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YAKIMA RIVER BASIN

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WATER RIGHTS ADJUDICATION KIM M. EATON, YAKIMA COUNTY CLERK
KIM M. EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

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. 15
(WENAS CREEK)**

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

REPORT OF REFEREE - VOLUME 20

9359

W. Stauffacher

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

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

No. 77-2-01484-5

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

REPORT OF REFEREE

Re: Subbasin No. 15
(Wenas Creek)

10 Plaintiff,)

11 v.)

12 James J. Acquavella, et al.,)
13 Defendants.)

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

16 I. BACKGROUND

17 This report concerns the determination of the surface water rights of the
18 Yakima River basin, specifically those rights located within Subbasin No. 15, the
19 Wenas Creek drainage basin. The criteria consisting of applicable law and bases
20 for water right determinations used by the Referee in the evaluation of claims can
21 be found in the Report of the Referee to the Court, Preface to Subbasin and Major
22 Category Reports, Volume 2, dated May 18, 1988.

23 The Referee conducted evidentiary hearings on November 30, December 1 - 3,
24 December 7 - 9 and December 15 - 16, 1992.

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1 II. FIELD INVESTIGATIONS

2 Field surveys were conducted by Department of Ecology (DOE) staff during
3 1991, to obtain information regarding existing water use patterns in Subbasin No.
4 15. Aerial photographs, topographic maps, county assessor's plats, and on-site
5 field investigations were used to prepare map exhibits showing the location of
6 ditches, pipelines, pumps, wells and other pertinent features of the water systems.

7
8 III. WATER DUTY

9 The Plaintiff State of Washington submitted an exhibit entitled "Supplemental
10 Documentary Information, Wenas Creek Subbasin No. 15", which included information
11 on soils, climate, irrigation and farming practices, and plant needs, meant to aid
12 the Referee in determining irrigation water requirements within the subbasin. In
13 addition, two expert witnesses for the U.S. Bureau of Reclamation testified at a
14 special hearing held on June 12, 1991, to provide general information regarding
15 crop irrigation requirements for water delivered to farms in the lower portion of
16 the Yakima River Basin. In the absence of definitive testimony or other evidence,
17 the Referee proposes to rely upon such expert testimony, and will calculate the
18 maximum duty of water for the various uses in Subbasin No. 15 according to the
19 following formulae:

- 20 A. Domestic Supply (in-house)
- 21 and Stock Water 0.01 cfs; 1 acre-foot per
- 22 year per residence
- 23 Domestic supply (with small
- 24 lawn and garden) 0.01 cfs; 1 acre-foot per
- 25 year
- 26 Domestic supply and large
- 27 lawn and garden up to
- 28 ½ acre 0.02 cfs; 2 acre-feet per
- 29 year
- Stock Water 1 acre-foot per year
- (diversion)

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

7 The maximum rate of diversion or withdrawal will be calculated on the basis
8 of 1.0 cubic foot per second (449 gallons per minute) for each 50 acres of
9 irrigation, irrespective of the type of crop. For each irrigated acre, the Referee
10 has calculated the maximum instantaneous rate of diversion to be 0.02 cubic foot
11 per second (9 gallons per minute). This is consistent with the quantities of water
12 authorized by the certificates that issued following the 1921 Wenas Creek
13 Adjudication. It is the Referee's opinion that the aforementioned duties of water
14 are reasonable maximum application rates for the soil and topographic conditions in
15 Subbasin No. 15.

16 It should be noted that the use of water under all irrigation rights is
17 limited to the amount of water that can be beneficially applied to the number of
18 acres identified in the water right. The number of irrigated acres cannot be
19 increased in the future without obtaining an additional water right.
20

21 IV. STIPULATIONS

22 Three stipulations were adopted during the hearing, as among all claimants
23 and their counsel. The first stipulation, concerning the use of exhibits and
24 testimony, reads as follows:
25
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1 "It is hereby stipulated by all claimants in the above-entitled cause that
2 all exhibits entered and all testimony taken at the hearing on claims held
3 beginning November 30, 1992, may be utilized by any party in the proof of a
4 claim or the contesting of a claim whenever relevant and material."
5

6 The second stipulates to the description of properties identified in the
7 claims of the defendants to this action, as follows:

