the Jenkins in Section 5 were
2 addressed in both the Ferguson and the Sander v. Jones decrees. The Decision
3 that preceded the Sander decree (which was entered in 1890) stated that A.
4 Haberman owned the land described in his answer since July 1887, having
5 purchased from NPRR. In 1883 he began diverting water from Wilson Creek and by
6 1889 had appropriated 49 inches of water. He was awarded a right to use 49
7 inches from Wilson Creek. In the Ferguson Findings of Fact, August Haberman
8 owned the S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, upon which he settled in
9 August 1883. In 1884 he began diverting water from Naneum Creek and irrigated a
10 total of 70 acres. He was awarded a right to use 70 inches of water. Water is
11 diverted out of both Wilson Creek and Naneum Creek to irrigate this portion of
12 Section 5 and the evidence presented shows that a right to irrigate a total of
13 119 acres in Section 5 were established at the time of the earlier decrees.
14 There was no evidence offered to show that additional water rights were
15 established following entry of the decrees. Therefore, the extent of the right
16 that the Referee can recommend for confirmation is a right to irrigate 49 acres
17 from Wilson Creek and 70 acres from Naneum Creek. Because there is nothing in
18 the record to assist in designating a smaller place of use than the entire ranch
19 in Section 5, the Referee will designate a place of use for each right based on
20 the location of the ditch(es) from each creek.

21 The Referee recommends that a right be confirmed for use of Wilson Creek
22 with a June 30, 1883, date of priority for the diversion of 0.98 cubic foot per
23 second in May and June and 0.49 cubic foot per second in April and July 1
24 through October 15, 245 acre-feet per year for the irrigation of 49 acres and

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1 2.5 acre-feet per year for stock watering in the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
2 Section 5, except the westerly 400 feet thereof.

3 With a June 30, 1883, date of priority, a right for the diversion from
4 Naneum Creek of 1.40 cubic feet per second in May and June and 0.70 cubic foot
5 per second in April and July 1 through October 15, 350 acre-feet per year for
6 the irrigation of 70 acres and 3.5 acre-feet per year for stock watering in the
7 N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$, except the westerly 400 feet thereof, all in Section 5.

8 The last portion of the Jenkins property to be considered is known as the
9 Cooke Place, which consists of all of Section 6, T. 18 N., R. 19 E.W.M., except
10 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and Government Lot 1 and except that portion of Government Lot 2
11 lying north of the irrigation ditch. A total of 524 acres is owned, with
12 approximately 255 acres irrigated with water diverted from Whiskey Creek and/or
13 the Kittitas Reclamation District canal. Ninety acres lying below the KRD canal
14 are irrigated with both KRD and Whiskey Creek water. Four take-outs (TO's) on
15 Whiskey Creek are used to divert water that is ditched to the property. TO-1 is
16 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. and is used to fill a stock
17 watering pond located in the northeast corner of Government Lot 3 of Section 6
18 and is also used to irrigate approximately 36 acres in the NW $\frac{1}{4}$ of Section 6. It
19 is estimated that between 3 and 4 cfs is diverted at this takeout. TO-2 is
20 located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5 and that diversion was measured at 2.0 cfs
21 in April of 1990. TO-3 is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6 and was measured at
22 2.62 cfs in April of 1990. TO-4, 5 and 6 are on the KRD canal and were not
23 measured. TO-7 is on Whiskey Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 and TO-8 is on
24 a drain below the KRD canal. Neither of these last two takeouts were measured.
25 Based on an analysis made by Mr. Bain in 1990, the fields need between 6.1 and

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1 9.1 acre-feet per year for each acre irrigated. The land is pasture and hay
2 ground that is rill irrigated using dirt ditches and gated pipe. The land above
3 the KRD canal often is not irrigated late in the irrigation season because
4 sufficient water is not available. Up to 250 cow/calf pairs are raised on the
5 land, needing 20 acre-feet per year. Whiskey Creek flows through the SE¹/₄NE¹/₄,
6 the SE¹/₄ and the SE¹/₄SW¹/₄ of Section 6. The testimony did not indicate whether
7 water is diverted from Whiskey Creek in the winter for stock watering or whether
8 the livestock drink directly from the creek and the pond in Government Lot 3.
9 Non-diversionary stock water is covered by the stock water stipulation discussed
10 on page 4 of this report and no additional right is necessary. Undoubtedly,
11 livestock drink from the irrigation ditches during the irrigation season, so the
12 Referee will allocate 10 acre-feet for diversionary stock watering incidental to
13 irrigation.

14 Pursuant to the requirements of RCW 90.14, Harold Jenkins filed five water
15 right claims for use of Whiskey Creek on lands within Section 6, T. 18 N.,
16 R. 19 E.W.M. Those claims are WRC No. 096632, 096633, 096634, 096641, 096642,
17 and between them assert a right to divert 6.5 cubic feet per second, 1250
18 acre-feet per year for the irrigation of 250 acres in that portion of Section 6
19 owned by the Jenkins. Each claim describes a different point of diversion and
20 takeouts 1, 2, 3 and 7 are described, along with a diversion in the SE¹/₄SE¹/₄ of
21 Section 31, T. 19 N., R. 19 E.W.M., which is not presently used. Several water
22 right claims were also filed for use on springs in Section 6, however, there was
23 no testimony and evidence put in the record about use of those springs.

24 The land in Section 6 was settled by three different individuals and there
25 is evidence of water rights being established by two of the three. William A.

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1 Jordan received a patent on January 11, 1892, for the E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$
2 of Section 6. On May 19, 1890, he and J. F. LeClerc filed an Affidavit of Water
3 Right stating that in 1872 Amana Galloway constructed a ditch capable of
4 carrying 700 inches of water and appropriated 400 inches of water, which was
5 carried in said ditch. The head of the ditch is in Section 32 and the purpose
6 of said ditch was to irrigate lands in Sections 5, 6 and 7. The evidence in the
7 record shows that at the time the affidavit was filed Jordan owned the E $\frac{1}{2}$ SW $\frac{1}{4}$,
8 SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, and the NW $\frac{1}{4}$ of Section 7. LeClerc owned the S $\frac{1}{2}$ NW $\frac{1}{4}$,
9 NW $\frac{1}{4}$ SW $\frac{1}{4}$ and Lot 4 of Section 5. Although the Report of George Maddox that
10 preceded the 1973 Order Pendente Lite assumed that the 400 inches were used on
11 all of Sections 5, 6 and 7, it is more reasonable to conclude that the water was
12 used on the land within those sections owned by the individuals who filed the
13 affidavit, i.e. Jordan and LeClerc. That is the intention of the Referee.
14 There is no evidence to show how many acres were irrigated within each of the
15 parcels of land. The Court decrees entered in the late 1800's and early 1900's
16 allowed the use of one inch of water for each acre irrigated. The Referee
17 concludes that the 400 inches identified in the Affidavit could have been used
18 to irrigate a maximum of 400 acres. In addition to the Jenkins, Chester Vernon
19 Stokes, and Byrl McNeil are asserting rights to irrigate portions of land owned
20 by Jordan and LeClerc. The evidence presented by the claimant does not show how
21 many acres are irrigated within each of the original homesteads. The Referee,
22 therefore, must make that determination from the evidence in the Bain Report and
23 Exhibit SE-2. The Referee estimates that there are 130 acres being irrigated
24 within the lands homesteaded by William Jordan. Those lands would have a right
25 with a priority date of 1872.

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1 A patent issued to William J. Knox for Government Lots 3, 4, 5 and 6 of
2 Section 6. Although Knox did not obtain the patent until 1910, he sold the land
3 to Patrick Thomas in 1909. That sale references water rights and a water ditch
4 used for irrigation and includes rights of egress and ingress over lands in the
5 SE¼ of Section 18 and in Section 19 for maintenance of a ditch used to carry 50
6 inches of water diverted from Wilson Creek. Also in the record is a copy of the
7 deed for the easement for the ditch across Sections 18 and 19. The deed was
8 signed in January of 1907, but clearly indicates that the ditch was in place and
9 used prior to execution of the deed. It does not identify when that ditch was
10 constructed. There is a diversion in the SE¼ of Section 18 that conveys water
11 from Wilson Creek southerly toward Section 6. Currently that ditch ends about a
12 mile above the claimants' land. The Jenkins are now using Whiskey Creek and the
13 diversion in Section 32 to serve this land. Glen Cooke's testimony was that the
14 land is being irrigated at the time of the hearing in much the same manner as
15 when his father acquired it in 1938. Until 1917 the point of diversion of a
16 water right could be changed without complying with an administrative process as
17 long as there was no detrimental effect on other water users. Lacking any
18 evidence to the contrary, the Referee will conclude that the change occurred
19 prior to 1917. The Referee estimates there are 35 acres being irrigated within
20 the lands settled by Knox. The date when this appropriate was initiated is not
21 in the record, just that the ditch was complete and in use in 1907. Review of
22 the decrees that are in the record indicates that it often took at least two
23 years to construct a ditch to serve acreage of this size. Therefore, the
24 Referee intends to use May 1, 1905, as the priority date.

25
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1 A patent issued to Isaac Carlton on July 6, 1893, for the W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and
2 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, within which the Referee estimates there are 90 acres being
3 irrigated. The only historical information put in the record as far as the
4 Referee can determine is the patent. There was no evidence offered to show that
5 a water right was established for this land. Lacking that evidence, the Referee
6 cannot recommend that a water right be confirmed for that portion of the Jenkins
7 land.

8 It is recommended that a right be confirmed with a June 30, 1872, date of
9 priority for the diversion of 2.6 cubic feet per second, 910 acre-feet per year
10 from Whiskey Creek for the irrigation of 130 acres and 5 acre-feet per year for
11 stock watering in the E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying north
12 of the KRD canal in Section 6. The point of diversion shall be in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
13 Section 6.

14 It is recommended that a right be confirmed with a May 1, 1905, date of
15 priority for the diversion of 0.70 cubic foot per second, 245 acre-feet per year
16 for the irrigation of 35 acres and 2 acre-feet per year for stock watering in
17 Government Lot 4, the S $\frac{1}{2}$ of Government Lot 3, that portion of Government Lot 5
18 north of the KRD canal and that portion of the the southwest corner of
19 Government Lot 2 lying southwest of the irrigation ditch, all in Section 6. The
20 point of diversion shall be in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32.

21 COURT CLAIM NO. 00991 -- Kayser Ranch, Inc.

22 Court Claim No. 00991 was filed by Kayser Ranch, Inc., asserting a right to
23 use waters from the Wilson-Naneum Drainage basin for irrigation and stock
24 water. The claimant is also asserting rights to use Schnebly Creek and unnamed
25

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1 springs that are located on the ranch. The springs and Schnebly Creek are
2 located on portions of the ranch that lie in Subbasin No. 10, Kittitas, and any
3 rights that may exist to those waters will be addressed in the Report of
4 Referee for Subbasin No. 10. Kayser Ranch, Inc., was represented by Attorney
5 William Almon, who has since withdrawn, at the evidentiary hearing. Mark Kayser
6 testified at the hearing in support of the claim.

7 Kayser Ranch, Inc., lies in Sections 34 and 35 of T. 19 N., R. 19 E.W.M.
8 and in Sections 2 and 3 of T. 18 N., R. 19 E.W.M. The only lands that the
9 Referee intends to address in detail as part of this report are those lands that
10 are irrigated with waters diverted from Wilson-Naneum Creek. Those lands are in
11 the N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34 and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 35, south of
12 Adams Ditch, T. 19 N., R. 19 E.W.M., the N $\frac{1}{2}$ Section 2 and the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the
13 N $\frac{1}{2}$ of Section 3, T. 18 N., R. 19 E.W.M. A right is being asserted for the
14 diversion of 14 cubic feet per second, 3,000 acre-feet per year to irrigate 740
15 acres and stock water for 200 head of mature cattle, 350 yearlings and six
16 horses.

17 Kayser Ranch, Inc., filed several Water Right Claims (WRC) pursuant to RCW
18 90.14. Following are the water right claims that were filed for water sources
19 that lie within Subbasin No. 9. WRC No. 118061 asserts a right to divert 2.67
20 cfs, 1080 acre-feet per year from Wilson-Naneum Creek for the irrigation of 270
21 acres and stock watering. The points of diversion described are in the W $\frac{1}{2}$ W $\frac{1}{2}$ of
22 Section 28 T. 19 N., R. 19 E.W.M. into the Adams and Keister Ditch. The
23 described place of water use is the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M.
24 and the NE $\frac{1}{4}$ of Section 3, T. 18 N., R. 19 E.W.M. The claimant filed as an
25 exhibit a Notice of Scrivener's Error and of Intent to Amend Water Right Claim

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1 No. 124771. The claim number referenced is in error. The notice referenced the
2 date stamp number, which appears in the upper right corner of the claim form.
3 The actual claim number is 118061, which is stamped in the lower right corner of
4 the claim form. The notice states that the claimant seeks to amend the water
5 right claim to include additional waters appurtenant to the NW¼ of Section 3 T.
6 18 N., R. 19 East arising from Sanders v. Bull, and additional waters
7 appurtenant to the SW¼SW¼ of Section 3 pursuant to Wilkins Ditch Co. v. F. C.
8 Drake. The notice also states that the water right claim should refer to waters
9 from Schnebly Creek for the SE¼NE¼ of Section 34 T. 19 N., R. 19 E.W.M., lying
10 westerly of Schnebly Creek. The Referee notes that RCW 90.14.065 provides a
11 process for amending a water right claim under certain circumstances. Although
12 the Referee is not certain that amendments to the claim proposed by Kayser Ranch
13 can be made under the statute, that is the only mechanism for amending a water
14 right claim filed pursuant to RCW 90.14. The Referee cannot make that amendment
15 as part of this proceeding (see Court's Memo Opinion RE: RCW 90.14 and
16 Substantial Compliance, entered February 10, 1995, at pages 8-9).

17 WRC No. 118064 asserts a right to divert 5.2 cfs, 1040 acre-feet per year
18 from Wilson-Naneum Creek for the irrigation of 260 acres and stock water. The
19 location of the diversion is in the W¼W¼ of Section 28 into the Adams and
20 Keister Ditches. The lands on which water is used are described as the NW¼,
21 W¼NE¼, Lots 2 and 3 of Section 2, T. 18 N., R. 19 E.W.M.; the SE¼NW¼, SW¼SE¼,
22 and N¼SE¼ of Section 34, T. 19 N., R. 19 E.W.M. WRC No. 118065 asserts a right
23 to divert 1.80 cfs, 400 acre-feet per year from Wilson-Naneum Creek for the
24 irrigation of 100 acres and stock watering. The diversion is also in the W¼W¼
25 of Section 28 and the place of water is described as the NW¼, W¼NE¼, SE¼NE¼,

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1 and Lots 2 and 3 of Section 2, the SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34. WRC
2 No. 118062 asserts a right to 6.4 cfs, 46,720 acre-feet per year from Naneum
3 Creek for the irrigation of 700 acres and irrigation. The described place of
4 water use is the W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Lots 2 and 3 of Section 2 T. 18 N., R.
5 19 E.W.M., the SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34 and the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 35,
6 T. 19 N., R. 19 E.W.M. The claim form indicates there was no water use at the
7 time it was filed. Mr. Kayser was questioned about the statement on the form
8 that no water was being used at the time the claim was filed. He believes that
9 was in error and water was being used at that time as described in the claim
10 form. The Referee notes that not using water during one season would not have
11 an affect on the water rights. There was no assertion by any party that water
12 right appurtenant to the Kayser property may have been relinquished due to five
13 or more successive years of nonuse, (see RCW 90.14.170).

14 The Kayser Ranch property was owned by defendants in the various
15 litigations that have occurred over the years concerning water rights to Wilson
16 and Naneum Creeks. The following rights were awarded in the Ferguson decree and
17 in most cases again addressed in the Thomas v. Roberts decree (or the Courts
18 Findings of Fact that preceded the decree): With an 1887 date of priority 100
19 inches (2 cfs) for the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Sec. 2 (Schnebly), with an 1880 date
20 of priority 331/3 inches (0.66 cfs) for the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 2, T. 18 N., R. 19
21 E.W.M. (Larsen); with an 1880 date of priority 120 inches (2.4 cfs) for the NE $\frac{1}{4}$
22 of Sec. 3.

23 Subsequent to entry of the Ferguson Decree, predecessors to Kayser Ranch
24 bought water rights from other Ferguson defendants and transferred those rights
25 to some of the lands now owned by Kayser Ranch. Those transfers are documented

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1 through agreements and deeds executed between the involved parties. Those
2 transfers occurred between 1911 and 1918 and involved individuals who owned
3 lands that would lie below the proposed Highline Canal, which was to be part of
4 the Kittitas Reclamation District project that was proposed for construction.
5 The agreement between Olding, Galvin, Wager and P. H. and Bertha Adams, which is
6 Exhibit DE-1268, was executed in 1911, but the physical transfer of the water
7 was to occur after the Highline Canal was constructed. In 1920 the portion of
8 the agreement pertaining to Wager was cancelled. The Referee notes that the
9 case of Lawrence v. Adams, Decree No. 8402 (1933) specifically prohibited James
10 Ferguson and/or Henry Wagar from transferring the water to which they were
11 entitled under Decree No. 2607 to P. H. Adams. Olding and Galvin transferred to
12 Adams their rights to Naneum Creek from the Ferguson decree. Olding and Galvin
13 owned the N $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 21 T. 18 N., R. 19 E.W.M. which was awarded
14 240 inches (4.8 cfs) with a priority date of 1872. In 1927 a document was
15 executed showing that the agreement between Adams and Olding and Galvin had been
16 satisfied. In 1916 William T. Evans transferred to P. H. Adams one-half of the
17 rights to Naneum Creek decreed to A. J. Sliger in Ferguson, which amounted to 50
18 inches (1 cfs) (see Exhibit DE-1263). Evans owned the lands to which the Sliger
19 right was appurtenant. In 1918 Charles and Kate Bull sold to P. H. Adams 1/20
20 of the right to Naneum Creek water decreed to F. R. Clement and Elijah Topliff
21 in Ferguson, which would be 40 inches (0.8 cfs). There is nothing in the
22 evidence to show that the Bulls owned the land to which the Clement/Topliff
23 water right was appurtenant. The Findings of Fact and Conclusions of Law in
24 Thomas v. Roberts acknowledges this transfer, and the quantity of water awarded
25 to P. H. Adams in the resulting decree included this right. The document

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1 supporting the transfer (a deed) is dated May 18, 1918, more than a year after
2 adoption of the Surface Water Code, which included a provision that changes in
3 place of use and points of diversion must be approved by the Department of
4 Ecology predecessor agency. Although there is no evidence this was done, the
5 Court in Thomas v. Roberts nevertheless included this right in the water awarded
6 to Adams.

7 The Findings of Fact and Conclusions of Law do not mention the transfer
8 of the Olding/Galvin right to P. H. Adams, perhaps due to the fact that the
9 transfer was not complete at the time the case was decided. Nevertheless, the
10 record is clear this transfer occurred. An assertion was made at the
11 evidentiary hearing that compliance with the change procedures of RCW 90.03.380
12 was necessary since the physical transfer did not occur until around 1927. The
13 Referee cannot agree with this assertion. It is clear that the right was sold
14 or transferred in 1911 with the understanding that the physical change would not
15 occur until construction of the Highline Canal. Construction of that canal was
16 not in the control of the parties to the agreement and the Referee is aware that
17 construction of the various canals under the entire Yakima Irrigation Project
18 took a number of years, requiring numerous extensions on the Federal
19 Government's withdrawal of the surface waters in the Yakima Basin. The Referee
20 believes that the intent of the parties was clear and the transfer was pursued
21 with as much due diligence as possible.

22 The Thomas Findings of Fact also states that P. H. Adams is the owner of
23 160 inches of water purchased through one Peter Kuchen with the right initiated
24 in 1887. It goes on to state the water is being used on the lands owned by the
25 Adams. The Referee can find no deed for this conveyance. Kayser Ranch

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1 submitted documents to show that in 1891 Peter Kuchen bought from Northern
2 Pacific Railroad Lots 3, 4 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ (which comprises most of the NW $\frac{1}{4}$) of
3 Section 3, T. 18 N., R. 19 E.W.M., and now owned by Kayser Ranch. Peter Kuchen
4 lost the land through foreclosure to Pennsylvania Mortgage Investment Company in
5 1897 and there is nothing else in the record concerning ownership of this land
6 until it was acquired by Kayser Ranch. The owner(s) of the NW $\frac{1}{4}$ of Section 3 at
7 the time of the various decrees dealing with Wilson/Naneum Creek(s) were, as
8 far as the Referee can determine, not parties to any of the actions. Kayser
9 Ranch is asserting a right to irrigate the NW $\frac{1}{4}$ of Section 3 with water from
10 Wilson-Naneum Creek, yet the record would indicate that water rights established
11 by Peter Kuchen were transferred to the lands owned by P. A. Adams in 1925
12 (portions of N $\frac{1}{2}$ of Section 2 and S $\frac{1}{2}$ of Section 34). Except for the reference in
13 the Thomas Findings of Fact, there is no evidence that water rights were
14 established by Peter Kuchen, or for what lands they might have been
15 established. Although the Thomas Findings of Fact stated that Adams was using
16 this water, the quantity of water awarded to Adams in the final decree did not
17 include this water. The Referee needs additional evidence before a right can be
18 recommended for this water.

19 Mr. Kayser testified to his belief that the ranch is being irrigated in
20 much the same manner as in the past and that the same number of acres are being
21 irrigated. Art Carlson, a neighboring landowner who grew up on land adjoining
22 Kayser Ranch, testified to his observations as a child of irrigation on the
23 Kayser Ranch and the various ditches that serve the ranch. Andy Gustafson, who
24 grew upon neighboring land, testified through a deposition taken on March 15,
25 1990, to his memory of water use on what is now Kayser Ranch.

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1 Milton Lewis, who owned lands irrigated with water from Naneum Creek
2 testified about his memory of transfers of water rights involving Adams in the
3 late 1920's and early 1930's and a court case that resulted from one attempt to
4 transfer water. That case, Haberman v. Sanders and Adams, 166 Wash. 453 (1932),
5 resulted from an attempt to transfer a portion of Olive Sanders' water right to
6 Wilson Creek to lands owned by Phil Adams and to be diverted from the combined
7 flow of Wilson-Nanem Creeks through the Adams Ditch. The Court found that the
8 proposed transfer was subject to the change procedures of the Surface Water
9 Code, RCW 90.03.380, and that the change could only be made if it would not be
10 detrimental to existing rights. The Court found with the facts before it that
11 the proposed change would be detrimental to existing rights and ordered that the
12 change not be made.

13 Mr. Kayser is not asserting a right to any of the water rights confirmed to
14 Sanders, but to rights confirmed to others who were parties to the Ferguson.
15 The only similarity between the transfers asserted by Mr. Kayser and the
16 transfer that was addressed in Haberman v. Sander, is that the lands which the
17 rights were transferred from lie below the Highline Canal. Most of the
18 transfers occurred prior to adoption of the Surface Water Code when there was no
19 statute that addressed the effect a transfer might have on existing rights.
20 The one that occurred after adoption of the Surface Water Code was confirmed in
21 the Thomas v. Roberts. It is not clear whether the claimants in this proceeding
22 who are contesting the transfers are successors to parties to Thomas v.
23 Roberts. Nevertheless, if that transfer was to be challenged, 1925 was the time
24 to do so, when it was before Kittitas County Superior Court.

25
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1 The Referee is not able to recommend that water rights be confirmed for all
2 that land irrigated by Kayser Ranch. The Referee is recommending that rights be
3 awarded for the irrigation of 613.3 acres. However, there are over 700 acres
4 being irrigated. The record does not show to which lands the purchased water
5 rights were transferred, just that it was to lands now owned by Kayser Ranch.
6 The Referee intends to recommend that those purchased rights be confirmed and
7 will specify a place of use for those rights. The claimant may during the
8 exception phase of this proceeding request an opportunity to clarify the place
9 of use for these rights if necessary.

10 The Referee recommends that the following water rights be awarded to Kayser
11 Ranch under Court Claim No. 00991:

12 With a priority date of June 30, 1872, a right to divert 4.8 cubic feet per
13 second in May and June, 2.4 cubic feet per second in April and July 1 through
14 October 15, 1200 acre-feet per year from Wilson-Naneum Creek for the irrigation
15 of 240 acres and stock watering in the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 3,
16 T. 18 N., R. 19 E.W.M. and the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 19 N., R. 19 E.W.M.
17 The point of diversion shall be into the Keister Ditch in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
18 Section 28, T. 19 N., R. 19 E.W.M.

19 With a priority date of June 30, 1877, a right to divert 1.30 cfs in May
20 and June and 0.65 cfs in April and July 1 through October 15, 325 acre-feet per
21 year from Wilson-Naneum Creek for the the irrigation of 65 acres and stock
22 watering in that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34 lying below the Adams Ditch
23 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 19 N., R. 19 E.W.M. The point of diversion
24 shall be into the Adams Ditch in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N.,
25 R. 19 E.W.M.

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1 With a priority date of June 30, 1877, a right to divert 1.0 cfs in May and
2 June, 0.50 cfs in April and July 1 through October 15, 250 acre-feet per year
3 for the irrigation of 50 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2,
4 T. 18 N., R. 19 E.W.M. The point of diversion shall be into the Adams Ditch in
5 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

6 With a priority date of June 30, 1880, a right to divert 0.50 cfs in May
7 and June and 0.25 cfs in April and July 1 through October 15, 125 acre-feet per
8 year from Wilson-Naneum Creek for the irrigation of 25 acres and stock watering
9 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 18 N., R. 19 E.W.M. The point of diversion shall
10 be into the Wilkins Ditch in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

11 With a priority date of June 30, 1880, a right to divert 2.4 cfs in May and
12 June and 1.2 cfs in April and July 1 through October 15, 600 acre-feet per year
13 from Wilson-Naneum Creek for the irrigation of 120 acres and stock watering in
14 the E $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T. 18 N., R. 19 E.W.M. The point of
15 diversion shall be into the Keister Ditch in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N.,
16 R. 19 E.W.M.

17 With a June 30, 1880, priority date, a right to divert 0.66 cubic foot per
18 second in May and June and 0.33 cubic foot per second in April and July 1
19 through October 15, 166.5 acre-feet per year from Wilson-Naneum Creek for the
20 irrigation of 33.3 acres and stock watering in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2,
21 T. 18 N., R. 19 E.W.M. The point of diversion shall be into the Keister Ditch
22 in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

23 With a June 30, 1887, date of priority, a right to divert 2 cfs in May and
24 June and 1 cfs in April and July 1 through October 15, 500 acre-feet per year
25 from Wilson-Naneum Creek for the irrigation of 100 acres and stock watering in

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1 the S½SE¼NW¼ and the W½NE¼ of Section 2, T. 18 N., R. 19 E.W.M. The point of
2 diversion shall be into the Adams Ditch in the SW¼NW¼ of Section 28, T. 19 N.,
3 R. 19 E.W.M.

4
5 COURT CLAIM NO. 01263 -- Sam Kayser
6 Thomas V. Morrison
7 & Ginger D. Morrison
8 Chet Morrison
9 & Judy Morrison

10 The Statement of Claim was originally filed by Thomas V. and Virginia D.
11 Morrison for use of waters from Naneum Creek. On March 30, 1989, Farm Credit
12 Bank of Spokane (formerly Federal Land Bank of Spokane) was joined to the claim
13 having acquired the land through a public auction by the Kittitas County
14 Sheriff's office. On April 27, 1990, Sam Kayser was joined to the claim and was
15 substituted for the Farm Credit Bank of Spokane on March 22, 1993. On February
16 25, 1993, Chet Morrison, Jr. and Judy Morrison were joined to the claim. Mr.
17 Kayser objected to their being joined to claim, asserting they had no interest
18 in the land described in the claim. Sam Kayser, represented by Attorney William
19 Almon, and his father, Mark Kayser, testified at the evidentiary hearing.

20 Mr. Kayser owns the S½NE¼ and E½SE¼, except the west 600 feet of the south
21 1200 feet of the SE¼SE¼, of Section 4, T. 18 N., R. 19 E.W.M., and is irrigating
22 between 140 and 150 acres. At the time of the hearing the land was irrigated
23 pasture that supported 200 cow/calf pairs and several horses. The livestock
24 drink directly from a spring not specifically located on the property and from
25 the irrigation ditches that cross the land. Mr. Kayser is asserting a right to
26 divert 1.82 cubic feet per second and 3.64 acre-feet per year for each acre

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1 irrigated, or 546 acre-feet per year. He has not measured the quantity of water
2 he uses, but believes that is what is being used to irrigate the land.

3 According to the testimony the current irrigation practice is consistent
4 with that which has occurred during the 1960's and 1970's. Neither of the
5 Kayzers who testified had knowledge of the property prior to 1960. Two water
6 right claims were filed by Thomas V. Morrison for this property, consistent with
7 the requirements of RCW 90.14. Water Right Claim No. 125069 asserted a right to
8 divert 1.82 cubic feet per second, 3.64 acre-feet per year for the irrigation of
9 150 acres and stock watering the S½NE¼ and the E½SE¼ of Section 4, T. 18 N.,
10 R. 19 E.W.M. (an exception to this was described, excluding land in the W½SE¼SE¼
11 of Section 4). The point of diversion described was for the Wilson Ditch,
12 located in the SW¼NW¼ of Section 33, T. 19 N., R. 19 E.W.M.. Water Right Claim
13 No. 125070 asserted the same claim, except identifying the point of diversion as
14 being into the Wilkins Ditch located in the SW¼SW¼ of Section 28, T. 19 N.,
15 R. 19 E.W.M.. The annual quantity asserted in both claims obviously is per acre
16 irrigated. Both asserted a date of first water use of 1883.

17 Mr. Kayser is basing his claim on Ferguson v. United States National Bank
18 of Portland, Oregon and the Order Pendente Lite from Department of Ecology v.
19 Carlson, et al.. A patent issued to James I. Wilson on January 11, 1888, for
20 the E½SE¼ and S½NE¼ of Section 4, T. 18 N., R. 19 E.W.M.. Mr. Wilson filed a
21 Statement of Water Right dated May 26, 1890, identifying the lands he owned and
22 stating he had a valid water right to 100 inches from Naneum Creek. The notice
23 states that the water was appropriated in May 1883. Ferguson recognized a Class
24 13 right for J. I. Wilson for 100 inches from Naneum Creek. The Findings of
25 Fact that preceded the decree showed that J. I. Wilson owned the E½SE¼ and S½NE¼

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1 of Section 4, T. 18 N., R. 19 E.W.M., which was first settled in the fall of
2 1882. One hundred inches of water were diverted from Naneum Creek in the spring
3 of 1883. According to the decree, 100 inches would have been sufficient for the
4 irrigation of 100 acres.

5 The Order Pendente Lite from Ecology v. Carlson, identified a right with an
6 1883 date of priority for Thomas Victor Morrison for 1.0 cubic foot per second
7 for the irrigation of 80 acres in the S½NE¼ of Section 4 and 0.82 cubic foot per
8 second for the irrigation of 41.15 acres in that portion of the E½SE¼ of
9 Section 4, except that parcel described as: Beginning at the southeast corner
10 of the SE¼SE¼ of Section 4; thence N 89°49'20 W along the south boundary of the
11 SE¼SE¼ 1349.00 feet; thence N 1°32'20" E 1156.72 feet; thence S 89°49'20" E
12 565.03 feet; thence S 1°32'20" W 1156.72 feet; thence N 89°49'20" W 565.03 feet
13 to the true point of beginning. Another claimant in both that proceeding and
14 the instant case, David Leffert, was awarded a right for 0.18 cubic foot per
15 second, allegedly for the balance of the Wilson right identified for the E½SE¼
16 of Section 4. The claim by Mr. Kayser is consistent with the quantity in the
17 Order Pendente Lite.

18 The Order Pendente Lite is a interim document during the pendency of an
19 adjudication of Wilson-Naneum Creeks, which was initiated in 1971 and never
20 completed. The Referee concludes that based on the findings in the Ferguson
21 case, the extent of the water right for the S½NE¼ and E½SE¼ of Section 4 is 100
22 inches of water for the irrigation of 100 acres. Between Mr. Kayser and David
23 M. and J. Christine Leffert, who own the W½SE¼SE¼ of Section 4, rights are being
24 asserted for the irrigation of 155 to 160 acres within an 160 acre area.
25 However, the evidence in the record supports a conclusion that a right exist for

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1 only 100 acres. The Referee will divide that 100 acres proportionately between
2 Mr. Kayser and the Lefferts. Mr. Kayser owns 90.6 percent of the lands owned by
3 J. I. Wilson when the water right was established and would then have 90.6
4 percent of the 100 inch right and the Lefferts own 9.4 percent of the land and
5 would hav 9.4 percent of the water right.

6 The Referee recommends that a right be confirmed to Sam Kayser under Court
7 Claim No. 01263 with a May 30, 1883, date of priority for the diversion of 1.82
8 cubic feet per second, 453 acre-feet per year for the irrigation of 90.6 acres
9 and 5 acre-feet per year for stock watering. A right is being recommended for
10 stock watering only during the irrigation season, as the claimant did not
11 testify to diverting water outside of the irrigation season.

12 Although Chet Morrison, Jr. and Judy Morrison were joined to the claim and
13 asserted that testimony was presented by Mr. Kayser relative to land they now
14 own, it is not clear to the Referee that any of the testimony and evidence
15 related to land other than that owned by Mr. Kayser in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of
16 Section 4. Therefore, the Referee does not recommend confirmation of a water
17 right under Court Claim No. 1263 to the Morrisons.

18
19 COURT CLAIM NO. 01234 -- Sam Kayser
(A) 06380 & Lonni Kayser

20 Court Claim No. 01234 was originally filed by Margaret Kooy and Jack Kooy
21 asserting a right to use waters from Naneum Creek for the irrigation of the
22 W $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 lying above the KRD canal. On
23 March 23, 1989, Sam and Lonni Kayser were substituted for the Kooy's. Attorney
24 William F. Almon represented the Kayzers at the evidentiary hearing. Mr. Almon
25

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1 has since withdrawn as their attorney. Sam Kayser and Henry Schnebly testified
2 in support of the claim.

3 The Kayzers own that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
4 T. 18 N., R. 19 E.W.M. lying north of the Kittitas Reclamation District (KRD)
5 canal. There is some issue about whether the claim was also filed for that
6 portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2 lying south of the KRD canal, which stayed in
7 the Kooy family and at the time of the hearing was owned by Michael Kooy.
8 Michael Kooy was served notice of the hearing, but did not make an appearance.
9 The testimony offered in support of the claim dealt strictly with land lying
10 north of the canal.

11 Mr. Kayser testified that he owns between 70 and 75 acres and irrigates it
12 all with water diverted from Naneum Creek and carried in the Keister Ditch. He
13 raises hay and uses the ground to pasture cows after the first hay cutting in
14 June. Up to 150 head of cattle are on the ground while the pasture lasts.
15 Since he has owned the property, Mr. Kayser replaced some of the dirt ditches
16 with gated pipe, but other than that has continued the irrigation practice in
17 place when he acquired the land, which was in the mid-1980's. Henry Schnebly
18 has lived in the area all of his life (he was 73 at the time of the Subbasin No.
19 9 hearings) and recalls the claimants' land being irrigated. His family at one
20 time owned the land, along with other neighboring lands. Mr. Schnebly's father
21 was born on the claimants' land. Although Mr. Schnebly did not provide any
22 specifics it is clear from his testimony that the Kayser land discussed herein
23 was being irrigated from a ditch that carried water from Naneum Creek as far
24 back as Mr. Schnebly can remember.

25
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1 Pursuant to RCW 90.14, Water Right Claim No. 062732 was filed by Jacob Kooy
2 asserting a right to use 0.84 cubic foot per second, 240 acre-feet per year from
3 Naneum Creek for the irrigation of 60 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ and part of the SE $\frac{1}{4}$ SW $\frac{1}{4}$
4 of Section 2, T. 18 N., R. 19 E.W.M. The point of diversion described is at
5 approximately the location of the diversion into the Keister Ditch. Water Right
6 Claim No. 062732 states as the basis of the claim Cause No. 18145, Superior
7 Court Kittitas County May 1973, with is the Department of Ecology v. Carlson
8 case. The Pendente Lite Order in that case gave Jacob Kooy a right to 0.84 cfs
9 for the SE $\frac{1}{4}$ SW $\frac{1}{4}$ north of the KRD and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2. The Report of
10 George E. Maddox that preceded the Order stated that a total of 70 acres were
11 irrigated in the portion of the Kooy property that was north of the canal, and
12 of that 70, 17 acres were irrigated in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2
13 north of the canal.

14 Water rights for the Kayser property were addressed in the Ferguson
15 decree. At the time of that action, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 was owned by
16 William Keister and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2 was owned by Eric Larson. Keister
17 and Larson constructed a ditch in 1880 from Naneum Creek to their lands in
18 Sections 2, 3, 10 and 11. The Ferguson decree awarded a right to Keister for
19 the use of 200 inches May 1 through June 15 and 100 inches the rest of the year
20 for use on the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and the NE $\frac{1}{4}$
21 of Section 3. In 1918 Charles Bull owned the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 and
22 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, all of which he sold to H. H. Adams along with 4/10 of
23 the Keister water right. Four-tenths of that right would be 80 inches or 1.60
24 cubic feet per second. The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 would have one-quarter of that
25 right and Kayser would have one-half of that one-quarter, or 10 inches (0.20 cfs

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1 May 1 through June 15). The Ferguson decree awarded a right to Eric Larson for
2 the use of 100 inches of water from May 1 through June 15 (for some reason this
3 particular right was reduce after June 15 instead of June 30 i the Ferguson
4 decree) for the W $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2 and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3. In
5 1919 Charles Bull sold to Charles Gustafson the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2 and the S $\frac{1}{2}$ SE $\frac{1}{4}$
6 of Section 3 along with 2/3 of the water from Naneum Creek decreed to Eric
7 Larson in the Ferguson case (which would be 66.6 inches or 1.332 cubic feet per
8 second). In 1922 Charles Gustafson sold the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2 together with 50
9 inches of that right, leaving 16.6 inches for use in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3.

10 Based on these documents, the Referee concludes that the Kayser property is
11 entitled to 60 inches of water (or 1.20 cfs) with an 1880 priority date. This
12 is more than was recognized in the Order Pendente Lite, however, there is no
13 evidence that the deeds that conveyed land with specific portions of the water
14 right were in the record. The Ferguson decree provided that one inch of water
15 was used for each acre irrigated and the Findings of Fact shows that when the
16 right was established the number of acres irrigated were the same as the inches
17 awarded. Although Mr. Kayser is now irrigating 70 acres, the Referee must
18 conclude that a right exists only for the irrigation of 60 acres.

19 The Referee, therefore, recommends that a right be confirmed with a
20 June 30, 1880, date of priority for the diversion of 1.20 cubic feet per second
21 from May 1 through June 15 and 0.60 cubic foot per second in April and June 16
22 through October 15, 300 acre-feet per year for the irrigation of 60 acres and
23 stock watering in that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N.,
24 R. 19 E.W.M. In the post-hearing brief filed in support of this claim a right
25 was asserted for continuous stock watering, however, Mr. Kayser did not testify

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1 to diverting water after the irrigation season for stock watering. Rather he
2 testified that livestock are on the land until the pasture "runs out". That
3 would indicate that the livestock are not on the land all year. The time period
4 when they would be on the property was not discussed, other than beginning at
5 the first cutting of hay. Therefore, the Referee only recommends a right for
6 stock watering during the irrigation season.

7
8 COURT CLAIM NO. 00667 -- Robert O. Kelley
& Paula K. Kelley

9 Court Claim No. 00667 was submitted by Gerald E. and Janis Anderson. On
10 October 24, 1988, Robert O. and Paula K. Kelley were substituted for the
11 Andersons on the claim. Mr. Kelley testified at the evidentiary hearing.

12 The Kelleys own the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, except the easterly 328 feet
13 thereof, in Section 28, T. 18 N., R. 19 E.W.M. and are asserting a right to
14 irrigate 48 acres with water diverted from Naneum Creek. A branch of Naneum
15 Creek, called Neally Creek, flows through the claimants' property. Water is
16 diverted from Neally Creek about 300 feet north of the claimants' north property
17 line, in the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21 and carried in a ditch through the
18 claimants' property. About 40 acres is planted in Timothy hay and 8 acres are
19 in pasture. The claimants' have 3 or 4 horses on the property and varying
20 numbers of cattle, ranging from 6 up to 30. The land is flood irrigated using
21 concrete ditches and gated pipe. The land is also assessed by the Kittitas
22 Reclamation District.

23 Water rights for this land stem from the Ferguson decree. The claimants'
24 land was owned by Elijah M. Topliff at the time of that case. Topliff was

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1 awarded several water rights in the decree due to his extensive land holdings.
2 Portions of a Class 4 (1873 priority date) and a Class 7 (1875 priority date)
3 right are appurtenant to the claimants' land. A Class 4 right for the use of
4 160 inches in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28 was awarded to
5 Topliff. The claimants land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28 would have a portion of
6 that right. A Class 4 right was awarded for 160 inches in the N $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$
7 of Section 28 and a portion of that right would be appurtenant to the claimants'
8 land in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28. The decree allowed for the use of one inch of
9 water for each acre irrigated in May and June and one-half inch of water the
10 remainder of the year. The claimants own 16 acres within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 21
11 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28.

12 Although it is clear that a water right was established for the land in the
13 late 1800's and that beneficial use has continued, the Referee can find no
14 evidence that a water right claim was filed pursuant to RCW 90.14, the Claims
15 Registratoin Act. This Act was passed by the legislature in 1967 and required
16 the filing of a water right claim for any water use initiated prior to adoption
17 of the state water codes (the Surface Water Code was adopted in 1917 and the
18 Ground Water Code was adopted in 1945). Claims were to be filed between
19 January 1, 1969 and June 30, 1974. Failure to file a claim waived or
20 relinquished any right that may have existed, RCW 90.14.071. Therefore, the
21 Referee cannot recommend that a water right be confirmed under Court Claim No.
22 00667.

23 Livestock drinking directly from the creek is covered by the
24 non-diversionary stock water stipulation discussed on page 4 of this report.

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1 COURT CLAIM NO. 01232 -- Bobby F. Kennedy
2 Haidas Ranches, LLC
3 Gary Griffith

4 Court Claim No. 01232 was originally filed by Dippel Brothers. On
5 April 21, 1994, Bobby F. Kennedy was substituted as claimant. On April 19,
6 1999, Haidas Ranches LLC was joined as an additional party to the claim and on
7 November 22, 1999, Gary Griffith was joined. The land was still owned by Dippel
8 Brothers at the time of the evidentiary hearing, and they were represented by
9 Attorney Hugh Spall. Jill Perry, ranch manager, and Les Sperline, who actually
10 irrigated the land, testified at the hearing.

11 Dippel Brothers owned approximately 950 acres and irrigated 935 acres with
12 waters from Whiskey Creek, Dry Creek and the Kittitas Reclamation District
13 (KRD). Their ownership can generally be described as: the NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$,
14 except the east 350 feet, in Section 12, all of Section 13, except the SW $\frac{1}{4}$ SW $\frac{1}{4}$
15 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, T. 18 N., R. 18 E.W.M. and the NW $\frac{1}{4}$ of Section 18, T. 18 N.,
16 R. 19 E.W.M. The land in Section 13 is riparian to both Dry Creek and Whiskey
17 Creek, the land in Section 12 is riparian to Whiskey Creek and the land in
18 Section 18 is riparian to Dry Creek. Section 13 was originally held by the
19 Northern Pacific Railroad, and the railroad sold portions of it to individual
20 settlers between 1887 and 1892. Riparian rights for lands originally held by
21 the railroad enjoy a priority date of the date the map of definite location was
22 filed with Kittitas County, which is May 24, 1884, see Sander v. Bull, 76 Wash.
23 1, 135 Pac. 489 (1913).

24 The claimant entered into evidence two patents showing when the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and
25 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12 and E $\frac{1}{2}$ NW $\frac{1}{4}$ and Government Lot 1 of Section 18 separated from

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1 federal ownership. However, there was nothing in the record concerning the rest
2 of the NE¼ and NW¼SE¼ of Section 12, or Government Lot 2 of Section 18, lands
3 that were owned and irrigated by the Dippels.

4 Jill Perry testified about the management of the ranch. The 935 irrigated
5 acres are pasture for cattle. A maximum of 800 pair of cattle are grazed on the
6 land. The cattle have access to and drink from the creeks, irrigation ditches
7 and springs that emerge on the land. She believes that the land has always been
8 used to raise livestock and that would not be possible without irrigation
9 water. She noted that there is an old log structure on the property with wooden
10 pegs and square metal nails, indicating that it has been there for a long time.
11 Very large willow and cottonwood trees, which need water to survive are also on
12 the property. She did not indicate on which part of the property the trees and
13 log structure were located. The land also receives water delivered by KRD,
14 however, Ms. Perry did not know how many acres are accessed by KRD.

15 Les Sperline testified about the irrigation practice on the property.
16 Several maps were entered into the record showing the locations of the
17 diversions and ditches used to irrigate the fields. Diversion 1 through 6 are
18 on Dry Creek and diversions 8 through 14 are on Whiskey Creek. At one point Mr.
19 Sperline testified that a maximum of 7 cfs is diverted from Dry Creek and a
20 maximum of 13 cfs is diverted from Whiskey Creek. However, later in his
21 testimony, Mr. Sperline stated that only half of that is taken at one time. The
22 Referee is unclear about how much is actually diverted from either creek. It
23 takes about a month to irrigate the entire ownership. Irrigation season begins
24 around April 1 and ends in early October. Mr. Sperline began farming the
25 property in 1955 for a previous owner and continued when Dippel Brothers

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1 acquired it in 1972. He also believes that it is not possible to raise
2 livestock on the land without irrigation water. He moved into the area in 1949
3 and the land has continuously been irrigated since that time.

4 Pursuant to the requirements of RCW 90.14, a prior owner of the land filed
5 water right claims (WRC). WRC No. 046379 asserts a right to use 17 cfs, 5200
6 acre-feet per year from Whiskey Creek for the irrigation of 843 acres and stock
7 water. The legal description of where the water is used describes all of the
8 Dippel Brothers land. Seven points of diversion are described and for the most
9 part these points are at or near the currently used diversions. WRC No. 046380
10 asserts a right to divert 12 cfs, 3600 acre-feet per year from Dry Creek for the
11 irrigation of 843 acres. The place of water use is also all of the Dippel
12 Brothers land. Six points of diversion are described, which for the most part
13 are very close to the points of diversion shown on the claimants maps. WRC Nos.
14 055273, 055274, 055275 and 055276 were filed by Dippel Brothers for unnamed
15 springs in Section 31, T. 19 N., R. 18 E.W.M. and Section 6, T. 18 N.
16 R. 18 E.W.M. These springs are located outside of Subbasin No. 9 (in Subbasin
17 No. 7) and will not be addressed in this report.

18 None of the land owned by Dippel Brothers (now owned by Kennedy and Haidas
19 Ranches) was addressed in the many decrees that been entered addressing water
20 rights in the Wilson-Naneum basin. That does not necessarily mean that a water
21 right does not exist. However, in order for the Referee to find that a water
22 right exists under the Riparian Doctrine, which would lead to a recommendation
23 that a right be confirmed, there must be evidence that beneficial use of the
24 creek water was made prior to December 31, 1932. That evidence is lacking. The
25 testimony expressed a belief that the land could not be used to raise livestock

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1 without irrigation of land. However, since KRD water is also used, that does
2 not necessarily show that creek water has always been used on the land or when
3 creek water was likely first used. The diversions from both Whiskey Creek and
4 Dry Creek that are used on the claimants' land are below the KRD Highline canal
5 and are greatly influenced by return flows generated by use of KRD water. There
6 needs to be evidence to show that use of the creeks was begun prior to KRD
7 coming on line. Additionally, if KRD water is delivered through the creek, the
8 claimant needs to attempt to quantify how much natural creek flow is diverted.

9 Due to the lack of evidence to show that water rights were legally
10 established for the lands described in Court Claim No. 01232, the Referee cannot
11 recommend that a right be confirmed.

12 The livestock grazing on the claimants' land drink from the creeks that
13 flow through the land and springs that emerge on the claimants' land. That
14 non-diversionary stock water use is covered by the stock water stipulation
15 discussed on page 4 of this report and no additional right is necessary.

16
17 COURT CLAIM NO. 01128 -- Daniel S. Kivi

18 Frank W. Phelps, Sr. filed a claim with the Court for use of waters from
19 Naneum Creek. Mr. Phelps was represented by Attorney Roger K. Garrison at the
20 evidentiary hearing and Mr. Phelps testified in support of the claim. On
21 September 29, 1999, Daniel S. Kivi was substituted for Mr. Phelps.

22 The Phelps property lies in Government Lot 3 of Section 4, T. 17 N.,
23 R. 19 E.W.M. west of Ferguson Road and is 20.60 acres in size. Water is
24 diverted from a branch of Naneum Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16 and carried
25 through the west half of Sections 21, 28 and 33 of T. 18 N., R. 19 E.W.M. to the

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1 north section line of Section 4. At that point Mr. Phelps diverts from that
2 ditch to irrigate his fields. The land is planted to pasture and hay. All of
3 the land, except where the house is located is irrigated. The Referee estimates
4 that probably 20.25 acres are being irrigated. Up to 15 cow/calf pairs can be
5 raised on the land and when creek water is available they are watered from the
6 irrigation ditches. Mr. Phelps testified that in many years between mid-July
7 and mid-August creek water does not make it to his property, in spite of his
8 land having a very high priority water right.

9 The claimant's land is part of the land owned by James Ferguson at the time
10 the Ferguson decree was entered. James Ferguson is Mr. Phelps' grandfather.
11 According to the Findings of Fact, Ferguson settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and
12 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. on July 5, 1872. The decree awarded
13 him 160 inches of water from Naneum Creek for use on that land. The decree
14 stated that one inch of water would be used to irrigate one acre of land in May
15 and June and one-half inch of water for each acre the rest of the year. Mr.
16 Phelps asserted a right for use of 21 inches of water, which would be 0.42 cubic
17 foot per second, based on his land being almost 21 acres in size, and his
18 proportionate share of the Ferguson water right.

19 Besides Mr. Phelps (now Kivi), there are several other claimants in this
20 proceeding who are successors to James Ferguson and share a portion of the water
21 right. Those claimants are: Gwendolyn and Robert Cooke, Edith Thomas, Morrison
22 Ranches, Laurance D. Raap, Maurice and Ruth Ann Olney. Their claims are
23 addressed elsewhere in this report (see table of contents).

24 Water Right Claim No. 200070 was filed by Mr. Phelps asserting a right to
25 divert 0.40 cubic foot per second, 116 acre-feet per year for the irrigation of

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1 20 acres and stock watering. The place of use described on the claim is a
2 portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. and the point of
3 diversion described is the point where the water is diverted from the main ditch
4 into the lateral for use on the claimant's property. Additionally, Certificate
5 of Change of Point of Diversion recorded in Volume 2, page 882 (signed on
6 December 6, 1965) may apply to the claimant's water right. It authorized
7 several people, including Bessie Phelps to change the point of diversion of 3.2
8 cubic feet per second (which would be 160 inches) from Naneum Creek from a point
9 in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M. to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 16. Mr. Phelps testified that his mother changed the point of
11 diversion, so the Referee believes it is reasonable to conclude that Bessie
12 Phelps is Frank Phelps' mother.

13 Based on the foregoing, the Referee recommends that a right be confirmed
14 under Court Claim No. 01128 for the use of waters from Naneum Creek with a
15 July 5, 1872, date of priority for the diversion of 0.42 cubic foot per second
16 in May and June and 0.21 cubic foot per second in April and July 1 through
17 October 15 and 101.25 acre-feet per year for the irrigation of 20.25 acres and
18 stock watering in that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M.
19 described as follows: Beginning at the south quarter corner of Section 4;
20 thence N 1°50' W 3871.68 feet along the center line of Ferguson County Road;
21 thence S 86°52'40" W 30 feet to the True Point of Beginning; thence S 86°52'40"
22 W 729.79 feet to the west boundary line of said E $\frac{1}{2}$ NW $\frac{1}{4}$; thence N 6°22'40" E
23 119.54 feet, more or less, to the northwest 1/16 corner; thence N 5°10' E 1207.7
24 feet, more or less, along the west line of the E $\frac{1}{2}$ NW $\frac{1}{4}$ to the south right of way
25 of State Road No. 7; thence N 87°17' E 422 feet along the south right of way;

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1 thence N 86°05' E 111 feet along the south right of way to the west right of way
2 of Ferguson County Road; thence S 3°19' E 1295.5 feet, more or less, along the
3 west right-of-way to the true point of beginning.

4
5 COURT CLAIM NO. 00818 -- Adolph Kjelmmyhr
6 Merle D. Lott

7 L. E. and Ellen E. Guise submitted a claim to the Court for use of waters
8 from Naneum Creek for the irrigation of 10 acres in the ~~W~~~~W~~~~NE~~~~SE~~ of
9 Section 21, T. 18 N., R. 19 E.W.M. Their neighbor, Lorne Dunning, appeared at
10 the evidentiary hearing on their behalf and presented testimony in support of
11 the claim. On February 5, 1992, Adolph Kjelmmyhr and Merle D. Lott were
12 substituted for the Guises.

13 According to Mr. Dunning's testimony the diversion in the SW~~NE~~ of
14 Section 21 that serves his property also delivers water to the Guise property.
15 Approximately 9 acres of pasture is rill or flood irrigated. Livestock are also
16 raised on the property. Mr. Dunning said the number varies, but that he would
17 put up to 30 head on for two weeks, rotate them off for six weeks and then back
18 on for a couple more weeks. He suggested that the equivalent of one animal unit
19 per month (an unit is a cow/calf pair) is on the property. One acre-foot of
20 water should be sufficient for that level of stock watering during the
21 irrigation season. There was no discussion of diversions for livestock during
22 the winter. The property is also assessed by KRD and that water is delivered in
23 the same ditch as the creek water.

24 Water Right Claim No. 112401 was filed by Mr. Guise asserting a right to
25 divert 1.0 cubic foot per second, 300 acre-feet per year from Naneum Creek for

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1 the irrigation of 10 acres and stock watering in the ~~W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$~~ of Section 21,
2 T. 18 N., R. 19 E.W.M. The diversion described on the claim is at the location
3 of the presently used diversion on a branch of Naneum Creek.

4 Mr. Dunning cited to the Ferguson Decree as the basis for the water right.
5 The decree awarded a Class 4 right, which would have a 1874 date of priority, to
6 F. R. Clement for the use of 160 inches in the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 21, T. 18 N.,
7 R. 19 E.W.M. The decree allowed for the use of one inch of water on each
8 irrigated acre in May and June and one-half inch of water the rest of the year.
9 Based on that, the claimants would have a right to 0.20 cubic foot per second in
10 May and June and 0.10 cubic foot per second the rest of the irrigation season.
11 A maximum of 5 acre-feet per acre can be diverted during irrigation season. Mr.
12 Dunning testified to his belief that the right had continued to be exercised
13 after it was established in 1874.

14 The Referee recommends that a right be confirmed with a June 30, 1874, date
15 of priority for the use of 0.18 cubic foot per second in May and June and 0.09
16 cubic foot per second in April and July 1 through October 15, 45 acre-feet per
17 year for irrigation of 9 acres and one acre-foot per year for stock watering in
18 the ~~W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$~~ of Section 21, T. 18 N., R. 19 E.W.M.

19
20 COURT CLAIM NO. 00662 -- Robert B. Klindworth
& Linda W. Klindworth

21 Robert and Linda Klindworth submitted a claim to the Court asserting a
22 right to use waters from Lyle Creek for irrigation and stock watering. Guy
23 Couture, their neighbor, testified at the evidentiary hearing.

24
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1 The Klindworth property is a portion of Block 20 of Smithson's Addition to
2 Ellensburg. They own approximately 2.3 acres and are asserting a right to
3 irrigate all of their land, except where their home is constructed. Mr. Couture
4 estimated they would be irrigating about 2 acres. Most of their land is
5 pasture, with a lawn and garden area around their home. The Klindworths
6 generally raise two head of cattle for which they are asserting a stock water
7 right.

8 Most of the irrigation water is provided by the Town Ditch, which is
9 operated by Ellensburg Water Company (EWC). Water is available from the Town
10 Ditch generally from April 15 through October 15. The claimants are seeking a
11 right to use water from Lyle Creek from October 15 through December 15 and
12 March 15 through April 15. Mr. Couture did not testify to what the water was
13 being used for from October 15 to December 15. If it were for stock watering,
14 it seems that water would be needed all winter. He did testify to using the
15 creek water to irrigate in the spring before EWC turns on around April 15. EWC
16 is a Major Claimant in this proceeding whose water rights have been determined
17 through the Major Claimant Pathway, see Report of the Court, Supplemental Report
18 of the Court and Conditional Final Order for Ellensburg Water Company. The
19 right to use water delivered by EWC will not be further addressed.

20 Water is diverted from Lyle Creek at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6,
21 T. 17 N., R. 19 E.W.M. and carried in a ditch that passes through the
22 neighboring Couture property. Water is withdrawn from the ditch into a
23 sprinkler system that is used to irrigate the land. Mr. Couture estimated that
24 20 gallons per minute is used to irrigate.

25
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1 Mr. Couture testified to his belief that water from Lyle Creek has been
2 used on his neighbor's land since at least the early 1900's. This belief is
3 supported by two affidavits that were attached to Court Claim No. 00819 (Mr.
4 Couture's claim) when it was originally filed. They are affidavits by Bertha
5 Wilson (formerly Bertha Cobain) and Charles C. Cobain, children of John James
6 Cobain who at one time owned all of Block 20, Smithson's Addition to Ellensburg
7 and all of Block E, Sunnyside Addition to Ellensburg. The affidavits state that
8 for more than 50 years water from Lyle Creek had been used for irrigating and
9 stock water within those two blocks. Their affidavits were made in 1962 and
10 also state that for at least the prior 10 years water had continued to be used
11 by successors to their father and by themselves while they owned portions of the
12 land.

13 Water Right Claim No. 012022 was filed pursuant to the requirements of RCW
14 90.14 by a prior owner of the Klindworth property. It asserts a right to use 30
15 gallons per minute, 2.0 acre-feet per year for the irrigation of 3.3 acres.

16 The claimants did not present much information to establish the priority
17 date. The affidavits show that water was being used as early as 1912. Mr.
18 Couture referenced an earlier court case that might provide additional
19 information, but that case is not in the record. Lyle Creek flows through the
20 E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 1, but not through the Klindworth property. A neighboring
21 claimant, Paul Alderman, who also owns land in the NE $\frac{1}{4}$ of Section 1 submitted
22 into evidence a chain of title for the NE $\frac{1}{4}$ of Section 1. It shows that Northern
23 Pacific Railroad originally received the patent for the entire NE $\frac{1}{4}$ and then
24 conveyed it to John Smithson. The land stayed in the Smithson name until 1944.
25 The priority date for riparian rights on land owned by the railroad is May 24,

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1 1884, the date that the map of definite location was filed with Kittitas
2 County.

3 Because the claimants did not indicate what use would be made of the water
4 between November 1 and December 15, the Referee will authorize a season of use
5 when water could be put to beneficial use for irrigation. The Referee
6 recommends that a right be confirmed with a May 24, 1884, date of priority for a
7 diversion from Lyle Creek of 0.04 cubic foot per second, 2.0 acre-feet per year
8 for irrigation of 2.0 acres and stock watering from October 16 through
9 October 31 and March 15 through April 15.

10 COURT CLAIM NO. 00256 -- Les S. Knudsen
11 & Barbara J. Knudsen

12 The Knudsens filed a claim with the Court asserting a right to use waters
13 from the combined flow of Wilson and Naneum Creeks for irrigation and stock
14 watering. The claimants are represented by Attorney J. Jay Carroll and Mr.
15 Knudsen testified at the evidentiary hearing.

16 The Knudsens land lies in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M.,
17 except the east 400 feet of the south 1100 feet thereof. They have owned the
18 land since 1963. It previously had been in pasture for raising cattle, but
19 presently is planted to hay and grain crops. After the final cutting in the
20 fall, up to 50 cow/calf pairs graze on the grain stubble. Exhibit DE-1520 is an
21 Engineering Report for the Knudsen Ranch prepared by Richard C. Bain, Jr., a
22 consulting engineer hired by the claimants. This report contains most of the
23 details of the claimants' irrigation system. According to the report 74 of the
24 76 acres are irrigated, with 69 acres assessed by the Kittitas Reclamation
25

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1 District. Water is diverted from Wilson Creek in the SW¼SE¼ of Section 19 and
2 conveyed to the claimants' property in an unlined ditch to a distribution box at
3 the northeast corner of the the property. The land is rill irrigated with gated
4 pipe. The report shows that an average of 3.06 cubic feet per second was used
5 to irrigate and that 10.3 acre-feet per acre irrigated was used during the
6 season.

7 Water Right Claim No. 123956 was filed by Les Knudsen pursuant to the
8 requirements of RCW 90.14. It asserts a right to divert 4 cubic feet per
9 second, 5 acre-feet per year for the irrigation of 76.3 acres and stock
10 watering. The Referee presumes that the intent was to claim 5 acre-feet per
11 year per acre irrigated. The place of use is the Knudsen land. The point of
12 diversion described on the claim is 590 feet south and 70 feet west of the
13 northeast corner of Section 32, T. 19 N., R. 19 E.W.M., which is where Wilson
14 and Naneum Creeks separate, with Wilson Creek continuing southerly toward the
15 claimants' property.

16 The claimants' land is part of what was originally settled by Gary Chapman
17 on June 15, 1877, with a patent issuing to Mr. Chapman on December 30, 1882. On
18 March 21, 1883, Chapman sold the land to Carl Sander, who continued to own it at
19 the time of the Sander v. Jones decree. The findings of fact that preceded the
20 decree states that Sander and/or his predecessors began appropriating water in
21 1873 and by 1887 had appropriated a total of 450 inches for irrigation
22 purposes. The priority date for the right appurtenant to the Knudsen property
23 would be 1877, when the land was settled, since the land would not have been
24 irrigated prior to it being settled. With the decree providing one inch of
25 water in May and June and one-half inch of water the remainder of the year. In

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1 spite of Mr. Bain's report of what was being used, the Knudsen property would be
2 entitled to 74 inches in May and June and 37 inches the remainder of the year,
3 (or 1.48 cfs in May and June and 0.74 cubic foot per second the rest of the
4 year). At that rate of diversion, a maximum of 5 acre-feet per year can be
5 applied to the land.

6 Therefore, the Referee recommends that a right be confirmed to the Knudsens
7 with a June 15, 1877, date of priority for the diversion of 1.48 cubic foot per
8 second in May and June and 0.74 cubic foot per second in April and July 1
9 through October 15, 370 acre-feet per year for the irrigation of 74 acres and
10 stock watering.

11
12 COURT CLAIM NO. 01954 -- Ray Knudson
& Linda Knudson

13 Court Claim No. 01954 was filed by Edward M. Tucker, Jr. and Susan E.
14 Tucker asserting rights to use waters from Wilson Creek. On February 9, 1989,
15 Ray and Linda Knudson were substituted for the Tuckers as claimant. There was
16 no appearance at the evidentiary hearing in support of the claim. At the time
17 of the field investigation the Tuckers indicated the land had been sold for
18 commercial development. The Referee cannot recommend that a water right be
19 confirmed since there was no evidence presented in support of the claim.
20

21 COURT CLAIM NO. 01138 -- Pamela Sue Kollman

22 Paul and Mary T. Thiry filed a claim with the Court asserting a right to
23 use waters from Wilson Creek. On February 20, 1986, they sent a letter to the
24 Yakima County Superior Court Clerk's Office and the Referee's office indicating
25

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1 that they wished to withdraw from the case. However, on February 2, 1991,
2 Pamela Sue Kollman was substituted for the Thirys. Ms. Kollman was scheduled to
3 appear at the hearing held on March 12, 1991, however, she did not appear and
4 testify. Therefore, the Referee cannot recommend that a water right be
5 confirmed under Court Claim No. 01138.

6
7 COURT CLAIM NO. 01939 -- Fabian Kuchin, Jr.

8 Court Claim No. 01939 was filed by Fabian and Sandra Kuchin asserting
9 rights to use wastewater, runoff, Dry Creek and Currier Creek for irrigation of
10 82.5 acres. On November 7, 1984, A & L Cattle Company and Marlis M. Lawler were
11 substituted for the Kuchins. On February 21, 1989, Fabian Kuchin, Jr. was
12 substituted back as the claimant. Mr. Kuchin, who testified at the evidentiary
13 hearing, is represented by Attorney Jeff Slothower.

14 Mr. Kuchin's property lies in that portion of the NW¼ and W½NE¼ of
15 Section 34, T. 18 N., R. 18 E.W.M. southwest of the Dry Creek Road and northeast
16 of State Highway No. 3. He owns a total of 76 acres and irrigates approximately
17 38 acres with water diverted from Whiskey Creek. State's Exhibit SE-2 was
18 corrected to show land owned by Mr. Kuchin, but not irrigated with Whiskey Creek
19 water. The land is planted to hay and pasture. During the summer months
20 approximately 70 head of cattle are on the land and during the winter 25 head.
21 The livestock drink directly from Whiskey Creek. Additionally, water from an
22 underground drain is also used to water the stock. Mr. Kuchin also holds shares
23 in Ellensburg Water Company and receives water from the Town Ditch for
24 irrigating the land. EWC water is released from Town Ditch into Whiskey Creek,
25 which conveys it to the Kuchin property. Water is diverted from Whiskey Creek

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1 at a point approximately 500 feet west and 100 feet south of the north quarter
2 corner of Section 34. Mr. Kuchin testified to using 2.6 cubic feet per second
3 from the creek. He also testified to taking seven days to cover the fields and
4 irrigating 12 times each season. That irrigation practice would result in 432
5 acre-feet per year being used to irrigate the 38 acres, or 11.38 acre-feet per
6 acre irrigated. The testimony leads the Referee to conclude that this is the
7 quantity of water that is used from both natural creek flow and EWC water.

8 The claimants land was originally owned by Robert Wallace, who received a
9 patent for the NW $\frac{1}{4}$ of Section 34 on April 13, 1875, and for the W $\frac{1}{2}$ NE $\frac{1}{4}$ of
10 Section 34 on March 30, 1882. Robert Wallace was the plaintiff in a dispute
11 over use of water in what was at that time called Galloway Creek. The findings
12 of fact stated that he had occupied the NW $\frac{1}{4}$ of Section 34 since 1870 and the
13 W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34 since 1875. The findings of fact relate the history of
14 diversion of water from Dry Creek into a dry natural channel known as Galloway
15 Creek for use by Wallace and others. The Court concluded that Wallace was
16 entitled to one-fourth of the waters in Galloway Creek, which is one-half of the
17 waters flowing through the Wallace and Fisher channel. The decree did not
18 quantify how much water that would entitle Wallace to use, however, the decree
19 also stated that one of the defendants, Rebeca A. Clemans was entitled to 100
20 inches of waters of Galloway Creek, which is one-half of the waters coming to
21 the "Forks" and that the other one-half of the water at the "Forks" would flow
22 into the Wallace Branch. The Referee then concludes that since Wallace was
23 entitled to one-half of the water in the Wallace Branch and 100 inches was to
24 flow into the Wallace Branch, then Wallace would be entitled to 50 inches, or 1
25 cubic foot per second.

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1 The claimant did not suggest that the Galloway Creek discussed in the
2 decree is Whiskey Creek. The decree discusses Galloway Creek separating from
3 Dry Creek. Other claimants in this proceeding have identified Dry Creek as a
4 stream that separates from Wilson Creek in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 18 N.,
5 R. 19 E.W.M. and the decree does state that Galloway Creek ran several miles to
6 Wallaces property. Documents put into the record by claimants McNeil/Roseburg
7 include an Affidavit of Water Right by LeClerc and Jordin that discusses
8 diversion of water by Galloway, which suggests that Whiskey Creek was called Dry
9 Creek in the late 1800's. There is also discussion of a Galloway Creek. The
10 Referee recognizes that the names of some of the creeks in this area have
11 changed over the years and concludes that the decree did recognize use of water
12 on the claimant's land and that the most likely source of that water is what is
13 today called Whiskey Creek. The decree does identify that 1 cubic foot per
14 second is the extent of the right. Although Mr. Kuchin testified to diverting
15 2.6 cubic feet per second from the creek, he also testified that his Town Ditch
16 water is part of what is diverted from the creek. The land owned by the
17 claimant in the NW $\frac{1}{4}$ of Section 34 was settled in 1870 and under the Riparian
18 Doctrine that would be the priority date. The land in the NE $\frac{1}{4}$ of Section 34 was
19 settled in 1875, which would be the priority date for that land. Therefore, the
20 Referee must estimate how many irrigated acres lie in each quarter section.

21 The Referee recommends that a right under the Riparian Doctrine be
22 confirmed with a June 30, 1870, date of priority for the diversion of 0.65 cubic
23 foot per second, 100 acre-feet per year from Whiskey Creek for the irrigation of
24 25 acres in that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 34 lying northeast of State
25 Highway No. 3 and southwest of Whiskey Creek; and with a June 30, 1875, date of

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1 priority for the diversion of 0.338 cubic foot per second, 52 acre-feet per year
2 from Whiskey Creek for the irrigation of 13 acres in that portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$
3 of Section 34 lying northeast of State Highway No. 3 and southwest of Whiskey
4 Creek.

5 The Referee cannot recommend that a water right be confirmed for use of the
6 underground drain. The testimony indicates that part of the water from the
7 drain is ground water which is not subject to this adjudication. Additionally,
8 drains by their vary nature capture return flow and seepage water from other
9 lands. Since EWC and Cascade Irrigation District canals are both updrainage
10 from the drain (along with Kittitas Reclamation District, albeit much further
11 updrainage), the drain surely is capturing imported return flows, for which a
12 water right cannot be awarded. A right for livestock drinking from the drain
13 and directly from Whiskey Creek is covered by the stock water stipulation
14 discussed on page 4 of this report.

15
16 COURT CLAIM NO. 00909 -- Roberta D. Lamb
& Estate of Harold F. Lamb

17 Court Claim No. 00909 was submitted by the Lambs asserting a right to use
18 waters from Wilson Creek. The Lambs are represented by Attorney John P.
19 Gilreath. Harold Lamb testified at the evidentiary hearing.

20 The Lambs own 145 acres in that portion of the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
21 Section 30, T. 17 N., R. 19 E.W.M. lying northeasterly of State Route 97 (the
22 Canyon Road). They irrigate 140 acres with water diverted from Wilson Creek and
23 a drain located in the southerly portion of the property. They grow Timothy hay
24 with a grain rotation and pasture. Up to 160 head of cattle are raised each
25

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1 year. The Lambs also own a small parcel in the southwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$
2 of Section 19, where their home is located. The testimony did not indicate that
3 any of the irrigated land is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19.

4 Richard C. Bain, Jr., consulting engineer, prepared an Engineering Report
5 (DE-1515) for the property. Water is diverted from Wilson Creek at two
6 locations, one in Government Lot 2 of Section 19, approximately three-quarters
7 of a mile north of the property and a second diversion located just off the
8 property in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. The most northerly diversion serves
9 fields 1, 2, 3, and 4, the lower diversion serves field 6 and the drain is used
10 to irrigate field 5. The drain collects runoff from irrigation of the fields
11 above it and water released from the ditch system served by the upper
12 diversion. The Lambs irrigate from the first of April through mid-October. The
13 fields are rill irrigated. Mr. Bain measured the water that enters the farm
14 from the upper diversion at 3.8 cubic feet per second and considering the
15 irrigation practice determined that 1128.6 acre-feet per year is used to
16 irrigate fields 1 through 4. The ditch was also measured just below the
17 diversion out of Wilson Creek and at that point 5.1 cfs was flowing in the
18 ditch, indicating that the ditch lost 1.3 cfs before entering the farm. Neither
19 Mr. Bain in his report or Mr. Lamb in his testimony provided information on the
20 quantity of water diverted at the lower diversion on Wilson Creek. The claimant
21 summary (DE-1688) also only discusses the instantaneous diversion at the upper
22 point. Therefore, the Referee must conclude that the maximum quantity of water
23 that is diverted from the creek is 5.1 cfs.

24 The Lambs have owned the land since 1954. The property they own was part
25 of three different homesteads that were ultimately pieced together. Most of

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1 their land was at one time owned by George Gillespie. In the record is a patent
2 that issued on June 30, 1883, to Gillespie for the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 19,
3 T. 17 N., R. 19 E.W.M. and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, T. 17 N., R. 18 E.W.M. The
4 Lambs own a very small parcel in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 and do not appear
5 to be asserting a right to irrigate any land in this parcel with Wilson Creek
6 water. Sometime prior to 1882 Gillespie also had acquired other land, including
7 the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, which is part of what is now owned by the
8 Lambs. On December 2, 1882, Gillespie sold to S. W. Maxey the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the
9 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 19, the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, all in T. 17 N.,
10 R. 19 E.W.M., along with the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25,
11 both in T. 17 N., R. 18 E.W.M. Although not part of the Lamb's evidence, the
12 Referee took note of Exhibit DE-1030 submitted by claimant Allan Grigg (who is
13 also represented by Attorney Gilreath). That exhibit is a Water Right Statement
14 by S. W. Maxey and Jacob Powell stating that in May of 1885 Maxey constructed a
15 ditch from Wilson Creek and appropriated 200 inches of water. The head of the
16 ditch was into the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 and running in a southwesterly direction
17 about one-half mile in Section 25. As previously mentioned, in 1885 S. W.
18 Maxey owned a portion of the Lamb property in the NW $\frac{1}{4}$ of Section 30 along with
19 land in Sections 19, 24, and 25. A ditch carrying Wilson Creek water into
20 Section 25 could easily have served Section 30. The land Maxey owned in
21 Section 19 was sold in 1905 and 1919 with one-half of the water right to Wilson
22 Creek. The deeds excluded that land in Section 19 that is now owned by the
23 Lambs. This land is now owned by the U. S. Farmers Home Administration, who is
24 asserting a right to Wilson Creek, see page 414 of this report for a discussion
25 of their claim. That would leave one-half of the water right that would be

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1 appurtenant to the Maxey land in Sections 24, 25 and 30. The Maxey land in the
2 S½SE¼ of Section 24 is now owned by Michael Moeur, also a client of Mr.
3 Gilreath, who is asserting a right to irrigate a portion of those lands with
4 water diverted from Wilson Creek. The NE¼SE¼ of Section 25 was owned by Victor
5 Boykiw at the time of the evidentiary hearing and is now owned by the Bureau of
6 Land Management. There was no appearance at the evidentiary hearing in support
7 of that claim, however, the documents in the record seem to suggest that Spring
8 Creek is the source of water to which a right is sought.

9 Based on the evidence in the record, 100 inches of the Maxey water right,
10 or 2 cfs, would be appurtenant to the Lamb property in the N½NW¼ and SE¼NW¼ of
11 Section 30 and the Moeur property in the S½SE¼ of Section 24.

12 The Lamb property in the NE¼SW¼ of Section 30 is part of what was settled
13 by Luther Keach, who received a patent on September 5, 1873, for the N½SE¼,
14 SW¼SE¼ and NE¼SW¼ of Section 30. There was no evidence presented to show that a
15 water right was established for this land. The Lamb property in Government Lot
16 2 of Section 30 (basically the SW¼NW¼) was settled by William McLeod who
17 received a patent for the SE¼SW¼ and Government Lots 2, 3 and 4 of Section 30.
18 There is considerable evidence in the record provided by claimants Robert
19 Stewart and Michael Moeur concerning the Steen, McLeod and Clark Ditch that
20 carried water diverted from the Yakima River and initially carried through the
21 Tjossem Ditch. However the Lambs are not asserting a right to use water from
22 the Yakima River and there is no evidence that Yakima River water is used on
23 their property.

24 Water Right Claim No. 050930 was filed by Harold Lamb asserting a right to
25 divert 6 cfs, 1800 acre-feet per year from Wilson Creek for the irrigation of

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1 125 acres in the NW¼ of Section 30. The point of diversion is in the NW¼ of
2 Section 19. Water Right Claim No. 050931 asserts a right to divert 2 cfs, 600
3 acre-feet per year from Wilson Creek for the irrigation of 20 acres in the
4 NE¼SW¼ of Section 30. The point of diversion is described as being in the NW¼
5 of Section 30.

6 Although the claimant presented evidence of when homesteads issued for the
7 land, there was little evidence presented to show that water rights were
8 established through beneficial use of water. A portion of the land is riparian
9 to Wilson Creek, which would require evidence of water use prior to December 31,
10 1932. Because the homestead evidence is lacking for all of the NW¼ except
11 Government Lot 2, the Referee is not sure how much of the NW¼ was riparian to
12 Wilson Creek at the time it separated from Federal ownership.

13 Counsel for the Lambs has asserted that in order for a homestead to issue,
14 the land had to be cultivated, which means it was irrigated. The Referee does
15 not believe that is an accurate statement. Dryland farming is not uncommon in
16 the this area, so land could be cultivated and farmed without it being
17 irrigated. Except for the Maxey Water Right Statement, there is no evidence to
18 show that the land was irrigated with water diverted from Wilson Creek during
19 the time frame necessary to establish a water right. The maximum water right
20 that the Maxey water right statement might show for the Lamb property is 100
21 inches, and that likely is shared with the Mouer property in the S¼SE¼ of
22 Section 24.

23 At this point the Referee concludes there is insufficient evidence to allow
24 confirmation of a water right for the Lamb property. Additional evidence is
25 needed of historical water use. The Referee also notes that the Lamb property

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1 is within the service area for the Bull Canal Company. The claimant did not
2 mention whether they receive water from the canal company or have in the past
3 received water.

4 COURT CLAIM NO. 00952 -- David M. Leffert
5 (A)04815 & J. Christine Leffert

6 The Lefferts submitted a Statement of Claim to the Court asserting a right
7 to use waters from Naneum Creek for irrigation. David Leffert testified at the
8 evidentiary hearing.

9 The Lefferts own 15 acres lying in the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 18 N.,
10 R. 18 E.W.M. Water is diverted from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33,
11 T. 19 N., R. 18 E.W.M. into the J. I. Wilson Ditch and used to irrigate 13.5
12 acres. The land is in hay, pasture and lawn around the Leffert's home and is
13 rill irrigated. Livestock raised on the property drink from the irrigation
14 ditches and from two ponds on the property. Up to 35 cow/calf pairs are raised
15 on the property. The claimant filed a "Request To Correct Department of Ecology
16 Records in Regard to the Stipulation Relating to Non-Diversionsary Stock and
17 Wildlife Watering Uses -- Subbasin 9 (Wilson-Naneum Subbasin). The Lefferts
18 name appears on the list of claimants who have recognized instream,
19 non-diversionary stock water rights that are covered by the stock water
20 stipulation. There appears to be concern that being on the list means the only
21 source of water for the livestock is the ponds on the property. The Referee
22 recognizes from the testimony that livestock do drink from available water
23 sources, including the irrigation ditches. Being placed on the list of claimants
24
25

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1 with non-diversionary stock water uses does not prevent a claimant from being
2 confirmed a diversionary stock water right.

3 The claimants' land is part of land for which James I. Wilson received a
4 patent on January 11, 1888. Mr. Wilson filed a Statement of Water Right dated
5 May 26, 1890, identifying that he owned the E½SE¼ and S½NE¼ of Section 4,
6 T. 18 N., R. 19 E.W.M. and that he had a valid water right to 100 inches from
7 Naneum Creek. The notice states that the water was appropriated in May 1883.
8 Ferguson recognized a Class 13 right for J. I. Wilson for 100 inches from Naneum
9 Creek. The decree did not identify the lands irrigated by the parties to the
10 action or the number of acres irrigated. However, the Findings of Fact and
11 Conclusions of law that preceded the decree did state that Wilson owned the same
12 lands for which he received a patent and described in his Notice of Water
13 Right.

14 David Leffert was a party to State of Washington Department of Ecology v.
15 Art Carlson, et ux., et al., and the Order Pendente Lite included him with a
16 Class 8 right with an 1883 date of priority for 0.18 cubic foot per second for
17 irrigation and livestock. The place of use described is the 15 acres described
18 in Court Claim No. 00952. The Ferguson Findings of Fact and Conclusions of Law
19 found that one inch of water is necessary for the proper irrigation of an acre
20 during the spring months and half an inch is sufficient after July 1. The Order
21 Pendente Lite is a interim document during the pendency of an adjudication of
22 Wilson-Naneum Creeks, which was initiated in 1971 and never completed. The
23 Referee concludes that based on the findings in the Ferguson case, the extent of
24 the water right for the S½NE¼ and E½SE¼ of Section 4 is 100 inches of water for
25 the irrigation of 100 acres. Between the Lefferts and Sam Kayser, who owns the

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1 rest of the SE¼SE¼ and the S¼NE¼ of Section 4, rights are being asserted for the
2 irrigation of 155 to 160 acres within an 160 acre area. However, the evidence
3 in the record supports a conclusion that a right exist for only 100 acres. The
4 Referee will divide that 100 acres proportionately between Mr. Kayser and the
5 Lefferts. Mr. Kayser owns 90.6 percent of the lands owned by J. I. Wilson when
6 the water right was established and would then have 90.6 percent of the 100 inch
7 right and the Lefferts own 9.4 percent of the land and would hav 9.4 percent of
8 the water right.

9 The Referee reviewed State's Exhibit SE-5, which consists of copies of
10 water right claims filed pursuant to RCW 90.14 and Surface Water Permits and
11 Certificates issued pursuant to RCW 90.03, along with printouts which list the
12 claims and could not find a claim for the Leffert property. This was confirmed
13 by Mr. Leffert, who explained his efforts to file a claim in 1973. At that time
14 he was involved in the Carlson and action and the Attorney General for Ecology
15 offered to deliver the claim to Olympia on his behalf. The claim was not
16 registered in Olympia and subsequently it was discovered that it, along with
17 several other claims, were filed with the Kittitas County Clerk's office as part
18 of the Carlson filings. Ecology obtained copies of those claims and they have
19 been entered into evidence in this proceeding and Mr. Leffert offered a copy of
20 his claim as DE-63. It asserts a right to divert 0.1875 cubic foot per second,
21 6 acre-feet per year for the irrigation of 15 acres and stock watering. The
22 place of use described on the claim is the Leffert property and the point of
23 diversion is into the J. I. Wilson Ditch. The Referee believes that the 6.0
24 acre-feet claimed is intended to be per irrigated acre, not a total of 6.0
25

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1 acre-feet. The Referee concludes that the claimant substantially complied with
2 the requirements of RCW 90.14.

3 Apparently the point of diversion for the claimants' land has been changed
4 sometime in the recent past. Mr. Leffert has filed an application for change of
5 water right with Ecology. That form identifies that prior to 1960, the land was
6 served by a diversion in the NW~~1~~⁴ of Section 33, approximately 1,130 feet
7 south and 290 feet east of the northwest corner of Section 33, T. 19 N.,
8 R. 19 E.W.M. This point is identified as diversion No. 15 on the State's Map,
9 SE-2. Ecology apparently has not taken action on this application for change.

10 Mr. Leffert testified to using as much as 2.0 cubic feet per second in the
11 spring when creek flows are high and then reducing his diversion to 0.18 cfs as
12 the creek flow declines. There are times during some summers when water is not
13 available for this land based on the priority of the right. The Referee has
14 heard other claimants testify to using higher quantities of water during the
15 spring, however, a right to the higher quantity can only be confirmed if there
16 is evidence to show historic use of that higher quantity. That does not exist
17 in this case. The only evidence of a water right being legally established is
18 the 100 inch Wilson right, to which the Leffert property enjoys a portion. Mr.
19 Leffert did not testify to the annual quantity of water used on his property.
20 Considering the instantaneous quantity of water authorized in the Ferguson
21 decree and the reduction that occurs on July 1, 48.43 acre-feet per year is
22 maximum that might be used.

23 Therefore, the Referee recommends that a right be confirmed with a June 30,
24 1883, date of priority for the diversion of 0.18 cubic foot per second from
25 April 1 through June 30 and 0.09 cubic foot per second from July 1 through

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1 October 15; 45 acre-feet per year for the irrigation of 9 acres and 0.5
2 acre-foot per year for stock watering.

3
4 COURT CLAIM NO. 00621 -- Myron Linder
& Sandy Linder

5 Court Claim No. 00621 was filed by C. E. Lippencott, Jr. and Inez
6 Lippencott. They both were deceased at the time of the evidentiary hearing and
7 since then Myron and Sandy Linder purchased the property from the estate and
8 were substituted on the claim. Attorney J. Jay Carroll represented the
9 Lippencott estate and Ralph Charlton, a neighboring landowner whose wife was the
10 administrator of the estate, and Charles Adams, who leased the property for
11 three years prior to the hearing, testified at the evidentiary hearing.

12 The Lippencotts property was a portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16,
13 T. 18 N., R. 19 E.W.M. They owned 75 acres and asserted a right to irrigate 63
14 acres. Mr. Charlton testified that all of the 75 acres, except a small area
15 around the homestead, was being irrigated. Mr. Charlton also indicated that the
16 Lippencotts land extended easterly to Naneum Road. The State's map exhibit,
17 SE-2, showed the property all lying west of a ditch that ran parallel to Naneum
18 Road. Review of the claim by the Referee discloses that the legal description
19 submitted by the Lippencott with their claim excludes the land lying east of the
20 ditch. This is the only legal description in the record, so the Referee must
21 consider it to be the correct description for the land addressed by Court Claim
22 No. 00621. Excluding the land east of the ditch results in there being 74 acres
23 within the area described. Although Mr. Charlton testified to all of the land
24 being irrigated, which would be around 74 acres, the original claim stated 63
25

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1 acres were being irrigated, as did the State's Investigation Report. Since the
2 claim and the investigation report are consistent, and lacking any specific
3 evidence other than Mr. Charlton's testimony and no explanation about the
4 difference, the Referee will use 63 irrigated acres.

5 The Lippencotts acquired the land in 1979 and made modifications to the
6 irrigation system after they purchased. In 1979, three diversions were used to
7 irrigate the land. Two of the diversions have ceased being used and only one
8 located approximately 1300 feet north and 300 feet west of the south quarter
9 corner of Section 16 is being used. That diversion feeds a lateral that runs
10 parallel to the north property line. The land is planted to hay and pasture and
11 has been used to raise livestock. Mr. Adams did not have livestock on the land,
12 but it had consistently been used for that purpose by the owners. The livestock
13 drink directly from the creek as it flows through the property. The land is
14 assessed by the Kittitas Reclamation District, which generally delivers 4
15 acre-feet per acre when that quantity is available. Mr. Charlton testified to
16 needing 8 acre-feet from all sources to irrigate the land. Neither Mr. Charlton
17 or Mr. Adams testified to the instantaneous quantity being diverted from the
18 creek to serve the land.

19 Water rights for this property were addressed in the Ferguson decree. A
20 Class 14 right, which would have an 1884 date of priority, was awarded to John
21 Clifton for the use of 130 inches in the SW $\frac{1}{4}$ of Section 16, T. 18 N.,
22 R. 19 E.W.M. The Findings of Fact and Conclusions of Law stated that Clifton
23 had 130 acres in cultivation. The decree allowed for the use of one inch of
24 water for each irrigated acre in May and June and one-half inch the rest of the
25 year. With no other guidance offered in the decree, the Referee concludes that

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1 half of the awarded quantity would be appurtenant to the N $\frac{1}{2}$ SW $\frac{1}{4}$ and half of the
2 quantity would be appurtenant to the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16. The Lippencotts were
3 the only claimants in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, and considering they are
4 irrigating 63 acres, the Referee finds that 65 inches, or 1.3 cubic feet per
5 second, would be appurtenant to the claimant's land. Although there was no
6 testimony about the quantity of water being diverted from the creek, it is not
7 unreasonable to conclude that the landowners have diverted at least that
8 quantity since the property has continued to be irrigated.

9 Three water right claim forms were filed pursuant to RCW 90.14 that include
10 the claimants' land within the place of water use described on the claim. They
11 were all three filed by James L. Bridge, Jr. Water Right Claim (WRC) No. 004577
12 asserts a right to divert 1 cfs, 730 acre-feet per year from Nanum Creek for the
13 irrigation of 20 acres in the SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M. The
14 point of diversion described is on the most westerly water course that flows
15 through the claimant's property. On SE-2 the water course is not named and is
16 not shown as originating on Naneum Creek. WRC No. 004576 asserts a right to use
17 4 cfs, 1500 acre-feet per year from Nanum Creek for the irrigation of 60 acres
18 in the SW $\frac{1}{4}$ of Section 16. The point of diversion is on the main branch of
19 Naneum Creek as it flows through the claimant's property. WRC No. 004569
20 asserts a right to use 4 cfs, 1500 acre-feet per year for the irrigation of 60
21 acres in the SW $\frac{1}{4}$ of Section 16. The point of diversion is on the water course
22 that flows along the easterly boundary of the claimants' property and is the
23 point of diversion currently being used. All three described diversions are
24 along the property's north line. The Referee suspects these are the three
25 diversions being used prior to the modifications made to the irrigation system

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1 by the Lippencotts. The two easterly diversions appear to have been used to
2 irrigate the same ground. Although there have been modifications to the points
3 of diversions, it appears that the currently used diversion has always been used
4 to serve most, if not all of the currently irrigated land. Since the historic
5 irrigation practice is not entirely clear, it is not clear that compliance with
6 the procedures for changing a point of diversion as outline in RCW 90.03.380 is
7 required. Therefore, the Referee will recommend confirmation of a water right
8 at the currently used point of diversion.

9 The Referee recommends that a right be confirmed with a June 30, 1884, date
10 of priority for the diversion of 1.30 cubic feet per second in May and June and
11 0.65 cubic foot per second in April and July 1 through October 15, and 315
12 acre-feet per year for the irrigation of 63 acres in that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$
13 of Section 16, T. 18 N., R. 19 E.W.M. lying west of the irrigation ditch that
14 parallels Nanum Road (more particularly spelled out in the findings of fact).
15 The livestock drinking from the creek is covered by the nondiversionsary stock
16 water stipulation discussed on page 4 of this report.

17
18 COURT CLAIM NO. 00904 -- John H. Ludwick
& Anne C. Ludwick

19 Mary Wipple submitted Court Claim No. 00904 asserting rights to use Lyle
20 and Wilson Creeks. On March 27, 1991, John H. and Anne C. Ludwick were
21 substituted for Mrs. Wipple. Mr. Ludwick, along with Dan Brunson, who owned the
22 property in 1989 and 1990, testified at the evidentiary hearing.

23 Court Claim No. 00904 asserts rights to use waters from Lyle Creek to
24 irrigate a portion of the NW $\frac{1}{4}$ of Section 19, T. 17 N., R. 19 E.W.M. and from
25

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1 Wilson Creek to irrigate portion of Government Lots 2 and 3 of Section 19
2 southwest of Wilson Creek. The claimant owns all of Government Lot 2, except a
3 small fraction of an acre in the southwest corner of the lot and owns an 8 acre
4 triangle that extends into Government Lot 3. State's Exhibit SE-2 does not
5 accurately reflect the claimant's ownership. Continuing the practice of the
6 prior owners, the Ludwicks irrigate 61 acres of hay and pasture with water
7 diverted from Lyle Creek and 24 acres of hay and pasture with water diverted
8 from Wilson Creek. Lyle Creek is used on the land north and east of Wilson
9 Creek and Wilson Creek is used on the lands south and west of Wilson Creek.
10 Most of the land irrigated with Lyle Creek water lies in Government Lots 1 and
11 2, with a small portion being in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19. The diversion from
12 Lyle Creek is in Government Lot 4 of Section 18 (the SW $\frac{1}{4}$ SW $\frac{1}{4}$) very near where
13 Lyle Creek flows into Wilson Creek. The diversion from Wilson Creek is very
14 near the northwest corner of Section 19. The State's Investigation Report had
15 identified a diversion further downstream as serving the property, but the
16 testimony indicates that is incorrect. The land is flood and rill irrigated.
17 Mr. Brunson testified to diverting between 2.5 and 3 cfs and 390 acre-feet per
18 year from Lyle Creek and 2 cfs and 244 acre-feet per year from Wilson Creek.

19 The Ludwicks property is part of two separate homesteads. Initially a
20 portion of Section 19 was conveyed by the Federal Government to the Northern
21 Pacific Railroad. In 1889 Government Lots 1, 2 and 3 were conveyed by NPRR to
22 George W. Carver after fulfillment of a contract entered into in 1881. In 1883
23 William M. Johnston received a patent for the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19, along with
24 other lands. Mr. Ludwick testified that during a telephone conversation Mary
25 Wipple that her father-in-law used the land as a dairy for 100 cows and feed for

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1 those cows was grown. The testimony was that Paul Wipple, Mary's father-in-law
2 owned the land beginning in June of 1916, however, that must have been for the
3 land in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19. Claimant Allan Grigg, who owns a portion of
4 Government Lots 2 and 3 put into evidence several deeds and real estate
5 contracts that show Government Lots 1, 2 and 3 were owned by others until 1956
6 when Paul Wipple acquired it. There was no chain of title put into evidence for
7 the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19.

8 In compliance with the requirements of RCW 90.14, Mary Wipple filed Water
9 Right Claims (WRC) No. 200009 and 2000011 during 1979 when the Claims
10 Registration Act was reopened and filing of additional claims was allowed. WRC
11 No. 200009 asserts a right to divert 3.5 cfs, 500 acre-feet per year from Wilson
12 Creek for the irrigation of 61 acres in those portions of Lots 2 and 3 of
13 Section 19, T. 17 N., R. 19 E.W.M. lying south and west of Wilson Creek. The
14 point of diversion location described is near the southwest corner of
15 Section 18. WRC No. 2000011 asserts a right to divert 3 cfs, 448 acre-feet per
16 year from Lyle Creek for the irrigation of 56 acres in part of the NW $\frac{1}{4}$ of
17 Section 19, T. 17 N., R. 19 E.W.M. lying east of Wilson Creek. Both claims
18 state the date of first water use as being 1885.

19 According to the testimony, other portions of the claimants' land is
20 irrigated with water delivered by Bull Canal Company. The water rights
21 associated with Bull Canal Company are being addressed through the Court claim
22 submitted by the canal company. See page 101 of the report. The claimant
23 directed the Referee to the record created by Bull Canal Company to support his
24 claim. Review of the Bull Canal exhibits show that George Carver was one of the
25 original organizers of Bull Canal Company and when the company was formed was

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1 awarded 7 shares, or 1/6 of the ditch. As far as the Referee knows, the only
2 land owned by George Carver within the Bull Canal Company service area is
3 Government Lots 1, 2 and 3 of Section 19. The Bull Canal Company records would
4 indicate that water delivered by the Bull Canal Company was being used to
5 irrigate the Carver land. Although the claimant's land is now being irrigated
6 with water from Wilson and Lyle Creeks, there was no evidence offered to show
7 when that water was first used. In order for there to be a right to use Wilson
8 Creek, under the Riparian Doctrine water had to have been used on the property
9 prior to 1932. In order for there to be a right to Lyle Creek under the Prior
10 Appropriation Doctrine, water had to have been first used prior to June 6,
11 1917. Although Mrs. Wipple had told Mr. Ludwick that the land had been farmed
12 and irrigated since at least 1916, since it appears that Bull Canal Company
13 water was being used at that time, there is no evidence to show that water
14 rights were established for use of the creeks.

15 Therefore, the Referee cannot recommend that water rights be confirmed
16 under Court Claim No. 00904.

17
18 COURT CLAIM NO. 00175 -- Brian Luque
& Teresa Luque

19 Frank M. and Janice R. Gates filed a Statement of Claim with the Court
20 asserting a right to use unnamed ditch water for irrigation of one acre. Mr.
21 Gates testified at the evidentiary hearing. On September 18, 1995, Brian and
22 Teresa Luque were substituted for the Gates.

23 The property now owned by the Luques lies in the southwest corner of the
24 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M. Water is diverted from a drain
25

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1 that enters their property and is used to irrigate their lawn, garden and a
2 small pasture. The Gates at times had a horse on the property, which drank from
3 the ditch. The land is sprinkler irrigated. The Gates bought the property in
4 1974. The home that is on the property was built in 1948 by Walt Bates. Prior
5 to the Gates buying it, the land had been irrigated for years from a creek or
6 ditch that came down the front of the property. The land is also assessed by
7 the Kittitas Reclamation District (KRD), however, they are not able to get KRD
8 water to the property.

9 Mr. Gates testified that the land was once part of the Pinckard estate.
10 Edith Pinckard is one of the heirs of Olive Sander, the plaintiff in many of the
11 lawsuits filed in the late 1800's and early 1900's concerning water rights on
12 Wilson and Naneum Creek. Although Mr. Gates did not provide any documents
13 relating to the history of the land, a neighboring claimant did. Don Hay and
14 Shird Burks, landowners to the north and west submitted several documents that
15 show that most of Section 30, including the land now owned by the Luques, was
16 owned by the Sanders family in the late 1800's and early 1900's. The W $\frac{1}{4}$ SE $\frac{1}{4}$ of
17 Section 30 was originally settled by Cary Chapman, in June of 1877. On
18 March 21, 1882, Chapman sold the land to Carl Sander and the patent issued on
19 December 30, 1882. Water rights to this property were addressed in Sanders v.
20 Jones. By the time this case was filed, Carl Sanders owned the Chapman
21 property. A total of 450 inches of water from Wilson Creek were awarded to Carl
22 Sanders, with dates of water use running from 1873 to 1887. Since the lands
23 purchased from Chapman were first settled in June of 1877, that is the earliest
24 that water could have been used on what is now the Luque land.

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1 Mr. Gates had testified to using water from a ditch or drain, not from
2 Wilson Creek. However, all of the land around his property is irrigated with
3 water diverted from Wilson Creek. Undoubtedly, the water in the ditch is Wilson
4 Creek water that has been diverted above this property for initial use by the
5 neighboring landowners. There are several diversions on the neighboring Hay
6 property that would convey water toward the Luque property.

7 Water Right Claim No. 158855 was filed by Frank Gates in compliance with
8 the requirements of RCW 90.14. It asserts a right to use waters from a runoff
9 ditch along Game Farm Road for domestic supply and irrigation of lawn and
10 garden. Mr. Gates used a short form, which was provided for in RCW 90.14, for
11 claiming a right to use up to 5,000 gallons per day for domestic supply, stock
12 watering, industrial use and irrigation of up to one-half acre of lawn and
13 non-commercial garden. That is the extent of the right that could be protected
14 by filing a short form. Although Mr. Gates had testified to irrigating
15 approximately one acre, because a short form was filed, a right can only be
16 recommended for one-half acre of non-commercial irrigation.

17 The Referee recommends that a right be confirmed under Court Claim No.
18 00175 with a June 30, 1878, date of priority for 0.01 cubic foot per second, 2.5
19 acre-feet per year for the irrigation of one-half acre of lawn and garden area.
20
21
22
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24
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1 COURT CLAIM NO. 01970 -- Kenneth R. MacRae
2 & Sandra MacRae

3 The MacRaes filed a Statement of Claim with the Court asserting a right to
4 divert water from Naneum Creek for irrigation and stock watering. The claimants
5 are represented by Attorney Richard T. Cole and Dr. MacRae testified at the
6 evidentiary hearing.

7 The MacRaes' property is a portion of the SE~~1~~NW~~1~~4 of Section 8, T. 17 N.,
8 R. 19 E.W.M. They are asserting a right to irrigate 17 acres and provide water
9 for livestock. They divert water from a water course that flows through
10 Section 8 just east of their property. There is a diversion near the northeast
11 corner of their property. Water is diverted into a concrete ditch that flows
12 along the claimants' north property line. They also receive water delivered by
13 Ellensburg Water Company (EWC). The land is in hay and pasture and is rill
14 irrigated. Dr. MacRae was familiar with the land prior to his purchase and it
15 has continually been irrigated since the early 1960's and he presumes earlier
16 than that. The water course that the claimants are using is shown on the
17 State's Exhibit map SE-2 as beginning immediately below the Cascade Irrigation
18 District (CID) Canal in Section 32, T. 18 N., R. 19 E.W.M. and then flowing
19 south through Sections 5 and 8. Although the claimant is claiming a right to
20 use Naneum Creek water, there is no connection between Naneum Creek and this
21 water course. There is some land east of the water course that is irrigated
22 with Naneum Creek water and return flows from that land may contribute to the
23 flow. However, there is a lot of land between the water course origin and the
24 claimants' land where the owners are not parties to Acquavella and if the land

25
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1 is irrigated, it must be from either CID or EWC. Return flow water from either
2 of those two entities would be considered foreign return flow and the Referee
3 could not recommend confirmation of a water right for those sources.

4 The claimants' land is part of what was settled on by Clinton H. King, who
5 received a patent for the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T. 17 N.,
6 R. 19 E.W.M. on May 23, 1889. There are two documents in the record that deal
7 with water rights for the King property. DE-1661 is a Water Ditch Agreement
8 between Gustav Walters and C. H. King dated May 12, 1884. The agreement
9 addresses a ditch intended to carry water to Walters land in the SE $\frac{1}{4}$ of
10 Section 7. The ditch will cross the land of King and it was agreed that King
11 could take water out of the ditch as necessary to irrigate his land below the
12 ditch. The course of the ditch was not discussed, so the Referee does not know
13 which of the King lands could have been served by this ditch or the source of
14 water for the ditch. A second document was offered by Stanley Baker, who owns
15 land south of the MacReas. Exhibit DE-852 is an Affidavit of Water Right filed
16 on May 24, 1890, by J. Kryger and C. H. King. It describes two ditches that
17 would take water out of Ripple Creek, a branch of Naneum Creek, and a third
18 ditch that would take water out of Back Creek, also a branch of Naneum Creek,
19 for use on the Kryger and King land. The affidavit describes the course of the
20 ditch, however, the descriptions related to property lines for lands owned by
21 Kryger and David Kincade. The description of the land they own is not provided,
22 so it is not possible to accurately find the head of any of the three ditches.
23 It does state that the Kryger land is in Section 5, T. 17 N., R. 18 E.W.M. It
24 also states that between King and Kryger 400 acres are intended to be irrigated.

25
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1 Several water right claims were filed pursuant to RCW 90.14 that include a
2 portion of the MacRea property. H. K. McCullough filed Water Right Claims No.
3 007913, 007914, 007916. WRC No. 007913 asserts a right to use 3 cfs, 300
4 acre-feet per year from Little Naneum Creek for irrigation of 60 acres in the
5 SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8, T. 17 N., R. 19 E.W.M. The point of diversion is
6 described as being 1320 feet south and 1470 feet west from the northeast corner
7 of Section 8, which would place it in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8. WRC No. 007914
8 asserts a right to use 2 cfs, 200 acre-feet per year from an unnamed water
9 course for irrigation of 40 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8,
10 T. 17 N., R. 19 E.W.M. The point of diversion is described as being 1320 feet
11 south and 3960 feet west from the northeast corner of Section 8, which would
12 place it in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8. WRC No. 007916 asserts a right to use 1
13 cfs, 100 acre-feet per year from an unnamed water course for the irrigation of
14 20 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8, T. 17 N., R. 19 E.W.M. The point
15 of diversion is described as being 1320 feet south and 3170 feet west from the
16 northeast corner of Section 8, which would place it in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8,
17 at approximately the location where the claimants divert water.

18 In order to recommend that a water right be confirmed to the MacRaes, the
19 Referee needs additional information to show that at least one of the water
20 right documents from the 1800's relate to use of the water course used by the
21 claimants and additional evidence about the source of water in the water
22 course. Since it appears to begin flowing immediately below the CID canal, the
23 implication is that the initial source of water is either leakage or spills from
24 the canal. The legal descriptions for the lands owned by Kryger and Kincade
25 might assist in that. The Referee does not recommend that a water right be

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1 awarded to the MacRaes under Court Claim No. 01970. This does not affect the
2 claimants' ability to use water delivered by the Ellensburg Water Company.

3
4 COURT CLAIM NO. 02245 -- Madeleine Villa, Inc.

5 Madeleine Villa, Inc., submitted a claim to the Court for use of Wilson and
6 Lyle Creeks. The claimant is represented by J. Jay Carroll and John Downey, who
7 owns Madeleine Villa, Inc., testified at the hearing.

8 The claimant owns the S½ of Section 20 and the E½SE¼ of Section 19,
9 T. 18 N., R. 19 E.W.M. and is asserting a right to irrigate 80 acres in the west
10 2,000 feet of the SW¼ of Section 20 and 35 acres in that portion of the E½SE¼ of
11 Section 19 east of Wilson Creek. The land was acquired from Stuart Bledsoe in
12 1972. The land in the SW¼ of Section 20 is irrigated with water diverted from
13 Lyle Creek at a point about 600 feet west of the center of Section 20. There is
14 a 53 acre Timothy hay field in the northerly portion of the SW¼ of Section 20,
15 with the remaining 27 irrigated acres being pasture for cattle. Up to 200 head
16 of cattle are on this field on a rotational basis. A concrete head ditch runs
17 along the north property line carrying water to the feeder ditches for the hay
18 field. A buried pipeline in the lower field is used to convey water for the
19 pasture. The pipeline was installed in 1982; prior to that there was an open
20 ditch in its place.

21 Mr. Downey testified that Lyle Creek is dry until the Kittitas Reclamation
22 District (KRD) turns on in mid-April and is then dry again after KRD turns off
23 in late September or early October. This would lead the Referee to conclude
24 that the water being used is return flow from fields irrigated with KRD water or
25 seepage from the KRD canal. A water right cannot be confirmed for use of return

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1 flows that are the result of the use of Yakima Project waters. However, Mr.
2 Downey testified that only in the last few years prior to the hearing had Lyle
3 Creek been dry prior to KRD turning on. He suspected that someone above was
4 "stealing" water. Mr. Downey testified that the house on the property was built
5 very early in the century and that it was his understanding that the land had
6 always been irrigated. Water rights for this land were addressed specifically
7 in the Sander v. Jones decree and possibly discussed in other decrees. At the
8 time of the Sander v. Jones case in 1890, the SW $\frac{1}{4}$ of Section 20, along with
9 other land, was owned by John Haley. According to the findings of fact that
10 preceded the decree, John Haley appropriated 30 inches of water in 1880 and by
11 1889 had appropriated a total of 135 inches for use on the SW $\frac{1}{4}$ of Section 20 and
12 "other land acquired from Northern Pacific Railroad". The source of water was
13 Wilson Creek or one of its branches. Lyle Creek is a branch of Wilson Creek.
14 The Ferguson decree, which was entered in 1901, primarily dealt with Naneum
15 Creek, and awarded 60 inches of water to John Haley without any indication of
16 the lands he owned. Based on the Sander v. Jones decree, the Referee concludes
17 that a water right exists for the claimant's land in the SW $\frac{1}{4}$ of Section 20.

18 The claimant is asserting a right to divert 2.3 cubic feet per second, 640
19 acre-feet per year from Lyle Creek for irrigating the 80 irrigated acres in the
20 SW $\frac{1}{4}$ of Section 20. However, Sander v. Jones awarded 1 inch of water, or 0.02
21 cubic foot per second, per acre irrigated, during May and June of each and half
22 that the remaining months of the year that water is diverted. The claimant then
23 would be entitled to 1.6 cubic feet per second in May and June and 0.80 cubic
24 foot per second the rest of the year for the 80 acres. At that rate, if water
25 was available the entire irrigation season, a maximum of 5 acre-feet per acre

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1 could be used. The Referee recognizes that natural flow water is generally not
2 available from Lyle Creek the entire irrigation season. Mr. Downey had
3 testified that Lyle Creek is dry except when KRD is turned on. The Referee
4 believes that is a man-induced phenomenon that will vary by year. The right the
5 Referee is awarding is not to use the project generated return flows, but any
6 natural creek flow that might be available. The land in the SW¼ of Section 20
7 is also irrigated with water delivered by KRD.

8 Pursuant to the requirements of RCW 90.14, Water Right Claim No. 141697 was
9 filed by Madeleine Villa Corp. asserting a right to divert 3 cubic feet per
10 second, 452 acre-feet per year from Lyle Creek for the irrigation of 113 acres
11 in the W¼SW¼ of Section 20, T. 18 N., R. 19 E.W.M. The Referee notes that the
12 place of use extends a bit beyond the W¼SW¼. A right to irrigate 113 acres is
13 claimed, yet the W¼SW¼ is only 80 acres in size. An 80 acre parcel was
14 described within a larger ownership, with the field actually extending into the
15 E¼SW¼. The Referee concludes that the claim substantially complied with the
16 requirements of RCW 90.14.

17 The Referee recommends that a right be confirmed to Madeleine Villa, Inc.,
18 with a June 30, 1880, date of priority for the diversion of 1.60 cubic foot per
19 second in May and June and 0.80 cubic foot per second in April and July 1
20 through October 15, 400 acre-feet per year for the irrigation of 80 acres and
21 stock watering in the west 2000 feet of the SW¼ of Section 20, T. 18 N.,
22 R. 19 E.W.M.

23 The claimants are also asserting a right to irrigate 35 acres in the E¼SE¼
24 of Section 19 with water diverted from Wilson Creek. The diversion is in the
25 SW¼NE¼SE¼ of Section 19 and water is diverted from the creek into earthen

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1 ditches. They begin diverting from Wilson Creek in mid-March and water is
2 available until sometime in June. After June there is only sufficient water for
3 the livestock. The 35 acres irrigated from Wilson Creek do not have KRD water;
4 there is another 35 acres in the SE¼ of Section 19 that KRD water is used on.

5 The 35 acres irrigated with Wilson Creek water lie in the SE¼SE¼ of
6 Section 19, which was settled in 1878 by Thomas Haley under a contract with
7 Northern Pacific Railroad. Thomas Haley was a party in many of the suits
8 involving Wilson Creek water in the late 1800's and early 1900's. He was a
9 defendant in Sander v. Jones, (1890) and was awarded 118 inches of water with
10 the first appropriation occurring in 1878. He was a plaintiff in Sander v.
11 Bull, (1911) with the Court recognizing a right to 200 inches of water. It may
12 be that there were additional appropriations by Thomas Haley between 1890 and
13 1911. The claimants in the Acquavella proceeding that own the land formerly
14 held by Thomas Haley are asserting rights for considerably less than the 118
15 acres awarded in Sander v. Jones. The Referee concludes that a right exists
16 under the referenced decrees for the claimant's land in the SE¼SE¼ of
17 Section 19. As with the lands in Section 20, the right is limited to one inch
18 of water per acre in May and June and one-half inch the remainder of the year.

19 Water Right Claim No. 141698 was filed by Madeleine Villa Corp. asserting a
20 right to use 2.0 cubic feet per second, 140 acre-feet per year from Wilson Creek
21 for the irrigation of 35 acres and stock watering in the E¼SE¼ of Section 20,
22 T. 18 N., R. 19 E.W.M. The point of diversion described is in the SW¼NE¼SE¼ of
23 Section 20. Wilson Creek does not flow through the SE¼ of Section 20. The
24 Referee suspects that an error was made in writing the section number on the
25 form, that it should have been Section 19, not Section 20. However, neither the

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1 claimant or his counsel addressed this discrepancy. The Referee cannot assume
2 that is the case and recommend that a water right be confirmed. Particularly
3 since the claimant apparently owns, or at one time did own, the SE¼ of
4 Section 20. RCW 90.14 provides a process to amend water right claims. RCW
5 90.14.065 allows a claim to be amended if an error was made in estimation of the
6 quantity of water used; there was a change in circumstances in the manner of
7 diversion or transportation of the water not foreseeable at the time the claim
8 was filed or the amendment is ministerial in nature. The only opportunity for
9 an amendment such as that needed by the claimant is to show that the change is
10 ministerial in nature. It is suggested that the claimant pursue this process.

11 The Referee cannot recommend that a right be confirmed for the lands in the
12 SE¼SE¼ of Section 19 due to there not being a RCW 90.14 claim filed for use of
13 Wilson Creek water on this land, RCW 90.14.071.

14
15 COURT CLAIM NO. 01416 -- Louaine A. Magnuson
Kevin Halley

16 Louaine A. Magnuson filed a claim with the Court asserting a right to use
17 waters from Naneum Creek. On September 22, 1992, her husband, Kevin Halley, was
18 joined to the claim. Ms. Magnuson testified at the evidentiary hearing.

19 Ms. Magnuson owns 6.86 acres within a portion of the E½NW¼SW¼ and W½NE¼SW¼
20 of Section 33, T. 19 N., R. 19 E.W.M. She has two 1.3 acre fields that she
21 irrigates. One field is irrigated from the Wilkins Ditch and one field is
22 irrigated from the J. I. Wilson Ditch. Both fields are in hay and pasture and
23 she there are two horses that graze on the property. One field is in the
24

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1 E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and one field is in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33. Both fields are rill
2 irrigated.

3 Ms. Magnuson is asserting a right to use 0.08 cubic foot per second, 10
4 acre-feet per year to irrigate each field. Ms. Magnuson filed two water right
5 claims pursuant to the requirements of RCW 90.14. Water Right Claim No. 117401
6 asserts a right to use 1 cfs, 300 acre-feet per year from Naneum Creek (Wilkins
7 Ditch) for the irrigation of 2 acres. Water Right Claim No. 117402 asserts a
8 right to use 1/25 cfs, 12 acre-feet per year from Naneum Creek for the
9 irrigation of 2 acres. The place of use for both is the Magnuson property.

10 The field in the E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ is part of land that was once owned by J. L.
11 Bennett. Mr. Bennett acquired the W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33,
12 T. 19 N., R. 19 E.W.M. from the Northern Pacific Railroad by deed dated June 25,
13 1890. Bennett also homesteaded and received a patent for the S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$
14 of Section 32. Mr. Bennett's widow was a party to the Ferguson case and was
15 awarded a Class 11 right for the use of 30 inches of water from Naneum Creek.
16 The Findings of Fact that preceded the decree described the lands owned by Mrs.
17 Bennett and to which the water right would be appurtenant. The Hultquists and
18 Louaine A. Magnuson, a neighboring landowner, contend that the copy of the
19 Findings of Fact that several claimants have put into the record contains a
20 typographical error in the paragraph that describes the lands owned by Mrs.
21 Bennett. The description is "The persons described in paragraphs XLV hereof
22 (the heirs to J. L. Bennett) are the owners of the southeast quarter of the
23 northeast quarter and the east half of the southeast quarter of Section 32, the
24 northwest quarter of the southwest quarter, the south half of the southwest
25 quarter and the southwest quarter of the southeast quarter of Section 32,

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

20 The Referee concludes that sufficient evidence has been placed in the
21 record to show that a typographical error was made on the version of the
22 Findings of Fact that has been put into the record and that the 30-inch Bennett
23 water right is appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and
24 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33. There are no claims filed in this proceeding for the
25 Bennett lands in Section 32.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 The Referee recommends that a right be confirmed to Ms. Magnuson under
2 Court Claim No. 01416 with a June 30, 1882, date of priority for the diversion
3 of 0.026 cubic foot per second in May and June, 0.013 cubic foot per second in
4 April and July 1 through October 15, 6.5 acre-feet per year for the irrigation
5 of 1.3 acres in the portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 that she owns.

6 The remaining irrigated land lies in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33. This land
7 has a different ownership history than the other land. The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33
8 is part of a larger parcel that George W. Gilkey obtained from the Northern
9 Pacific Railroad in 1904. Gilkey then immediately sold to John Filer who in
10 1906 sold to Elizabeth Drake. None of the deeds referenced water rights. The
11 land stayed in the Drake family until 1937 and the deed that year included the
12 language, "together with all water rights and irrigation ditches." Part of the
13 Tirotta's exhibits is an Affidavit by Howard Thomas dated December 18, 1933,
14 stating he was 30 years old and for the past 25 years (since he was five years
15 old) he had been familiar with the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 33. That ever
16 since he could remember John Filer used ten inches of water of the 11th class
17 under the Ferguson decree and used that for irrigation until 1920 when Fred C.
18 Drake purchased 35 inches in the 14th Class from Oliver Fields and since then
19 had used both the 10 inches and the 35 inches. The Affidavit also states that
20 the water was diverted from Naneum Creek through two ditches, one having its
21 intake in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, known as the Keister Ditch and the other
22 having it intake in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33. The second was also used to serve
23 land owned by G. A. Nylén, who takes out 20 inches of water for his farm in the
24 W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33. A copy of document conveying water from Oliver Fields to
25 Fred C. Drake is also part of the record.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 None of the documents put in the record establish where the 10 inches of
2 Class 11 water referenced in the affidavit came from. If they were transferred
3 from another water user, there should be a sales agreement or deed to document
4 the sale. Additionally, the ten inches were described as being used on 160
5 acres of land. The affidavit does not indicate which lands with those described
6 were irrigated. Certainly they were not all irrigated with the ten inches. The
7 35 inches clearly were sold and transferred in 1920. However, 1920 is after
8 adoption of the Surface Water Code on June 6, 1917, now codified as RCW 90.03.
9 Section 90.03.380 required that in order to change the point of diversion and/or
10 place of use of a water right approval from the state was required. There was
11 no evidence offered to show that approval was obtained.

12 The Referee cannot recommend that a water right be confirmed for the
13 portion of the Magnuson property in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 due to the lack
14 of evidence to show that a water right was established for the land.

15 COURT CLAIM NO. 01958 -- Brian Maier
16 & Sheila Maier
17 A.C.X. Trading, Inc.

18 Court Claim No 01958 was originally filed by Egon R. and Pam Wegner
19 asserting a right to use waters from Naneum Creek. Brian and Sheila Maier were
20 substituted as claimants on May 4, 1991 and A.C.X. Trading, Inc. was joined to
21 the claim on August 20, 1998. Attorney Jeff Slothower represented the Maiers at
22 the evidentiary hearing. David Tollett, who works for the Maiers, testified at
23 the hearing.

24 The claimants' property lies in the S $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33,
25 T. 18 N., R. 19 E.W.M. At the time of the Ferguson decree the land was owned by

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 J. S. Dysart, who was awarded a Class 6 right for 100 inches of water. However,
2 when the Cascade Irrigation District was constructed, Mr. Dysart sold his creek
3 water rights and irrigation district water has been used on the land ever
4 since. The Maiers are not asserting a right to use water from Naneum Creek.
5 Cascade Irrigation District is a major claimant in this proceeding whose rights
6 are being determined through the Major Claimant Pathway.

7 The claimants land lies within Subbasin No. 10 (Kittitas) and is riparian
8 to Coleman Creek. They are asserting a non-diversionary stock water right out
9 of Coleman Creek and presented evidence about that use at the Subbasin No. 9
10 hearing. Non-diversionary stock water uses are covered by the stock water
11 stipulation that is contained in each Report of Referee. The claimants should
12 refer to the Subbasin No. 10 Report of Referee when it is issued to insure they
13 are listed as claimants with stock water rights.

14 Since the claimant is not asserting a right to use any water originating in
15 Subbasin No. 9, the Referee does not recommend that a water right be confirmed
16 under Court Claim No. 01958 for use of Subbasin No. 9 waters.

17
18 COURT CLAIM NO. 05297 -- Nick A. Mandelas

19 Court Claim No. 05297 was filed on May 7, 1990, several years after the
20 original filing period in this case. The Court granted Mr. Mandelas request
21 that the claim be allowed for further processing and it was scheduled to be
22 heard at the Subbasin No. 9 evidentiary hearing. Mr. Mandelas, represented by
23 Attorney Richard T. Cole, testified at the hearing.

24 Mr. Mandelas owns approximately 16 acres that is a portion of the W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$
25 and E $\frac{1}{2}$ SW $\frac{1}{4}$ east of the county road, in Section 33, T. 19 N., R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 Because the claim was filed after Ecology conducted its field work for Subbasin
2 No. 9, there is no investigation report for the claim, nor does it appear on
3 exhibit SE-2. Mr. Mandelas roughly drew his property on the exhibit, along with
4 providing exhibit DE-1669. The property is used to grow hay and pasture for 20
5 steers that are raised on the land each year. The livestock drink from the
6 irrigation ditches that cross the property. Fifteen acres is rill irrigated
7 with gated PVC pipe. Water is diverted from Naneum Creek at two locations. One
8 diversion is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 and diverts into the Wilkins
9 Ditch and the second is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 and diverts into the Keister
10 Ditch. The Wilkins Ditch branches above the claimant's property, with both
11 branches flowing through the property. A right is being asserted for the use of
12 1.5 cubic feet per second, 105 acre-feet per year.

13 The claimant is basing his claim on rights awarded in the Ferguson decree
14 and submitted three affidavits in support of this claim. The three affidavits
15 were completed by Philip Laurence, Victor Zumbrunnen and Howard Thomas, who had
16 been acquainted with the land for 18, 30 and 25 years respectively. Each
17 affidavit states that 10 inches of Class 11 water from the Ferguson decree had
18 been used to irrigate land within the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 33, T. 19 N.,
19 R. 19 E.W.M. until 1920 when 35 inches of Class 14 water was acquired and since
20 then 45 inches has been used to irrigate 70 acres. The affidavit states that
21 the water was carried in the Keister Ditch with a diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 28 and a second ditch with a diversion in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33
23 (which is where the Wilkins Ditch branches).

24 The Ferguson decree was entered in 1901. According to the chain of title
25 for this land, it was held by the Northern Pacific Railroad until 1903 when it

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 was sold to George W. Gilkey. It has been the Referee's experience that the
2 purchaser of railroad land generally resides on the land and farms it under
3 license from the railroad prior to actually acquiring title in the land. It is
4 reasonable to conclude the George Gilkey was living on the land at the time of
5 the Ferguson case. The Referee cannot find where a water right was awarded to
6 him. Claimant's council suggests that since the decree only referenced names
7 and the Findings of Fact that preceded the decree did not in every instance
8 describe the lands, that it would be difficult to determine whether Mr. Mandelas
9 land was awarded a water right. However, through review of the Ferguson
10 documents and exhibits submitted by claimants in this proceeding, the Referee
11 has been able to determine the lands owned by those awarded rights at the time
12 of the Ferguson decree. The individuals who were awarded Class 11 rights did
13 not own land in Section 33, T. 19 N., R. 19 E.W.M. It may be that one of them
14 sold a portion of their water right and it was transferred to the claimant's
15 land. However, there has been no evidence of that provided. The affidavits
16 that discuss the use of Ferguson water on the claimant's land clearly state that
17 35 inches of Class 14 water was acquired in 1920. That is after adoption of the
18 State Surface Water Code in 1917, which required that changes to water rights be
19 approved by the State through compliance with RCW 90.03.380. There is no
20 evidence that occurred.

21 Additionally, in order to protect any water right that might be appurtenant
22 to the claimants property, a water right claim needed to be filed pursuant to
23 RCW 90.14, the Claims Registration Act. The only water right claim that has
24 been brought to the Referee's attention was Water Right Claim (WRC) No. 160175
25 filed by Nick Mandelas. It asserts a right to use ground water for domestic,

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27 Re: Subbasin No. 9

1 stock watering, and irrigation (lawn and garden). WRC No. 160175 is a short
2 form. RCW 90.14 provided for use of a short form to claim small uses of water.
3 Those uses are limited to the uses described in the exemption from the permit
4 requirements of RCW 90.44.050 (the State Ground Water Code) and are domestic
5 supply, stock watering, irrigation of up to one-half acre of lawn or
6 non-commercial garden domestic supply, and industrial use not exceeding 5,000
7 gallons per day. Therefore, the only water right that the Referee could
8 recommend would be limited to those uses if sufficient proof was made to
9 recommend that a water right be confirmed. Mr. Mandelas testified that he
10 misunderstood the term ground water, as opposed to surface water; thinking that
11 surface water was only lakes and ponds and that ground water was water running
12 on top of the ground. That may be. However, the Referee notes that Mr.
13 Mandelas also testified to having a well on his property which he uses for
14 domestic purposes. It is just as reasonable to conclude that WRC No. 160175 was
15 filed for use of the well, which is in fact a ground water source that is being
16 used for at least some of the purposes indicated on the claim form.

17 Because the claimant has not established the existence of a valid water
18 right for the property and because there is not RCW 90.14 claim for use of
19 Naneum Creek for irrigation of 15 acres, the Referee cannot recommend that a
20 water right be confirmed for the property.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 COURT CLAIM NO. 00769 -- Bernard L. Martin
2 & Marlene F. Martin

3 Court Claim No. 00769 was filed asserting a right to use waters from Wilson
4 Creek and springs for irrigation of 2 acres, stock water, and domestic supply.
5 Mr. Martin appeared and testified at the evidentiary hearing.

6 The Martin property is approximately 4 acres in size and lies in the SE $\frac{1}{4}$ NE $\frac{1}{4}$
7 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M. They own two adjoining
8 parcels that were acquired in separate purchases. They have a large house and
9 garden area and one acre of pasture. The pasture is irrigated from Wilson Creek
10 and the lawn and garden are irrigated from a spring that is in the basement of
11 the old brick mill that is on the northerly parcel. The spring also provides
12 in-house domestic supply for the Martin home and a neighboring home further up
13 the lane. Overflow from the spring also goes to a pond from which livestock
14 drink. Livestock also have access to Wilson Creek. Creek water is pumped into
15 a sprinkler system used to irrigate the pasture, which lies west of the house.
16 Mr. Martin did not testify to the quantity of water being used. The Referee
17 believes that all of the water use is being made on the parcel of land that lies
18 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19.

19 The Martins placed into evidence several documents addressing the history
20 of the land. A patent issued to Robert N. Canaday on August 20, 1878, for the
21 S $\frac{1}{2}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M. That same year,
22 one-half interest in the land was conveyed to Milton Canaday. R. N. Canaday and
23 M. Canaday were defendants in Sander v. Jones. The Findings of Fact does not
24 describe the lands owned by the Canadays, but does state they acquired the lands
25

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1 by patents issued June 30, 1876, and August 20, 1878. The Referee believes that
2 at least a portion of the land discussed and for which a water right was awarded
3 is the N½SE¼ and S½NE¼ of Section 19. The Findings of Fact goes on to state
4 that in 1873 the Canadays built a mill on their land to be run by water power
5 and appropriated 400 inches of water from Wilson Creek for the purpose of
6 running the mill. In addition to the water appropriated for mill purposes,
7 Canaday appropriated for farming purposes on their land a total of 275 inches,
8 with the appropriation beginning in 1872 and the full 275 inches were being used
9 by 1889. Recognizing that the decree awarded one inch of water for each acre
10 irrigated, an award of 275 inches is obviously for more than the 160 acres
11 described in the patent that issued on August 20, 1878. The other lands owned
12 by Canaday are not in the record. Mr. Martin is the only claimant in this
13 proceeding asserting a right in the S½NE¼ of Section 19. Madeleine Villa, Inc.
14 and J. Downey are claimants owning a portion of the N½SE¼ of Section 19.

15 The Sander v. Jones decree only addresses use of Wilson Creek water, not
16 the springs for which the Martins are also asserting a water right. Mr. Martin
17 testified that the development around the spring appears to be quite old.
18 Knowing that the mill was built in 1873, it is not unreasonable to conclude that
19 the nearby spring would have been for domestic supply at the mill and at the
20 Canaday homesite. Clear evidence of historic use of springs is often difficult
21 because there rarely is a conflict between water users that would make it
22 necessary to have documentation about the use.

23 Bernard and Marlene Martin filed two water right claims (WRC) pursuant to
24 the requirements of RCW 90.14. WRC No. 079445 asserts a right to use springs
25 and Wilson Creek in the amount of 0.04 cfs, 8 acre-feet per year for the

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27 Re: Subbasin No. 9

1 irrigation of 2 acres and stock watering on the Martin property. WRC No. 079446
2 asserts a right o use 15 gpm, 2 acre-feet from springs for domestic supply.

3 Also in the record is Certificate of Change Recorded in Volume 1, page 297,
4 which authorized Brickmill Ranch, once a owner of the claimants' land, along
5 with other land in Section 19, to change the place of use of a portion of a
6 right awarded in Sander v. Jones. The certificate of change authorized changing
7 the place of use for 0.30 cfs being diverted from Wilson Creek from the S $\frac{1}{2}$ NE $\frac{1}{4}$,
8 NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19 to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19. The claimant did
9 not address the significance of this change to his claim.

10 The Referee recommends that the following rights be confirmed under Court
11 Claim No. 00769: With a June 30, 1872, date of priority, a right to divert 0.02
12 cfs, in May and June and 0.01 cfs in April and from July 1 through October 15, 5
13 acre-feet per year from Wilson Creek for the irrigation of one acre and with a
14 June 30, 1873, date of priority a right to divert 0.02 cfs , 2 acre-feet per
15 year from a spring for domestic supply, including lawn and garden irrigation of
16 up to one-half acre, and stock water.

17 Livestock drinking from the creek is covered from the non-diversionary
18 stock water stipulation discussed on page 4 of this report and no additional
19 right is necessary.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 COURT CLAIM NO. 01707 -- Don E. Mays
2 & Paula Mays

3 Don E. and Paula Mays submitted a claim to the Court asserting a right to
4 use waters from Wilson Creek for irrigation of 300 acres. The Mays are
5 represented by Attorney J. Jay Carroll. Don Mays testified at the evidentiary
6 hearing.

7 The Mays property is in the W $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, a portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ all in
8 Section 18, T. 18 N., R. 19 E.W.M. and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
9 Section 19, T. 18 N., R. 19 E.W.M. They own and irrigate 270 acres of pasture
10 land. The land previously had grown hay. Wilson Creek water is used to some
11 degree on all 270 acres, however, there is 100 to 110 acres on which Wilson
12 Creek is primarily used. That land is primarily in the SE $\frac{1}{4}$ of Section 18 and
13 the N $\frac{1}{2}$ of Section 19, except the northwesterly corner. The Mays are patrons of
14 the Kittitas Reclamation District (KRD) and KRD water is also used on 160
15 acres. Small ponds have been constructed on the land to collect runoff water.
16 The Mays raise cattle and depending on the time of year, as few as 300 head and
17 as many as 3,000 head are on the property. Mr. Mays has also managed
18 neighboring land owned by Ralph Strand and Earl Glauert and his cattle have
19 grazed on their land also. The livestock drink from ponds and ditches that
20 cross the land. Mr. May testified in some years he will begin irrigating as
21 early as March 15 and will irrigate until early October, however, Wilson Creek
22 water is generally not available after July 1. The Mays bought their property
23 in 1978 from Charles Malone.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 Two water right claims (WRC) were filed by C. L. Malone pursuant to the
2 requirements of RCW 90.14. WRC No. 144872 asserts a right to divert 5 cubic
3 feet per second, 1800 acre-feet per year from Wilson Creek for the irrigation of
4 300 acres and stock water in the S½ of Section 18, T. 18 N., R. 19 E.W.M. WRC
5 No. 144873 asserts a right to use 5 cubic feet per second, 1800 acre-feet per
6 year from Wilson Creek for the irrigation of 300 acres and stock water in the N½
7 of Section 19, T. 18 N., R. 19 E.W.M. Both claims state that water was first
8 used prior to 1900.

9 The claimants presented little historical information about water use on
10 their land. When they first bought the land in 1978, Mr. Mays was aware of
11 depressions in the fields that he has since realized are old ditches previously
12 used to irrigate and there were old boards and concrete structures on the land.
13 He did not identify what those structures and board were related to. The Mays
14 did provide chain of title documents for the land and cited to the Sander v.
15 Jones decree as the basis for their water right. At the time that decree was
16 entered, the Mays land was owned by John B. Jones, who was a defendant in that
17 case (in fact the Jones in the case title). The Findings of Fact that preceded
18 the decree stated that Mr. Jones owned the S½SE¼ of Section 18 and the N½NE¼ of
19 Section 19, both in T. 18 N., R. 19 E.W.M. and had a possessory right to the
20 NE¼NW¼ of Section 19 under contract to purchase with the Northern Pacific
21 Railroad. It further identified that Jones and his predecessor, Jordin had
22 begun appropriating water from Wilson Creek in 1872 and by 1885 had appropriated
23 60 inches and since 1885 Jones appropriation had been 60 inches. The decree
24 then confirmed a right to Jones for the use of 60 inches. The decree also
25 stated that one inch of water was sufficient to irrigate one acre until the end

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1 of June and after than one-half inch of water was sufficient for each acre.
2 Therefore, the Referee concludes that Jones had a right to use 60 inches of
3 water for the irrigation of 60 acres.

4 The Mays are irrigating between 100 and 110 acres with water diverted from
5 Wilson Creek. They have presented no evidence to show that an additional water
6 right was established for their land after entry of the Sander v. Jones decree.
7 Additionally, two other claimants in this proceeding own and irrigate land that
8 was owned by John B. Jones at the time of the decree. Earl Glauert owns
9 approximately 20 acres and is asserting a right to 19 acres and Ralph Strand
10 owns approximately 30 acres within the former Jones ownership and is asserting a
11 right to irrigate his entire ownership.

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

24 The Referee recommends that a right be confirmed under Court Claim No.
25 01707 with a June 30, 1872, date of priority for the diversion of 0.796 cubic

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1 foot per second in May and June and 0.398 cubic foot per second from March 15 to
2 April 30 and July 1 through October 15 and 202 acre-feet per year for the
3 irrigation of 39.8 acres and stock watering within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and
4 the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19. Livestock drinking from any ponds or
5 drains on the property is covered by the non-diversionary stock water
6 stipulation discussed on page 4 of this report and no additional right is
7 necessary for that use.

8
9 COURT CLAIM NO. 00495 -- Estate of Byrl A. McNeil
& Arlene Rosenberg

10 Byrl A. and Arlene McNeil submitted a statement of claim to the Court
11 asserting a right to use waters from Whiskey Creek for irrigation and stock
12 watering. Mr. McNeil is now deceased and Mrs. McNeil has remarried and her name
13 is now Arlene Rosenberg. Mrs. Rosenberg appeared and testified at the
14 evidentiary hearing in support of the claim.

15 The claimant owns the NW $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 19 E.W.M.
16 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, T. 18 N., R. 18 E.W.M. Water is
17 diverted from Whiskey Creek at six points and used to irrigate 126 acres, which
18 are riparian to Whiskey Creek. The claimants are also patrons of the Kittitas
19 Reclamation District (KRD) and 176 acres are assessed by KRD. A drain, which is
20 primarily fed by seepage from the KRD Highline Canal, is used to irrigate 55
21 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 7. Whiskey Creek is used to irrigate 50 acres
22 adjacent to the creek in the NW $\frac{1}{4}$ of Section 7, 60 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of
23 Section 12 east of Whiskey Creek are irrigated from Whiskey Creek and 14 acres
24 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 are also irrigated from the creek. Although not
25

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1 specifically testified to by Mrs. Rosenberg, the Referee concludes from the
2 evidence presented that all of the irrigated land is assessed by KRD, with
3 Whiskey Creek water being used when it is available on 124 acres.

4 Mrs. Rosenberg testified to using three diversions to irrigate the NW¼ of
5 Section 7. The main diversion just below the north section line, is located
6 approximately 800 feet west of the north quarter corner. It is used to irrigate
7 the 50 acres in the NW¼ of Section 7. A diversion 1100 feet south and 900 feet
8 east of the northwest corner of the section is used to irrigate approximately 4
9 acres that lie west of Whiskey Creek. The third diversion is 1500 feet south
10 and 950 feet east of the northwest corner of the section and is used to irrigate
11 2 acres around the barn.

12 Byrl A. McNeil filed Water Right Claim No. 052437 pursuant to RCW 90.14
13 asserting a right to divert 4 cubic feet per second, 1200 acre-feet per year
14 from Whiskey Creek for the irrigation of 160 acres and stock watering in the NW¼
15 of Section 7, T. 18 N., R. 19 E.W.M. and the S½S½ of Section 12, T. 18 N.,
16 R. 18 E.W.M. The point of diversion described in WRC No. 052437 is closest to
17 the northerly most diversion, which is the one used to irrigate most of the
18 land. Mrs. Rosenberg did not explain whether the other diversions had been
19 added since the claim was filed or simply omitted from the claim. The land
20 owned and irrigated in the W½NE¼ of Section 7 was excluded from WRC No. 052437,
21 however, that is not significant since the testimony indicates that land is
22 irrigated with either direct deliveries from KRD or from a ditch fed by seepage
23 from the KRD canal and KRD return flows. Use of that water is covered by the
24 KRD water right and the Referee cannot recommend that an individual water right
25 be confirmed for use of that water.

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1 The claimant is asserting that the basis of a right for the lands in the
2 NW¼ of Section 7 is an Affidavit of Water Right filed by J. F. LeClerc and W. A.
3 Jordin dated February 22, 1883. The affidavit states that during the year 1872
4 Aman Galloway dug a ditch capable of conveying 700 inches of water and
5 appropriated 400 inches of water. The ditch commenced near the center of
6 Section 32, T. 19 N., R. 19 E.W.M. and ran in a southwesterly direction. The
7 ditch was taken out for the purpose of irrigating land in Sections 5, 6, and 7,
8 in T. 18 N., R. 19 E.W.M. As a result of documents submitted by the claimant
9 and by Chester V. Stokes, a neighboring claimant, the Referee has been able to
10 determine that J. F. LeClerc owned the S½NW¼, NW¼SW¼ and Lot 4 of Section 5 and
11 W. A. Jordin owned the SE½NW¼, E½SW¼ and SW¼SE¼ of Section 6 and the NW¼ of
12 Section 7. Mr. Stokes and Harold Jenkins, who owns the land in Section 6 are
13 also asserting rights based on the Jordin/LeClerc affidavit.

14 This area has been heavily litigated, however, the lands owned by Jordin
15 and LeClerc were not involved in any of the numerous lawsuits and resultant
16 miscellaneous decrees. The Courts have consistently held that 0.02 cubic foot
17 per second is sufficient water to irrigate one acre of land. Even though this
18 land was not covered by any of the decrees, the Referee intends to use the same
19 standard as set forth in those decrees. Mrs. Rosenberg is asserting a right to
20 use 1200 acre-feet per year to irrigate the 124 acres adjacent to Whiskey
21 Creek. However, that annual quantity of water is not consistent with what the
22 courts have previously found to be sufficient, and available, for use in this
23 area. The Referee proposes 5 acre-feet per year for each acre irrigated.
24 Additional water may be available through deliveries from KRD.

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1 The Jordin/LeClerc affidavit states that the diversion into the ditch was
2 near the center of Section 32, which is approximately where Whiskey Creek
3 separates from Wilson Creek. There has been some discussion at the hearing that
4 Whiskey Creek actually is the ditch referred to in the affidavit. However, the
5 evidence was not conclusive, so the Referee will continue to refer to it as a
6 creek. Whiskey Creek flows through the land in the NW¼ of Section 7, therefore,
7 the Riparian Doctrine would be applicable. Water rights based on the Riparian
8 Doctrine enjoy a priority date of when first efforts were made to separate the
9 land from Federal ownership, if that information is in the record. Title to
10 Section 7 was originally held by Northern Pacific Railroad and the priority date
11 under the Riparian Doctrine for railroad land is the date the map of definite
12 location was filed for construction of the railroad. That date in Kittitas
13 County is May 24, 1884. However, the affidavit states that construction of the
14 ditch began in 1872 with the intent of serving the described lands. Based on
15 the information in the record, the Referee concludes that a right was
16 established under the Prior Appropriation Doctrine in 1872, prior to the land
17 separating from the Federal government. Milton Lewis testified to assisting
18 with farming the land in the mid-1920's.

19 Although there was historical evidence presented to show the existence of a
20 water right for the land in the NW¼ of Section 7, the same cannot be said for
21 the land owned by the claimants in the S½ of Section 12, T. 18 N., R. 18 E.W.M.
22 The claimants submitted a chain sheet showing the history of the ownership of at
23 least a portion of the land, however, there was nothing entered to show that a
24 water right was established through beneficial use of the water. Since the land
25 in the S½SE¼ of Section 12 is riparian to Whiskey Creek, there needs to be

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1 evidence of when that portion of the section separated from Federal ownership.
2 The Referee was unable to pick that date out of the chain sheet. Additionally
3 there needs to be evidence that water was used on this land prior to
4 December 31, 1932. The land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 is not riparian to
5 Whiskey Creek and in order for the Referee to conclude a right exists for that
6 land, evidence is needed to show use of water prior to June 6, 1917. That
7 evidence is also lacking.

8 The Referee recommends that a right be confirmed under the Prior
9 Appropriation Doctrine for Court Claim No. 00495 with a June 30, 1872, date of
10 priority for the use of 1.0 cubic foot per second, 250 acre-feet per year for
11 the irrigation of 50 acres and stock watering in that portion of the NW $\frac{1}{4}$ of
12 Section 7, T. 18 N., R. 19 E.W.M. lying southeast of Whiskey Creek, except the
13 SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said section. The original right established by LeClerc and Jordin
14 only described one diversion, that being near the center of Section 32,
15 T. 19 N., R. 19 E.W.M., which is where Whiskey Creek separates from Wilson
16 Creek. It is reasonable that diversions from Whiskey Creek would then have been
17 developed to each parcel of land. The only diversion described on WRC No.
18 052437 in the one in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, therefore, that is the only
19 diversion proposed for inclusion on the recommended right.

20
21 COURT CLAIM NO. 00484 -- Mark McWhorter
(A) 04498

22 The McWhorters filed a Statement of Claim with the Court for several water
23 sources in the Yakima River Basin. The claim was amended in 1989 to include use
24 of Naneum Creek and Lyle Creek located in Subbasin No. 9. The property lying in
25

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1 Subbasin No. 9 is owned solely by Mark McWhorter, who was represented by
2 Attorney James P. Hutton. Mark McWhorter testified at the evidentiary hearing
3 in support of the claim.

4 Mr. McWhorter's land lies in the E $\frac{1}{2}$ NE $\frac{1}{4}$, south of the KRD canal, and SE $\frac{1}{4}$ of
5 Section 8, the W $\frac{1}{2}$ of Section 9 south of the KRD canal, and the NE $\frac{1}{4}$ of
6 Section 17, all in T. 18 N., R. 19 E.W.M. This land has been in his family's
7 ownership since the mid-1960's and has been operated as a cattle ranch. Hay,
8 pasture and grain are the predominant crops grown, with a small orchard in the
9 southeast corner of Section 8. Water is diverted from Naneum Creek, Lyle Creek
10 and Wilson Creek, along with deliveries from the Kittitas Reclamation District
11 (KRD), to irrigate the land. Sufficient water is generally available from the
12 creeks to irrigate until around the first of July; after that the creek flows
13 decline considerably and KRD water is relied upon. Most of the fields are
14 irrigated over a 12 day period and are irrigated between four and five times
15 each year. Within Section 8 there are 199.6 acres irrigated, 162 of those are
16 assessed by KRD; within Section 9 there are 259.4 acres irrigated and 169 of
17 those are assessed by KRD; and within Section 17 148 acres are irrigated, with
18 124 acres assessed by KRD. During a year when there are no restrictions on KRD
19 deliveries, 1801 acre-feet will be delivered by KRD to the McWhorter property.

20 Several water right claims were filed by Mark McWhorter pursuant to the
21 requirements of RCW 90.14. Water Right Claim (WRC) No. 005561 asserts a right
22 to divert 4 cfs, 400 acre-feet per year from Wilson Creek for the irrigation of
23 50 acres in the SE $\frac{1}{4}$ of Section 8. The point of diversion described is 2340 feet
24 east and 980 feet south of the northwest corner of Section 8, being within the
25 NW $\frac{1}{4}$ of Section 8. This point is marked as #3 on Mr. McWhorter's Exhibit

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1 DE-1573. Lyle Creek separates from Wilson Creek on the McWhorter's property at
2 the point described in WRC 005561. The Referee will consider this water right
3 claim to also address use of Lyle Creek.

4 WRC No. 005565 asserts a right to divert 10 cfs April 1 to Aug. 1 and 4 cfs
5 Aug 2 to March 29, 4680 acre-feet per year from Naneum Creek for the irrigation
6 of 600 acres in the W½ of Section 9 (the Referee notes there are only 320 acres,
7 not 600 in the W½ of Section 9, which may explain the statement on the claim
8 that 200 acres were presently irrigated). The point of diversion described is
9 920 feet south and 1300 feet east of the northwest corner of Section 9, being
10 within the NW¼ of Section 9. This is identified as #7 on DE-1573.

11 WRC No. 005568 asserts a right to divert 1/5 cfs, 140 acre-feet per year
12 from a spring in the NW¼ of Section 9 for stock watering in the W½ of
13 Section 9. The spring is described as being 1610 feet east and 2230 feet south
14 of the northwest corner of Section 9, in the NW¼ of Section 9.

15 These claims were all cited to by Ecology in its investigation reports for
16 the claim. In addition, Mr. McWhorter directed the Referee to two water right
17 claims that he filed describing the source as being ground water. The Referee
18 suspects that because of the ground water designation on the claim, they were
19 not included in Ecology's exhibits. WRC No. 005562 asserts a right to use 3
20 cfs, 320 acre-feet per year from a drain for the irrigation of 150 acres and
21 stock watering in the E½ of Section 8. The diversion from the drain is 610 feet
22 west and 800 feet south of the northeast corner of Section 8, in the NE¼ of
23 Section 8. Diversion #4 on DE-1573 appears to be at that location. WRC No.
24 005564 asserts a right to use 3 cfs, 320 acre-feet per year from a drain for the
25 irrigation of 350 acres and stock watering in parts of the W½ of Section 9, the

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1 SE¼ of Section 8 the SW¼ of Section 8 and the NE¼ of Section 17 (Mr. McWhorter
2 is not asserting rights in this proceeding for the SW¼ of Section 8). The
3 diversion from the drain is described as being 920 feet south and 890 feet east
4 of the northwest corner of Section 9, in the NW¼ of Section 9. Diversion #6 on
5 DE-1573 appears to be at that location.

6 According to Mr. McWhorter's testimony these drains capture run off water
7 from the Jenkins property to the north. The Jenkins property is irrigated with
8 water diverted from both Wilson Creek and Naneum Creek (see discussion of the
9 Jenkins claim on page 259 of this report). Therefore, the run off, or return
10 flow water, is the result of the application of water that naturally occurs in
11 this basin and would not be considered either foreign or Yakima project return
12 flows. Mr. McWhorter did not testify to when these drains were constructed and
13 first used. If use began prior to June 6, 1917, a right could have established
14 under the Prior Appropriation Doctrine. However, there is insufficient
15 historical information in the record to reach that conclusion.

16 Water rights for the McWhorter property were addressed in both the Ferguson
17 and Sanders v. Jones decrees. The land in the E½NE¼ of Section 8 is part of
18 land once owned by John Bloomquist, who was awarded a Class 3 right in the
19 Ferguson decree for 160 inches of water from Naneum Creek. The Bloomquist right
20 was for the SW¼SE¼ of Section 5, the N½NE¼ and SE¼NE¼ of Section 8. The land
21 was first settled and water diverted in 1873, which would be the priority date
22 for the right. The entire 160 acres were cultivated, resulting in an award of
23 160 inches, or 3.2 cubic feet per second. The proportionate share of the right
24 that would be appurtenant to the E½NE¼ of Section 8 is 80 inches or 1.6 cubic
25 feet per second. The Referee estimates that Mr. McWhorter owns and irrigates 60

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1 acres of land south of the KRD canal, and would therefore, have a right to 60
2 inches or 1.20 cubic feet per second. John Bloomquist was also a defendant in
3 Sanders v. Jones but was not awarded a right in that proceeding. A Class 3
4 right for 160 inches from Naneum Creek was also awarded in Ferguson to George
5 Cooke for what was referred to as the Stinson property. The Stinson property is
6 the S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9. Mr. McWhorter owns all of this, so
7 the entire 160 inches, or 3.2 cubic feet per second is appurtenant to his land.
8 A Class 11 right was awarded to George Cooke for the use of 320 inches of water
9 from Naneum Creek for use in the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9 and the
10 S $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4. Half of this right, or 160 inches (1.6 cfs) is
11 appurtenant to land in Section 9. Approximately 45 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
12 Section 9 is not owned by Mr. McWhorter, leaving 115 acres and a water right for
13 115 inches (2.3 cubic feet per second). The land was first occupied and
14 cultivated in 1882, which would be the priority date for the right. The NE $\frac{1}{4}$ of
15 Section 17 was owned by W. Rader at the time of the Ferguson decree and it was
16 awarded a Class 12 right, with an 1882 date of priority for 100 inches of water
17 or 2.0 cubic feet per second from Naneum Creek. The Sander v. Jones decree also
18 awarded a right to use 20 inches of water from Lyle Creek with an 1881 date of
19 priority. The SE $\frac{1}{4}$ of Section 8, then owned by A. J. Rader, was also awarded a
20 Class 12 right, but for only 40 inches of water, or 0.80 cubic foot per second
21 from Naneum Creek.

22 Clearly water rights were established for the McWhorter property and
23 confirmed in the Ferguson and Sanders v. Jones decrees. However, the number of
24 acres being irrigated on portions of the property exceeds the acres for which
25 there is evidence of a water right. Within Section 8, Mr. McWhorter testified

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1 to irrigating 199.6 acres, however, rights for the irrigation of 100 acres were
2 awarded in Ferguson. In Section 9, a total of 259.4 acres are being irrigated,
3 however, right to 220 acres were awarded in Ferguson and in the NE¼ of
4 Section 17, 148 acres are being irrigated and rights for the irrigation of 120
5 acres were awarded in Ferguson and Sander v. Jones. The Referee can only
6 recommend to the Court that rights be confirmed if the evidence shows that a
7 water right was legally established. There was no evidence presented to show
8 that additional rights were established beyond those described in the decrees.
9 It may be that more land was irrigated after the KRD canal was constructed into
10 the area. The claimant is asserting a right to use Wilson Creek, Lyle Creek and
11 Naneum Creek. Except for the 20 inch right to Lyle Creek for the NE¼ of
12 Section 17, all of the water rights addressed in the Ferguson decree were for
13 use of waters from Naneum Creek.

14 The Referee notes that the only RCW 90.14 claim on file for the E½NE¼ of
15 Section 8 is WRC No. 005562, which was filed for use of a drain. Although it
16 does not describe Naneum Creek as a source of water, the drain captures run off
17 water from fields irrigated with water diverted from Naneum Creek.

18 Mr. McWhorter has identified on Exhibit DE-1573 over a dozen diversions
19 that are used to irrigate his property. However, the two water right claims
20 that have been filed for the creeks each only describe one diversion.
21 Therefore, the Referee is limited to confirming rights at the diversion points
22 described on the claim forms or historically used. It is not clear whether the
23 diversions described are the ones historically used, however, they are the only
24 ones documented.

25
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1 The Referee recommends that the following rights be confirmed under Court
2 Claim No. 00484 for the use of Naneum Creek: With a June 30, 1873, date of
3 priority a right to divert 1.2 cubic foot per second in May and June, 0.60 cubic
4 foot per second in April and July 1 through October 15, 300 acre-feet per year
5 for the irrigation of 60 acres in that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8,
6 T. 18 N., R. 19 E.W.M. lying south of the KRD canal. Also with a June 30, 1873,
7 date of priority a right to divert 3.20 cubic foot per second in May and June,
8 1.60 cubic foot per second in April, and July 1 through October 15, 800
9 acre-feet per year for the irrigation of 160 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and
10 SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 18 N., R. 19 E.W.M. With a June 30, 1882, date of
11 priority, 2.3 cubic feet per second in May and June and 1.15 cubic feet per
12 second in April and July 1 through October 15, 575 acre-feet per year for the
13 irrigation of 115 acres in that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ lying south of the KRD
14 canal, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 18 N., R. 19 E.W.M. With a
15 June 30, 1882, date of priority a right to 2 cubic foot per second, 500
16 acre-feet per year for the irrigation of 100 acres in the NE $\frac{1}{4}$ of Section 17,
17 T. 18 N., R. 19 E.W.M., lying east of Lyle Creek. With a June 30, 1882, date
18 of priority a right to 0.80 cubic foot per second, 200 acre-feet per year for
19 the irrigation of 40 acres. This right is recommended for confirmation
20 contingent on the claimant identifying the 40 acres within the SE $\frac{1}{4}$ of Section 8
21 that will be irrigated with water from the creek. The Referee believes that it
22 is not in anyone's best interest to award a 40 acre water right with a 160 acre
23 place of use.

24 The Referee also recommends that a right be confirmed with a June 30, 1881,
25 date of priority for the diversion of 0.40 cubic foot per second in May and June

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1 and 0.20 cubic foot per second in April and July 1 through October 15, 100
2 acre-feet per year for the irrigation of 20 acres in the NE¼ of Section 17,
3 lying west of Lyle Creek.

4 Livestock are raised on the claimant's property and drink from irrigation
5 ditches and creek channels. Up to 1500 head of livestock can be on the
6 claimant's land. Recognizing that not all of the stock water use is
7 diversionary, the Referee will award an additional annual quantity under each
8 right for stock watering. Livestock drinking directly from the water source is
9 covered by the stock water stipulation discussed on page 4 of this report.

10 COURT CLAIM NO. 01202 -- Grace M. Menig

11 Mrs. Grace Menig submitted a claim to the Court asserting a right to use
12 surface waters for irrigation of 2.77 acres. Mrs. Menig testified at the
13 evidentiary hearing.

14 Mrs. Menig's property lies in the NE¼NW¼NE¼ of Section 24, T. 17 N.,
15 R. 18 E.W.M. She owns a total of 2.77 acres and irrigates with Yakima River
16 water carried initially in the Tjossem Ditch and ultimately in the Steen McLeod
17 and Clark Ditch. She has several buildings on her property leaving the Referee
18 to conclude that no more than 2 acres are actually irrigated. Over the years
19 she has had problems with upditch water users taking all of the water in the
20 ditch and her not getting any water. This lack of water in the ditch is
21 reflected in the State's Investigation Report and the water right claim filed by
22 Mr. Menig in 1974. That is a periodic problem, but according to Mrs. Menig's
23 testimony, she irrigates from the ditch whenever water is available to her. She
24 irrigates about 1.5 acres of pasture and 0.5 acre of lawn and garden area. She
25

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1 uses a pump to withdraw water from the ditch and according to the Statement of
2 Claim, it is a 1½ HP pump. This size pump would easily withdraw sufficient
3 water from the ditch to irrigate 2 acres. The Referee estimates that
4 approximately 0.06 cfs could reasonably be expected to be used on the claimant's
5 property.

6 Mrs. Menig's land is part of a larger parcel that was homesteaded by Emil
7 Pederson, who received a patent for the W½NE¼, SE½NE¼ and NW¼SE¼ of Section 24,
8 T. 17 N., R. 18 E.W.M. on March 25, 1891. On April 3, 1900, Pederson sold all
9 of the land to Joel Clarke. Mrs. Menig and her husband acquired their land, and
10 several other acres that they have since sold, in 1946. Mrs. Menig knew very
11 little about the property prior to their purchase, except that sheep were raised
12 on it and it had water rights.

13 A neighboring landowner and claimant in this case, Judith Nickerson, put in
14 the record Exhibit DE-1597, which included a statement by Albert Tjossem made on
15 October 31, 1933, concerning operation of the Tjossem Ditch and the Steen
16 McLeod and Clark Ditch. He indicated who the users on the Clark branch of the
17 Steen McLeod and Clark Ditch were at that time, and one user was Almina Adams,
18 who according to Mrs. Menig's records owned the W½NE¼ of Section 24. The
19 statement also indicates that the users on the Clark Branch were successors to
20 Joel Clark, who was one of the prior owners of the Menig property. The record
21 is not clear about when the Steen McLeod and Clark Ditch was built. Attachments
22 to DE-1597 clearly show that it was constructed prior to October 1902, when
23 agreement was made to consolidate the upper portion of the ditch with the
24 Tjossem Ditch. Lacking any other information to establish an earlier priority
25 date, 1902 shall be used.

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1 Water Right Claim No. 144966 was filed by Bert A. Menig pursuant to the
2 requirements of RCW 90.14. It asserts a right to divert 8 acre-feet per year
3 from the Yakima River for the irrigation of 2.77 acres and stock water. The
4 point of diversion described is where the Tjossem Ditch diverts from the Yakima
5 River. The place of use described is all of the NE¼ of Section 24, however,
6 clearly the intent of Mr. Menig was to preserve a right for the 2.77 acres he
7 owns in the NE¼NW¼NE¼ of Section 24.

8 Based on the foregoing, the Referee recommends that a right be confirmed
9 under Court Claim No. 01202 with a June 30, 1902, date of priority for the
10 diversion of 0.06 cfs, 8 acre-feet per year from the Yakima River for the
11 irrigation of 2 acres in the North 337 feet of the west 350.6 feet of the
12 NE¼NW¼NE¼ of Section 24, T. 17 N., R. 18 E.W.M.

13
14 COURT CLAIM NO. 01669 -- Howard Miles

15 Howard Miles filed a Statement of Claim asserting a right to use waters
16 from Naneum Creek for irrigation and stock water. Mr. Miles testified at the
17 evidentiary hearing.

18 Mr. Miles property lies in that portion of the easterly 2000 feet of the
19 N¼NW¼ of Section 9, T. 18 N., R. 19 E.W.M. lying north of the Kittitas
20 Reclamation District Highline Canal. He owns slightly more than 23 acres and is
21 asserting a right to irrigate 18 acres with water diverted from Naneum Creek.
22 The land is pasture and both cattle and horses have been raised in the past.
23 Mr. Miles and his father acquired the land from Ralph Klein in 1976 and his
24 father lived on the property, raised cattle, and irrigated pasture with water
25 diverted from Naneum Creek. Following his father's death in 1980, Howard Miles

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1 moved onto the property. The diversion to the property is in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of
2 Section 4, T. 18 N., R. 19 E.W.M., approximately 700 feet north of the
3 claimant's property. That diversion had not been used during the time that
4 Howard Miles was on the land. Runoff from the Morrison and Jenkins Ranches to
5 the north was sufficient to irrigate the land to the extent desired by Mr.
6 Miles. His intent at the time of the hearing was to resume a more intensive
7 irrigation of the property which would require use of the direct diversion from
8 Naneum Creek. Naneum Creek is the source of water used to irrigate the Morrison
9 and Jenkins Ranches, so the runoff water used by Mr. Miles is essentially a
10 reuse of Naneum Creek water. Since the land has continued to be irrigated to
11 some extent with Naneum Creek water, the Referee does not find relinquishment of
12 any right that may exist to be an issue.

13 Mr. Miles did not provide much history about the land, other than it was
14 being irrigated at the time he and his father acquired it. They bought from
15 Ralph Klein and prior to that it was part of the Bar 14 Ranch. The Referee has
16 reviewed the evidence placed in the record by Mark McWhorter, who owns the
17 portion of the NW $\frac{1}{4}$ of Section 9 below the KRD canal. That shows water rights
18 for the NW $\frac{1}{4}$ of Section 9 were addressed in both the Ferguson and Sanders v.
19 Jones decrees. A Class 11 right was awarded to George Cooke in the Ferguson
20 decree for the use of 320 inches of water in the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
21 Section 9 and the S $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4. Half of this right, or 160
22 inches (1.6 cfs) is appurtenant to land in Section 9. Approximately 45 acres in
23 the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9 is north of the KRD canal with rights being asserted by
24 Mr. Miles and Patrick Jenkins and approximately 115 acres are below the canal
25 and owned by Mark McWhorter. See page 351 of this report for a discussion of

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1 the McWhorter claim. The land was first occupied and cultivated in 1882, which
2 would be the priority date for the right. The Ferguson decree provided for the
3 use of one inch of water for each acre irrigated in May and June and one-half
4 inch of water the remainder of the year. Therefore, Mr. Miles would have a
5 right to 18 inches, or 0.36 cubic foot per second in May and June and 0.18 cubic
6 foot per second the remainder of the year. At that rate of diversion, a maximum
7 of 5 acre-feet per acre irrigated could be used during the irrigation season.

8 Mr. Miles testified to a spring on his property that has not been
9 developed. Livestock drink from the spring area and outflow from the spring.
10 Livestock also have access to Naneum Creek as it flows through the property.
11 Non-diversionary stock watering is covered by the stock water stipulation
12 discussed on page 4 of this report and no additional right is necessary.

13 Two water right claims were filed pursuant to RCW 90.14 that include the
14 claimant's property. Water Right Claim (WRC) No. 005565 was filed by Mark
15 McWhorter asserting a right to divert 10 cfs, 4680 acre-feet per year from
16 Naneum Creek for the irrigation of 600 acres in the W $\frac{1}{2}$ of Section 9, T. 18 N.,
17 R. 19 E.W.M. It is not clear to the Referee that Mr. McWhorter intended this
18 claim to protect water rights for any land other than his own, however, it does
19 describe Mr. Miles property and asserted a right large enough for the entire
20 half section. Additionally, WRC No. 090378 was filed by Ralph C. Klein. It
21 asserts a right to use Naneum Stream and Wilson Stream for stock watering and
22 irrigation (lawn and garden) and describes portions of several sections as the
23 place of water use, including that portion of the W $\frac{1}{2}$ of Section 9 lying north of
24 the right of way of the North Branch Canal of KRD. This claim was filed on a
25 short form. RCW 90.14 allowed for the use of the short form to claim small uses

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1 of water that are exempt from the permitting requirements described in RCW
2 90.44. Those uses are up to 5,000 gallons per day for stock watering,
3 industrial supply, domestic supply or irrigation of up to one-half acre of lawn
4 and non-commercial garden. The Referee and the Court in this case have
5 routinely found that use of the short form limits the right that can be
6 confirmed to those small uses. However, in this case, Mr. Klein added a note to
7 the claim form that states: "This water right claim refers to Order Pendente
8 Lite No. 18145 in the Superior Court of the State in 1973; Note: the claimant's
9 number which Richard C. Klein, owner and Ralph C Klein, is power of attorney,
10 recorded in Kittitas County, is shown under the former owners name of Lawrence A
11 Many. Claimant No. 16, on page 5; Claimant No. 16 on page 9; Claimant No. 16 on
12 page 8; Claimant No. 16 on page 10; No 16 on page 14;" Pendente Lite Order No.
13 18145 was an interim order issued for use in regulating water rights in the
14 Wilson-Naneum basin following the attempt to adjudicate those creeks in the
15 early 1970's. The order would provide all of the information needed to
16 determine the extent of the right being asserted by Mr. Klein. The Referee
17 believes that sufficient information was contained in the short form to meet the
18 expressed intent of RCW 90.14 and finds that Mr. Klein substantially complied
19 with those requirements.

20 Based on the foregoing, the Referee recommends that a right be confirmed to
21 Howard Miles under Court Claim No. 01669 with a June 30, 1882, date of priority
22 for the diversion of 0.36 cubic foot per second in May and June and 0.18 cubic
23 foot per second in April and July 1 through October 15, 90 acre-feet per year
24 for the irrigation of 18 acres.

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SUBBASIN NO. 9
SEE PART II FOR
PAGES 363 – 713**

**YAKIMA RIVER BASIN
WATER RIGHTS ADJUDICATION**

FILED

JUN 29 2000

**KIM M. EATON
YAKIMA COUNTY CLERK**

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

REPORT OF REFEREE
Re: SUBBASIN NO. 9
(WILSON-NANEUM)

KIM M. EATON
YAKIMA COUNTY CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

00 JUN 29 AM 9 37

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

1 COURT CLAIM NO. 01801 -- Andrew J. Mills
2 & Stephanie Mills

3 The Mills submitted a claim to the Court asserting a right to irrigate with
4 waters from Wilson Creek. Mr. Mills testified at the evidentiary hearing.

5 The Mills own 16.5 acres and irrigate 13 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32
6 with water diverted from Wilson Creek. Most of the land is irrigated pasture
7 and up to 10 horses and 15 to 20 head of cattle are at times raised on the
8 property. Water is diverted from the creek in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 into
9 what is sometimes called Rogers Ditch. This is the historical diversion point
10 that served the property and is now used to irrigate 10 acres that are surface
11 irrigated. The remaining three acres are now sprinkler irrigated and a second
12 diversion with a pump on the claimants' property is used for that three acres.
13 The sprinkler system was installed in the early 1980's and the Referee presumes
14 that is when the second point of diversion was added. There was no indication
15 that the claimants obtained approval from Ecology pursuant to the provisions of
16 RCW 90.03.380 for adding the additional point of diversion.

17 The Mills property is part of a larger parcel for which William Rogers
18 received a patent on January 13, 1893. The Rogers homestead consisted of the
19 S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. By August of 1901 the
20 land, along with other land in the area, was owned by W. R. Thomas and remained
21 in the Thomas family until 1950. Water rights for the Thomas property were
22 addressed in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 signed on
23 March 1, 1924. In the Findings of Fact for that decree, it was stated that W.
24 R. Thomas owned the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.,
25

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1 known as the Rogers Tract, and that Rogers settled on the land in 1886 and water
2 was first diverted for irrigating this tract in 1885. The amount of water that
3 had been diverted and was being used was 30 inches. This decree identified
4 other water rights that are appurtenant to other lands owned by W. R. Thomas.
5 Besides the Mills, Gary M. and Jacquelyn J. Galbraith and Chester Vernon & Roma
6 B. Stokes own land within the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 and are asserting a
7 water right. Their claims are addressed on pages 202 and 519, respectively.
8 Between the three claimants, rights are being asserted for the irrigation of a
9 total of 33 acres. Based on the record, a right exists for the irrigation of a
10 maximum of 30 acres, which is the maximum the Referee can recommend that rights
11 be confirmed. There is an additional three acres being irrigated beyond the
12 historic water right. There is insufficient evidence in the record to show
13 where the additional three acres are located, therefore, the Referee will
14 recommend that the right confirmed to each claimant be only a portion of what
15 they are asserting a right. Thirty acres is 91 percent of the total acreage
16 being irrigated, so each claimant will be recommended a right for 91 percent of
17 the land they are irrigating. The proportionate share of the 30 acres that the
18 Mills would enjoy is 11.8 acres.

19 A reading of the Findings of Fact that preceded the Ferguson decree would
20 suggest that another right is appurtenant to lands that include the S $\frac{1}{2}$ SW $\frac{1}{4}$ and
21 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. The Findings of Fact state that Mrs. J. L. Bennett owned
22 the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, with 30 acres being
23 irrigated. However, the evidence presented by Mr. Stokes clearly shows that
24 Mrs. Bennett did not own the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. Claimants in the
25 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, (Tirotta and Magnuson) have put into the record evidence to

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1 show that Bennett owned the S½SW¼ and SW¼SE¼ of Section 33, not Section 32. See
2 page 161 and 331 of this report for discussion of their claims.

3 There are no water right claims filed pursuant to RCW 90.14 in State's
4 Exhibit DE-5 that the Referee can clearly conclude are appurtenant to the Mills
5 property. However, Ecology offered SE-224, which is a Motion to Allow Admission
6 of Additional 90.14 Water Right Claims Relating to Subbasin No. 9,
7 Wilson-Naneum. The water right claims attached to the motion were located in
8 the Kittitas County Superior Court file No. 18145, State v. Carlson, et ux., et
9 al.. The claims registration period under RCW 90.14 ended on June 30, 1974 and
10 the filings and hearings related to State v. Carlson, supra were held in 1972
11 and 1973. Apparently some of the claims that were intended to be filed pursuant
12 to RCW 90.14 ended up in the Kittitas County records. There is not definitive
13 information in the record to explain how or why this happened. The Referee
14 finds that those landowners whose claims were inadvertently filed at the
15 Kittitas County Courthouse rather than with Ecology have substantially complied
16 with RCW 90.14.

17 One of the claims attached to the State's motion was signed by Ed Buchanan,
18 who owned the Mills property in the early 1970's. It claims a right to divert
19 0.24 cubic foot per second from Wilson Creek for the irrigation of 13 acres.
20 The point of diversion is in the SW¼SE¼ of Section 32. Unfortunately, a
21 description of the lands on which water is used is not included. Written on the
22 document is "See attached", however, there is nothing attached. Ed Buchanan was
23 a party to the Carlson case in 1971 and was listed in the Order Pendente Lite
24 with a Class 10 right (1885) for the land now owned by the Mills. The Order
25 authorized the use of 0.22 cfs from Wilson Creek for irrigation and stock

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1 watering. The Referee believes that it is reasonable to conclude that the water
2 right claim filed by Mr. Buchanan in 1973 is intended to be for the same land.

3 The Referee recommends that a right be confirmed under Court Claim No.
4 01801 with a June 30, 1885, date of priority for the diversion of 0.236 cubic
5 foot per second in May and June, 0.118 cubic foot per second in April and July 1
6 through October 14, 59 acre-feet per year for the irrigation of 11.8 acres and
7 stock watering. The point of diversion shall be in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32.
8 The claimant should contact the Department of Ecology concerning compliance with
9 RCW 90.03.380 for the additional point of diversion.

10 COURT CLAIM NO. 02289 -- James M. Mills
11 Mr. & Mrs. George Nelson

12 Barbara Owen filed a Statement of Claim asserting a right to use an unnamed
13 source of water for irrigation and stock watering. On June 13, 1990, George M.
14 and Belva J. Nelson were joined to the claim. On December 19, 1990, James M.
15 Mills and Suni Mazur-Mills were joined to the claim. On February 19, 1993, Ms.
16 Owen transferred her interest in the claim to James M. Mills. Attorney Michael
17 Bauer appeared at the evidentiary hearing representing the Nelsons and Ms.
18 Owen. Mr. Nelson testified at the hearing.