8 "It is hereby stipulated that the description of lands set forth in the
9 claims of the respective claimants is the correct description of the lands
10 for which the water right is claimed and that such claim will constitute
11 proof of the ownership thereof in the absence of a contest as to such title."
12

13 In the third, the parties stipulated to the following in relation to
14 "non-diversionary" stock and wildlife watering use with regards to Subbasin No. 15:

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

24 2. Waters in natural watercourses in the subbasin shall be retained when
25 naturally available, in an amount not to exceed 0.25 cubic feet per second
26

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1 (cfs), for wildlife watering uses in such watercourses as they flow across or
2 are adjacent to lands, which are now used as pasture or range for wildlife.
3 Retention of such water shall be deemed senior (or first) in priority,
4 regardless of other rights confirmed in this cause. Regulations of these
5 watercourses by the plaintiff shall be consistent with such retention
6 requirements.

7
8 3. Waters in naturally occurring ponds and springs (with no surface
9 connection to a stream) in the subbasin shall be retained for stock water
10 uses, when such ponds and springs are located on or adjacent to lands which
11 are now used as pasture or range for livestock. Said uses embody
12 entitlements to a level in the water bodies sufficient to provide water for
13 animals drinking directly therefrom while ranging on riparian lands, and with
14 the same priority as provided in paragraph 1. Regulation of the ponds and
15 springs by the plaintiff shall be consistent with such retention
16 requirements.

17
18 4. Waters in naturally occurring ponds and springs (with no surface
19 connection to a stream) in the subbasin shall be retained for wildlife
20 watering uses, when such ponds and springs are located on or adjacent to
21 lands which are now used as pasture or range for wildlife. Said uses embody
22 entitlements to a level in the water bodies sufficient to provide water for
23 wildlife drinking directly therefrom while ranging on riparian lands, and
24 with the same priority as provided in paragraph 2. Regulation of the ponds
25
26

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

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

7
8
9 V. LAND DESCRIPTIONS

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

14
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 elected
18 to use the 30th of June to represent the midpoint of that particular year. In
19 those instances when the priority to be confirmed only specifies the month, the
20 last day of that month has been used.

21
22 VII. SPECIAL ISSUES

23 1921 Wenas Creek Adjudication:

24 The surface waters of Wenas Creek and its tributaries have previously been
25 adjudicated in Yakima County Superior Court Cause No. 12935 entered on February 3,
26

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1 1921. The Report of Referee contained a discussion of the legal basis for
2 establishment of the water rights. The schedule of rights included the date of
3 settlement upon which Riparian Rights attached and the date of initiation of the
4 right. The Report of Referee stated that "the lands involved in this proceeding
5 were settled upon after 1866 and the patentees therefor took the same subject to
6 the appropriations of water theretofor made, the doctrine of appropriation having
7 been recognized by the local customs and laws of this State. As between riparian
8 owners, therefore, the conclusions of law fixing the dates of their priorities are
9 based upon their appropriations rather than upon their riparian rights." The
10 report further stated that riparian rights for railroad lands attached as of
11 May 24, 1894, the date the map of definite location was filed for those lands. In
12 many cases railroad land had been settled upon and water appropriated prior to the
13 filing of the map and priority of those rights was the date of the appropriation.

14 Exceptions were filed to the Report of Referee and the Referee was directed
15 to reconsider the priority of the rights and other matters. However, the
16 supplemental report did not change the table of priorities, except to correct
17 errors, because the defendants' counsel did not suggest any changes that the
18 Referee felt properly applied the rule of law announced by the Court. The Decree
19 signed and entered by the Judge changed the schedule of rights. The schedule in
20 the decree did not contain the priority date, but ranked the rights by class from
21 Class 1 to Class 26, with Class 1 being the most senior right. Upon comparing the
22 Decree with the Report of Referee and supplemental report, both of which contained
23 the date of settlement and the date of appropriation of water, it is apparent that
24 the Judge attempted to rank the Riparian Rights according to the date the land was
25 settled and the non-riparian rights according to the date water was appropriated.

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1 For some unidentified reason there is one Class 2 right and the Class 3 right, both
2 riparian, that were not ranked according to the date they were settled. R. E.
3 Cameron's Class 2 lands were settled in 1872, but all the other Class 2 lands were
4 settled in 1870. The land described in the Class 3 right for David Longmire was
5 settled in 1865, which should have made it the only Class 1 right. The Judge
6 apparently tried to correct that at the end of the decree by making the Class 3
7 right equal to the Class 1 and 2 rights.