19 The property described in Court Claim No. 02289 is the West 307 feet of
20 Lots 1 and 2 of Highway Addition to Kittitas County, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
21 of Section 6, T. 17 N., R. 19 E.W.M. Mr. Nelson testified that he owns 1.5
22 acres and Ms. Owen owned 2 acres. The Nelsons acquired their land in 1988.
23 About half of the land is in pasture and the rest is lawn, garden, trees, and
24 the Referee presumes, a home. Two horses are pastured during the irrigation
25

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1 season. Water is diverted from Lyle Creek near the center of Section 31,
2 T. 18 N., R. 19 E.W.M. and carried to the claimants' property in a ditch. Mr.
3 Nelson diverts from the ditch into a 55 gallon drum, on which a 2 HP pump has
4 been placed. Water is pumped from the drum into a sprinkler system. Up to ten
5 sprinklers can be operated at one time. Mr. Nelson did not know how much water
6 he uses. Mr. Nelson also was not familiar with the irrigation system used on
7 the Owen property. He believes that the Owen parcel has been irrigated and is
8 also pasture land, with 5 horses on the pasture. A large ditch separates his
9 parcel from the Owen parcel.

10 Mr. Nelson has lived in the area since 1929 and was aware that this land
11 was part of a larger farm or ranch. He is sure it was irrigated at that time,
12 but does not know any particulars about how it was irrigated or how much water
13 was used. There was no historical record provided for this land in the way of a
14 patent to show when the larger parcel separated from Federal ownership or any of
15 the ownership history. The Sander v. Bull decree addresses water rights on Lyle
16 Creek, however, without knowing who owned the land at the time this decree was
17 entered, it is not possible to determine whether a water right was awarded.

18 Water Right Claim No. 070389 was filed by Steven and Barbara Farkas,
19 apparently owners of the land during the claims registration period. It asserts
20 a right to divert 0.02 cubic foot per second, 4 acre-foot per year for each acre
21 irrigated. A right was asserted for stock water and the irrigation of two acres
22 in the west 307 feet of Lots 1 and 2 of Highway Addition. However, at the time
23 the claim was filed in 1974, there was no land being irrigated.

24 The Referee concludes that there is insufficient information in the record
25 at this time to recommend that a water right be confirmed. Although Mr. Nelson

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1 recalls the land being irrigated in 1929, there is no evidence of when that use
2 might have begun and no historical record to use to establish a potential
3 priority date for the water right. Additionally, there was insufficient
4 testimony about continued water use on the Owen property to allow for
5 confirmation of a water right. Testimony of the quantity of water being used is
6 also lacking, as is a legal description for each parcel.

7
8 COURT CLAIM NO. 00951 -- Vernon Mills
& Lorraine Mills

9 Elmer C. and Alta Cobain submitted a claim to the Court for use of waters
10 from Lyle Creek for stock watering. On November 13, 1990, Vernon and Lorraine
11 Mills were substituted for the Cobains. Mr. Mills and Don Cobain, Elmer and
12 Alta Cobain's son, testified at the evidentiary hearing.

13 The land described in Court Claim No. 00951 is the ~~W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$~~ of Section 31,
14 T. 18 N., R. 19 E.W.M. and is 20 acres in size. Lyle Creek flows diagonally
15 through the property. The Court claim asserts a right to use one gallon per
16 minute, one acre-foot per year for stock watering. A right was not being
17 asserted for irrigation. However, at the evidentiary hearing, Mr. Mills
18 requested to amend the claim to also assert a right to use waters from Lyle
19 Creek for irrigation. The land is pasture and up to 30 head have been pastured
20 on the land. Livestock have access to, and drink directly from, the creek.

21 Don Cobain testified that his parents bought the property in 1958. At that
22 time it was a dairy. His father irrigated about two acres out of Lyle Creek.
23 It is not clear that there was any water from Lyle Creek diverted and used to
24 irrigate the land prior to when the Cobains bought it in 1958. There was no
25

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1 testimony of water use prior to 1958. The Referee was not able to find any
2 reference to this property in any of the prior decrees, nor is there any
3 information in the record about the owner of the land at the time the decrees
4 were entered.

5 Water Right Claim No. 042141 was filed by Elmer C. Cobain pursuant to the
6 requirements of RCW 90.14. It asserts a right to 1 gallon per minute, 1
7 acre-foot per year for stock watering. The claim states that the diversions are
8 along the entire channel of the creek through the property. This implies a
9 non-diversionary use, where the livestock simply drink from the creek channel.
10 This type of use is covered by the stock water stipulation discussed on page 4
11 of this report.

12 Elmer Cobain asserted a right for non-diversionary stock watering in both
13 the claim he filed with the Court in this proceeding and in the claim filed
14 pursuant to RCW 90.14. This leads the Referee to conclude that is the extent of
15 the right he believed was appurtenant to the land. Nothing has been provided to
16 show otherwise. Based on the foregoing, the Referee cannot recommend
17 confirmation of a water right beyond that covered by the stock water
18 stipulation.

19 A right is also being asserted by Vernon and Lorraine Mills for use on a
20 three acre parcel south of Ronald Road in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31. This
21 parcel is not described in Court Claim No. 00951. Mr. Mills is asserting a
22 right to irrigate the 3 acres and water stock from Lyle Creek. As with the
23 other parcel, there is little information about historical water use on the
24 land. It also was not described in any of the earlier decrees dealing with use
25 of Lyle Creek or Wilson Creek water. Additionally, there is no evidence that a

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1 claim was filed pursuant to RCW 90.14 for this particular parcel. Failure to
2 file a claim relinquishes any right that may have existed, RCW 90.14.071.

3 Due to the lack of evidence to show that a right was legally established
4 for the land and lack of an RCW 90.14 claim, the Referee cannot recommend that a
5 right be confirmed.

6
7 COURT CLAIM NO. 00899 -- Donna Minielly
8 Maurice Olney
& Ruth Ann Olney

9 A statement of claim was filed by Donna and Wally M. Minielly for use of
10 waters from Naneum Creek. On December 20, 1989, Clifford Gage was joined to the
11 claim and on February 17, 1994, Maurice and Ruth Ann Olney were substituted for
12 Mr. Gage. Clifford Gage, represented by Attorney John P. Gilreath, testified at
13 the evidentiary hearing.

14 The property described in Court Claim No. 00899 is basically the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$
15 of Section 4, T. 17 N., R. 19 E.W.M. and is 20 acres in size. The claimants are
16 asserting a right to irrigate the entire 20 acres and the State's Investigation
17 Report indicates 20 acres are being irrigated. The claimant also has up to 25
18 cow/calf pairs that are watered from the irrigation ditches and drink directly
19 from Naneum Creek as it crosses the southeast corner of the property. A right
20 is being asserted for 20 inches of water or 0.40 cubic foot per second, and
21 158.4 acre-feet per year.

22 The claimant's land is part of the land owned by James Ferguson at the time
23 the Ferguson decree was entered. Mrs. Gage is James Ferguson's granddaughter.
24 According to the Findings of Fact, Ferguson settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and
25 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. on July 5, 1872. The decree awarded

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1 him 160 inches of water from Naneum Creek for use on that land. The decree
2 stated that one inch of water would be used to irrigate one acre of land in May
3 and June and one-half inch of water for each acre the rest of the year.
4 Although the claimants are asserting a right to 158.4 acre-feet per year, only
5 102.4 acre-feet per year can be diverted from the creek during irrigation season
6 at the instantaneous rate allow for in the decree.

7 Besides the Olneys, there are several other claimants in this proceeding
8 who are successors to James Ferguson and share a portion of the water right.
9 Those claimants are: Gwendolyn and Robert Cooke, Edith Thomas, Morrison
10 Ranches, Frank Phelps, and Laurance Raap. Their claims are addressed elsewhere
11 in this report (see table of contents).

12 Water Right Claim No. 129604 was filed by Wally Minielly asserting a right
13 to use 1 cfs, 160 acre-feet per year from Naneum Creek for the irrigation of 20
14 acres and stock watering in the west 650 feet of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4,
15 T. 17 N., R. 19 E.W.M. Additionally, Certificate of Change of Point of
16 Diversion recorded in Volume 2, page 882 appears to apply to the claimant's
17 water right. It authorized several people, including Wally Minielly to change
18 the point of diversion of 3.2 cubic feet per second (which would be 160 inches)
19 from Naneum Creek from a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N.,
20 R. 19 E.W.M. to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16. The diversion that feeds a
21 ditch that goes south through Sections 21, 28 and 33, T. 18 N., R. 19 E.W.M. is
22 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16. This ditch feeds the neighboring Phelps (now Kivi)
23 property and could have been used to serve the claimant's land in the past.

24 The Referee recommends that a right be confirmed under Court Claim No.
25 00899 with a July 5, 1872, date of priority for the diversion of 0.40 cubic foot

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1 per second in May and June and 0.20 cubic foot per second in April and July 1
2 through October 15, 102.4 acre-feet per year for the irrigation of 20 acres and
3 stock watering in the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. The point
4 of diversion will be that authorized in Certificate of Change recorded in volume
5 2, page 882.

6
7 COURT CLAIM NO. 01718 -- Floyd A. (Buck) Minor
8 & Merna Minor
9 Dwight Bolton

10 Floyd A. and Merna Minor submitted a claim to the Court for the use of
11 waters from Wilson Creek and an unnamed spring. The Minors are represented by
12 Attorney Richard T. Cole and Floyd Minor testified at the evidentiary hearing.
13 On June 23, 1998, Dwight Bolton was joined to the claim.

14 The Minor's property lies in the SE $\frac{1}{4}$ of Section 7, excluding the south 603
15 feet, and a portion of the SW $\frac{1}{4}$ of Section 8, both in T. 18 N., R. 19 E.W.M.
16 They are asserting a right to irrigate 136 acres within land they currently own
17 and an additional 20 acres on land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7 which they have
18 sold to other parties. Water is diverted from Wilson Creek from points in the
19 NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7 and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8. They flood irrigate pasture and
20 hay ground and are seeking a right to use 3 acre-feet per acre and to divert 3
21 cfs from each diversion point, for a total of 6 cfs. It is not clear whether
22 this instantaneous quantity is also used on the lands in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7
23 sold to other parties. Up to 150 head of cattle are on the land from
24 July through November and 90 head over the winter months. A spring in the
25 NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 is used solely for stock watering. The spring at one
26 time supplied domestic water to the Minor home and that of William Erickson,

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1 whose property is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The domestic use was discontinued
2 many years ago and a right is not being asserted for that use.

3 The land sold by Mr. Minor that he is including within his claim lies in
4 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. Approximately 20 acres were sold to Dr. J. A. Bourdeau
5 and 7.36 acres were sold to Dwight Bolton. Only Mr. Bolton has been joined to
6 the claim. Although the testimony about irrigation was very general, the
7 Referee concludes that it was intended to show continued irrigation on the lands
8 sold to Dr. Bourdeau and Mr. Bolton. However, Mr. Minor testified to there
9 being 20 acres irrigated within the area he sold. Between the two new owners,
10 there is a total of 27 acres owned, with no specifics about where the 20
11 irrigated acres are within the 27 acre total ownership. Therefore, each will
12 get a proportionate share of the 20 acres.

13 Three water right claims were filed pursuant to the requirements of RCW
14 90.14 for lands addressed in Court Claim No. 01718. Water Right Claim No.
15 079486 asserts a right to divert 3 cfs, 620 acre-feet from a creek for
16 irrigation of 130 acres and stock watering in the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 and the
17 E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7. The described point of diversion is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
18 Section 8, on Wilson Creek. WRC No. 079489 asserts a right to divert 2 cfs, 180
19 acre-feet per year from a creek for the irrigation of 45 acres and stock
20 watering in part of the SE $\frac{1}{4}$ of Section 7. The described point of diversion is
21 in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, on what is often referred to as Dry Creek (which
22 separates from Wilson Creek about a mile upstream). WRC No. 079491 was also
23 filed for use of the spring in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, asserting a right to
24 use it for stock watering.

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1 Water rights for the SW¼ of Section 8 and the N¼SE¼ of Section 7 were
2 addressed in the Sander v. Jones decree. Mary A. Thomas acquired the SW¼ of
3 Section 8 from James R. Van Alstine who received a patent for the land in 1889.
4 She purchased the N¼SE¼ of Section 7 from the Northern Pacific Railroad Company
5 in 1887. Mary Thomas appropriated 225 inches of water, or 4.5 cubic feet per
6 second in 1889. The record shows that James R. Van Alstine had been in
7 possession of the land since 1877. The SW¼ of Section 8 is riparian to Wilson
8 Creek, so under the Riparian Doctrine the priority of the right would be 1877,
9 when steps were first taken to acquire the land. Section 7, including the
10 N¼SE¼, is riparian to Dry Creek, the branch of Wilson Creek used to irrigate the
11 Minor property in that section. Since it is former railroad land, the priority
12 date would be the date that the map of definite location was filed for Kittitas
13 County, May 24, 1884. There are several other claimants who own land and are
14 asserting rights within the area covered by the 225 inches, but the total rights
15 being asserted are less than the 225 acres to which the water would be
16 appurtenant. Therefore, the irrigated land owned by Mr. Minor or his successors
17 in the NW¼SE¼ would enjoy the proportionate share of the right. However, there
18 is no evidence of a right for the S¼SE¼ of Section 7. The only historical
19 evidence put in the record by the claimant was referencing the prior decrees,
20 none of which cover the S¼SE¼ of Section 7. With no evidence to show that a
21 water right was established for that land, the Referee cannot recommend
22 confirmation of a water right for that part of the Minor property. Within the
23 N¼SE¼ of Section 7 still owned by Mr. Minor, there are approximately 45.32 acres
24 being irrigated and Mr. Minor testified to 20 acres being irrigated within the
25 land he had sold. Additionally, within the SW¼ of Section 8, there are 50.14

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1 acres being irrigated for a total of 115.46 acres being irrigated within the
2 lands covered by Court Claim No. 01718.

3 The Sanders v. Jones decree found that one inch of water was sufficient for
4 the irrigation of one acre during May and June and one-half inch of water was
5 sufficient the remainder of the year. Therefore, the award of 225 inches of
6 water would have been sufficient for 225 acres. The claimant is asserting a
7 right in excess of one inch per acre, but the Referee is constrained by the
8 findings in Sanders v. Jones. Mr. Minor testified that by July 1 the flow in
9 Wilson Creek is very low and water is not always available. The requested 3
10 acre-feet per year per acre is reasonable considering the instantaneous quantity
11 that can be authorized.

12 The Referee recommends that three rights be confirmed under Court Claim No.
13 01718 as follows: With a June 30, 1877, date of priority, a right for the
14 diversion of 1.0 cubic foot per second, from May 1 through June 30 and 0.50
15 cubic foot per second in April and from July 1 through October 15, 150.42
16 acre-feet per year for the irrigation of 50.14 acres and 2.5 acre-feet per year
17 for stock watering within the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8 lying west of Wilson Creek;
18 with a May 24, 1884, date of priority a right for the diversion of 1.21 cubic
19 feet per second from May 1 through June 30 and 0.60 cubic foot per second in
20 April and from July 1 through October 15, 180.96 acre-feet per year for the
21 irrigation of 60.32 acres (15 of which are owned by Dr. J. Bourdeau) and 2.5
22 acre-feet per year for stock watering; also with a May 24, 1884, date of
23 priority to Dwight Bolton, 0.10 cubic foot per second from May 1 through June 30
24 and 0.05 cubic foot per second in April and from July 1 through October 15, 45
25 acre-feet per year for the irrigation of 5 acres.

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1 The claimant was also asserting a right to use an unnamed spring in the
2 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 for stock watering. The testimony was that there is no
3 diversion works in place and the livestock drink directly from the source. This
4 type of use is covered by the stock water stipulation discussed on page 4 of
5 this report and no other right is needed.
6
7

8 COURT CLAIM NO. 01717 -- Jean G. Minor

9 Jean G. Minor submitted a claim to the Court for use of waters from Wilson
10 Creek for irrigation and stock watering. She is represented by Attorney Richard
11 T. Cole and her son, Floyd A. Minor testified on her behalf at the evidentiary
12 hearing.

13 Mrs. Minor owns 20 acres, which appears to be the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7,
14 T. 18 N., R. 19 E.W.M. Mr. Minor estimated that 12 acres lie east of Wilson
15 Creek Road and 8 acres lie west of the road. The aerial photograph put in the
16 record for the claim, DE-1577, has the property outlined and points of diversion
17 marked. Although the claimant is asserting a right to irrigate the entire 20
18 acres, the aerial photograph shows that much of the land west of the road has
19 not been developed, remaining in native vegetation. There appears to be about
20 one acre around the buildings west of the road that is irrigated. There also
21 appears to be about one acre east of the road that is in native vegetation and
22 not farmed. The Referee estimates that the total number of acres that are
23 farmed and irrigated is 12 acres. The State's Investigation Report indicates
24 that the land is not irrigated with water diverted from any of the creeks in the
25 area. However, that conclusion was a result of a misunderstanding. The ditch

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1 that serves the Minor property goes through the Rees (formerly Stoltzman)
2 property to the north and there is not a diversion from the creek that goes
3 directly to Mrs. Minor's property.

4 The land is planted to pasture and 15 to 20 head of cattle are raised,
5 drinking from the irrigation ditches. Mr. Minor testified that one of the
6 ditches carries water through the winter months and is used for stock watering.
7 Mr. Minor testified to using 2 cubic feet per second for irrigation.

8 Two water right claims were filed pursuant to RCW 90.14 that include Mrs.
9 Minor's property. WRC No. 079474 asserts a right to divert 2 cubic foot per
10 second, 60 acre-feet per year from a creek for the irrigation of 15 acres in
11 part of the E $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M. The point of
12 diversion is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8. WRC No. 079475 asserts a right to
13 divert 1.5 cubic foot per second, 80 acre-feet per year from a creek for the
14 irrigation of 20 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. The point of diversion is in
15 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8.

16 Water rights for the SW $\frac{1}{4}$ of Section 8 were addressed in the Sander v. Jones
17 decree. Mary A. Thomas acquired that quarter section from James R. Van Alstine
18 who received a patent for the land in 1889. She also owned the N $\frac{1}{2}$ SE $\frac{1}{4}$ of
19 Section 7, having purchased that land from the Northern Pacific Railroad Company
20 in 1887. Mary Thomas appropriated 225 inches of water, or 4.5 cubic feet per
21 second in 1889. The record shows that James R. Van Alstine had been in
22 possession of the land since 1877. The SW $\frac{1}{4}$ of Section 8 is riparian to Wilson
23 Creek, so under the Riparian Doctrine the priority of the right would be 1877,
24 when steps were first taken to acquire the land. Mrs. Minor's land would enjoy
25 the proportionate share of the 225 inches. There are several other claimants

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1 who own land and are asserting rights within the area covered by the 225 inches,
2 but the total rights being asserted are less than the 225 acres to which the
3 water would be appurtenant.

4 The Sanders v. Jones decree found that one inch of water was sufficient for
5 the irrigation of one acre during May and June and one-half inch of water was
6 sufficient the remainder of the year. Therefore, the award of 225 inches of
7 water would have been sufficient for 225 acres. The claimant is asserting a
8 right in excess of one inch per acre, but the Referee is constrained by the
9 findings in Sanders v. Jones. Mr. Minor testified that by July 1 the flow in
10 Wilson Creek is very low and water is not always available. A diversion of 0.02
11 cfs in May and June and 0.01 cfs the remainder of the irrigation season, results
12 in approximately 5 acre-feet per acre being available for use, were those
13 quantities available in the creek the entire season. That, of course, is not
14 always the case.

15 The Referee recommends that a right be confirmed with a June 30, 1877, date
16 of priority for the diversion of 0.24 cubic foot per second from May 1 through
17 June 20 and 0.12 cubic foot per second in April and from July 1 through
18 October 15, 60 acre-feet per year for the irrigation of 12 acres and 0.50
19 acre-foot per year for stock watering from May 1 through October 15; 0.12 cubic
20 foot per second, 0.5 acre-foot per year for stock watering from October 16
21 through March 31.

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1 COURT CLAIM NO. 05349 -- Ron Mitchell

2 Ron Mitchell submitted a statement of claim to the Court on June 4, 1990,
3 and the Court signed an Order allowing further processing of the claim on
4 September 14, 1990. Mr. Mitchell, who testified at the evidentiary hearing, is
5 represented by Attorney Richard T. Cole.

6 Mr. Mitchell owns all of the NW $\frac{1}{4}$ of Section 33, T. 18 N., R. 19 E.W.M.,
7 except approximately the west 500 feet thereof, which is owned by neighboring
8 claimant Alan Burke. Mr. Mitchell is asserting a right to irrigate 40 acres of
9 hay, grain and pasture that lie in the E $\frac{1}{2}$ NW $\frac{1}{4}$ with water diverted from Naneum
10 Creek. He testified to his belief that his land is riparian to Naneum Creek.
11 He believed that the channel that flows through the easterly part of the
12 property is Naneum Creek. However, the maps submitted by Ecology and other
13 claimants shows Naneum Creek as flowing along the west section line for
14 Section 33. The Referee believes that the channel referred to by the claimant
15 is actually a ditch that diverts from the creek in the NW $\frac{1}{4}$ of Section 16,
16 T. 18 N., R. 19 E.W.M. At one point in his testimony Mr. Mitchell referred to
17 it as the Ferguson Channel.

18 The NW $\frac{1}{4}$ of Section 33 was originally conveyed to Northern Pacific Railroad,
19 who sold it to a C. M. McDonald. By 1890, it was owned by F. S. McDonald, who
20 along with A. J. Sliger filed a Claim of Water Right attesting to having
21 constructed a ditch with a diversion in the SW $\frac{1}{4}$ of Section 28. Construction
22 began on May 15, 1877, and the ditch had a capacity of 150 inches. The claim
23 stated it was used to irrigate land owned by McDonald in the NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
24 Section 33 and land owned by Sliger in the SW $\frac{1}{4}$ of Section 33. Both McDonald and
25

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1 Sliger were parties to the Ferguson decree. McDonald was awarded a Class 9
2 right, which would have an 1878 date of priority, for the use of 100 inches of
3 water. The Findings of Fact that preceded the decree only referenced the land
4 in the NW¼ of Section 33, therefore, the Referee believes that is where the 100
5 inches was appurtenant. Besides Mr. Mitchell, Alan Burke is also asserting a
6 right to a portion of the 100 inches. He is irrigating 30 acres and is basing
7 his claim on the right awarded in Ferguson. The Referee recommended that a
8 right be confirmed for that use, see page 111 of this report for a discussion of
9 the Burke claim.

10 During the presentation of the Mitchell claim, it was acknowledged that the
11 prior owner, Joe Bresnans did not file a claim pursuant to RCW 90.14. The
12 Referee has also reviewed the summary of RCW 90.14 claims filed for this
13 subbasin and was not able to locate one filed by Mr. Bresnans, who was the
14 landowner during the claims registration period. Failure to file a claim
15 relinquishes any right that may have existed, RCW 90.14.071.

16 The Referee cannot recommend that a right be confirmed due to the right
17 having been relinquished for failure to file a claim.

18
19 COURT CLAIM NO. 02133 -- Michael Kelly Moeur, Sr.
20 02134 & Michael Kelly Moeur, Jr.
21 02135
22 02136
23 02137

24 Five Statements of Claim were submitted to the Court by the claimant
25 asserting rights to use five surface water sources within Subbasin No. 9. All
26 five claims will be considered herein. The claimants are represented by

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1 Attorney John P. Gilreath and Michael K. Moeur, Sr., testified at the
2 evidentiary hearing.

3 The claimants own approximately 300 acres along the Yakima River in
4 Sections 24 and 25, T. 17 N., R. 18 E.W.M. They are asserting a right to
5 irrigate 150 of those acres with water diverted from the Yakima River, carried
6 in the Tjossem Ditch; Wilson Creek, carried in the Scott Ditch; Spring Creek,
7 the Yakima River diverted into Spring Creek; and a lake constructed on the
8 property. The specific lands for which they are asserting rights include the
9 N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25, the SE $\frac{1}{4}$ of Section 24 west of the Burlington Northern
10 Railroad tracks and portions of the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24. Most of the irrigated
11 land (142 acres) is planted to a grain and hay rotation, with 8 acres in
12 pasture. The claimants raise 150 cow/calf pairs on their land. The livestock
13 drink from all available water sources, including the irrigation ditches, Spring
14 Creek and the lake on the property. Water that is carried in the Tjossem Ditch
15 and Scott Ditch is ditched to the lake and then pumped into sprinkler irrigation
16 systems. A 30 HP and a 5 HP pump is on the lake. The pumping capacities were
17 not provided. The claimant irrigates 140 days during the irrigation season. A
18 right is being asserted to divert 5.4 cubic feet per second into Tjossem Ditch,
19 of which 3 cfs is used on the property. A right is being asserted for the
20 diversion of 7 cfs from Wilson Creek, of which 4 cfs is used on the property.
21 From Spring Creek, the claimant is asserting a right to use 4 cubic feet per
22 second.

23 Spring Creek is used to irrigate 33 acres. A 20 acre field lies west of
24 the creek and is flood irrigated. A 13 acre field identified as being below the
25 corral is sprinkler irrigated. The claim to Spring Creek is based on a 1945

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Judgment and Decree in Kittitas County Superior Court Cause No. 11052, R. D. Ringer and Emma E. Ringer, and Albert T. Gleason and Edna E. Gleason v. Charles Stone, and the Court's Memo-Decision that preceded the decree. The Moeurs are successors to the defendant, Charles Stone. The Court determined that the plaintiffs had the superior rights to use Spring Creek, to the extent of 200 inches. The decree did not define the water rights of Stone, but found that he could divert and use irrigation water from Spring Creek so long as the same does not interfere with the prior and superior rights of the plaintiffs. The Memo-Decision indicates that approximately 23 acres were being irrigated prior to the Decree on what is now the Moeur property, although Stone's answer to the complaint indicated he was irrigating about 30 acres. The judgment was entered in 1945 and at that time only 23 acres were being irrigated. In 1945, the only mechanism by which a right could be established to irrigate more lands was through the procedures set forth in the Surface Water Code, RCW 90.03. The Referee can find no evidence that those procedures were complied with in order to obtain a right to irrigate an additional 10 acres. The Referee can find nothing in that judgment that would indicate that Stone, who again is the Moeurs' predecessor, had a right to divert 4 cfs from Spring Creek. A diversion of 4 cfs to irrigate 33 acres is excessive and there has been no basis established for needing that quantity of water. The claimant did not testify to how much water actually is diverted from Spring Creek for irrigation or provide any specifics on how they irrigate the two fields that are irrigated from Spring Creek.

Water Right Claim (WRC) No. 018040 was filed by D. M. McAusland, a prior owner of the claimants' property pursuant to RCW 90.14. It asserts a right to

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1 use 3 cubic feet per second, 800 acre-feet per year from Spring Creek for the
2 irrigation of 50 acres. The legal description attached to the claim includes
3 the lands now irrigated from Spring Creek. The point of diversion described is
4 3150 feet west and 2740 feet south of the northeast corner of Section 24,
5 T. 17 N., R. 18 E.W.M. That diversion appears to be a point where what is
6 called Spring Creek diverts from a side channel of the Yakima River. The
7 Referee notes that the water right claim initially had identified Yakima River
8 as the water source and that was crossed off and Spring Creek added. The
9 Referee will consider WRC No. 018040 to address use of naturally occurring water
10 in Spring Creek and contributions from the Yakima River to the creek.

11 The land being irrigated from Spring Creek is riparian to Spring Creek and
12 would enjoy a priority date of when steps were first taken to sever the land
13 from Federal ownership. The irrigated lands lie in the NW~~1~~/~~4~~NE~~1~~/~~4~~ of Section 25 and
14 the only evidence relating to settlement of this land is the patent to Northern
15 Pacific Railroad for much of Section 25, including the NW~~1~~/~~4~~NE~~1~~/~~4~~. The record does
16 not reflect when the railroad sold it into private ownership, but it is part of
17 the lands owned by Charles Stone. The priority date under the Riparian Doctrine
18 for former railroad lands is May 24, 1884, the date the map of definite location
19 was filed for Kittitas County.

20 As previously mentioned, the claimant did not testify to the quantity of
21 water actually being used from Spring Creek to irrigate. Many of the historical
22 decrees in the subbasin have limited the use of 0.02 cfs for each acre
23 irrigated, or 1 cfs for 50 acres. Recognizing the more porous soils along the
24 river, it is reasonable to conclude that a larger quantity of water would have
25 been needed to irrigate this alnd. Therefore, the Referee will recommended 0.03

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1 cfs for each irrigated acres and an annual quantity of 7 acre-feet per acre
2 irrigated. Therefore, under Court Claim No. 02133 the Referee recommends that a
3 right be confirmed with a May 24, 1884, date of priority for the diversion of
4 0.69 cubic foot per second, 161 acre-feet per year from Spring Creek for the
5 irrigation of 23 acres and an additional 6 acre-feet per year for stock watering
6 in that portion of the NW~~NE~~ of Section 25, T. 17 N., R. 18 E.W.M. lying
7 southwest of Spring Creek.

8 The claimant is asserting a right to divert 5.4 cfs from the Yakima River
9 carried through the Tjossem Ditch. The diversion into that ditch is in the
10 SW~~SW~~ of Section 11, T. 17 N., R. 18 E.W.M. The Tjossem Ditch carries water
11 southeasterly through Section 14, into Section 13 where two laterals continue to
12 the south. The second lateral carries water to the claimants' land. This
13 lateral is generally referred to as the Clark Ditch.

14 An agreement between John Hanks and R. P. Tjossem et al. in 1902 provides
15 history on the ditch. The agreement allowed for consolidating two ditches into
16 one and disposed of one of the ditches. A. Steen, William McLeod and Joel Clark
17 were third parties to the agreement and the end result was that their previously
18 used ditch was being consolidated with the Tjossem Ditch, which would carry
19 sufficient water to irrigate their 340 acres, not exceeding 600 inches. Steen
20 and McLeod would each get one-fourth of the water and Clark would get one-half.
21 Affidavits by Peter R. Tjossem and John Hanks made in 1935 provide additional
22 detail. They appear to have been made in support of identifying the water
23 rights for the E~~NW~~ of Section 24, which is part of the Steen/McLeod ditch and
24 delivery area. It does identify that water users on the Clark branch of the
25 ditch, which carries 300 inches are successors to Joel Clark: Lydia Putman,

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1 Alminie Adams, Ollie Cripe, Walter Clark, Martha M. Clark, Charlie Stone, T. W.
2 Farrell and Art Donald.

3 The Moeurs are successors to Charlie Stone and T. W. Farrell and suggest
4 that the remaining named water users own very small acreages. The Moeurs are
5 asserting a right to 270 of the 300 inches. This assertion is based on their
6 ownership of 150 acres of land that they believe is part of 340 acres identified
7 in the Hanks/Tjossem agreement. With there being 600 inches for the 340 acres,
8 each acre would get 1.76 inches or 0.035 cubic foot per second. Assuming that
9 the Moeurs have 150 of the 340 acres, then they would have a right to 5.25 cubic
10 feet per second. There would be more support for this argument if more
11 information was available about the lands owned by all the parties named in the
12 1902 agreement and the 1935 affidavits. The 1935 affidavit clearly states that
13 300 inches went down the Clark branch and 300 inches went down the Steen/McLeod
14 branch. Charlie Stone owned land that is currently not owned by the Moeurs.
15 The testimony was that 33 acres are irrigated from Spring Creek, which would
16 result in 117 acres of the 150 irrigated acres potentially having a right to
17 water delivered through the Clark Ditch. Additionally, much of the Charlie
18 Stone land was once owned by E. C. Stonebreaker, who sold it to T. W. Farrell,
19 along with water rights from Tjossem Ditch, except for 50 inches sold to Ernest
20 Stewart. This provision would appear to reduce by 50 inches the potential right
21 that might be appurtenant to the claimants' land. The record does not show what
22 land was owned by Ernest Stewart. Although the claimants are seeking a right to
23 divert 5.4 cfs into the ditch, they testify to 3 cfs being in the ditch at the
24 point of entry to the property. Richard C. Bain, Jr., a consultant hired by
25 neighboring claimants who also use the Tjossem Ditch, conducted measurements of

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1 the ditch to determine if there was a conveyance loss associated with the
2 ditch. He found that it neither gained nor loss water. Therefore, if 3 cfs is
3 what the claimants need on their property, additional water need not be diverted
4 for conveyance.

5 Determining the priority date for the claimants' land is a bit
6 challenging. A right under the Riparian Doctrine is being asserted. However,
7 that is not appropriate for most of the property. The lands in the SE¼ of
8 Section 24 are not riparian to the Yakima River. Three different individuals
9 homesteaded portions of the SE¼ of Section 24, and a totally different
10 individual homesteaded the SW¼ of Section 24, which is riparian to the Yakima
11 River. Lands cannot be made riparian to a water source through an individual
12 buying up lands that are adjoining a piece that is riparian. Therefore, the
13 Riparian Doctrine can only apply to those irrigated lands in the SW¼ of
14 Section 24. The NE¼NE¼ of Section 25 was not railroad land, it was patented
15 directly to George Gillespie on September 5, 1873. However, there is no
16 evidence that water was diverted from the Yakima River and used on the property
17 during Gillespie's ownership. The only date in the record that is of assistance
18 is the 1902 agreement. The ditch was clearly in place prior to that agreement,
19 but it does not say for how many years prior. The Referee concludes 1900 is a
20 reasonable date to use for the lands in the NE¼NE¼ of Section 25, as that date
21 is just prior to 1902, when we know the ditch was in place. The claimant is
22 urged to further research the records to determine if there is better evidence
23 of when this ditch was constructed.

24 WRC No. 018037 was filed by D. M. McAusland asserting a right to divert 4
25 cubic feet per second, 1200 acre-feet per year from the Yakima River for the

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1 irrigation of 80 acres and stock watering. Attached to the claim is the place
2 of water use which includes the lands the claimants irrigate with Yakima River
3 water. The point of diversion is described as 1790 feet west and 2980 feet
4 south of the northeast corner of Section 24, which appears to be the point where
5 the ditch dumps water into the lake on the claimants' land. The river water is
6 dumped into the lake and then pumped from the lake to sprinkler systems.

7 The Referee recommends that a right be confirmed under Court Claim No. 2136
8 under the Prior Appropriation Doctrine with a June 30, 1900, date of priority
9 for the diversion of 3 cubic feet per second, 831.6 acre-feet per year for
10 irrigation and 12 acre-feet per year for stock watering from the Yakima River
11 for the irrigation of 117 acres and stock watering in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25
12 and the SE $\frac{1}{4}$ of Section 24 west of the Burlington Northern Railroad tracks. The
13 annual quantity is based on diverting 3 cubic feet per second for 140 days
14 during the irrigation season, which is consistent with the claimant's
15 testimony.

16 A right is also being asserted to divert 7 cubic feet per second from
17 Wilson Creek and use of 4 cfs of that for irrigation and stock watering Water
18 is diverted from Wilson Creek in Government Lot 2 of Section 19, T. 17 N., R. 19
19 E.W.M. into Scott Ditch and carried to the lake on the claimants land where it
20 is commingled with Yakima River water. It is then pumped from the lake into the
21 irrigation system.

22 The primary evidence of a water right to Wilson Creek is contained in the
23 Ringer and Gleason v. Stone decree. The Court stated that the plaintiff's had a
24 right to 50 inches of water from Scott Ditch and the defendant had a right to
25 450 inches (9 cfs) of water. The Court found that the plaintiff's right to 50

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1 inches was superior to that of the defendants. The Moeurs put into the record
2 DE-1570 which is a 1924 warranty deed between C. J. Ringer and P. J. Michela for
3 the sale of land in Section 30, T. 17 N., R. 19 E.W.M. The deed states that
4 with the land went 49 inches of water from the Scott Ditch. Although the deed
5 is for lands not owned by the Moeurs, it does support the quantity of Wilson
6 Creek water the Court found was held by Ringer and Gleason.

7 The Moeurs own much of the land previously owned by Charley Stone, but not
8 all of it. The claimants are asserting a right to divert 7 of the 9 cfs
9 mentioned in the Court decree. It is not clear on what that quantity is based,
10 as there was no indication of whether the diversion or ditch was measured. In
11 order to recommend that a water right be confirmed it is important to know how
12 much water is being diverted and used, not the quantity for which a right is
13 being asserted.

14 WRC No. 018039 was filed pursuant to RCW 90.14, asserting a right to divert
15 3 cubic feet per second, 900 acre-feet per year from Wilson Creek for the
16 irrigation of 31 acres and stock watering. The claim was filed for less than
17 half the quantity of water for which a right is being asserted. The acreage
18 identified as being irrigated is also considerably less than that being asserted
19 herein. The 90.14 claim was filed at about the time the lake on the claimants'
20 property was being constructed. It seems likely to the Referee that a different
21 method of irrigating was in place prior to the lake being constructed. The
22 claimants indicated that the land was previously rill or flood irrigated. Less
23 land may have been irrigated by gravity flow than is now being irrigated with
24 sprinklers. Although the Ringer and Gleason v. Stone decree clearly indicates
25 that the claimants' land enjoyed a right to Wilson Creek, it is not clear to

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1 what extent beneficial use continued at the time McAusland owned the land and
2 filed WRC No. 018039.

3 Since the claimant did not address the significant difference between the
4 water right asserted in WRC No. 018039 and the right being asserted in this
5 proceeding, the Referee will not recommend that a right be confirmed for use of
6 Wilson Creek. It is suggested that the claimants address those issues, and also
7 address the actual quantity of water being used during the exception phase of
8 this subbasin.

9
10 COURT CLAIM NO. 01267 -- Morrison Ranches

11 Court Claim No. 01267 was submitted to the Court asserting a right to use
12 water from Naneum Creek for irrigation and stock watering. The claimant is
13 represented by Attorney Jeff Slothower and Bertha Morrison and Chester Morrison
14 testified at the evidentiary hearing.

15 The land described in Court Claim No. 01267 lies in the ~~E~~^W/~~N~~^W/~~S~~^W/~~W/~~W~~^W and
16 ~~W~~^W/~~N~~^E/~~S~~^W/~~W~~^W of Section 4, T. 17 N., R. 19 E.W.M. A right is being asserted for the
17 irrigation of 35 acres that is planted in hay with a grain rotation. Water is
18 diverted from Naneum Creek at two locations, one into the Ferguson Ditch in the
19 ~~S~~^E/~~E~~^W/~~S~~^W/~~W~~^W of Section 16, T. 18 N., R. 19 E.W.M. and the second in the ~~S~~^W/~~N~~^W/~~W~~^W of
20 Section 4, just north of the irrigated land. The claimants testified to using
21 0.5 cubic foot per second out of the Ferguson Ditch to irrigate about 3 acres in
22 the northeast corner of the property. An additional 1.6 cubic feet per second
23 is diverted from the creek at the diversion in Section 4 and used to irrigate
24 the remainder of the property. Based on the irrigation practice of the
25 claimant, approximately 6.6 acre-feet per acre is used on the three acres~~

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1 irrigated from the Ferguson Ditch and 13.86 acre-feet per acre is used on the
2 remainder of the land. A third ditch, called Bull Ditch (not to be confused
3 with the Bull Canal Company Ditch further down the valley) provides stock
4 watering when livestock are on the land. The Bull Ditch comes off of the
5 Cooke/Thomas property to the north. The Referee believes that the source for
6 the Bull Ditch is water delivered from the Ferguson Ditch.

7 The Morrisons are successors to James Ferguson. Bertha Morrisons's husband
8 is one of Mr. Ferguson's grandsons. She has been familiar with the property
9 since 1939 and testified to it being irrigated in much the same manner then as
10 today. The portion of the property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4 is part of the
11 land for which James Ferguson was awarded a right in Ferguson v. United States
12 National Bank of Portland, Oregon, (Ferguson). The Findings of Fact that
13 preceded the decree indicated that James Ferguson settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$
14 and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. on July 5, 1872 and first
15 cultivated and diverted water from Naneum Creek for irrigation of those lands in
16 1873. The land was riparian to Naneum Creek when the water rights were
17 established and the Riparian Doctrine would apply, even though because of the
18 land being subdivided, portions of it are no longer riparian to the creek. The
19 Ferguson decree awarded a right for 160 inches of water for the Ferguson land.
20 The decree awarded one inch of water each irrigated acre in May and June and
21 one-half inch of water the rest of the year. The claimants' land would have
22 portion of that right if beneficial use of the water had continued. The
23 testimony indicates that beneficial use has in fact continued.

24 A portion of the Morrison property lies in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4.
25 According to the testimony of Gwendolyn Cooke, who owns the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of

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1 Section 4, this land was originally settled by a Mr. McEwen in 1871 and
2 Elizabeth Ferguson bought it in 1911. Mr. McEwen was Mrs. Ferguson's brother.
3 A Notice of Appropriation of Water was filed by a James W. McEwen stating that
4 he was claiming a right to 100 inches of water for irrigation. The water is
5 taken from Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. and
6 is conveyed by ditch in a southeasterly direction through his land. The ditch
7 was one-half mile long. The notice stated that the water had been used by
8 McEwen for about 17 years prior to the notice being filed on February 20, 1892.
9 That would place the date of first water use as being 1875. A chain of title
10 for the property was not put in the record, nor was any other documents to show
11 what lands Mr. McEwen owned between 1875 and 1892. DE-55 offered by the Cookes
12 is a series of documents that relate to survey and construction of the Naneum
13 Creek Road. William McEwen is included in a list of names of landowners along
14 the route of the road. Also in that packet of documents is a map that shows the
15 area and on the map is marked J. Ferguson's house and McEwen's house at
16 approximately the location of the land described in Court Claim No. 00740 filed
17 by the Cookes. There is a document signed by W. J. McEwen and J. H. McEwen
18 concerning the road and asking for a change in the location as it crosses their
19 land and that of James Ferguson in Section 4, T. 17 N., R. 19 E.W.M. Mr. McEwen
20 was not a party to the suit that resulted in the Ferguson decree. The
21 Morrison's testimony implied that all of their property was covered by the
22 Ferguson decree as part of the James Ferguson land.

23 Water Right Claim No. 119609 was filed by Chester J. Morrison asserting a
24 right to use 0.80 cfs from Naneum Creek for the irrigation of 40 acres and stock
25 watering in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M.

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1 The point of diversion described in the claim is in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4,
2 where the Morrisons currently divert their water a portion of their water.

3 Additionally, Certificate of Change recorded in Volume 2, pagge 882, issued
4 to several parties, including Chet Morrison, permitting the change in point of
5 diversion of 3.2 cubic feet per second from Naneum Creek. The original point of
6 diversion was in the NW $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16 and the changed diversion was in the
7 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, both in T. 18 N., R. 19 E.W.M. The new point of diversion
8 is into the Ferguson Ditch.

9 The claimant's land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, is part of the land for
10 which James Ferguson was awarded a water right in the Ferguson decree. They are
11 irrigating 20 acres in what is very nearly the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4 and would
12 have a right to use 0.40 cubic foot per second in May and June and 0.20 cubic
13 foot per second the rest of the year from Naneum Creek for the irrigation of
14 those 20 acres. The testimony leads the Referee to conclude that a water right
15 was also established for the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, even though it was not
16 described in the Ferguson decree. Since McEwen was not a party to that suit, a
17 water right can exist even though a right was not awarded in the decree.

18 The Referee recommends that two rights be confirmed to Morrison Ranches for
19 use of Naneum Creek: With July 5, 1872, date of priority, a right for the
20 diversion of 0.40 cubic foot per second in May and June and 0.20 cubic foot per
21 second in April and July 1 through October 15, 100 acre-feet per year for
22 irrigation of 20 acres in that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 17 N.,
23 R. 19 E.W.M. bounded by a line described as follows: Beginning at the center
24 west sixteenth corner (NW corner of NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 4; thence along the
25 sixteenth line S 4°36' W 573.0 feet to the north right of way line of the C.M.

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1 St. P. & P. Ry.; thence along the right of way line N 78°30'W 571.0 feet to the
2 center of gateway in right of way fence; thence N 4°46' E 420.3 feet to a stake
3 in the east and west mid-section line; thence along the mid-section line N
4 86°10' E 572.5 feet to the place of beginning. Also, beginning at the southwest
5 sixteenth corner (SW corner of the NW¼SW¼) of Section 4; thence S 85°44' W along
6 the sixteenth line 641.4 feet; thence N 4°46' E 827.0 feet to the south right of
7 way line of the C. M. St. P. & P. Ry; thence along the right of way line S
8 78°30' E 641.4 feet to a post on the north and south sixteenth line; thence
9 along the sixteenth line S 4°46' W 652.0 feet to the point of beginning.

10 With a June 30, 1875, date of priority, a right for the diversion of 0.30
11 cubic foot per second, 75 acre-feet per year for the irrigation of 15 acres and
12 5 acre-feet per year for stock watering in the W½NE¼SW¼ of Section 4, T. 17 N.,
13 R. 19 E.W.M.

14 The quantity of water awarded is less than what Mr. Morrison testified to
15 using. The right awarded in the Ferguson decree is limited by that decree. The
16 Referee believes that since the Courts in the early 1900's found that one inch
17 of water (or 0.02 cfs) was sufficient to irrigate one acre, it would be
18 reasonable to use that quantity for rights not specifically identified in the
19 decree, unless there is evidence of the quantity of water actually used when the
20 other right was established. That information is lacking in this instance.

21
22 COURT CLAIM NO. 01266 -- Morrison Ranches

23 Court Claim No. 01266 asserts a right to use water from Wilson Creek for
24 irrigation and stock watering. Morrison Ranches is represented by Attorney Jeff

25
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1 Slothower. Bertha Morrison, Chester "Tuffy" Morrison, and Fred Zumbrunnen
2 testified at the evidentiary hearing.

3 The claimants are asserting a right to irrigate 200 acres in the W $\frac{1}{2}$ of
4 Section 30, T. 19 N., R. 19 E.W.M. with water diverted from Wilson Creek. The
5 diversion is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, and water is carried over a
6 mile and a half through the Seaton-Johnson Ditch. The land is in pasture, which
7 is rill irrigated with dirt ditches and gated pipe. Approximately 200 head of
8 cattle are periodically kept on this land during the irrigation season. They
9 drink from the irrigation ditch. The quantity of water used to irrigate the
10 land has not been measured, however, Mr. Morrison estimated it was about 3 cfs.
11 The claimants have also developed a pond that is used for stock watering. The
12 pond is near the center of the NW $\frac{1}{4}$ of Section 30 and is approximately 20 feet
13 long and 10 feet wide. The pond is fed by a spring and is used for
14 non-diversionary stock watering, which is covered by the stock water stipulation
15 discussed on page 4 of this report.

16 Pursuant to the requirements of RCW 90.14, Chester J. Morrison filed Water
17 Right Claim No. 119598 asserting a right to use 2 cubic feet per second, 4
18 acre-feet per year from Wilson Creek for the irrigation of 150 acres and stock
19 watering. The Referee believes the intent was to claim 4 acre-feet per year per
20 acre irrigated. The place of water use is the W $\frac{1}{2}$ of Section 30, T. 19 N.,
21 R. 19 E.W.M. The point of diversion is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, at the
22 location of the presently used diversion.

23 The NW $\frac{1}{4}$ of Section 30 was originally settled by Victor Zumbrunnen on
24 March 9, 1906, but in the fall of 1908 he relinquished his claim to the land.
25 Thomas Hodgson then filed a homestead entry application in November of 1908 and

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1 ultimately received a patent on September 23, 1914. Thomas Hodgson's answer to
2 the complaint filed in the Sander v. Bull case states that after Victor
3 Zumbrunnen settled in 1906 he cultivated a small portion of the land and
4 appropriated a small amount of water. Hodgson began in the spring of 1909 to
5 improve and cultivate his land, ultimately appropriating 80 inches of water from
6 Wilson Creek.

7 Victor Zumbrunnen received a patent on September 21, 1911, for the SW¼ of
8 Section 30. In 1910 he filed a notice of water right stating he had
9 appropriated 2 cfs from Wilson Creek for irrigation, stock watering and domestic
10 supply for his lands in the SW¼ of Section 30. The notice stated that water was
11 carried in a ditch that diverted from the creek near the north boundary line of
12 the SE¼ of Section 18. This diversion is still being used to serve the land.

13 The claimant also put in the record as Exhibit DE-435 a Notice of Water
14 Right filed by Victor Zumbrunnen in 1904. However, this notice does not
15 describe the lands for which a right is being asserted in Court Claim No.
16 01266. This document asserts a right to use waste waters from the NE¼ of
17 Section 30, T. 18 N., R. 18 E.W.M., to the extent of 2 cfs, on the SE¼ of
18 Section 30. The Referee is aware through review of the Subbasin No. 9 exhibits
19 that Victor Zumbrunnen owned other lands besides those in Section 30, T. 19 N.,
20 R. 19 E.W.M.

21 The testimony put in the record by Chester Morrison and Fred Zumbrunnen
22 show that water from Wilson Creek has been used to irrigate the claimant's land
23 in the W½ of Section 30. However, it is apparent from the evidence in the
24 record that water use did not start until at least 1906 and the actual water
25 right may not have been established until 1909 for the NW¼ and 1910 for the SW¼

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1 of Section 30. All of the potential dates for establishment of a water right
2 are after the United States on May 10, 1905, withdrew all of the unappropriated
3 surface waters in the Yakima River Basin. After May 10, 1905, surface water
4 rights could not be established in the Yakima River Basin without the written
5 concurrence of the United States. There was no evidence presented to show that
6 concurrence was obtained. The Court in this adjudication has ruled that rights
7 could have been established for only the use of de minimis quantities of water
8 if that use would not have impacted the Yakima Project. A right for the
9 irrigation of 200 acres cannot be considered de minimis.

10 Therefore, the Referee cannot recommend that a water right be confirmed
11 under Court Claim No. 01266.

12
13 COURT CLAIM NO. 01264 -- Morrison Ranches

14 Court Claim No. 01264 was filed for use of waters from Wilson Creek on the
15 SE¼ of Section 18, T. 19 N., R. 19 E.W.M. Morrison Ranches is represented by
16 Attorney Jeff Slothower. Bertha Morrison, Chester "Tuffy" Morrison and Fred
17 Zumbrunnen testified at the evidentiary hearing.

18 Morrison Ranches is asserting a right to irrigate between 15 and 20 acres
19 in that portion of the SE¼ of Section 18 lying between Wilson Creek and the
20 Seaton-Johnson Ditch. The state's investigation report estimates that 16 acres
21 are being irrigated in this area. Water is diverted from Wilson Creek in the
22 NE¼SE¼ of Section 18 and carried in the Seaton-Johnson Ditch. The irrigated
23 land is pasture on which about 200 head of cattle graze for a couple weeks in
24 the early summer and again in the fall. Cattle drink from the irrigation ditch

25
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1 and directly from Wilson Creek. Non-diversionary stock water use from the creek
2 is covered by the stock water stipulation discussed on page 4 of this report.

3 According to the evidence in the record, this land was originally settled
4 on in 1878 by John Lillard, who prior to 1885 appropriated 8 or 9 inches of
5 water for irrigating purposes. Lillard then conveyed his possession of the land
6 and improvements to Alexander W. Seaton (see Sander v. Bull, 76 Wash. 1, 135
7 Pac. 489 (1913)). Seaton received a patent for the SE¼ of Section 18 on
8 April 25, 1898. The Supreme Court found that the land enjoyed a right to 8
9 inches prior to those who appropriated subsequent to 1885, but not prior to
10 those who deraign title from the railroad. The water rights were again
11 addressed in Thomas v. Roberts in the Findings of Fact dated March 1, 1924, and
12 the decree that was entered the next year. The Findings of Fact found that 9
13 inches of water were appropriated in 1884 and that appropriation had increased
14 to 20 inches. The decree found that the 9 inches were senior to or equal to the
15 rights of the plaintiff in that case.

16 Water Right Claim No. 119600 was filed by Chester Morrison pursuant to the
17 requirements of RCW 90.14. It asserts a right to divert 0.80 cfs, 1.6 acre-feet
18 per year for the irrigation of 40 acres and stock water in the SE¼ of
19 Section 18, T. 19 N., R. 19 E.W.M. The point of diversion is the point
20 currently used to divert water to the land. It is clear that when completing
21 WRC No. 119600, Mr. Morrison did not understand how to estimate the annual
22 quantity of water being used, as 1.6 acre-feet per year is not even enough water
23 to irrigate one acre. The instantaneous quantity of water claimed is consistent
24 with the rights confirmed in both the Sander v. Bull and Thomas v. Roberts
25 decrees.

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1 Mr. Morrison and Mr. Zumbrunnen both testified about their memory of the
2 land being irrigated in much the same manner as at the time of the hearing.

3 Based on the record presented to the Referee, it is recommended that a
4 right be confirmed under the Riparian Doctrine with a June 30, 1884, date of
5 priority for the diversion of 0.40 cubic foot per second in May and June, 0.20
6 cubic foot per second in April and July 1 through October 15, 100 acre-feet per
7 year for the irrigation of 20 acres and stock watering in that portion of the
8 SE¼ of Section 18, T. 19 N., R. 19 E.W.M. lying between the Seaton-Johnson Ditch
9 and Wilson Creek.

10
11 COURT CLAIM NO. 01265 -- Morrison Ranches

12 The claimants are asserting a right to use waters from Naneum Creek for
13 irrigation and stock watering. They were represented by Attorney Jeff
14 Slothower at the evidentiary hearing. Bertha Morrison, Chester "Tuffy"
15 Morrison and Fred Zumbrunnen testified at the hearing.

16 Morrison Ranches owns the E½SW¼ of Section 4, T. 18 N., R. 19 E.W.M. and
17 are asserting a right to irrigate most of that land with water diverted from two
18 diversions on Naneum Creek. According to the testimony, they irrigate 55 acres
19 of hay and 22 acres of pasture with Naneum Creek water. The rest of the land is
20 the homesite, corrals and other buildings. The first diversion from Naneum
21 Creek is in Government Lot 4 of Section 4, about 2,000 feet north of the
22 claimant's land. The second diversion is near the southeast corner of the
23 SW¼NW¼ of Section 4, just outside the northwest corner of the claimant's land.
24 There is also a drain near the center of the land where they capture and reuse
25 irrigation return flows. Mr. Morrison testified to using about 3 cfs from the

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1 northern diversion and 1.5 cfs from the southerly diversion. The land is rill
2 irrigated with dirt ditches and gated pipe.

3 Water Right Claim No. 119599 was filed by Chester Morrison pursuant to the
4 requirements of RCW 90.14. It asserts a right to use 1.6 cfs from Naneum Creek
5 for the irrigation of 80 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4. The point of
6 diversion described is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, and the dimensions are very
7 close to the southerly diversion at the northwest corner of the claimant's
8 property. The Referee believes that it was Mr. Morrison's intent to describe
9 that diversion.

10 The E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4 was originally settled by Samuel C. Thomas, who on
11 August 16, 1889 received a patent for the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4. In 1890
12 the land was sold to John Clifton who was a party to the Ferguson case. The
13 Findings of Fact stated that Clifton owned 160 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of
14 Section 4, which was riparian to Naneum Creek. All of the land was under
15 cultivation, with water taken from the creek for irrigation beginning in 1878.
16 The decree awarded Clifton a right for 160 inches, or 3.20 cfs. Half of that,
17 or 1.6 cfs, would be appurtenant to the Morrison Ranches property. It appears
18 to the Referee that the claimants are attempting to assert a right to the entire
19 160 inches, or 3.20 cfs. However, half of that is appurtenant to the W $\frac{1}{2}$ SE $\frac{1}{4}$ of
20 Section 4.

21 The Referee recommends that a right be confirmed under the Riparian
22 Doctrine with a September 30, 1877, date of priority for the diversion of 1.6
23 cubic feet per second in May and June and 0.80 cubic foot per second in April
24 and July 1 through October 15, 385 acre-feet per year for the irrigation of 77
25 acres and stock watering in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M. The

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1 point of diversion to be authorized will be in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, since
2 that is the only diversion described on the claim form. The Referee recognizes
3 that WRC No. 119599 describes the point as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4,
4 rather than the SW $\frac{1}{4}$ NW $\frac{1}{4}$; however, the diversion is within a few feet of the
5 corner that the two quarter/quarter sections share. Clearly the intent of the
6 claim was to describe the diversion being used by the claimant.

7 A right is also being asserted for use of a spring that is located about
8 300 feet north of the claimant's property, in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4 (on land
9 owned by Stan Youngberg). The spring has been developed and is used for
10 domestic supply on the claimants land. According to a statement by Mrs.
11 Morrison's mother, the spring was first developed and used in 1902. That use
12 has continued to the present. Mrs. Morrison's home is at the same location as
13 John Clifton's house, which at one time burned and the present home built in its
14 place. There was no testimony about the quantity of water used from the
15 spring. Water Right Claim No. 119603 asserts a right to use 10 gallons per
16 minute (0.02 cfs) and 0.90 acre-foot per year for domestic supply from that
17 spring. The quantity claimed is reasonable for domestic supply. Lacking any
18 other evidence as to the quantity of water used, the Referee will use the amount
19 claim in Water Right Claim No. 119603.

20 The Referee recommends that a right be confirmed with a June 30, 1902, date
21 of priority for the use of 0.02 cfs, 0.90 acre-foot per year for single domestic
22 supply in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4.

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1 COURT CLAIM NO. 01252 -- N. N. Eaton & Sons

2 Court Claim No. 01252 was filed by N. N. Eaton & Sons asserting rights to
3 use 40 springs and 3 ponds. The Department of Ecology placed this claim within
4 Subbasin No. 9 and, therefore, it was placed on the schedule for this subbasin.
5 The Referee reviewed the claim and does not believe any of the water sources
6 lies within Subbasin No. 9. The claimants also had Court Claim No. 01236, for
7 which they did appear at the evidentiary hearing and present testimony. There
8 was no testimony presented related to any other water sources besides those
9 described in Court Claim No. 01236. The Referee does not recommend that a water
10 right be confirmed under Court Claim No. 01252 as none of the sources appear to
11 lie in Subbasin No. 9 and there was no testimony presented in support of the
12 claim. Rights to the use of 31 springs and 2 ponds were addressed in the
13 Subbasin No. 21 Report of Referee and the Referee believes the balance of the
14 claims lie in Subbasin No. 10 and will be addressed in that report of referee.
15

16 COURT CLAIM NO. 00598 -- Estate of Dorothy R. Nelson
17 & Estate of Paul Nelson
18 Jeanne M. Dunning

19 A Statement of Claim was filed by Dorothy R. Nelson for the use of waters
20 from Wilson Creek. Jeanne M. Dunning is Mrs. Nelson's successor and Loren
21 Dunning, her husband, testified at the evidentiary hearing.

22 Court Claim No. 00598 was filed for the N½ of Section 29, T. 19 N.,
23 R. 19 E.W.M., the Nelsons and now Mrs. Dunning only own that portion of the N½
24 of Section 29 lying east of the Wilson Creek Road. A right is being asserted
25 for the irrigation of 100 acres, although it appears to the Referee that quite a

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1 bit more than 100 acres is currently being irrigated. Water is diverted from
2 Wilson Creek in the NW¼SE¼, SE¼NW¼, and NW¼NW¼ of Section 20, T. 19 N.,
3 R. 19 E.W.M. to serve this land. According to the testimony, four hundred
4 acre-feet per year is used to irrigate the land, but Mr. Dunning testified to a
5 need for 750 acre-feet to adequately irrigate. However, rights being confirmed
6 in this case are based on historic beneficial use, rather than potential optimum
7 use. Therefore, the Referee can recommend rights be confirmed only for the
8 quantity that has been historically used.

9 The first settler on this land was George Wilson, who acquired it from the
10 Northern Pacific Railroad. The map of definite location for the railroad was
11 filed on May 24, 1884, and Mr. Wilson settled on the land in 1885. Some
12 improvements had been made to the land prior to Mr. Wilson settling, however,
13 most were accomplished after the land was conveyed from Wilson to W. R. Thomas.
14 W. R. Thomas was a defendant in Sander v. Bull,, however, the Court in that
15 proceeding did not determine the rights of the defendants. The defendants were
16 restrained from interfering with the use of water from Naneum and Wilson Creeks
17 by the plaintiff. Although the rights of the defendants were not determined, it
18 is clear from the language in the decree that they were using water to the
19 detriment of the plaintiffs. He also was the plaintiff in W. R. Thomas v. James
20 T. Roberts, et al. In the later case the Court recognized a right to use 75
21 inches (1.5 cubic feet per second) in the N¼ of Section 29 with an 1884 date of
22 priority. The Thomas right for this land was ranked against the defendants in
23 that proceeding, being senior to some and junior to others.

24 Pursuant to the requirements of RCW 90.14 Paul Nelson filed Water Right
25 Claim No. 000093 asserting a right to divert 3 cubic feet per second, 300

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1 acre-feet per year from Wilson Creek for the irrigation of 100 acres in the N½
2 of Section 29, T. 19 N., R. 19 E.W.M. The point of diversion described is in
3 the NW¼NW¼ of Section 20, T. 19 N., R. 19 E.W.M. Mr. Nelson also filed Water
4 Right Claim No. 000094 asserting rights to use of a spring; however, there was
5 no testimony about use of this source of water. Two claims were filed on Paul
6 Nelson's behalf with Kittitas County Superior Court in 1972, each asserting a
7 right for 2 cubic feet per second, 500 acre-feet per year from Wilson Creek for
8 irrigation in the N½ of Section 29. One claim described a point of diversion in
9 the NE¼ of Section 19 and one described a diversion in the NW¼SE¼ of
10 Section 20.

11 Paul Nelson was a party to the 1973 Order Pendente Lite, which listed
12 rights and priorities recognized at that time. The Order identified a right
13 with an 1884 priority for the diversion of 1.50 cfs for the irrigation of 75
14 acres in the N½ of Section 29, less land lying west of the county road.

15 Marilyn J. Wilkinson, under Court Claim No. 00582, Walter and Gail Farrar,
16 under Court Claim No. 02282, and Wallace Stampfly, under Court Claim No. 00462,
17 are also asserting rights to irrigate small portions of the N½ of Section 29,
18 west of Wilson Creek Road. Their respective claims are addressed on pages 533,
19 509, 560 of this report. The ultimate recommendation under those claims was to
20 not confirm a water right for the portion of the N½ of Section 29 they own.

21 Mr. Dunning's testimony was that 100 acres were being irrigated and he is
22 seeking a right for that acreage. However, the decrees that were entered in the
23 early 1900's generally awarded one inch of water for each acre being irrigated,
24 which would indicate that 75 acres were being irrigated at the time of the
25 Thomas v. Roberts decree. The Referee will only recommend confirmation of a

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1 water right for 75 acres, since that appears to be what was being irrigated in
2 1924 and in 1973 when the Pendente Lite Order was entered. Any increase in the
3 number of acres since either of those two dates would have required that a new
4 water right be obtained through the procedures in the Surface Water Code, RCW
5 90.03. Although the Dunnings are irrigating land in the NW¼ of Section 29, the
6 Referee intends to only authorize use of water in the NE¼, so that the place of
7 use is closer to the size of the acres being authorized for irrigation.

8 The Referee recommends that a right be confirmed under the Riparian
9 Doctrine with a May 24, 1884, date of priority for the diversion of 1.50 cubic
10 feet per second, 375 acre-feet per year for the irrigation of 75 acres in that
11 portion of the NE¼ of Section 29, T. 19 N., R. 19 E.W.M. lying northwest of
12 Wilson Creek. Mr. Dunning testified that livestock raised on this land drink
13 from naturally occurring water sources, which is covered by the stock water
14 stipulation discussed on Page 4 of this report.

15
16 COURT CLAIM NO. 01866 -- G. Jay Nelson, et al.

17 Court Claim No. 01866 was submitted to the Court asserting a right to use
18 waters from five unnamed springs, Lyle Creek and Wilson Creek. The claimants
19 are represented by Attorney John P. Gilreath. G. Jay Nelson testified at the
20 evidentiary hearing.

21 The claimants own the W¼ and SE¼ of Section 17, T. 18 N., R. 19 E.W.M. and
22 irrigate 440 acres with water from the unnamed springs, Lyle Creek, Wilson
23 Creek, a source they call Wilson-Lyle, Naneum Creek and Kittitas Reclamation
24 District (KRD). Half of the land is used to produce hay and the other half is
25 pasture. Up to 3,000 head of cattle can be raised on the ranch. A right is

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1 being asserted for 120 acre-feet per year for stock watering. Livestock drink
2 from the ditches, the ponds and from the spring areas. Exhibit DE-1584 is an
3 aerial photograph of Section 17 on which the claimants have drawn their water
4 delivery system. Water is diverted from Wilson Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
5 Section 8, T. 18 N., R. 19 E.W.M. piped under Wilson Creek Road and Rader Road
6 into an open ditch that flows to the southwest across the portion of the
7 claimants land in the NW $\frac{1}{4}$ of Section 17. A diversion from Wilson-Lyle Creek is
8 near the north quarter corner of Section 17 and feeds an open ditch that runs
9 west along the north property line to the ditch from Wilson Creek.
10 Additionally, a pond has been constructed on the Wilson-Lyle Creek channel in
11 the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 that, besides capturing the creek water, also is fed by
12 a spring near the pond and irrigation return flows. Water from the pond is used
13 for irrigation and stock watering. A diversion from Lyle Creek is located in
14 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, which feeds gated pipe that runs along the north and
15 east line of the SW $\frac{1}{4}$ of Section 17. According to the testimony, a ditch that
16 runs along the east section line of Section 17 carries KRD water and Naneum
17 Creek water, however, a diversion from Naneum Creek was not identified. The
18 State's map exhibit SE-2 does not show any connction between Naneum Creek and
19 this ditch.

20 Five springs located on the Nelson property are also used. Three of the
21 springs are located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17, one is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 17, near the pond, and the last is located in the northeast corner of
23 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17. The claimant estimated that 520 acre-feet per year is
24 used from the five springs.

25
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1 Water rights for the Nelson property were addressed in both the Ferguson
2 decree and in Sander v. Jones. The portion of the property in the S½ of
3 Section 17 was addressed in Ferguson. According to the Findings of Fact and
4 Conclusions of Law from the Ferguson case, J. H. Crawford owned the S½ of
5 Section 17, T. 18 N., R. 19 E.W.M. and in 1882 diverted and used water from
6 Naneum Creek for the irrigation of 100 acres. Crawford was awarded a Class 12
7 right to 100 inches (2 cfs). Since the land is not riparian to Naneum Creek,
8 1882 would be the priority date of the right.

9 J. H. Crawford was also awarded water rights to Wilson Creek in Sander v.
10 Jones. The Decision that preceded the decree states that the allegations by J.
11 H. Crawford in his answer are true, except that it does not appear that he
12 diverted water over all his land. It does not describe the lands owned;
13 however, by 1901, when the Ferguson case was filed, he owned the S½ of
14 Section 17. The Referee believes it is not unreasonable to conclude he would
15 have owned the same lands in 1890. Beginning in 1880 water was diverted from
16 Wilson Creek, in steadily increasing quantities, until by 1889 he was diverting
17 80 inches of water.

18 The NW¼ of Section 17 was owned by J. H. Thomas who purchased it from the
19 Northern Pacific Railroad Co. on June 28, 1887. The land is riparian to Wilson
20 Creek and the priority date for riparian rights would be the date the map of
21 definite location was filed by NPRR, which was May 24, 1884. The Decision state
22 that in 1885 Thomas' predecessors appropriated 3 inches and by 1889 was
23 appropriating a total of 32 inches. The last increase in appropriation was 2
24 inches in 1889. The 2 inch figure appears in both the handwritten, signed
25 version of the Decision and the typed version, both of which are in the record.

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1 The Schedule of Rights for the Sander decree also shows the 1889 appropriation
2 as being an additional 2 inches. The claimant put into the record a typed copy
3 of the decree that is different than other typed versions of the decree. Some
4 of the water rights that were awarded to I. M. Thomas in the Decision have the
5 name J. H. Thomas associated with them in the copy of the decree that is part of
6 Exhibit DE-1583. Review of the Decision shows that I. M. Thomas owned different
7 land than J. H. Thomas (the NE $\frac{1}{4}$ of Section 18, T. 18 N., R. 19 E.W.M.) and a
8 right is being asserted by Harold Jenkins in this proceeding for that land. The
9 version of the Decree in DE-1583 also shows that last right awarded to J. H.
10 Thomas in 1889 as being 200 inches. Obviously a significant difference. If the
11 200 inches is correct, the decree would have awarded Thomas 230 inches to use in
12 irrigating 160 acres, which is contrary to the specific holdings in the decree.
13 A copy of the handwritten, signed decree is not in the record. What is in the
14 record is clearly a copy, typed subsequent to entry of the decree. The Referee
15 will not disregard the hand written and signed Decision in favor of this copy of
16 the decree when there is such a significant difference that has not been
17 addressed. The Referee suggests that every effort be made to secure a copy of
18 the handwritten decree so that the quantities may be verified. That will also
19 provide an opportunity to clarify the distinction between I. M. Thomas and J. H.
20 Thomas and the rights awarded to each.

21 Several water right claims were filed by G. Jay Nelson in compliance with
22 RCW 90.14. Water Right Claim (WRC) No. 004563 asserts a right to divert 3 cfs,
23 200 acre-feet per year from Lyle Creek for the irrigation of 100 acres in the
24 NW $\frac{1}{4}$ of Section 17. The described point of diversion is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
25 Section 8, where the stream splits into two channels immediately prior to

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1 entering Section 17. WRC No, 004568 asserts a right to divert 4 cfs, 500
2 acre-feet per year from Wilson Creek for the irrigation of 120 acres in the NW¼
3 of Section 17. The point of diversion described is the point in the SW¼SW¼ of
4 Section 8 where the claimant currently diverts water from Wilson Creek. WRC
5 004565 asserts a right to divert 1 cfs, 730 acre-feet per year from a spring
6 located in the NW¼NW¼ of Section 17 for the irrigation of 80 acres and stock
7 watering in the NW¼ of Section 17. WRC No. 04566 asserts a right to divert 0.50
8 cfs, 365 acre-feet per year from a second spring in the NW¼NW¼ of Section 17 for
9 stock watering and the irrigation of 20 acres in the NW¼ of Section 17. WRC No.
10 004574 asserts a right to divert 2 cfs, 1460 acre-feet per year from Lyle Creek
11 (Wilson) for the irrigation of 110 acres in the S½ of Section 17, T. 18 N.,
12 R. 19 E.W.M. The described point of diversion is 2300 feet south and 2000 feet
13 west from the northeast corner of Section 17, which would be in the SW¼NE¼ of
14 Section 17. Additionally, WRC No. 004571, 004572 and 004578 were filed for use
15 of springs in the S½ of Section 17.

16 Although the claimant is asserting a right to use Naneum Creek, there were
17 no claims filed pursuant to RCW 90.14 for use of waters from Naneum Creek and
18 the claim filed with the Court does not assert a right to that creek. Failure
19 to file a claim waives and relinquishes any right that may have existed, RCW
20 90.14.071. Additionally, there was no testimony about actual use of Naneum
21 Creek, just an indication that one ditch carries Naneum Creek water along with
22 KRD water. There was no diversion identified on Naneum Creek that would serve
23 this ditch. Therefore, the Referee cannot recommend that water rights be
24 confirmed for use of Naneum Creek.

25
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1 There also was no testimony about the history of water use from the
2 springs. The historical record that was relied on was the existing decrees,
3 which address use of water from the creeks and does not provide any evidence
4 concerning use of the springs. Undoubtedly the springs are influenced to some
5 degree by the use of KRD water on updrainage lands. Where there exists either
6 project or foreign return flows intermixed with naturally occurring waters it is
7 important for the Referee to have estimates of the amount of naturally occurring
8 water available for use.

9 In light of the lack of evidence to show that a water right was established
10 for use of the springs in Section 17 through use prior to December 31, 1932, the
11 Referee cannot recommend that a water right be confirmed for the springs. Due
12 to the lack of testimony to show that beneficial use of Naneum Creek water has
13 continued and lack of a RCW 90.14 claim for Naneum Creek, the Referee also
14 cannot recommend that a right be confirmed for that source.

15 The Referee does find that a recommendation can be made to confirm a right
16 to use of waters from Wilson Creek. However, due to the inconsistency between
17 the handwritten Decision and Schedule of Rights and the typed copy of the decree
18 for the lands in the NW¼ of Section 17, the Referee recommends that a right be
19 confirmed for 32 acres. It is suggested the claimant pursue further research to
20 locate a copy of the handwritten and signed decree. The right is recommended
21 with a May 24, 1884, date of priority for the diversion of 0.64 cubic foot per
22 second from May 1 through June 30 and 0.32 cubic foot per second in April and
23 from July 1 through October 15, 160 acre-feet per year for irrigation of 32
24 acres and stock watering in the NW¼ of Section 17. Although this place of use
25 is rather large considering the number of acres authorized for irrigation, the

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1 Referee anticipates that an exception will be filed in an effort to obtain a
2 larger water right. If that is not the case, the claimant shall specify where
3 within the NW¼ of Section 17 the 32 acres lies that will continue to be
4 irrigated from Wilson Creek.

5 It is also recommended that a right be confirmed for use of Lyle Creek to
6 irrigate lands within the SW¼ of Section 17. In addition to the Nelsons, Thomas
7 and Sara Haven (Court Claim No. 1649) are asserting a right to irrigate land in
8 the SW¼ of Section 17 from Wilson Creek, see page 230 of this report. They own
9 5 acres most of which is in the SW¼SW¼ of Section 17 west of Wilson Creek Road.
10 They are entitled to a portion of the right. Their proportionate share would be
11 1 acre, leaving 79 acres for the Nelson property. Therefore, the Referee
12 recommends that a right be confirmed under Court Claim No. 01866 with a June 30,
13 1880, date of priority for the diversion of 1.58 cubic feet per second in May
14 and June and 0.79 cubic foot per second in April and July 1 through October 15,
15 395 acre-feet per year for the irrigation of 79 acres and stock watering in the
16 SW¼ of Section 17.

17 Livestock drinking directly from the spring areas and ponds is covered by
18 the stock water stipulation discussed on page 4 of this report and the claimants
19 shall be placed on the list of those enjoying rights under the stipulation.

20
21 COURT CLAIM NO. 00672 -- Leonard L. Newman
& Loree Newman

22 The Newmans submitted a claim to the Court for the use of water delivered
23 through Bull Ditch for irrigation and stock watering. Mr. Newman testified at
24 the evidentiary hearing.

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1 The Newmans' property lies in the N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 13, T. 17 N.,
2 R. 18 E.W.M., north and east of Wilson Creek. The claimants provided very
3 limited historical information on the property. It is part of a larger piece
4 that was conveyed by the Federal government to Northern Pacific Railroad, who in
5 1887 conveyed it to R. P. Tjossem. Apparently, at one time water was diverted
6 from Wilson Creek for irrigation purposes. However, since 1970 their irrigation
7 water has been provided by Bull Canal Company. There was insufficient evidence
8 submitted for the Referee to conclude that the Newmans' property had a water
9 right for use of Wilson Creek. Bull Canal Company is a claimant in this
10 proceeding and is asserting a right on behalf of its patrons. See page 101 of
11 this report. The Referee will not recommend confirmation of individual water
12 rights for the canal company patrons. Therefore, the Referee does not recommend
13 that a right be confirmed under Court Claim No. 00672.

14
15 COURT CLAIM NO. 01575 -- Brian Norelius
16 Kevin Weyand
& Gail Weyand

17 Robert N. and Laurel L. Bynum submitted a claim to the Court asserting a
18 right to use water from the Yakima River conveyed in the Tjossem Mill Ditch for
19 irrigation and stock watering. On March 23, 1989, Brian Norelius and Judith
20 Nickerson were substituted for the Bynums. Both Mr. Norelius and Ms. Nickerson
21 are represented by Attorney Richard T. Cole, and testified at the evidentiary
22 hearing. On March 27, 2000, Kevin and Gail Weyand were substituted for Ms.
23 Nickerson.

24 The property originally owned by the Bynums was approximately 12.7 acres in
25 size lying in the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M. Mr. Norelius

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1 now owns 9.89 acres and Ms. Nickerson owned approximately 3 acres. Water is
2 diverted from the Yakima River into the Tjossem Mill Ditch near the southwest
3 corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M. The ditch travels
4 southeast across the N $\frac{1}{2}$ of Section 14 and enters Section 13 about 1,000 feet
5 south of the west quarter corner of Section 13. In the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 a
6 pump forces the water through a 12 inch pipe that runs underground beneath the
7 Millpond Manor mobile home park. After the pipeline resurfaces on the east side
8 of Millpond Manor, water is conveyed across the Norelius property to the
9 Nickerson land and further to the south. Prior to Norelius and Nickerson
10 purchasing the property it was irrigated pasture and hay. Ms. Nickerson had not
11 irrigated her parcel since she acquired it in May of 1988. Mr. Norelius has
12 continued to irrigated his parcel in the same manner as the Bynums, which is
13 with flood irrigation. Mr. Norelius estimates that he uses between 1.0 and 1.5
14 cubic feet per second. Ms. Nickerson is seeking a right to use 0.50 cubic foot
15 per second. Mr. Norelius raises livestock and has had up to 12 animals on his
16 property and that of Ms. Nickerson, who has allowed him to use her pasture, even
17 though it has not been irrigated. It is not clear whether water is diverted
18 into the Tjossem Ditch during the winter months for stock watering.

19 The claimants are asserting a right based on the initial appropriation for
20 the Tjossem Mill Ditch; however, they did not place anything in the record to
21 establish what that date might be. Mr. Cole suggested that additional
22 historical information might be placed in the record by other claimants who use
23 the Tjossem Ditch. According to the chain of title submitted as Exhibit DE-913,
24 the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13 was originally conveyed to the Northern Pacific
25 Railroad, who in 1887 sold it to Joseph McLeod. By March of 1899 the land was

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1 owned by Albert Tjossem and stayed in the Tjossem family until the Bynums
2 acquired it in 1945. Two historical documents appear to be applicable to this
3 claim. An agreement between John Hanks, et ux. and R. P. Tjossem et al.
4 (including Albert Tjossem) was made on October 7, 1902. The agreement granted
5 to the Tjossems property for constructing, operating, etc., an irrigation
6 canal. The land conveyed was a 50 foot strip on either side of a ditch, which
7 description started about 396 feet south of the east quarter corner of
8 Section 14, which is approximately the location of where the Tjossem ditch
9 enters Section 13, and went to the west across the NE $\frac{1}{4}$ of Section 14. The
10 agreement required the Tjossems to abandon another ditch that crossed the N $\frac{1}{2}$ NE $\frac{1}{4}$
11 of Section 14, through which they had been conveying water. It is clear that
12 the Tjossems had constructed a ditch and diverted water prior to 1902, however,
13 the exact date is not in the record. Part of Exhibit DE-1597 is an affidavit by
14 Albert Tjossem that states he has been a resident of Kittitas County since 1877
15 and a member of the firm of R. P. Tjossem and Son since it was organized. It is
16 clear that the purpose of the affidavit is to document the source of water and
17 means of conveying that water for use on lands in Section 24 specifically and to
18 document the merger of the top part of the Steen McLeod and Clark Ditch with the
19 canal belonging to R. P. Tjossem and Son. The affidavit does state that at the
20 time of the 1902 agreement between Hanks and Tjossem (see discussion above) the
21 Tjossems had for many years diverted water from the Yakima River for their mill
22 and that third parties to the agreement (identified as William McLeod and
23 others) had diverted irrigation water from the Yakima River for their lands in
24 Sections 13 and 24.

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1 Pursuant to the requirements of RCW 90.14, Robert N. Bynum and Associates
2 submitted Water Right Claim No. 119386 asserting a right to divert 4 cubic feet
3 per second, 1440 acre-feet per year from the Yakima River from April 15 to
4 October 15 for the irrigation of 30 acres (5 parcels). The date of first water
5 use is shown as 1903. The diversion is at the point where Tjossem Ditch diverts
6 from the Yakima River. At the time the claim was filed in 1974, it states that
7 2.8 cubic feet per second, 1008 acre-feet per year for the irrigation of 20
8 acres was being used. The place of use describes the Bynum property and the R.
9 Bender property, which lies to the south, across the Tjossem Road from the
10 claimants' property.

11 Although the claimants' are asserting a right for stock watering and based
12 on the testimony, seem to seek a year around right for that purpose, the RCW
13 90.14 claim does not assert a right for that purpose and it identifies that
14 water is diverted only during irrigation season, i.e. April 15 to October 15.
15 The Referee concludes that use of water for stock watering is incidental to
16 irrigation and, therefore, only occurs during the irrigation season.

17 The Referee concludes that sufficient evidence has been presented to show
18 that a water right was established for irrigating the claimants land with water
19 diverted from the Yakima River and delivered through the Tjossem Ditch. The
20 priority date for this right is not clear. The claimants assert that the
21 Tjossem Ditch was constructed in the 1880's, however, no evidence has been
22 submitted to support that date. Clearly the ditch was constructed and in use by
23 1902, but that is the only date in the record that can be relied upon for the
24 priority date.

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1 The Referee concludes that a right can be confirmed to Brian Norelius with
2 a June 30, 1902, date of priority for the diversion of 1.0 cubic foot per
3 second, 54 acre-feet per year for the irrigation of 9 acres and stock watering
4 from April 15 through October 15. However, the Referee is not able to recommend
5 that a right be confirmed to Judith Nickerson (now the Weyands). At the time of
6 the hearing in January of 1991, Ms. Nickerson had owned the land for three
7 irrigation seasons and had not irrigated it during that time. She testified
8 that she did not intend to abandon her water right, but she did not testify to
9 an intent to resume irrigating the land in the near future. At the time of the
10 hearing, it was believed by the Referee that the adjudication was a legal
11 proceeding that prevented relinquishment of a water right, see RCW 90.14.140.
12 However, since then the Washington Supreme Court in the case of R.D. Merrill v.
13 Pollution Control Hearings Board has ruled that the legal proceeding needs to
14 prevent the use of water in order for it to be a sufficient cause to prevent
15 relinquishment. Therefore, in order for the Referee to recommend that a water
16 be confirmed to Ms. Nickerson's successors, there needs to be evidence that
17 beneficial use of the water occurred prior to there being five successive years
18 of non-use. RCW 90.14.160. It is suggested that the Weyands file an exception
19 to this report if they are able to testify to beneficial use of water on their
20 land within two years of the evidentiary hearing. Additionally, evidence of
21 when the Tjossem Canal was constructed and first used could lead to an earlier
22 priority date than that currently recognized.

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

1 COURT CLAIM NO. 01956 -- Northwest Rainier

2 Court Claim No. 01956 was originally filed by Park Place Properties and was
3 scheduled for the Subbasin No. 9 evidentiary hearing. Their attorney, Jeff
4 Slothower, notified the Referee that the claimants would not appear at the
5 evidentiary hearing and they did not appear. As there was no testimony or
6 evidence put in the record to support the claim, the Referee cannot recommend
7 that a water right be confirmed under Court Claim No. 01956. On January 5,
8 2000, Northwest Rainier was substituted as claimant.
9

10 COURT CLAIM NO. 00984 -- Timothy P. O'Neill
11 & Deborah S. O'Neill
12 Farmers Home Administration

13 Timothy and Deborah O'Neill submitted a claim to the Court asserting rights
14 to use waters from Wilson Creek and Naneum Creek. On May 3, 1990, the Court
15 ordered that the Farmers Home Administration be substituted for the O'Neills.
16 Farmers Home Administration is represented by Attorney Charles E. O'Connell,
17 Jr., with the U. S. Department of Justice. Clifford Bird and Andrew Mills
18 testified at the evidentiary hearing in support of the claim.

19 The claimant's land lies within the E $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19,
20 T. 17 N., R. 19 E.W.M. A right is being asserted through the statement of claim
21 to use 2 cfs, 600 acre-feet per year from Wilson Creek to irrigate 100 acres and
22 0.16 cfs, 16 acre-feet per year from Naneum Creek to irrigate 8 acres. Mr. Bird
23 farmed and irrigated the land from 1941 through 1980 and during that time it was
24 planted in hay, grain and pasture. Up to 200 head of livestock have been raised
25 on the property. Mr. Bird first rented the land from 1941 until 1957 and then

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1 purchased it. The house that was on the property while he was renting was
2 estimated to have been constructed in the early 1900's, as it had square nails.
3 After Mr. Bird bought the land he had a new house built. In 1980 he sold to the
4 O'Neills. Mr. Bird testified that after he bought the land in 1957 he cleared
5 and planted additional land, about 13 acres in size, east of Wilson Creek and
6 drained additional land about 15 acres in size below the house, which he also
7 put in irrigation. Mr. Bird did not testify to how many acres in total were
8 being irrigated during the time he farmed the land. The State's Investigation
9 Report indicates that 90 acres are irrigated from Wilson Creek and 10 acres are
10 irrigated from Naneum Creek. Mr. Bird also did not testify to how much water is
11 diverted from the creek for irrigation, nor did he describe the irrigation
12 practices he used when he farmed the land.

13 Andrew Mills is the county supervisor for the Farmers Home Administration
14 in Ellensburg. He testified briefly about the chain of title documents that
15 were entered into the record in support of the claim. He specifically testified
16 about a contract dated September 23, 1905, between Stephen Woodhouse and Lucius
17 Winters, which talked about construction of a ditch or drain in the NW¼ of
18 Section 30 to carry water from a slough in that section and a second slough in
19 the SW¼SW¼ of Section 19. It was Mr. Mills opinion that the sloughs would have
20 been created as a result of irrigation of the land in the SW¼ of Section 19, and
21 the accumulation of that irrigation water in the sloughs made it necessary to
22 construct the drain. The Referee does not find that sufficient to prove that a
23 water right was established for use of either Wilson Creek or Naneum Creek on
24 the claimant's land.

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1 However, a second document in the record as part of Exhibit DE-181 is a
2 deed between William Ross and Thomas Donald conveying the land in question. The
3 deed states that conveyed with the land is one-half interest in the waters
4 conveyed in a ditch that takes water from Wilson Creek. This language also
5 appears in a 1910 deed conveying the land from Lucius Winters to William Ross.
6 The provision does establish that water was being used from Wilson Creek in the
7 early 1900's. This land is riparian to Wilson Creek and under the Riparian
8 Doctrine the priority for the right would extend to the date steps were first
9 taken to sever the land from Federal ownership. That date is not known. The
10 chain of title indicates that a patent issued on October 29, 1884, which is the
11 only date in the record that can be used for the priority date. Neighboring
12 claimant Allan Grigg put into the record Exhibit DE-1030, which is a water right
13 statement by S. W. Maxey and Jacob Powell stating that in May 1885 Maxey
14 constructed a ditch from Wilson Creek and appropriated 200 inches of water. The
15 head of the ditch was in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 and the ditch ran in a
16 southwesterly direction about one-half mile into Section 25. Harold Lamb placed
17 in the record exhibits that showed S. W. Maxey owned the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of
18 Section 19, along with other land at the time this statement was filed. The
19 Referee believes this may be the water right that was referenced in the deeds
20 that conveyed one-half interest in the water right, which would result in 100
21 inches of water, or 2 cfs, being appurtenant to the claimant's land.

22 Two water right claims were filed by Clifford Bird pursuant to the
23 requirements of RCW 90.14. Water Right Claim (WRC) No. 033787 asserts a right
24 to use 0.16 cfs, 16 acre-feet per year from Naneum Creek for the irrigation of 8
25 acres on the lands described in Court Claim No. 0984. WRC No. 033788 asserts a

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1 right to use 2 cfs, 600 acre-feet per year from Wilson Creek for the irrigation
2 of 100 acres, also on the lands described in Court Claim No. 0984.

3 Following the presentation of the evidence offered in support of the claim,
4 Attorney John P. Gilreath, appearing on behalf of other claimants scheduled to
5 appear on the same day objected to the claimant not putting on any testimony or
6 evidence to quantify the right, i.e. quantity of water diverted and used on the
7 property and the number of acres irrigated. Mr. O'Connell responded that the
8 claim speaks for itself and no objections were made to the claim.

9 While the claim does express the right that was being asserted by the
10 O'Neills, it is very common for the claim to be different than the actual water
11 use. The Referee must have sufficient testimony to show that beneficial use has
12 continued and the extent of that use, i.e. number of acres irrigated, quantity
13 of water used, etc. Although the historical documents do convince the Referee
14 that a right exists for the land and Mr. Bird's testimony indicates that
15 beneficial use of the right existed during the time he owned the land, there
16 needs to be evidence presented to show that beneficial use continued after 1980
17 and to quantify that beneficial use.

18 Therefore, the Referee does not recommend that a water right be confirmed
19 under Court Claim No. 00984 until that evidence is presented.

20
21 COURT CLAIM NO. 00535 -- David Papineau

22 Court Claim No. 00535 asserts a right to use Spring Creek for irrigation
23 and stock watering. Mr. Papineau, who is represented by Attorney John P.
24 Gilreath, testified at the evidentiary hearing.

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1 The Papineau property lies in Government Lot 4 and that portion of
2 Government Lots 2 and 3 and the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of the Burlington Northern
3 Railroad line, all in Section 30, T. 18 N., R. 19 E.W.M. He owns 93 acres and
4 irrigates 91 acres, primarily with water diverted out of Spring Creek, which is
5 augmented with Yakima River water. A right is also being asserted for use of
6 Wilson Creek water carried in Scott Ditch.

7 Water is pumped from Spring Creek at two locations; a 10 BHP pump is on the
8 creek near the northwest corner of Government Lot 2 of Section 30 and a 15 BHP
9 pump is on the creek just after it crosses into Government Lot 3 of Section 30.
10 Two wheel lines and a big gun sprinkler are used to irrigate 45 acres of hay and
11 46 acres of pasture. Mr. Papineau also testified to flood irrigating his fields
12 occasionally, however, that system was not discussed in any detail. Mr.
13 Papineau testified to using 1.5 cubic feet per second from the two pumps. He
14 also indicated more water is used when he flood irrigates, but did not testify
15 to how much water is used. He also did not testify about whether he still pumps
16 from the creek when he is flood irrigating. Up to 91 cow/calf pairs are raised
17 on the property, drinking directly from Spring Creek as it flows through the
18 property.

19 Several documents were placed in the record in support of the claim. C. J.
20 Ringer filed an affidavit dated April 19, 1923, stating that for the preceding
21 14 years he had owned Lot 4 and that part of Lots 2 and 3 and the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying
22 west of the NPRR in Section 30, T. 17 N., R. 19 E.W.M. and during that time he
23 had farmed the land and irrigated it using 200 inches from Spring Creek. He had
24 been told the water had been used for 8 years prior to his ownership. This

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1 affidavit suggests Spring Creek was first used in 1901 on the claimant's land.
2 No mention is made of use of Wilson Creek water.

3 A deed from Ringer to Michaela in 1933 transferred the same land with 49
4 inches from Scott Ditch and 3/4 of all water rights in Spring Creek. The
5 property was transferred in 1944 to Gleason, a plaintiff in Ringer and Gleason
6 v. Stone. That decree found that Gleason had a right to 150 inches from Spring
7 Creek and 49 inches from Scott Ditch. One hundred and fifty inches of water is
8 equal to 3 cubic feet per second and 49 inches is equal to slightly less than 1
9 cubic foot per second.

10 Water Right Claim No. 024243 was filed by Emery Papineau pursuant to RCW
11 90.14. It asserts a right to use 3 cfs, 900 acre-feet per year from the Yakima
12 River (Spring Creek) for the irrigation of 55 acres and stock watering. The
13 point o diversion described is 2690 feet south and 500 feet east of the
14 northwest corner of Section 30, which is near one of the pump locations. The
15 legal description of the place water is used on the claim form is the NW¼ of
16 Section 30, T. 17 N., R. 19 E.W.M.

17 The current water use is not consistent with WRC No. 024243. Mr. Papineau
18 is asserting a right to, and indicates he is, irrigate 91 acres, while WRC No.
19 024243 states 55 acres are being irrigated and is the number of acres for which
20 a right is claimed. Additionally, the place of water use described on WRC No.
21 024243 is the NW¼ of Section 30, which is where Government Lot 2 is located.
22 However, Government Lots 3 and 4 are located in the SW¼ of Section 30. The
23 Referee estimates that no more than 30 acres are being irrigated within the NW¼
24 of Section 30. The claimant did not address the inconsistency between WRC No.
25 024243 and the right being asserted in this proceeding.

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1 Although not stated in Court Claim No. 0535, a right is also being asserted
2 for use of Wilson Creek. The testimony indicates that water from Wilson Creek
3 was not being used and that the claimant wanted to retain the right for future
4 use. In order to recommend that a water right be confirmed in this proceeding,
5 the Referee needs evidence to show continued beneficial use of the water. That
6 evidence is lacking. Additionally, the Referee can find no evidence to show
7 that a water right claim was filed pursuant to RCW 90.14 for use of Wilson
8 Creek. Failure to file a claim relinquishes any right that may have existed,
9 RCW 90.14.071.

10 Due to the lack of evidence of beneficial use and lack of an RCW 90.14
11 claim, the Referee cannot recommend that a right be confirmed for use of Wilson
12 Creek. Due to the significant inconsistency between WRC No. 24243 and the claim
13 being asserted in this proceeding and that inconsistency not having been
14 addressed by the claimant or his counsel, the Referee cannot recommend
15 confirmation of a water right for use of Spring Creek.

16
17 COURT CLAIM NO. 01724 -- Pautzke Bait Company, Inc.

18 Pautzke Bait Company, Inc. asserts rights under Court Claim No. 01724 for
19 use of several surface water sources in the Yakima River Basin, including use of
20 Mercer Creek, which lies in Subbasin No. 9. Most of the sources claimed were
21 addressed in the Report of Referee and Supplemental Report of Referee for
22 Subbasin No. 7 (Reecer Creek). Only the claim for a right to use Mercer Creek
23 will be addressed herein. Pautzke Bait Company, Inc. is represented by Attorney
24 John P. Gilreath, who appeared on their behalf at the Subbasin No. 9 evidentiary
25 hearing. The claimant asked that the testimony and evidence entered at the

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1 Subbasin No. 7 evidentiary hearing be used in evaluating their claim to a water
2 right for Mercer Creek. With no objections from other parties, the Referee
3 granted that request. Richard C. Bain, a consultant hired by the claimant, and
4 Darrell Eason, who farms the land, testified at the Subbasin No. 7 hearing. No
5 additional testimony was offered at the Subbasin No. 9 hearing. Three exhibits
6 were entered into evidence as part of the presubmittals for this subbasin and
7 will be considered herein.

8 The Pautzke Bait property that is irrigated with water from Mercer Creek is
9 a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 17 N., R. 18 E.W.M. east of
10 Mercer Creek and west of Anderson Road. The field is designated by the claimant
11 as field 7 and is 13 acres in size. It is pasture that is sprinkler irrigated.
12 A 10 HP pump is placed on the creek and feeds handlines on which 42 sprinklers
13 with 9/64 inch nozzles are placed. With an operating pressure of 60 psi, to
14 which Mr. Bain testified, the 42 sprinklers would use 0.42 cubic foot per
15 second. The field is irrigated 7 times during the irrigation season. Mr. Bain
16 testified to using 81.7 acre-feet per year.

17 The portion of the property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 is part of the land
18 to which William Dennis received a patent on June 30, 1876. The claimant is
19 arguing that a priority date of 1871 would be appropriate, as Dennis would have
20 had to be on the property at least five years prior to the time he received the
21 patent. The Court has previously ruled on this argument and directed the
22 Referee to not make an automatic relation back based on this type of theory, see
23 Memorandum Opinion Re: Priority Date -- Date of Patent or Date of Entry, January
24 15, 1995. Therefore, there has to be evidence of when the land was settled, or
25 any intervening actions prior to the patent issuing for an earlier date to be

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1 used. William Merrill received a patent on August 15, 1888, for the SW¼SW¼ of
2 Section 2. Both pieces are riparian to Mercer Creek and were there evidence of
3 when water was first used for irrigation, the patents could be used to establish
4 a priority date, lacking specific information of when the settlers first took
5 action to sever the land from Federal ownership. However, the claimant did not
6 put into evidence any information about a water right actually being established
7 for use of Mercer Creek. At this point in the basin, Mercer Creek is below the
8 Kittitas Reclamation District canal, the Cascade Irrigation District Canal and
9 Ellensburg Water Company's Town Ditch. All three use Mercer Creek as a
10 mechanism to deliver their water. In order to show that there is a water right
11 to use Mercer Creek, the claimant not only has to show water use prior to
12 December 31, 1932, the date by which riparian rights could be established
13 through beneficial use of water, but the claimant also needs to show that
14 natural creek flow is being used. This can best be demonstrated by showing use
15 prior to construction of the three canals.

16 A second issue must be addressed by the claimant. There is no evidence in
17 the record that a claim was filed pursuant to RCW 90.14 for use of Mercer Creek
18 water on this land. At the time that claims were to be filed, the land was
19 owned by the Hundley family. The Referee could find no claim filed in that name
20 for Mercer or Wilson Creek. Failure to file a claim relinquishes any right that
21 may have existed. RCW 90.14.071.

22 Therefore, due to the lack of evidence to show that a water right was
23 established for the land and lack of a RCW 90.14 claim for the property, the
24 Referee cannot recommend that a water right be confirmed for use of Mercer
25 Creek.

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1 COURT CLAIM NO. 01836 -- David T. & Marguerite L. Pearson

2 Court Claim No. 01836 was filed for use of Whiskey Creek on the
3 claimant's property in the N~~1~~/~~2~~SE~~1~~/~~4~~ of Section 27, T. 18 N., R. 18 E.W.M. The
4 Pearsons communicated with the Referee's office prior to the hearing stating
5 that the only right they were seeking was for non-diversionary stock watering,
6 as covered by the stock water stipulation, and that they were no going to attend
7 the evidentiary hearing. As a result, the only right recommended under Court
8 Claim No. 01836 is that provided in the stock water stipulation discussed on
9 page 4 of this report.
10

11 COURT CLAIM NO. 01702 -- John M. Pearson
12 & Julie Ann Pearson

13 The Pearsons submitted a claim to the Court asserting a right to use
14 waters from Mercer Creek for irrigation and stock watering. Mr. Pearson
15 testified at the evidentiary hearing.

16 According to the Statement of Claim, the Pearsons own that portion of the
17 E~~1~~/~~2~~SW~~1~~/~~4~~NW~~1~~/~~4~~ of Section 25, T. 18 N., R. 18 E.W.M. lying south of the Cascade
18 Irrigation District (CID) canal. However, the State's map exhibit, SE-2 also
19 shows them owning a portion of the SW~~1~~/~~2~~SW~~1~~/~~4~~NW~~1~~/~~4~~ of Section 25, which would appear
20 to be where the Pearson home is located. Mr. Pearson testified to irrigating
21 about one acre of lawn and landscape around his home. They also irrigate 9.5
22 acres of pasture. The pasture can either be flood irrigated or can be irrigated
23 with handlines. When handlines are used, an 8 HP pump is placed on the creek.
24 Mr. Pearson did not testify about how much water is used to irrigate the land.
25

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1 The property is also assessed by CID. CID water is delivered to the Pearson
2 property through Mercer Creek. During the irrigation season, comingled water is
3 used.

4 According to Mr. Pearson, his land was part of the land conveyed by the
5 Federal Government to Northern Pacific Railroad in the late 1800's. This is
6 consistent with information provided by other claimants who own land in
7 Section 25. Mr. Pearson did not provide the name of the first individual
8 landowner when Northern Pacific sold the property, nor did he provide any
9 evidence that a water right was legally established through beneficial use of
10 the water prior to December 31, 1932. Because CID water is delivered through
11 Mercer Creek, proof of establishment of a water right would need to include use
12 of water from the creek prior to construction of the CID canal or use during the
13 irrigation season prior to the canal delivering water (1904).

14 Water Right Claim No. 041162 was filed by a prior owner of the claimant's
15 property pursuant to the requirements of RCW 90.14. It asserts a right to use
16 0.16 cfs, 32 acre-feet per year from Wilson Creek for the irrigation of 8 acres
17 in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T. 18 N., R. 18 E.W.M. The point of diversion
18 described is on Mercer Creek just below where the CID canal crosses the creek.

19 Due to the lack of evidence to show that a water right was established
20 through beneficial use of the creek water, the Referee cannot recommend that a
21 water right be confirmed under Court Claim No. 01702.

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1 COURT CLAIM NO. 01182 -- Dorothy Pease
2 & Estate of Murl Pease

3 Dorothy Pease submitted a claim to the Court on behalf of herself and the
4 Estate of Murl Pease. She asserts a right to use waters from an unnamed drain
5 and natural waterway for lawn and garden irrigation. Mrs. Pease testified at
6 the hearing.

7 Mrs. Pease's property lies in a portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34,
8 T. 18 N., R. 18 E.W.M. lying north of Cascade Way. She irrigates about
9 one-quarter acre of lawn and garden with water diverted from a waterway she
10 called Whiskey Creek. It appears to the Referee that Whiskey Creek flows west
11 of the claimant's land. It is not clear from State's Exhibit SE-2 the exact
12 source of the water used by Mrs. Pease. She testified that in 1960 they acquired
13 an easement to install an underground pipeline across a neighbor's land. The
14 State's Investigation Report states that an unnamed drain is the source of water
15 used. A drain in the area of the claimant's land would undoubtedly capture
16 return flows generated by use of Whiskey Creek water, Cascade Irrigation
17 District and Ellensburg Water Company. Mrs. Pease did not testify to the
18 quantity of water used to irrigate her lawn and garden.

19 Water Right Claim No. 003673 was filed by Mr. Pease for use of a drain and
20 natural waterway.

21 Mr. and Mrs. Pease bought their property in 1937 from B. F. Reed and
22 immediately began irrigating. Mrs. Pease testified that her land is part of a
23 larger parcel once owned by Reed and the land was being irrigated when they
24 bought. There was an open ditch and a flume across the B. F. Reed Mill Ditch.

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1 Mrs. Pease did not testify to the source of water for the ditch and flume.
2 Clearly the land was being irrigated in 1937. Identifying the source of water
3 carried in the ditch and flume would help in establishing the potential
4 existence of a water right. However, in order for there to be a water right for
5 the land, there must be evidence that the land was irrigated by December 31,
6 1932, if the land is riparian to the water source or by June 6, 1917, if the
7 land is not riparian to the water source. That evidence is lacking. As a
8 result, the Referee cannot recommend that a water right be confirmed under Court
9 Claim No. 01182.

10
11 COURT CLAIM NO. 01247 -- Jill M. Perry

12 Jill Perry submitted a Claim to the Court for use of waters from Naneum
13 Creek. Ms. Perry, who was represented by Attorney Hugh Spall, testified at the
14 evidentiary hearing. Mr. Spall has withdrawn from representing Ms. Perry.

15 Ms. Perry's property lies in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, T. 18 N.,
16 R. 19 E.W.M. She runs a large cattle feeding operation on the land and
17 irrigates primarily pasture ground, with a grain rotation. Hay has been raised
18 in the past. The land is irrigated with water from Naneum Creek and the
19 Kittitas Reclamation District (KRD). There are three diversions that serve the
20 property, two of which deliver Naneum Creek water. One diversion is in the
21 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, where comingled KRD and creek water are carried in an
22 underground pipe through the NE $\frac{1}{4}$ into the Perry property. A pump is on the
23 creek near the intersection of Schnebly and Naneum Roads, near the northwest
24 corner of the property. A pump is also on a lateral or drain that carries KRD
25 water only to the east half of the property. The person who irrigates the

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1 property was not available to testify, so there were no specifics provided about
2 the irrigation practice. Ms. Perry testified that the water duty is very
3 similar to that on the Dipple Farm, which she manages and referred the Referee
4 to the testimony for that ranch. According to Ms. Perry, approximately 30 acres
5 are irrigated with Naneum Creek water and the rest is irrigated with KRD water.

6 Water rights for this land were addressed in the Ferguson decree. At that
7 time Elijah M. Topliff owned the S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, T. 18 N.,
8 R. 19 E.W.M. and was awarded a Class 7 right for 160 inches, or one inch for
9 each acre. Ms. Perry's property would be entitled to 80 inches or 1.6 cubic
10 feet per second for 80 acres. There is a total of 72 acres irrigated within her
11 ownership, of which 30 acres are irrigated with Naneum Creek water.

12 The Referee could find no evidence that a claim was filed for the Perry
13 property pursuant to the requirements of RCW 90.14. Ms. Perry thought that her
14 husband had filed a claim; however, the Referee could not locate one in either
15 the Perry name or Harold Hawley, from whom they purchased in 1971. Failure to
16 file a claim relinquishes any right that may have existed, RCW 90.14.071.
17 Therefore, the Referee cannot recommend that a water right be confirmed to Ms.
18 Perry under Court Claim No. 01247. The Referee notes that a branch of Naneum
19 Creek, known as Neally Creek, flows through the claimants property. If
20 livestock raised on the property drink directly from the creek, there is a
21 non-diversionary stock water right covered by the stock water stipulation
22 discussed on page 4 of this report.

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1 COURT CLAIM NO. 00461 -- Robert Perry
2 John Ressler
3 & Diana Ressler
4 Gerry Williams
5 & Laura Williams
6 Ron Elkins
7 & Peggy Elkins
8 James S. Ritter

9 COURT CLAIM NO. 05283 -- Ronald D. Elkins
10 & Marguerite A. Elkins

11 Court Claim No. 00461 was originally filed by Henry Bongiorno. In January
12 of 1990, John and Diana Ressler, Gerry and Laura Williams, Ron and Peggy Elkins
13 and Robert Perry were joined to the claim. Mr. Bongiorno's remaining interest
14 in the claim was conveyed to James S. Ritter on August 31, 1990. Ron and Peggy
15 Elkins were the only parties associated with the claim represented at the
16 evidentiary hearing. Charles W. Elkins, Ron Elkins brother appeared on their
17 behalf and testified. Additionally on April 30, 1990, Ronald and Marguerite
18 filed Court Claim No. 5283, which was filed for the portion of the lands
19 described in Court Claim No. 00461 owned by the Elkins.

20 Due to their failure to appear at the evidentiary hearing, the Referee
21 cannot recommend that water rights be confirmed under Court Claim No. 00461 to
22 James S. Ritter, Gerry and Laura Williams, John and Diana Ressler, and Robert
23 Perry.

24 According to Charles Elkins' testimony, the Elkins own 10 acres of land
25 that lies in the ~~S2N2SW2NW2~~ of Section 29, T. 18 N., R. 19 E.W.M. Most of the
26 land is pasture, with the exception of a home and lawn area. The pasture is
27 leased to a neighbor who raises horses. The number of horses varies based on
28 the pasture conditions. Water for the horses is provided from shallow wells on

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1 the property. The pasture is flood irrigated with water diverted from Lyle
2 Creek. The diversion on the creek is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, into a ditch
3 that appears to serve property north and south of that owned by the Elkins.
4 Water is taken from the ditch at the northeast corner of the Elkin property.

5 The Elkins property was acquired in two purchases. Five acres were bought
6 from Mrs. Elkins mother and five acres were bought from another, unnamed party.
7 Although the Elkins were joined to the Bongiorno claim, it does not appear that
8 the land was owned by Mr. Bongiorno. However, the legal description of land on
9 which water is being put to beneficial use on Court Claim No. 00461 includes the
10 Elkins land. Mr. Elkins testimony implied there were documents in the record
11 that would show historical ownership of the land. However, that is not the
12 case. The court claim states that a patent issued to Northern Pacific Railroad
13 for the land and that it was owned by William and Margaret Lyles when the claim
14 was adjudicated in 1890. The Referee assumes that the Sanders v. Jones case is
15 what is being referred to. The Findings of Fact that preceded the decree in
16 Sanders v. Jones does show that the Lyles (also spelled Liles) were parties to
17 the case. It does not describe the lands owned by them. The Referee needs
18 documentation to show that the claimants are successors to the Lyles, or some
19 other party to the case, since there is no other evidence of historical water
20 use.

21 Additionally, it is not clear to the Referee that a water right claim was
22 filed for the claimants' property pursuant to RCW 90.14. Henry Bongiorno filed
23 Water Right Claim No. 118465 which asserted a right to divert 2 cfs, 600
24 acre-feet per year from Lyle Creek for the irrigation of 35 acres. The place of
25 water use described on the claim is the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of

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1 Section 29, T. 18 N., R. 19 E.W.M. A small portion of the Elkins property may
2 be included in the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, but the rest of their land is not
3 included. Additionally, Water Right Claim No. 094505 was filed by William Z.
4 Smith asserting a right to use 2 cfs, 125 acre-feet per year from Lyle Creek for
5 the irrigation of 25.5 acres in part of the NW $\frac{1}{4}$ of Section 29. The Elkins
6 property does lie in "part of the NW $\frac{1}{4}$ ", however, the Referee is not convinced
7 that the intent was to cover the Elkin property. When Mr. Smith appeared at the
8 hearing, his testimony was that he at one time owned over 20 acres and was
9 asserting rights on behalf of those to whom he had sold land. There is no
10 evidence that William Smith once owned the Elkins land. The record does not
11 contain a legal description for the Elkins property, only a hand drawn map that
12 shows the general location of their parcel within the NW $\frac{1}{4}$ of Section 29.

13 The Referee cannot recommend that a water right be confirmed to the Elkins
14 under Court Claim Nos. 00461 and 5283 due to the lack of evidence to show that a
15 water right was established through beneficial use of the water prior to June 6,
16 1917. Historical documentation to show that their land was owned by one of the
17 parties to Sanders v. Jones and was awarded a right in that case would be very
18 helpful. Additional evidence about compliance with RCW 90.14 is also necessary,
19 along with a legal description for the property.

20
21 COURT CLAIM NO. 01129 -- Frank W. Phelps

22 Frank W. Phelps filed Court Claim No. 01129 asserting a right to use
23 unnamed springs for irrigation and stock watering. Mr. Phelps, represented by
24 Attorney Roger Garrison, testified at the evidentiary hearing.

25
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1 The property described in Court Claim No. 01129 is a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$
2 of Section 26, T. 18 N., R. 18 E.W.M. Mr. Phelps is asserting a right to
3 irrigate 7 acres in a 10.6 acre parcel and also provide water for up to 50 head
4 of cattle. The land is planted to hay and also used for pasture. It is rill
5 irrigated. Mr. Phelps had the spring output measured and testified to 0.25
6 cubic foot per second coming from the springs. Drains were constructed to
7 capture the spring flow sometime prior to when Mr. Phelps owned the property.
8 He believes that Schaaque Packing Company owned the land at the time the drains
9 were built. The spring water could not be used for irrigation until the drains
10 were constructed. Since he grew up in the area, he remembers the land being
11 irrigated as far back as 1930 and there being a hay crop at that time. The
12 primary source of irrigation water is water delivered by the Cascade Irrigation
13 District. The spring water is used prior to Cascade turning on in April and
14 after it turns off in October. The spring water is very warm and is
15 particularly important for stock watering during the winter months.

16 Mr. Phelps had limited knowledge about the history of the land. Attached
17 to a water right claim he filed pursuant to RCW 90.14, are several documents.
18 Although the copies are very difficult to read, it is apparent that a Receivers
19 Receipt dated December 3, 1887, acknowledged receipt of final payment for land
20 that included the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26, T. 18 N., R. 18 E.W.M. The payee was
21 John Teofill. December of 1887 is the priority date asserted on Court Claim No.
22 01129. Also attached was a deed dated May 25, 1903, that acknowledged
23 fulfillment of a mortgage between John Teofill and John Robinson. Mr. Phelps
24 purchased the land in 1963 and there had been several intervening owners. Water
25 Right Claim No. 2000072 filed by Mr. Phelps asserts a right to use 0.17 cubic

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1 foot per second, 67 acre-feet per year from and unnamed spring for irrigation of
2 15 acres and stock watering. Mr. Phelps no longer owns a portion of the
3 property described in WRC No. 20072 and is now asserting a right to irrigate 7
4 acres.

5 Although Mr. Phelps has knowledge that the land was being irrigated in
6 1930, since it also receives water from Cascade Irrigation District, that alone
7 is not proof that the springs were a source of the irrigation water. Since the
8 claimant was not able to testify to when the drains were constructed that
9 allowed use of the spring water for irrigation, the Referee cannot conclude that
10 the springs were used for that purpose during a time frame that would result in
11 establishment of a water right. However, it is reasonable to conclude that due
12 to the warm water in the springs they would have been used for stock watering,
13 particularly during the winter months, very soon after the land was settled.

14 Since the springs are located on the claimant's land, the Riparian Doctrine
15 would apply, with the priority date being established when first efforts were
16 made to sever the land from Federal ownership. The earliest date in the record
17 of that happening is December 31, 1887, when the Receiver's Receipt issued. The
18 Referee recommends that a right be confirmed under the Riparian Doctrine with a
19 December 31, 1887, date of priority for the use of 0.25 cubic foot per second, 2
20 acre-feet per year from the unnamed springs for continuous stock watering within
21 that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26, T. 18 N., R. 18 E.W.M. described as
22 follows: Beginning 30 feet south of the northeast corner of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section
23 26; thence S 00°41' E 1752.3 feet along the east line of the W $\frac{1}{2}$ SW $\frac{1}{4}$; thence S
24 87°35' W 311.6 feet; thence S 19°48' W 373.0 feet to the north bank of the
25 Ellensburg Water Company's canal; thence N 73°14' W 7.7 feet along said canal;

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1 thence N 00°41' W 1330.7 feet; thence N 89°38' E 207.0 feet; thence N 00°41' W
2 778.1 feet to the south right of way of the County road; thence N 89°38' E along
3 the right-of-way to the point of beginning.

4
5 COURT CLAIM NO. 00866 -- Gerald E. Platt, et al.
6 Ron Voshall
Sarah Nickel

7 Court Claim No. 00866 was originally filed by Edith Courson. On
8 January 10, 1989, Gerald E. Platt, Ron Voshall and Sarah Nickel were substituted
9 for Mrs. Courson. Larry Nickel testified at the evidentiary hearing on behalf
10 of all three claimants.

11 The claimants' property lies mostly within the S½NE¼SE¼, with about two
12 acres being in the SE¼NW¼NE¼SE¼, all in Section 1, T. 17 N., R. 18 E.W.M. The
13 land has been subdivided, with Platt owning 10 acres, Voshall owning 6 acres and
14 Nickel owning 2.83 acres. Platt irrigates about 9.5 acres of pasture and at the
15 time of the hearing had 6 horses; Voshall irrigates pretty much the entire 6
16 acres and had 4 horses and 6 cows; and Nickel irrigates about 2 acres and had
17 one horse. The number of livestock may vary somewhat each year.

18 Mr. Nickel testified that the three current landowners continued the
19 irrigation practice that was in place when they purchased the land from Edith
20 Courson, which includes use of a 3 HP pump on the creek and sprinkler systems.
21 Put into evidence was a letter dated December 19, 1979, from Thelma Cornwall to
22 Edith Courson discussing the property. The letter indicates Ms. Cornwall's
23 belief that the home that is owned by Sarah Nickel was build by George Champie,
24 who had homesteaded the property long before she became acquainted with it in
25 1921. Her letter indicates that the property is in pasture and there is a

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1 spring in the pasture. There is no mention of irrigation or the source of water
2 that might be used.

3 Also put into evidence is a chain of title, but it does not identify the
4 land for which the chain was prepared. However, comparing it to one that was
5 submitted by Joseph Fitterer for neighboring land, it is apparent it is for the
6 SE¼ of Section 1, T. 17 N., R. 18 E.W.M. It appears that George Champie
7 acquired a portion of the SE¼ of Section 1 in 1905. The chain of title does not
8 show which portions of the SE¼ are covered by each entry, so it is difficult to
9 track the claimants' property back to George Champie.

10 Mr. Nickel testified that the property has three shares of Ellensburg Water
11 Company. It is not clear whether he was referring to only the Nickel property
12 or all three parcels. The claim filed by Mrs. Courson also indicates use of
13 water delivered by Ellensburg Water Company.

14 The Coursons filed several water right claims (WRC) in response to RCW
15 90.14. It appears that three claims were filed by Mr. Courson in 1970 and two
16 additional claims were filed by Mrs. Courson in 1974. The three claims filed on
17 creeks, which all appear to be on Lyle Creek, assert a right to irrigate 14
18 acres if they are considered to be additive.

19 The testimony and evidence provided indicate water use on the property for
20 an extended period of time. However, there was no evidence that a water right
21 was established for use of water from Lyle Creek. Ellensburg Water Company
22 (EWC) uses Lyle Creek to convey water to its patrons, see Report of the Court,
23 Re: Ellensburg Water Company, page 9, line 5. The water that is being
24 withdrawn from the creek could be EWC water.

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1 Due to the lack of evidence to show that a water right has been established
2 for the property for use of Lyle Creek the Referee cannot recommend that a water
3 right be confirmed under Court Claim No. 0866. The water received from
4 Ellensburg Water Company as a result of the shares owned by the claimants is
5 separate from this claim. The water rights for Ellensburg Water Company, a
6 major claimant in this proceeding, have been determined through the Major
7 Claimant Pathway.

8
9 COURT CLAIM NO. 02178 -- Ponderosa Properties, Inc.

10 Ponderosa Properties, Inc. filed a claim with the Court asserting a right
11 to use waters from Wilson Creek for irrigation. Prior to the evidentiary
12 hearing the claimant notified the Referee's office that they no longer owned the
13 property. A Motion to Substitute Parties was sent to the claimant, but was not
14 submitted to the Court. Therefore, the claim remains in the name of Ponderosa
15 Properties. There was no appearance at the hearing in support of the claim,
16 therefore, the Referee must recommend that a water right not be confirmed for
17 the property.

18
19 COURT CLAIM NO. 02380 -- Herman R. Potts
& Janet A. Potts

20 The Potts submitted a claim to the Court for use of water from the combined
21 flow of Wilson and Reecer Creeks. Mr. Potts testified at the evidentiary
22 hearing.

23 The Potts property lies in a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ west of Mercer Creek
24 and east of Anderson Road. They are irrigating 1.5 acres of alfalfa hay with
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1 water diverted from Mercer Creek. Although the statement of claim indicates the
2 source as Reecer and Wilson Creeks, Mr. Potts testified and the map clearly
3 shows that the source of water is Mercer Creek. The Referee understands that
4 there has been confusion concerning the name of many of the creeks in this
5 area. Mr. Potts withdraws water from the creek using a 1 HP pump and irrigates
6 with sprinklers. In the past livestock have been raised on the property and
7 will be again in the future. The Potts have owned the property since 1974.

8 Attached to the Statement of Claim are several documents. Some of them are
9 very difficult to read, but they appear to be quit claim deeds transferring
10 land, including that owned by the claimants. The more recent deeds state the
11 land is transferred "together with water rights and irrigation ditches
12 appurtenant thereto". A deed in 1922 transferred land in the SE $\frac{1}{4}$ of Section 3
13 and portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. It also conveyed all water
14 rights and irrigating ditches appurtenant to the premises herein conveyed
15 including all interest of the granters in and to that certain ditch known as the
16 Klein-Coble-Castle and Regel ditch from the Yakima River". This document was
17 reviewed for a neighboring landowner in the Subbasin No. 7 Supplemental Report
18 of Referee. The SE $\frac{1}{4}$ of Section 3 was owned by one of the parties who
19 constructed the Klein-Coble-Castle and Regel Ditch, however, there is no
20 evidence that lands in Section 2 were owned by any one with a direct interest in
21 the ditch. Because the language is not specific, it is not clear that the land
22 in Section 2 was irrigated from that ditch. Mr. Potts is not asserting a right
23 to use water from the Klein-Coble-Castle Ditch.

24 None of the documents attached to the claim reference water rights to
25 Mercer Creek or use of water from the creek. The Referee finds there is not

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1 sufficient evidence to conclude that a water right was established for use of
2 Mercer Creek. There would need to be evidence of use of that water prior to
3 December 31, 1932, the date by which water had to be used in order to have a
4 right under the Riparian Doctrine. Additionally, by 1932, Cascade Irrigation
5 District's canal and Ellensburg Water Company's Town Ditch both crossed Mercer
6 Creek with CID making deliveries of water through the creek. The claimant would
7 have to show that naturally occurring creek water was being used. In order to
8 do so, it may be necessary to show that use of the water predated construction
9 of those canal.

10 However, efforts to prove the existence of a water right will not resolve a
11 major obstacle to a recommendation to confirm a water right. As far as the
12 Referee can determine, there was no water right claim filed for the property as
13 required by RCW 90.14. The Claims Registration Act required that a water right
14 claim be filed for all uses of water initiated prior to adoption of the Surface
15 Water Code in 1917 and the Ground Water Code in 1945. Failure to file a water
16 right claim waives and relinquishes any right that may have existed. RCW
17 90.14.071.

18 Therefore, due to the lack of proof that a right was established for use of
19 Mercer Creek and the lack of a RCW 90.14 claim for the property, the Referee
20 cannot recommend that a right be confirmed under Court Claim No. 02380.

21
22 COURT CLAIM NO. 00739 -- Kay E. Powers
23 Sandra Thomas

24 Mrs. Edith Thomas submitted the referenced claim to the Court asserting a
25 right to use waters from Wilson and Naneum Creeks for irrigation and stock

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1 watering. Mrs. Thomas, who was represented by Attorney James P. Hutton,
2 testified at the evidentiary hearing in support of the claim. Since the
3 evidentiary hearing, Mrs. Thomas has passed away and her daughters, Kay Powers
4 and Sandra Thomas, have succeed her as claimants.

5 Court Claim No. 00739 asserts rights for lands in Section 32, T. 19 N., R.
6 19 E.W.M. and in the NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. Rights for the
7 lands in Section 4 are also being asserted through Court Claim No. 01454, which
8 was originally filed by Burrill Ferguson. Mrs. Thomas, along with two others,
9 have been joined as parties to that claim. The Referee shall address assertions
10 of water rights for the lands in Section 4 as part of Court Claim No. 01454,
11 rather than as part of Claim No. 00739, see page 147 of this report.

12 Mrs. Thomas owned the N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 and she
13 asserted a right to divert 3 cfs, 980 acre-feet per year for the irrigation of
14 140 acres. According to Mrs. Thomas, water is diverted from the combined
15 Wilson/Naneum Creeks at diversion No. 10 in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 T. 19 N.,
16 R. 19 E.W.M. to irrigate most of the land she owns in Section 32. This
17 diversion serves a head ditch that feeds her flood irrigation system. A second
18 diversion is on Wilson Creek, immediately below where Wilson Creek and Dry Creek
19 split in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. This diversion is used to irrigate her lawn
20 and fruit trees, an area approximately 1/3 acre in size. A third diversion is
21 on Whiskey Creek, also in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, where a 1/2 HP pump is used
22 to withdraw water from the creek into a 5/8 inch hose that is used to sprinkle
23 irrigate her garden.

24 Several water right claims (WRC) were filed by James Thomas, Mrs. Thomas'
25 husband, in response to RCW 90.14. WRC No. 026205 was filed asserting a right

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1 to divert 2 cfs, 720 acre-feet per year from Naneum Creek for the irrigation of
2 70 acres and stock water in the NE¼ and a portion of the SE¼ of Section 32, T.
3 19 N., R. 19 E.W.M. The described point of diversion is in the NE¼SE¼ of
4 Section 29. The date of first water use shown is spring of 1884. WRC No.
5 026210 asserts a right to divert 0.5 cfs, 100 acre-feet per year from Wilson
6 Creek for the irrigation of 1 acre and stock water in a portion of the SE¼ of
7 Section 32. The point of diversion described is in the NW¼SE¼ of Section 32.
8 The date of first water use shown is spring of 1943. WRC No. 056723 duplicates
9 WRC 026210, except the date of first water use shown is spring of 1884. WRC
10 No. 026204 asserts a right to divert 0.80 cfs, 300 acre-feet per year for the
11 irrigation of 40 acres, stock water and domestic supply in the NE¼ of Section
12 32, T. 19 N., R. 19 E.W.M. The point of diversion described is in the NE¼SE¼ of
13 Section 29.

14 Both the State's Investigation Report for the Thomas claim and the RCW
15 90.14 claims filed by James Thomas describe diversions from Wilson-Naneum Creek
16 in the NE¼SE¼ of Section 29. The State's map exhibit Insert A, SE-2 shows a
17 diversion in the SE¼NE¼ of Section 29, marked with No. 10, to a ditch that
18 traverses the SE¼ of Section 29 and enters Section 32 near the north quarter
19 corner and continues south through Section 32 along the west line of the Thomas
20 property. This ditch leads from the diversion to which Mrs. Thomas testified.
21 Two diversions that are not numbered are located on a braid of the creek in the
22 NE¼SE¼ of Section 29 and ditches from the diversions flow through the SE¼ of
23 Section 29 into the NE¼ of Section 32. Mrs. Thomas did not testify to using
24 those diversions.

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1 In addition to the water right claims filed for Wilson and Naneum Creeks
2 previously discussed, Mr. Thomas also filed several claims pursuant to RCW 90.14
3 for use of springs located in the NE¼ of Section 32. However, there were no
4 rights asserted in this proceeding for use of any of the springs.

5 This land has been in the Thomas family since 1894, when Mrs. Thomas'
6 father-in-law, W. R. Thomas, acquired the land. Mrs. Thomas and her husband
7 acquired ownership of the land in 1936. At that time 100 acres were being
8 irrigated. Shortly thereafter her husband began clearing and developing an
9 additional 40 acres and 140 acres have been irrigated since the late 1930's or
10 early 1940's. Mrs. Thomas familiarity with the property extends to the early to
11 mid 1920's. As a child she accompanied her grandparents to the Thomas property
12 to pick cherries and at that time 100 acres were also being irrigated.

13 W. R. Thomas was a party to three Kittitas County Superior Court cases
14 related to water use on Wilson and/or Naneum Creeks. He was a defendant in
15 Ferguson v. The United States National Bank of Portland, Oregon, et al, a 1901
16 proceeding to determine the rights amongst the parties to the waters of Upper
17 Wilson and Naneum Creeks, the combined Wilson-Naneum Creek and Lower Naneum
18 Creek (resulting in Decree No. 2607). During that proceeding W. R. Thomas
19 disclaimed any right in the waters being litigated. He was also a defendant in
20 Olive Sander, et al, v. Charles Bull and Kate Bull, et al., a 1911 proceeding
21 that resulted in Decree No. 4121. The decree did not determine the rights of
22 the various defendants between themselves, but determined the rights of the
23 plaintiffs against the defendants. The only water rights that were defined in
24 the decree were those of the plaintiffs and intervenors. Therefore, the decree
25 itself is not helpful in defining the water rights that may be appurtenant to

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1 the Thomas property. It does show that Thomas was using water from
2 Wilson-Naneum Creek and that the plaintiffs alleged that use was to their
3 detriment. However, a claimant in the Acquavella proceeding, Kayser Ranch,
4 entered Exhibit No. DE-1526, which is a copy of the testimony and proceedings
5 for Sanders v. Bull. W. R. Thomas testified in that proceeding about the land
6 he owned in Section 32, along with other lands he owned at that time. According
7 to Mr. Thomas' testimony in 1911, he was farming approximately 75 acres of land
8 and 65 of those acres were being irrigated with water diverted from
9 Wilson-Naneum Creeks. He testified that there was additional land that was
10 susceptible to irrigation.

11 W. R. Thomas was the plaintiff in Thomas v. Roberts, et al., which was
12 initiated in 1919 to settle disputes over the rights to use water from both
13 Wilson and Naneum Creeks and the combined flows of Wilson-Naneum Creek. A
14 decree was entered on November 16, 1925. The decree prioritized the rights of
15 each of the parties as they related to each other and established the quantity
16 of water to which each party was entitled. W. R. Thomas owned three separate
17 parcels for which he was asserting a right. The Court found that he was
18 entitled to 65 inches of the combined flow of Wilson-Naneum Creek for use on
19 what was referred to as the "Shelton Tract", except as affected by the case of
20 Ferguson v. United States National Bank of Portland, et al. The Shelton Tract
21 is the N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. (The
22 Referee notes that the Thomas decree and findings of fact describe the Shelton
23 tract as being the N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. However, Attorney
24 Hutton filed a Notice of Scrivener's Error on November 13, 1989, identifying
25 that an error had been made in describing the lands owned by W. R. Thomas at the

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1 time of the proceeding. No one objected to this notice and a 1913 map showing
2 land ownerships at that time, which was submitted as an exhibit by Kayser Ranch,
3 confirms this position). The Court stated that the right to 65 inches was
4 initiated in the spring of 1884, which is the priority date asserted by Edith
5 Thomas. The Court in the Thomas opinion did not specify what was meant by
6 "except as affected by the Ferguson decree. However, the decree ranked the
7 parties of the case against each other and the Thomas' entitlement to water
8 initiated in 1884 was ranked inferior to entitlements with subsequent initiation
9 dates if the other person was also a party to Ferguson and awarded a water
10 right. Therefore, although the right resulting from the Thomas decree for this
11 property has a priority date of 1884, it is subordinate to rights with later
12 priority dates that were awarded in the Ferguson decree.

13 The Thomas land is riparian to Wilson Creek. Although only 65 acres were
14 being irrigated in 1911 at the time of the Sanders v. Bull proceeding, Thomas
15 had until December 31, 1932, to perfect the water right being established under
16 the Riparian Doctrine, see Department of Ecology v. Abbott, 103 Wn.2d 686, 694
17 P.2d 1071 (1985). According to Mrs. Thomas' testimony, 100 acres were being
18 irrigated by 1932. Since that time, in the late 1930's the Thomas' increased
19 the number of acres being irrigated to 140 acres and are asserting a right to
20 divert 3 cfs, rather than the 1.30 cfs that was recognized in Thomas v.
21 Roberts. The quantity of water recognized in the Thomas v. Roberts decree was
22 based on irrigating 65 acres and awarded 0.02 cubic foot per second per acre
23 irrigated. The Referee believes that it would be reasonable to use the same per
24 acre quantity for the additional 35 acres that were first irrigated after 1911.
25 Therefore, a right for the use of 2.0 cubic feet per second for the irrigation

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1 of 100 acres is appropriate. An additionally 40 acres were developed and
2 irrigated after 1936. At that time, the only way to establish a new water right
3 was through compliance with the permitting procedures of RCW 90.03. There is no
4 evidence in the record that occurred.

5 Ms. Thomas is asserting a right to use 7 acre-feet per acre irrigated,
6 which would be 700 acre-feet per year for the 100 acres for which the Referee
7 believes a right exists. However, that quantity cannot be withdrawn at the
8 instantaneous diversion of 2.0 cfs. Five acre-feet per acre irrigated is a much
9 more realistic figure to expect to be used if the diversion is limited to the
10 quantity for which a right exists.

11 The Referee recommends that a water right be confirmed to Ms. Thomas from
12 the combined flow of Wilson-Naneum Creek for the diversion of 2.0 cubic feet per
13 second, 500 acre-feet per year for irrigation of 100 acres and 2 acre-feet per
14 year for stock watering. Although Mrs. Thomas testified to using three points
15 of diversion, the historic record indicates that only one diversion was used
16 when the water right was established. Clearly the diversion that utilizes a
17 pump on the creek was established long after the adoption of the water code and
18 the second diversion from Wilson Creek for use on the lawn and fruit trees
19 likely also was established after adoption of the water code. Since 1917,
20 points of diversion could only be added to a water right through compliance with
21 the change provisions of RCW 90.03.380. There is no evidence this occurred.
22 The Referee recommends that the only point of diversion for the confirmed right
23 be in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29.

24 In order to reduce the place of use for the right being recommended for
25 confirmation to reflect an area more closely the size of the acres authorized to

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

1 be irrigated, the Referee has referred to exhibit No. DE-1179 submitted by Mrs.
2 Thomas. This is an aerial photograph of Section 32. Upon review of that
3 photograph, the Referee recommends that the place of use for the 100 acres
4 authorized for irrigation be the NW $\frac{1}{4}$ NE $\frac{1}{4}$, the SW $\frac{1}{4}$ NE $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and the
5 SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32. Due to the creek flowing through this land and the
6 claimants house being located within this area, it appears to the Referee that
7 most of this described area is being irrigated.

8 Each of Mrs. Thomas' daughters own a portion of the land that the Referee
9 intends to designate as the place of use. In hopes of clarifying the right, the
10 Referee will divide the recommendation between Ms. Thomas and Ms. Powers based
11 on what is in the record and submitted with the Motions to Join and Substitute
12 Parties. If necessary this division can be revised during the exception phase
13 of this proceeding if an exception is filed by either party.

14 The Referee recommends that a right for 34 acres be awarded for the lands
15 now owned by Sandra Thomas and a right for 66 acres be awarded for the lands now
16 owned by Kay Powers.

17
18 COURT CLAIM NO. 00782 -- Chas. A. Priebe
& Carrie Priebe

19 The Priebe's filed a Statement of Claim asserting a right to use waters from
20 an unnamed stream tributary of Mercer Creek for stock watering. Mr. Priebe
21 testified at the evidentiary hearing. Recently, Mr. Priebe contacted the
22 Referee's office and stated his intent to not pursue the claim. He has
23 sufficient water for his needs from the Cascade Irrigation District and his
24 domestic well. Based on that contact, the Referee will give the claim no
25

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1 further consideration and it is recommended that a water right not be
2 confirmed.

3
4 COURT CLAIM NO. 00356 -- M. Joanne Pugh
& Estate of Durward Pugh

5 Court Claim No. 00356 was filed by the Pughs asserting a right to use
6 waters from Reecer Creek for the irrigation of 1.4 acres. Greg Pugh, the
7 claimants' son testified at the evidentiary hearing.

8 The claimants property is that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2,
9 T. 17 N., R. 18 E.W.M. lying west of Mercer Creek. Court Claim No. 00356 and
10 Water Right Claim No. 052031, which was filed by a prior owner of the Pugh land,
11 describes the creek as being Reecer Creek. However, State's Exhibit SE-2 and
12 the testimony by other claimants show it as being Mercer Creek. Approximately
13 one-half acre of lawn and garden is irrigated with water from Mercer Creek. A
14 pump is placed on the creek which feeds an underground sprinkler system. Mr.
15 Pugh believes that the system was put in place when the house was built around
16 1974. There are small ditches on the property, providing evidence that it was
17 surface irrigated in the past. Mr. Pugh was not able to provide any history for
18 the property beyond his parent's ownership. Greg Pugh is now the owner of the
19 property, however, the paperwork has not been filed to transfer the claim into
20 his name.

21 Water Right Claim No. 052031 was filed by Willard Hudson pursuant to the
22 requirements of RCW 90.14. It asserts a right to divert 30 gallons per minute 8
23 acre-feet per year from Reecer Creek for the irrigation of 2.4 acres in that
24 portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 west of Reecer Creek. The Referee is
25

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1 aware of there being confusion about the correct names of creeks in the
2 Ellensburg area. The creek referred to is Mercer Creek, not Reecer Creek.

3 The Referee cannot recommend that a water right be confirmed under Court
4 Claim No. 00356. There has not been sufficient evidence presented to show that
5 a water right was established under the Riparian Doctrine through beneficial use
6 of the water prior to December 31, 1932.

7
8 COURT CLAIM NO. 01329 -- Merton Purnell

9 The statement of claim was filed with the Court asserting rights to use
10 several sources of water in Subbasins No. 9 and 10. Those sources lying within
11 Subbasin No. 10 will be addressed in the Report of Referee for that subbasin.
12 Mr. Purnell, who was represented by Attorney Hugh Spall, testified at the
13 evidentiary hearing. In addition Pat Jenkins, who leases the land, and his
14 father Harold Jenkins a prior owner of the land testified at the hearing. On
15 March 15, 1990, Andy H. Gustafson was deposed and the deposition published in
16 open Court on January 16, 1991. Mr. Gustafson, who was 88 years old at the time
17 of the deposition lived in the area and at one time owned the Purnell property.

18 Mr. Purnell owns and is asserting a water right for the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of
19 Section 10; the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14,
20 all in T. 18 N., R. 19 E.W.M. He irrigates 175 acres in Sections 10 and 15 and
21 an additional 13 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14. The crops are pasture and
22 hay and up to 150 cow/calf pairs are raised, drinking from the various ditches
23 and water sources on the property. The land is also assessed by the Kittitas
24 Reclamation District.

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1 The land in Sections 10 and 15 is irrigated with water diverted from the
2 combined flows of Wilson-Naneum Creeks. The diversion is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
3 Section 28, T. 19 N., R. 19 E.W.M. and the ditch is over three miles in length,
4 going through several different properties. The land is irrigated by flood and
5 rill practices. Mr. Jenkins testified that there are two places where creek
6 water enters the property, one crosses over the Highline Canal where the flow
7 was measured at 0.75 cubic foot per second and the second is a undershot to the
8 canal that carries between 0.50 and 1.0 cubic foot per second. Usually creek
9 water is not available after July 1 and KRD water is relied upon. When creek
10 water is available he will irrigate two or three times, with a 10 day rotation,
11 for a total of 30 days of water use. A use of 1.75 cubic feet per second for a
12 30 day period would result in the use of 103.95 acre-feet per year.

13 Mr. Purnell bought the property from Harold Jenkins in 1969 and the land is
14 being irrigated in the same manner as was being done at that time. Water rights
15 for the land were addressed in both the Ferguson decree and the Thomas v.
16 Roberts decree. The Ferguson decree awarded 100 inches with an 1882 date of
17 priority for the NW $\frac{1}{4}$, SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M. Mr.
18 Purnell's land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10 is entitled to a proportionate share
19 of that water. The Roberts decree stated that 50 inches of that water was being
20 used on the W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 10, leaving 50 inches for the E $\frac{1}{2}$ SW $\frac{1}{4}$,
21 E $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10. Mr. Purnell is asserting a right for 9 of those
22 50 inches. The NW $\frac{1}{4}$ of Section 15 was also entitled to a water right for 100
23 inches with a priority date of 1891 and Mr. Purnell is asserting a right to 25
24 inches. The N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15 was awarded a right with an 1887 date of
25 priority for 40 inches of water. Mr. Purnell is irrigating sufficient acreage

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1 within the lands described to support his claim. He is also claiming a right
2 for 8 and 1/3 inches based on Ferguson, that the Referee has not been able to
3 track down in the decree. The sections of the decree cited in the claimants
4 post hearing brief do not appear to pertain to the Purnell property.

5 The Referee can find foundation in the decrees for 74 inches of water, or
6 1.48 cubic feet per second. Mr. Jenkins testified to using between 1.5 and 1.75
7 cubic feet per second on the lands in Sections 10 and 15. The Referee could not
8 find anything in the decrees to show that a water right has been established for
9 the S $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 and a right for only 9 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10
10 has been identified.

11 The following water right claims were filed by Mr. Purnell pursuant to the
12 requirements of RCW 90.14:

13 WRC No. 117961 asserts a right to divert 1.25 cfs, 63 acre-feet per year
14 from Wilkins Ditch for the irrigation of 27 acres and stock watering in the
15 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15 and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M. WRC
16 No. 117956 asserts a right to divert 2.5 cfs, 249 acre-feet per year from
17 Wilkins Ditch for the irrigation of 83 acres and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
18 Section 10 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. Wilkins Ditch
19 diverts from Wilson-Naneum Creek. WRC No. 117958 asserts a right to divert 2.5
20 cfs, 210 acre-feet per year from a drain for the irrigation of 42 acres and
21 stockwatering in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. WRC No.
22 117959 asserts a right to divert 2.5 cfs, 483 acre-feet per year from a wasteway
23 for the irrigation of 96 acres and stock watering in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10
24 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. WRC No. 117962 asserts a
25 right to divert 0.25 cfs, 89 acre-feet per year from a drain for the irrigation

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1 of 6 acres and stock watering in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
2 Section 15, T. 18 N., R. 19 E.W.M. WRC No. 117965 asserts a right to divert
3 0.50 cfs, 148 acre-feet per year from a wasteway for the irrigation of 23 acres
4 and stock watering in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M. WRC No.
5 117957 was filed asserting a right to use water diverted from the Highline
6 Canal. The Highline Canal carries and deliver water diverted by the Kittitas
7 Reclamation District, which is a major claimant whose rights have been
8 determined through the Major Claimant Pathway.

9 Four of the water right claims describe the source of water as being drains
10 or wasteways (No. 117958, 117959, 117962 and 117965). The State's map, SE-2
11 shows ditches carrying water diverted from Wilson-Naneum Creek at approximately
12 the locations of the drains and wasteways described in the water right claim
13 forms. Undoubtedly those ditches capture return flow or wastewater from
14 updrainage lands irrigated with Wilson-Naneum Creek. However, the source of
15 that water is the creek and the Referee believes that if the evidence
16 establishes that a right to creek water exists, describing the sources as drains
17 and waste water on the water right claims will not prevent confirmation of a
18 water right. Although the claimant is asserting a right to irrigate the S $\frac{1}{2}$ SE $\frac{1}{4}$
19 of Section 10, the only water right claim that asserts a right for that area is
20 WRC No. 117962, which asserts a right to irrigate 6 acres lying in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
21 Section 10 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15.

22 Based on the testimony and evidence in the record, the Referee concludes
23 that rights exist to the extent they were addressed in the Ferguson and Roberts
24 decrees. There is no evidence of a water right for the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 10. In
25 order to prevent the place of use from being considerably larger than the number

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1 of acres authorized for irrigation, the Referee will refine the description
2 somewhat. The claimant through the exception phase can seek modification of
3 recommended place of use. The Referee recommends that the following water rights
4 be confirmed for use of Wilson-Naneum Creek under Court Claim No. 01329:

5 With a June 30, 1882, date of priority, a right for the diversion of 0.18
6 cubic foot per second from May 1 through June 30 and 0.09 cfs in April and from
7 July 1 through October 15, 28 acre-feet per year for the irrigation of 9 acres
8 and stock water in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M.; with a
9 June 30, 1891, date of priority, a right for the diversion of 0.50 cubic foot
10 per second from May 1 through June 30 and 0.25 cubic foot per second in April
11 from July 1 through October 15, 100 acre-feet per year for the irrigation of 25
12 acres and stock water in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.; with
13 a June 30, 1887, date of priority a right for the diversion of 0.80 cubic foot
14 per second from May 1 through June 30 and 0.40 cubic foot per second in April
15 and from July 1 through October 15, 160 acre-feet per year for the irrigation of
16 40 acres and stock water in that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, T. 18 N.,
17 R. 19 E.W.M. lying west of Schnebly Creek.

18 At the hearing the claimant also asserted a right to use waters from
19 Wilson-Naneum Creek for the irrigation of 13 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14,
20 T. 18 N., R. 19 E.W.M. This land was addressed in the Roberts decree, where it
21 was stated that Carrie E. Kregness and her husband were the owners of the SW $\frac{1}{4}$ SW $\frac{1}{4}$
22 of Section 14, the E $\frac{1}{2}$ NW $\frac{1}{4}$, the W $\frac{1}{2}$ NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 18 N.,
23 R. 19 E.W.M. and in the year 1886, Eric Erickson appropriated 115 inches of
24 water from Naneum and Wilson Creeks for the irrigation of those lands. The
25 decree awarded 115 inches of water for those lands. Mr. Purnell is asserting a

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1 right to 19 inches of water to irrigate 13 acres in the SW¼SW¼ of Section 14.
2 At the time of the hearing that water had not been used for several years. At
3 least by 1987 the ditch that served this land had been covered over by upstream
4 neighbors. Mr. Purnell expressed a desire to resume using that water, but did
5 not indicate when that might be. The issue was not pursued further because at
6 that time it was felt that the adjudication was a legal proceeding that was a
7 sufficient cause to prevent relinquishment of a water right, RCW 90.14.140.
8 However, due to the Merrill ruling, relinquishment is now being applied in this
9 proceeding. Additionally, the Referee could not identify a claim filed pursuant
10 to RCW 90.14 that describes the SW¼SW¼ of Section 14. Failure to file a claim
11 waives or relinquishes any right that may have existed, see RCW 90.14.071. Due
12 to the period of nonuse and the need to address whether the right has
13 relinquished for five or more years of nonuse and the lack of an RCW 90.14 water
14 right claim, the Referee does not recommend that a right be confirmed for using
15 water out of Wilson-Naneum Creek for irrigating the SW¼SW¼ of Section 14.

16
17 COURT CLAIM NO. 00969 -- Larry Raap

18 Court Claim No. 00969 was originally filed by David and Margaret Baker
19 asserting the right to use waters from Naneum Creek for irrigation and stock
20 watering. Larry Raap was substituted for the Bakers on November 30, 1988. Mr.
21 Raap testified at the evidentiary hearing.

22 Mr. Raap's property lies in Government Lot 3 and the SE¼NW¼ of Section 4,
23 T. 17 N., R. 19 E.W.M. He is irrigating 17 acres with water diverted from
24 Naneum Creek. Water is diverted from a branch of Naneum Creek that is piped
25 under the Cascade Irrigation District Canal. The land is rill irrigated with a

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1 concrete ditch along the north side of the field and rills running north to
2 south. The land is planted to hay, but periodically livestock are on the
3 property. He owns other land that is irrigated solely with water delivered by
4 the Cascade Irrigation District. The Referee believes that land lies in the NE¼
5 of Section 4. The land that is irrigated from Naneum Creek does not receive any
6 other water.

7 Mr. Raap's land is part of the land owned by James Ferguson at the time the
8 Ferguson decree was entered. According to the Findings of Fact, Ferguson
9 settled o the E¼NW¼, SE¼NW¼ and SW¼NW¼ of Section 4, T. 17 N., R. 19 E.W.M. on
10 July 5, 1872. The decree awarded him 160 inches of water from Naneum Creek for
11 use on that land. The decree stated that one inch of water would be used to
12 irrigate one acre of land in May and June and one-half inch of water for each
13 acre the rest of the year.

14 Besides Mr. Raap, there are several other claimants in this proceeding who
15 are successors to James Ferguson and share a portion of the water right. Those
16 claimants are: Gwendolyn and Robert Cooke, Edith Thomas, Morrison Ranches,
17 Frank Phelps, Maurice and Ruth Ann Olney. Their claims are addressed elsewhere
18 in this report (see table of contents).

19 Water Right Claim No. 003458 was filed by David G. Baker pursuant to the
20 requirements of RCW 90.14. It asserts a right to divert 2 cubic feet per
21 second, 600 acre-feet per year from Naneum Creek for the irrigation of 17.97
22 acres in the NE¼NW¼ L 3, Tx 19, Section 4, T. 17 N., R. 19 E.W.M. The point of
23 diversion is described as being in the NE¼NW¼ of Section 4, T. 17 N.,
24 R. 19 E.W.M. Additionally, Certificate of Change of Point of Diversion recorded
25 in Volume 2, page 882 may apply to the claimant's water right. It authorized

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1 several people, including David G. Baker (from whom Mr. Raap purchased) to
2 change the point of diversion of 3.2 cubic feet per second (which would be 160
3 inches) from Naneum Creek from a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N.,
4 R. 19 E.W.M. to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16. The branch of Naneum Creek
5 used by Mr. Raap separates from the main Naneum Creek near the center of the NW $\frac{1}{4}$
6 of Section 16 and then separates again in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16. It has not
7 been made clear to the Referee whether this lower separation is a diversion into
8 a ditch or a stream. The State's Map Exhibit seems to show it as a stream
9 continuing on to the south, with a ditch going off to the west and then south.
10 Many claimants have called the branch Neally Creek. The water right claim filed
11 by Mr. Baker describes the point of diversion as a point where the stream
12 separates.

13 The Referee recommends that a right be confirmed under Court Claim No.
14 00969 for the use of waters from Naneum Creek with a July 5, 1872, date of
15 priority for the diversion of 0.34 cubic foot per second in May and June and
16 0.17 cubic foot per second in April and July 1 through October 15, 85 acre-feet
17 per year for the irrigation of 17 acres in that portion of Government Lot 3 of
18 Section 4, T. 17 N., R. 19 E.W.M. described as follows: beginning at a point on
19 the quarter section line which is 30 feet S 5°55' W of the quarter section
20 corner on the north boundary line of said Section 4, thence S 5°55' W on said
21 quarter section line 1,238.6 feet; thence S 85°38' W 579.0 feet to the east
22 boundary line of the right of way of the county road; thence N 3°18' W along
23 said boundary line 1,211.5 feet to the south boundary line of the right of way
24 of State Road No. 7; thence N 82°12' E 295 feet; thence N 86°51' E 484 feet to
25 the point of beginning.

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1 COURT CLAIM NO. 01236 -- Gayle V. Redd
2 & Karen K. Redd

3 Court Claim No. 01236 was originally filed with the Court by N. N. Eaton
4 and Sons. On March 1, 1991, Gayle V. and Karen K. Redd were substituted for the
5 Eatons. Jack Eaton and Gayle Redd testified at the evidentiary hearing.

6 The land described in the claim lies in the N~~W~~NE~~W~~ of Section 19, T. 17 N.,
7 R. 19 E.W.M. lying east of Interstate-82 and consists of approximately 58
8 acres. The land is planted in pasture and flood irrigated. Varying numbers of
9 cattle are on the ground depending on the time of year. The primary source of
10 irrigation water is Bull Ditch. Bull Ditch and one of the branches of Naneum
11 Creek join on the Jansen property just north of the claimants' land and are one
12 through the NE~~W~~ of Section 19. Although the Court claim appears to also assert
13 a right to use waters from Naneum Creek, the testimony led the Referee to
14 conclude that it is actually Bull Ditch water, which includes water from Naneum
15 Creek, that is being used. The claimant is also asserting a right to use water
16 from a spring that emerges near the northeast corner of Section 19. The Eatons
17 installed tile in the spring area to allow for the flow to be carried over to
18 Naneum Creek/Bull Ditch. Livestock drink from the spring and the channel that
19 leads to the creek. Although the spring has been developed somewhat, the
20 Referee believes that it is a non-diversionary stock water use that is being
21 made of the water. This use is covered by the stock water stipulation discussed
22 on page 4 of this report and no other right is needed. There is a slough along
23 I-82, near the claimants' westerly boundary line that is also used for stock
24 watering. The slough captures drainage and return flows from neighboring

25
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1 lands. The testimony did not indicate that there was a diversion from the
2 slough.

3 Water Right Claim No. 120718 was filed by N. N. Eaton & Sons pursuant to
4 RCW 90.14. It asserts a right to divert 5 gallons per minute, 8 acre-feet per
5 year from a spring for stock watering. The place of use on the claim is
6 Section 19, T. 17 N., R. 19 E.W.M. The spring location on the claim is
7 approximately the same location marked on the map for the spring to which Mr.
8 Eaton testified. The Referee can find no RCW 90.14 claim filed specifically for
9 use of Naneum Creek water on the Eaton property (besides the claims filed by
10 Bull Canal Company).

11 Based on the evidence presented, the Referee concludes there is a
12 non-diversionary stock water right associated with the spring and slough that is
13 covered by the stock water stipulation discussed on page 4 of this report. No
14 other right will be recommended for confirmation under Court Claim No. 01236.

15 Bull Canal Company is a claimant in this proceeding, whose claim is being
16 addressed on page 101 of this report.

17
18 COURT CLAIM NO. 00892 -- Ronald C. Rees

19 Court Claim No. 00892 was originally filed by Joseph E. Stoltman. On
20 January 11, 1991, Clyde M. Rees was substituted for Mr. Stoltman. Mr. Rees
21 appeared at the evidentiary hearing and testified in support of the claim. On
22 May 10, 1995, Ronald C. Rees was substituted for Clyde M. Rees.

23 The land described in Court Claim No. 00892 consists of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the
24 N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and approximately the north 178 feet of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, all in Section 8,
25 T. 18 N., R. 19 E.W.M. There was some confusion about the area originally owned

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1 by the Stoltmans, as more land was mapped on State's Exhibit SE-2. However, the
2 claim clearly describes the land and the Rees family succeeded to all of the
3 land described in the Court claim. The claim describes three sources of water,
4 Wilson Creek, Lyle Creek and Mountain Creek. Mountain Creek is not identified
5 on SE-2. Wilson Creek does split in the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 8, with an unnamed
6 branch flowing through the Rees property. This may be what is being called
7 Mountain Creek. Lyle Creek separates from Wilson Creek south of the Rees
8 property, so Wilson Creek is the actual source of water.

9 Approximately four acres are irrigated with a diversion located in the SW $\frac{1}{4}$
10 of Section 5. The four acres lies in the middle of the N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8
11 west of the previously mentioned branch of Wilson Creek. Seventeen acres lying
12 in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 east of the branch of Wilson Creek are
13 irrigated with water diverted from the branch of Wilson Creek. All of the land
14 is flood or rill irrigated. Livestock are raised on the property and between 20
15 and 30 head have access to the creek and irrigation ditches. Often one cutting
16 of hay is raised and after it is cut the fields are used for cattle grazing.
17 Mr. Rees was not real familiar with the history of the land, but the Stoltmans
18 had owned it for 37 years and farmed it in much the same way as it is presently
19 being farmed. Vernon Stokes testified to irrigating grain on the property in
20 the early 1950's.

21 Joe E. Stoltman filed two water right claims pursuant to the requirements
22 of RCW 90.14. WRC No. 002115 asserted a right to divert 2 cfs, 5 acre-feet per
23 year from Lyle Creek for the irrigation of 16 acres within the land presently
24 owned by Mr. Rees. WRC No. 002116 asserts a right to divert 1 cfs, 5 acre-feet
25 per year from Mountain Creek for the irrigation of 10 acres within the land

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1 presently owned by Mr. Rees. The Referee believes that the 5 acre-feet per year
2 claimed in both is meant to be 5 acre-feet per acre.

3 Although Mr. Rees did not provide historical information, other claimants
4 who own land in the NW $\frac{1}{4}$ submitted exhibits that are helpful. Additionally, the
5 Referee reviewed the Decree No. 96 and the Decision in Sander v. Jones, dated
6 August 12, 1890. The claimants land in the NW $\frac{1}{4}$ of Section 8 was part of a
7 larger parcel for which James Jude received a patent on January 22, 1890. That
8 larger parcel was the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 18 N.,
9 R. 19 E.W.M. James Jude was a defendant in Sander v. Jones. The decree awarded
10 James Jude 20 inches of water and indicated that the water was appropriated
11 between 1883 and 1887. The decree provided that one inch of water was
12 sufficient for the irrigation of one acre, therefore, the 20 inches of water
13 awarded to Jude would have been sufficient for 20 acres. The Jude property was
14 riparian to Wilson Creek. Approximately 12 irrigated acres lie within the Rees
15 land that was homesteaded by the Judes. There are two other claimants in this
16 adjudication who are asserting a right based on being successors to Jude.
17 William P. Woods, under Court Claim No. 05316, and Gerald and Ruth Brunner,
18 under Court Claim No. 02214, each are asserting a claim for the irrigation of 20
19 acres. Rights are being asserting for the irrigation of a total of 52 acres,
20 but the extent of the right based on the decree is 20 acres. There has been no
21 evidence offered to show that an additional right beyond that awarded in Decree
22 No. 96 is appurtenant to the property. Mr. Rees owns a total of approximately
23 40 acres within the area for which a right was awarded, Mr. Wood owns 20 acres
24 and Mr. Brunner owns 20 acres. There is insufficient evidence to show where the
25 20 acre right was being exercised within the Jude land when the right was

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28 459

Referee's Office
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1 established in the 1800's and the Referee doubts that information is available
2 today. Therefore, the Referee will divide the 20 acre right amongst the three
3 claimants, based on the number of acres they own within the original Jude
4 property. Based on this, Mr. Rees will have one-half of the right, or ten
5 acres, and Mr. Wood and the Brunners will each have a right to one-quarter of
6 the right, or five acres.

7 Mr. Rees also owns and irrigates land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. This
8 land was never owned by James Jude, so the water right just discussed is not
9 appurtenant to this land. The Referee estimates that 9 acres are irrigated
10 within the land owned by Mr. Rees in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8. At the time of
11 the Sander v. Jones litigation that land was owned by Mary A. Thomas, who owned
12 the entire SW $\frac{1}{4}$ of Section 8 and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 7. The Findings of Fact
13 states that in 1889 she appropriated 225 inches of water. The land was
14 originally homesteaded by James R. Van Alstine, who proved up on the homestead
15 on April 14, 1887, but had been in possession of the land since 1877. The land
16 was riparian to Wilson Creek. There are several other claimants who own
17 portions of the land for which Mary A. Thomas was awarded a water right, but
18 claims are being made for the irrigation of less than 225 acres, therefore,
19 there does not appear to be a conflict between the claimants.

20 Mr. Rees did not provide testimony about the quantity of water used,
21 however, the decree limited the right to one miner's inch per acre in May and
22 June and one-half miners inch per acre the rest of the irrigation season. Were
23 this quantity available the entire irrigation season, up to 5 acre-feet per acre
24 could be used. The Referee proposes to use this quantity. An additional one
25 acre-foot per year may be used for stock watering.

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1 The Referee recommends that a right be confirmed to Ronald C. Rees under
2 the Prior Appropriation Doctrine for the use of Wilson Creek with a June 30,
3 1883, date of priority for the diversion of 0.20 cubic foot per second from
4 May 1 through June 30 and 0.10 cubic foot per second in April and from July 1
5 through October 15, 50 acre-feet per year for the irrigation of 10 acres and
6 one-half acre-foot per year for stock watering in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8 and
7 under the Riparian Doctrine with a June 30, 1877, date of priority for the
8 diversion of 0.18 cubic foot per second from May 1 through June 30 and 0.09
9 cubic foot per second in April and from July 1 through October 15, 45 acre-feet
10 per year for irrigation of 9 acres and one-half acre-foot per year for stock
11 watering in in that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and north 178 feet of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
12 of Section 8 lying east of the branch of Wilson Creek that flows through the
13 property.

14
15 COURT CLAIM NO. 01981 -- Ronald C. Rees

16 Richard and Mary Lilledahl filed a claim with the Court for use of waters
17 from Whiskey Creek for irrigation and stock watering. On January 25, 1991,
18 Clyde M. Rees was substituted for the Lilledahls. Mr. Rees and Victor Munz,
19 whose family owned the land from 1918 until 1960, testified at the evidentiary
20 hearing. On May 10, 1995, Ronald C. Rees was substituted for Clyde Rees.

21 The claimant's land lies in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27, T. 18 N., R. 18 E.W.M.
22 lying southeast of Whiskey Creek. Water is diverted from Whiskey Creek at a
23 point 400 feet south and 5 feet west of the northeast corner of Section 27 and
24 used to irrigated 40 acres of pasture. The land is flood irrigated. There was
25 no testimony about the quantity of water used to irrigate the land. The land

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1 lies just below the Cascade Irrigation District canal and the claimant is
2 assessed and receives Cascade water for all of the land.

3 According to Mr. Munz's testimony, when his family acquired the property in
4 1918, a portion of the land now owned by Rees was Timothy hay and a portion was
5 an apple orchard. His father removed the orchard. According to Mr. Munz, prior
6 to construction of the Cascade Canal, the land was irrigated solely from the
7 creek. A priority date of 1890 was asserted on the Court claim, however,
8 neither Mr. Munz or Mr. Rees could provide anything to support that date. There
9 is nothing in the record to show ownership of the land prior to the Munz family
10 purchasing it in 1918. Section 27 very likely was conveyed by the Federal
11 government to Northern Pacific Railroad, as most odd numbered sections went to
12 NPRR for potential construction of the railroad and then lands on which the
13 railroad was not constructed were sold to private parties.

14 The claimant's land is riparian to Whiskey Creek. The evidence shows that
15 use of the creek began prior to 1918 and has continued to the present. Cascade
16 Irrigation District water is also used on the land, but Mr. Munz was very
17 specific about releases from the canal into the creek and use of creek water.
18 However, in order to establish a priority date it is necessary to know when
19 steps were first taken to sever the land from Federal ownership. Additional
20 evidence is also needed about the quantity of creek water used.

21 RCW 90.14, the Claims Registration Act, was passed by the legislature in
22 1967 requiring that water right claims be filed for uses of water begun prior to
23 adoption of the state's water code and for which permits or certificates had not
24 issued. There is no evidence that a water right claim was filed for the
25 claimants use of Whiskey Creek water. Failure to file a claim as required in

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1 RCW 90.14 waives and relinquishes any right that may have existed, RCW
2 90.14.071.

3 Due to the lack of an RCW 90.14 claim for the water use, and insufficient
4 evidence to establish a priority date, the Referee cannot recommend that a water
5 right be confirmed under Court Claim No. 01981. This recommendation does not
6 affect the claimant's use of water delivered by Cascade Irrigation District, a
7 major claimant in this proceeding, whose rights are being determined through the
8 Major Claimant Pathway.

9
10 COURT CLAIM NO. 01163 -- Kent D. Richards
& Carolyn E. Richards

11 Kent D. and Carolyn E. Richards submitted a statement of claim for the use
12 of waters from Lyle Creek and unnamed springs for irrigation and stock water.
13 Mr. Richards testified at the evidentiary hearing.

14 The Richards' property lies in the south 1200 feet of the east 375 feet of
15 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M. They own 10 acres and irrigate
16 8 acres with water diverted from what they and their neighbors call Lyle Creek.
17 There is some uncertainty about the creek channel they use actually being Lyle
18 Creek or a portion of Wilson Creek. However, since the claimants in the area,
19 and Ecology in its investigation reports, call the source Lyle Creek, so shall
20 the Referee. The claimants' land is pasture, on which sheep are raised. The
21 number of sheep varies, with 22 being the maximum. A small pond has been
22 constructed on the property that captures creek water, irrigation return flows
23 and ground water. The sheep drink from the pond, springs on the property and
24 the irrigation ditches when water is available in the ditches. Livestock

25
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1 drinking from natural sources, such as the springs and pond, is a use that is
2 covered by the non-diversionary stock water stipulation discussed on page 4 of
3 this report and no other water right is needed.

4 Mr. Richards testified that creek water is generally available during the
5 early spring months until sometime in June when the flow diminishes
6 significantly. The claimants are patrons of the Kittitas Reclamation District
7 (KRD), however, there was no testimony about the number of acres assessed by KRD
8 or the quantity of water delivered to them. According to the testimony, the
9 Richards property is at the end of a long delivery ditch for carrying KRD water
10 and delivery to them is inconsistent.

11 Water rights for the SW $\frac{1}{4}$ of Section 8 were addressed in the Sander v. Jones
12 decree. Mary A. Thomas acquired the SW $\frac{1}{4}$ of Section 8 from James R. Van Alstine
13 who received a patent for the land in 1889. The record shows that James R. Van
14 Alstine had been in possession of the land since 1877. She also purchased the
15 N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 7 from the Northern Pacific Railroad Company in 1887. Mary
16 Thomas appropriated 225 inches of water, or 4.5 cubic feet per second in 1889
17 for use on her lands in Sections 7 and 8. The SW $\frac{1}{4}$ of Section 8 is riparian to
18 Wilson Creek, so under the Riparian Doctrine the priority of the right would be
19 1877, when steps were first taken to acquire the land.

20 Water Right Claim No. 131420 was filed by Kent D. Richards for use of
21 waters from Lyle Creek. It asserts a right to use 1 cfs, 730 acre-feet per year
22 for the irrigation of 7 acres, stock water and pond filling, although it states
23 that 0.10 cfs and 73 acre-feet per year are actually being used to irrigate the
24 7 acres. The described point of diversion is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 and the
25 place of water use is the East 375 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, T. 18 N.,

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1 R. 19 E.W.M. Mr. Richards also filed WRC 131419 for use of an unnamed spring
2 located in the SE¼SW¼ of Section 8 for irrigation of 2 acres and stock watering.

3 The proportionate share of the Mary Thomas water right awarded in Sander v.
4 Jones that would be appurtenant to the Richards property is 0.14 cubic foot per
5 second, which is very close to the quantity stated as being used on WRC No.
6 131420. Mr. Richards did not directly testify to the quantity of water diverted
7 from the creek, but since the right is limited to that which was awarded in
8 Sander v. Jones, which is consistent with WRC No. 131420, that is the quantity
9 the Referee shall recommend for confirmation. The quantity awarded in Sander v.
10 Jones is available for use from May 1 through June 30 and one-half that quantity
11 the rest of the year. Additionally, the Sander v. Jones decree found that one
12 inch of water (or 0.02 cfs) would be sufficient for one acre of land. The
13 number of inches awarded was based on the number of acres being irrigated.
14 Therefore, 0.14 cfs could be used to irrigate 7 acres.

15 Based on the foregoing, the Referee recommends that a right be confirmed
16 with a June 30, 1877, date of priority for the diversion of 0.14 cubic foot per
17 second from May 1 through June 30 and 0.07 cubic foot per second in April and
18 from July 1 through October 15, 35 acre-feet per year from Lyle Creek for the
19 irrigation of 7 acres and stock watering.

20
21 COURT CLAIM NO. 01048 -- Merle Ringer

22 Court Claim No. 01048 was filed for use of waters diverted from Naneum
23 Creek. Mrs. Ringer, represented by Attorney Jeff Slothower, testified at the
24 evidentiary hearing, along with Cal Jansen, who farms the property, and her son
25 Tom Ringer.

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1 The property lies in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 17 N., R. 19 E.W.M. east
2 of Interstate-82. Approximately 18.5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 are
3 irrigated with water diverted from Naneum Creek. The water is diverted at a
4 point approximately 800 feet south and 400 feet east of the center of
5 Section 19, just east of I-82. Prior to construction of I-82, water was
6 diverted on the O'Neill property, a few hundred feet upstream and carried by
7 wooden flume onto the claimants land. An additional 8 acres were irrigated from
8 Naneum Creek prior to I-82 being constructed. The land is currently planted in
9 Timothy hay. Mr. Jansen testified to using 1 cubic foot per second, 75
10 acre-feet per year to irrigate what he calls Field A, which is 7.5 acres in
11 size. Field B, which is 10.9 acres in size is irrigated with an additional 1
12 cubic foot per second and 147.15 acre-feet per year. Field B is irrigated
13 almost continuously because of the soil conditions. Field A is not irrigated
14 continually, so the water duty is slightly less. In the fall cattle or sheep
15 are placed on the fields for a period of time and they drink directly from
16 Naneum Creek. This type of non-diversionary stock watering is covered by the
17 stock water stipulation discussed on page 4 of this report and no other right is
18 needed.

19 Water delivered by the Bull Canal Company is used to irrigate 25 acres that
20 lie east of Fields A and B and west of Coleman Creek. The diversion from Bull
21 Ditch is described in the State's Investigation Report for this claim and lies
22 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 17 N., R. 19 E.W.M. Bull Canal Company is a
23 claimant in this proceeding and is asserting rights for its patrons. See page
24 101 of this report for a discussion of that claim. The claimant is also
25 asserting a right through Court Claim No. 01047 to use waters from Coleman

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1 Creek. Coleman Creek lies in Subbasin No. 10 (Kittitas) and that claim will be
2 addressed in the Report of Referee for Subbasin No. 10.

3 The Ringer family has owned this land since 1917 and farmed it since 1909,
4 when it was owned by Grant Bull. Mrs. Ringer first became acquainted with the
5 land in 1930 when she met her future husband. She and her husband acquired the
6 land in 1951. They would hunt in the area around Naneum Creek and were familiar
7 with the wooden flume that was in place prior to construction of I-82. In the
8 1930's the flume was aging and had some of its boards replaced. She believes it
9 was at least 20 years old at that time. The irrigation practices maintained by
10 her husband, and continuing at the time of the hearing, are consistent with the
11 practices during the 1930's.

12 A patent issued to Thomas Haley on August 1, 1872, for lands that included
13 the NE¼SE¼ of Section 19. A patent issued to William Johnson on June 5, 1873,
14 for lands that included the NW¼SE¼ of Section 19. The NW¼SE¼ of Section 19 is
15 riparian to Naneum Creek and under the Riparian Doctrine the water right to
16 Naneum Creek would have a priority date of when steps were first taken to sever
17 the land from Federal ownership. The only date in the record is the patent
18 date.

19 Water Right Claim No. 056833 was filed by Harold Ringer pursuant to the
20 requirements of RCW 90.14. It asserts a right to divert 1 cubic foot per
21 second, 360 acre-feet per year from Naneum Creek for the irrigation of 35 acres
22 and stock watering within the W½N¼SE¼ of Section 19, T. 17 N., R. 19 E.W.M. The
23 point of diversion described on the claim form is not clear. It is clear that
24 the historic diversion has always been in the NW¼SE¼ of Section 19, although it
25 has been moved a little downstream as a result of the highway construction. The

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1 diversion remains in the NW¼SE¼ of Section 19, which is described in WRC No.
2 056833.

3 WRC No. 056833 is asserting a right to divert 1 cubic foot per second, yet
4 Mr. Jansen testified to using at times 2 cfs. The difference was not
5 explained. Since there was a change in the diversion, the claimant needs to
6 address whether that change is what precipitated the increased diversion or
7 whether an error was made when the claim was initially completed.

8 Based on the evidence in the record, the Referee recommends that a right be
9 confirmed under Court Claim No. 01048 to Merle Ringer with a June 5, 1873, date
10 of priority for the diversion of 1 cfs, 222.15 acre-feet per year for the
11 irrigation of 18.5 acres in that portion of the NW¼SE¼ of Section 19, T. 17 N.,
12 R. 19 E.W.M. lying east of Interstate-82.

13
14 COURT CLAIM NO. 04349 -- Doss Roberts
& Edra Roberts

15 The Roberts submitted a Statement of Claim to the Court asserting a right
16 to irrigate 90 acres with waters from Naneum Creek. Mr. Roberts testified at
17 the evidentiary hearing in support of the claim. In addition, David Leffert, a
18 neighboring claimant, also presented evidence concerning a spring to which the
19 Roberts are also asserting a right.

20 The claimants own Government Lots 1, 2, 3 and 4 of Section 4, T. 18 N.,
21 R. 19 E.W.M. and according to Mr. Roberts' testimony irrigate 105 acres with
22 water diverted from Naneum Creek, springs, and seepage water. The Roberts
23 family first acquired the land in 1938, and Mr. and Mrs. Roberts acquired it in
24 1988. There are six diversions from Naneum Creek that are used to serve
25

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1 portions of the property. The land is planted to hay and pasture and up to 80
2 head of livestock are raised on the property, drinking from the irrigation
3 ditches and springs.

4 A patent issued to Christy Halpin for the property, with a receiver's
5 receipt dated April 26, 1888, in the record. This land was addressed in
6 Ferguson v. U. S. National Bank of Portland, Oregon, 1901. Sullivan Savings
7 Institution was the owner of the land at the time of Ferguson and was awarded a
8 Class 14 right for 70 inches to be used in Government Lots 1, 2, 3 and 4 of
9 Section 4. The decree stated that the land was settled in the autumn of 1883
10 and water first used in the spring of 1884. As provided in the decree, 70 acres
11 would have been irrigated with 70 inches of water (1.4 cfs).

12 It is clear that a right existed for the use of 1.4 cfs from Naneum Creek
13 for the irrigation of 70 acres within the land owned by the Roberts. Based on
14 Ferguson that is the extent of the right that existed in 1901. It may be that
15 subsequent to that, an additional right was established for the irrigation of 35
16 acres. However, the claimant has not presented any evidence to show that
17 occurred. Therefore, the Referee must conclude that the extent of the right was
18 1.4 cfs for the irrigation of 70 acres.

19 RCW 90.14, which was passed by the legislature in 1967, required that any
20 claiming a right to use water based on a use begun prior to adoption of the
21 water codes (the Surface Water Code was adopted in 1917) to file a water right
22 claim with Ecology. Section 90.14.071 provided that anyone who fails to file
23 such a claim relinquishes any right that might have existed. The Referee can
24 find no water right claim in the record for the Roberts property. Due to the
25 lack of a claim filed pursuant to RCW 90.14, the Referee cannot recommend that a

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1 water right be confirmed under Court Claim No. 04349. To the extent that
2 livestock have access to Naneum Creek and unnamed springs for drinking, that use
3 is covered by the non-diversionary stock water stipulation addressed on page 4
4 of this report.

5
6 COURT CLAIM NO. 01444 -- Schaake Packing Company

7 Schaake Packing Company submitted a claim to the Court asserting rights to
8 use waters from the Yakima River, Mercer Creek and Wilson Creek. Their claim to
9 use water from the Yakima River is being addressed in Subbasin No. 7 and will
10 not be considered herein. The claimant is represented by Attorney John P.
11 Gilreath and Paul Weaver, with Schaake Packing Company, testified at the
12 evidentiary hearing.

13 Schaake Packing is asserting a right to irrigate 7 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
14 Section 11, T. 17 N., R. 18 E.W.M. with water diverted from Mercer Creek. Water
15 is diverted from the creek at a point approximately 200 feet north and 1250 feet
16 east of the west quarter corner of Section 2, and is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
17 Section 2, T. 17 N., R. 18 E.W.M. Water is carried in an open, unlined dirt
18 ditch that flow southeasterly parallel to the Burlington Northern railway.
19 Shortly after the ditch enters the NE $\frac{1}{4}$ of Section 11 it splits and water is
20 carried to the Schaake Packing property. The land is flood or rill irrigated
21 pasture ground and up to 30 head of livestock are raised on the property.
22 Schaake is asserting a right to divert 1.5 cubic feet per second. They use 88
23 acre-feet per year to irrigate the pasture, but if the land was planted to
24 Timothy hay, which it potentially could be, it would need 132 acre-feet per
25

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1 year. Neighboring land is planted to Timothy and Mr. Weaver believed that prior
2 to Schaake purchasing the land Timothy had been grown.

3 The land irrigated from Mercer Creek is part of that for which Frederick
4 Ludi received a patent on March 13, 1881. A right under the Riparian Doctrine
5 is being asserted, which would result in a priority date of when efforts were
6 first made to sever the land from Federal ownership. The patent is the only
7 evidence in the record that could be used for a priority date.

8 Pursuant to the requirements of RCW 90.14, Water Right Claim (WRC) No.
9 119374 was filed by Schaake Packing Company asserting a right to divert 0.50
10 cubic foot per second, 60 acre-feet per year for the irrigation of 8 acres and
11 stock watering. The Referee notes that the claimant is asserting a right in
12 this proceeding for three times the quantity of water stated in WRC No. 119374.
13 The place of use is that part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 17 N.,
14 R. 18 E.W.M. lying north and east of Wilson Creek, which accurately describes
15 the location of the irrigated field.

16 The claimant has not provided any information to show that a water right
17 was established for this property. The claimant provided testimony about
18 current use of the property, but provided no history of the property other than
19 a copy of the patent. Both Ellensburg Water Company's Town Ditch and the
20 Cascade Irrigation District (CID) canal cross Wilson Creek and CID uses the
21 creek to deliver water and for operational spills. Besides providing evidence
22 to show that a water right was established, such as historical use of Mercer
23 Creek on the property, the claimant needs to address whether the water used was
24 natural creek flow or imported water from the districts.

25
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1 Based on the lack of evidence to show that a water right was established
2 for the land irrigated from Mercer Creek, the Referee recommends that a right
3 not be confirmed for use of Mercer Creek.

4 The claimant is also asserting a right to irrigate 35 acres with water
5 diverted from Wilson Creek. This land is located in the SE $\frac{1}{4}$ of Section 11,
6 south of Interstate 90 and west of the Burlington Northern Railroad and a
7 portion of the NE $\frac{1}{4}$ of Section 14 west of Wilson Creek, all in T. 17 N.,
8 R. 18 E.W.M. The diversion from Wilson Creek is located 600 feet east and 1150
9 feet north of the south quarter corner of Section 11, within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 11. Water is carried in an open, unlined dirt ditch and is used to
11 flood irrigate pasture ground. There are three separate fields that are
12 irrigated: One 7 acre field is north of Wilson Creek, solely in the SE $\frac{1}{4}$ of
13 Section 11, one field is 22 acres and is in the SE $\frac{1}{4}$ of Section 11 south of
14 Wilson Creek and a portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 14. Both of these fields are
15 irrigated directly from the ditch. The third field is 6 acres in size and is
16 located south of the feedlots. It is irrigated with water pumped from a pond
17 that captures water diverted from Wilson Creek. According to Mr. Weaver's
18 testimony, 1.5 cubic feet per second is used to irrigate the fields. The
19 pasture requires 150 acre-feet per year to adequately irrigate it, but if it
20 were planted to Timothy hay, 658 acre-feet per year would be needed.

21 WRC No. 119372 was filed by Schaaake Packing asserting a right to use 6
22 cubic feet per second, 1600 acre-feet per year from Wilson Creek for the
23 irrigation of 213 acres, stock watering and feedlot operations. The place of
24 water use is very extensive and the Referee believes it describes all of the
25 Schaaake land holdings in this area.

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1 The portion of the Schaake land for which they are asserting a water right
2 was settled by two different individuals. Frank Hinton received a patent on
3 May 23, 1889, for the N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T. 17 N.,
4 R. 18 E.W.M. The receiver's receipt for this land is dated December 28, 1887,
5 which is the earliest date in the record that can be used to establish a
6 priority date under the Riparian Doctrine. According to the Chain of Title
7 sheet sometime prior to 1901 John Hanks had acquired the Hinton property. The
8 SE $\frac{1}{4}$ of Section 11 was conveyed by the United States to Northern Pacific Railroad
9 for construction of the railway. Prior to 1919, William Doughty acquired the
10 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and sold it to a Park B. Hanks.

11 John Hanks filed a Water Location Notice dated May 15, 1902, giving notice
12 of his intent to appropriate 160 inches from Wilson Creek at a point 410 feet
13 south and 120 feet east of the northwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11.
14 The ditch would flow southerly across the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 into the NE $\frac{1}{4}$ of
15 Section 14. Hanks stated his intent to use the water to irrigate 160 acres in
16 the N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14.

17 The point of diversion described in the Hanks notice is located such that
18 the ditch could not have served by gravity flow most of the Schaake land that is
19 irrigated from Wilson Creek in the SE $\frac{1}{4}$ of Section 11. Additionally, the notice
20 states Hanks intent to use the water to irrigate lands only in Section 14. The
21 Referee believes this document establishes a water right for the Schaake land in
22 Section 14, but not the land in Section 11. Obviously, sometime after 1902 the
23 diversion was moved from a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 to the current
24 diversion over a quarter mile upstream. It is not clear whether that change
25 happened after Schaake acquired the property or was accomplished by a prior

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1 owner. The lands in the SE¼ of Section 11 likely were first irrigated after the
2 point of diversion was changed.

3 The Referee finds there is sufficient evidence to recommend that a water
4 right be confirmed for the irrigated lands in the NE¼ of Section 14. A portion
5 of the 22 acre field is in the NE¼ of Section 14 and a portion is in the SE¼ of
6 Section 11. The Referee estimates that the portion lying in the NE¼ of
7 Section 14 is about 7 acres in size. John Hanks appropriated one inch of water
8 for each acre he intended to irrigate, which is consistent with the rest of the
9 water rights established for use of Wilson Creek. The claimant argued that they
10 are entitled to use the inches that would have been appurtenant to portions of
11 the Hanks property they own, but do not irrigate. In order for that to be the
12 case, the claimant would have had to follow the procedures of RCW 90.03.380 to
13 transfer the water from the land to which it is appurtenant to land that already
14 had a water right. The Referee can find no evidence that occurred, nor has the
15 claimant made an effort to suggest that type of transfer occurred. There is no
16 evidence that Schaaque elected to stop irrigating a portion of the land that was
17 being irrigated when they purchased it and moved the water rights to other
18 land.

19 The claimant has argued that although they have been using approximately
20 4.3 acre-feet per acre to irrigate the pasture, they should be confirmed a right
21 for sufficient water to allow for the irrigation of Timothy hay. They suggested
22 that prior to Schaaque acquiring the land it may have been planted in Timothy hay
23 and the larger quantity of water used to irrigate. Since Schaaque has owned the
24 property it has been in pasture. Schaaque acquired some of the land in the
25 1940's and other in 1972. The Referee can only confirm a right for the quantity

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1 of water that has continued to be beneficially used. If a lesser quantity has
2 been used over the past 25 years, the unused portion has relinquished, see RCW
3 90.14.170.

4 The Referee recommends that a right be confirmed under the Riparian
5 Doctrine with a December 28, 1887, date of priority for the diversion of 0.26
6 cubic foot per second, 55.9 acre-feet per year for the irrigation of 13 acres
7 and stock water. The place of use shall be the ~~W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$~~ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
8 Section 14, T. 17 N., R. 18 E.W.M. lying west of Wilson Creek and south or east
9 of the feedlot. In addition to livestock drinking from the ditch, they also
10 drink from Wilson Creek and a pond on the property. This non-diversionary stock
11 water use is covered by the stock water stipulation discussed on page 4 of this
12 report.

13
14 COURT CLAIM NO. 02301 -- Evan A. Scheik

15 Janet Van de Brake submitted the claim to the Court asserting a right to
16 use waters from Lyle Creek for irrigation and stock watering. On May 2, 1989,
17 Evan A. Scheik and Judy Scheik were substituted for Ms. Van de Brake. Mrs.
18 Scheik testified at the evidentiary hearing.

19 The Scheik property is the north 1300 feet of the west 300 feet of
20 Government Lot 1 of Section 19, T. 17 N., R. 19 E.W.M. They own a total of 9
21 acres and irrigate pasture on most of the land. Except where the house and barn
22 are located, the rest is irrigated. Mrs. Scheik was uncertain how many acres
23 were irrigated, however, the State's Investigation Report estimated that 6 acres
24 were irrigated. The investigation report also shows that the pasture is rill
25 and flood irrigated with a diversion from Lyle Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of

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1 Section 18, T. 17 N., R. 19 E.W.M. Ten horses are raised on the property and
2 they drink directly from Wilson Creek that borders the property on the east.
3 The non-diversionary stock water stipulation discussed on page 4 of this report
4 cover this use and no other right is necessary. The Scheik's name will be
5 placed on the list of those claimants with non-diversionary stock water rights.

6 Pursuant to the requirements of RCW 90.14, Janet Van de Brake filed Water
7 Right Claims (WRC) No. 200007 and 200134, each asserting a right to use 200 gpm
8 (0.45 cubic foot per second), 64 acre-feet per year from Lyle Creek for the
9 irrigation of 8 acres and stock water. The point of diversion on both forms is
10 described at approximately the same location described on the State's
11 Investigation Report for the claimant's property and the place of use is the
12 Scheik land. Mrs. Scheik did not know much about the history of the land,
13 except that it was part of the Wippel ranch. The Referee will refer to the
14 historical evidence put in the record by claimant John Ludwick, who owns the
15 portion of Government Lot 1 of Section 19 lying east of Wilson Creek.

16 In 1889 Government Lots 1, 2 and 3 were conveyed by the Northern Pacific
17 Railroad to George W. Carver after fulfillment of a contract entered into in
18 1881. Mr. Ludwick testified that during a telephone conversation Mary Wippel
19 stated that her father-in-law used the land as a dairy for 100 cows and to grow
20 feed for those cows was grown. The testimony was that Paul Wippel, Mary's
21 father-in-law owned the land beginning in June of 1916, however, that must have
22 been for land he owned in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19. Claimant Allan Grigg, who
23 owns a portion of Government Lots 2 and 3 put into evidence several deeds and
24 real estate contracts that show Government Lots 1, 2 and 3 were owned by others
25 until 1956 when Paul Wippel acquired it. Mr. Ludwick directed the Referee to

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1 the record created by Bull Canal Company to support his claim. Review of the
2 Bull Canal exhibits show that George Carver was one of the original organizers
3 of Bull Canal Company and when the company was formed was awarded 7 shares, or
4 1/6 of the ditch. As far as the Referee knows, the only land owned by George
5 Carver within the Bull Canal Company service area is Government Lots 1, 2 and 3
6 of Section 19. The Bull Canal Company records would indicate that water
7 delivered by the Bull Canal Company was being used to irrigate the Carver land.
8 Bull Canal Company is a claimant in this proceeding, whose rights are addressed
9 on page 101 of this report. There is no evidence to show that a water right was
10 established to use Lyle Creek for irrigation on the claimant's land.

11 Due to the lack of evidence to show that a water right was established for
12 use of Lyle Creek initiated prior to 1917, the Referee cannot recommend that a
13 water right be confirmed for this land.

14
15 COURT CLAIM NO. 00979 -- Henry J. Schnebly, et al.
16 (A) 04783 Fred Schnebly
(A) 05073 Jim Schnebly

17 The Schnebly family initially submitted Court Claim No. 00979 asserting
18 rights to use waters from Coleman Creek and other surface water sources in
19 Subbasin No. 10 (Kittitas). However, in 1989 the claim was amended to also
20 assert a right to use waters from Naneum Creek. The Schneblys were represented
21 by Attorney William Almon and Henry Schnebly, Jim Schnebly and Robert Edwards
22 testified at the evidentiary hearing.

23 The Schneblys own over 1100 acres and are asserting a right to use waters
24 from Naneum Creek for the irrigation of 551 acres and water livestock. The land
25 on which they use Naneum Creek water lies in the S $\frac{1}{2}$ NE $\frac{1}{4}$ (40 acres) and S $\frac{1}{2}$ (142

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1 acres) of Section 15; That portion of Section 22 lying east of Moreau Road (262
2 acres) and the NW¼ of Section 27 (107 acres) all in T. 18 N., R. 19 E.W.M. The
3 lands in Sections 22 and 27 have been in the Schnebly family since the late
4 1800's and the land in Section 15 was acquired from Robert Edward in 1977. In
5 addition to Naneum Creek, the claimants are asserting rights to use water from
6 Schnebly Creek, Spring Creek and Coleman Creek, along with using water delivered
7 by the Kittitas Reclamation District (KRD). At the present time there is no
8 diversion from Naneum Creek to the property. The diversions ceased being used
9 years ago. According to Henry Schnebly, they stopped direct diversions from
10 Naneum Creek after the KRD canal was built, as KRD took over the diversion works
11 and delivery system. The water they use that originates in Naneum Creek is
12 return flow from neighboring lands that enters drains, Spring Creek and Schnebly
13 Creek. Mr. Schnebly did not quantify how much water that might be, except to
14 estimate they were using 3 acre-feet per year per irrigated acre. There were at
15 least two diversions from Naneum Creek historically used on the Schnebly
16 property, one was into the Wilkins Ditch. Mr. Schnebly testified to the
17 existence of the diversions, but did not locate them on the map.

18 The Schneblys provided considerable testimony about the irrigation system
19 in place to irrigate the ranch. It is a very complex system, with many
20 diversions that serve specific areas of the ranch. Since none of the diversions
21 are on Naneum Creek, the Referee will not go into any detail about the system.
22 The Schneblys testified about the creeks and ditches capturing return flow water
23 from neighboring lands. This return flow is generated from the irrigation of
24 the neighboring lands with water diverted from Naneum Creek, water delivered by
25 the KRD and water diverted from Coleman and Schnebly Creeks. There is no

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1 obvious way to determine how much of this water might be the result of use of
2 Naneum Creek water.

3 Water rights for a portion of the Schnebly property were addressed in the
4 Ferguson decree. A Class 3 right was awarded to U. S. National Bank of Portland
5 Oregon for the use of 80 inches in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 18 N.,
6 R. 19 E.W.M. and a Class 5 right was also awarded to the bank for using 160
7 inches in the SW $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M. However, there is no
8 evidence that water rights were established for use of Naneum Creek on any other
9 of the Schnebly land.

10 Amended Claim (A)4783 was filed after Ecology conducted its investigations
11 for Subbasin No. 9, therefore, there is no investigation report for the
12 property. The Referee has review State's Exhibit SE-5, which is the compilation
13 of water right claims filed pursuant to RCW 90.14 and certificates issued by the
14 State. The Referee was not able to locate a water right claim for use of waters
15 from Naneum Creek for any of the lands described above. Failure to file a claim
16 relinquishes any right that might have existed, RCW 90.14.071. However, it may
17 not have been necessary for the Schneblys to file a claim. RCW 90.14.041
18 provided that "Neither this section nor RCW 90.14.068 apply to any water rights
19 which are based on the authority of a permit or certificate issued by the
20 department of ecology or one of its predecessors." Also in SE-5 is a copy of
21 Certificate of Change recorded in Volume 1, at page 5, which issued to P. H.
22 Schnebly on July 25, 1919, authorizing him to change the point of diversion of
23 water from a point in the NW $\frac{1}{4}$ of Section 16 to the SW $\frac{1}{4}$ of Section 9, both in
24 T. 18 N., R. 19 E.W.M. The diversions described would be on Naneum Creek, so
25 this certificate of change obviously was for a right to use Naneum Creek water.

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1 However, in order to conclude that this certificate of change was for lands in
2 questions now the Referee would need evidence to show that connection. That
3 evidence, however, would not change the fact that Naneum Creek water has not
4 been diverted for use on the Schnebly land for a number of years. Based on
5 that, the Referee finds that any right that may have existed has relinquished
6 for nonuse, see discussion of Merrill case and relinquishment on page 6 of this
7 report. The Referee does not recommend that a right be confirmed for use of
8 Naneum Creek under Court Claim No. 00979.

9
10 COURT CLAIM NO. 00605 -- Albert F. Scott
11 (A) 01749 & Dorothy Scott
12 Stephen K. German
& Donna German

13 Albert F. and Dorothy Scott submitted a Statement of Claim to the Court for
14 several surface water sources, including Naneum Creek. The other sources are
15 located in Subbasin No. 10, Kittitas, and will be addressed in that Report of
16 Referee. The Scotts are represented by Attorney Richard T. Cole and Mr. Scott
17 testified at the evidentiary hearing. Stephen K. and Donna German were joined
18 to the claim on June 23, 1998.

19 The Scotts own that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 lying
20 below the Kittitas Reclamation District (KRD) canal, the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and that
21 portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying west and below the KRD canal in Section 11, all in
22 T. 18 N., R. 19 E.W.M. They are asserting a right to divert 10 cubic feet per
23 second, 800 acre-feet per year from Naneum Creek for the irrigation of 145 acres
24 and stock water for 75 pair of cattle. The land is currently pasture, but has
25 been planted in Timothy hay and grain in the past. Water is diverted from

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1 Naneum Creek in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M., carried in the
2 Keister Ditch through Sections 28 and 34 and dumped into Schnebly Creek on the
3 east section line of Section 34. Secondary diversions from Schnebly Creek are
4 used as it traverses the Scott property in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and in
5 Section 11. The Scotts are patrons of KRD and receive KRD water for 85 acres.
6 The remaining 60 irrigated acres only receive Naneum Creek water. The KRD is a
7 major claimant, whose rights were determined in the Major Claimant Pathway. A
8 priority date of 1880 is being claimed for Naneum Creek. Mr. Scott testified
9 that there are approximately 25 acres he now irrigates, that due to efficiency
10 improvements he made to the irrigation system, were not historically irrigated.
11 He did not indicate where those 25 added acres are located.

12 Water Right Claim (WRC) No. 097150 was filed pursuant to RCW 90.14
13 asserting a right to divert 2 cubic feet per second, 792 acre-feet per year from
14 Naneum Creek for the irrigation of 148 acres. The place of water use is the
15 same lands described in Court Claim No. 00605 and the claim identifies a
16 diversion from Naneum Creek into the Keister Ditch and then 7 secondary
17 diversions from Schnebly Creek. WRC No. 097149 was filed by the Scotts for use
18 of a spring for domestic supply, lawn and garden irrigation and stock watering
19 on their property. However, there was no testimony offered about use of a
20 spring.

21 The Scotts' land separated from Federal ownership under three different
22 patents. On June 26, 1882, a patent issued to F. D. Schnebly for the S $\frac{1}{2}$ SE $\frac{1}{4}$,
23 NW $\frac{1}{4}$ SE $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M. Although a portion of
24 the Scotts' land lies in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, it is not clear to the Referee
25 that any of the irrigated land lies in this area. On October 31, 1884, a patent

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1 issued to William Keister for the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, the N $\frac{1}{2}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$
2 of Section 11. Most of the Scott land is covered by this patent. Northern
3 Pacific Railroad Company received a patent on January 16, 1896, for the N $\frac{1}{2}$ NE $\frac{1}{4}$,
4 SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11. The Scotts own that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
5 Section 11 lying west and below the KRD canal, but it is not clear to the
6 Referee that the land in this area is irrigated with water diverted from Naneum
7 Creek.

8 On May 31, 1890, Erick Larson and W. H. Keister filed an Affidavit of Water
9 Right asserting a right to 16 cubic feet per second from Naneum Creek conveyed
10 through ditches constructed in June of 1880 for use on lands in Sections 2 and
11 11 and the NE $\frac{1}{4}$ of Section 3, owned by Keister, and Sections 2, 3 and 10, on
12 lands owned by Larson. The affidavit did not specify exactly which portion of
13 the sections cited were owned, but did state that the water was used to irrigate
14 240 acres owned by Keister and 160 acres owned by Larson. Keister and Larson
15 were parties to Ferguson and the Court's findings described the lands owned by
16 Keister as being the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and
17 the NE $\frac{1}{4}$ of Section 3 and the lands owned by Larson as the W $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ of
18 Section 2 and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3.

19 Although Mr. Scott testified he was not basing his claim on the Ferguson
20 decree, the Court in Ferguson awarded a right to Keister for the use of 200
21 inches (4 cfs) until June 15 each year and 100 inches thereafter. The Scotts
22 own all of Keister's land except the NE $\frac{1}{4}$ of Section 3, which is owned by Kayser
23 Ranch, and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 north of the KRD canal, which
24 is owned by Sam Kayser. The Scotts were not parties to Department of Ecology v.
25 Carlson, therefore they were not include in the Order Pendente Lite.

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1 In 1918, Charles Bull owned the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 and the
2 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, all of which he sold to P. H. Adams along with 4/10 of the
3 Keister water right. Four-tenths of that right would be 80 inches, or 1.60
4 cfs. Mr. Scott owns all of that land, except that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
5 Section 2 above the KRD canal, owned by Sam Kayser. The SE $\frac{1}{4}$ SW $\frac{1}{4}$ would have
6 one-quarter of the right and the portion north of the KRD Canal (which is very
7 close to the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) would have one-eighth of the right. The proportionate
8 share of that right appurtenant to the Scott property would be a total of 1.40
9 cfs for the irrigation of 70 acres.

10 Mr. Scott is claiming a right to divert 10 cubic feet per second from
11 Naneum Creek, however, he did not present evidence of historic use of this
12 quantity. He did not know how much water is used to irrigate his land. The
13 Court in Ferguson determined that one inch of water was needed to irrigate each
14 acre of land early in the irrigation season. Mr. Scott testified that 120 acres
15 have historically been irrigated within his property, with 25 additional acres
16 being irrigated now due to system efficiencies. The additional 25 acres were
17 first irrigated after the Scotts acquired ownership of the land in 1963. At that
18 time in order to acquire a water right to irrigate additional acreage,
19 compliance with the permitting requirements of RCW 90.03 would have been
20 necessary. There is no evidence that occurred. Since the Court in Ferguson
21 established that the Scotts' predecessor was entitled to one inch of water from
22 May 1 to June 15 for each acre irrigated and one-half inch after that, the
23 Referee is constrained to recommend confirmation consistent with that prior
24 decree. There was no evidence presented to show that water rights for use of

25
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1 Naneum Creek were established for the property beyond those recognized in the
2 Ferguson decree.

3 The Referee recommends that a right be confirmed under the Prior
4 Appropriation Doctrine with a June 1, 1880, date of priority for the diversion
5 of 1.4 cubic feet per second from May 1 through June 15 and 0.70 cubic foot per
6 second in April and June 16 through October 15, 350 acre-feet per year for the
7 irrigation of 70 acres and 5 acre-feet per year for stock watering.

8
9 COURT CLAIM NO. 01941 -- Jack G. Sikes
& Ada M. Sikes
10 Larry Hansen

11 Jack G. and Ada M. Sikes filed Court Claim No. 01941 asserting a right to
12 use the East and West Branches of Naneum Creek and Coleman Creek. On
13 February 2, 1989, Larry Hansen was joined to the claim. Mr. Hansen, who is
14 represented by Attorney Richard T. Cole, testified at the evidentiary hearing,
15 along with Ron Poulson, who leases and farms the property.

16 The land is described as the N $\frac{1}{2}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T. 17 N.,
17 R. 19 E.W.M. The portion of the property in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 is
18 irrigated only with water diverted from Coleman Creek, which lies in Subbasin
19 No. 10 (Kittitas). Due to the water source being in Subbasin No. 10, the
20 claimant did not put on any evidence related to use of that water, as that
21 evidence will be presented during the Subbasin No. 10 evidentiary hearing. The
22 only claim addressed herein is the claim to use waters from the branches of
23 Naneum Creek.

24 Approximately 32 acres within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17 are irrigated with
25 water diverted from Naneum Creek. The diversion from the creek is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$

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1 of Section 17. The claimant also owns 70 shares from Ellensburg Water Company
2 and that water is used to supplement the creek water on the 32 acres and to
3 irrigate the remaining 38 acres that are irrigated in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17.
4 Larry Hansen acquired the land in 1987 and it was being irrigated at that time.
5 Ron Poulson was leasing and farming the land when Hansen purchased it and
6 continued to do so. Timothy hay is planted on the land and is rill irrigated
7 using concrete ditches and gated pipe. A one horsepower pump is also used to
8 supply water for lawn and garden irrigation around the house. The claimant
9 testified to also raising livestock on the property, with a maximum of 20 cattle
10 and 3 horses. The livestock drink directly from the creek. This type of
11 non-diversionary stock watering is covered by the stock water stipulation
12 discussed on page 4 of this report and no additional right is needed. Mr.
13 Poulson's family farmed land next to the land described in the claim and he
14 testified that he can recall the land being farmed for 25 to 28 years.

15 The land in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17 was originally settled by James
16 Montgomery, who received a patent on January 18, 1887. The receiver's receipt
17 for the land was signed on November 11, 1886. There was no other evidence
18 presented concerning the history of the land. The earliest date of water use
19 that was put in the record was 1962 based on Mr. Poulson's testimony.

20 Pursuant to the requirements of RCW 90.14 Jack Sikes submitted two water
21 right claims asserting rights to use a branch of Naneum Creek. Water Right
22 Claim (WRC) No. 065522 asserts a right to use 0.02 cubic foot per second and 4
23 acre-feet per year per acre from the West Branch of Naneum Creek for the
24 irrigation of 35 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17. The point of diversion is
25 described as being in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17. The date of first water use

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1 shown on the claim is 1889. WRC No. 065526 asserts a right to use 0.02 cubic
2 foot per second, 4 acre-feet per year per acre for the irrigation of 35 acres in
3 the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17. The point of diversion described is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
4 Section 17, very close to the currently exercised point of diversion. This
5 claim also cites to an 1889 date of first water use.

6 Although the two water right claims state that water was first used in
7 1889, there has been no evidence offered to support that date. Since the land
8 is riparian to Naneum Creek, the Riparian Doctrine would apply. In order to
9 recommend that a water right be confirmed for the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 17, there
10 would need to proof of actual use of Naneum Creek water prior to 1932. Since
11 water delivered by the EWC is also used on the land and EWC was in place by the
12 early 1900's, the evidence would also have to show that it was creek water, not
13 EWC water, that was being used.

14 Therefore, the Referee cannot recommend that a right be confirmed to the
15 claimants under Court Claim No. 01941.

16
17 COURT CLAIM NO. 01130 -- John L. Silva
& Janet E. Silva

18 The Silvas filed a claim with the Court asserting a right to use waters
19 from Naneum Creek. They were represented by Attorney J. Jay Carroll at the
20 evidentiary hearing. Mr. Silva testified at the hearing.

21 The Silva's property lies in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 18 N.,
22 R. 19 E.W.M. They own approximately 5 acres which they acquired from the
23 Haberman family, who owns the rest of the SW $\frac{1}{4}$ of Section 28. They irrigate
24 approximately 4.5 acres of pasture with water diverted from Naneum Creek. The
25

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1 land west of the creek is rill or flood irrigated and the land east of the creek
2 is irrigated with sprinklers. The claimants' have had between 2 and 5 horses on
3 the property at various times.

4 The history for the property is identical to that for the rest of the SW¼
5 of Section 28. George and Ruby Haberman acquired the SW¼ of Section 28 in 1941,
6 however, the family's knowledge of the land preceded that date as other members
7 of the Haberman family owned and farmed land in the NE¼ of Section 29.

8 The Silvas are basing their water right on the Ferguson decree, which
9 awarded a Class 10 right, which would have an 1880 date of priority, to Norman
10 Burroughs, who owned the land at that time. The right awarded was for the use
11 of 100 inches of water, or 2.0 cubic feet per second. The Findings of Fact
12 stated that Burroughs owned 160 acres in the SW¼ of Section 28, but 100 acres
13 were under cultivation at that time. The decree awarded one inch of water in
14 May and June for each acre irrigated and one-half inch of water the rest of the
15 year. An award of 100 inches was based on 100 acres having been cultivated and
16 irrigated at the time of the decree. In spite of the decree awarding a right to
17 irrigate 100 acres, a right is being asserted between the Silvas and the
18 Habermans to irrigate the entire 160 acres in the SW¼ of Section 28. There has
19 been no evidence presented to show that an additional water right was
20 established beyond that recognized in the Ferguson decree.

21 Since there has been no evidence presented to show establishment of a water
22 right beyond that recognized in the Ferguson decree, the Referee can only
23 recommend that water rights be confirmed for irrigating a total of 100 acres in
24 the SW¼ of Section 28. Therefore, the Referee shall recommend that the
25 Habermans and Mr. Silva each receive a proportionate share of the right.

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1 In compliance with the requirements of RCW 90.14, John Silva filed Water
2 Right Claims No. 149874, 149875, and 149876, each asserting a right to divert 1
3 cfs, 25 acre-feet per year from Naneum Creek for the irrigation of 5 acres and
4 stock watering in portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 18 N.,
5 R. 19 E.W.M.

6 The Referee recommends that a right be confirmed to the Silvas under Court
7 Claim No. 01130 with a June 30, 1880, date of priority for the diversion of 0.06
8 cubic foot per second in May and June and 0.03 cubic foot per second in April
9 and July 1 through October 15, 15 acre-feet per year for the irrigation of 3
10 acres.

11
12 COURT CLAIM NO. 01552 -- George Simpson
13 (A)08870 & Barbara Simpson
Ken Wolfe

14 Court Claim No. 01552 was originally filed by Richard P. and Mona S. Ross.
15 On February 9, 1989, Ken Wolfe was joined to the claim and on May 12, 1989, the
16 Rosses remaining interest in the claim was transferred to George and Barbara
17 Simpson. On January 5, 1994, Ken Wolfe filed an amendment to Court Claim No.
18 01552 (A08870) adding to the place of water use lands he had acquired that were
19 formerly owned by the Rosses. Mr. Wolfe testified at the evidentiary hearing.
20 There was no appearance by the Simpsons.

21 Mr. Wolfe's testimony related only to the land he owned and is described in
22 amended claim (A)08870. Mr. Wolfe did not provide a legal description for his
23 property. Amended Claim (A)08870 describes the land as being 13.5 acres in the
24 SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T. 18 N., R. 18 E.W.M., which is the approximate
25 location Mr. Wolfe drew on State's Exhibit SE-2. However, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of

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1 Section 25 is only 10 acres in size. If Mr. Wolfe in fact does own 13.5 acres,
2 the legal description for his land that is in the record is incomplete.

3 Mr. Wolfe's property is pasture that is flood irrigated. Cattle have been
4 raised in the past and when they are in the pasture they have access to Mercer
5 Creek and drink directly from the creek. Mr. Wolfe testified that the creek
6 feeds a pond from which he pumps to irrigate a large lawn area. Mr. Wolfe did
7 not identify a point where he diverts water from the creek, nor did he indicate
8 that he has actually irrigated the land, except for the lawn that is irrigated
9 from the pond.

10 Mr. Wolfe was not familiar with the history of the land. He knew that at
11 one time it was part of the Infield Dairy and that Central Washington University
12 owns land to the south and east. Attached to the amended claim was a chain of
13 title. Although the chain is very general, it appears that this portion of
14 Section 25 was originally conveyed by the United States to Northern Pacific
15 Railroad Company for potential use for construction of a railway. Northern
16 Pacific sold this portion of Section 25 to Michael Rollinger, who owned it until
17 approximately 1909. There is no evidence that Mr. Rollinger established a water
18 right for the land.

19 Richard P. Ross submitted two water right claims pursuant to the
20 requirements of RCW 90.14. Water Right Claim (WRC) No. 140575 asserts a right
21 to use 35 acre-feet per year from a branch of Wilson Creek for the irrigation of
22 17.5 acres, stock water and fish propagation in a portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and
23 the north 150 feet of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T. 18 N., R. 18 E.W.M. The
24 point of diversion from the creek described on the form is near the northeast
25 corner of the the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25. WRC No. 140577 asserts a right to use

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1 30 gallons per minute, 12 acre-feet per year from a spring for irrigation of 3
2 acres, stock water and fish propagation. The place of water use is the same as
3 that described on WRC No. 140575. The spring location described on the claim is
4 described as being within the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25. Mr. Wolfe did not testify
5 about use of a spring on his land.

6 Mr. Wolfe did testify that he is assessed by Cascade Irrigation District
7 (CID) but was not aware of any mechanism to deliver CID water to his property.
8 The CID canal crosses Mercer Creek less than half a mile upstream from the
9 claimant's property. The Referee is aware that CID and other districts in the
10 Kittitas Valley often use the creeks as a mechanism for delivery of their
11 water. A neighboring landowner, John Pearson, testified to that occurring. Mr.
12 Wolfe may want to contact the district to see if they have been turning his
13 water into the creek for his use.

14 There has been no evidence to show that a water right was established for
15 this land through beneficial use of Mercer Creek prior to December 31, 1932, the
16 date necessary to have used water in order to establish a right under the
17 Riparian Doctrine. Additionally, it is not clear that use of Mercer Creek has
18 continued. Therefore, if Mr. Wolfe were able to prove that a water right was
19 legally established for his land, he would also need to provide evidence of how
20 much water has been diverted from the creek and how many acres are being
21 irrigated.

22 If CID is delivering water to the Wolfe property by means of Mercer Creek,
23 use of that water can continue in spite of the Referee not being able to
24 recommend that a water right be confirmed. Non-diversionary stock water use,
25

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1 such as livestock drinking directly from the creek, is covered by the stock
2 water stipulation discussed on page 4.

3 Following conclusion of the evidentiary hearing for Subbasin No. 9, Mr.
4 Wolfe filed a motion to be allowed to introduce additional testimony and
5 evidence in support of Claim No. 01552. On May 26, 1992, the Court issued an
6 order stating that the Wolfes would be allowed to present evidence and testimony
7 during the exception hearing phase for this subbasin. Therefore, the Wolfe's
8 claim shall be included in the schedule when the supplemental hearing for
9 Subbasin No. 9 is set.

10 COURT CLAIM NO. 02262 -- Patrick Smith

11 Patrick Smith submitted a claim to the Court for use of the combined flow
12 of Wilson and Naneum Creeks for irrigation. Mr. Smith testified at the
13 evidentiary hearing.

14 Mr. Smith's property lies in Government Lot 4 and a small portion of
15 Government Lot 3 in Section 30, T. 18 N., R. 19 E.W.M. He is asserting a right
16 to irrigate 32.5 acres with water diverted from Wilson Creek. There is 7.5
17 acres of lawn, garden and landscape area that is sprinkler irrigated and 25
18 acres of pasture that in the past has been flood or rill irrigated. During the
19 time that Mr. Smith has owned the property the pasture has not been irrigated,
20 except for being sub-irrigated. Mr. Smith did not describe the means by which
21 the pasture is subirrigated. The pasture has been leased to a neighboring
22 landowner (the Hay property) and 35 to 40 head of cattle have been on the land
23 during the summer months. The lawn, garden and landscape area is irrigated with
24 water pumped from a pond on the claimants property. The pond is fed by water
25

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1 diverted from Wilson Creek. The diversion is located approximately 300 feet
2 north of the northeast corner of the claimant's property. The water is carried
3 initially in wood and tile underground pipeline and then in an open ditch
4 system. Cottonwood trees have grown up around the pipeline, which is generally
5 in a state of disrepair. The open ditch goes through a series of small ponds
6 and ultimately into the large pond from which the claimant pumps. A 2 HP pump
7 is place on the pond during irrigation season. Overflow from the large pond
8 returns to Wilson Creek. Mr. Smith is seeking a right to divert water into the
9 pond the entire year, which has been his practice. He suggests that since some
10 of the trees are not native to this area and climate, they need water all year.
11 Although he did not testify to the quantity of water diverted from the creek and
12 carried in the ditch, Mr. Smith did attest to a need for a "brisk flow" to keep
13 the ditch from freezing in the winter and to prevent stagnation in the ponds
14 during the summer.

15 Water Right Claim No. 132989 was filed by James B. Pinckard pursuant to the
16 requirements of RCW 90.14. It asserts a right to divert 4 cubic feet per
17 second, 2880 acre-feet per year from the combined flow of Wilson and Naneum
18 Creeks for the irrigation of 36 acres and stock watering in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 30, T. 18 N., R. 19 E.W.M.

20 The claimant's land in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 30 was settled by Carl Sander
21 in the early 1870's. Mr. Smith purchased his property from Carl Sander's
22 grandson, James Pinckard, and the original Sander home is still on the
23 property. In 1910 landscape architects established a 7 acre park around the
24 home. The Referee believes this is most of the lawn and landscape area still
25 irrigated by the claimant. On April 20, 1871, Sander settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$ and

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1 Government Lots 2 and 3 of Section 30 (155.39 acres) and received the patent on
2 February 10, 1875. On June 1, 1874, Sander settled on the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of
3 Section 30 (117.77 ac.) and received the patent on December 1, 1882. This land
4 is riparian to Wilson Creek. Rights were awarded to Carl Sander for this land
5 and others he owned in the Sander v. Jones decree. The Findings of Fact that
6 preceded the decree stated that Sander first appropriated 20 inches from Wilson
7 Creek in 1873 and steadily increased his appropriation until by 1887 he was
8 appropriating a total of 450 inches. Additional water was appropriated by
9 Sander for running a mill. As previously mentioned, the decree stated that one
10 inch of water was needed to irrigate one acre in May and June and one-half inch
11 the rest of the year.

12 Under the Riparian Doctrine, the priority date for a water right is the
13 date steps were first taken to sever the land, which in this case would be the
14 date that Carl Sander settled on the land. The land was settled in two blocks,
15 therefore, two separate water rights must be awarded. The land in Government Lot
16 3 would have a priority date of April 20, 1871 and the land in Government Lot 4
17 would have a priority date of June 1, 1874.

18 However, Mr. Smith testified to not having irrigated the 26 acres of
19 pasture during his ownership. A statement by Mr. Smith entered as Exhibit
20 DE-182 indicates he acquired the land in 1981. RCW 90.14.170 provides that if a
21 water right, or portion of a water right, is not exercised for five successive
22 years, the unused portion is relinquished. There are several sufficient causes
23 that prevent relinquishment, but Mr. Smith has not brought to the Referee's
24 attention any that might apply. Therefore, the Referee can only recommend that
25 a water right be confirmed for the irrigation of the 7.5 acres that have

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1 continued to be irrigated. Mr. Smith asks that a right be allowed for diversion
2 of water into the pond the entire year. However, irrigation rights are limited
3 to the season when water can beneficially be used for irrigation purposes. Due
4 to the climate in the Ellensburg area, irrigation water is not applied in the
5 winter months. Mr. Smith has provided no evidence to show that water can
6 beneficially be used for irrigation on his property during the winter months.
7 Lacking that evidence, the Referee will not recommend that the right be
8 exercised all year.

9 The Referee recommends that a right be confirmed with a June 1, 1874, date
10 of priority for the diversion of 0.15 cubic foot per second in May and June and
11 0.075 cubic foot per second in April and July 1 through October 31, 37.5
12 acre-feet per year for the irrigation of 7.5 acres.

13 Mr. Smith testified that livestock grazing in the pasture drink from the
14 pond, which is covered by the stock water stipulation discussed on page 4 of
15 this report.

16
17 COURT CLAIM NO. 01960 -- William Z. Smith
18 & Jean Smith
19 John Libenow
20 Conrad Kraft

21 The Smiths submitted a claim to the Court asserting a right to use waters
22 from Wilson and Lyle Creeks for irrigation and stock water. Mr. Smith testified
23 at the evidentiary hearing. On April 4, 1991, John Libenow and Conrad Kraft
24 were joined to the claim.

25 At the time the claim was filed, the Smiths owned approximately 21 acres.
26 Since then they sold 10 acres to John Libenow and 7 acres to Conrad Kraft. The

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1 Smiths retained approximately 4 acres. According to Mr. Smith's testimony the
2 entire 20 plus acres has been irrigated from Lyle Creek with water placed in the
3 creek by the Kittitas Reclamation District (KRD). The only system for delivering
4 KRD water is through Lyle Creek. The land is pasture and at times rented to
5 neighbors, who raised cattle and horses. The livestock drink directly from the
6 creek. Of the property still owned by the Smiths, only their lawn is irrigated
7 with water diverted from the creek. Three acres are subirrigated, so it has
8 never needed to be irrigated.

9 A spring located in the middle of the 10 acres owned by John Libenow flows
10 into Lyle Creek. When the flow in Lyle Creek is down, the spring produces
11 enough water for the livestock. Mr. Smith also testified about a spring located
12 on the neighboring Overton property, but it is not clear whether any of the
13 water is used on the claimants' land.

14 Water Right Claim No. 094505 was filed by William Z. Smith asserting a
15 right to use 2.0 cfs, 125 acre-feet per year from Lyle Creek for the irrigation
16 of 25.5 acres and stock watering.

17 Very little historical information about the property was placed into the
18 record at the hearing. Mr. Smith testified that the land was included in a
19 patent that issued to Northern Pacific Railroad on January 16, 1896. When Court
20 Claim No. 01960 was filed, a copy of Decree 96, Sanders v. Jones, was included
21 with the claim. Also included were two chain of title sheets, showing the chain
22 of title for a portion of Section 29, T. 18 N., R. 19 E.W.M. One sheet shows
23 NPRR conveying land in 1888 to Wm. G. and Margaret Liles, who then conveyed it
24 to Andrew Ford. The second sheet shows NPRR conveying land to John Haley. John
25 Haley was a party to Sanders v. Jones and was awarded 135 inches of water. A

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1 portion of his land was described in the Findings of Fact that preceded the
2 decree, but the land he acquired from NPRR was not. It may be that if the
3 claimants own land that was originally owned by John Haley, they may enjoy a
4 portion of that right. However, it is not clear to the Referee that they are
5 successors to John Haley. The legal description for the chain of title sheet is
6 not on the sheet. Additionally, it is not clear that the claimants are using
7 natural flow water from Lyle Creek. Mr. Smith testified to using water placed
8 in the creek by KRD. Rights to the use of water delivered by KRD are not being
9 addressed in the subbasin pathway. KRD is a major claimant whose rights have
10 been determined through the Major Claimant Pathway.

11 Due to the lack of evidence to show that natural creek water is being used,
12 as opposed to water delivered by KRD and lack of evidence to show that a water
13 right was established through historic water use, the Referee cannot recommend
14 that a right be confirmed.

15 Non-diversionary stock watering from either the creek or springs is covered
16 by the stock water stipulation discussed on page 4 of this report.

17
18 COURT CLAIM NO. 00366 -- Richard A. Snowden

19 Richard Snowden filed a Statement of Claim with the Court asserting a right
20 to use waters from Mercer Creek for irrigation and stock water. Mr. Snowden is
21 represented by Attorney John P. Gilreath. Don Snowden, the claimant's son
22 testified at the evidentiary hearing.

23 According to Mr. Snowden's testimony and Exhibit DE-1622, the claimants
24 property lies in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M.
25 Within that area 39 acres are irrigated with water diverted from Mercer Creek.

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1 Nine acres are planted in grain, 9 acres in mixed grasses and 21 acres are
2 pasture. Up to 150 head of sheep are raised on the land. The sheep have access
3 to the irrigation ditch and Wilson Creek. Water is diverted from Mercer Creek
4 in the NE¼SE¼ of Section 2, T. 17 N., R. 18 E.W.M. and carried in an open,
5 unlined dirt ditch that parallels the Burlington Northern railway. The ditch
6 splits after it enters the NE¼ of Section 11 with the westerly branch going to
7 the Schaake property and the easterly branch going to the Snowden property. The
8 land is flood and rill irrigated. Mr. Snowden estimated that the flow of water
9 coming onto the property and used to irrigate is 2 cubic feet per second and
10 that he uses 547 acre-feet per year to irrigate the 39 acres (14 acre-feet per
11 acre). An additional 6 acre-feet per year is needed for stock watering.
12 Livestock drinking directly from Wilson Creek is covered by the stock water
13 stipulation discussed on page 4 of this report.

14 Water Right Claim (WRC) No. 043215 was filed by Richard A. Snowden pursuant
15 to the requirements of RCW 90.14. It asserts a right to use 1.5 cubic feet per
16 second, 200 acre-feet per year from Mercer Creek for the irrigation of 35 acres
17 in that portion of the NE¼ of Section 11, T. 17 N., R. 18 E.W.M. known as tax 27
18 and that portion of the N¼N¼ of Section 11, T. 17 N., R. 18 E.W.M., both tracts
19 west of the right of way of the Burlington Northern Railroad. The Referee notes
20 that the claim does not include the SE¼ of Section 11, which is where a portion
21 of the irrigated land lies. Neither the witness nor the claimant's counsel
22 addressed the discrepancy between the 90.14 claim and the place of use described
23 on WRC No. 043215. The point of diversion described is very near the diversion
24 currently used.

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1 Section 11 was originally conveyed to the Northern Pacific Railroad for
2 construction of the railway. On November 8, 1887, NPRR conveyed to Edwin
3 Leaming the E $\frac{1}{2}$ SE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and according to Mr. Snowden on
4 November 22, 1900, conveyed to a Schlotfelt the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11. There are
5 no documents in the record concerning the ownership history for the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
6 Section 11, except for a real estate contract that shows by 1933 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
7 Section 11 was in the Snowden family.

8 The Referee discovered in the Schaae Packing Company exhibits two
9 documents that appear to relate to the Snowden property. DE-812 is a Notice of
10 Appropriation of Water filed by E. H. Snowden on October 22, 1913. It states
11 that on that day Snowden appropriated and converted to beneficial use 120 miner
12 inches of water at a point in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, about 350 feet above
13 where the currently used ditch enters the Snowden property. The notice states
14 that the water is an accumulation from springs, underground drainage and
15 ditches. "The same heretofore going to waste, to be conveyed by flume, pipes
16 and ditches and used for irrigation on the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11,
17 T. 17 N., R. 18 E.W.M." DE-811 is an Appropriation of Water dated January 24,
18 1918, by E. H. Snowden that includes a "Map showing accumulation of waste water
19 from irrigation, drainage, springs and other sources, in the County Road, on the
20 South Side of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 11 T. 17 N. R. 18 E.W.M. the same
21 heretofore going to waste, is hereby appropriated by E. H. Snowden to be used
22 for irrigation purposes, on the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the north $\frac{1}{2}$ of the SE $\frac{1}{4}$ of
23 said Section eleven." The drawing shows the location of the 1913 appropriation
24 and the Appropriation of waste water by E. H. Snowden in 1918.

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1 The appropriations do not suggest that there is any other water use on the
2 property. Both Cascade Irrigation District and Ellensburg Water Company deliver
3 water to lands updrainage from the claimants lands. The terms in the notices of
4 appropriation suggest that something other than creek water was being captured
5 and used and in fact use the words waste water. Although Mr. Snowden testified
6 that his family farmed and irrigated the land, it now appears that the water
7 used was not from Mercer Creek. Attached to the claim summary (DE-1621) is a
8 map that includes the claimant's property outlined in red. The map was prepared
9 by C. H. Swigart as part of the surveys done prior to construction of the Yakima
10 Irrigation Project. This 1915 map shows a branch of Wilson Creek going through
11 the claimant's property, as it does today. However, Mercer Creek is not shown.
12 The course of Mercer Creek was changed in the 1940's when the airport north of
13 Ellensburg was constructed. With this map not showing Mercer Creek, the Referee
14 must question whether it flowed at a location that would have allowed a
15 diversion to the claimant's property. There are no ditches shown coming to the
16 claimant's property. That certainly is not conclusive, because this map appears
17 to have been intended to show diversions and ditches off the Yakima River, not
18 its tributaries. However, there are many ditches off of tributaries that are
19 shown.

20 In light of the discrepancy between the RCW 90.14 claim and the lands to
21 which the claimant is asserting a right, which appear to be the lands the
22 Snowden family have owned for over 70 years, the Referee will not at this time
23 recommend that a water right be confirmed. If the claimant made an error in
24 completing WRC No. 043215, he may need to seek an amendment to the claim through
25 RCW 90.14.065. As the Snowden family has owned the land for such an extended

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1 period of time, additional information should be available about the nature of
2 the water used and the history of that use.

3
4 COURT CLAIM NO. 00529 -- Howard P. Sorensen
& Bernice H. Sorensen

5 The Sorensens submitted a claim to the Court for the use of waters from
6 Lyle Creek, Wilson Creek and Little Wilson Creek. The claimants are represented
7 by Attorney Lawrence E. Martin and their son, Morris Sorensen, testified at the
8 evidentiary hearing.

9 The claimants' land lies in the S $\frac{1}{2}$ NW $\frac{1}{4}$, the N $\frac{1}{2}$ SW $\frac{1}{4}$ north of I-90 and the
10 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, that portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
11 Section 11 east of a branch of Wilson Creek (called Little Wilson Creek by the
12 claimants) and that portion of the NW $\frac{1}{4}$ lying northeast of I-90 and the
13 N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, all in T. 17 N., R. 18 E.W.M. The Sorensens own a
14 total of 388 acres, of which 348.3 acres are irrigated. Within the land lying
15 north of I-90, 162.7 acres are irrigated and 170.8 acres south of I-90 are
16 irrigated, mostly with water delivered through Bull Ditch. The claimants are
17 not asserting a right individually for water delivered through Bull Ditch. Bull
18 Canal Company is a claimant in this proceeding and is asserting rights on behalf
19 of its patrons; see page 101 of this report.

20 Lyle Creek is diverted near the northeast corner of the property and is
21 used to irrigate land both north and south of I-90. Mr. Sorensen testified to
22 irrigating 183 acres with water diverted from Lyle Creek. However, the
23 Engineering Report prepared by Richard Bain, a consultant hired by the claimant,
24 states that Lyle Creek, through takeout (TO) 1 is used to irrigate fields, 1, 2
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1 and 3, with a total of 120.9 acres and fields 9 and 11, which have 45.3 acres;
2 for a total of 166.2 acres in the five fields. Water delivered by Bull Ditch is
3 also used on Fields 9 and 11. Water delivered by Ellensburg Water Company (EWC)
4 is also used to irrigate fields 1, 2 and 3. EWC dumps its water into Lyle Creek
5 for delivery to the Sorensen property. Mr. Sorensen testified to diverting 4
6 cfs from Lyle Creek, but believes half of that is EWC water, so 2 cfs is creek
7 water. Lyle Creek borders the east edge of the property in Section 12.
8 Approximately 110 head of cattle, along with 2 horses, graze on the property and
9 drink directly from the creek. Non-diversionary stock watering is covered by
10 the stock water stipulation discussed on page 4 of this report.

11 Little Wilson Creek is used to irrigate fields 4 and 5. Field 5 is 25
12 acres in size and is irrigated solely with Little Wilson Creek Water. Mr.
13 Sorensen testified that field 4 is 10 acres in size and is primarily irrigated
14 with creek water, but other sources can be used in an emergency. Although Mr.
15 Sorensen testified to it being 10 acres in size, a map attached to the claim,
16 which matches the map in the Bain report, shows it being 8 acres. 2.3 cubic
17 feet per second is diverted from Little Wilson Creek. Wilson Creek is used to
18 irrigate 34.5 acres lying south of Wilson Creek and east of the Canyon Road. 6
19 cubic feet per second is diverted from Wilson Creek.

20 A pond is located in the $W\frac{1}{2}W\frac{1}{2}$ of Section 12. A small pond existed on the
21 property and was enlarged in the early 1960's when I-90 was built. Prior to the
22 enlargement, the small pond was not used. The pond is now 13 acres in size and
23 is used when water is not available from the primary sources, i.e. the creeks
24 and EWC. Two pumps are located on the pond, one at the north end and one at the
25 south. There is no diversion into the pond, it captures return flow from

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1 neighboring irrigated fields and shallow ground water. The pond is used as a
2 backup water supply and is only used when water is not available from the creeks
3 or EWC.

4 Howard Sorensen filed three water right claims pursuant to the requirements
5 of RCW 90.14. Water Right Claim (WRC) No. 049533 asserts a right to divert 4
6 cubic feet per second, 1200 acre-feet per year from Wilson Creek for the
7 irrigation of 50 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M. The
8 described point of diversion is near the center of the NW $\frac{1}{4}$ of Section 13, on
9 Wilson Creek. WRC No. 049534 asserts a right to use 6 cubic feet per second,
10 1800 acre-feet per year from Lyle Creek for the irrigation of 280 acres in the
11 S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 12, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, T. 17 N.,
12 R. 18 E.W.M. The point of diversion described is near the northeast corner of
13 the Sorensen property, near the north-south half section line. WRC No. 049535
14 asserts a right to use 4 cubic feet per second, 1200 acre-feet per year from
15 Wilson Creek for the irrigation of 52 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ of
16 Section 11, T. 17 N., R. 18 E.W.M. The point of diversion described is in the
17 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, on what has been described by Morris Sorensen as Little
18 Wilson Creek. All three of the claims assert that water was first used in 1895
19 and besides asserting a right for irrigation, also assert a right for stock
20 watering.

21 The Referee notes that not all of the Sorensen irrigated land is described
22 in the claims filed pursuant to RCW 90.14. WRC No. 049533 only describes the
23 E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13 as the lands on which water is used. Field 8 lies in the
24 NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13; however, the Referee concludes from the information in the
25 Bain report that this field is irrigated exclusively from Bull Ditch.

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1 Similarly, WRC No. 049534 does not include the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, where field
2 7 is located, as lands on which Lyle Creek water is used. The Bain Report also
3 leads the Referee to conclude that this field (#7) is irrigated from Bull
4 Ditch.

5 Additionally, there was no RCW 90.14 claim filed for use of the pond. Since
6 the pond was enlarged in the early 1960's and first used after the enlargement,
7 the only mechanism for obtaining a water right was through the permit procedures
8 of RCW 90.03, so filing a claim under RCW 90.14 would not have been
9 appropriate. There is no evidence that a permit was acquired by the claimants
10 for use of the pond. To the extent that the claimant is using return flow water
11 generated from the irrigation of his fields that surround the pond, no
12 additional water right is needed beyond that held for the water used for the
13 initial irrigation of the land. The Referee cannot recommend that a water
14 right be confirmed for use of the pond as there is no evidence a right was
15 established for use of any naturally occurring water in the pond.

16 Several different people owned the land in Sections 11, 12 and 13 in the
17 late 1800's and the claimants own portions of several different homesteads. The
18 claimant has put into the record several documents that relate to settling of
19 the land.

20 The claimants land in Section 12 was settled by two individuals. William
21 Berry received a patent on July 1, 1874, for the SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 12; the Sorensens own the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 12. According to
23 the homestead documents, Berry had settled on the land on June 10, 1872, and
24 before the patent issued had plowed and cultivated 140 acres. There was no
25 reference in the documents to irrigation on the land. Jacob Galladay received a

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1 patent on January 22, 1890, for the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12. The
2 homestead documents show that he settled on the land on September 25, 1882, and
3 that by 1888 had 120 acres farmed in wheat, oats barley, and garden. The
4 documents also show he spent \$1000 on water rights and irrigation ditches. The
5 parcel that Galladay homesteaded was riparian to Lyle Creek. The Sorensens own
6 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12.

7 David Small received a patent on June 13, 1876, for the N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and
8 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13. The Sorensens own all of this land, except for a portion
9 of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$. Section 13 was originally awarded to Northern Pacific Railroad
10 Company as potential land for construction of a railroad. In 1874, NPRR
11 relinquished its interest in the land to Small. According to the homesteading
12 documents, Small settled on the land on June 10, 1872, and prior to the patent
13 issuing had 6 acres plowed and cultivated. This land is riparian to Wilson
14 Creek.

15 Most of the land owned by the claimants in Section 11 lies in the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
16 which was settled by William Berry, who received a patent for lands including
17 the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11 on June 5, 1873. This land is riparian to Little
18 Wilson Creek. The Sorensens also own that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11
19 lying east of Little Wilson Creek. The SE $\frac{1}{4}$ of Section 11 was originally
20 conveyed to Northern Pacific Railroad for potential siting of a railroad. There
21 is no evidence in the record of when it passed into private ownership. The
22 NE $\frac{1}{4}$ SE $\frac{1}{4}$ is also riparian to Little Wilson Creek.

23 The record does not contain the names of who would have owned the
24 claimants' land at the time of either the Ferguson or Sanders decree. The
25 decrees, or the Findings of Fact that preceded the decree describe the lands

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1 owned by some of the parties, but not all of them. The lands described do not
2 include the land owned by the claimants and without knowing who owned their land
3 at the time of those cases, the Referee cannot find where rights were awarded
4 for the claimants' land. While the homesteading documents in the record
5 reference clearing and cultivating land, with one exception, there is no
6 discussion about irrigating the land or expenses noted that relate to
7 irrigation. The one exception is land for which the patent issued in 1890 and
8 the reference to spending \$1000 for water rights and irrigation ditches. This
9 particular homestead is for lands that are served by Ellensburg Water Company.
10 Construction of the Town Ditch began in 1885 and water was delivered shortly
11 thereafter. It is not possible to know whether the water right and irrigation
12 ditch referenced is for use of creek water or water delivered by EWC.

13 The claimants have not put in any evidence to show that water rights were
14 established for use of the creeks. Three documents were entered with that
15 intent, however, they fail. Exhibit DE-682 is a Notice of Water Right filed by
16 S. R. Geddis. However, the water sources and lands described do not pertain to
17 the claimants land or water use. Manastash Creek and Reed Creeks are discussed,
18 which lie on the other side of the Yakima River from the claimants' land. When
19 lands are described, often the range is left off of the location. However, the
20 Referee recognizes the names in the notice as landowners in the Manashtash Creek
21 area during the late 1800's. Exhibit DE-683 is an Appropriation of Water by E.
22 H. Snowden. It asserts a right by Snowden to use accumulated water water for
23 use in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11. There is no evidence that
24 Snowden owned the portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11 now owned by the
25 claimants. The Referee notes that there is a Snowden who is a claimant for land

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1 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11. The map attached to the document shows
2 the water the land southwest of the NPRR line, which is not where the claimants'
3 land lies. Lastly, there is Decree No. 11,460, Exhibit No. DE-685, which
4 settles a dispute between George W. and Edna P. Schreiner and Richard A. and
5 Helen Snowden about use of water. The decree orders that the parties use water
6 on alternate weeks during the months of May through September of each year. It
7 does not identify the source of water in dispute, although the Referee surmises
8 that it might be the waste water discussed in the Snowden appropriation document
9 previously discussed. The Snowden property is again described as being in the
10 SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11 and the Schreiner property is a portion of the
11 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11. If the claimants were to provide information to show that
12 Snowden owned their land and that these documents support a conclusion that a
13 water right exists, they only own about 3 acres within the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11
14 and the source of water addressed is clearly not the source of water currently
15 being used on that portion of the claimant's land, i.e. Little Wilson Creek.

16 The deeds in the record show that the Sorensens acquired a portion of the
17 land in Section 12 in 1952. It is not clear when the rest of the land was
18 acquired, although Morris Sorensen's testimony would indicate the rest was
19 acquired at about the same time.

20 Due to lack of evidence to show that water rights were established for use
21 of the creeks, the Referee cannot recommend that water rights be confirmed. In
22 order to support their claim, there needs to be evidence that creek water was
23 diverted and beneficially used on their land prior to December 31, 1932. Since
24 EWC and Bull Ditch water is also used, evidence of water use without
25 identification of the sources is not adequate.

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1 COURT CLAIM NO. 00673 -- Morris P. Sorensen
2 & Patricia E. Sorensen

3 The Sorensens are asserting a right to use water from unnamed drains for
4 the irrigation of 28.09 acres in the E½ of Section 13, T. 17 N., R. 19 E.W.M.
5 Morris Sorensen appeared and testified at the evidentiary hearing.

6 The Sorensen property is approximately the south 686 feet of the SW¼NE¼ and
7 the north 825 feet of the NW¼SE¼ of Section 13. All of the land was irrigated
8 with water delivered by Bull Canal Company until 1970. In 1970 the pond on the
9 property was constructed and resulted in Bull Ditch not being able to serve the
10 12.5 acres that is around the pond. There are 14.5 acres lying generally to the
11 north of the pond that is still irrigated from Bull Ditch. The Sorensens are
12 asserting a right to irrigate the 12.5 acres from the pond. They are claiming a
13 right to use 5 acre-feet per acre irrigated. Mr. Sorensen did not testify to
14 the instantaneous quantity used. A diesel pump is placed on the pond
15 withdrawing water to a sprinkler system. The 12.5 acres is pasture land that
16 has up to 110 head of cattle on it from time to time during the irrigation
17 season. As the cattle eat the grass down they are moved to another pasture to
18 allow it to regrow. The livestock drink directly from the pond. When the land
19 was served by Bull Ditch, they drank from the ditch. Mr. Sorensen testified to
20 consistently irrigating the field, although he may not do so every year.
21 Weather conditions and diesel prices are factored into his decision to
22 irrigate. He irrigates the field at least every couple of years. Mr. Sorensen
23 is asserting a priority date for use of the pond consistent with the Bull Canal
24 Company priority date.

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1 The Referee cannot recommend confirmation of a water right for a use
2 initiated in 1970. At that time, compliance with the permit requirements of RCW
3 90.03 was needed in order to establish a new water right. However, it appears
4 that rather than establishing a new water right, the Sorensens may have changed
5 their water right from Bull Canal to the pond. Mr. Sorensen did not testify to
6 the source of the water in the pond, but bearing in mind the location of Bull
7 Ditch in relation to the pond and the neighboring fields irrigated with Bull
8 Ditch water, it is very likely that much of the water pumped from the pond is in
9 fact Bull Ditch water. RCW 90.03.380 provides a process for changing a water
10 right. The claimant may want to contact Ecology's Central Regional Office to
11 inquire about the need and process to seek a change for any water he has a right
12 to under the Bull Canal Company. The canal company is a claimant in this
13 proceeding, whose claim is addressed on page 101 of this report.

14
15 COURT CLAIM NO. 00355 -- Walter R. Stampfly
& Thelma D. Stampfly

16 COURT CLAIM NO. 00462 -- Wallace M. Stampfly

17 Wallace M. Stampfly filed Court Claim No. 00462 for the use of waters from
18 Wilson Creek, Naneum Creek and Cave Creek and Walter and Thelma Stampfly filed
19 Court Claim No. 0355 for use of Naneum Creek and Cave Creek. The Stampflys were
20 represented by Attorney Kenneth Beckley at the evidentiary hearing and Wallace
21 Stampfly testified on behalf of both claims at the hearing.

22 The first claim to be addressed is for the use of waters diverted from
23 Wilson Creek for the irrigation of 70 acres in the S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$
24 of Section 30 and a portion of the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29, T. 19 N.,
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1 R. 19 E.W.M. Water is diverted from Wilson Creek in the SE¼ of Section 18 and
2 carried through Sections 18 and 19, into Section 30. Claimants Wilkinson,
3 Dunning and Morrison also use this ditch. The land is flood and rill irrigated,
4 which is believed to have been the historic practice.

5 Mr. Stampfly is asserting an 1885 priority date, but provided no basis for
6 that assertion. According to the evidence presented as part of Marilyn
7 Wilkinson's claim for the land she owns in the NE¼ of Section 30 and the NW¼ of
8 Section 29, Christian Johnson received a patent on January 11, 1890, for the NE¼
9 and NE¼SE¼ of Section 30 and at some point acquired the west 280 feet of the NW¼
10 of Section 29, which includes the portion of the NW¼ owned by Mr. Stampfly. In
11 a deed dated June 10, 1893, Christian Johnson transferred the land described in
12 the patent, along with the west 280 feet of the NW¼ of Section 29 to Mrs.
13 Elizabeth Searles, along with the water right appropriated in 1887. Christian
14 Johnson and John Lelard filed a Notice of Location of Ditch and Water Right
15 providing notice of construction of a ditch from the North Fork Wilson Creek to
16 the ranch of Christian Johnson in the NE¼ and NE¼SE¼ of Section 30. A right was
17 asserted for 300 inches of water with the appropriation of water occurring
18 between March 24 and April 14, 1887.

19 Two prior decrees address water rights for land which includes the Stampfly
20 property. In Rader v. Sander, (1917) a right to the use of 10 inches diverted
21 from Wilson Creek above Lyle Creek for use in Section 19, the W¼SW¼ of
22 Section 20, the NE¼ and NE¼SE¼ of Section 30 and the NW¼ of Section 29 was
23 identified for C. R. and Grace Hovey as being senior to the plaintiff, William
24 H. Rader. The decree did not identify where the irrigated land was located.

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1 Claimants Lorne Dunning and Marilyn Wilkinson are also asserting rights to this
2 water.

3 Although Christian Johnson had filed a notice of water right asserting a
4 right to 300 inches of water, a right to only 10 inches was recognized in Rader
5 v. Sander for what was formerly the Johnson property. None of the claimants who
6 own portions of the Christian Johnson property have attempted to explain the
7 difference or provide a basis for their claimed water right.

8 The Stampfly property was owned by Lawrence A. Manly during the 1972
9 action, Ecology v. Carlson, which resulted in the 1973 Order Pendente Lite. Mr.
10 Manly was recognized as having a right to 0.05 cubic foot per second for use in
11 the NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30 and a portion of the NW $\frac{1}{4}$ of Section 29. There is
12 no evidence that he filed any claims pursuant to RCW 90.14 for his property.
13 Due to this and the lack of information concerning the historic place of use for
14 the 10 inches recognized in Rader v. Sander and no other water rights having
15 been awarded in Rader, supra, the Referee cannot recommend that water rights to
16 Wilson Creek be confirmed for the Stampfly land in either Sections 29 or 30.

17 Rights are being asserted for the use of water from Naneum Creek for the
18 irrigation of 250 acres in the SE $\frac{1}{4}$ of Section 28 and the SW $\frac{1}{4}$ of Section 27, both
19 in T. 19 N., R. 19 E.W.M.. Water is diverted from the creek at a point in the
20 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 and carried to the property through the Charlton-Fleming
21 Ditch. Hay and irrigated pasture are planted on the property, which is flood
22 and rill irrigated. Mr. Stampfly testified to diverting up to 10 cubic feet per
23 second into the ditch early in the irrigation season for his use and that of
24 Larry Charlton for lands in the NW $\frac{1}{4}$ of Section 34. Irrigation begins in
25

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1 mid-April and generally by August water can only be diverted for stock watering
2 in order to satisfy senior rights on Naneum Creek.

3 The Northern Pacific Railroad Company (NPRR) received a patent for the W½
4 of Section 27 on May 27, 1896. Prior to that, on August 2, 1890, they conveyed
5 that land to Charles Dibble. The land was sold four times between 1890 and 1903
6 when Robert Fleming purchased it from Elizabeth Dickson. The deeds transferring
7 the land each referenced water rights and irrigation ditches. Robert Fleming
8 received a patent for the SE¼ of Section 28 on June 3, 1910, and immediately
9 sold both the SE¼ of Section 28 and the W½ of Section 27 to Ernest Marks.

10 On May 22, 1890, Robert Fleming filed with the county a Statement of Water
11 Right in which he stated that he owned the SE¼ of Section 28 and in April 1885
12 dug a ditch from Stone Creek beginning in the SE¼ of Section 21 for irrigating
13 his land. In April 1887 he enlarged the ditch to irrigate 160 acres. It also
14 went on to say that C. W. Dibble and Jesse Gilkey helped with construction of
15 the ditch and claimed an interest in it, but have since abandoned their interest
16 in the ditch. The Referee believes that Stone Creek is now called Cave Canyon
17 Creek, which is in the neighboring Subbasin No. 10, Kittitas. Rights to use of
18 that water will be addressed in the Subbasin No. 10 Report of Referee.

19 On May 31, 1890, George C. Charlton, Robert Fleming, and C. W. Dibble,
20 filed a Statement of Claim Of Water Right stating that on November 1, 1886, they
21 began construction of a ditch known as the Pleasant Hill Ditch, and completed
22 the ditch in April 1888. The ditch was constructed by them jointly for the
23 purpose of irrigating their lands. Charlton claimed land in the E½NW¼ and W½NE¼
24 of Section 34, T. 19 N., R. 19 E.W.M., C. W. Dibble claimed 100 acres in the W½
25 of Section 27, T. 19 N., R. 19 E.W.M., and Robert Fleming claimed the SE¼ of

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1 Section 28, T. 19 N., R. 19 E.W.M. The Notice did not identify the quantity of
2 water claimed, the capacity of the ditch or the number of acres actually
3 irrigated.

4 Robert Fleming, who owned the SE¼ of Section 28, and John Farwell, who at
5 the time owned the SW¼ of Section 27, were defendants in Ferguson v. United
6 States National Bank of Portland, Oregon, (1901). They were both awarded Class
7 16 rights, Farwell in the amount of 30 inches and Fleming in the amount of 45
8 inches. There is nothing in the Ferguson decree to indicate what the priority
9 date would be for a Class 16 right. The deed transferring the SE¼ of Section 28
10 and the SW¼ of Section 27 from Robert Fleming to Ernest Marks stated that the
11 sale included 75 inches of water awarded in Ferguson, 45 inches awarded to
12 Robert Fleming and 30 inches awarded to John Farwell.

13 Pursuant to the requirements of RCW 90.14 two water right claims were filed
14 asserting rights to Naneum Creek. Water Right Claim (WRC) No. 023630 asserted a
15 right to divert 2 cubic feet per second, 800 acre-feet per year from the creek
16 for the irrigation of 90 acres in the SW¼ of Section 27. WRC No. 023636
17 asserted a right to divert 3 cubic feet per second, 1080 acre-feet per year from
18 Naneum Creek for the irrigation of 145 acres in the SE¼ of Section 28.

19 The Order Pendente Lite which issued in 1973 as part of the Ecology v.
20 Carlson proceeding recognized a right for 0.90 cfs for the irrigation of 45
21 acres in the SE¼ of Section 28 and 0.60 cfs for the irrigation of 30 acres in
22 the SW¼ of Section 27, both with an 1887 date of priority. The Order Pendente
23 Lite was an interim order for management of the water until an adjudication was
24 complete and cannot be considered to be a final determination of the water
25 rights to Wilson and Naneum Creeks. There is, however, sufficient evidence in

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1 the record, primarily the Ferguson decree in 1901, to allow the Referee to
2 conclude that water rights were established for the irrigation of of 45 acres in
3 the SE¼ of Section 28 and 30 acres in the SW¼ of Section 27. The Referee
4 believes that if rights in excess of that were in use at the time of the
5 Ferguson decree, they should have been asserted at that time. Additional rights
6 could have been established subsequent to entry of the decree, however, there is
7 insufficient information in the record to allow the Referee to reach that
8 conclusion.

9 The Referee recommends that a right be confirmed under Court Claim No.
10 00462 with a November 1, 1886, date of priority for the diversion of 0.90 cubic
11 foot per second in May and June and 0.45 cubic foot per second in April and
12 July 1 through October 15, 225 acre-feet per year for the irrigation of 45 acres
13 in the SE¼ of Section 28 lying south of the Charlton-Fleming Ditch and north of
14 the Keister Ditch and under Court Claim No. 00355 a right with a June 30, 1887,
15 date of priority for the diversion of 0.60 cubic foot per second in May and June
16 and 0.30 cubic foot per second in April and July 1 through October 15, 150
17 acre-feet per year for the irrigation of 30 acres in the N½SW¼ of Section 27
18 lying below the Charlton-Fleming Ditch.

19
20 COURT CLAIM NO. 00497 -- Robert G. Stewart
& Shirley D. Stewart

21 The Stewarts filed a Statement of Claim with the Court asserting a right to
22 use waters from the Yakima River and an unnamed spring for irrigation and stock
23 watering. The claimants are represented by Attorney John P. Gilreath. John
24 Eaton who has leased and farmed the property since 1976 testified at the
25

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1 evidentiary hearing. Exhibit DE-1513 is an Engineering Report prepared by
2 Richard C. Bain, Jr., a consulting engineer hired by the claimants. The report
3 contains information about the irrigation system and water use on the property.

4 The Stewarts' property lies in the NW $\frac{1}{4}$ of Section 24, T. 17 N.,
5 R. 18 E.W.M. lying west of Stone Road and east of the Yakima River. They
6 irrigate 88 acres planted in hay and pasture grass. Up to 300 head of cattle
7 are raised on the property. The hay ground which is 46 acres is rill irrigated
8 and the pasture is sprinkler irrigated and is 42 acres. Water is diverted from
9 the Yakima River in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M. and carried
10 to the property through the Tjossem Ditch. Takeout (TO)-1 on the ditch is used
11 to irrigate 34 acres on the claimants property and 30 acres owned by the county
12 and farmed by Mr. Eaton in the SW $\frac{1}{4}$ of Section 13. The estimated flow at TO-1
13 was 4.0 cubic feet per second. TO-2 is used to irrigate the rest of the Stewart
14 property. The flow at TO-2 was not mentioned, however, the Bain report did
15 indicate that a maximum of 4.8 cubic feet per second is used from the Tjossem
16 Ditch (and the Clark lateral off the ditch) to irrigate the Stewart property.
17 Mr. Bain measured the Tjossem Ditch near its intake from the river and again at
18 the fish screen above TO-1 and found that there was no loss or gain associated
19 with the ditch. A right is also being asserted for use of a spring that is
20 located near the southerly property line. A pump is placed on the spring and is
21 used to provide additional water to about 70 acres. The Bain report indicates
22 that 1.2 cfs is used from the spring.

23 Mr. Bain determined the annual quantity of water used on the fields based
24 on the flow at TO-1 and Mr. Eaton's irrigation schedule. Because the rill
25 irrigated hay ground is so near the river and the ground is very porous, 21.7

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1 acre-feet per year was used to irrigate those fields. The sprinkler irrigated
2 pasture used 7.9 acre-feet per year per acre irrigated. The claimants are
3 seeking an additional 12 acre-feet per year for stock watering.

4 David R. Campbell received a patent on May 21, 1891, for the E $\frac{1}{2}$ NW $\frac{1}{4}$ and
5 E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, T. 17 N., R. 18 E.W.M. He then conveyed to William McLeod
6 the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24, consisting of 80 acres along with all water rights and
7 ditches appurtenant thereto. McLeod sold the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24 to G. F. Dyer
8 in 1913 and that deed specifically referenced that it included one-half interest
9 in a water right to the Yakima River conveyed in the ditch used jointly by
10 Tjossem, Steen, Clark and McLeod. McLeod later sold the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24 to
11 the Dyer family and that deed also referenced water rights conveyed in the
12 Tjossem, Steen, Clark and McLeod Ditch. An agreement in 1902 between John Hanks
13 and R. P. Tjossem et al deals with abandoning an existing ditch and construction
14 of a new ditch from the Yakima River. McLeod is one of the parties to the
15 agreement. The third page of the agreement is missing and the Referee believes
16 that page identifies how much water each of the parties would have a right to
17 use from the ditch.

18 Attached to Court Claim No. 00497 are affidavits by Peter R. Tjossem,
19 Albert Tjossem and John Hanks that attest to the use of water on the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
20 Section 24, and that the water right appurtenant to that ground is 75 inches of
21 water appropriated from the Yakima River. It summarizes the agreement between
22 Hanks and Tjossem et al. and states that McLeod's interest in the ditch was 150
23 inches for the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24. It also states that for many years prior to
24 the 1902 agreement R. P. Tjossem and Son were the owners of a power and
25 irrigation canal and appropriated water from the Yakima River to their mill in

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1 Section 13 and the third parties to the agreement (including McLeod) were owners
2 of a power and irrigation canal from the Yakima River to their lands in Section
3 13 and 24 and the two canals ran in the same general direction and were to some
4 extent parallel. Since the agreement was entered into the third parties have
5 used the canal of the second parties to divert their water from the Yakima River
6 to a point in Section 13 where it is diverted from said canal to the lands of
7 the third parties. The water for the Steen McLeod and Clark ditch is diverted
8 from the Tjossem Ditch and 300 inches are carried, 75 inches for Roy Brown, 75
9 inches for John Whittendale and 150 inches for C. F. Lauderdale. Another ditch,
10 called the Clark Branch carries water from the Tjossem Ditch for the successors
11 in interest of Joel Clark. The Referee believes that John Whittendale is a
12 predecessor to the claimants for the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 24. That would result in
13 the claimants' land enjoying a right to 150 inches or 3 cubic feet per second.

14 There were no historical records offered concerning the W $\frac{1}{2}$ NW $\frac{1}{4}$ of
15 Section 24, except testimony that a patent issued to a Thompson on June 30,
16 1922. There also was no evidence of historical water use on this land. All the
17 evidence shows water use only in the E $\frac{1}{2}$ NW $\frac{1}{4}$ and since it was public land at the
18 time the ditches were being constructed, it is not reasonable to conclude that
19 there was beneficial use of water on that land. Although counsel for the
20 claimants has repeatedly stated there are 88 acres being irrigated in the E $\frac{1}{2}$ NW $\frac{1}{4}$
21 of Section 24, since there are no government lots involved in this section, the
22 E $\frac{1}{2}$ NW $\frac{1}{4}$ is only 80 acres in size (that number is referenced in most of the deeds
23 also). Additionally, review of the maps and aerial photographs lead the Referee
24 to conclude that some of the irrigated land (at least 8 acres) does lie in the
25 W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24. The Referee concludes that there has been sufficient

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1 evidence presented to prove the existence of a right to use 3 cfs for the
2 irrigation of 80 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24.

3 Water Right Claim No. 027375 was filed in 1974 by a prior owner of the
4 property pursuant to the requirements of RCW 90.14. It asserts a right to
5 divert 5 cfs, 1800 acre-feet per year from the Yakima River for the irrigation
6 of 160 acres in the NW $\frac{1}{4}$ of Section 24, T. 17 N., R. 18 E.W.M. It also states
7 that at the time the claim was filed water was only being used for stock
8 watering. Mr. Eaton was able to establish that by 1976 water was being used for
9 irrigation, which is less than the five years needed to show that the right had
10 relinquished, RCW 90.14.170. Water Right Claim No. 027374 was also filed for
11 the property. It asserts a right to use 0.50 cfs, 180 acre-feet per year for
12 the irrigation of 160 acres in the NW $\frac{1}{4}$ of Section 24. There is a note on the
13 claim that the spring water helps irrigate the land along with the water used
14 from the Yakima River. Although the claimant is asserting a right to use the
15 spring, there was no evidence put in the record to show that the spring was used
16 during a time frame that would allow establishment of a water right (prior to
17 December 31, 1932). The spring is located near the southerly property line and
18 a pump is used to convey the water to the irrigated land. Most water conveyance
19 systems in place during the time period when water rights could be established
20 under either the Prior Appropriation Doctrine or the Riparian Doctrine were
21 gravity flow systems, not involving use of pumps. The Referee concludes there
22 is not sufficient information in the record to conclude that a water right was
23 established through beneficial use of the spring prior to December 31, 1932.

24 The Referee is faced with determining the appropriate annual quantity of
25 water to award to the claimants. The information presented in the Bain report

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1 is based on use of approximately 6 cubic feet per second. However, the Referee
2 has found that the evidence supports a recommendation for only 3 cubic feet per
3 second. At one point in the Bain Report, it states that water is used for 150
4 days during the irrigation season. The Referee will use that figure. Three
5 cubic feet per second diverted over a 150 day period would result in 891
6 acre-feet per year being diverted from the Yakima River for use on the
7 property.

8 The claimant has suggested that the priority date should be based on the
9 Riparian Doctrine, which would be the earliest date in the record for efforts to
10 sever the land. However, the land is not riparian to the Yakima River,
11 therefore, the priority date would be based on the first efforts to actually
12 appropriate the water. That date is not in the record. The priority date the
13 Referee will use will be the date McLeod obtained the property, since the ditch
14 being used is named the Steen, McLeod Ditch. The Referee recommends that a
15 right be confirmed with a June 30, 1898, date of priority, for the diversion of
16 3 cubic feet per second 891 acre-feet per year from the Yakima River for the
17 irrigation of 80 acres and stock watering in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24, T. 17 N.,
18 R. 18 E.W.M.

19
20 COURT CLAIM NO. 02311 -- Chester Vernon Stokes
21 02312 & Roma B. Stokes
22 02313

23 COURT CLAIM NO. 02314 -- Chester Vernon Stokes

24 The referenced Court claims were filed asserting rights to Wilson and
25 Naneum Creeks. The claimants are represented by Attorney Vernon E. Fowler, Jr.
26 Mr. Stokes testified at the evidentiary hearing.

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1 The Stokes own approximately 400 acres in two sections and are irrigating
2 between 190 and 200 of those acres. Mr. Stokes has lived his entire life in the
3 Wilson-Naneum area and became familiar with the lands he now owns when as a
4 child he helped his father cut wood further up the creek. Each of the claims
5 filed appears to be based on a different water right, so each claim will be
6 addressed individually.

7 Court Claim No. 02311 asserts a right to use waters from Wilson Creek to
8 irrigate lands in the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M. He
9 purchased this land in 1958 from Howard Thomas. According to Mr. Stoke's
10 testimony, approximately 15 acres are irrigated above the Haberman Ditch and 2
11 acres are irrigated below the ditch. Livestock also are raised on this land,
12 with a maximum of 400 head on all of the Stokes property. Four hundred head
13 would need 20 acre-feet per year, or 10 acre-feet during the irrigation season.
14 The total area described in Claim No. 02311 is about 40 acres, or one-tenth the
15 total area. One-tenth of the water needed for stock watering will be included
16 in any right confirmed under Court Claim No. 02311. The 15 acres were
17 originally irrigated from a ditch that diverted water from Wilson Creek at a
18 point in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M., over a mile
19 upstream. When that diversion was used the land was flood irrigated, using
20 considerably more water than is used at this time. Currently the land is
21 irrigated with water pumped from a barrow pit that is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 32. In 1974 Mr. Stokes changed the irrigation system, along with
23 changing the point of diversion for his water. There is no evidence he complied
24 with the change requirements in RCW 90.03.380. This barrow pit captures return
25 flow water off of the Edith Thomas property to the north and is also fed by

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1 water diverted from Wilson Creek and/or Whiskey Creek. The land is sprinkler
2 irrigated, with 30 to 34 sprinklers operated at one time. Based on the
3 information provided by Mr. Stokes, 0.50 cubic foot per second and 45 acre-feet
4 per year is currently being used to irrigate the 15 acres. The two acres below
5 the Haberman Ditch is irrigated with water diverted into the Haberman Ditch from
6 Whiskey Creek and 1.0 cubic foot per second, 9 acre-feet per year is used on the
7 two acres. Mr. Stokes described the irrigated land below the Haberman Ditch as
8 "wild pasture". When it is available, he uses a large quantity of water to
9 irrigate the field quickly and then shuts it off, which is why such a high
10 volume is used.

11 Water rights for the the land in the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 were
12 addressed in W. R. Thomas v. James T. Roberts, et al., Decree No. 5653 signed on
13 March 1, 1924. In the Findings of Fact for that decree, it was stated that W.
14 R. Thomas owned the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.,
15 known as the Rogers Tract, and that Rogers settled on the land in 1886 and water
16 was first diverted for irrigating this tract in 1885. The amount of water that
17 had been diverted and was being used was 30 inches. This decree identified
18 other water rights that are appurtenant to other lands owned by W. R. Thomas.
19 Besides the Stokes, Andrew J. and Stephanie Mills and Gary M. and Jacquelyn J.
20 Galbraith own land within the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 and are asserting a
21 water right. Their claims are addressed on pages 363 and 202, respectively.
22 Between the three claimants, rights are being asserted for the irrigation of a
23 total of 33 acres. Based on the record, a right exists for the irrigation of a
24 maximum of 30 acres, which is the number of acres for which the Referee can
25 recommend that rights be confirmed. Obviously there is an additional three

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1 acres being irrigated beyond the historic water right. There is insufficient
2 evidence in the record to show where the historically irrigated 30 acres are
3 located, therefore, the Referee will recommend that the right confirmed to each
4 claimant be for only a portion of what they are asserting a right. Thirty acres
5 is 91 percent of the total acreage being irrigated, so each claimant will be
6 recommended a right for 91 percent of the land they are irrigating. The
7 proportionate share of the right that the Stokes land would enjoy would be for
8 the irrigation of 15.5 acres, and based on the award in the decree of 1 inch of
9 water (or 0.02 cfs) for each acre irrigated, an instantaneous quantity of 0.31
10 cubic foot per second.

11 A reading of the Findings of Fact that preceded the Ferguson decree would
12 suggest that another right is appurtenant to lands that include the S $\frac{1}{2}$ SW $\frac{1}{4}$ and
13 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. The Findings of Fact state that Mrs. J. L. Bennett owned
14 the SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, with 30 acres being
15 irrigated. However, the evidence presented by Mr. Stokes clearly shows that
16 Mrs. Bennett did not own the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. Claimants in the
17 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 33, (Tirotta and Magnuson) have put into the record evidence to
18 show that Bennett owned the S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, not Section 32. See
19 page 161 and 331 of this report for discussion of their claims.

20 Water Right Claim No. 149672 was filed by Mr. Stokes pursuant to the
21 requirements of RCW 90.14. It asserted a right to divert 0.25 cubic foot per
22 second, 75 acre-feet per year from Naneum - Wilson Creeks (combined flow) for
23 the irrigation of 15 acres and stock water in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 32. The
24 place of use description on the claim does not include the lands irrigated in
25 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. Very little of the Stokes land lies outside of the

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1 S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 32, therefore, the Referee finds that it would be very easy to
2 mistakenly believe that all of the irrigated land lies within the area described
3 on the claim. Therefore, the omission of the lands in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32
4 from WRC No. 149672 will not be considered a defect in confirming a right for a
5 portion of that land.

6 The Referee recommends that a right be confirmed with a September 30, 1885
7 date of priority, for the diversion of 0.31 cubic foot per second in May and
8 June and 0.16 cubic foot per second in April and July 1 through October 15,
9 47.79 acre-feet per year from Wilson Creek for the irrigation of 15.5 acres and
10 stock watering. The place of use shall be that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 32 lying north of the Haberman Ditch and that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
12 Section 32 west of Wilson Creek and east of Whiskey Creek. The point of
13 diversion shall be in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29. The claimants should contact
14 the Department of Ecology about compliance with the change of point of diversion
15 procedures in RCW 90.03.380.

16 Court Claim No. 02312 asserts a right to irrigate 20 acres within
17 Government Lot 3 of Section 5, T. 18 N., R. 19 E.W.M. with waters diverted from
18 Wilson Creek and Whiskey Creek and 5 acres from an unnamed spring. Livestock
19 are also raised on this portion of the Stokes property. Up to 400 head can be
20 on all of the 400 acres owned by the Stokes in any given year, although the
21 average is around 190 head. Since this parcel is one-tenth of the total
22 ownership, one-tenth of the water needed for stock watering will be included in
23 any right confirmed under Court Claim No. 2312. Four hundred head of livestock
24 would need 20 acre-feet each year, or 10 acre-feet during the irrigation
25 season. One-tenth of that would be 1 acre-foot per year. Eighteen acres lying

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1 east of Whiskey Creek are irrigated from a diversion in the SW¼SE¼ of
2 Section 32. Two acres in the southeasterly corner of Government Lot 3 lie east
3 of Wilson Creek and are irrigated with water diverted from Wilson Creek at a
4 point in Government Lot 2 of Section 5. Mr. Stokes indicates that 1.5 cfs is
5 diverted at each point. A spring located approximately 360 feet north and 600
6 feet east of the southwest corner of Government Lot 3 is also used to irrigate
7 the southerly five acres that are east of Whiskey Creek and west of Wilson
8 Creek. The Referee believes that this 5 acres are part of the 18 acres also
9 irrigated from Whiskey Creek. The flow from the spring was estimated as being
10 between 0.25 cfs and 1 cfs. Considering the spring's location, it is very
11 likely it is fed by return flow during the irrigation season. Therefore, a
12 separate water right will not be considered for the spring.

13 At the time the land was settled, this portion of the the claimant's land
14 along with other land in Section 5 was initially owned by Northern Pacific
15 Railroad. On December 15, 1892, the railroad sold Government Lots 1, 2 and 3 of
16 Section 5 to S. W. Prater, who in 1898 sold it to Charles M. Hildreth. The land
17 was sold many times between 1898 and 1912, which is when it was acquired by
18 Lillian Lawrence. In 1918 Lawrence sold one acre in the southwest corner of
19 Government Lot 3 to Mary C. LeClerc and the remaining land stayed in the
20 Lawrence family until 1939 when half interest in the land was sold to Milton
21 Lewis. Mr. Lewis' partner, Phil Lawrence, was the nephew of Lillian Lawrence
22 and in 1916 he began farming the land and leasing it from his aunts. Milton
23 Lewis testified on behalf of Mrs. Gearhart, a neighboring landowner whose land
24 has the same historical ownership, about past water use on the land. In 1922 he
25 was hired to assist with chores and herding cattle on the farm, and that he was

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1 familiar with the land from that time until he sold it in 1971. Mr. Lewis raised
2 hay, grain, and pasture. For a time the land was a dairy farm. Mr. Lewis
3 testified at length about the various controversies over water in the area, but
4 this land was never involved in any of the past litigation.

5 The Referee has reviewed the various decrees and judgments regarding Wilson
6 and Naneum Creeks and none of the owners of this land during the time of the
7 litigation were parties to any of the cases. Exhibit No. DE-1307 offered by Mr.
8 Stokes is an Affidavit of Water Right filed by J. F. LeClerc and W. A. Jordin
9 dated February 22, 1883, stating that during the year 1872 Aman Galloway dug a
10 ditch capable of conveying 700 inches of water and appropriated 400 inches of
11 water. The ditch commenced near the center of Section 32, T. 19 N.,
12 R. 19 E.W.M. and ran in a southwesterly direction. The ditch was taken out for
13 the purpose of irrigating land in Sections 5, 6, and 7 in T. 18 N., R. 19
14 E.W.M. There is nothing in the record to show that the individuals that filed
15 the affidavit of water right had any interest in the claimants' land. The
16 affidavit states the ditch commenced near the center of Section 32. The state's
17 exhibit map does not show a natural water course near the center of Section 32.
18 The Referee recognizes that the creeks in the area may have changed course over
19 the years. If Wilson Creek had flowed nearer the center of Section 32 than at
20 present, a ditch taking off to the southwest would most likely have been serving
21 the W½ of Section 5, particularly since it was also intended to deliver water to
22 Sections 6 and 7, which are to the west of Section 5.

23 Milton Lewis was a party to Ecology v. Carlson and was identified in the
24 Order Pendente Lite as having a right with an 1872 date of priority for use of
25 0.67 cubic foot per second. Review of the report shows that this award was

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1 based on the Affidavit of Water Right discussed in the previous paragraph. Mr.
2 Maddox in his report chose to assume that the water right was appurtenant to all
3 of the irrigated lands in Sections 5, 6 and 7, irrespective of whether there was
4 any evidence that water had actually been delivered to the land in the late
5 1800's and early 1900's. This Referee will not make that assumption. In fact,
6 Mr. Stokes has put into evidence documents that clarify the lands owned by
7 LeClerc and Jordin. Chain of title documents show that the LeClerc property was
8 originally settled by Amasa Galloway, with a patent issuing on June 30, 1876.
9 In October of 1876 Fournier LeClerc (also referred to as J. F. LeClerc) acquired
10 the S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and Lot 4 of Section 5, T. 18 N., R. 19 E.W.M. Exhibit DE-603
11 is a transcript of testimony. The proceeding under which the testimony was
12 given is not identified, nor is the date, however, it would appear to be in the
13 late 1800's or early 1900's. Amasa Galloway is testifying about his knowledge
14 of Wilson, Naneum, Whiskey (then called Dry) and Galloway Creeks. He settled in
15 the area in 1871 along with Father Jordan (his father-in-law), William Jordan,
16 John Bloomquist, Aaron Mercer and Robert Canaday. Mr. Galloway testified some
17 about the William Jordan property and the attorney asking the questions
18 identified the William Jordan land as being the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$ of
19 Section 6, T. 18 N., R. 18 E.W.M. The Referee believes that the lands in
20 Sections 5 and 6 intended to be served under the Notice of Water right are
21 limited to the lands owned by LeClerc and Jordin. Documents submitted in
22 support of Claim No. 00495, Burl McNeil, show that William Jordin owned the NW $\frac{1}{4}$
23 of Section 7, receiving a title to the land on October 28, 1889. The land owned
24 by the Stokes in Government Lot 3 of Section 5 do not benefit from this notice,
25

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28 525

Referee's Office
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1 however, much of the Stokes' land described in Court Claim No. 02313 will
2 benefit and will be further discussed below.

3 The testimony offered by Milton Lewis establishes that the land was being
4 irrigated by the mid-1920's at the latest. Government Lot 3 is riparian to
5 Whiskey Creek (also known as Dry Creek). Under the Riparian Doctrine, a right
6 is established when steps are first taken to sever the land from Federal
7 ownership contingent on putting the water to beneficial use prior to
8 December 31, 1932, Department of Ecology v. Abbott, 103 Wn.2d 686, 694, P.2d
9 1071 (1985). The appropriate date for severing the land from Federal ownership
10 for lands originally patented to the railroad is May 24, 1884, the date when the
11 map of definite location was filed for Kittitas County.

12 WRC No. 149667 was filed by Mr. Stokes pursuant to RCW 90.14. It asserts a
13 right to divert 0.67 cfs, 90 acre-feet per year from Dry Creek for the
14 irrigation of 15 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, which actually is Government
15 Lot 3 of Section 5. The point of diversion described in the water right claim
16 is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32. WRC No. 149671, also filed by Mr. Stokes,
17 asserts a right to divert 0.8 cfs, 280 acre-feet per year from field drains and
18 a spring for the irrigation of 40 acres in the NW $\frac{1}{4}$ of Section 5, which would
19 include Government Lot 3.

20 The Referee concludes that sufficient evidence has been presented to show
21 that a water right exists for use of Whiskey and Wilson Creeks for the
22 irrigation of 20 acres in Government Lot 3 of Section 5. Although Mr. Stokes
23 indicated a use of 1.5 cfs from each diversion, the Referee finds that it would
24 be inappropriate to confirm a right for that quantity when the courts have
25 consistently held that one miner's inch, or 0.02 cfs, was sufficient for the

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1 irrigation of each acre in this area. Therefore, the Referee recommends that a
2 right be confirmed with a May 24, 1884, date of priority for the diversion of
3 0.40 cfs, 100 acre-feet per year for the irrigaiton of 20 acres and 1 acre-foot
4 per year for stock watering in Government Lot 3 of Section 5 east of Whiskey
5 Creek.

6 Court Claim No. 02314 was filed for what is referred to as the DeWeese
7 place, which is the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5. Within that area, 56 acres
8 are irrigated from two points of diversion. One diversion is in either the
9 S $\frac{1}{2}$ E $\frac{1}{4}$ NW $\frac{1}{4}$ or N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5 and diverts to the east of Mercer Creek. This
10 diversion is immediately downstream from the point where Mercer Creek separates
11 from Wilson Creek. It is used to rill irrigate a 21 acre field. A right is
12 being sought for the diversion of 1.25 cfs, 126 acre-feet per year. The second
13 diversion is a 30 HP pump on Mercer Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5. This pump
14 is used to sprinkler irrigate a field approximately 15 acres in size west of
15 Mercer Creek and north of the KRD canal and a smaller field also in the SW $\frac{1}{4}$ SW $\frac{1}{4}$
16 of Section 5, but east of Mercer Creek. A right is being sought for the
17 diversion of 2 cfs, 105 acre-feet per year from this diversion. The pump is
18 also used part of the season to irrigate the 21 acre field that is rill
19 irrigated from the upper diversion. Although Mr. Stokes' testimony and his
20 claim summary indicate a total 56 acres being irrigated, because of the overlap
21 between the area served by the two diversions, less acres are being irrigated
22 within the DeWeese place. Mr. Stokes did not testify to the maximum number of
23 acres being irrigated under Claim No. 02314. The State's Investigation Report
24 shows 40 acres being irrigated and review of aerial photo submitted by Mr.
25 Stokes (DE-1555) leads the Referee to conclude that is fairly accurate, so 40

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1 acres is the number the Referee intends to use. The livestock raised on the
2 Stokes property also have access to this land, which is three-tenths of the
3 total area, so three-tenths of the water needed for stock watering, or 3
4 acre-feet per year, will be part of any right confirmed under this claim.

5 The DeWeese place was also originally railroad land, acquired by John H.
6 Filer in 1891. By April of 1911 the land was owned by George W. and Allie
7 DeWeese, who granted the Ellensburg Water Supply Company a right of way across
8 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5 for construction of a water pipeline. The right of way
9 contained language that Ellensburg Water Supply Company would be responsible for
10 any actual damage to crops caused by the construction and maintenance of the
11 pipeline. This would indicate the existence of crops on the land. The DeWeeses
12 were also named in Decree No. 5411, William H. Rader v. Olive Sander, et al.,
13 which was entered on January 3, 1917. The decree did not identify with any
14 specifics the water right held by the DeWeeses, but it did state that the
15 defendant had a prior right against the plaintiff and co-defendants including
16 George and Allie DeWeese. Again this indicates to the Referee that there was
17 water use on the property. When the Stokes family first acquired the land, it
18 was being irrigated and had evidence of past use, including old fruit trees,
19 barns and a home that appeared to have been built in the early 1900's.

20 Two water right claims describe land that includes the DeWeese place. WRC
21 No. 150664 asserted a right to use 2.0 cfs, 500 acre-feet per year from
22 Mercer/Dry Creek for the irrigation of 120 acres and stock watering. The place
23 of use is the S3/4W $\frac{1}{2}$ of Section 5 and the described point of diversion is in the
24 SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5. This diversion is at approximately the same location as
25 the upper most diversion currently being used. WRC No. 152102 asserts a right

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1 to use 1.98 cfs, 720 acre-feet per year from Whiskey Creek for the irrigation of
2 180 acres and stock watering. The place of use is the NW¼ and SW¼ of Section 5
3 and the point of diversion is described as being in the NE¼NW¼ of Section 5.
4 This diversion is not currently being used. The second diversion being used by
5 the claimant requires the use of a pump to irrigate the land. When the water
6 right was established in the late 1800's pumps were not in use. It is very
7 likely that the diversion in the NE¼NW¼ of Section 5 was used to deliver water
8 by gravity flow to the field now irrigated with the pump. There is no evidence
9 that the procedures for changing the point of diversion on a water right
10 provided for in RCW 90.03.380 were complied with.

11 As with the rest of the Stokes' property, the land described in Court Claim
12 02314 is riparian to the water source being used, Mercer and Wilson Creeks, and,
13 therefore, the rights were established under the Riparian Doctrine with a
14 May 24, 1884, date of priority. The Stokes are seeking a right to divert 3.25
15 cfs for the irrigation of approximately 40 acres. In light of the repeated
16 findings by Kittitas County Superior Court in the late 1800's and early 1900's
17 that 0.02 cfs per acre is sufficient water for irrigation in this area, the
18 Referee will adopt that finding. Mr. Stokes' testified that when rill
19 irrigating he uses 6 acre-feet per acre and when he sprinkler irrigates, he uses
20 3 acre-feet per acre. Some of the land covered by this claim is both sprinkler
21 and rill irrigated and there was no clear indication how many acres are only
22 sprinkler irrigated and how many are only rill irrigated. Therefore, the
23 Referee proposes to use an average of 4.5 acre-feet per irrigated acre. The
24 Referee recommends that a right be confirmed under Court Claim No. 02314 for the
25 diversion of 0.80 cubic foot per second, 180 acre-feet per year for the

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1 irrigation of 40 acres and 3 acre-feet per year for stock watering. The Referee
2 will authorize use of the two diversions described in the RCW 90.14 claims and
3 it is suggested that Mr. Stokes contact Ecology about the process for seeking a
4 change in point of diversion to his pump location. The last claim to be
5 addressed in Court Claim No. 02313, which was filed for land referred to as the
6 Coble Place in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Government Lot 4) of Section 5.
7 Mr. Stokes testified to the number of acres served by each of the five
8 diversions, but not to the total number of acres being irrigated within the
9 described area. Because some of the diversions serve land that is also served
10 by another diversion, the Referee cannot simply add up the acres served by each
11 diversion and reach a total number of acres irrigated. Mr. Stokes testified to
12 irrigating between 190 and 200 acres, which is also consistent with the State's
13 investigation reports for the property. Under the other three claims 82 acres
14 are being irrigated, which leaves 118 acres being irrigated within the lands
15 described in Court Claim No. 02313. According to Mr. Stoke's testimony some of
16 the diversions have been added in recent years without compliance with the
17 change procedures in RCW 90.03.380. Any rights recommended for confirmation
18 will authorize use of the historic points only and Mr. Stokes should approach
19 Ecology about compliance with RCW 90.03.380.

20 This land is part of the land owned by J. F. LeClerc and W. A. Jordon at
21 the time they filed the Affidavit of Water Right previously discussed. The
22 affidavit stated that they had appropriated 400 inches of water (8 cfs) for
23 irrigating lands in Sections 5, 6, and 7. The ditch being used began in
24 Section 32 and ran southwesterly. There has been some discussion that Whiskey
25 Creek was originally a ditch that diverted from Wilson Creek in Section 32.

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1 Amana Galloway initially constructed the ditch in 1872 and he was the first
2 owner of what is now described as the Coble place. Mr. Stokes is seeking a
3 right to divert up to 8.25 cfs from Whiskey Creek. He made it clear that this
4 quantity is only diverted during high flow periods and that as the creek flow
5 declines, so does his diversion of water. The Referee believes that the
6 claimant is taking advantage of flood waters as they are available, without
7 evidence that has been the historic practice when fewer diversions were being
8 used. The appropriation that was the basis for this right was limited to 8 cfs
9 to be used between three sections. The Courts consistently in litigation
10 involving this area found that one miners inch of water, or 0.02 cfs, is
11 sufficient for each acre irrigated. The Referee intends to adopt that finding.
12 Livestock are also grazed on this land, which is about half of the total area
13 owned by the Stokes, therefore, the right recommended for confirmation will have
14 a stock water right for half of the water needed, or 5 acre-feet per year.

15 It is recommended that a right be confirmed under Court Claim No. 02313
16 with a June 30, 1872, priority date for the diversion from Whiskey Creek and
17 Mercer Creek of 2.36 cubic feet per second, 678 acre-feet per year for the
18 irrigation of 118 acres and 5 acre-feet per year for stock watering. The
19 authorized points of diversion shall be those described on the water right claim
20 forms. The place of use shall be the W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$
21 west of Mercer Creek, in Section 5, T. 18 N., R. 19 E.W.M.

22 Under all of the Court claims addressed herein rights are asserted for use
23 of water from springs and drains on the property to supplement the irrigation
24 water diverted from the creeks. There was little testimony about historic use
25 of these springs and Mr. Stokes testified that the springs and drains capture

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1 runoff or return flow water from his irrigated fields. Capturing and reusing
2 water in this matter is a landowner and water right holders management option
3 and reflects efficient use of the available water. However, there is
4 insufficient information available to allow the Referee to determine that
5 separate water rights exist for use of the springs. The Referee would need to
6 know the flow from the springs prior to irrigation season beginning to assess
7 how much natural flow is available and testimony about the condition of the
8 springs when the Stokes family acquired the land. At this time the Referee
9 declines to recommend that any rights be confirmed for use of the springs. If
10 any of the springs are used for non-diversionary stock watering, that use is
11 covered by the stock water stipulation discussed on page 4 of this report.

12
13 COURT CLAIM NO. 02275 -- Charles Strickland
& Linda Strickland
14 Walter L. Farrar
& Gail Farrar

15 COURT CLAIM NO. 02282 -- Walter L. Farrar
16 & Gail Farrar

17 Court Claim No. 02275 was filed by Charles and Linda Strickland for the
18 irrigation of 38 acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
19 Section 30, T. 19 N., R. 19 E.W.M. with waters diverted from Wilson Creek. On
20 June 26, 1990, Walt and Gail Farrar were joined to this claim. Court Claim No.
21 02282 was originally filed by Robert Prall for the irrigation of 6 acres within
22 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 19 N., R. 19 E.W.M.
23 with waters diverted from Wilson Creek. On June 14, 1993, Walt and Gail Farrar
24 were substituted for Mr. Prall as a claimant. Mr. Farrar testified at the
25 evidentiary hearing.

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1 The Farrars own that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29 west of the
2 Wilson Creek Road and the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30. Mr. Farrar estimated that they
3 irrigate 20 to 25 acres in Section 30 and 5 acres in Section 29. Mr. Farrar did
4 not provide testimony concerning historic water use on the property, beyond
5 conversations with owners of adjoining lands. However, another claimant in this
6 proceeding who also owns a portion of the NE $\frac{1}{4}$ of Section 30 and a portion the of
7 the NW $\frac{1}{4}$ of Section 29 lying west of Wilson Creek Road, Marilyn Wilkinson,
8 presented considerable history about the land, see page 560 of this report. The
9 bill of sale for the land mentions having a portion (20/135th interest) in the
10 Lawrence Manly water right. Lawrence Manly was a party to the 1973 Pendente
11 Lite Order. That order recognized that Lawrence Manly was asserting a right in
12 that proceeding with an 1883 date of priority for 0.05 cfs for irrigation and
13 stock watering in the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30 and the west 280 feet of
14 the NW $\frac{1}{4}$ of Section 29. Although the Order Pendente Lite issued to allow parties
15 an opportunity to comply with the requirements of RCW 90.14 to file water right
16 claims, there is no evidence in the record that Mr. Manly filed any water right
17 claims for this property in Sections 29 and 30. Failure to file a water right
18 claim waives and relinquishes any right that might have existed, RCW 90.14.071.

19 Due to the lack of a RCW 90.14 claim for this property, and the lack of
20 evidence of historic use of water on this land, the Referee cannot recommend
21 that a right be confirmed under Court Claims No. 02282 or 02275.

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1 COURT CLAIM NO. 05934 -- Clint Swanstrum
2 & Becky Swanstrum

3 Doris Jean Swanstrum filed a claim with the Court on January 18, 1991. The
4 Court signed an Order on February 8, 1991, allowing further processing of the
5 claim, which was scheduled to be heard at the evidentiary hearing held on
6 March 11, 1991. Mrs. Swanstrum, represented by Attorney Richard T. Cole, and
7 her son, Clint Swanstrum, testified at the hearing. Clint and Becky Swanstrum
8 were substituted as claimants in 1996.

9 Mrs. Swanstrum owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7,
10 T. 18 N., R. 19 E.W.M. A water right is being asserted to irrigate 10 acres in
11 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7 with water diverted from Dry Creek, a branch of Wilson
12 Creek. Since no rights are being asserted for the land in Section 6, no
13 additional consideration will be given to that land. Mrs. Swanstrum and her
14 husband acquired the land in June of 1952. At that time the irrigation system
15 and ditches were in place and the land was being irrigated. Mr. Swanstrum
16 initially continued irrigating in the same manner. The diversion from the creek
17 at that time was approximately 600 feet north and 600 feet east of the southwest
18 corner of Section 5. In the late 1960's or early 1970's the diversion was moved
19 downstream a short distance, still within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5. The
20 testimony indicates that when these two diversions were utilized the land was
21 flood or rill irrigated. Some time after the early 1970's the diversion from
22 the creek was changed again to a pump location on the claimant's property. A 2
23 HP pump is now used to withdraw water from the creek for a sprinkler system.
24 The pump withdraws water at a rate of 40 gallons per minute. Twelve handlines
25

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1 and sprinklers are now used to irrigate the land. The claimant is asserting a
2 right to use 1 cubic foot per second, 50 acre-feet per year from the creek for
3 irrigation. The land irrigated from the creek is planted to hay. Approximately
4 20 cow/calf pairs are raised, along with a few other head of livestock; the
5 livestock drink directly from the creek as it flows through the property. It is
6 not clear to the Referee whether the gravity flow diversion is still maintained
7 or if the pump is now the only mechanism for diverting water.

8 Water Right Claim No. 096871 was filed by Clark A. Swanstrum pursuant to
9 the requirements of RCW 90.14. It asserts a right to divert 1 cubic foot per
10 second, 50 acre-feet per year from Dry Creek for the irrigation of 10 acres in
11 the NE~~1~~/~~4~~NE~~1~~/~~4~~ of Section 7. The point of diversion described is the original
12 diversion that served the property. There is nothing in the record to show that
13 the claimant complied with the requirements of RCW 90.03.380 to obtain approval
14 to change their point of diversion. That definitely would have been required
15 when use of the pump began, but may not have been required when the diversion
16 was just moved a few hundred feet downstream.

17 The claimant put in historical documents to show the ownership history for
18 the property. The NE~~1~~/~~4~~ of Section 7 was originally conveyed by the Federal
19 government to Northern Pacific Railroad Company, who sold it to William Coon on
20 June 17, 1890. William Coon quit claimed the property to John Coon, who sold
21 the NE~~1~~/~~4~~NE~~1~~/~~4~~ of Section 7, along with other land to William Jordin on March 22,
22 1892. In September of 1895 the land was sold to The New England Mortgage
23 Security Company. That deed conveyed the land along with water, water rights,
24 irrigating ditches, aqueducts and canals. Many of the later transfers of the
25 land did not reference water rights. However, on May 17, 1890, J. W. Coon

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1 prepared and signed a Statement of Water Ditch, see Exhibit DE-588 put in the
2 record by Chester Vernon Stokes. It stated that he owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
3 Section 6 and the N $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7 and that he had a valid claim to
4 100 inches of water from Dry Creek for agricultural and domestic purposes. The
5 water was carried by three separate ditches from Dry Creek. In April 1888 50
6 inches of water were appropriated and carried in ditches 1 and 2, which diverted
7 from Dry Creek in Section 5) and in April 1890 appropriated an additional 50
8 inches of water carried in ditch 3, which diverted from Dry Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$
9 of Section 7. The statement does not indicate how many acres were irrigated.
10 The decrees entered by the Courts in the late 1800's and early 1900's for this
11 area all indicated that one inch of water was sufficient for irrigating one acre
12 of land. Therefore, the Referee will presume the 100 inches were used to
13 irrigate 100 acres. Mrs. Swanstrum is only asserting a right to irrigate 10
14 acres. Even though the affidavit indicates that 1888 was when water was first
15 appropriate, under the Riparian Doctrine, the priority date is set when steps
16 are first taken to sever the land from Federal ownership. For land conveyed
17 from the Federal Government to the railroad, as is the case with Section 7, the
18 priority date is the date when the map of definite location was filed, which
19 would be May 24, 1884.

20 The Referee recommends that a right be confirmed under the Riparian
21 Doctrine with a May 24, 1884, date of priority for the diversion of 0.20 cubic
22 foot per second, 50 acre-feet per year for the irrigation of 10 acres in that
23 portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 19 E.W.M. lying southeast of
24 Dry Creek. The diversion to be authorized will be in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5,
25 where water was diverted until the early 1970's. The change to the pump

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1 location on the creek was made without complying with the procedures for
2 changing points of diversion provided for in RCW 90.03.380.

3
4 COURT CLAIM NO. 01052 -- James C. Swayze
(A)05592 & Dianne Morrison

5 Court Claim No. 01052 was filed by Gerald & Ida Mae Thomas, Robert A. &
6 Lovelia L. Case, Leonard E. & Betty Thayer, and Donald & Virginia Garrity. On
7 November 4, 1988, James C. Swayze and Dianne Morrison were substituted for the
8 original claimants. Mr. Swayze testified at the evidentiary hearing.

9 The claimants' own approximately 30 acres in a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of
10 Section 33, T. 18 N., R. 19 E.W.M. lying north of the Cascade Irrigation
11 District canal. They acquired the land in 1985 and moved onto the property in
12 1986. They raise Arabian horses and cattle and use the land as pasture for
13 those animals. The land has also historically been used as pasture. There are
14 two branches from Naneum Creek that go through the property. The Referee
15 believes the easterly channel is actually a ditch that carries water diverted
16 from Naneum Creek. The main Naneum Creek is on the west side of the claimants'
17 land and the pasture west of the creek can only be irrigated with creek water.
18 The claimants are patrons of the Kittitas Reclamation District (KRD) and are
19 assessed for 25 acres. KRD water can only be used on the land east of Naneum
20 Creek.

21 Prior to the claimants acquiring the land, a makeshift dam in the creek
22 diverted water onto their land. When the claimants moved onto the property,
23 they inquired of Ecology concerning the status of the adjudication and their
24 ability to use creek water. According to Mr. Swayze, he was told that until the
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1 adjudication was over, any removal of water from the creek might be construed as
2 improper. Therefore, the only water he has intentionally used is water he
3 believed was delivered by KRD. As a result, the land west of the creek has not
4 been irrigated since 1986. The claimants' KRD water is delivered through the
5 branch of Naneum Creek, or ditch, that is on the east end of their property.

6 The claimants purchased their property from Raymond Razey. The land has
7 been in the Razey family since 1923. Several deeds were placed in the record
8 showing the sale or transfer of the land from 1907 to 1923. At the time of the
9 Ferguson decree in 1901, the SW $\frac{1}{4}$ of Section 33 was owned by A. J. Sliger, who
10 was awarded a Class 8 water right for 100 inches (2 cfs) of water from Naneum
11 Creek. A Class 8 right has a priority date of 1877. On April 10, 1912, John S.
12 Evans, who at the time owned the SW $\frac{1}{4}$ of Section 33 sold half of the water right
13 to J. E. Gebhart. In 1916 Gebhart conveyed the water right back to the Evans
14 family. That same year the land now owned by the claimants, along with the west
15 1789.6 feet of that portion of the SW $\frac{1}{4}$ of Section 33 south of the Cascade
16 Irrigation District canal was sold, along with one-half of the water rights
17 awarded for the quarter section to A. J. Sliger in the Ferguson decree. The
18 rest of the deeds conveying this land continue to have a statement that one-half
19 of the Sliger water right transferred with the land. Based on that language, it
20 is reasonable to conclude that the claimants' land, along with the west 1789.6
21 feet of the SW $\frac{1}{4}$ of Section 33 south of the canal is entitled to 50 inches of
22 water. The decree provided that one inch of water was sufficient for one acre.
23 Therefore, there exists a right to irrigate 50 acres. Besides Court Claim No.
24 01052, the only other claim in this proceeding is Court Claim No. 00661 (Kenneth

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1 Huber/Wilber Mills/Jim Vasquez), which is asserting a right to irrigate 7 acres
2 of the former Sliger right.

3 Pursuant to the requirements of RCW 90.14, Raymond Razey filed Water Right
4 Claim No. 100012 asserting a right to divert 50 inches of water from Naneum
5 Creek for the irrigation of 32 acres. The point of diversion described on the
6 claim is in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33. A very poor copy of the claim is in the
7 record and the portion of the claim which asks for the legal description of
8 lands on which the water is used is either blank or ink was so light it did not
9 copy. However, the record is clear that Raymond Razey owned the claimant's land
10 during the claims registration period. There is no evidence he owned other land
11 besides that in the SW $\frac{1}{4}$ of Section 33. The Referee concludes that WRC No.
12 100012 complied with the requirements of RCW 90.14.

13 It is clear that a portion of the water right awarded to A. J. Sliger in
14 the Ferguson decree is appurtenant to the claimants' property. At the time of
15 the evidentiary hearing the claimants were not using water. RCW 90.14.160 -
16 .180 provides that water rights, or portions of a water right, that are not used
17 for five consecutive years relinquish unless there is a sufficient cause for the
18 nonuse. One of the sufficient causes for nonuse is a legal proceeding that
19 prevents the use of water. In 1988 the Referee in this proceeding issued a
20 preface report that, among other things, concluded that the adjudication was a
21 legal proceeding that provided a sufficient cause for nonuse, thereby preventing
22 relinquishment. However, a recent Washington Supreme Court case, R. D. Merrill
23 v. Pollution Control Hearings Board, 137 Wn.2d 118 (1999) addressed
24 relinquishment and the Court ruled that the legal proceeding had to prevent use
25 of the water in order to protect the right of relinquishment. This adjudication

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1 does not prevent the use of water. However, it appears that the claimants may
2 have gotten advise from Ecology that could have lead them to believe that they
3 could not use water because of the adjudication. In light of this, and since
4 the land has continued to be irrigated from another source, the Referee does not
5 find that the right has relinquished.

6 The record is not clear about how many acres the claimants are asserting a
7 right to irrigate. They own approximately 30 acres. The Court claim appears to
8 assert a right to irrigate 10 acres from Naneum Creek. The State's
9 Investigation Report indicates that approximately 25 acres have been irrigated
10 on the property. However, that includes the land irrigated with water from
11 KRD. Mr. Swayze in his testimony did not make clear the extent of the right
12 they are seeking, but did testify that there are 7 acres that can only be
13 irrigated from Naneum Creek.

14 The Referee recommends that a right be confirmed under Court Claim No.
15 01052 with a June 30, 1877, date of priority for the diversion of 0.20 cubic
16 foot per second from May 1 through June 30 and 0.10 cubic foot per second from
17 July 1 through October 15 and April 1 through April 30, 40 acre-feet per year
18 for the irrigation of 10 acres and stock watering in that portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$
19 of Section 33 lying north of the Cascade Irrigation District Canal. Livestock
20 on the property also drink directly from the creek and that use is covered by
21 the non-diversionary stock water stipulation discussed on page 4 of this
22 report.

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1 COURT CLAIM NO. 01861 -- Robert Swedberg
2 & Lorene Swedberg

3 The claimants are asserting a right to use waters from Naneum Creek for
4 irrigation and stock watering. They were represented by Attorney William F.
5 Almon, who has since withdrawn as their attorney, and Mr. Swedberg testified at
6 the evidentiary hearing along with Art Carlson. Additionally, Andy H. Gustafson
7 testified by deposition taken on March 15, 1990.

8 The Swedbergs own almost all of the NW¼ and W½NE¼ of Section 33, T. 19 N.,
9 R. 19 E.W.M. They own a total of 225 acres and are asserting a right to irrigate
10 160 acres and water stock with water diverted from Naneum Creek. They obtained
11 the property in 1953 and the land was being irrigated at the time they
12 purchased. They have upgraded the system some, putting in a sprinkler system in
13 1968 and gated pipe in 1982. They also began using the Adams Ditch to irrigate
14 a portion of their land that lies west of the ridge that runs through the
15 property. Adams Ditch had not been used to serve the land prior to their
16 ownership. Mr. Swedberg has never measured the quantity of water being used
17 when he irrigates.

18 Mr. Swedberg filed several water right claims pursuant to the requirements
19 of RCW 90.14. Water Right Claims (WRC) No. 117908, 117911, 117912, 117914 and
20 117915 claim a right between the five of them to use 4 cfs, 1350 acre-feet per
21 year for the irrigation of 84 acres in the NW¼ of Section 33. WRC No. 117916
22 asserts a right to use 3 cfs, 900 acre-feet per year to irrigate 63 acres in the
23 N½ of Section 33. Each of the claim forms describes a different diversion from
24 Naneum Creek.

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1 The history of ownership for the NW¼ of Section 33 is different from that
2 for the NE¼ of Section 33. The NW¼ was conveyed by the Northern Pacific
3 Railroad (NPRR) to Sven Pearson on April 14, 1888. By the time the Findings of
4 Fact and Conclusion of Law were entered preceding the Ferguson decree, the NW¼
5 of Section 33 was owned by F. S. McDonald. The Findings state that the land was
6 first settled in March of 1878 and waters from Naneum Creek diverted that year.
7 One hundred acres were under cultivation. The Ferguson decree awarded McDonald
8 a right to use 100 inches of water in the NW¼ of Section 33. The W½NE¼ of
9 Section 33 was also originally owned by NPRR, who sold it to George Gilkey. In
10 November of 1904, Gilkey sold it to Charles Bregg. As far as the Referee can
11 determine Gilkey was not a party to any of the decrees that determined the water
12 rights for Wilson and Naneum Creeks. Charles Bregg also acquired the NW¼ of
13 Section 33 in 1904.

14 On September 26, 1918, J. B. and Annie T. Marquette sold to Charles Bregg
15 all of the waters of Naneum Creek appurtenant to the E½NE¼ of Section 5,
16 T. 17 N., R. 19 E.W.M., including one-half of the water awarded to David Kinkade
17 in the Ferguson decree, the one-half interest being 75 inches in the 10th
18 Class. David Kinkade was awarded a Class 10 right in the Ferguson decree for
19 150 inches and he owned the E½NE¼ of Section 5 at the time the decree was
20 entered. The Swedbergs have put into evidence documents to show that the
21 Marquettes owned the E½NE¼ of Section 5 at the time they sold the water right to
22 Charles Bregg.

23 However, September 26, 1918, is obviously after the adoption of the State
24 Surface Water Code on June 6, 1917. That code established procedures to be
25 followed to change the point of diversion and place of use for a water right.

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1 There is no indication those procedures were followed. Charles Bregg was a
2 party to W. R. Thomas v. James T. Roberts, decree entered on November 16, 1925.
3 The Findings of Fact stated that Charles Bregg was the owner of the E $\frac{1}{2}$ NE $\frac{1}{4}$ and
4 NW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M. and that water for irrigating said
5 tract was diverted from the combined streams shortly after said land became the
6 property of the Northern Pacific Railway Company and at the present time (1925)
7 seventy-five inches of water is being diverted for said purpose. The decree
8 then stated that Charles Bregg was entitled to seventy-five inches of water from
9 the waters of Wilson and Nanum prior to the right of the plaintiff.

10 It is clear to the Referee that in 1925 the Court did not recognize the
11 additional water right that apparently was sold to Charles Bregg in 1918.
12 Although the quantity of water awarded in Thomas is less that what was awarded
13 in the Ferguson decree, the Referee will recommend that right be confirmed
14 herein. Due to lack of compliance with the change procedures in RCW 90.03.380,
15 the Surface Water Code, the Referee cannot recommend that a right be confirmed
16 for the additional 1.5 cfs claimed.

17 It is recommended that a right be confirmed with a March 30, 1878, date of
18 priority for the diversion of 2.0 cubic feet per second in May and June, 1.0
19 cubic foot per second in April and July 1 through October 15, 500 acre-feet per
20 year for the irrigation of 100 acres and stock water in the NW $\frac{1}{4}$ of Section 33,
21 T. 19 N., R. 19 E.W.M.; 1.0 cfs, 10 acre-feet per year for stock watering from
22 October 16 through March 31.

23 The right being recommend will have three points of diversion authorized.
24 The diversion into Adams Ditch will not be included, as use of this diversion
25

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1 began in the 1950's apparently without compliance with the provisions of RCW
2 90.03.380 for adding a point of diversion.

3
4 COURT CLAIM NO. 01747 -- Vivian I. Teter
Art W. McFarland

5 Vivian I. Teter filed a Statement of Claim with the Court asserting a right
6 to use ground water and a slough for irrigation of one acre, stock water and
7 domestic. On January 22, 1990, Mr. McFarland was joined to the claim. Mr.
8 McFarland testified at the evidentiary hearing.

9 The property lies in a portion of the the SE ~~1/4~~ NW ~~1/4~~ of Section 11,
10 T. 17 N., R. 18 E.W.M. known as Lot 1 of Teter Short Plat. The only right that
11 Mr. McFarland is asserting is for non-diversionary stock watering. Livestock on
12 his property drink from a water source not specifically identified in the
13 testimony. The Referee must assume it is the slough cited in the Court claim as
14 a source of water. The State's map exhibit does not show a water source on the
15 property, but the investigation report does state there is a slough. Water for
16 domestic supply and irrigation of up to one-half acre is from two wells on the
17 property. Rights to the use of ground water are not being addressed in this
18 adjudication.

19 Non-diversionary stock watering, such as that described by Mr. McFarland is
20 covered by the stock water stipulation discussed on page 4 of this report. That
21 stipulation will adequately all of the claim being asserted and no other right
22 is recommended for confirmation.

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1 COURT CLAIM NO. 02279 -- Robert Tobin
2 & Linda Tobin
3 Alvia S. Dunnagun
& Janet G. Dunnagun

4 Robert and Melinda Tobin filed a claim with the Court asserting a right to
5 use waters from Naneum Creek and a spring. On March 10, 1989, Alvia S. and
6 Janet B. Dunnagun were joined to the claim. There was no appearance at the
7 evidentiary hearing in behalf of this claim. On November 20, 1991, the
8 Dunnaguns filed a Motion to Allow the Presentation of Evidence in relation to
9 this claim. The Court issued an Order May 26, 1992, stating that the Dunnaguns
10 would be allowed to introduce testimony and evidence during the exceptions
11 hearing phase for Subbasin No. 9. The Referee at this point cannot recommend
12 that a water right be confirmed under Court Claim No. 02279, but recognizes that
13 it is the intent of the Court that the Dunnaguns be scheduled to present
14 evidence when the supplemental hearing for Subbasin No. 9 is set.

15
16 COURT CLAIM NO. 00784 -- Jerry Tyler
17 Steven Lee
& Debbie Lee
18 Dale Lee
& Sandy Lee

19 Steven C. and Gloria E. Wright filed a Statement of Claim asserting a right
20 to use waters from Wilson Creek. On March 25, 1987, Jerry Tyler and Steven and
21 Debbie Lee were substituted for the Wrights. Mr. Tyler and the Lees own two
22 separate, adjoining parcels that were once owned by the Wrights. Mr. Tyler,
23
24
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1 represented by Attorney Jeff Slothower, appeared at the evidentiary hearing and
2 presented testimony concerning his land. There was no appearance on behalf of
3 the Lees.

4 Mr. Tyler's property is approximately in the southwest quarter of
5 Government Lot 3 of Section 19, T. 17 N., R. 19 E.W.M. He owns 8.1 acres and is
6 asserting a right to irrigate 7.5 acres of pasture and water livestock with
7 water diverted from Wilson Creek. Irrigation water is delivered through a
8 pipeline from the Grigg property that lies immediately north. In 1980 Mr. Grigg
9 and Mr. Tyler repaired the ditch that carries Wilson Creek water onto the Grigg
10 property, removed an old flume that conveyed water over a swamp, filled in the
11 swamp and built a section of ditch through the former swamp area. The testimony
12 indicates that Mr. Tyler, Mr. Grigg and the person leasing the Ludwick property
13 in the NW¼ of Section 19 coordinate the timing of their irrigation so that one
14 irrigator's practice does not interfere with another. Mr. Tyler irrigates during
15 times when Mr. Grigg is not. Mr. Tyler estimated that he uses 1 cubic foot per
16 second and irrigates about 20 days each irrigation season, which would result in
17 40 acre-feet per year being used (he estimated about 5.5 acre-feet per acre and
18 40 acre-feet equals 5.3 acre-feet per acre). The livestock on the property,
19 generally 7 or 8 cows, drink from a ditch that serves Harold Lamb's property to
20 the south. Mr. Tyler does not withdraw any water from this ditch, the stock
21 simply drink directly from the ditch. The State's Investigation Report
22 indicates that the land was not being irrigated at the time of the state's
23 inspection. Mr. Tyler testified that there was a three year period in the late
24 1980's when Mr. Lamb's ditch would backup and water would overflow and flood the
25 Tyler property. Mr. Tyler did not want to put any additional water on the land,

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1 so he did not irrigate. That problem was resolved by the time the hearing was
2 held and irrigation had resumed.

3 Clifford Bird, who is familiar with the property, also testified at the
4 hearing. His knowledge of the land extends back to 1941 and at that time it was
5 owned by the Fitterer Brothers and was irrigated pasture. The Fitterers had a
6 dairy operation.

7 In compliance with the requirements of RCW 90.14, Mary Wippel filed Water
8 Right Claim (WRC) No. 200009 during 1979 when the Claims Registration Act was
9 reopened and filing of additional claims was allowed. WRC No. 200009 asserts a
10 right to divert 3.5 cfs, 500 acre-feet per year from Wilson Creek for the
11 irrigation of 61 acres in those portions of Lots 2 and 3 of Section 19,
12 T. 17 N., R. 19 E.W.M. lying south and west of Wilson Creek. The point of
13 diversion location described is near the southwest corner of Section 18, T.
14 17 N., R. 19 E.W.M.

15 The claimants' land is part of a larger piece in Section 19 that was
16 originally conveyed by the United States to Northern Pacific Railroad Company,
17 who sold it to George W. Carver on August 9, 1889. Carver owned the land until
18 1905, when he sold to the Fitterer Brothers. The Griggs submitted three
19 documents into the record that specifically address water rights. DE-1030 is a
20 Water Right Statement by S. W. Maxey and Jacob Powell stating that in May of
21 1885 Maxey constructed a ditch from Wilson Creek and appropriated 200 inches of
22 water. The head of the ditch was at a slough, emptying into Wilson Creek, just
23 above the beaver dam on said creek in Section 19, T. 17 N., R. 19 E.W.M. near
24 the northeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19 and running in a southwesterly
25 direction about one-half mile into Section 25, T. 17 N., R. 18 E.W.M. There is

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1 no mention of water use from this ditch in Section 19. Part of the evidence put
2 in the record in support of Claim No. 2133, Michael Moeur, was a copy of the C.
3 H. Swigart Survey for this area (DE-697), which does show ditches off of Wilson
4 Creek. However, there is no ditch shown diverting from Wilson Creek in the SW¼
5 of Section 19. There does seem to be two diversions in the NW¼ of Section 19
6 and a diversion near the southwest corner of Section 18, labeled Fitterer #1 and
7 Fitterer #2. F. G. Fitterer sold Government Lots 1, 2 and 3 of Section 19,
8 which would include the Grigg land, in 1909 to Luttrell and McIntire together
9 with one share of the Bull Canal Stock. No other water rights are mentioned.
10 The Fitterer family apparently got the land back and Frank Fitterer sold
11 Government Lots 1, 2 and 3 of Section 19, and a portion of the SE¼NE¼ of
12 Section 24, along with one share of Bull Ditch stock and 20 inches of water in
13 the Stein, McLeod, and Clark Ditch. The Referee believes that the water from
14 the Stein, McLeod, and Clark Ditch were appurtenant to the described lands in
15 Section 24. Also in the record as part of the Moeur claim is DE-1627 which
16 contains three statements that address the Tjossem Ditch and the Steen (Stein),
17 McLeod and Clark Ditch. These statements identify those individuals using the
18 ditch, that they are all successors to Joel Clark, and the sections where their
19 land lies. Mr. Tyler is not a successor to Clark and his land does not lie in
20 the identified sections, which includes Section 24. The Stein, McLeod and Clark
21 Ditch carries water diverted from the Yakima River and Mr. Tyler is not
22 asserting a right to the Yakima River and have offered no evidence to show that
23 Yakima River has ever been used on their land.

24 Although the Maxey-Powell water right statement would indicate that a ditch
25 potentially had been constructed across the claimants property, none of the

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1 deeds reference the ditch or any easement related to the ditch and the Swigart
2 survey, which all agree was made between 1902 and 1912 does not show a ditch in
3 the SW¼ of Section 19. There is no evidence that water from this ditch was used
4 on the Tyler property. Additionally, the existence of Bull Ditch Company stock
5 and the lands being situated within the Bull Ditch Company service area needs to
6 be addressed.

7 Therefore, the Referee does not recommend that a water right be confirmed
8 to Jerry Tyler under Court Claim No. 00784. Due to the lack of appearance by
9 Steven and Debbie Lee in support of their portion of Court Claim No. 00784, the
10 Referee also does not recommend that a water right be confirmed to the Lees.

11
12 COURT CLAIM NO. 01520 -- Dick Van de Graaf, Jr.
& Maxine Van de Graaf

13 Dick and Maxine Van de Graaf submitted a statement of claim to the Court
14 asserting rights to use several sources of water in the Yakima Basin, including
15 Whiskey Creek, which lies in Subbasin No. 9. The other sources of water will be
16 addressed in their respective subbasins. The Van de Graafs are represented by
17 Attorney Lawrence E. Martin, and Mr. Van de Graaf testified at the evidentiary
18 hearing.

19 The claimants are asserting a right to use water from Whiskey Creek for the
20 irrigation of up to 100 acres and stock watering for 500 head of cattle and a
21 few horses. The land is currently pasture, although hay has been raised in the
22 past. The claimants' land lies in the W½ of Section 11, T. 18 N., R. 18 E.W.M.
23 Water is diverted from Whiskey Creek at a point near the center of the SE¼SW¼ of
24

25
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1 Section 6, T. 18 N., R. 19 E.W.M. into a ditch that crosses the N½ of Section 12
2 and goes through most of Section 11. The pasture is rill irrigated.

3 Mr. Van de Graaf's knowledge of the property dates back to 1953 when an
4 easement was granted for the ditch to cross neighboring land to get to the W½ of
5 Section 11. He knows that from that time forward the land has been irrigated
6 with water from Whiskey Creek, but has no knowledge of water use on the land
7 prior to 1953. Court Claim No. 01520 states that in 1953 water was appropriated
8 from Whiskey Creek. This land is not mentioned in any of the decrees that were
9 entered by Kittitas County Superior in the late 1800's and early 1900's for
10 waters in the Wilson - Naneum Creek drainage.

11 Water Right Claim No. 118274 was filed by Dick Van de Graaf, Jr., pursuant
12 to RCW 90.14. It asserts a right to use 6 cubic feet per second, 600 acre-feet
13 per year from Whiskey Creek for the irrigation of 300 acres and stock watering
14 in the W½ of Section 11, T. 18 N., R. 18 E.W.M. The claim states that water was
15 first used in August 1953.

16 The Referee concludes based on the testimony and evidence in the record
17 that 1953 was when water was first diverted from Whiskey Creek for the
18 irrigation of the Van de Graaf land. The only way to establish a water right at
19 that time was through the permit procedures prescribed in RCW 90.03. There is
20 no water right permit in the record for this land. The Referee concludes that a
21 water right was not legally established and therefore cannot recommend
22 confirmation of a right in this proceeding.

23 The Referee notes that the Van de Graafs are patrons of the Kittitas
24 Reclamation District (KRD) and the testimony was that this same ditch can be

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1 used to carry KRD water. This recommendation has no effect on the claimants use
2 of water delivered by the Kittitas Reclamation District.

3
4 COURT CLAIM NO. 00990 -- Steve Wallace
& Deborah L. Wallace

5 Steve and Deborah Wallace submitted a claim to the Court asserting a right
6 to use waters from Wilson-Naneum Creeks. The Wallaces were represented by
7 Attorney William F. Almon, who has withdrawn as their attorney, and Mr. Wallace
8 testified at the evidentiary hearing. Additionally, the claimant is relying on
9 the testimony of Andy H. Gustafson taken by Deposition on March 15, 1990.

10 The Wallaces own the S½SE¼ of Section 3 and the NE¼ of Section 10, in
11 T. 18 N., R. 19 E.W.M. They own 240 acres and are asserting a right to irrigate
12 20 acres in that part of the S½SE¼ of Section 3 above the Kittitas Reclamation
13 District Highline Canal and 107 acres on the portion of their land that lies
14 below the canal. The 107 acres below the canal are assessed by KRD and district
15 water is used on that land along with Wilson-Naneum Creek water. Since the
16 Wallaces acquired the land in the late 1970's, they have replaced most of the
17 dirt ditches used to irrigate the land with gated pipe, concrete ditches and
18 irrigate a portion fo the land with 70 sprinkler heads. Creek water is delivered
19 to the land through the Keister and Wilkins Ditches. The Keister Ditch diverts
20 from the combined flow of Wilson-Naneum in the NW¼SW¼ of Section 28, T. 19 N.,
21 R. 19 E.W.M. and Wilkins Ditch diverts from the creek in the SW¼SW¼ of
22 Section 28. The claimants irrigate hay, grain and pasture and use their land to
23 raise cattle. The number of cattle on the property varies seasonally, and
24 includes 300 or so yearling steers and/or 300 cow/calf pairs that are watered
25

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1 out of the ditches that serve the land. Water is diverted into the ditches all
2 year for stock watering.

3 Water Right Claim No. 090086 was filed pursuant to RCW 90.14 by Henry
4 Vander Vate, a prior owner of their land. It asserts a right to use 1.50 cfs,
5 760 acre-feet per year for the irrigation of 156 acres within the claimant's
6 land. The point of diversion described is the diversion into the Wilkins
7 Ditch. The claim did not identify the diversion into Keister Ditch as being
8 used. If use of that ditch was initiated after WRC No. 090086 was filed, the
9 claimant should contact Ecology about the procedures in RCW 90.03.380 for adding
10 a point of diversion. If Keister Ditch has always been used, there is a process
11 provided for in RCW 90.03.065 for amending a water right claim to correct
12 errors. Again, Ecology should be contacted about that process.

13 The claim filed with the Court and the assertions of the claimant's counsel
14 base their water rights on the Ferguson decree, the Roberts decree and the
15 Carlson decree. As mentioned on page 14 of this report, the Carlson decree was
16 an interim order and did not determine with any finality the extent or validity
17 of the rights being asserted. Additionally, it only dealt with lands above the
18 Highline Canal.

19 The Ferguson decree did address a portion of the claimant's land. The
20 Additional Amendatory and Supplemental Findings and Decree that the Court
21 entered on June 1, 1901, modified the prior Findings of Fact and the Decree. It
22 awarded to Eric Larson, who owned the W $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 2 and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of
23 Section 3, T. 18 N., R. 19 E.W.M., a right for the use of 100 inches of water
24 from Naneum Creek. It indicated that 150 acres were being irrigated with that
25 100 inches until June 15 and after that 50 inches were used. Construction of

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1 the ditch began in 1880. Andy Gustafson's testimony was that the portion of the
2 Wallace property above the Highline Canal was irrigated at the time he was
3 familiar with the land, which was in the 1920's. Sam Kayser offered Exhibits
4 DE-1277 and DE-1278 in support of his claim. These exhibits are deeds conveying
5 the Larson land to new owners. DE-1277 conveyed the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2 and the
6 S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3 to Charles Gustafson, together with 2/3 of the water from
7 Naneum Creek decreed to Eric Larson in the Ferguson case (66-2/3 inches).
8 DE-1278 is a copy of a deed that subsequently conveyed the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2,
9 together with 50 inches of that right, leaving 16.6 inches for use in the S $\frac{1}{2}$ SE $\frac{1}{4}$
10 of Section 3.

11 The Referee can find no indication in any of the decrees that water rights
12 were established for the Wallace property in the NE $\frac{1}{4}$ of Section 10. In fact,
13 Mr. Gustafson testified that portion of the land was undeveloped during the time
14 he was familiar with it. After June 6, 1917, the only method for obtaining a
15 water right for land that is not riparian to the water source was through the
16 permit procedures established in RCW 90.03. There is no evidence that the
17 Wallace's predecessors complied with those procedures and obtained a water right
18 permit for use of Wilson-Naneum Creek in the NE $\frac{1}{4}$ of Section 10. Even though
19 Water Right Claim No. 090086 asserts a right to irrigate the land in Section 10
20 from Wilson-Naneum Creek, the claim can only protect rights that were properly
21 established prior to June 6, 1917. Therefore, the Referee cannot recommend that
22 a water right be confirmed for the portion of the claimant's land lying in the
23 NE $\frac{1}{4}$ of Section 10. This does not affect water delivered to the property by KRD,
24 who is a major claimant in this proceeding, whose rights were determined in the
25 Major Claimant Pathway.

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1 The Referee does recommend that a right be confirmed with a June 30, 1880,
2 date of priority for the diversion of 0.33 cubic foot per second from May 1
3 through June 15 and 0.165 cubic foot per second in April and June 16 through
4 October 15, 78.4 acre-feet per year for irrigation of 20 acres and stock
5 watering; 0.165 cfs and 5 acre-feet per year from October 16 to March 31 for
6 stock watering.

7
8 COURT CLAIM NO. 02232 -- John L. Whittaker
9 & Barbara Whittaker
10 Ralph G. Charlton
11 Ronald J. Freytag
12 & Mary Styron Freytag
13 Robert Shannon
14 & Cathy Shannon
15 Harriett Nichols
16 Charles Rimer
17 & Faye Rimer
18 Don C. Smith
19 & Jane K. Smith

20 The referenced Court claim was initially filed by John L. and Barbara
21 Whittaker for use of waters from Wilson Creek and Naneum Creek for irrigation
22 and stock watering. Subsequent to filing the claim the other listed parties
23 were joined as additional parties. Ralph Charlton, who owned much of the land
24 described in the Court claim in the early 1980's and subsequently sold the land,
25 and Cathy Shannon testified at the evidentiary hearing.

26 At the time the Court claim was filed, the Whittakers owned the S½ of
27 Section 29, T. 19 N., R. 19 E.W.M. and at this time no longer have any interest
28 in the lands. Neither Mr. Charlton nor Mrs. Shannon provided historical
information about the land. However, documents in the record presented by other
claimants and information from the 1972 Ecology v. Carlson action that resulted

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1 in the Order Pendente Lite are useful in determining whether there is a
2 foundation for a water right in the S½ of Section 29.

3 In the early 1970's the land in question was owned by G. L. Blattner. The
4 Order Pendente Lite listed two "rights" in his name. The first is identified as
5 a Class 1 right with no date established for the use of 0.20 cubic foot per
6 second for the irrigation of 10 acres and livestock in the S½ of Section 29,
7 T. 19 N., R. 19 E.W.M. The second right is a Class IX with an 1884 date of
8 priority for 1.30 cubic feet per second for the irrigation of 65 acres in the S½
9 of Section 29. Mr. Blattner also filed two water right claims in response to
10 RCW 90.14, The Claims Registration Act. Water Right Claim (WRC) No. 007995
11 asserts a right to use 0.5 cubic foot per second, 100 acre-feet per year from
12 Wilson Creek for the irrigation of 20 acres in the S½ of Section 29, with the
13 notation to see #1 on sketch. The Referee believes the note was referring the
14 reader to field #1 designated on the sketch attached to WRC No. 007995, which
15 would appear to be in the NE¼SW¼ of Section 29 and to point of diversion #1 on
16 the sketch, in the NW¼ of Section 20. WRC No. 007996 asserts a right to use 1
17 cubic foot per second, 275 acre-feet per year from the combined waters of Wilson
18 and Naneum Creek for the irrigation of 60 acres in the S½ of Section 29. The
19 claim describes three points of diversion being used, all in the E½SE¼ of
20 Section 29.

21 A map attached to the water right claims shows seven fields all in the S½
22 of Section 29. As previously mentioned, field #1 is in the NE¼SW¼, field #2 is
23 in the E½SW¼SW¼, fields #3 and #4 are in the NE¼SE¼, Field #5 is in the E½SW¼SE¼
24 and field 6 and 7 are in the SE¼SE¼, all in Section 29, T. 19 N., R. 19 E.W.M.

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1 A prior owner of the land was a defendant in the case Thomas v. Roberts, et
2 al., which was decided in Kittitas County Superior Court with a decree being
3 entered on November 16, 1925. That decree awarded T. W. Farrell 10 inches of
4 water from Naneum and Wilson Creeks prior to the rights of the plaintiff, but
5 did not state a priority date for that right. Farrell also was awarded 65
6 inches of water that would have an 1884 date of priority. The decree does not
7 state what lands were owned by Farrell; however, in the record as Exhibit
8 DE-1527 (by Kayser Ranch), is a map created in 1912, that shows the ownership
9 of lands in this part of Kittitas County. T. W. Farrell is shown as owning the
10 S $\frac{1}{2}$ of Section 29. The Referee believes this decree is the basis for the
11 "rights" recognized in the 1973 Order Pendente Lite.

12 Mr. Charlton testified in general about continued water use on the land.
13 This testimony, along with the information contained in the water right claims
14 filed by Mr. Blattner, and the conclusions reached in the Order Pendente Lite,
15 lead the Referee to conclude that a recommendation can be made to confirm water
16 rights under Court Claim No. 02232. John Whittaker apparently acquired the land
17 shortly after the Order Pendente Lite was issued and then within a few years
18 began selling the land. The current ownership of the land appears to be as
19 follows: Harriett Nichols - the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29; Donald Smith - the
20 E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29, except the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; Ronald J. and Mary S. Freytag - the
21 NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ (except the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$), N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 29; Robert and Cathy Shannon - the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
23 Section 29. There are two additional parcels that were previously owned by the
24 Whittakers, the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$, for which the current owners were not

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1 provided, nor was there any testimony about current water use on the land or an
2 assertion that there is a water right for the land.

3 There are three diversions from the combined channel of Wilson-Naneum and
4 one diversion from Wilson Creek that serve ditches that convey water to and
5 through the S $\frac{1}{2}$ of Section 29. One diversion is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29 (the
6 Referee believes this is diversion #2 on WRC No. 007996, although it is a couple
7 hundred feet further north than was described); the second diversion is in the
8 SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 (diversion #4 on sketch attached to WRC 007996, again
9 the dimensions are off by a couple hundred feet) and the third diversion is in
10 the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 (diversion #3 on sketch attached to WRC 007996). A
11 diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20 is to a ditch used to irrigate lands in
12 the SW $\frac{1}{4}$ of Section 29, the Freytags own land in this quarter section.

13 According to the evidence, the Freytags are irrigating 12 acres in the
14 W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, which is where field 1 is located on the attachment to
15 the water right claims, and 6 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, which is where field 2 is
16 located. Mrs. Nichols/Charles & Faye Rimer own a five acre tract in the
17 S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, a portion of field 5, and irrigate three acres. The
18 Shannons own ten acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, a portion of
19 fields 5 and 6, and irrigate 8 acres. Donald Smith owns the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and the
20 SE $\frac{1}{4}$ SE $\frac{1}{4}$, except the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, consisting of 75 acres, which would be the
21 remainder of field 6, field 7 and fields 3 and 4. Mr. Charlton testified that
22 44 acres are being irrigated within the Smith ownership. Within the various
23 ownerships, a total of 73 acres are being irrigated, which is consistent with
24 the historic rights and with the water right claims filed pursuant to RCW
25 90.14.

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1 The Referee recommends that water rights be confirmed under Court Claim No.
2 02232 consistent with the continued beneficial use. Because there are two
3 different water rights appurtenant to the land with different priority dates,
4 the rights must be divided amongst the landowners in the proportion of the
5 irrigated land they own. As a result, Smith will get 60 percent, Freytag will
6 get 25 percent, Shannon will get 11 percent and Nichols/Rimer will get 4
7 percent. It is recommended that the rights be confirmed as follows:

8 To Don C. and Jane K. Smith, with a June 30, 1871, date of priority, 0.12
9 cubic foot per second, 30 acre-feet per year for the irrigation of 6 acres and
10 stock watering and with a June 30, 1884 date of priority, 0.78 cubic foot per
11 second, 190 acre-feet per year for the irrigation of 38 acres and stock watering
12 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$, except the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 29,
13 T. 19 N., R. 19 E.W.M. The authorized points of diversion will be the lower two
14 diversions on Wilson - Naneum Creek in the SE $\frac{1}{4}$ of Section 29.

15 To Ronald J. and Mary S. Freytag, with a June 30, 1871, date of priority,
16 0.05 cubic foot per second, 12.5 acre-feet per year for the irrigation of 2.5
17 acres and stock watering and with a June 30, 1884, date of priority, 0.325 cubic
18 foot per second, 77.5 acre-feet per year for the irrigation of 15.5 acres and
19 stock watering in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29. The point of
20 diversion shall be from Wilson Creek in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20.

21 To Robert and Cathy Shannon, with a June 30, 1871, date of priority, 0.022
22 cubic foot per second, 5.5 acre-feet per year for the irrigation of 1.1 acres
23 and stock watering and with a June 30, 1884, date of priority 0.143 cubic foot
24 per second, 34.5 acre-feet per year for the irrigation of 6.9 acres and stock
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1 water in the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29. The upper two
2 points of diversion from Wilson-Naneum Creek in Section 29 shall be authorized.

3 To Harriet Nichols/Charles & Faye Rimer, with a June 30, 1871, date of
4 priority, 0.008 cubic foot per second, 2 acre-feet per year for the irrigation
5 of 0.4 acres and stock watering; with a June 30, 1884, date of priority, 0.052
6 cubic foot per second, 13 acre-feet per year for the irrigation of 2.6 acres and
7 stock watering in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29. The authorized point of
8 diversion shall be the upper two diversions from Wilson-Naneum Creek in
9 Section 29.

10 COURT CLAIM NO. 00582 -- J. Marilyn Wilkinson
11 05055

12 Court Claim No. 00582 was originally filed by Margaret Juul for use of
13 waters from Wilson Creek. On February 20, 1991, J. Marilyn Wilkinson was
14 substituted for Ms. Juul. On January 30, 1990, J. Marilyn Wilkinson filed Court
15 Claim No. 05055 for the use of waters from Wilson Creek. Ms. Wilkinson
16 testified at the evidentiary hearing in support of both claims.

17 A right is being asserted under Court Claim No. 00582 for the irrigation of
18 13 acres in that portion of the North 659 feet of the NW $\frac{1}{4}$ of Section 29 west of
19 Wilson Creek Road and the North 659 feet of the NE $\frac{1}{4}$ of Section 30, both in
20 T. 19 N., R. 19 E.W.M.. According to Ms. Wilkinson's testimony, she is
21 irrigating 13 acres with water diverted from Wilson Creek at a point in the SE $\frac{1}{4}$
22 of Section 18. Of the 13 acres, approximately 4 are located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
23 Section 29 and 9 are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. Livestock raised on the
24 property drink from the irrigation ditch.

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1 Christian Johnson received a patent on January 11, 1890, for the NE¼ and
2 NE¼SE¼ of Section 30, T. 19 N., R. 19 E.W.M. and at some point acquired a
3 portion of the NW¼ of Section 29, including the land now owned by Ms.
4 Wilkinson. In a deed dated June 10, 1893, he transferred the land in Section 30
5 along with the portion of the NW¼ of Section 29 he owned to Mrs. Elizabeth
6 Searles, along with the water right appropriated in 1887. Christian Johnson and
7 John Lelard filed a Notice of Location of Ditch and Water Right providing notice
8 of construction of a ditch from the North Fork Wilson Creek to the ranch of
9 Christian Johnson in the NE¼ and NE¼SE¼ of Section 30. A right was asserted for
10 300 inches of water with the appropriation of water occurring between March 24
11 and April 14, 1887.

12 Two prior decrees address the land described in Court Claim No. 00582. In
13 Rader v. Sander a right to the use of 10 inches diverted from Wilson Creek above
14 Lyle Creek for use in Section 19, W¼SW¼ of Section 20, the NE¼NE¼SE¼ of
15 Section 30 and the NW¼ of Section 29 was identified for C. R. and Grace Hovey as
16 being senior to the plaintiff, William H. Rader. That decree did not identify
17 where the irrigated land was located. Loren Dunning, under Court Claim No.
18 00166 is asserting a right to the 10 inches of water for irrigation of five
19 acres in the SE¼SE¼ of Section 19. Ms. Wilkinson, under Court Claim No. 05055,
20 is asserting a right for the irrigation of 10 acres she owns in the SE¼SE¼ of
21 Section 19. That claim will be addressed in more detail below.

22 In W. R. Thomas v. James T. Roberts, Decree No. 5653, a water right was
23 identified for W. R. Thomas in the amount of 75 inches (1.5 cfs) for use in the
24 N¼ of Section 29 with a priority date of 1884. Jeanne Dunning and the estate of
25 Dorothy R. and Paul Nelson, under Court Claim No. 00598, are asserting rights

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1 for the portion of the N½ of Section 29 not owned by Ms. Wilkinson. A right is
2 being asserted under Court Claim No. 00598 for the irrigation of 100 acres.

3 Water Right Claim No. 000093 was filed by Paul Nelson asserting a right to
4 divert 3 cubic feet per second, 300 acre-feet per year from Wilson Creek for the
5 irrigation of 100 acres in the N½ of Section 29, T. 19 N., R. 19 E.W.M.. This
6 claim was filed pursuant to the requirements of RCW 90.14. Two claims were
7 filed on Paul Nelson's behalf with Kittitas County Superior Court in 1972, each
8 asserting a right for 2 cubic feet per second, 500 acre-feet per year from
9 Wilson Creek for irrigation in the N½ of Section 29.

10 During the time when claims were to be filed under RCW 90.14, the Wilkinson
11 land was owned by Lawrence Manly. There were no water right claims filed by Mr.
12 Manly for any of the lands owned by Mrs. Wilkinson. Mr. Manly was a party to
13 the 1973 Order Pendente Lite, which listed a potential right with an 1883 date
14 of priority for the diversion of 0.05 cfs for irrigation in the NE¼, NE¼SE¼ of
15 Section 30 and the west 280 feet of the NW¼ of Section 29. The Wilkinson
16 property is within this area. The Referee considered whether it would be
17 appropriate to conclude that WRC No. 000093 filed by Paul Nelson protected any
18 water right that might be appurtenant to the lands owned by Ms. Wilkinson in the
19 N½ of Section 29. While the first inclination might be to do just that, it
20 would not be appropriate. Mr. Nelson clearly did not own the land now owned by
21 Ms. Wilkinson at the time WRC No. 000093 was filed and the water use described
22 in the water right claim mirrors what is now being asserted in this proceeding.
23 Were the Referee to find that this water right claim protected Ms. Wilkinson's
24 land, the same conclusion would apply to the claims of Walt and Gail Farrar and
25 Wallace Stampfly, who also own land in the N½ of Section 29 west of Wilson Creek

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1 Road and are also successors to Lawrence Manly. Any rights that might be
2 confirmed to these parties as a result of the claim asserted in WRC No. 000093,
3 would result in a reduction in the quantity of water and number of acres that
4 could be recommended to Jeanne Dunning, who now owns the Nelson property. The
5 Referee finds it very interesting that Mr. Manly would participate in the
6 Pendente Lite, which was a proceeding to suspend an adjudication of Wilson and
7 Naneum Creeks to allow for filing claims pursuant to RCW 90.14, but then did not
8 proceed with filing the claim. Nevertheless, the Referee finds that a right
9 cannot be recommended for confirmation under Court Claim No. 00582 due to the
10 failure of Ms. Wilkinson's predecessor to file a water right claim pursuant to
11 RCW 90.14.

12 Court Claim No. 05055 was filed by Ms. Wilkinson for the irrigation of 10
13 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 19 N., R. 19 E.W.M. and 4.5 acres in
14 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T. 19 N., R. 19 E.W.M.. This is part of the land
15 owned by C. R. Hovey, for which he testified in the Sanders v. Bull proceeding
16 and for which he was awarded a right for 10 inches in Rader v. Sander. The
17 Rader v. Sanders decree stated that Hovey owned Section 19, the W $\frac{1}{2}$ SW $\frac{1}{4}$ of
18 Section 20 the NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30 and the west 280 feet of the NW $\frac{1}{4}$ of
19 Section 29, but did not indicate where the 10 inches was being used. A water
20 right claim form, completed by Lorne T. Dunning, Jr., pursuant to the
21 requirements of RCW 90.14 was filed with the Kittitas County Clerk's Office on
22 February 15, 1972. It asserted a right to divert 2 cubic feet per second, 500
23 acre-feet per year from Wilson Creek for the irrigation of 85 acres in the W $\frac{1}{2}$ of
24 Section 20 and part of the E $\frac{1}{2}$ of Section 20, T. 19 N., R. 19 E.W.M..

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1 The 1973 Order Pendente Lite pursuant to State of Washington Department of
2 Ecology v. Carlson, et al. divided the Hovey 10 inches of water, giving Lorne T.
3 Dunning, Jr. 0.15 cubic foot per second for use in Section 19 and Lawrence A.
4 Manly, a predecessor of Ms. Wilkinson, 0.05 cubic foot per second for the NE¼,
5 NE¼SE¼ of Section 30 and the west 280 feet of the NW¼ of Section 29. None of
6 the water was for the SW¼ of Section 20. However, Mr. Manly testified in 1972
7 that the 10 inches was only for use in Section 19. The reports that issued
8 prior to the 1973 Order Pendente Lite divided the 10 inches proportionately
9 between the two landowners who were successors to C.R. Hovey, Lawrence A. Manly
10 and Lorne T. Dunning, Jr.. However, the record does not indicate whether this
11 division was based on evidence of historic water use.

12 The Referee can find no water right claims pursuant to RCW 90.14 filed
13 either with the Department of Ecology or with Kittitas County Superior Court for
14 the lands in the SE¼ of Section 19 or the NE¼ of Section 30. Therefore, there
15 can be no recommendation to confirm a water right for those lands. Lorne T.
16 Dunning, Jr. filed with Kittitas County Superior Court a RCW 90.14 claim form
17 asserting a right to divert 1 cubic foot per second from Wilson Creek for the
18 irrigation of 35 acres in the W½ of Section 20 and a portion of the E½ of
19 Section 20. Mr. Dunning owns all of the W½ of Section 20, except for the 4.5
20 acres owned by Ms. Wilkinson. At the time of the filing requirements for RCW
21 90.14, Ms. Wilkinson's land was owned by Lawrence A. Manly and, as far as the
22 Referee can determine, was never owned by Mr. Dunning. It is not clear to the
23 Referee that Mr. Dunning intended to include Ms. Wilkinson's land in his
24 filing. Since the two claimants are asserting to have a portion, or all, of the
25 10 inch water right from Rader v. Sander, the Referee will not assume that the

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1 water right claim filed by Mr. Dunning protects rights claimed by Ms. Wilkinson
2 for her parcel in the SW¼SW¼SW¼ of Section 20.

3 The Referee, therefore, does not recommend confirmation of a water right
4 under Court Claim No. 05055.

5 COURT CLAIM NO. 06737 -- Stephan A. Willard
6 Son Vida I

7 On November 21, 1991, Son Vida I and Steve Willard filed Court Claim No.
8 06737 asserting a right to divert water from Wilson Creek and two unnamed
9 springs. Since The Referee held the evidentiary hearings for Subbasin No. 9 in
10 January of 1991, well before the late claim was filed. The Court on January 9,
11 1992, signed an order allowing further processing of the claim by the Referee.
12 On May 26, 1992, the Court signed an Order granting the claimants the right to
13 participate in the Subbasin No. 9 proceeding by introducing their evidence and
14 testimony through the exceptions hearing that will be scheduled by the Court for
15 Subbasin No. 9. Although the Referee cannot recommend that a water right be
16 confirmed due to the lack of testimony, it is recognized that Court Claim No.
17 06737 will be scheduled when the supplemental hearing for Subbasin No. 9 is
18 set.

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1 COURT CLAIM NO. 00726 -- Stephan A. Willard
2 & Ruby Willard
3 Shird J. Burks
4 & Audrey E. Burks
5 John Scott Downey

6 Donald R. and James B. Hay were the original claimants under Court Claim
7 No. 00726. On October 4, 1989, Shird J. and Audrey E. Burks and John Scott
8 Downey were joined to the claim; on January 20, 1993, Stephen A. and Ruby
9 Willard were substituted for the Hays on their remaining interest in the claim.
10 The claimants were represented by Attorney J. Jay Carroll at the evidentiary
11 hearing. Donald Hay, Shird Burks and John Downey testified at the hearing in
12 support of the claim.

13 Court Claim No. 00726 asserts a right to irrigate 450 acres and water
14 livestock with water diverted from the combined flows of Wilson and Naneum
15 Creeks. The lands described in the claim are: The W $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of
16 Section 19, the NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 30, T. 18 N.,
17 R. 19 E.W.M. The land is planted to hay and pasture, with grain rotation, and
18 its primary purpose is raising of cattle. A right is being asserted for the
19 diversion of 10 cubic feet per second, 2000 acre-feet per year. Water Right
20 Claim No. 123683 was filed by the Hays pursuant to RCW 90.14 and asserts the
21 same right as described in Court Claim No. 00726. The point of diversion
22 described in both the Court claim and the RCW 90.14 claim is in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 32, T. 19 N., R. 19 E.W.M., which is the point where Wilson and Naneum
24 Creeks separate. It does not describe the location of any diversions from
25 Wilson Creek itself. Wilson Creek flows through much of the claimant's
26 property, where there are five points of diversion. Since the water right claim

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1 does not describe points of diversion, the Referee proposes to recommend the
2 point of diversion being used to irrigate the land at the time of the hearing.

3 John Scott Downey is now the owner of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19,
4 T. 18 N., R. 19 E.W.M. The State's Investigation Report for this property shows
5 that 142 acres are irrigated with water carried in a head ditch that parallels
6 the north property line. The investigation report indicates that there is no
7 diversion from Wilson Creek to this ditch, that it captures runoff water from
8 irrigated fields to the north. However, Mr. Downey testified to a diversion
9 from Wilson Creek into the ditch just east of the northeast property corner. A
10 buried PVC pipe carries the water from the creek to the ditch. Although Court
11 Claim No. 00726 did not do so, Mr. Downey is also asserting a right to irrigate
12 Government Lots 3 and 4 of Section 19 with water diverted from Wilson Creek.
13 Mr. Downey testified to owning and irrigating a total of 200 acres. The Referee
14 believes that something less than that is actually being irrigated. The State's
15 Map, SE-2, shows a strip of land between two branches of Wilson Creek in the
16 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 as not being irrigated. It would be difficult to irrigate
17 the small strip of land between the two branches. Additionally, according to
18 the map, Mr. Downey only owns that portion of Government Lots 3 and 4 lying east
19 of Look Road; the Referee believes there is approximately 15 acres lying west of
20 the road that appears to be owned by Kittitas County. Mr. Downey did not
21 testify to the map being inaccurate. Mr. Downey is assessed by Kittitas
22 Reclamation District for 153 acres and uses KRD water on this land. The land is
23 planted to hay and pasture, with the hay fields being rill irrigated and the
24 pasture flood irrigated. Up to 200 head of cattle are grazed on the pasture and
25 are rotated from the neighboring Madeleine Villa, Inc. property. Livestock

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1 drink directly from the creek. The Referee notes that Water Claim No. 123683
2 does not include within the description of lands on which water is used the
3 portion of Section 19 lying in Government Lots 3 and 4. The Referee has not
4 been directed to any other RCW 90.14 claims that might describe this land.

5 The land in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19 was originally settled by
6 Milton and Robert Canaday, parties to Sanders v. Jones. The Canadays settled on
7 the land in 1871, obtained title from the Federal Government and sold to Carl
8 Sanders in 1900. The Canadays apparently owned other land in the area, as they
9 were awarded a total of 275 inches of water for irrigating. The Findings of
10 Fact that preceded the decree provided that one inch of water was sufficient for
11 the irrigation of one acre. Therefore, 275 inches would have been used on 275
12 acres. The E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ are 160 acres in size and would be entitled to 160
13 inches of water. The decree provided that one inch of water per acre could be
14 used in May and June and one-half inch could be used the remainder of the year.
15 There is no indication that the Canadays owned Government Lots 3 and 4 of
16 Section 19, nor is there any information in the record of who might have owned
17 that land. As far as the Referee can determine, there was no water right
18 awarded in Sanders v. Jones for Government Lots 3 and 4 and there was evidence
19 of a water right being established subsequent to that decree being entered.
20 Therefore, the Referee will not recommend confirmation of a water right for that
21 land.

22 Based on the evidence presented, the Referee recommends that a right be
23 confirmed with a June 30, 1872, date of priority for the diversion of 2.84 cubic
24 feet per second in May and June, 1.42 cubic feet per second in April and from
25 July 1 through October 31, 710 acre-feet per year for the irrigation of 142

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1 acres and stock watering in the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 18 N.,
2 R. 19 E.W.M.

3 Shird and Audrey Burks own the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the east 400 feet of the south
4 1100 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M. They are
5 asserting a right to irrigate 75 acres and water stock with water diverted from
6 Wilson Creek. Pasture, Timothy hay and barley are grown on the land. The land
7 is flood irrigated. Approximately 60 pair of cattle are raised. Water is
8 diverted from Wilson Creek at a point approximately 1200 feet north and 1300
9 feet east from the south quarter corner of Section 19, and carried in a ditch
10 that ultimately borders the east line of the Burks property. The Burks are
11 assessed by KRD for 72 acres.

12 The Burks land was originally settled by Gary Chapman on June 15, 1877, and
13 a patent received on December 30, 1882. Carl Sanders bought the land from
14 Chapman on March 21, 1883. It was owned by Sanders at the time of the Sanders
15 v. Jones suit. In that decree, Sanders was awarded a right for 450 inches of
16 water used on lands he settled or acquired from Chapman and Snyder. The
17 Decision that preceded the decree states that Sanders and/or his predecessors
18 began appropriating water in 1873 and by 1887 had appropriated a total of 450
19 inches for irrigation purposes. The priority date for the portion appurtenant
20 to the Burks property would be 1877, when the land was settled. With the decree
21 providing one inch of water in May and June and one-half inch of water the
22 remainder of the year, the Burks property would be entitled to 75 inches in May
23 and June and 37.5 inches the remainder of the year.

24 Based on the foregoing, the Referee recommends that a right be confirmed to
25 Shird and Audrey Burks with a June 15, 1877, date of priority for the diversion

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1 of 1.5 cubic foot per second in May and June, 0.75 cubic foot per second in
2 April and from July 1 through October 15, 375 acre-feet per year for the
3 irrigation of 75 acres and stock watering in the W $\frac{1}{2}$ SE $\frac{1}{4}$ (minus the exception) and
4 the east 400 feet of the south 1100 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 18 N.,
5 R. 19 E.W.M.

6 The remaining portion of the claim is now in the name of Stephan and Ruby
7 Willard. Their land predominately lies in the W $\frac{1}{2}$ of Section 30, plus a small
8 sliver of land in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 lying east of Look Road and north of
9 Sanders Road. Most of Government Lot 4 and the southerly 400 feet of Government
10 Lot 3 east of Wilson Creek are owned by Patrick Smith, who is also a claimant in
11 this proceeding. Don Hay testified at the hearing about use of this land. It
12 was planted in pasture and hay, with a grain rotation. They could have 1500 to
13 2000 head of cattle on the pasture during the irrigation season, or up to 300
14 head year around. That practice would vary over the years. Approximately 236
15 acres of the 270 acre total area is irrigated with water diverted from Wilson
16 Creek. KRD also delivers water for 200 acres.

17 The land in the W $\frac{1}{2}$ of Section 30 was settled on by Carl Sanders in the
18 early 1870's. On April 20, 1871, Sander settled on the E $\frac{1}{2}$ NW $\frac{1}{4}$ and Government
19 Lots 2 and 3 of Section 30 (155.39 acres) and received the patent on February
20 10, 1875. On June 1, 1874, Sander settled on the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 30
21 (117.77 ac.) and received the patent on December 1, 1882. Although the claimant
22 is asserting a right for Government Lot 1 of Section 30, there is no evidence
23 that it was owned by Carl Sander, nor is there any evidence at all in the record
24 about historic ownership or water use on this specific parcel. Approximately 15
25 acres are irrigated within Government Lot 1. This land is riparian to Wilson

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1 Creek. Rights were awarded to Carl Sander for this land and other land he owned
2 in the Sander v. Jones decree. The Decision that preceded the decree stated
3 that Sander first appropriated 20 inches from Wilson Creek in 1873 and steadily
4 increased his appropriation until by 1887 he was appropriating a total of 450
5 inches. Additional water was appropriated by Sander for running a mill. As
6 previously mentioned, the decree stated that one inch of water was needed to
7 irrigate one acre in May and June and one-half inch the rest of the year.

8 Although the claimant testified to irrigate 236 acres with water diverted
9 from Wilson Creek, 15 of those acres lie within Government Lot 1, for which
10 there has been no evidence submitted to show the existence of a water right.
11 Therefore, the Referee cannot recommend that a right be confirmed for those 15
12 acres, leaving 221 acres for which a water right can be recommended. Under the
13 Riparian Doctrine, the priority date for a water right is the date steps were
14 first taken to sever the land, which in this case would be the date that Carl
15 Sander settled on the land. The land was settled in two blocks, therefore, two
16 separate water rights must be awarded. The land in the E $\frac{1}{2}$ NW $\frac{1}{4}$, and Government
17 Lots 2 and 3 (SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 30 would have a priority date of
18 April 20, 1871 and the remaining land would have a priority date of June 1,
19 1874. The Referee concludes that 150 irrigate acres will have a priority date
20 of April 20, 1871, and 71 acres will have a priority date of June 1, 1874. The
21 claimant at the exception phase can seek to have a different distribution of the
22 acres if evidence in support of that can be presented.

23 Therefore, the Referee recommends that a right be confirmed with an
24 April 20, 1871, date of priority for the diversion of 3 cubic foot per second in
25 May and June, 1.5 cubic foot per second in April and July 1 through October 15,

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1 750 acre-feet per year for the irrigation of 150 acres and stock watering in the
2 E½NW¼, Government Lots 2 and 3, except that portion of Government Lot 3
3 described as follows: Beginning at the southeast corner of said lot, thence S
4 89°28' W along the south line of said lot 904.3 feet; thence north 26°08' E 242
5 feet; thence N 70°05' E 496 feet; thence N 83°05' E 167 feet; thence S 83°07' E
6 73 feet; thence S 13°03' E 400.7 feet to the point of beginning, in Section 30,
7 T. 18 N., R. 19 E.W.M. With a June 1, 1874, date of priority, a right to divert
8 1.42 cubic feet per second in May and June, 0.71 cubic foot per second in April
9 and July 1 through October 15, 355 acre-feet per year for the irrigation of 71
10 acres and stock watering in the E½SW¼ and that portion of Government Lot 4
11 roughly lying north of Sanders Road and west of Wilson Creek, in Section 30, T.
12 18 N., R. 19 E.W.M.

13 In addition to drinking from the irrigation ditches, livestock grazing on
14 the claimants' land may have access to Wilson Creek, which is covered by the
15 stock water stipulation discussed on page 4 of this report.

16
17 COURT CLAIM NO. 00893 -- Barbara Williams

18 Ms. Williams filed a claim with the Court asserting a right to use an
19 unnamed spring for domestic supply, stock watering and irrigation. Ms. Williams
20 son-in-law, William Erickson, testified at the evidentiary hearing.

21 The claimant's property lies in the S½SE¼SW¼ of Section 33, T. 19 N.,
22 R. 19 E.W.M. There appears to be some confusion in the record about the actual
23 legal description for the property. The description in the claim is as
24 follows: "That portion of the S½ of the NW¼ of Sec. 33, T. 19 N., R. 19 E.W.M.,
25 which is bounded by a line described as follows: beginning at the SW corner of

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1 the SE¼SW¼ of Section 33, thence N 2°10'44" W along the west boundary of said
2 SE¼SE¼, 30 feet; thence N 88°39' E 616.39 feet; thence N 01°47' W 335.71 feet;
3 thence N 88°39' E 654.7 feet; thence S 0°2'40" E 335.59 feet to the true point
4 of beginning." Discounting the two apparent typographical errors, the legal
5 description appears to describe the southerly 335 feet of the westerly 600 or so
6 feet of the SE¼SW¼ of Section 33. Yet the State's Investigation Report and SE-2
7 describe the SW¼SE¼SW¼ of Section 33, except the southerly 341 feet -- which
8 would appear to exclude the portion of the SE¼SW¼ described in Court Claim No.
9 00893. The State's Investigation Report identifies two water right claims filed
10 pursuant to RCW 90.14 that may be appurtenant to the claimant's property. They
11 describe basically the same land as described on the claim form itself, not on
12 the investigation report. Mr. Erickson referred to a claim filed by Leonard
13 Bakeman as being for the spring and the property, however, that claim describes
14 the land described in the investigation report and mapped on the exhibit, not
15 the land described in Court Claim No. 00893. The Referee is confused about
16 which land is owned by Barbara Williams.

17 Mr. Erickson testified that a spring on the property is used for irrigation
18 of approximately 2 acres of pasture. The outflow of the spring was measured by
19 his brother-in-law at 55 gallons per minute, but he believed that the flow
20 fluctuated over the year. Prior to his mother-in-law acquiring the land, there
21 was a wooden pipe, approximately six inches in diameter into the spring. They
22 have since constructed a concrete box around the spring. He believes that the
23 original spring development is very old. However, he was not able to provide
24 any history about the property and, therefore, nothing definitive to establish
25 when the spring was first developed and used. When his mother-in-law acquired

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1 the land in 1975 the spring was also used for domestic supply. However,
2 subsequently a well was drilled for the domestic use. Mr. Erickson testified
3 that a stream flows through the property and livestock drink from the stream.
4 However, the Referee believes the stream is actually a ditch that carries water
5 diverted from Naneum Creek just to the northwest of the claimant's property.
6 There was no evidence presented to show that a water right was established for
7 use of Naneum Creek for stock watering.

8 There are three water right claim forms filed pursuant to RCW 90.14 that
9 may be appurtenant to the claimant's property. They are Water Right Claims No.
10 112083 filed by Leonard Bakeman, No. 007250 filed by Floyd L. Porter, and No.
11 119731 filed by Mr. and Mrs. Steven Hall and Mr. and Mrs. John Bennett. Only
12 WRC No. 112083 asserts a right to use a spring.

13 There has been no evidence presented to show that a water right was legally
14 established for use of the spring. Additionally, the correct legal description
15 of the claimant's land is in question. Therefore, the Referee cannot recommend
16 that a water right be confirmed to Barbara Williams under Court Claim No. 00893.

17
18 COURT CLAIM NO. 01681 -- Philip C. Wilson

19 Joe Thomas, Sr. filed a statement of claim with the Court asserting a right
20 to use waters from Wilson Creek for irrigation and stock water. On October 31,
21 1989, Philip C. Wilson was substituted for Mr. Thomas as claimant. Mr. Wilson
22 testified at the evidentiary hearing.

23 The claimant's land is 1.6 acres in size and lies in a portion of the
24 SW~~1~~NE~~4~~ of Section 35, T. 18 N., R. 18 E.W.M. Mercer Creek flows through the
25 property. Mr. Wilson is asserting a right to irrigate his lawn and garden with

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1 water diverted from Mercer Creek. Water is pumped from the creek near the
2 northeast corner of the claimant's land. The irrigation system was in place
3 when Mr. Wilson bought the property from Joe Thomas, Sr.'s estate.

4 Entered into evidence is a copy of the receiver's receipt dated August 27,
5 1886, from Annie Michels for the W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 35,
6 T. 18 N., R. 18 E.W.M. Payment to the receiver is the last step prior to a
7 Homestead Patent issuing, so it is evidence that Ms. Michels in the process of
8 acquiring the land by 1886. On October 30, 1889, Henry Michels sold to Charles
9 Robinson an 6 acre parcel that included the land now owned by Mr. Wilson. Mr.
10 Wilson also put in the record a summary of the chain of title for his property.
11 Although Mr. Wilson believes that it is likely that the land has been irrigated
12 since it was first settled, he has provided no evidence to show that a water
13 right was established for use of Mercer Creek. Both the Ellensburg Water
14 Company and Cascade Irrigation District deliver water in this area and Cascade
15 Irrigation District uses Mercer Creek as a mechanism to deliver their water.
16 Without evidence to show that water from Mercer Creek was used in the late
17 1800's or early 1900's, the Referee cannot recommend that a water right be
18 confirmed for the property.

19 Additionally, the Referee can find no evidence that a water right claim was
20 filed for the property pursuant to RCW 90.14. The land apparently was owned by
21 the Mundy family at the time of the claims registration. It does not appear
22 that they filed a water right claim for use of Mercer Creek. Failure to file a
23 claim relinquishes any right that may have existed. RCW 90.14.071.

24
25
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1 COURT CLAIM NO. 05316 -- William P. Woods
2 & Priscilla A. Woods

3 William P. and Priscilla A. Woods submitted a Statement of Claim to the
4 Court on May 11, 1990, and the Court on June 8, 1990, entered an Order accepting
5 the claim for further processing. The claimants are represented by Attorney
6 John P. Gilreath, who appeared on their behalf at the evidentiary hearing. Mr.
7 Gilreath presented their claim to the Court and during the testimony of a
8 neighboring claimant, C. Vernon Stokes, solicited testimony about his knowledge
9 of the property.

10 The Woods land consists of a total of 20 acres in the ~~N $\frac{1}{2}$ NW $\frac{1}{4}$~~ of
11 Section 8, T. 18 N., R. 19 E.W.M. Although the land was not being irrigated
12 when the Woods acquired it in 1990, there was evidence of past irrigation. A
13 ditch from Wilson Creek goes under the Kittitas Reclamation District canal,
14 which is just north of the property. Although the claimants are asserting a
15 right to irrigate the entire 20 acres, Mr. Stokes testified to his belief that
16 between 5 and 8 acres have been irrigated in the past. Mr. Stokes did not
17 believe the land east of the driveway had been irrigated. He described the land
18 as "subby" because of seepage from the KRD canal. He also described rock bars
19 on the property that were not irrigable and a borrow pit in the northwest
20 corner. Review of attachment G to DE-1574 confirms some of Mr. Stokes'
21 testimony -- the borrow pit in the northwest corner and the existence of rock
22 outcrops that certainly would not be irrigated. Ditches have been drawn on the
23 face of the document and the ditch from Wilson Creek does not appear to serve
24 the land east of the driveway. There is a ditch draw somewhat parallel to the
25

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1 KRD canal and Mr. Gilreath suggested it captured seepage water and was used to
2 irrigate the land. Mr. Stokes acknowledge the existence of that ditch, but
3 indicated it was built "not too long ago". Mr. Stokes testimony raises a
4 question as to the number of acres that have historically been irrigated on the
5 land. The land has been used to pasture livestock which drink from the
6 irrigation ditch and unnamed springs located on the property. Stock watering
7 from the springs is nondiversionary in nature.

8 Pursuant to the requirements of RCW 90.14, Orie Pratt submitted two water
9 right claims. WRC No. 09751 asserts a right to use springs for domestic supply
10 and livestock. The springs are located on the claimants property. Based on the
11 presentation at the hearing, the Referee concludes this is the non-diversionary
12 stock water use discussed and covered by the stock water stipulation. WRC No.
13 09752 asserts a right to divert 1 cfs, 700 acre-feet per year from Wilson Creek
14 for the irrigation of 5 acres. The point of diversion described on the claim
15 appears to be at approximately the location of the borrow pit on the property.
16 Mr. Stokes testified that water was diverted from the creek into the borrow pit
17 and then used for irrigation, so it appears that Mr. Pratt was describing the
18 point where the water entered his irrigation system, rather than the point where
19 the water was diverted from Wilson Creek. The Referee notes that Mr. Pratt was
20 asserting a right to irrigate 5 acres. The difference between that and the 20
21 acres now being asserted was not addressed by Mr. Gilreath.

22 The claim is based on a water right established by James Jude, who received
23 a patent on August 12, 1890, for the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8,
24 T. 18 N., R. 19 E.W.M. James Jude was a defendant in Sander v. Jones. The
25 decree awarded James Jude 20 inches of water and indicated that the water was

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1 appropriated between 1883 and 1887. The decree provided that one inch of water
2 was sufficient for the irrigation of one acre, therefore, the 20 inches of water
3 awarded to Jude would have been sufficient for 20 acres. The Jude property was
4 riparian to Wilson Creek. There are two other claimants in this adjudication
5 who are asserting a right based on being successors to Jude. Ronald Rees, under
6 Court Claim No. 00892, and Gerald and Ruth Brunner, under Court Claim No. 02214
7 own and are asserting rights for lands within the NW $\frac{1}{4}$ of Section 8. Mr. Rees is
8 irrigating 12 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the Brunners are irrigating 20 acres
9 in the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$. Rights are being asserting for the irrigation of a total of 52
10 acres, but the extent of the right based on the decree is 20 acres. There has
11 been no evidence offered to show that an additional right beyond that awarded in
12 Decree No. 96 is appurtenant to the collective properties, or specifically for
13 the Wood property. Mr. Rees owns a total of approximately 40 acres within the
14 area for which a right was awarded, Mr. Wood owns 20 acres and Mr. Brunner owns
15 20 acres. There is insufficient evidence to show where the 20 acre right was
16 being exercised within the Jude land when the right was established in the
17 1800's and the Referee doubts that information is available today. Mr. Gilreath
18 asserted that the land in the N $\frac{1}{2}$ NW $\frac{1}{4}$ should have half of the Jude water right.
19 The Referee agrees with that position, however, since there are two claimants
20 who are asserting rights in the N $\frac{1}{2}$ NW $\frac{1}{4}$, Mr. Wood would only have a right to
21 one-quarter and the Brunners would have one-quarter of the right.

22 Mr. Gilreath presented an exhibit that raises a question concerning the
23 extent of the Jude water right. The Sander v. Jones Decree, No. 96, shows that
24 James Jude has a right to a total of 20 inches. This is the quantity in both
25 the typed version of the Decree and Findings of Fact that is in evidence and the

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1 handwritten Findings of Fact that is part of DE-1574. However, also part of
2 DE-1574 is a portion of a typed document titled "Wilson Creek - Sander vs. Jones
3 et al.". The Referee has encountered this type of document in many subbasins
4 and has referred to it as a "Schedule of Rights" for the referenced decree.
5 These Schedules were apparently prepared by someone responsible for
6 interpreting and enforcing the various decrees entered in Kittitas County.
7 Although there is not definitive statement as to when the schedules were
8 prepared, or by whom, the Referee believes it was the Kittitas County
9 Watermaster, who would have been responsible for administering the decrees prior
10 to enactment of the Surface Water Code in 1917. The particular Schedule of
11 Rights at issue here is only partially in the record, the first page and the
12 page with the James Jude water right are identified as Exhibit E. James Jude is
13 shown as having a right to 30 inches, 10 more than appears in the Decree or
14 Findings of Fact. The first 20 inches are recited in the same order as they
15 appear in the Decree and Findings of Fact (6 inches, then 7, then 3, then 4)
16 with the extra 10 inches following. There was no explanation offered concerning
17 the difference between the 20 inches awarded in the decree and the 30 inches in
18 the schedule. Without further explanation, the Referee must conclude that the
19 Jude right is limited to 20 inches and 20 acres.

20 Therefore, the Referee will divide the 20 acre right amongst the three
21 claimants, based on the number of acres they own within the original Jude
22 property. Based on this, Mr. Rees will have one-half of the right, or ten
23 acres, and Mr. Wood and the Brunners will each have a right to one-quarter of
24 the right, or five acres. The recommendation for five acres is also consistent
25 with WRC No. 09751 filed pursuant to RCW 90.14.

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1 The Referee recommends that a right be confirmed under Court Claim No.
2 05316 with a June 30, 1877, date of priority for the diversion from Wilson Creek
3 of 0.10 cubic foot per second in May and June, 0.05 cfs in April and July 1
4 through October 15, 25 acre-feet per year for the irrigation of 5 acres and 0.5
5 acre-foot per year for stock watering. A non-diversionary stock water right
6 also exists for the property under the stock water stipulation.

7
8 COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources
(A) 00590

9 The Washington State Department of Natural Resources (DNR) filed a claim
10 for use of numerous sources of water within the Yakima River Basin, including
11 several within Subbasin No. 9. Miriam I. Laukers, a Program Specialist with
12 DNR, and Larry Charlton, a DNR Land Manager, testified in support of the claim.

13 DNR is asserting rights to use water from Wilson and Naneum Creeks, unnamed
14 streams and unnamed springs in Subbasin No. 9 for stock watering, timber
15 harvesting and fire suppression. According to the testimony the stock watering
16 use is nondiversionary in nature, with the livestock drinking directly from the
17 source. This type of stock water use is covered by the stock water stipulation
18 discussed on page 4 of this report. Mr. Charlton testified that there also was
19 no diversionary use of water for timber harvesting. Water is diverted from all
20 available water sources for fire fighting when needed. Pumper trucks are filled
21 and helicopters dip water from the sources. The area averages one to five fires
22 each year. The amount of water needed for fire fighting each year is
23 unpredictable, as is determining which sources within the area will be used.

24
25
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1 The Referee recognizes that use of water for fire fighting is very
2 important, but this use cannot be quantified and is unpredictable. Although the
3 Referee cannot recommend that a specific right be confirmed for fire fighting,
4 it is acknowledged that water will be used as needed for that purpose.

5
6 COURT CLAIM NO. 01600 -- WA State Park and Rec. Commission

7 The Washington State Parks and Recreation Commission submitted a claim to
8 the Court asserting a right to use several surface water sources in the Yakima
9 River Basin. Within Subbasin No. 9, a right is being asserted for Wilson Creek
10 and an unnamed lake. Kris Kauffman testified at the evidentiary hearing and a
11 Sworn Statement by Ted Clausing with the then Washington State Department of
12 Wildlife was entered as Exhibit DE-1512.

13 The commission owns a portion of the N $\frac{1}{2}$ of Section 31, T. 17 N.,
14 R. 19 E.W.M. lying east of State Route 97 (the Canyon Road). The land was
15 acquired in 1973 and comprises the Helen McCabe State Park. At the time of the
16 hearing the land had not been developed for public use, but was being held for
17 future development as a park. A riparian right to Wilson Creek and littoral
18 right to the lake are being asserted for recreation and aesthetics. The
19 commission is not asserting a diversionary right and Mr. Kauffman was not aware
20 of any historical irrigation rights for the property. The land is being leased
21 to John Eaton who uses it for cattle grazing. Ted Clausing's sworn statement
22 addressed the wildlife and birds that inhabit or make use of the park and the
23 waters within the park and their dependency on the riparian habitat along the
24 creek and lake. Mr. Kauffman referenced the stock and wildlife water
25 stipulations in his presentation.

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1 The testimony and evidence references an artesian well on the property.
2 The flow from the well contributes to the lake, along with Wilson Creek and the
3 high ground water table in the area. The well, of course, is ground water,
4 which is not within the jurisdiction of this Court. Rights to the use of the
5 well will not be addressed.

6 Livestock, wildlife and birds accessing Wilson Creek and the lake is
7 covered by the stock water and wildlife stipulation that is discussed on page 4
8 of this report and the claimant will appear on the list of those who have rights
9 under the stipulation. Mr. Kauffman points to RCW 90.54.020(3)(a) which
10 provides for protection of perennial rivers and streams with base flows
11 necessary to provide for preservation of wildlife, fish, scenic, aesthetic and
12 other environmental values and lakes and ponds being retained substantially in
13 their natural condition. The purpose of RCW 90.54, as stated in 90.54.010(2) is
14 to set forth fundamentals of water resource policy for the state to insure that
15 waters of the state are protected and fully utilized for the greatest benefit to
16 the people and provide direction to the Department of Ecology in carrying out
17 water resources programs.

18 Adjudications are governed by RCW 90.03.110 through 90.03.245 and are a
19 process to determine the extent and validity of existing rights based on the
20 evidence and testimony presented. The only existing right that may exist for
21 this property is that covered by the stipulations previously discussed.
22 Maintaining water courses and lakes as provided in the policy statements in RCW
23 90.54 relates to future decisions of local and state governments, rather than in
24 the process of determining the validity of water rights in an adjudication.

25
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1 Beyond the rights protected by the stock and wildlife water stipulation,
2 the Referee recommends that no other rights be confirmed in Subbasin No. 9 under
3 Court Claim No. 01600.

4
5 COURT CLAIM NO. 00363 -- Stanley P. Youngberg
6 (A) 01686

7 A Statement of Claim was filed by the Court for use of Naneum Creek for the
8 irrigation of 50 acres in a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4,
9 T. 18 N., R. 19 E.W.M. Mr. Youngberg, who was represented by Attorney Michael
10 Bauer, testified at the evidentiary hearing.

11 Mr. Youngberg's land lies predominantly in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, east of
12 Naneum Creek. Fifty acres of hay and pasturer are irrigated with water diverted
13 from Naneum Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M. Livestock
14 grazing on the property drink from the ditches. Up to 50 cow/calf pairs are
15 raised. The land was originally settled by Andrew S. Burbank, who on May 1,
16 1896, received a patent for the S $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4, T. 18 N.,
17 R. 19 E.W.M. On May 31, 1890, A. S. Burbank filed a Statement of Water Right,
18 describing the lands he owned and that in the spring of 1881, he constructed a
19 ditch for the purpose of conveying water onto his claim for irrigation. The
20 ditch was constructed about 160 feet north of the north line of his claim from a
21 stream flowing from Wilson Creek to Naneum Creek and the ditch had a capacity of
22 500 inches of water flowing under no pressure. He had appropriated about half
23 of that quantity. He named the ditch the Sheppard Ditch. He also constructed a
24 ditch in 1881 from Naneum Creek and he claimed an appropriation of 30 inches of
25 water. He made another small ditch from Nanum Creek in the spring of 1890, and

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1 appropriated about 20 inches of water through the ditch. The two ditches from
2 Naneum Creek were named Burbank's Ditch No. 1 and No. 2.

3 This land was also addressed in the Ferguson decree. A Class 11 right was
4 awarded to George Cooke for 320 inches for the S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4 and the
5 N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9. A portion of this right, 50 inches for the
6 irrigation of 50 acres, was appurtenant to the land now owned by Mr. Youngberg.

7 Water Right Claim No. 090378 was filed by Ralph C. Klein pursuant to the
8 requirements of RCW 90.14. RCW 90.14 was passed by the legislature in 1967 and
9 required that anyone using surface waters who did not have a permit or
10 certificate had to file a water right claim. Mr. Klein used a "short form",
11 which according to Section 90.14.051 could be used only for uses of water
12 described in the exemption from the permit requirements of RCW 90.44.050 (use of
13 up to 5,000 gallons per day for domestic supply, stock watering, irrigation of
14 up to one-half acre, or industrial supply). When using the short form, the only
15 information needed was that sufficient to identify the claimant, source of
16 water, purpose of use and legal description of the land upon which the water is
17 used. Mr. Klein in completing the form provided more information than was
18 required by including a note on the form referring to Order Pendente Lite No.
19 18145 and the rights identified in that order for Lawrence A. Manly, claimant
20 No. 16, on pages 6, 9, 8, 10 and 14. The purpose of RCW 90.14, as stated in
21 Section 90.14.010, is to provide adequate records for efficient administration
22 of the state's waters, . . ." Although the short form itself did not provide
23 sufficient information about the extent of the right being asserted to meet the
24 stated purpose of RCW 90.14, it referred to a document that would provide that
25 information. The Order Pendente Lite referred to on the form resulted from an

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1 action initiated by the Department of Ecology to determine the valid water
2 rights in the Wilson-Naneum drainage basin. It is part of Ecology's records and
3 the evidence in this proceeding is that it used by Ecology for regulatory
4 purposes. The Referee finds that WRC No.090378 substantially complies with the
5 requirements of RCW 90.14.

6 Therefore, the Referee recommends that a right be confirmed with a June 30,
7 1882, date of priority for the diversion from Naneum Creek of 1.0 cubic foot per
8 second in May and June, 0.50 cubic foot per second in April and July 1 through
9 October 15, 250 acre-feet per year for the irrigation of 50 acres in that
10 portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M. lying east of Naneum
11 Creek.

12
13 COURT CLAIM NO. 00364 -- Winona P. Youngberg
(A) 01687

14 Mrs. Youngberg submitted a claim to the Court for the use of Naneum Creek
15 and an unnamed spring for the irrigation of 80 acres and stock watering.

16 Mrs. Youngberg was represented at the evidentiary hearing by Attorney Michael
17 Bauer. Her son, Stan Youngberg, testified in support of the claim.

18 Mrs. Youngberg owns the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M. and
19 irrigates the entire tract with water diverted from Naneum Creek. The spring
20 cited in the claim is used strictly for stock watering, particularly during low
21 flow periods when water is not available from Naneum Creek. Mrs. Youngberg
22 acquired the property in 1938. The patent for the land issued to Samuel C.
23 Thomas on August 16, 1889, and included the Youngberg property along with the
24 E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4. S. C. Thomas filed a Notice of Water Right stating that in
25

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1 the spring of 1878 he dug an irrigation ditch capable of carrying 500 inches and
2 appropriated 400 inches of water. The ditch commenced where the section line
3 between Section 4, T. 18 N., R. 19 E.W.M. and Section 33, T. 19 N., R. 19 E.W.M.
4 crosses Naneum Creek and the ditch runs in a southeasterly direction for one and
5 a half miles.

6 Water rights for this land were addressed in the Ferguson decree. A Class
7 9 right was awarded to Margaret Clifton for 160 inches for the E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$
8 of Section 4. The Findings of Fact stated that the land was settled in
9 September of 1877 and irrigated from Naneum Creek beginning in 1878. The
10 diversion currently used diverts into the Youngberg Morrison Ditch in Government
11 Lot 4 of Section 4. This point is about 700 feet downstream of the point
12 described in the notice of water right filed by S. C. Thomas. Prior to 1917
13 points of diversion could be changed without any state oversight and there is no
14 evidence in the record of when the change occurred.

15 Water Right Claim (WRC) No. 000860 was filed by Mrs. Youngberg asserting a
16 right to divert 1.6 cfs, 400 acre-feet per year from Naneum Creek for the
17 irrigation of 80 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4. The point of diversion
18 described in WRC No. 000860 is slightly different than the location described in
19 the State's investigation report, but is in the same vicinity. WRC No. 000862
20 was also filed by Mrs. Youngberg. It asserts a right to use 0.25 cfs, 3
21 acre-feet per year for stock watering from an unnamed spring that is very close
22 to the half section line between the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. Water from
23 the spring flows into an excavated area and stream that emanates from the
24 spring. Livestock drink from the excavated area and the stream. The testimony
25 was not clear on whether the channel leaving the spring is a natural stream or a

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 ditch. If it is a stream the non-diversionary stock water stipulation discussed
2 on page 4 of this report would cover the use. Since the testimony was not
3 definitive, the Referee will consider it a non-diversionary use and apply the
4 stipulation.

5 The Referee recommends that a right be confirmed with a September 30, 1877,
6 date of priority for the diversion of 1.60 cubic feet per second in May and June
7 and 0.80 cubic foot per second in April and July 1 through October 31, 400
8 acre-feet per year for the irrigation of 80 acres and stock water from April 1
9 through October 31. The Referee recognizes because of the fluctuations in the
10 stream flow, this quantity may not be available the entire irrigation season.

11
12 COURT CLAIM NO. 00351 -- Keith Williams
& Margaret Williams

13 COURT CLAIM NO. 00377 -- Jessie E. Wikstrom

14 COURT CLAIM NO. 00460 -- Greg Brozovich
15 Joe Morrow

16 COURT CLAIM NO. 00480 -- Ralph Fields
& Gwyla A. Fields

17 COURT CLAIM NO. 00577 -- William W. Razey
18 & Donna Razey
Andrew J. Schmidt
19 William D. & Melva M. Schmidt

20 COURT CLAIM NO. 00717 -- James A. Powell
& Joyce Powell

21 COURT CLAIM NO. 00724 -- Fred Christen
22 & Mollie Christen

23 COURT CLAIM NO. 00766 -- Robert G. Dier
& Diane C. Dier

24 COURT CLAIM NO. 00986 -- David W. T. Watt
25 & Dorothy A. Watt

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 COURT CLAIM NO. 01004 -- Harold W. Anderson
2 COURT CLAIM NO. 01028 -- Ruth Floyd
3 COURT CLAIM NO. 01081 -- Anita Sorenson
4 COURT CLAIM NO. 01208 -- Gene Panattoni
 & Sally Panattoni
5 COURT CLAIM NO. 01451 -- Fred Christen
6 William R. Peterson
7 COURT CLAIM NO. 01463 -- Gary Lee Johnson
8 COURT CLAIM NO. 01559 -- Patrice Hardisty
9 COURT CLAIM NO. 01567 -- Thomas H. Borger
10 COURT CLAIM NO. 01601 -- Frances Knutson
11 COURT CLAIM NO. 01607 -- Howard L. Gibson
 & Ruth A. Gibson
12 COURT CLAIM NO. 01608 -- William Brown
13 & Marilyn Brown
14 COURT CLAIM NO. 01677 -- Sam Rust
 & Diane Rust
15 COURT CLAIM NO. 01701 -- Patrick R. O'Shaughnessy
16 & Marilyn O'Shaughnessy
17 COURT CLAIM NO. 01732 -- Kittitas County
18 COURT CLAIM NO. 01785 -- Maurice L. Dufault
 & Florence J. Dufault
19 COURT CLAIM NO. 01806 -- Mark G. Williams
20 & Kathleen S. Williams
21 COURT CLAIM NO. 01814 -- Jeffrey Chris Merrick
22 COURT CLAIM NO. 01818 -- Gerald R. Rimpler
 & Janet L. Rimpler
23 COURT CLAIM NO. 01841 -- James Russell Bender
24 & Florence E. Bender
25

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

- 1 COURT CLAIM NO. 01862 -- Taco Bell Corporation
- 2 COURT CLAIM NO. 01891 -- Beulah M. Dunn
 (A)01892 -- William W. Razey
- 3 COURT CLAIM NO. 01895 -- Clinton A. Noyes
 & Laverne Noyes
- 4
- 5 COURT CLAIM NO. 01952 -- Estate of Glenn Turner
 Carol W. Phelps
 -- & Joy M. Turner
- 6
- 7 COURT CLAIM NO. 01957 -- Steven T. Sturdevant
 -- & Debi L. Sturdevant
- 8
- 9 COURT CLAIM NO. 01975 -- Jane Stark
- 10 COURT CLAIM NO. 01977 -- Melvin Shenyer
- 11 COURT CLAIM NO. 02117 -- Keith S. Rowbotham
 -- & Margaret I. Rowbotham
- 12 COURT CLAIM NO. 02128 -- Barry C. Kent, et ux.
- 13 COURT CLAIM NO. 02172 -- Charles L. Hiatt, Sr.
 -- & Carolyn M. Hiatt
- 14 COURT CLAIM NO. 02175 -- William R. Marquiss
 -- & Billie R. Marquiss
- 15
- 16 COURT CLAIM NO. 02214 -- Betty & Randy Hawk
- 17 COURT CLAIM NO. 02270 -- Mel & Jodee Shenyer
 -- Robert Dean
- 18 COURT CLAIM NO. 02354 -- John F. Marvich
- 19 COURT CLAIM NO. 02374 -- Ralph & Cecile Johnson
 -- Walter R. Kaminski
- 20

21 The above listed claims were all filed asserting rights to use waters
 22 within Subbasin No. 9. There was no appearance at the evidentiary hearing in
 23 support of these claims. Therefore, the Referee cannot recommend that water
 24 rights be confirmed to any of the listed claimants.

26 REPORT OF REFEREE
 27 Re: Subbasin No. 9

Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

- 1 Don Akehurst and Barbara Akehurst
- 2 Joseph Antonich
- 3 Glen Armistead and Bonnie Spurrier
- 4 Ida Joseph Nason Aronica
- 5 Don H. Bacon and Gabriella R. Bacon
- 6 Everett O. Barney and Lanita M. Barney
- 7 Frank J. Beard and Charlot M. Beard
- 8 Boise Cascade Corporation
- 9 Dwight Bolton
- 10 James Bridge and Mary Bridge and Cy Morgan
- 11 Orren Busby and Ruth Busby
- 12 D. Winslow Charlton and Anna Charlton
- 13 Ralph G. Charlton and Nancy L. Charlton
- 14 Charles W. Cole and Ethel M. Cole
- 15 Curtis S. Conner and Ruth J. Conner
- 16 Harvey L. Dodge
- 17 John Scott Downey
- 18 Jeanne M. Dunning
- 19 Lorne T. Dunning and Jeanne M. Dunning
- 20 Jack Eaton
- 21 John N. Eaton and Christi Eaton
- 22 Gerald French and Maxine French
- 23 Ronald J. Freytag and Mary Styron Freytag
- 24 Fred K. Gerlach and Shirley E. Gerlach
- 25 Terry E. Goodrich and Carol Goodrich
- 26 Allan R. Grigg and Teresa M. Grigg
- 27 Dale Haberman and Kathy Haberman
- 28 George Haberman and Ruby Haberman
- Haidas Ranches, LLC
- Carol Hartlaub
- Thomas Haven and Sara Haven
- Alice A. Henderson
- James Henderson and Karen Henderson
- Le Moyne Henderson
- Wm. Ralph Hooper and Patricia Julia Hooper
- Kenneth R. Huber and Sharon L. Huber
- John Hultquist and Nancy Hultquist
- Harold W. Jenkins and Gladys D. Jenkins
- Patrick M. Jenkins and Vicki K. Jenkins
- Kayser Ranch, Inc.
- Robert O. Kelley and Paula K. Kelley
- Bobbie Kennedy
- Les S. Knudsen and Barbara J. Knudsen
- Fabian Kuchin, Jr.
- David M. Leffert and J. Christine Leffert
- Myron Linder and Sandy Linder
- Bernard L. Martin and Marlene F. Martin

REPORT OF REFEREE

Re: Subbasin No. 9

- 1 Don E. Mays and Paula Mays
- Art W. McFarland
- Ronald P. McGee and Joy A. McGee
- 2 Estate of Byrl A. McNeil and Arlene Rosenberg
- Mark McWhorter
- 3 Howard Miles
- Andrew J. Mills and Stephanie Mills
- 4 Donna Minielly
- Floyd A. (Buck) Minor and Merna Minor
- 5 Michael Kelly Moeur, Sr. and Michael Kelly Moeur, Jr.
- Morrison Ranches
- 6 Estate of Dorothy R. Nelson and Estate of Paul Nelson
- G. Jay Nelson, et al.
- 7 Harriett Nichols
- Joseph J. O'Leary and Mary E. O'Leary
- 8 Maurice Olney and Ruth Ann Olney
- Nick Parsel and Kim Parsel
- 9 David T. Pearson and Marguerite L. Pearson
- Jill M. Perry
- 10 Frank W. Phelps
- Kay E. Powers
- 11 Larry Raap
- Katherine M. Rasmussen
- 12 Ronald C. Rees
- Kent D. Richards and Carolyn E. Richards
- 13 Charles Rimer and Faye Rimer
- Merle Ringer
- 14 Doss Roberts and Edra Roberts
- Schaake Packing Company
- 15 Robert Shannon and Cathy Shannon
- John L. Silva and Janet E. Silva
- 16 Don C. Smith and Jane K. Smith
- Patrick Smith
- 17 Richard A. Snowden
- Chester Vernon Stokes and Roma B. Stokes
- 18 Ralph D. Strand and Kathryn A. Strand
- Clint Swanstrum and Becky Swanstrum
- 19 James C. Swayze and Dianne Morrison
- Robert Swedberg and Lorene Swedberg
- 20 Vivian I. Teter
- Sandra Thomas
- 21 Arthur Tirota and Susan Tirota
- Donald G. Toman and Cynthia R. Toman
- 22 Jim Vasquez
- Stephan A. Willard and Ruby Willard
- 23 William P. Woods and Priscilla A. Woods
- WA State Dept. of Natural Resources
- 24 WA State Park and Rec. Commission
- Winona P. Youngberg
- 25

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

VIII. FINDINGS OF FACT

1 I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined
2 the testimony and evidence and having investigated Subbasin No. 9, do hereby
3 make the following Findings of Fact:
4

5 1. That the waters of Subbasin No. 9 and lands irrigated or waters
6 otherwise utilized therefrom are situated in Kittitas County.

7 2. That the claims to any diversionary or withdrawal rights within Subbasin
8 No. 9 of the following named claimants are denied in their entirety for reason
9 set forth in the body of this report:

10 A.C.X. Trading, Inc.
11 Charles Adams
12 Paul Alderman and Paula Alderman
13 Alfred Anderson
14 Gerald E. Anderson and Janis Anderson
15 Harold W. Anderson
16 Jim Anspach and Paige Anspach
17 Don H. Bacon and Gabriella R. Bacon
18 Dimitri Bader and Lenora Bader
19 Stanley J. Baker and Gena L. Baker
20 James Russell Bender and Florence E. Bender
21 Joyce L. Bloxham
22 Thomas H. Borger
23 Victor Boykiw and Darlene Boykiw
24 William Brown and Marilyn Brown
25 Greg Brozovich
26 Jeff T. Brunson
27 Curtis B. Bull and Lucille E. Bull
28 John A. Bull, Jr., et al.
Thomas W. Bull, II and Jonelle M. Bull
Bull Canal Company, Inc.
U.S. Department of the Interior (00185 & 00900)
Peter Burkholder
Burlington Northern Railroad Co.
Central Washington University
D. Winslow Charlton and Anna Charlton
Larry L. Charlton and Marilyn Charlton (only for Claim No. 02174)
Ralph G. Charlton (only for Claim No. 02232)
Fred Christen (00724 & 01451)
Dick Colasurdo and Anna Colasurdo
Robert Dean

REPORT OF REFEREE
Re: Subbasin No. 9

1 Robert G. Dier and Diane C. Dier
Larry Douglass and Denece Douglass
Gordon L. Dudley and Anita M. Dudley
2 Stefan Dudley
Maurice L. Dufault and Florence J. Dufault
3 Beulah M. Dunn
Alvia S. Dunnagun and Janet G. Dunnagun
4 Darrel Eason and Janet Rae Eason
Jack Eaton
5 John N. Eaton and Christi Eaton
Ron Elkins and Peggy Elkins
6 Ronald D. Elkins and Marguerite A. Elkins
Ellensburg; City of
7 William E. Erickson and Glenda L. Erickson
Farmers Home Administration
8 Walter L. Farrar and Gail Farrar (02275 & 02282)
Harry Ferguson and Concetta Ferguson
9 Ralph Fields and Gwyla A. Fields
Charles R. Fischer and Ellen Fischer
10 Joseph C. Fitterer and Bettie E. Fitterer
Ruth Floyd
11 David Arnold Fogle and Linda Rose Fogle
G.R. Hughes; Enterprises LP
12 Leona Gearheart and Estate of Charles Gearheart
Howard L. Gibson and Ruth A. Gibson
13 Jay Gorman
Jeff Gorman and Sheryl Gorman
14 Gary Griffith
Allan R. Grigg and Teresa M. Grigg
15 Bill Haberman and Bill Haberman, Jr.
Haidas Ranches, LLC
16 Larry Hansen
Patrice Hardisty
17 Betty Hawk and Randy Hawk
Mark Herbert and Kathy Herbert
18 Charles L. Hiatt, Sr. and Carolyn M. Hiatt
Richard M. Hilliard
19 Lyndell G. Hobbs and Vicki Diehl-Hobbs
Wm. Ralph Hooper and Patricia Julia Hooper
20 Mary Hundley
HMH Enterprises Inc.
21 Gerhard Jansen and Bertha Jansen
Gary Lee Johnson
22 Ralph Johnson and Cecile Johnson
Walter R. Kaminski
23 Bobby F. Kennedy
Barry C. Kent, et ux.
24 Kittitas County
Ray Knudson and Linda Knudson
25

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 Frances Knutson
Pamela Sue Kollman
Conrad Kraft
2 Roberta D. Lamb and Estate of Harold F. Lamb
Dale Lee and Sandy Lee
3 Steven Lee and Debbie Lee
John Libenow
4 John H. Ludwick and Anne C. Ludwick
Kenneth R. MacRae and Sandra MacRae
5 Brian Maier and Sheila Maier
Nick A. Mandelas
6 William R. Marquiss and Billie R. Marquiss
John F. Marvich
7 Kevin McDowell and Becky McDowell
Art W. McFarland
8 Jeffrey Chris Merrick
James M. Mills
9 Vernon Mills and Lorraine Mills
Ron Mitchell
10 Chet Morrison and Judy Morrison
Thomas V. Morrison and Ginger D. Morrison
11 Morrison Ranches (01266)
Joe Morrow
12 N. N. Eaton & Sons
Mr. George Nelson and Mrs. George Nelson
13 Leonard L. Newman and Loree Newman
Sarah Nickel
14 Northwest Rainier
Clinton A. Noyes and Laverne Noyes
15 Joseph J. O'Leary and Mary E. O'Leary
Timothy P. O'Neill and Deborah S. O'Neill
16 Patrick R. O'Shaughnessy and Marilyn O'Shaughnessy
Gene Panattoni and Sally Panattoni
17 David Papineau
Pautzke Bait Company, Inc.
18 David T. Pearson and Marguerite L. Pearson
John M. Pearson and Julie Ann Pearson
19 Dorothy Pease and Estate of Murl Pease
Jill M. Perry
20 Robert Perry
William R. Peterson
21 Carol W. Phelps and Joy M. Turner
Gerald E. Platt, et al.
22 Ponderosa Properties, Inc.
Herman R. Potts and Janet A. Potts
23 James A. Powell and Joyce Powell
Chas. A. Priebe and Carrie Priebe
24 M. Joanne Pugh and Estate of Durward Pugh
William W. Razey and Donna Razey
25

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 Gayle V. Redd and Karen K. Redd
Ronald C. Rees (only for Claim No. 01981)
John Ressler and Diana Ressler
2 Gerald R. Rimpler and Janet L. Rimpler
James S. Ritter
3 Doss Roberts and Edra Roberts
Keith S. Rowbotham and Margaret I. Rowbotham
4 Sam Rust and Diane Rust
Lonnie Sala and Kathleen J. Sala
5 Evan A. Scheik
Andrew J. Schmidt
6 William D. Schmidt and Melva M. Schmidt
Fred Schnebly
7 Henry J. Schnebly, et al.
Jim Schnebly
8 Mel Shenyer and Jodee Shenyer
Melvin Shenyer
9 Jack G. Sikes and Ada M. Sikes
George Simpson and Barbara Simpson
10 William Z. Smith and Jean Smith
Richard A. Snowden
11 Howard P. Sorensen and Bernice H. Sorensen
Morris P. Sorensen and Patricia E. Sorensen
12 Anita Sorenson
Jane Stark
13 Charles Strickland and Linda Strickland
Steven T. Sturdevant and Debi L. Sturdevant
14 Taco Bell Corporation
Vivian I. Teter
15 Robert Tobin and Linda Tobin
Donald G. Toman and Cynthia R. Toman
16 Estate of Glenn Turner
Jerry Tyler
17 Dick Van de Graaf, Jr. and Maxine Van de Graaf
Ron Voshall
18 David W. T. Watt and Dorothy A. Watt
Kevin and Gail Weyland
19 John L. Whittaker and Barbara Whittaker
Jessie E. Wikstrom
20 J. Marilyn Wilkinson (00582 & 05055)
Stephen Willard and Son Vida I (only for Claim No. 06737)
21 Barbara Williams
Gerry Williams and Laura Williams
22 Keith Williams and Margaret Williams
Mark G. Williams and Kathleen S. Williams
23 Philip C. Wilson
Ken Wolfe
24 WA State Dept. of Natural Resources
WA State Park and Rec. Commission
25

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 3. That the name of the claimant(s), court claim number(s), sources of
2 water, uses for which rights have been established, time periods when water may
3 be used, amounts of water designated in the right, priority of water right,
4 location of points of diversion, and description of lands to which water rights
5 are appurtenant are as follows:
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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 CLAIMANT NAME: Fabian Kuchin, Jr. COURT CLAIM NO. 01939
2 Source: Whiskey Creek
3 Use: Irrigation of 25 acres
4 Period of Use: April 1 through October 15
5 Quantity: 0.65 cubic foot per second, 100 acre-feet per year
6 Priority Date: June 30, 1870
7 Point of Diversion: 450 feet south and 400 feet west from the north
8 quarter corner of Section 34, being within the
NE¹/₄NE¹/₄NW¹/₄ of Section 34, T. 18 N., R. 18 E.W.M.
9 Place of Use: That part of the E¹/₂NW¹/₄ of Section 34, T. 18 N., R. 18
10 E.W.M., lying north and east of the northeasterly
11 right-of-way of State Highway No. 3, and south and
12 west of Whiskey Creek, EXCEPT: highway and railroad
13 rights-of-way.
14 Limitations of Use: This land also receives water from Ellensburg Water
15 Company
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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

Stephan A. Willard
& Ruby Willard

COURT CLAIM NO. 00726

Source:

Wilson Creek

Use:

Irrigation of 150 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

3 cubic feet per second in May and June, 1.5 cubic feet per second in April and July 1 through October 15, 750 acre-feet per year

Priority Date:

April 20, 1871

Point of Diversion:

(1) 50 feet north and 200 feet east from the south quarter corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

(2) 800 feet south and 100 feet west from the north quarter corner of Section 30, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M.

(3) 1000 feet north and 500 feet west from the center of Section 30, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M.

(4) 200 feet south and 1100 feet west from the center of Section 30, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M.

Place of Use:

The E $\frac{1}{2}$ NW $\frac{1}{4}$, Government Lots 2 and 3, of Section 30, T. 18 N., T. 19 E.W.M., except that portion of Government Lot 3 described as follows: Beginning at the southeast corner of said lot; thence S 89°28' along the south boundary line of said lot, 904.3 feet; thence N 26°08' 242.0 feet; thence N 70°05' E 496.0 feet'; thence N 83°05' E 167.0 feet; thence S 83°07' E 73.0 feet; thence S 13°30' E 400.7 feet to the point of beginning.

Limitations of Use:

This land may also receive water delivered by the Kittitas Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME: **Ida Joseph Nason Aronica** COURT CLAIM NO. 01006

Source: Naneum Creek

Use: Irrigation of 115 acres and stock water

Period of Use: April 1 through October 15

Quantity: 2.5 cubic feet per second, 575 acre-feet per year

Priority Date: **June 30, 1871**

Point of Diversion: Adams Ditch - 150 feet north and 600 feet east from the west quarter corner of Section 28, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.
Nason Ditch #1 - 550 feet south and 600 feet east from the west quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use: That portion of the SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M., lying south and west from the Carlson Ditch, and east of the easternmost channel of Naneum Creek, EXCEPT rights-of-way for the Naneum Creek and Carlson Roads.

CLAIMANT NAME: **Ronald J. Freytag** COURT CLAIM NO. 02232
& **Mary Styron Freytag**

Source: Wilson Creek

Use: Irrigation of 2.5 acres and stock water

Period of Use: April 1 through October 31

Quantity: 0.05 cubic foot per second, 12.5 acre-feet per year

Priority Date: **June 30, 1871**

Point of Diversion: 300 feet north and 1250 feet west from the center of Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 19 E.W.M.

Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

CLAIMANT NAME:

**Harriett Nichols
Charles Rimer
& Faye Rimer**

COURT CLAIM NO. 02232

Source:

Wilson-Naneum Creeks

Use:

Irrigation of 0.4 acres and stock water

Period of Use:

April 1 to October 31

Quantity:

0.008 cubic foot per second, 2 acre-feet per year

Priority Date:

June 30, 1871

Point of Diversion:

#1 - 200 feet north and 450 feet west of the east quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29;
#2 - 650 feet south and 525 feet west from the east quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29
ALL in T. 19 N., R. 19 E.W.M.

Place of Use:

The S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

CLAIMANT NAME:

**Robert Shannon
& Cathy Shannon**

COURT CLAIM NO. 02232

Source:

Wilson - Naneum Creek

Use:

Irrigation of 1.1 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.022 cubic foot per second, 5.5 acre-feet per year

Priority Date:

June 30, 1871

Point of Diversion:

#1 - 200 feet north and 450 feet west from the east quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29;
#2 - 650 feet south and 525 feet west of the east quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, ALL in T. 19 N., R. 19 E.W.M.

Place of Use:

The N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Don C. Smith
& Jane K. Smith**

COURT CLAIM NO. 02232

Source:

Wilson - Naneum Creek

Use:

Irrigation of 6 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.12 cubic foot per second, 30 acre-feet per year

Priority Date:

June 30, 1871

Point of Diversion:

#1 - 650 feet south and 525 feet west from the east quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.
#2 - 1200 feet south and 400 feet west from the east quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

Place of Use:

The NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$, except the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

CLAIMANT NAME:

Joseph Antonich

COURT CLAIM NO. 02297

Source:

Naneum Creek

Use:

The irrigation of 155 acres and stock watering.

Period of Use:

April 1 through October 15

Quantity:

3.20 cubic feet per second in May and June, 1.60 cubic feet per second in April and July 1 through October 15, 775 acre-feet per year

Priority Date:

April 30, 1872

Point of Diversion:

100 feet north and 1300 feet east from the southwest corner of Section 21, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Place of Use:

The NW $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M.

Limitations of Use:

Water delivered by the Kittitas Reclamation District may also be used on this land.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

**Kenneth E. Barnhart
& Susan Barnhart**

COURT CLAIM NO. 00968

2 Source:

Naneum Creek

3 Use:

Irrigation of 54 acres.

4 Period of Use:

April 1 through October 15

5 Quantity:

1.08 cubic foot per second in May and June, 0.54
6 cubic foot per second in April and July 1 through
October 15, 270 acre-feet per year

7 Priority Date:

June 30, 1872

8 Point of Diversion:

250 feet north and 250 feet west from the south
9 quarter corner of Section 16, being within the
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use:

The east 1800 feet of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 21, T. 18
11 N., R. 19 E.W.M.

12 CLAIMANT NAME:

**Ralph G. Charlton
& Nancy L. Charlton**

COURT CLAIM NO. 00967

13 Source:

Naneum Creek

14 Use:

Irrigation of 40 acres

15 Period of Use:

April 1 through October 15

16 Quantity:

0.80 cubic foot per second in May and June, 0.40
17 cubic foot per second in April and from July 1
18 through October 15, 200 acre-feet per year

19 Priority Date:

June 30, 1872

20 Point of Diversion:

300 feet north and 1200 feet east from the west
21 quarter corner of Section 21, being within the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

22 Place of Use:

The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

23 Limitations of Use:

A portion of this land also receives water from the
24 Kittitas Reclamation District.

25 REPORT OF REFEREE

26 Re: Subbasin No. 9

CLAIMANT NAME:

John Scott Downey

COURT CLAIM NO. 00726

Source:

Wilson Creek

Use:

Irrigation of 142 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

2.84 cubic feet per second in May and June, 1.42 cubic foot per second in April and July 1 through October 15; 710 acre-feet per year

Priority Date:

June 30, 1872

Point of Diversion:

25 feet south and 950 feet west of the east quarter corner of Section 19, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

Place of Use:

The E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

Limitations of Use:

This land may also receive water delivered by the Kittitas Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Earl T. Glauert
& Ellen E. Glauert

COURT CLAIM NO. 02130

Source:

Wilson Creek

Use:

Irrigation of 6.8 acres and stock water

Period of Use:

March 15 through October 15

Quantity:

0.136 cubic foot per second from May 1 through
June 30, 0.068 cubic foot per second in April and
from July 1 through October 15; 34 acre-feet per year

Priority Date:

June 30, 1872

Point of Diversion:

850 feet north and 400 feet west from the east
quarter corner of Section 18, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$
of Section 18, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18 and the N $\frac{1}{2}$ NE $\frac{1}{4}$
of Section 19, T.18 N., R. 18 E.W.M. bounded by a
line described as follows: Beginning at the
southeast corner of said Section 18; thence S 89°37'
W along the south boundary of said Section 18 269.14
feet to the true point of beginning; thence N
9°01'10" E 239.99 feet; thence N 21°41' W 579.33
feet; thence S 80°33'20" W, 685.55 feet; thence S
4°34' W, 261.37 feet; thence S 47°05'40" W 244.24
feet; thence S 20°36'40" W, 322.92 feet; thence S
1°01'30" W 138.19 feet; thence S 89°57'30" E 1135.91
feet; thence N 9°01'10" 208.25 feet to the true point
of beginning.

Limitations of Use:

This land may also receive water delivered by the
Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Terry E. Goodrich
& Carol Goodrich
Ralph D. Strand
& Kathryn A. Strand

COURT CLAIM NO. 01870

Source:

Wilson Creek

Use:

Irrigation of 13.4 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.268 cubic foot per year from May 1 through June 30,
0.134 cubic foot per second in April and from July 1
through October 15, 67 acre-feet per year

Priority Date:

June 30, 1872

Point of Diversion:

130 feet south and 150 feet west of the northeast
corner of Section 19, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 19, T. 18 N., R. 19 E.W.M.

Place of Use:

The following described tract of land located within
Section 19, T. 18 N., R. 19 E.W.M.: commencing at
the NE corner of said Section 19; thence south 210
feet; thence west 485 feet to the true point of
beginning; thence west 960 feet, more or less; thence
S 1° E 162 feet, more or less; thence S 45° W 639
feet, more or less; thence S 20° W 574 feet, more or
less; thence east 1520 feet, more or less; thence N
5° E 592 feet, more or less; thence west 70 feet,
more or less; thence N 520 feet, more or less, to the
true point of beginning.

Limitations of Use:

This land may also receive water delivered by the
Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930
2 & **Gladys D. Jenkins**
3 Source: Whiskey Creek
4 Use: Irrigation of 130 acres and stock water
5 Period of Use: April 1 through October 15
6 Quantity: 2.6 cubic feet per second, 910 acre-feet per year for
7 irrigation, 5 acre-feet per year for stock watering
8 Priority Date: **June 30, 1872**
9 Point of Diversion: 500 feet north and 250 feet west from the east
10 quarter corner of Section 6, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$
11 of Section 6, T. 18 N., R. 19 E.W.M.
12 Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
13 Section 6, T. 18 N., R. 19 E.W.M. lying northerly of
14 the Kittitas Reclamation District (North Branch
15 Canal).

16 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991
17 Source: Wilson - Naneum Creek
18 Use: Irrigation of 240 acres and stock water
19 Period of Use: April 1 through October 15
20 Quantity: 4.8 cubic feet per second in May and June, 2.4 cubic
21 feet per second in April and July 1 through
22 October 15, 1200 acre-feet per year
23 Priority Date: **June 30, 1872**
24 Point of Diversion: 1050 feet south and 550 feet east from the west
25 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
26 Section 28, T. 19 N., R. 19 E.W.M.,
27 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$, of Section 3,
28 T. 18 N., R. 19 E.W.M. and the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
SEction 34, T. 19 N., R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

**Bernard L. Martin
& Marlene F. Martin**

COURT CLAIM NO. 00769

Source:

Wilson Creek

Use:

Irrigation of 1 acre

Period of Use:

April 1 through October 15

Quantity:

0.02 cubic foot per second in May and June, 0.01 cubic foot per second in April and from July 1 through October 15, 5 acre-feet per year.

Priority Date:

June 30, 1872

Point of Diversion:

40 feet south and 950 feet west from the east quarter corner of Section 19, within the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, ALL in T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M., lying east of Wilson Creek, EXCEPT the right of way for the county road located on the north boundary thereof.

CLAIMANT NAME:

**Don E. Mays
& Paula Mays**

COURT CLAIM NO. 01707

Source:

Wilson Creek

Use:

Irrigation of 39.8 acres and stock watering

Period of Use:

March 15 through October 15

Quantity:

0.796 cubic foot per second in May and June, 0.398 cubic foot per second from March 15 through April 30 and July 1 through October 15, 202 acre-feet per year

Priority Date:

June 30, 1872

Point of Diversion:

850 feet north and 400 feet west of the east quarter corner of Section 18, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T. 18 N., R. 19 E.W.M.

Place of Use:

The SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Estate of Byrl A. McNeil
& Arlene Rosenberg

COURT CLAIM NO. 00495

Source:

Whiskey Creek

Use:

Irrigation of 50 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.0 cubic foot per second, 250 acre-feet per year

Priority Date:

June 30, 1872

Point of Diversion:

10 feet south and 800 feet west from north quarter corner of Section 7, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T. 18 N., R. 19 E.W.M.

Place of Use:

The NW $\frac{1}{4}$ of Section 7, T. 18 N., R. 19 E.W.M. lying southeasterly of Whiskey Creek; EXCEPT, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said section.

Limitations of Use:

This land may also receive water delivered by the Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Chester Vernon Stokes
& Roma B. Stokes

COURT CLAIM NO. 02313

Source:

Whiskey Creek and Dry (Mercer) Creek

Use:

Irrigation of 118 acres and stock water

Period of Use:

April 15 through October 15

Quantity:

2.36 cubic feet per second, 678 acre-feet per year
for irrigation; 5 acre-feet per year for stock
watering

Priority Date:

June 30, 1872

Point of Diversion:

Whiskey Creek: 900 feet south and 800 feet west from
the north quarter corner of Section 5, within
Government Lot 3 of Section 5, T. 18 N., R. 19 E.W.M.
Dry Creek: 1540 feet south and 400 feet west from the
north quarter corner of Section 5, within Government
Lot 3 of Section 5, both in T. 18 N., R. 19 E.W.M.
Whiskey Creek: 500 feet north and 150 feet west from
the south quarter corner of Section 32, being within
the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 19 N., R. 18 E.W.M.

Place of Use:

The NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, and that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$,
lying west from Wilson Creek, ALL in Section 5,
T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Curtis S. Conner
& Ruth J. Conner

COURT CLAIM NO. 01209

Source:

Naneum Creek

Use:

Irrigation of 18.5 acres and stock watering.

Period of Use:

April 1 through October 15

Quantity:

0.372 cubic foot per second in May and June; 0.186 cubic foot per second in April and July 1 through October 15, 92.5 acre-feet per year

Priority Date:

July 5, 1872

Point of Diversion:

650 feet north and 300 feet west of the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

Tract 1: Beginning at the west quarter corner of Section 4, T. 17 N., R. 19 E.W.M., thence N 86° 10' E 751.5 feet along the mid section line; thence S 4°46' W 420.3 feet to the north right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence N 78°30' W 749.5 feet along said right of way to the west line of Section 4; thence N 5°20' E 220 feet along the section line, 220 feet to the point of beginning. EXCEPT the east 190 feet of the north 80 feet thereof. Tract 2: Beginning at the intersection of the west line of Section 4, T. 17 N., R. 19 E.W.M., with the south right of way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence along the right of way line, S 78°30' E 678.6 feet; thence S 4°46' W 827.0 feet; to a point in the east-west 1/16 line; thence S 85°44' W 673.0 feet to the south 1/16 corner on the west line of Section 4; thence N 4°04' E 1012 feet on the west line of Section 4 to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Gwendolyn Cooke

COURT CLAIM NO. 01454

(A) 04171

2 Source:

Naneum Creek

3 Use:

Irrigation of 10 acres and stock watering

4 Period of Use:

April 1 through October 15

5 Quantity:

0.20 cubic foot per second in May and June, 0.10 cubic foot per second in April and July 1 through October 15; 51.20 acre-feet per year

7 Priority Date:

July 5, 1872

8 Point of Diversion:

750 feet north and 300 feet west of the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

10 Place of Use:

11 The S $\frac{1}{2}$ of that portion of the NW $\frac{1}{4}$ of Section 4,
12 T. 19 N., R. 19 E.W.M. bounded by a line described as
13 follows: beginning at the south quarter corner of
14 Section 4; thence N 1°50' W along the centerline of
15 the county road 2601.68 feet; thence S 87°06' W, 30
16 feet to the true point of beginning; thence S 87°06' W
17 912.90 feet; thence N 6°30' E 14.32 feet; thence N
18 6°22'40" E to a point which is S 86°52'40" W of a
19 point on said county road which latter point is
20 3576.68 feet N 1°50' W from the said south quarter
21 corner of said section; thence N 86°52'40" E to the
22 west right-of-way line of the county road; thence S
23 1°50' W along said right-of-way line to the point of
24 beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

Daniel S. Kivi

COURT CLAIM NO. 01128

Source:

Naneum Creek

Use:

Irrigation of 20.25 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.42 cubic foot per second in May and June, 0.21 cubic foot per second in April and July 1 through October 15, 101.25 acre-feet per year

Priority Date:

July 5, 1872

Point of Diversion:

300 feet north and 300 feet west from the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

That part of the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. described as follows: Beginning at the south quarter corner of Section 4; thence N 1°50' W 3871.68 feet along the center line of Ferguson County Road; thence S 86°52'40" W 30 feet to the True Point of Beginning; thence S 86°52'40" W 729.79 feet to the west boundary line of said E $\frac{1}{2}$ NW $\frac{1}{4}$; thence N 6°22'40" E 119.54 feet, more or less, to the northwest 1/16 corner; thence N 5°10' E 1207.7 feet, more or less, along the west line of the E $\frac{1}{2}$ NW $\frac{1}{4}$ to the south right-of-way of State Road No. 7; thence N 87°17' E 422 feet along the south right-of-way; thence N 86°05' E 111 feet along the south right-of-way to the west right-of-way of Ferguson County Road; thence S 3°19' E 1295.5 feet, more or less, along the west right-of-way to the True Point of Beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Morrison Ranches

COURT CLAIM NO. 01267

Source:

Naneum Creek

Use:

Irrigation of 20 acres

Period of Use:

April 1 through October 15

Quantity:

0.40 cubic foot per second in May and June, 0.20 cubic foot per second in April and July 1 through October 15; 100 acre-feet per year

Priority Date:

July 5, 1872

Point of Diversion:

400 feet north and 800 feet east of the west quarter corner of Section 4, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M.

Place of Use:

That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. bounded by a line described as follows: Beginning at the center west sixteenth corner (NW corner of NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 4; thence along the sixteenth line S 4°36' W 573.0 feet to the north right-of-way line of the C.M. St. P. & P. Ry.; thence along the right-of-way line N 78°30' W 571.0 feet to the center of gateway in right-of-way fence; thence N 4°46' E 420.3 feet to a stake in the east and west mid-section line; thence along the mid-section line N 86°10' E 572.5 feet to the place of beginning. Also, beginning at the southwest sixteenth corner (SW corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 4; thence S 85°44' W along the sixteenth line 641.4 feet; thence N 4°46' E 827.0 feet to the south right-of-way line of the C. M. St. P. & P. Ry; thence along the right-of-way line S 78°30' E 641.4 feet to a post on the north and south sixteenth line; thence along the sixteenth line S 4°46' W 652.0 feet to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Terry Powers

COURT CLAIM NO. 01454

(A) 04171

Source:

Naneum Creek

Use:

Irrigation of 10 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.20 cubic foot per second in May and June, 0.10 cubic foot per second in April and July 1 through October 15; 51.20 acre-feet per year

Priority Date:

July 5, 1872

Point of Diversion:

750 feet north and 300 feet west of the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

The N $\frac{1}{2}$ of that portion of the NW $\frac{1}{4}$ of Section 4, T. 19 N., R. 19 E.W.M. bounded by a line described as follows: beginning at the south quarter corner of Section 4; thence N 1°50' W along the centerline of the county road 2601.68 feet; thence S 87°06' W, 30 feet to the true point of beginning; thence S 87°06' W 912.90 feet; thence N 6°30' E 14.32 feet; thence N 6°22'40" E to a point which is S 86°52'40" W of a point on said county road which latter point is 3576.68 feet N 1°50' W from the said south quarter corner of said section; thence N 86°52'40" E to the west right-of-way line of the county road; thence S 1°50' W along said right-of-way line to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Larry Raap

COURT CLAIM NO. 00969

Source:

Naneum Creek

Use:

Irrigation of 17 acres

Period of Use:

April 1 through October 15

Quantity:

0.34 cubic foot per second in May and June, 0.17 cubic foot per second in April and July 1 through October 15

Priority Date:

July 5, 1872

Point of Diversion:

2600 feet west and 10 feet south of the northwest corner of Section 4, being within the $N\frac{1}{2}N\frac{1}{2}$ of Section 4, T. 17 N., R. 19 E.W.M.

Place of Use:

That portion of Government Lot 3 of Section 4, T. 17 N., R. 19 E.W.M. described as follows: beginning at a point on the quarter section line which is 30 feet S 5°55' W of the quarter section corner on the north boundary line of said Section 4, thence S 5°55' W on said quarter section line 1,238.6 feet; thence S 85°38' W 579.0 feet to the east boundary line of the right of way of the county road; thence N 3°18' W along said boundary line 1,211.5 feet to the south boundary line of the right of way of State Road No. 7; thence N 82°12' E 295 feet; thence N 86°51' E 484 feet to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Sandra Thomas

COURT CLAIM NO. 01454

(A) 04171

Source:

Naneum Creek

Use:

Irrigation of 26.5 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.53 cubic foot per second in May and June, 0.265 cubic foot per second in April and July 1 through October 15; 135.68 acre-feet per year

Priority Date:

July 5, 1872

Point of Diversion:

750 feet north and 300 feet west from the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the NW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M. described as follows: Beginning at the south quarter corner of said Section 4, thence N 1°50' W 3871.68 feet along the centerline of the county road; thence S 86°52'40" W 759.79 feet to the true point of beginning; thence N 6°22'40" E 119.54 feet; thence S 86°17'00" W 688.66 feet; thence S 6°35'40" W 1354.00 feet; thence N 87°38'50" E 691.15 feet; thence N 6°22'40" E 1250.30 feet to the true point of beginning. AND the north 300 feet of the following described parcel: Beginning at the south quarter corner of said Section 4; thence N 1°0' W 3671.61 feet along the centerline of the county road to the true point of beginning; thence S 86°2'40"W, 729.79 feet; thence S 6°22'40" W, 1250.30 feet; thence N 87°38'50" E, 907.65 feet to the centerline of the county road; thence N 1°50' W to the true point of beginning, EXCEPT the county road.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Donna Minielly
Maurice Olney
& Ruth Ann Olney**

COURT CLAIM NO. 00899

Source:

Naneum Creek

Use:

Irrigation of 20 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.40 cfs in May and June, 0.20 cfs in April and July 1 through October 15, 102.5 acre-feet per year

Priority Date:

December 5, 1872

Point of Diversion:

300 feet north and 300 feet west of the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

Beginning at the west quarter corner of Section 4, T. 17 N., R. 19 E.W.M.; thence N 5°20' E 565 feet along the section line; thence N 3°55' E 783 feet to the north sixteenth corner, thence N 84°25' E 651 feet; thence S 4°59' W 1367 feet to the east-west mid section line; thence S 86°10' W 637 feet to the point of beginning.

CLAIMANT NAME:

Merle Ringer

COURT CLAIM NO. 01048

Source:

Naneum Creek

Use:

Irrigation of 18.5 acres

Period of Use:

April 1 through October 1

Quantity:

1 cubic foot per second, 222.15 acre-feet per year

Priority Date:

June 5, 1873

Point of Diversion:

800 feet south and 400 feet west of the center of Section 19, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 17 N., R. 19 E.W.M.

Place of Use:

That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 17 N., R. 19 E.W.M. located east of the Interstate Highway 82.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

James Bridge
& Mary Bridge
Cy Morgan
Nick Parsel
& Kim Parsel
Katherine M. Rasmussen

COURT CLAIM NO. 00825

Source:

Dry Creek (branch of Wilson Creek)

Use:

Irrigation of 30 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.60 cfs in May and June, 0.30 cfs in April and July 1 through October 31, 150 acre-feet per year

Priority Date:

June 30, 1873

Point of Diversion:

850 feet south and 10 feet west from the northeast corner of Section 25, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 18 N., R. 18 E.W.M.

Place of Use:

The NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, of Section 25, T. 18 N., R. 18 E.W.M. lying northerly of Sanders Road.

Limitations of Use:

This land also receives water delivered by the Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Patrick M. Jenkins
& Vicki K. Jenkins

COURT CLAIM NO. 00932

Source:

Wilson Creek

Use:

Irrigation of 53 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

1.06 cubic feet per second in May and June. 0.53 cubic foot per second in April and July 1 through October 15; 265 acre-feet per year for irrigation; 1 acre-foot per year for stock watering

Priority Date:

June 30, 1873

Point of Diversion:

600 feet north and 600 feet east of the center of Section 5, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M. lying north of the KRD canal and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M., less the westerly 400 feet thereof.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Robert O. Kelley
& Paula K. Kelley**

COURT CLAIM NO. 00667

Source:

Naneum Creek (Neally Creek)

Use:

Irrigation of 16 acres and stock watering.

Period of Use:

April 1 through October 15

Quantity:

0.32 cubic foot per second in May and June, 0.16 cubic foot per second in April and July 1 through October 15; 80 acre-feet per year

Priority Date:

June 30, 1873

Point of Diversion:

300 feet south and 800 feet east from the north quarter corner of Section 28, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M.

Place of Use:

The S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M., EXCEPT the easterly 328 feet thereof.

Limitations of Use:

Water delivered by the Kittitas Reclamation District is also used on this land.

CLAIMANT NAME:

**Bernard L. Martin
& Marlene F. Martin**

COURT CLAIM NO. 00769

Source:

Unnamed springs

Use:

Single domestic supply, including irrigation of one-half acre of lawn and garden, and stock watering

Period of Use:

Continuously for single domestic supply and stock watering; April 1 through October 15 for irrigation of lawn and garden

Quantity:

0.02 cubic foot per second, 2 acre-feet per year

Priority Date:

June 30, 1873

Point of Diversion:

75 feet north and 800 feet west from the east quarter corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M. lying east of Wilson Creek

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Mark McWhorter

COURT CLAIM NO. 00484

(A) 04498

Source:

Naneum Creek

Use:

Irrigation of 60 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.20 cubic feet per second in May and June, 0.60 cubic foot per second in April and July 1 through October 15, 300 acre-feet per year for irrigation and 4 acre-feet per year for stock watering

Priority Date:

June 30, 1873

Point of Diversion:

920 feet south and 1300 feet east of the northwest corner of Section 9, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9, T. 18 N., R. 19 E.W.M.

Place of Use:

The S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M. lying south of the KRD canal

Limitations of Use:

Water delivered by the Kittitas Reclamation District may also be used on this land.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: Mark McWhorter COURT CLAIM NO. 00484
2 Source: Naneum Creek (A) 04498
3 Use: Irrigation of 160 acres and stock water
4 Period of Use: April 1 through October 15
5 Quantity: 3.20 cubic feet per second in May and June, 1.60
6 cubic feet per second in April and July 1 through
7 October 15, 800 acre-feet per year for irrigation and
8 4 acre-feet per year for stock watering.
9 Priority Date: June 30, 1873
10 Point of Diversion: 920 feet south and 1300 feet east of the northwest
11 corner of Section 9, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
12 Section 9, T. 18 N., R. 19 E.W.M.
13 Place of Use: The S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, T. 18 N.,
14 R. 19 E.W.M.
15 Limitations of Use: Water delivered by the Kittitas Reclamation District
16 may also be used on this land.

17 CLAIMANT NAME: Patrick Smith COURT CLAIM NO. 02262
18 Source: Wilson Creek
19 Use: Irrigation of 7.5 acres
20 Period of Use: April 1 through October 31
21 Quantity: 0.15 cubic foot per second in May and June, 0.075
22 cubic foot per second in April and July 1 through
23 October 31, 37.5 acre-feet per year
24 Priority Date: June 1, 1874
25 Point of Diversion: 750 feet south and 1280 feet east from the west
26 quarter corner of Section 30, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
27 Section 30, T. 18 N., R. 19 E.W.M.
28 Place of Use: That portion of Government Lot 4, Section 30,
T. 18 N., R. 19 E.W.M., lying east of Wilson Creek
and the County Road and north of the Cascade
Irrigation Canal.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Stephan A. Willard
& Ruby Willard

COURT CLAIM NO. 00726

2 Source:

Wilson Creek

3 Use:

Irrigation of 71 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

1.42 cubic foot per second in May and June, 0.71
6 cubic foot per second in April and from July 1
through October 15, 355 acre-feet per year

7 Priority Date:

June 1, 1874

8 Point of Diversion:

(1) 1000 feet north and 500 feet west from the center
9 of Section 30, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30,
T. 18 N., R. 19 E.W.M.

10 (2) 200 feet south and 1100 feet west from the
center of Section 30, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 30, T. 18 N., R. 19 E.W.M.

12 (3) 1000 feet south and 1300 feet west from the
center of Section 30, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
13 Section 30, T. 18 N., R. 19 E.W.M.

14 Place of Use:

The E $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of Government Lot 4
15 described as follows: Beginning at a point on the
north line of said lot, 33.8 feet east of the
16 northwest corner thereof, being the intersection of
the north line of said lot with the east line of the
17 right of way of the county road; thence southeasterly
along the east boundary line of said right of way
18 239.0 feet; thence N 30°22' E 149.0 feet; thence S
89°28' W 275.0 feet to the point of beginning, all in
19 Section 30, T. 18 N., R. 19 E.W.M.

20 Limitations of Use:

This land may also receive water delivered by the
Kittitas Reclamation District.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

Lorne T. Dunning
& Jeanne M. Dunning

COURT CLAIM NO. 00166
(A) 12208

Source:

Naneum Creek

Use:

Irrigation of 35 acres

Period of Use:

April 1 through October 15

Quantity:

0.70 cubic foot per second in May and June and 0.35
cubic foot per second in April and July 1 through
October 15

Priority Date:

June 30, 1874

Point of Diversion:

100 feet north and 400 feet east of the center of
Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21,
T. 18 N., R. 19 E.W.M.

Place of Use:

The NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Limitations of Use:

This land may also receive water from the Kittitas
Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Timothy E. Eckert
& Marcia N. Eckert

COURT CLAIM NO. 00635

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Source:

Naneum Creek

Use:

Irrigation of 80 acres and stock water.

Period of Use:

April 1 through October 31

Quantity:

1.6 cubic feet per second in May and June, 0.80 cubic foot per second in April and July 1 through October 31, 370 acre-feet per year

Priority Date:

June 30, 1874

Point of Diversion:

200 feet north and 200 feet west of the south quarter corner of Section 16 being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27, T. 18 N., R. 19 E.W.M.

Limitations of Use:

If a right is awarded for use of Spring Creek for these same lands in the Subbasin No. 10 Report of Referee, the maximum annual quantity of water that can be used under both rights is 370 acre-feet per year.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Adolph Kjelmlyhr
Merle D. Lott**

COURT CLAIM NO. 00818

Source:

Naneum Creek

Use:

Irrigation of 9 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.18 cubic foot per second in May and June, 0.09 cubic foot per second in April and July 1 through October 15, 45 acre-feet per year for irrigation; 1 acre-foot per year for stock watering

Priority Date:

June 30, 1874

Point of Diversion:

100 feet north and 400 feet east of the center of Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Limitations of Use:

This land may also receive water from the Kittitas Reclamation District.

CLAIMANT NAME:

**Ralph G. Charlton
& Nancy L. Charlton**

COURT CLAIM NO. 00967

Source:

Naneum Creek

Use:

Irrigation of 40 acres

Period of Use:

April 1 through October 15

Quantity:

0.80 cubic foot per second in May and June, 0.40 cubic foot per second in April and from July 1 through October 15 and 200 acre-feet per year

Priority Date:

June 30, 1875

Point of Diversion:

300 feet north and 1200 feet east from the west quarter corner of Section 21, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Place of Use:

The SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Limitations of Use:

A portion of this land also receives water from the Kittitas Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Gwendolyn Cooke
& Robert Cooke

COURT CLAIM NO. 00740

Source:

Naneum

Use:

Irrigation of 7 acres and stock watering

Period of Use:

April 1 through October 31

Quantity:

0.14 cubic foot per second, 35 acre-feet per year

Priority Date:

June 30, 1875

Point of Diversion:

300 feet north and 300 feet west from the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the W $\frac{1}{2}$ of Section 4, T. 17 N., R. 19 E.W.M. described as follows: Beginning at the south quarter corner of said Section 4, thence N 1°50' W 2601.68 feet along the centerline of the county road; thence S 87°06' W 30.00 feet to the true point of beginning; thence S 1°50' E 835.98 feet; thence N 77°00'50" W 463.82 feet; thence N 6°13'10" E 717.63 feet; thence N 87°06' E 348.15 feet to the true point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Herbert J. Herbert
& Rita Herbert**

COURT CLAIM NO. 00663

Source:

Naneum Creek

Use:

Irrigation of 80 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

1.60 cubic feet per second in May and June, 0.80 cubic foot per second in April and July 1 through October 15, 410.20 acre-feet per year

Priority Date:

June 30, 1875

Point of Diversion:

100 feet north and 400 feet east of the center of Section 21, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, T. 18 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 22, T. 18 N., R. 19 E.W.M.

Limitations of Use:

This land may also receive water from the Kittitas Reclamation District.

CLAIMANT NAME:

**Robert O. Kelley
& Paula K. Kelley**

COURT CLAIM NO. 00667

Source:

Naneum Creek (Neally Creek)

Use:

Irrigation of 32 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.64 cubic foot per second in May and June, 0.32 cubic foot per second in April and July 1 through October 15, 160 acre-feet per year

Priority Date:

June 30, 1875

Point of Diversion:

300 feet south and 800 feet east from the north quarter corner of Section 28, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M.

Place of Use:

The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M., EXCEPT the easterly 328 feet thereof.

Limitations of Use:

Water delivered by the Kittitas Reclamation District is also used on this land.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Fabian Kuchin, Jr.** COURT CLAIM NO. 01939

2 Source: Whiskey Creek

3 Use: Irrigation of 13 acres

4 Period of Use: April 1 through October 15

5 Quantity: 0.338 cubic foot per second, 52 acre-feet per year

6 Priority Date: **June 30, 1875**

7 Point of Diversion: 450 feet south and 400 feet west from the north
8 quarter corner of Section 34, being within the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T. 18 N., R. 18. E.W.M.

9 Place of Use: That part of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, T. 18 N.,
10 R. 18 E.W.M., lying north and east of the
northeasterly right-of-way line of State Highway No.
3, and south and west of Whiskey Creek.

11 Limitations of Use: This land also receives water from the Ellensburg
12 Water Company

13 CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01267

14 Source: Naneum Creek

15 Use: Irrigation of 15 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 0.30 cubic foot per second, 75 acre-feet per year for
18 irrigation and 5 acre-feet per year for stock
watering

19 Priority Date: **June 30, 1875**

20 Point of Diversion: 1. 750 feet north and 30 feet west from the south
21 quarter corner of Section 16, within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 16, T. 18 N., R. 19 E.W.M.

22 2. 400 feet north and 800 feet east of the west
23 quarter corner of Section 4, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$
of Section 4, T. 17 N., R. 19 E.W.M.

24 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 17 N., R. 19 E.W.M.,
25 excluding the railroad right-of-way.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

Harvey L. Dodge

COURT CLAIM NO. 00603

Source:

Taylor Creek (a branch of Naneum Creek)

Use:

Irrigation and stock watering.

Period of Use:

April 1 through October 15

Quantity:

1.3 cubic feet per second in May and June, 0.65 cubic foot per second in April and July 1 through October 15, 195 acre-feet per year

Priority Date:

December 20, 1876

Point of Diversion:

No. 1: 1200 feet north and 10 feet west from the east quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29;

No. 2: 850 feet south and 10 feet west from the northeast corner of Section 29, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29; ALL within T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 29, T. 18 N., R. 19 E.W.M. lying northerly and easterly of the right of way of the Kittitas Reclamation District ditch EXCEPT the west 495 feet thereof and the right of way for Burroughs Road.

Limitations of Use:

Water delivered by the Kittitas Reclamation District is also used on this property

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Shird J. Burks
& Audrey E. Burks

COURT CLAIM NO. 00726

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Source:

Wilson Creek

Use:

Irrigation of 75 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.5 cubic feet per second in May and June, 0.75 cubic foot per second in April and from July 1 through October 15; 375 acre-feet per year

Priority Date:

June 15, 1877

Point of Diversion:

1200 feet north and 1200 feet east of the south quarter corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 30, except that portion described as follows: Commencing at south quarter corner of said section; thence east 492 feet; thence north 200 feet; thence west 492 feet; thence south 200 feet to the true point of beginning. Also the east 400 feet of the south 1100 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, all in T. 18 N., T. 19 E.W.M.

Limitations of Use:

This land may also receive water delivered by the Kittitas Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Les S. Knudsen
& Barbara J. Knudsen

COURT CLAIM NO. 00256

Source:

Wilson Creek

Use:

Irrigation of 74 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.48 cubic feet per second in May and June, 0.74 cubic foot per second in April and July 1 through October 15; 370 acre-feet per year

Priority Date:

June 15, 1877

Point of Diversion:

1200 feet north and 1300 feet east from the south quarter corner of Section 19, being within SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, T. 18 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M. EXCEPT, the east 450 feet of the south 1100 feet thereof.

Limitations of Use:

This land also receives water from the Kittitas Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

James Bridge
& Mary Bridge
Cy Morgan
Nick Parsel
& Kim Parsel
Katherine M. Rasmussen

COURT CLAIM NO. 00825

Source:

Dry Creek

Use:

Irrigation of 44 acres and stock watering

Period of Use:

April 1 through October 31

Quantity:

0.88 cubic foot per second in May and June, 0.44
cubic foot per second in April and July 1 through
October 31, 220 acre-feet per year

Priority Date:

June 30, 1877

Point of Diversion:

850 feet south and 10 feet west from the northeast
corner of Section 25, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 25, T. 18 N., R. 18 E.W.M.

Place of Use:

The NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 18 N.,
R. 18 E.W.M.

Limitations of Use:

Water from the Kittitas Reclamation District is also
used on this land.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Gerald F. Brunner
& Ruth Ann Brunner

COURT CLAIM NO. 02124

Source:

Wilson Creek

Use:

Irrigation of 5 acres and stock water

Period of Use:

April 15 through October 15

Quantity:

0.10 cubic foot per second in May and June, 0.05 cubic foot per second in April and July 1 through October 15, 26 acre-feet per year for irrigation; 0.5 acre-foot per year for stock water

Priority Date:

June 30, 1877

Point of Diversion:

1250 feet north and 200 feet west from the south quarter corner of Section 5, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use:

The S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

James F. Carmody
& Dorothy Carmody

COURT CLAIM NO. 00612

2 Source:

Dry Creek (a branch of Wilson Creek)

3 Use:

Irrigation of 6.5 acres and stock watering

4 Period of Use:

April 1 through October 31

5 Quantity:

0.13 cubic foot per second in May and June, 0.065
6 cubic foot per second in April and July 1 through
October 31, 35.26 acre-feet per year

7 Priority Date:

June 30, 1877

8 Point of Diversion:

650 feet south and 1200 feet west from the east
9 quarter corner of Section 25, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$
of Section 25, T. 18 N., R. 18 E.W.M.

10 Place of Use:

11 That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, T. 18 N.,
12 R. 18 E.W.M. described as follows: Commencing at the
center of said section; thence south approximately 28
13 feet to the south line of Sanders Road; thence
southeasterly 854.25 feet; thence southwesterly
14 253.92 feet to the north line of the Cascade Canal;
thence northwesterly 690.8 feet; thence northeasterly
15 304.58 feet to the point of beginning.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

**Kenneth R. Huber
& Sharon L. Huber
Jim Vasquez**

COURT CLAIM NO. 00661

Source:

Naneum Creek

Use:

Irrigation of 5 acres

Period of Use:

April 1 through October 15

Quantity:

0.10 cubic foot per second from May 1 through June 30, 0.05 cubic foot per second from July 1 through October 15 and April 1 through April 30; 25 acre-feet per year

Priority Date:

June 30, 1877

Point of Diversion:

1260 feet north and 720 feet east from the southwest corner of Section 33, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 18 N., R. 19 E.W.M.

Place of Use:

Lot 1 of Short Plat 77-9 being a portion of the W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 18 N. R. 19 E.W.M.

CLAIMANT NAME:

Kayser Ranch, Inc.

COURT CLAIM NO. 00991

Source:

Wilson-Naneum Creek

Use:

Irrigation of 65 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.30 cubic feet per second in May and June, 0.65 cubic foot per second in April and July 1 through October 15, 325 acre-feet per year

Priority Date:

June 30, 1877

Point of Diversion:

150 feet north and 600 feet east of the west quarter corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34 lying below the Adams Ditch and the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: Kayser Ranch, Inc. COURT CLAIM NO. 00991
2 Source: Wilson-Naneum Creek
3 Use: Irrigation of 50 acres and stock watering
4 Period of Use: April 1 through October 15
5 Quantity: 1.0 cubic foot per second in May and June, 0.50 cubic
6 foot per second in April and July 1 through October
7 15, 250 acre-feet per year
8 Priority Date: June 30, 1877
9 Point of Diversion: 150 feet north and 600 feet east of the west quarter
10 corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
11 Section 28, T. 19 N., R. 19 E.W.M.
12 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 18 N.,
13 R. 19 E.W.M.

14 CLAIMANT NAME: Floyd A. (Buck) Minor COURT CLAIM NO. 01718
15 & Merna Minor
16 Source: Wilson Creek
17 Use: Irrigation of 50.14 acres and stock water
18 Period of Use: April 1 through October 15
19 Quantity: 1.0 cubic foot per second in May and June, 0.50 cubic
20 foot per second in April and from July 1 through
21 October 15, 150.42 acre-feet per year for irrigation;
22 2.5 acre-feet per year for stock watering
23 Priority Date: June 30, 1877
24 Point of Diversion: Wilson Creek: 700 feet north and 600 feet west from
25 the center of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
26 Section 8, T. 18 N., R. 19 E.W.M.
27 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 8, T. 18 N.,
28 R. 19 E.W.M. west of Wilson Creek.

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME: **Jean G. Minor** COURT CLAIM NO. 01717

2 Source: Wilson Creek

3 Use: Irrigation of 12 acres and stock water

4 Period of Use: May 1 through October 15 for irrigation, continuous
for stock watering

5 Quantity: 0.24 cubic foot per second from May 1 through June 30
6 and 0.12 cubic foot per second in April and from
7 July 1 through October 15; 60 acre-feet per year for
8 irrigation, 0.50 acre-foot per year for stock water;
0.12 cubic foot per second, 0.5 acre-foot per year
for stock watering from October 16 to March 31

9 Priority Date: **June 30, 1877**

10 Point of Diversion: 650 feet north and 600 feet west from the center of
11 Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8,
T. 18 N., R. 19 E.W.M.

12 Place of Use: The south 750 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8,
13 T. 18 N., R. 19 E.W.M.
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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Ronald C. Rees

COURT CLAIM NO. 00892

2 Source:

An unnamed branch of Wilson Creek (may be locally known as Lyle Creek)

3 Use:

Irrigation of 9 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

6 0.18 cubic foot per second from May 1 through
7 June 30, 0.09 cubic foot per second in April and from
8 July 1 through October 15; 45 acre-feet per year for
9 irrigation; one-half acre-foot per year for stock
10 watering

11 Priority Date:

June 30, 1877

12 Point of Diversion:

13 1500 feet south and 200 feet west from the north
14 quarter corner of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$
15 of Section 8, T. 18 N., R. 19 E.W.M.

16 Place of Use:

17 That portion of the following described land lying
18 east of the branch of Wilson Creek that flows through
19 the property: N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 and that portion
20 of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, described as follows:
21 Beginning at a point 711 feet south of the center of
22 Section 8; thence west 1221.9 feet; thence south 178
23 feet; thence east 1221.9 feet; thence north 178 feet
24 to the point of beginning, all in T. 18 N.,
25 R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28 638

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

CLAIMANT NAME:

**Kent D. Richards
& Carolyn E. Richards**

COURT CLAIM NO. 01163

Source:

Lyle Creek

Use:

Irrigation of 7 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.14 cubic foot per second from May 1 through June 30
and 0.07 cubic foot per second in April and from
July 1 through October 15, 35 acre-feet per year

Priority Date:

June 30, 1877

Point of Diversion:

400 feet north and 200 feet east from the center of
Section 8, within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T. 18 N.,
R. 19 E.W.M.

Place of Use:

The south 1170 feet of the east 375 feet of the
southwest quarter of Section 8, T. 18 N.,
R. 19 E.W.M. lying west of Wilson Creek

REPORT OF REFEREE

Re: Subbasin No. 9

639

Referee's Office

15 W. Yakima Ave Ste. 200

Yakima, WA 98902-3401

1 CLAIMANT NAME:

James C. Swayze
& Dianne Morrison

COURT CLAIM NO. 01052
(A) 05592

2 Source:

Naneum Creek

3 Use:

Irrigation of 10 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

0.20 cubic foot per second from May 1 through
6 June 30, 0.10 cubic foot per second in April and from
July 1 through October 15; 40 acre-feet per year

7 Priority Date:

June 30, 1877

8 Point of Diversion:

75 feet south and 400 feet east from the west quarter
9 corner of Section 33, being within the NW¼SW¼ of
Section 33, T. 18 N., R. 19 E.W.M.

10 Place of Use:

11 That portion of the N¼SW¼ of Section 33, T. 18 N., R.
12 19 E.W.M. lying northerly of the Cascade Irrigation
Company canal EXCEPT: the west 165 feet thereof; and
EXCEPT right of way for county road on the easterly
13 boundary thereof; and EXCEPT the following: Beginning
at the southeast corner of said SW¼; thence N
14 2°45'11" W 2277.82 feet along the east line to the
True Point of Beginning; thence S 87°02'19" W 406.98
15 feet; thence N 2°45'11" W 464.22 feet to the north
line of said quarter section; thence N 88°59'47" E
407.17 feet to the northeast corner of said quarter
16 section; thence S 2°45'11" E along the east line of
said quarter section 450.31 feet to the True Point of
17 Beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28 640

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

CLAIMANT NAME:

William P. Woods
& Priscilla A. Woods

COURT CLAIM NO. 05316

Source:

Wilson Creek

Use:

Irrigation of 5 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

0.10 cubic foot per second in May and June, 0.05 cubic foot per second in April and July 1 through October 15, 25 acre-feet per year for irrigation; 0.50 acre-foot per year for stock watering

Priority Date:

June 30, 1877

Point of Diversion:

900 feet north and 850 feet east of the southwest corner of Section 5, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M. described as follows: Beginning at a point 20 feet south of a point 27 feet east of the northwest corner of said Section 8, thence N 88°57' E along the south boundary of the right of way for the county road 1360.3 feet; thence S 1°42' W 642.0 feet; thence S 88°57' W 1360.3 feet to the east boundary line of the right of way of said county road; thence N 1°42' E 642.0 feet to the point of beginning; except right of way for the canal of the Kittitas Reclamation District.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME: **Morrison Ranches** COURT CLAIM NO. 01265

Source: Naneum Creek

Use: Irrigation of 77 acres and stock water

Period of Use: April 1 through October 15

Quantity: 1.60 cubic feet per second in May and June, 0.80 cubic foot per second in April and July 1 through October 15; 385 acre-feet per year

Priority Date: **September 30, 1877**

Point of Diversion: 50 feet north and 1020 feet east from the west quarter corner of Section 4, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T. 19 N., R. 19 E.W.M.

Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M.

CLAIMANT NAME: **Winona P. Youngberg** COURT CLAIM NO. 00364
(A) 01687

Source: Naneum Creek

Use: Irrigation of 80 acres and stock water

Period of Use: April 1 through October 31

Quantity: 1.6 cubic feet per second in May and June, 0.80 cubic foot per second in April and July 1 through October 31, 400 acre-feet per year

Priority Date: **September 30, 1877**

Point of Diversion: 750 feet south and 600 feet east from the northwest corner of Section 4, within Government Lot 4 of Section 4, T. 18 N., R. 19 E.W.M.

Place of Use: W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME:

**Robert Swedberg
& Lorene Swedberg**

COURT CLAIM NO. 01861

2 Source:

Naneum Creek

3 Use:

Irrigation of 100 acres and stock water

4 Period of Use:

April 1 through October 15 for irrigation; continuous for stock watering

5 Quantity:

6 2.0 cubic feet per second in May and June, 1.0 cubic
7 foot per second in April and July 1 through
8 October 15, 500 acre-feet per year for irrigation and
stock watering; 1.0 cfs, 10 acre-feet per year from
October 16 through March 31 for stock watering

9 Priority Date:

March 30, 1878

10 Point of Diversion:

11 #1 - 1050 feet south and 550 feet east from the west
12 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
13 Section 28, T. 19 N., R. 19 E.W.M.,
14 #2 - 550 feet south and 600 feet east from the west
quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 28, T. 19 N., R. 19 E.W.M.,
#3 - 500 feet north and 250 feet east from the
southwest corner of Section 28, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 28, T. 19 N., R. 19 E.W.M.

15 Place of Use:

The NW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Alan Burke

COURT CLAIM NO. 01181

(A) 06158

2 Source:

Naneum Creek

3 Use:

Irrigation of 30 acres and stock watering

4 Period of Use:

April 1 through October 15

5 Quantity:

0.60 cubic foot per second from May 1 through
6 June 30, 0.30 cubic foot per second in April and from
July 1 through October 15; 150 acre-feet per year

7 Priority Date:

June 30, 1878

8 Point of Diversion:

10 feet south and 10 feet west from the northwest
9 corner of Section 33, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 33, T. 18 N., R. 19 E.W.M.

10 Place of Use:

11 That portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 33, T. 18 N., R.
12 19 E.W.M., described as follows: Commencing at the
west quarter corner of Section 33, thence east on the
13 mid-section line 495.5 feet; thence north parallel to
the west boundary line 2420.0 feet; thence N 34°04' E
14 110.8 feet; thence N 51° E 194.0 feet; to the south
line of the right of way of the county road; thence N
15 87°49' W along said right of way line 708.5 feet to
the west boundary of Section 33; thence south on said
west boundary 2642.0 feet to the point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

**Brian Luque
& Teresa Luque**

COURT CLAIM NO. 00175

Source:

Wilson Creek (delivered through an unnamed drain)

Use:

Irrigation of one-half acre

Period of Use:

April 1 through October 15

Quantity:

0.01 cubic foot per second, 2.5 acre-feet per year

Priority Date:

June 30, 1878

Point of Diversion:

150 feet south and 1000 feet west from the center of Section 30, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30, T. 18 N., R. 19 E.W.M.

Place of Use:

The south 88.5 feet of the west 492 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 19 N., R. 19 E.W.M., EXCEPT a 30 feet road right of way along the south boundary.

CLAIMANT NAME:

**Don Akehurst
& Barbara Akehurst**

COURT CLAIM NO. 05072

Source:

Lyle Creek (branch of Wilson Creek)

Use:

Irrigation of 40 acres

Period of Use:

April 1 through October 15

Quantity:

0.82 cubic foot per second in May and June, 0.41 cubic foot per second in April and from July 1 through October 15, 200 acre-feet per year

Priority Date:

June 30, 1880

Point of Diversion:

780 feet south of the north quarter corner of Section 20, being within the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 20, T. 18 N., R. 19 E.W.M.

Place of Use:

The SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Orren Busby
& Ruth Busby

COURT CLAIM NO. 00857

2 Source:

Taylor Creek, a branch of Naneum Creek

3 Use:

Irrigation of 15 acres .

4 Period of Use:

April 1 through October 15

5 Quantity:

0.30 cubic foot per second in May and June, 0.15
6 cubic foot per second in April and July 1 through
October 15, 75 acre-feet per year

7 Priority Date:

June 30, 1880

8 Point of Diversion:

9 No. 1: 50 feet south and 150 feet west of the east
quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$
of Section 29;
10 No. 2: 450 feet south and 50 feet west of the east
quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$
11 of Section 29, ALL being within T. 18 N., R. 19 E.W.M.

12 Place of Use:

That portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 18 N.,
13 R. 19 E.W.M. lying west of Taylor Creek.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

George Haberman
& Ruby Haberman
Dale Haberman
& Kathy Haberman

COURT CLAIM NO. 00620

Source:

Naneum Creek

Use:

Irrigation of 97 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.94 cubic feet per second in May and June and 0.97 cubic foot per second in April and July 1 through October 15, 388 acre-feet per year.

Priority Date:

June 30, 1880

Point of Diversion:

No. 1 - 1150 feet south and 1100 feet east from the northwest corner of Section 28, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M.
No. 2 - 650 feet north and 300 feet west of the south quarter corner of Section 16, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

The E $\frac{1}{2}$ SW $\frac{1}{4}$ and that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M., lying east of Naneum Creek.

Limitations of Use:

Some of this land may also receive water delivered by the Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

**Thomas Haven
& Sara Haven**

COURT CLAIM NO. 01649

2 Source:

Lyle Creek

3 Use:

Irrigation of 1 acre and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

0.02 cubic foot per second in May and June, 0.01
cubic foot per second in April and July 1 through
6 October 15, 5 acre-feet per year

7 Priority Date:

June 30, 1880

8 Point of Diversion:

100 feet south and 100 feet east from the center of
9 Section 17, within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17,
T. 18 N., R. 19 E.W.M.

10 Place of Use:

11 That portion of SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T. 18 N.,
R. 19 E.W.M., lying west of Wilson Creek Road.

12 CLAIMANT NAME:

**Harold W. Jenkins
& Gladys D. Jenkins**

COURT CLAIM NO. 00930

13 Source:

Wilson Creek

14 Use:

Irrigation of 65 acres and stock water

15 Period of Use:

April 1 through October 15

16 Quantity:

17 1.30 cubic feet per second in May and June, 0.65
cubic foot per second in April and July 1 through
18 October 15, 325 acre-feet per year for irrigation and
2 acre-feet per year for stock watering.

19 Priority Date:

June 30, 1880

20 Point of Diversion:

1250 feet north and 850 feet east from the southwest
21 corner of Section 8, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 8, T. 18 N., R. 19 E.W.M.

22 Place of Use:

23 That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 18, T. 18 N.,
R. 19 E.W.M. lying westerly of a Kittitas Reclamation
District lateral.

24 Limitations of Use:

25 This land may also receive water delivered by the
Kittitas Reclamation District

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991

Source: Wilson-Naneum Creek

Use: Irrigation of 25 acres and stock watering

Period of Use: April 1 through October 15

Quantity: 0.50 cubic foot per second in May and June, 0.25 cubic foot per second in April and July 1 through October 15, 125 acre-feet per year

Priority Date: **June 30, 1880**

Point of Diversion: 500 feet north and 250 feet east of the southwest corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 18 N., R. 19 E.W.M.

CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991

Source: Wilson-Naneum Creek

Use: Irrigation of 120 acres and stock watering

Period of Use: April 1 through October 15

Quantity: 2.4 cubic feet per second in May and June, 1.2 cubic feet per second in April and July 1 through October 15, 600 acre-feet per year

Priority Date: **June 30, 1880**

Point of Diversion: 1050 feet south and 550 feet east from the west quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.,

Place of Use: E $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME: **Kayser Ranch, Inc.** COURT CLAIM NO. 00991
2 Source: Wilson-Naneum Creek
3 Use: Irrigation of 33.3 acres and stock watering
4 Period of Use: April 1 through October 15
5 Quantity: 0.66 cubic foot per second in May and June, 0.33
6 cubic foot per second in April and July 1 through
7 October 15, 166.5 acre-feet per year
8 Priority Date: **June 30, 1880**
9 Point of Diversion: 1050 feet south and 550 feet east from the west
10 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 28, T. 19 N., R. 19 E.W.M.,
12 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M.

11 CLAIMANT NAME: **Sam Kayser** COURT CLAIM NO. 01234
12 & **Lonni Kayser** (A) 06380
13 Source: Wilson and Naneum Creeks
14 Use: Irrigation of 60 acres and stock water
15 Period of Use: April 1 through October 15
16 Quantity: 1.20 cubic feet per second May 1 through June 15,
17 0.60 cubic foot per second in April and June 16
18 through October 15, 300 acre-feet per year
19 Priority Date: **June 30, 1880**
20 Point of Diversion: 1050 feet south and 550 feet east from the west
21 quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
22 Section 28, T. 19 N., R. 19 E.W.M.
23 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
24 Section 2, T. 18 N., R. 19 E.W.M., lying north of the
25 Highline Canal, EXCEPT the right-of-way for the
26 Highline Canal.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME: **Madeleine Villa, Inc.** COURT CLAIM NO. 02245

1 Source: Lyle Creek
2
3 Use: Irrigation of 80 acres and stock water
4
5 Period of Use: April 1 through October 15
6
7 Quantity: 1.60 cubic feet per second in May and June, 0.80
8 cubic foot per second in April and July 1 through
9 October 15, 400 acre-feet per year.
10
11 Priority Date: **June 30, 1880**
12
13 Point of Diversion: 30 feet south and 600 feet west from the center of
14 Section 20, within the NE~~1~~NE~~4~~SW~~4~~ of Section 20,
15 T. 18 N., R. 19 E.W.M.
16
17 Place of Use: The west 2000 feet of the SW~~4~~ of Section 20,
18 T. 18 N., R. 19 E.W.M.
19
20 Limitations of Use: This land also receives water from the Kittitas
21 Reclamation District.
22

CLAIMANT NAME: **G. Jay Nelson, et al.** COURT CLAIM NO. 01866

14 Source: Lyle Creek
15
16 Use: Irrigation of 79 acres and stock water
17
18 Period of Use: April 1 through October 15
19
20 Quantity: 1.58 cubic feet per second in May and June, 0.79
21 cubic foot per second in April and July 1 through
22 October 15, 395 acre-feet per year
23
24 Priority Date: **June 30, 1880**
25
26 Point of Diversion: #1 - 30 feet south and 300 feet east from the north
27 quarter corner of Section 17, within the NW~~4~~NE~~4~~ of
28 Section 17,
#2 - 10 feet south and 550 feet east from the center
of Section 17, within the NW~~4~~SE~~4~~ of Section 17, ALL
in T. 18 N., R. 19 E.W.M.
Place of Use: That portion of the SW~~4~~ of Section 17, T. 18 N.,
R. 19 E.W.M., lying east of Wilson Creek Road.

REPORT OF REFEREE
Re: Subbasin No. 9

CLAIMANT NAME:

Albert F. Scott
& Dorothy Scott
Stephen K. German
& Donna German

COURT CLAIM NO. 00605
(A) 01749

Source:

Naneum Creek

Use:

Irrigation of 70 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.40 cubic feet per second from May 1 through
June 15, 0.70 cubic foot per second in April and from
June 16 through October 15. 350 acre-feet per year
for irrigation, 5 acre-feet per year for stock
watering.

Priority Date:

June 30, 1880

Point of Diversion:

1050 feet south and 550 feet east from the west
quarter corner of Section 28, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use:

The N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11 and that portion of the
SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 lying south of the KRD Canal,
both in T. 18 N., R. 19 E.W.M.

Limitations of Use:

This land may also receive water delivered by the
Kittitas Reclamation District. Secondary diversion
points on Schnebly Creek are used to convey Naneum
Creek water to this property. Additional water from
Schnebly Creek may also be used on this land.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**John L. Silva
& Janet E. Silva**

COURT CLAIM NO. 01130

Source:

Naneum Creek

Use:

Irrigation of 3 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.06 cubic foot per second in May and June, 0.03 cubic foot per second in April and July 1 through October 15, 15 acre-feet per year

Priority Date:

June 30, 1880

Point of Diversion:

No. 1: 1150 feet north and 1100 feet east from the west quarter corner of Section 28, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M.
No. 2: 30 feet south and 600 feet east from the west quarter corner of Section 28, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 18 N., R. 19 E.W.M.

Place of Use:

The south 440 feet of the west 500 feet of Section 28, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Steve Wallace
& Deborah L. Wallace

COURT CLAIM NO. 00990

2 Source:

Wilson and Naneum Creeks (combined flow)

3 Use:

Irrigation of 20 acres and stock water

4 Period of Use:

April 1 through October 15 for irrigation,
continuously for stock watering

5 Quantity:

6 0.33 cubic foot per second from May 1 through
7 June 15, 0.165 cubic foot per second in April and
8 June 16 through October 15, 78.4 acre-feet per year
for irrigation and stock watering; 0.165 cubic foot
per second, 5 acre-feet per year from October 16
through March 31 for stock watering

9 Priority Date:

June 30, 1880

10 Point of Diversion:

1050 feet south and 550 feet east from the west
quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 28, T. 19 N., R. 19 E.W.M.,

12 Place of Use:

12 That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 3, T. 18 N.,
13 R. 19 E.W.M., lying north of the KRD Highline Canal

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Mark McWhorter

COURT CLAIM NO. 00484

(A) 04498

2 Source:

Lyle Creek

3 Use:

Irrigation of 20 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

0.40 cubic foot per second in May and June, 0.20 cubic foot per second in April and July 1 through October 15; 100 acre-feet per year for irrigation and 1 acre-foot per year for stock water.

7 Priority Date:

June 30, 1881

8 Point of Diversion:

10 feet south and 100 feet east of the north quarter corner of Section 17, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T. 18 N., R. 19 E.W.M.

10 Place of Use:

That portion of the NE $\frac{1}{4}$ of Section 17, T. 18 N., R. 19 E.W.M. lying west of Lyle Creek.

12 Limitations of Use:

Water delivered by the Kittitas Reclamation District may also be used on this land.

14 CLAIMANT NAME:

**John Hultquist
& Nancy Hultquist**

COURT CLAIM NO. 01721

15 Source:

Naneum Creek

16 Use:

Irrigation of 10 acres and stock water

17 Period of Use:

April 1 through October 15

18 Quantity:

0.20 cubic foot per second in May and June, 0.10 cubic foot per second in April and July 1 through October 15, 50 acre-feet per year

20 Priority Date:

June 30, 1882

21 Point of Diversion:

1000 feet north and 400 feet east from the west quarter corner of Section 33, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M.

23 Place of Use:

24 That portion of the west 933.38 feet of the north 933.38 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M., lying east of Naneum Creek.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

28 655

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

1 CLAIMANT NAME: Patrick M. Jenkins COURT CLAIM NO. 00932
& Vicki K. Jenkins

2 Source: Naneum Creek

3 Use: Irrigation of 105 acres and stock water

4 Period of Use: April 1 through October 15

5 Quantity: 2.10 cubic feet per second in May and June, 1.05
6 cubic foot per second in April and July 1 through
7 October 15, 525 acre-feet per year for irrigation and
8 3 acre-feet per year for stock watering

8 Priority Date: June 30, 1882

9 Point of Diversion: 1250 feet south and 250 feet east from the northwest
10 corner of irregular Section 4, within Government Lot
11 4 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 4, T. 18 N., R. 19 E.W.M.

12 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9 lying north of the Kittitas
13 Reclamation District canal and the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$
14 of Section 4, in T.18 N. R.19 E.W.M.

14 CLAIMANT NAME: Louaine A. Magnuson COURT CLAIM NO. 01416
& Kevin Halley

15 Source: Naneum Creek

16 Use: Irrigation of 1.3 acres

17 Period of Use: April 1 through October 15

18 Quantity: 0.026 cubic foot per second in May and June, 0.013
19 cubic foot per second in April and July 1 through
20 October 15, 6.5 acre-feet per year

20 Priority Date: June 30, 1882

21 Point of Diversion: 520 feet north and 275 feet east from the west
22 quarter corner of Section 33, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
23 Section 33, T. 19 N., R. 19 E.W.M.

24 Place of Use: The east 300 feet of the south 398.15 feet of the
25 north 933.38 feet of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 33, T. 19 N.,
26 R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

Ronald P. McGee
& Joy A. McGee

COURT CLAIM NO. 02035

Source:

Naneum Creek

Use:

Irrigation of 6 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.12 cubic foot per second in May and June, 0.06
cubic foot per second in April and July 1 through
October 15, 30 acre-feet per year

Priority Date:

June 30, 1882

Point of Diversion:

1000 feet north and 400 feet east from the west
quarter corner of Section 33, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 33, T. 19 N., R. 19 E.W.M.

Place of Use:

The west 300 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33,
T. 19 N., R. 19 E.W.M., except the north 300 feet
thereof.

CLAIMANT NAME:

Mark McWhorter

COURT CLAIM NO. 00484
(A) 04498

Source:

Naneum Creek

Use:

Irrigation of 40 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.80 cubic foot per second in May and June, 0.40
cubic foot per second in April and July 1 through
October 15, 200 acre-feet per year for irrigation and
2 acre-feet per year for stock watering

Priority Date:

June 30, 1882

Point of Diversion:

920 feet south and 1300 feet east of the northwest
corner of Section 9, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
Section 9, T. 18 N., R. 19 E.W.M.

Place of Use:

The SE $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M. lying
east of Lyle Creek.

Limitations of Use:

Water delivered by the Kittitas Reclamation District
is also used on this land.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Mark McWhorter

COURT CLAIM NO. 00484

(A) 04498

2 Source:

Naneum Creek

3 Use:

Irrigation of 115 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

6 2.30 cubic feet per second in May and June, 1.15
7 cubic feet per second in April and July 1 through
8 October 15, 575 acre-feet per year for irrigation and
9 4 acre-feet per year for stock watering.

8 Priority Date:

June 30, 1882

9 Point of Diversion:

920 feet south and 1300 feet east of the northwest
10 corner of Section 9, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
11 Section 9, T. 18 N., R. 19 E.W.M.

11 Place of Use:

12 That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ lying south of the KRD
13 canal, the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$, all in Section 9,
14 T. 18 N., R. 19 E.W.M.

15 Limitations of Use:

16 Water delivered by the Kittitas Reclamation District
17 may also be used on this land.
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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Mark McWhorter

COURT CLAIM NO. 00484

(A) 04498

2 Source:

Naneum Creek

3 Use:

Irrigation of 100 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

6 2.00 cubic feet per second in May and June, 1.0 cubic
7 foot per second in April and July 1 through
8 October 15, 500 acre-feet per year for irrigation and
9 4 acre-feet per year for stock watering.

8 Priority Date:

June 30, 1882

9 Point of Diversion:

920 feet south and 1300 feet east of the northwest
10 corner of Section 9, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of
11 Section 9, T. 18 N., R. 19 E.W.M.

11 Place of Use:

That portion of the NE $\frac{1}{4}$ of Section 17, T. 18 N.,
12 R. 19 E.W.M. lying east of Lyle Creek

12 Limitations of Use:

13 Water delivered by the Kittitas Reclamation District
14 may also be used on this land.

15 CLAIMANT NAME:

Howard Miles

COURT CLAIM NO. 01669

16 Source:

Naneum Creek

17 Use:

Irrigation of 18 acres.

18 Period of Use:

April 1 through October 15

19 Quantity:

20 0.36 cubic foot per second in May and June, 0.18
21 cubic foot per second in April and July 1 through
22 October 15, 90 acre-feet per year

21 Priority Date:

June 30, 1882

22 Point of Diversion:

700 feet north and 1320 feet east from the southwest
23 corner of Section 4, being within the N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ of
24 Section 4, T. 18 N., R. 19 E.W.M.

24 Place of Use:

25 That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9, T. 18 N., R.
26 19 E.W.M. lying east of Naneum Creek and north of the
27 Kittitas Reclamation District Canal.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329

Source: Wilson-Naneum Creeks
Use: Irrigation of 9 acres and stock water
Period of Use: April 1 through October 15
Quantity: 0.18 cubic foot per second from May 1 through June 30, 0.09 cubic foot per second in April and from July 1 through October 15; 28 acre-feet per year.
Priority Date: **June 30, 1882**
Point of Diversion: 500 feet north and 200 feet east from the southwest corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.
Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 18 N., R. 19 E.W.M.
Limitations of Use: This land may receive water delivered by the Kittitas Reclamation District.

CLAIMANT NAME: **Arthur Tirotta & Susan Tirotta** COURT CLAIM NO. 02035

Source: Naneum Creek
Use: Irrigation of 4.5 acres and stock water
Period of Use: April 1 through October 31
Quantity: 0.09 cubic foot per second in May and June, 0.045 cubic foot per second in April and July 1 through October 15, 22.5 acre-feet per year
Priority Date: **June 30, 1882**
Point of Diversion: 1000 feet north and 400 feet east from the west quarter corner of Section 33, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M.
Place of Use: That portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M. lying east of Naneum Creek

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME: **Stanley P. Youngberg** COURT CLAIM NO. 00363

2 Source: Naneum Creek

3 Use: Irrigation of 50 acres and stock water

4 Period of Use: April 1 to October 15

5 Quantity: 1.0 cubic foot per second in May and June, 0.50 cubic
6 foot per second in April and July 1 through October 15;
250 acre-feet per year

7 Priority Date: **June 30, 1882**

8 Point of Diversion: 850 feet north and 550 feet east from the southwest
9 corner of Section 33, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 33, T. 19 N., R. 19 E.W.M.

10 Place of Use: That portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, T. 18 N.,
R. 19 E.W.M. lying east of Naneum Creek

11 CLAIMANT NAME: **Sam Kayser** COURT CLAIM NO. 01263

12 Source: Naneum Creek

13 Use: Irrigation of 90.6 acres and stock water

14 Period of Use: April 1 to October 31

15 Quantity: 1.82 cubic feet per second in May and June, 0.91
16 cubic foot per second in April and July 1 through
17 October 15, 453 acre-feet per year for irrigation; 5
acre-feet per year for stock water

18 Priority Date: **May 30, 1883**

19 Point of Diversion: Wilkins Ditch - (14) 500 feet north and 250 feet east
20 from the southwest corner of Section 28, within the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28;
21 Lewis (Wilson) Ditch/Naneum Creek #1 - (21) 520 feet
22 north and 275 feet east from the west quarter corner
of Section 33, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, BOTH
within T. 19 N., R. 19 E.W.M.

23 Place of Use: S $\frac{1}{2}$ NE $\frac{1}{4}$ and the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, T. 18 N.,
24 R. 19 E.W.M., EXCEPT the south 1200 feet of the west
25 600 feet of said E $\frac{1}{2}$ SE $\frac{1}{4}$.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930
2 & **Gladys D. Jenkins**
3 Source: Naneum Creek
4 Use: Irrigation of 70 acres and stock water
5 Period of Use: April 1 through October 15
6 Quantity: 1.40 cubic feet per second in May and June, 0.70
7 cubic foot per second in April and July 1 through
8 October 15, 350 acre-feet per year for irrigation and
9 3.5 acre-feet per year for stock watering.
10 Priority Date: **June 30, 1883**
11 Point of Diversion: 350 feet south and 400 feet west from the northeast
12 corner of Section 5, being within Government Lot 1 of
13 Section 5, T. 18 N., R. 19 E.W.M.
14 Place of Use: The N~~1~~/~~4~~NE~~1~~/~~4~~SE~~1~~/~~4~~ and S~~1~~/~~4~~NE~~1~~/~~4~~ of Section 5, T. 18 N., R. 19
15 E.W.M., EXCEPT the westerly 400 feet thereof.

16 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930
17 & **Gladys D. Jenkins**
18 Source: Wilson Creek
19 Use: Irrigation of 49 acres and stock water
20 Period of Use: April 1 through October 15
21 Quantity: 0.98 cubic foot per second in May and June, 0.49
22 cubic foot per second in April and July 1 through
23 October 15, 245 acre-feet per year for irrigation,
24 2.5 acre-feet per year for stock water.
25 Priority Date: **June 30, 1883**
26 Point of Diversion: 550 feet north and 500 feet east from the center of
27 Section 5, being within the SW~~1~~/~~4~~NE~~1~~/~~4~~ of Section 5,
28 T. 18 N., R. 19 E.W.M.
Place of Use: The S~~1~~/~~4~~NE~~1~~/~~4~~SE~~1~~/~~4~~ and the SE~~1~~/~~4~~SE~~1~~/~~4~~ of Section 5, T. 18 N.,
R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

David M. Leffert
& J. Christine Leffert

COURT CLAIM NO. 00952
(A) 04815

Source:

Naneum Creek

Use:

Irrigation of 9 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.18 cubic foot per second in May and June, 0.09 cubic foot per second in April and from July 1 through October 15; 45 acre-feet per year for irrigation, 0.50 acre-foot per year for stock watering

Priority Date:

June 30, 1883

Point of Diversion:

1130 feet south and 290 feet east from the northwest corner of Section 33, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T. 19 N., R. 19 E.W.M.

Place of Use:

That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T. 18 N., R. 19 E.W.M., bounded by a line described as follows: Beginning at the southeast corner of said Section, thence N 89°49'20" W along the south boundary of said SE $\frac{1}{4}$ SE $\frac{1}{4}$, 1349.90 feet; thence N 1°32'20" E, 30.01 feet to the true point of beginning; thence N 1°32'20" E, 1156.72 feet; thence S 89°49'20" E, 565.03 feet; thence S 1°32'20" W, 1156.72 feet; thence N 89°49'20" W, 565.03 feet to the true point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Ronald C. Rees

COURT CLAIM NO. 00892

Source:

Unnamed branch of Wilson Creek (perhaps aka Lyle Creek)

Use:

Irrigation of 10 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.20 cubic foot per second from May 1 through June 30, 0.10 cubic foot per second in April and from July 1 through October 15; 50 acre-feet per year for irrigation; one-half acre-foot per year for stock water

Priority Date:

June 30, 1883

Point of Diversion:

1) 1500 feet south and 200 feet west from the north quarter corner of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M.
2) 350 feet north and 300 feet west from the south quarter corner of Section 5, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use:

The E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, east of the branch of Wilson Creek that flows through the property and four acres near the center of the N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8 west of the branch of Wilson Creek, in T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Kay E. Powers

COURT CLAIM NO. 00739

Source:

Wilson-Naneum Creeks

Use:

Irrigation of 66 acres and stock water.

Period of Use:

April 1 through October 15

Quantity:

1.32 cubic feet per second, 330 acre-feet per year for irrigation, 1 acre-foot per year for stock watering

Priority Date:

April 15, 1884

Point of Diversion:

500 feet north and 450 feet west from the east quarter corner of Section 29, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M., except that portion that lies in Parcel A of that certain survey as recorded on August 31, 1999, in Book 24 of Surveys at pages 124-125, under Auditor's file No. 199908310013.

Limitations of Use:

This right is inferior to the rights of the parties in the Ferguson v. United States National Bank of Portland, et al. decree

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Sandra Thomas

COURT CLAIM NO. 00739

Source:

Wilson-Naneum Creeks

Use:

Irrigation of 34 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

0.68 cubic foot per second, 170 feet per year for irrigation, 1 acre-foot per year for stock watering

Priority Date:

April 15, 1884

Point of Diversion:

500 feet north and 450 feet west from the east quarter corner of Section 29, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

Place of Use:

Parcel A of that survey recorded on August 31, 1999, in Book 24 of Surveys at pages 124-125 under Auditor's File No. 199908310013, being a portion of N $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.

Limitations of Use:

This right is inferior to the rights of parties to the Ferguson v. United States National Bank of Portland, et al. Decree.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Gerald F. Brunner
& Ruth Ann Brunner

COURT CLAIM NO. 02124

Source:

Wilson Creek

Use:

Irrigation of 9 acres and stock watering

Period of Use:

April 15 through October 15

Quantity:

0.18 cubic foot per second, from May 1 through
June 30, 0.09 cubic foot per second in April and from
July 1 through October 15, 46.8 acre-feet per year

Priority Date:

May 8, 1884

Point of Diversion:

1250 feet north and 200 feet west of the south
quarter corner of Section 5, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$
of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use:

The north 790 feet of the west 507.3 feet of the
SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Everett O. Barney
& Lanita M. Barney

COURT CLAIM NO. 00928

2 Source:

Naneum Creek

3 Use:

Irrigation of 12 acres and stock water

4 Period of Use:

April 1 through October 1

5 Quantity:

0.4837 cubic foot per second, 72 acre-feet per year
6 for irrigation; 5 acre-feet per year for stock
watering

7 Priority Date:

May 24, 1884

8 Point of Diversion:

50 feet north and 450 feet west from the southeast
9 corner of Section 32, within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
32, T. 19 N., R. 19 E.W.M.

10 Place of Use:

That portion of Government Lot 1 of Section 5,
11 T. 18 N., R. 19 E.W.M., described as follows:
beginning at the northeast corner of said Lot 1,
12 thence S 10°48'06" W along the east boundary of said
Government Lot 1, 1535.88 feet; thence S 88°01'17" W,
13 678.53 feet; thence N 2°57'12" E, 1090.61 feet;
thence N 88°43'12" E 336.66 feet; thence N 4°24'32"
14 E, 423.12 feet; thence N 88°33'21" E 540.85 feet to
the point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

**Everett O. Barney
& Lanita M. Barney**

COURT CLAIM NO. 00903

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Source:

Wilson Creek

Use:

Irrigation of 8.4 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.168 cubic foot per second, 33.6 acre-feet per year for irrigation; 1 acre-foot per year for stock water

Priority Date:

May 24, 1884

Point of Diversion:

600 feet south and 875 feet east from the north quarter corner of Section 5, within Government Lot 2 of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of Government Lots 1 and 2 of Section 5, T. 18 N., R. 19 E.W.M. described as follows:
Beginning at the northeast corner of said Government Lot 1; thence S 88°34'21" W along the north boundary of said Government Lot 1, 1354.10 feet; thence S 1°54'48" E, 175.48 feet; thence S 44°12'12" W, 347.10 feet; thence N 88°43'12" E, 680.26 feet to the true point of beginning; thence S 88°43'12" W, 710.00 feet; thence S 2°56'27" W, 35.01 feet; thence S 85°54'50" E, 319.19 feet; thence S 2°56'27" W, 1010.6 feet more or less to the south boundary of said Government Lot 1; thence easterly along said south boundary 389.62 feet to a point being S 2°57'12" W from the true point of beginning; thence N 2°57'12" E to the true point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: An unnamed stream
5 Use: Timber management/harvest, including road maintenance
6 Period of Use: May 1 through December 1
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
8 Priority Date: **May 24, 1884**
9 Point of Diversion: 550 feet north and 200 feet west from the south
10 quarter corner of Section 33, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33,
11 T. 21 N., R. 19 E.W.M.
12 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T. 21 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: An unnamed spring
17 Use: Timber management/harvest, including road maintenance
18 Period of Use: May 1 to December 1
19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
20 Priority Date: **May 24, 1884**
21 Point of Diversion: 1240 feet south and 2175 feet east of the northwest
22 corner of Section 3, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
23 Section 3, T. 20 N., R. 19 E.W.M.
24 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T. 20 N., R. 19 E.W.M.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
(A) 03119
(A) 05238

Source: Swift Creek
Use: Timber management/harvest, including road maintenance
Period of Use: May 1 through December 1
Quantity: 0.01 cubic foot per second, 1 acre-foot per year
Priority Date: **May 24, 1884**
Point of Diversion: 2480 feet north and 40 feet west of the south quarter corner of Section 11, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 20 N., R. 19 E.W.M.
Place of Use: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 20 N., R. 19 E.W.M.

CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
(A) 03119
(A) 05238

Source: An unnamed spring
Use: Timber management/harvest, including road maintenance
Period of Use: May 1 through December 1
Quantity: 0.01 cubic foot per second, 1 acre-foot per year
Priority Date: **May 24, 1884**
Point of Diversion: 830 feet south and 1810 feet west from the northeast corner of Section 11, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 20 N., R. 19 E.W.M.
Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 20 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: Dot Creek

5 Use: Timber management/harvest, including road maintenance

6 Period of Use: May 1 through December 1

7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

8 Priority Date: **May 24, 1884**

9 Point of Diversion: 600 feet south and 50 feet east of the northwest
10 corner of Section 15, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
11 Section 15 T. 10 N., R. 19 E.W.M.

12 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 10 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: Swift Creek

17 Use: Timber management/harvest, including road maintenance

18 Period of Use: May 1 through December 1

19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

20 Priority Date: **May 24, 1884**

21 Point of Diversion: 200 feet north and 600 feet east of the south quarter
22 corner of Section 15, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
23 Section 15, T. 20 N., R. 19 E.W.M.

24 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T. 20 N., R. 19 E.W.M.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: High Creek
5 Use: Timber management/harvest, including road maintenance
6 Period of Use: May 1 through December 1
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
8 Priority Date: **May 24, 1884**
9 Point of Diversion: 1860 feet south and 2325 feet west of the northeast
10 corner of Section 19, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 19, T. 20 N., R. 19 E.W.M.
12 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T. 20 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: Unnamed spring
17 Use: Timber management/harvest, including road maintenance
18 Period of Use: May 1 through December 1
19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
20 Priority Date: **May 24, 1884**
21 Point of Diversion: 180 feet north and 1200 feet east of the west quarter
22 corner of Section 23, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
23 Section 23, T. 20 N., R. 19 E.W.M.
24 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T. 20 N., R. 19 E.W.M.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: Boulder Creek
5 Use: Timber management/harvest, including road maintenance
6 Period of Use: May 1 through December 1
7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
8 Priority Date: **May 24, 1884**
9 Point of Diversion: 530 feet north and 530 feet west of the southeast
10 corner of Section 23, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
11 Section 23, T. 20 N., R. 19 E.W.M.
12 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T. 20 N., R. 19 E.W.M.

12 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
13 (A) 03119
14 (A) 05238

15 Source: Wilson Creek
16 Use: Timber management/harvest, including road maintenance
17 Period of Use: May 1 through December 1
18 Quantity: 0.01 cubic foot per second, 1 acre-foot per year
19 Priority Date: **May 24, 1884**
20 Point of Diversion: 250 feet south and 240 feet east of the north quarter
21 corner of Section 31, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
22 Section 31, T. 20 N., R. 19 E.W.M.
23 Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, T. 20 N., R. 19 E.W.M.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
(A) 03119
(A) 05238

Source: Leonard Spring
Use: Timber management/harvest, including road maintenance
Period of Use: May 1 through December 1
Quantity: 0.01 cubic foot per second, 1 acre-foot per year
Priority Date: **May 24, 1884**
Point of Diversion: 990 feet north and 265 feet west of the southeast corner of Section 5, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T. 19 N., R. 19 E.W.M.
Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T. 19 N., R. 19 E.W.M.

CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
(A) 03119
(A) 05238

Source: An unnamed stream
Use: Timber management/harvest, including road maintenance
Period of Use: May 1 through December 1
Quantity: 0.01 cubic foot per second, 1 acre-foot per year
Priority Date: **May 24, 1884**
Point of Diversion: 200 feet south and 1650 feet west of the northeast corner of Section 6, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 19 N., R. 19 E.W.M.
Place of Use: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A) 03119
3 (A) 05238

4 Source: Naneum Creek

5 Use: Timber management/harvest, including road maintenance

6 Period of Use: May 1 through December 1

7 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

8 Priority Date: **May 24, 1884**

9 Point of Diversion: 300 feet south and 200 feet west of the northeast
10 corner of Section 9, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 9, T. 19 N., R. 19 E.W.M.

12 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 19 N., R. 19 E.W.M.

13 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
14 (A) 03119
15 (A) 05238

16 Source: An unnamed spring

17 Use: Timber management/harvest, including road maintenance

18 Period of Use: May 1 through December 1

19 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

20 Priority Date: **May 24, 1884**

21 Point of Diversion: 330 feet north and 595 feet west of the east quarter
22 corner of Section 1, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
23 Section 1, T. 19 N., R. 19 E.W.M.

24 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 19 N., R. 19 E.W.M.

25
26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

Dwight Bolton

COURT CLAIM NO. 01718

Source:

Dry Creek

Use:

Irrigation of 5 acres

Period of Use:

April 1 through October 15

Quantity:

0.10 cubic foot per second from May 1 through June 30, 0.05 cubic foot per second in April and from July 1 through October 15, 15 acre-feet per year.

Priority Date:

May 24, 1884

Point of Diversion:

1000 feet north and 1100 feet west from the east quarter corner of Section 7, being within the NW~~SE~~NE~~SE~~ of Section 7, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the NW~~SE~~ of Section 7, T. 18 N., R. 19 E.W.M. described as follows: Beginning at the center of Section 7, thence east 400 feet to the True Point of Beginning, thence continuing east 623.50 feet; thence south 544 feet; thence west 623.50 feet; thence north 544 feet to the true point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Charles W. Cole
& Ethel M. Cole
Fred K. Gerlach
& Shirley E. Gerlach

COURT CLAIM NO. 00884

2
3 Source:

Wilson Creek

4 Use:

Irrigation of 3 acres and stock water

5 Period of Use:

April 1 through October 15

6 Quantity:

0.08 cubic foot per second, 15 acre-feet per year

7 Priority Date:

May 24, 1884

8 Point of Diversion:

900 feet north and 1100 feet east from the south
quarter corner of Section 32, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$
of Section 32, T. 19 N., R. 19 E.W.M.

10 Place of Use:

11 That portion of Government Lot 2, Section 5,
12 T. 18 N., R. 18 E.W.M. described as follows:
13 Commencing at the northeast corner of said section;
14 thence S 88° 34' 21" W 1889.59 feet to the true point
15 of beginning; thence S 8° 04' 48" E 420.40 feet;
16 thence S 81° 39' 20" W 314.35 feet; thence N 9° 44'
17 32" W 460.27 feet; thence N 88° 34' 21" E 329.92 feet
18 to the true point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

Guy F. Couture
& Judy A. Couture

COURT CLAIM NO. 00819

Source:

Lyle Creek

Use:

Irrigation of 1.75 acres

Period of Use:

March 15 through April 14 and October 16 through
October 31

Quantity:

0.04 cubic foot per second, 1 acre-foot per year

Priority Date:

May 24, 1884

Point of Diversion:

1200 north and 200 feet east from the west quarter
corner of Section 6, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 6, T. 17 N., R. 19 E.W.M.

Place of Use:

That portion of Block 20, Smithson's Addition to the
City of Ellensburg, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1,
T. 17 N., R. 18 E.W.M., described as follows:
Beginning at an iron pipe on the north boundary of
Capitol Avenue, said pipe being S 0°41'E 51 feet and
N 87°28'E 2027.06 feet from the center of Section 1,
thence N 01°39'30" W 202.78 feet; thence S 87°28' W
20.17 feet; thence N 01°41'30" W 180.10 feet; thence
N 87°42'30" E 251.24 feet to the right-of-way of
Pfenning Road; thence S 01°38' W along said
right-of-way, 282.8 feet to the north boundary of
Capitol Avenue, thence S 87°28' W (more or less) 209
feet to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Carol Hartlaub

COURT CLAIM NO. 00903

2 Source:

Wilson Creek

3 Use:

Irrigation of 12.6 acres stock water

4 Period of Use:

April 1 through October 31

5 Quantity:

0.252 cubic foot per second, 50.4 acre-feet per year for irrigation; 1 acre-foot per year for stock watering

7 Priority Date:

May 24, 1884

8 Point of Diversion:

600 feet south and 875 feet east from the north quarter corner of Section 5, within Government Lot 2 of Section 5, T. 18 N., R. 19 E.W.M.

10 Place of Use:

11 That portion of Government Lots 1 and 2 of Section 5, T. 18 N., R. 19 E.W.M. bounded by a line described as follows: Beginning at the northeast corner of said Government Lot 1; thence S 88°34'21" W along the north line of said Government Lot 1, 1354.10 feet; thence S 1°54'48" E 175.48 feet; thence S 44°12'12" W, 347.10 feet to the true point of beginning; thence S 88°43'12" W, 79.16 feet; thence S 9°00'35" W, 83.37 feet; thence S 41°11'03" W, 60.51 feet; thence S 50°52'00" W 141.77 feet; thence S 5°53'42" W, 203.25 feet; thence S 85°44'32" W, 23.15 feet; thence S 2°38'40" W, 458.21 feet; thence S 65°09'10" E, 44.37 feet; thence S 12°17'20" W, 211.78 feet; thence N 88°01'17" E, 936.39 feet; thence N 2°57'12" E, 1090.61 feet; thence S 88°43'12" W, 680.26 feet to the true point of beginning; EXCEPT: That portion described as follows: Beginning at the northeast corner of said Government Lot 1; thence S 88°34'21" W along the north boundary of said Government Lot 1, 1354.10 feet; thence S 1°54'48" E, 175.48 feet; thence S 44°12'12" W, 347.10 feet; thence N 88°43'12" E, 680.26 feet to the true point of beginning; thence S 88°43'12" W, 710.00 feet; thence S 2°56'27" W, 35.01 feet; thence S 85°54'50" E, 319.19 feet; thence S 2°56'27" W, 1010.6 feet more or less to the south boundary of said Government Lot 1; thence easterly along said south boundary 389.62 feet to a point being S 2°57'12" W from the true point of beginning; thence N 2°57'12" E to the true point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

**Robert B. Klindworth
& Linda W. Klindworth**

COURT CLAIM NO. 00662

Source:

Lyle Creek

Use:

Irrigation of 2 acres and stock water

Period of Use:

March 15 through April 14 and October 16 through
October 31

Quantity:

0.04 cubic foot per second, 2 acre-feet per year

Priority Date:

May 24, 1884

Point of Diversion:

1200 feet north and 200 feet east from the west
quarter corner of Section 6, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 6, T. 17 N., R. 19 E.W.M.

Place of Use:

Block 20 EXCEPT the south 208 feet of the east 208
feet thereof, within Smithson's Addition to the City
of Ellensburg and the vacated streets adjacent
thereto, AND Block "E" Sunnyside Addition to
Ellensburg (now vacated), ALL within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 1, T. 17 N., R. 18 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Floyd A. (Buck) Minor
& Merna Minor

COURT CLAIM NO. 01718

Source:

Dry Creek and Wilson Creek

Use:

Irrigation of 60.32 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.21 cubic feet per second from May 1 to June 30;
0.60 cubic foot per second in April and from July 1
through October 15; 180.96 acre-feet per year for
irrigation; 2.5 acre-feet per year for stock water

Priority Date:

May 24, 1884

Point of Diversion:

Dry Creek: 1000 feet north and 1100 feet west from
the east quarter corner of Section 7, being within
the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 19 E.W.M.
Wilson Creek: 700 feet north and 600 feet west from
the center of Section 8, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 8, T. 18 N., R. 19 E.W.M.

Place of Use:

That portion of the N $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T. 18 N.,
R. 19 E.W.M. lying east of Dry Creek; except the
following described parcel: Beginning at the center
of Section 7, thence east 1023.50 feet; thence south
544 feet; thence west 1023.50 feet; thence north 544
feet to the point of beginning.

Limitations of Use:

15 acres of this right (0.30 cfs from 5/1 to 6/30 and
0.15 cfs in April and from 7/1 to 10/15 and 45
acre-feet per year is appurtenant to land owned by
Dr. J. Bourdeau.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: Michael Kelly Moeur, Sr. COURT CLAIM NO. 02133
& Michael Kelly Moeur, Jr.
2 Source: Spring Creek/Yakima River
3 Use: Irrigation of 23 acres and continuous stock water.
4 Period of Use: April 1 through October 15
5 Quantity: 0.69 cubic foot per second, 161 acre-feet per year
6 for irrigation, 6 acre-feet per year for stock
watering
7 Priority Date: May 24, 1884
8 Point of Diversion: 400 feet south and 1000 feet west from the center of
9 Section 24, within the NW~~1~~NE~~4~~SW~~4~~ of Section 24,
T. 17 N., R. 18 E.W.M.
10 Place of Use: That portion of the N~~1~~NE~~4~~ of Section 25, T. 17 N.,
11 R. 19 E.W.M., lying south and west from Spring Creek.

12
13 CLAIMANT NAME: Estate of Dorothy R. Nelson COURT CLAIM NO. 00598
& Estate of Paul Nelson
14 Jeanne M. Dunning
15 Source: Wilson Creek
16 Use: Irrigation of 75 acres
17 Period of Use: April 1 to October 31
18 Quantity: 1.50 cubic feet per second, 375 acre-feet per year
19 Priority Date: May 24, 1884
20 Point of Diversion: 1100 feet south and 500 feet east from the center of
21 Section 20, within the SW~~1~~NW~~4~~SE~~4~~ of Section 20, ALL
in T. 19 N., R. 19 E.W.M.
22 Place of Use: That portion of the NE~~4~~ of Section 29, T. 19 N., R.
23 19 E.W.M., lying northwest of Wilson Creek.

24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 CLAIMANT NAME: G. Jay Nelson, et al. COURT CLAIM NO. 01866
2 Source: Wilson Creek
3 Use: Irrigation of 32 acres
4 Period of Use: May 1 through October 15
5 Quantity: 0.64 cubic foot per second from May 1 through
6 June 30, 0.32 cubic foot per second in April and from
7 July 1 through October 15, 160 acre-feet per year
8 Priority Date: May 24, 1884
9 Point of Diversion: 600 feet north and 500 feet east from the southwest
10 corner of Section 8, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8,
11 T. 18 N., R. 19 E.W.M.
12 Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T. 18 N.,
13 R. 19 E.W.M., lying east of Wilson Creek Road.

14 CLAIMANT NAME: Chester Vernon Stokes COURT CLAIM NO. 02312
15 & Roma B. Stokes
16 Source: Wilson Creek
17 Use: Irrigation of 20 acres and stock water
18 Period of Use: April 15 through October 15
19 Quantity: 0.40 cubic foot per second, 120 acre-feet per year
20 for irrigation; 1 acre-foot per year for stock
21 watering.
22 Priority Date: May 24, 1884
23 Point of Diversion: 500 feet north and 400 feet east of the south quarter
24 corner of Section 32, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
25 Section 32, T. 19 N., R. 19 E.W.M.
26 Place of Use: That portion of Government Lot 3 of Section 5,
27 T. 18 N., R. 19 E.W.M. lying east of Whiskey Creek.

28 REPORT OF REFEREE
Re: Subbasin No. 9

CLAIMANT NAME: **Chester Vernon Stokes** COURT CLAIM NO. 02314

Source: Dry Creek

Use: Irrigation of 40 acres and stock water

Period of Use: April 15 through October 15

Quantity: 0.80 cubic foot per second, 180 acre-feet per year for irrigation; 3 acre-feet per year for stock water

Priority Date: **May 24, 1884**

Point of Diversion: 1. 650 feet west from the center of Section 5, within either the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ or the S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M.
2. 850 feet south and 800 feet west of the north quarter corner of Section 5, being within Government Lot 3 of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use: That portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Wilson Creek, and that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ lying north of the Kittitas Reclamation District's North Branch Canal, BOTH in Section 5, T. 18 N., R. 19 E.W.M.

CLAIMANT NAME: **Clint Swanstrum & Becky Swanstrum** COURT CLAIM NO. 05934

Source: Dry Creek

Use: Irrigation of 10 acres

Period of Use: April 1 through October 15

Quantity: 0.20 cubic foot per second, 50 acre-feet per year

Priority Date: **May 24, 1884**

Point of Diversion: 150 feet north and 125 feet east of the Southwest corner of Section 5, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T. 18 N., R. 19 E.W.M.

Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T. 18 N., R. 19 E.W.M. lying southeast of Dry Creek

REPORT OF REFEREE
Re: Subbasin No. 9

CLAIMANT NAME:

Frank J. Beard
& Charlot M. Beard

COURT CLAIM NO. 01831
(A) 05373

Source:

Naneum Creek

Use:

Irrigation of 32 acres and stock watering.

Period of Use:

April 1 through October 15

Quantity:

0.63 cubic foot per second from May 1 through
June 30, 0.32 cubic foot per second in April and from
July 1 through October 15; 160 acre-feet per year for
irrigation; 2 acre-feet per year for stock water

Priority Date:

June 30, 1884

Point of Diversion:

500 feet south and 600 feet east from the northwest
corner of Section 4, being within Government Lot 4 of
Section 4, T. 18 N., R. 19 E.W.M.

Place of Use:

For irrigation: That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
Section 9, T. 18 N., R. 19 E.W.M. lying north of the
Kittitas Reclamation District Canal. For stockwater:
The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 18 N., R. 19 E.W.M.

Limitations of Use:

The stock water use is a year around use, however,
diversion from Naneum Creek does not occur outside
the irrigation season. The channel that is used for
stock watering continues to capture return flow water
and perhaps some natural flow during the winter
months and livestock drink from that channel.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Ronald J. Freytag
& Mary Styron Freytag

COURT CLAIM NO. 02232

Source:

Wilson Creek

Use:

Irrigation of 15.5 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.325 cubic foot per second, 77.5 acre-feet per year

Priority Date:

June 30, 1884

Point of Diversion:

300 feet north and 1250 feet west from the center of
Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20,
T. 19 N., R. 19 E.W.M.

Place of Use:

The W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Myron Linder
& Sandy Linder**

COURT CLAIM NO. 00621

Source:

Naneum Creek

Use:

Irrigation of 63 acres

Period of Use:

April 15 through October 15

Quantity:

1.30 cubic feet per second in May and June, 0.65 cubic foot per second in April and July 1 through October 15, 315 acre-feet per year.

Priority Date:

June 30, 1884

Point of Diversion:

1300 feet north and 300 feet west of the south quarter corner of Section 16, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M.

Place of Use:

The S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, T. 18 N., R. 19 E.W.M., except that portion described as follows: Beginning on the north boundary, 20 feet west of the northeast corner of the S $\frac{1}{2}$ SW $\frac{1}{4}$; thence S 1°35' E along the west right of way of the KRD lateral, 1,241.2 feet to a point on the county road; thence S 27°34' W 45.9 feet; thence S 45°10' W 75.3 feet; thence S 53°20' W 91.2 feet; thence S 89°17' W 184.2 feet; thence N 4°33' W 45.1 feet; thence N 15°40' E 265.7 feet; thence N 1°35' E 430.5 feet; thence N 70°45' E 27.8 feet; thence N 16°25' W 175.2 feet; thence N 14°33' E 193.6 feet; thence N 00°13' W 68.3 feet; thence N 50°49' W 73.5 feet; thence N 00°33' E 154.7 feet; thence N 85°51' east on the 1/16 section line 247.4 feet to the point of beginning (the described exception is basically the land lying east of the KRD lateral).

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME: Morrison Ranches COURT CLAIM NO. 01264

Source: Wilson Creek

Use: Irrigation of 20 acres and stock water

Period of Use: April 1 through October 15

Quantity: 0.40 cubic foot per second in May and June, 0.20 cubic foot per second in April and July 1 through October 15, 100 acre-feet per year

Priority Date: June 30, 1884

Point of Diversion: 50 feet south and 750 feet west from the east quarter corner of Section 18, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 19 N., R. 19 E.W.M.

Place of Use: That portion of the SE $\frac{1}{4}$ of Section 18, T. 19 N., R. 19 E.W.M. lying between the Seaton-Johnson Ditch and Wilson Creek.

CLAIMANT NAME: Harriett Nichols COURT CLAIM NO. 02232
Charles Rimer
& Faye Rimer

Source: Wilson - Naneum Creek

Use: Irrigation of 2.6 acres and stock water

Period of Use: April 1 through October 31

Quantity: 0.052 cubic foot per second, 13 acre-feet per year

Priority Date: June 30, 1884

Point of Diversion: #1 - 200 feet north and 450 feet west of the east quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29;
#2 - 650 feet south and 525 feet west from the east quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 ALL in T. 19 N., R. 19 E.W.M.

Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

CLAIMANT NAME:

**Robert Shannon
& Cathy Shannon**

COURT CLAIM NO. 02232

Source:

Wilson - Naneum Creek

Use:

Irrigation of 6.9 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.143 cubic foot per second, 34.5 acre-feet per year

Priority Date:

June 30, 1884

Point of Diversion:

#1 - 200 feet north and 450 feet west from the east quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29;
#2 - 650 feet south and 525 feet west of the east quarter corner of Section 29, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, ALL in T. 19 N., R. 19 E.W.M.

Place of Use:

The N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

CLAIMANT NAME:

**Don C. Smith
& Jane K. Smith**

COURT CLAIM NO. 02232

Source:

Wilson Creek - Naneum Creek

Use:

Irrigation of 38 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.78 cubic foot per second, 190 acre-feet per year

Priority Date:

June 30, 1884

Point of Diversion:

#1 - 650 feet south and 525 feet west from the east quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.,
#2 - 1200 feet south and 400 feet west from the east quarter corner of Section 29, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

Place of Use:

The NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$, except the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: James F. Carmody COURT CLAIM NO. 00612
& Dorothy Carmody

2 Source: Mercer Creek

3 Use: Irrigation of 3.5 acres and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.07 cubic foot per second, 29 acre-feet per year

6 Priority Date: May 30, 1885

7 Point of Diversion: 850 feet south and 50 feet west from the northeast
8 corner of Section 25, being within the SE~~1~~⁴NE~~1~~⁴ Section 25, T. 18 N., R. 18 E.W.M.

9 Place of Use: That portion of the NE~~1~~⁴SW~~1~~⁴, Section 25, T. 18 N.,
10 R. 18 E.W.M. lying south of Sanders Road and north of
11 the Cascade Irrigation District canal.

12 CLAIMANT NAME: Gerald French COURT CLAIM NO. 01777
13 & Maxine French

14 Source: Mercer Creek

15 Use: Irrigation of 32 acres and stock water

16 Period of Use: April 1 through October 15

17 Quantity: 0.64 cubic foot per second, 128 acre-feet per year
18 for irrigation; 2 acre-feet per year for stock
19 watering

19 Priority Date: May 30, 1885

20 Point of Diversion: 1350 feet north and 70 feet east from the center of
21 Section 25, being within the SW~~1~~⁴NW~~1~~⁴NE~~1~~⁴ of Section 25,
22 T. 18 N., R. 18 E.W.M.

22 Place of Use: That portion of the SE~~1~~⁴NW~~1~~⁴ of Section 25, T. 18 N.,
23 R. 18 E.W.M. lying northerly of the Cascade Canal.

24 Limitations of Use: Water delivered by the Kittitas Reclamation District
25 may also be used on this land.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Gary Melvin Galbraith
& Jacquelyn J. Galbraith

COURT CLAIM NO. 00778
(A) 06178

2 Source:

Wilson Creek

3 Use:

Irrigation of 2.27 acres and stock water

4 Period of Use:

April 1 to October 31

5 Quantity:

0.045 cubic foot per second in May and June, 0.0225
6 cfs in April and July 1 through October 15, 11.35
acre-feet for irrigation; 0.5 acre-foot for stock
7 water

8 Priority Date:

June 30, 1885

9 Point of Diversion:

900 feet south and 1100 feet east from the center of
10 Section 32, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19
N., R. 19 E.W.M.

11 Place of Use:

That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N.,
12 R. 19 E.W.M., which is bounded by a line described as
follows: Beginning at the southeast corner of the
13 SE $\frac{1}{4}$ of said Section 32, thence S 88°34'21" W, along
the south boundary of said SE $\frac{1}{4}$, 1353.22 feet to the
14 southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence N 25°06'50" W,
844.90 feet to the true point of beginning; thence W
15 434.34 feet; thence N 12°19'40" W, 157.14 feet;
thence N 16°27'40" E, 366.21 feet; thence S 88°54'27"
16 E, 377.88 feet; thence S 1°34'13" W, 497.96 feet to
the true point of beginning.

26 REPORT OF REFEREE

27 Re: Subbasin No. 9

CLAIMANT NAME:

George Haberman
& Ruby Haberman
Dale Haberman
& Kathy Haberman

COURT CLAIM NO. 00620

Source:

Whiskey Creek

Use:

Irrigation of 80 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

2 cubic feet per second, 400 acre-feet per year

Priority Date:

June 30, 1885

Point of Diversion:

500 feet north and 150 feet west from the south quarter corner of Section 32 within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.

Place of Use:

Government Lots 1 and 2 of Section 6, T. 18 N., R. 19 E.W.M.

CLAIMANT NAME:

Andrew J. Mills
& Stephanie Mills

COURT CLAIM NO. 01801

Source:

Wilson Creek

Use:

Irrigation of 11.8 acres stock water

Period of Use:

April 1 through October 31

Quantity:

0.236 cubic foot per second in May and June, 0.118 cubic foot per second in April and July 1 through October 31, 59 acre-feet per year for irrigation; 1 acre-foot per year for stock watering

Priority Date:

June 30, 1885

Point of Diversion:

900 feet south and 1100 feet east from the center of Section 32, within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.

Place of Use:

That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M., lying east of Dry Creek, EXCEPT the north 497.96 feet of the west 434.34 feet and right-of-way located on the south boundary.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Chester Vernon Stokes** COURT CLAIM NO. 02311
2 & **Roma B. Stokes**

3 Source: Wilson Creek

4 Use: Irrigation of 15.5 acres and stock water

5 Period of Use: April 15 through October 15

6 Quantity: 0.31 cubic foot per second in May and June, 0.155
7 cubic foot per second in April and July 1 through
8 October 15, 47.79 acre-feet per year for irrigation;
9 1.0 acre-foot per year for stock watering.

10 Priority Date: **September 30, 1885**

11 Point of Diversion: 200 feet north and 450 feet west from the east
12 quarter corner of Section 29, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
13 Section 29, T. 19 N., R. 19 E.W.M.

14 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ north of the Haberman
15 Ditch and that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ west of Wilson
16 Creek and east of Whiskey Creek, ALL in Section 32,
17 T. 19 N., R. 19 E.W.M.

18 CLAIMANT NAME: **Wallace M. Stampfly** COURT CLAIM NO. 00462

19 Source: Naneum Creek

20 Use: Irrigation of 45 acres and stock water

21 Period of Use: April 1 to October 31

22 Quantity: 0.90 cubic foot per second in May and June and 0.45
23 cubic foot per second in April and July 1 through
24 October 15, 225 acre-feet per year

25 Priority Date: **November 1, 1886**

26 Point of Diversion: Charlton and Fleming Ditch - 400 feet south and 900
27 feet west from the east quarter corner of Section 20,
28 within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T. 19 N.,
R. 19 E.W.M.

Place of Use: That portion of the SE $\frac{1}{4}$ of Section 28, T. 19 N.,
R. 19 E.W.M., lying south of the Charlton-Fleming
Ditch and north of the Keister Ditch.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

James Bridge
& Mary Bridge
Cy Morgan
Nick Parsel
& Kim Parsel
Katherine M. Rasmussen

COURT CLAIM NO. 00825

Source:

Dry Creek

Use:

Irrigation of 40 acres and stock water

Period of Use:

April 1 through October 31

Quantity:

0.80 cubic foot per second in May and June, 0.40
cubic foot per second in April and July 1 through
October 31, 200 acre-feet per year

Priority Date:

June 30, 1887

Point of Diversion:

850 feet south and 10 feet west from the northeast
corner of Section 25, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 25, T. 18 N., R. 18 E.W.M.

Place of Use:

The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 18 N., R. 18 E.W.M.

Limitations of Use:

This land also receives water delivered by the
Kittitas Reclamation District

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Estate of Naomi Charlton
& Larry L. Charlton**

COURT CLAIM NO. 00481

Source:

Naneum Creek

Use:

Irrigation of 70 acres and stock water

Period of Use:

April 1 through October 15

Quantity:

1.40 cubic feet per second in May and June, 0.70 cubic foot per second in April and July 1 through October 15, 350 acre-feet per year for irrigation and 5 acre-feet per year for stock watering

Priority Date:

June 30, 1887

Point of Diversion:

300 feet south and 800 feet west from the east quarter corner of Section 20, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T. 19 N., R. 19 E.W.M.,

Place of Use:

The NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T. 18 N., R. 19 E.W.M.

CLAIMANT NAME:

Kayser Ranch, Inc.

COURT CLAIM NO. 00991

Source:

Wilson-Naneum Creek

Use:

Irrigation of 100 acres and stock watering

Period of Use:

April 1 through October 15

Quantity:

2.0 cubic feet per second in May and June, 1.0 cubic foot per second in April and July 1 through October 15, 500 acre-feet per year

Priority Date:

June 30, 1887

Point of Diversion:

150 feet north and 600 feet east of the west quarter corner of Section 28, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use:

The S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329
2 Source: Wilson - Naneum Creek
3 Use: Irrigation of 40 acres and stock water
4 Period of Use: April 1 through October 15
5 Quantity: 0.80 cubic foot per second from May 1 through
6 June 30, 0.40 cubic foot per second in April and from
7 July 1 through October 15; 160 acre-feet per year
8 Priority Date: **June 30, 1887**
9 Point of Diversion: 500 feet north and 200 feet east from the southwest
10 corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
11 Section 28, T. 19 N., R. 19 E.W.M.
12 Place of Use: That portin of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 15, T. 18 N.,
13 R. 19 E.W.M. lying west of Schnebly Creek.
14 Limitations of Use: This land may receive water delivered by the Kittitas
15 Reclamation District

16 CLAIMANT NAME: **Walter R. Stampfly** COURT CLAIM NO. 00355
17 & **Thelma D. Stampfly**
18 Source: Naneum Creek via the Charlton-Flemming Ditch
19 Use: Irrigation of 30 acres and stock water
20 Period of Use: April 1 through October 15
21 Quantity: 0.60 cubic foot per second in May and June and 0.30
22 cubic foot per second in April and July 1 through
23 October 15, 150 acre-feet per year
24 Priority Date: **June 30, 1887**
25 Point of Diversion: 400 south and 900 feet west from the east quarter
26 corner of Section 20, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
27 Section 20, T. 19 N., R. 19 E.W.M.
28 Place of Use: The N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 27, T. 19 N., R. 19 E.W.M., lying
south of the Charlton-Fleming Ditch.

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

Frank W. Phelps

COURT CLAIM NO. 01129

Source:

Unnamed springs.

Use:

Stock watering.

Period of Use:

Continuously

Quantity:

0.25 cubic foot per second, 2 acre-feet per year

Priority Date:

December 3, 1887

Point of Diversion:

POD No. 1: 50 feet south and 1300 feet east from the west quarter corner of Section 26, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T. 18 N., R. 18 E.W.M.
POD No. 2: 800 feet south and 1300 feet east from the west quarter corner of Section 26, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, T. 18 N., R. 18 E.W.M.

Place of Use:

That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26, T. 18 N., R. 18 E.W.M. described as follows: Beginning 30 feet south of the northeast corner of the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 26; thence S 00°41' E 1752.3 feet along the east line of the W $\frac{1}{2}$ SW $\frac{1}{4}$; thence S 87°35' W 311.6 feet; thence S 19°48' W 373.0 feet to the north bank of the Ellensburg Water Company's canal; thence N 73°14' W 7.7 feet along said canal; thence N 00°41' W 1330.7 feet; thence N 89°38' E 207.0 feet; thence N 00°41' W 778.1 feet to the south right of way of the County road; thence N 89°38' E along the right-of-way to the point of beginning.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME: **Schaake Packing Company** COURT CLAIM NO. 01444
2 Source: Wilson Creek
3 Use: Irrigation of 13 acres and stock water
4 Period of Use: April 1 through October 31
5 Quantity: 0.26 cubic foot per second, 55.9 acre-feet per year
6 Priority Date: **December 28, 1887**
7 Point of Diversion: 750 feet north and 1000 feet west from the southeast
8 corner of Section 11, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
9 Section 11, T. 17 N., R. 18 E.W.M.
10 Place of Use: That portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 14 lying westerly of Wilson Creek and south
12 and east of the feedlot, in T. 17 N., R. 18 E.W.M.

11 CLAIMANT NAME: **Le Moyne Henderson** COURT CLAIM NO. 02264
James Henderson
& Karen Henderson
Alice A. Henderson
13 Source: Naneum Creek
14 Use: Irrigation of 10 acres
15 Period of Use: April 1 through October 31
16 Quantity: 0.20 cubic foot per second, 30 acre-feet per year
17 Priority Date: **April 21, 1891**
18 Point of Diversion: 500 feet south and 900 feet west from the east
19 quarter corner of Section 20, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
20 Section 20, T. 19 N., R. 19 E.W.M.
21 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, T. 19 N.,
22 R. 19 E.W.M. lying south of the Naneum Creek Road.
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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

Ron G. Carlson
& Toni D. Carlson

COURT CLAIM NO. 01832

Source:

Wilson - Naneum Creeks

Use:

Irrigation of 160 acres and stock watering

Period of Use:

April 1 through October 15 for irrigation; continuous for stock watering

Quantity:

3.20 cubic feet per second in May and June, 1.60 cubic feet per second in April and July 1 through October 15; 800 acre-feet per year for irrigation and stock watering; 1.60 cubic feet per second, 5 acre-feet per year October 16 through March 31 for stock watering

Priority Date:

June 30, 1891

Point of Diversion:

#1 - 1050 feet north and 550 feet east from the west quarter corner of Section 28, within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.;
#2 - (12) 1050 feet south and 550 feet east from the west quarter corner of Section 28, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use:

E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 33 and the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 34, ALL in T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME: **Merton Purnell** COURT CLAIM NO. 01329

Source: Wilson - Naneum Creek

Use: Irrigation of 25 acres and stock water

Period of Use: April 1 through October 15

Quantity: 0.50 cubic foot per second from May 1 through June 30, 0.25 cubic foot per second in April and from July 1 through October 15; 100 acre-feet per year

Priority Date: **June 30, 1891**

Point of Diversion: 500 feet north and 200 feet east from the southwest corner of Section 28, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 18 N., R. 19 E.W.M.

Limitations of Use: This land may also receive water delivered by the Kittitas Reclamation District

CLAIMANT NAME: **Lorne T. Dunning** COURT CLAIM NO. 00166
& **Jeanne M. Dunning** (A)12208

Source: Wilson Creek

Use: Irrigation of 70 acres

Period of Use: April 1 to October 31

Quantity: 1.4 cubic feet per second, 400 acre-feet per year

Priority Date: **November 25, 1892**

Point of Diversion: 1. 700 feet south and 200 feet east from the northwest corner of Section 20, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20,
2. 300 feet north and 1250 feet west from the center of Section 20, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20,

Place of Use: The W $\frac{1}{2}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20, T. 19 N., R. 19 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 9

CLAIMANT NAME:

**Lorne T. Dunning
& Jeanne M. Dunning**

COURT CLAIM NO. 00166
(A) 12208

Source:

Wilson Creek

Use:

Irrigation of 19 acres

Period of Use:

April 1 to October 31

Quantity:

0.38 cubic foot per second, 100 acre-feet per year

Priority Date:

December 12, 1894

Point of Diversion:

350 feet north and 50 feet west from the southeast corner of Section 18, within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T. 19 N., R. 19 E.W.M.

Place of Use:

That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T. 19 N., R. 19 E.W.M. lying northwest of Wilson Creek.

CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206
(A) 03119
(A) 05238

Source:

Pearson Creek

Use:

Timber management/harvest, including road maintenance

Period of Use:

May 1 through December 1

Quantity:

0.01 cubic foot per second, 1 acre-foot per year

Priority Date:

November 13, 1895

Point of Diversion:

980 feet north and 200 feet east from the southwest corner of Section 10, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 20 N., R. 19 E.W.M.

Place of Use:

The SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 20 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

1 CLAIMANT NAME:

Estate of May S. Barnhart
& E. Eugene Barnhart, Jr.
Kenneth E. Barnhart
& Susan Barnhart

COURT CLAIM NO. 00708

2
3 Source:

Naneum Creek

4 Use:

Irrigation of 39.5 acres and stock water

5 Period of Use:

April 1 through October 15 for irrigation; continuous
6 for stock water

7 Quantity:

.80 cubic foot per second, 200.5 acre-feet per year
for irrigation and stock watering April 1 to
8 October 15; 0.10 cubic foot per second, 2 acre-feet
per year for stock water October 16 through March 30

9 Priority Date:

June 30, 1897

10 Point of Diversion:

Adams Ditch - 150 feet north and 600 feet east from
the west quarter corner of Section 28, within the
11 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 19 E.W.M.

12 Place of Use:

NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 18 N., R. 19 E.W.M.

13
14 CLAIMANT NAME:

Robert G. Stewart
& Shirley D. Stewart

COURT CLAIM NO. 00497

15 Source:

Yakima River

16 Use:

Irrigation of 80 acres and stock water

17 Period of Use:

April 1 through October 15

18 Quantity:

3.0 cubic feet per second, 891 acre-feet per year

19 Priority Date:

June 30, 1898

20 Point of Diversion:

300 feet north and 1200 feet east from the southwest
corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
21 11, T. 17 N., R. 18 E.W.M.

22 Place of Use:

The E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 24, T. 17 N., R. 18 E.W.M.

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26 REPORT OF REFEREE

27 Re: Subbasin No. 9

1 CLAIMANT NAME:

Michael Kelly Moeur, Sr.
& Michael Kelly Moeur, Jr.

COURT CLAIM NO. 02136

2 Source:

Yakima River

3 Use:

Irrigation of 117 acres and stock water

4 Period of Use:

April 1 through October 15

5 Quantity:

3 cubic feet per second, 831.6 acre-feet per year for
6 irrigation and 12 acre-feet per year for stock
watering

7 Priority Date:

June 30, 1900

8 Point of Diversion:

300 feet north and 1200 feet east from the southwest
9 corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
11, T. 17 N., R. 18 E.W.M.

10 Place of Use:

That portion of the SE $\frac{1}{4}$ of Section 24 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$
11 Section 25, T. 17 N., R. 18 E.W.M., lying west of the
Burlington Northern Railroad right of way; EXCEPT,
12 the north 300 feet of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Section 24,
T. 17 N., R. 18 E.W.M.

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26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

**Glen Armistead
Bonnie Spurrier**

COURT CLAIM NO. 01155

Source:

Yakima River with secondary diversion from an unnamed pond

Use:

Irrigation of one-half acre and fish propagation

Period of Use:

April 15 through October 15

Quantity:

0.02 cubic foot per second, 2.5 acre-feet per year

Priority Date:

June 30, 1902

Point of Diversion:

From Yakima River: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M.
From the pond: 270 feet north and 170 feet east from the south quarter corner of Section 13, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M.

Place of Use:

That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M., described as follows:
Beginning 20 feet north and 130 feet east from the south quarter corner of said section; thence east 162 feet, thence north 120 feet; thence east 110 feet; thence north 230.4 feet; thence S 82°30' W 282 feet; thence S 13°30' W 145.4 feet; thence S 64° W 40 feet to the northeasterly right of way of Highway SR 97; thence southeasterly 174 feet along the said right of way to the point of beginning (also known as Lot 16).

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

Glen Armistead
Bonnie Spurrier

COURT CLAIM NO. 01156

Source:

Yakima River with secondary diversion from an unnamed pond

Use:

Irrigation of one-half acre

Period of Use:

April 15 through October 15

Quantity:

0.02 cubic foot per second, 2.5 acre-feet per year

Priority Date:

June 30, 1902

Point of Diversion:

From Yakima River: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M.
From the pond: 270 feet north and 170 feet east from the south quarter corner of Section 13, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M.

Place of Use:

That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M., described as follows: Beginning 290 feet north of the south quarter corner of said section; thence north 221 feet, thence east 406 feet; thence south 132.6 feet; thence S 82°30' W 282 feet; thence S 13°30' W 145.4 feet; thence S 64° W 40 feet to the northeasterly right-of-way of Highway SR 97; thence northwesterly 120 feet along said right-of-way to the point of beginning (also known as Lot 15).

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME:

**Glen Armistead
Bonnie Spurrier**

COURT CLAIM NO. 01158

Source:

Yakima River with secondary diversion from an unnamed pond

Use:

Irrigation of one-half acre and fish propagation

Period of Use:

April 15 through October 15

Quantity:

0.02 cubic foot per second, 2.5 acre-feet per year

Priority Date:

June 30, 1902

Point of Diversion:

From Yakima River: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M.
From the pond: 270 feet north and 170 feet east from the south quarter corner of Section 13, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 17 N., R. 18 E.W.M.

Place of Use:

That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, of Section 13, T. 17 N., R. 18 E.W.M. described as follows:
Beginning 20 feet north and 292 feet east from the south quarter corner of said section; thence north 120 feet; thence east 110 feet; thence north 363 feet; thence east 100 feet; thence south 483 feet; thence west 210 feet to the point of beginning (also known as Lots 14 and 17).

CLAIMANT NAME:

Grace M. Menig

COURT CLAIM NO. 01202

Source:

Yakima River via the Tjossem and Clark Ditches

Use:

Irrigation of 2.0 acre of lawn and garden

Period of Use:

April 15 through October 15

Quantity:

0.06 cubic foot per second, 8 acre-feet per year

Priority Date:

June 30, 1902

Point of Diversion:

300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 17 N., R. 18 E.W.M.

Place of Use:

The north 337 feet of the west 350.6 feet of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 17 N., R. 18 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

CLAIMANT NAME: Morrison Ranches COURT CLAIM NO. 01265

Source: An unnamed spring
Use: Single domestic supply
Period of Use: Continuously
Quantity: 0.02 cubic foot per second, 0.90 acre-foot per year
Priority Date: June 30, 1902
Point of Diversion: 100 feet north and 1350 feet west of the center of Section 4, being within the S½NW¼ of Section 4, T. 18 N., R. 19 E.W.M.
Place of Use: The NE¼SW¼ of Section 4, T. 18 N., R. 19 E.W.M.

CLAIMANT NAME: Brian Norelius COURT CLAIM NO. 01575

Source: Yakima River
Use: Irrigation of 9 acres and stock water
Period of Use: April 15 through October 15
Quantity: 1.0 cubic foot per second, 54 acre-feet per year
Priority Date: June 30, 1902
Point of Diversion: 300 feet north and 1200 feet east from the southwest corner of Section 11, within the SW¼SW¼ of Section 11, T. 17 N., R. 18 E.W.M.
Place of Use: The south 495 feet of the NW¼SE¼ of Section 13, T. 17 N., R. 18 E.W.M., lying east of Bull Road and north of Tjossem Road, EXCEPT that portion described as follows: Beginning at a point on the east boundary line of said quarter/quarter section which is 30 feet north of the center of the SE¼ of said section and on the north boundary line of the right of way of the Tjossem County Road; thence N 0°45' W along the east boundary of said quarter/quarter section 455 feet; thence N 88°35' W 287 feet; thence S 0°45' E 355 feet; thence S 88°33' E 117 feet; thence S 0°45' E 100 feet; thence S 88°33' E along the north boundary of said Tjossem Road 170 feet to the point of beginning.

REPORT OF REFEREE
Re: Subbasin No. 9

1 CLAIMANT NAME: **Harold W. Jenkins** COURT CLAIM NO. 00930
2 & **Gladys D. Jenkins**

3 Source: Whiskey Creek

4 Use: Irrigation of 35 acres and stock water

5 Period of Use: April 1 through October 15

6 Quantity: 0.70 cubic foot per second, 245 acre-feet per year
7 for irrigation; 2 acre-feet per year for stock
8 watering

9 Priority Date: **May 1, 1905**

10 Point of Diversion: 500 feet north and 100 feet west from the south
11 quarter corner of Section 32, being within the
12 SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 19 N., R. 19 E.W.M.

13 Place of Use: Government Lot 4, the S $\frac{1}{2}$ of Government Lot 3, that
14 portion of Government Lot 5 north of the KRD canal
15 and that portion of the southwest corner of
16 Government Lot 2 lying south of the irrigation ditch,
17 all in Section 6, T. 18 N., R. 19 E.W.M.

18 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
19 (A) 03119
20 (A) 05238

21 Source: An unnamed spring

22 Use: Timber management/harvest, including road maintenance

23 Period of Use: May 1 through December 1

24 Quantity: 0.01 cubic foot per second, 1 acre-foot per year

25 Priority Date: **June 21, 1909**

26 Point of Diversion: 2470 feet north and 1400 feet west of the southeast
27 corner of Section 4, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
28 Section 4, T. 20 N., R. 19 E.W.M.

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

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

CLAIMANT NAME:

Boise Cascade Corporation

COURT CLAIM NO. 02206

(A) 03119

(A) 05238

Source:

Dot Creek

Use:

Timber management/harvest, including road maintenance

Period of Use:

May 1 through December 1

Quantity:

0.01 cubic foot per second, 1 acre-foot per year

Priority Date:

April 25, 1910

Point of Diversion:

850 feet north and 1200 feet west of the southeast corner of Section 8, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 20 N., R. 19 E.W.M.

Place of Use:

The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T. 20 N., R. 19 E.W.M.

REPORT OF REFEREE

Re: Subbasin No. 9

710

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

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

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

Certificates of Surface Water Right

S4-23575C	S4-23578C	S4-23579C
S4-23582C	S4-26125C	S4-23580C
Certificate of Change, Vol. 1, Page 5		
Certificate of Change, Vol. 1, Page 297		
Certificate of Change, Vol. 2, Page 882		
Certificate of Change, Vol. 1-4, Page 275		

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

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.

REPORT OF REFEREE
Re: Subbasin No. 9

711

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

Duty of Water

1 Unless otherwise specified, the diversion of water from sources of water
2 contained within Subbasin No. 9 for irrigation purposes shall be limited, at a
3 maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed
4 during each irrigation season, a total of 5 acre-feet per acre.
5

6 Irrigation Season

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

14 Certificates of Adjudicated Water Right

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

21 Administration of Water

22 The use of Subbasin No. 9 waters should be regulated by the Department
23 of Ecology on the basis of Certificates of Adjudicated Water Rights issued as a
24 result of this proceeding, and on the basis of any permits and certificates that
25

26 REPORT OF REFEREE
27 Re: Subbasin No. 9

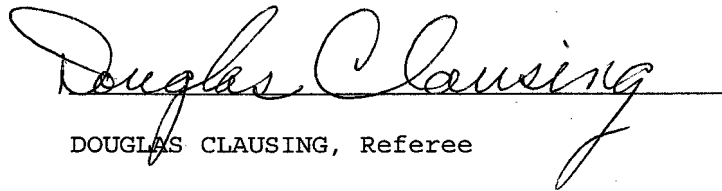
1 may have issued outside of this proceeding under appropriation procedures of
2 Chapter 90.03 RCW. When available water in Subbasin No. 9 is insufficient to
3 supply all rights, and upon a finding that regulation is required, the
4 Department may regulate junior water rights in the interest of satisfying senior
5 water rights.

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

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

13 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person
14 authorized to use surface water from Subbasin No. 9 may be required to provide
15 and maintain, at the water user's expense, proper diversion works and/or
16 measuring devices. Design, installation, maintenance, and operation of such
17 works and measuring devices will be as prescribed by the Department.

18 SIGNED and DATED at Yakima, Washington this 29th day of June, 2000.

19 
20 DOUGLAS CLAUSING, Referee

21
22
23
24
25
26 REPORT OF REFEREE
27 Re: Subbasin No. 9