8 The decree contained several other conditions or provisions at the end of the
9 schedule of rights. Review of those conditions leads this Referee to believe that
10 in 1921 the Judge attempted to make riparian owners who immediately began
11 appropriating water upon settlement of their land equal with those who had earlier
12 settled on land, but did not use water until a few years later. The position taken
13 by the Court in 1921 is not supported by subsequent case law on riparian rights.
14 Courts interpreting Western Water Law have consistently held that the priority of a
15 right established under the Riparian Doctrine is the date steps are first taken to
16 sever riparian land from Federal ownership. Evidence to show that date can be any
17 of the documents required under the Federal Homestead Act, but often is the patent
18 itself. The conditions in the 1921 Decree have made it hard to understand and
19 difficult for individual landowners and administrative agencies to interpret. This
20 Referee does not intend to perpetuate this situation and will assign priority dates
21 for rights herein confirmed based on the date the land was settled for riparian
22 lands and date of water appropriation for non-riparian lands. These dates shall be
23 taken from the the Report of Referee and supplemental report from the 1921
24 adjudication unless a claimant provides convincing argument as to why those dates
25 should not be used.

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1 The Referee also intends to adopt the certificates as issued in 1921
2 following entry of the decree, along with certificates issued pursuant to RCW 90.03
3 subsequent to the decree, to be the full extent of the water rights for Wenas Creek
4 and its tributaries and prima facie evidence that a water right exists for the land
5 described on the certificate. However, each claimant must present testimony and
6 evidence to show continued beneficial use of water on the property in order for a
7 water right to be confirmed herein. The effect of the provisions of RCW 90.14.130
8 - .180, which provide for relinquishment of a water right or portion of the right
9 if it goes unused for five or more successive years, will be considered by the
10 Referee.

11 It is apparent that the 1921 adjudication did not address rights to use
12 springs within the basin. Therefore, in order for the Referee to recommend to the
13 Court that a right be confirmed for use of a spring, the claimant must provide
14 evidence to show that the water use began prior to June 6, 1917, under the Prior
15 Appropriation Doctrine, or December 31, 1932, if the land is riparian to the
16 spring. Additionally, the evidence must show that the use has continued and that a
17 claim was filed pursuant to the requirements of RCW 90.14, the Claims Registration
18 Act. This act required the filing of a water right claim to document uses of water
19 began prior to adoption of the Surface Water Code in 1917 and the Ground Water Code
20 in 1945, unless a certificate had been obtained for the use under RCW 90.03 (such
21 as those that issued following the 1921 adjudication).

22
23 POINT OF DIVERSION CHANGES

24 The testimony and evidence shows that in many cases the points of diversion
25 authorized for use in the certificates that issued following the 1921 Wenas Creek
26

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1 Adjudication are no longer being used. When these water rights were established in
2 the late 1800's, gravity flow ditches were predominately used to convey the water
3 to the irrigated lands and the land was rill or flood irrigated. Often these
4 ditches were over a mile in length.

5 As technology advanced, many of the landowners abandoned the gravity flow
6 ditches and installed pumps on or near their property to withdraw water from the
7 creek. In other cases several small ditches were abandoned in favor of using one
8 larger ditch, Purdin Ditch, resulting in landowners pumping their water from the
9 ditch to lands that previously had been served by a gravity flow ditch. Many of
10 the landowners have changed their irrigation practice from flood or rill irrigation
11 to use of sprinklers.

12 The record indicates that these changes have all resulted in moving points of
13 diversion downstream, which allows the water to remain in the creek for a longer
14 period of time and reduces or eliminates any conveyance loss that may have occurred
15 in the gravity flow ditches. In many cases the changes in point of diversion were
16 made before the current owners acquired the property, so the exact date of the
17 change is unknown.

18 RCW 90.03.380 provides that the point of diversion of water for beneficial
19 use may be changed if such change can be made without detriment or injury to
20 existing rights. That section also provides a process for filing an application
21 for change and obtaining the approval of the Department of Ecology prior to making
22 the change. The record shows that some landowners complied with the requirements
23 of RCW 90.03.380 when they changed their point of diversion, however, a large
24 number did not. If the testimony and evidence presented at the evidentiary hearing
25 is adequate to recommend confirmation of a water right, the Referee will recommend
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1 that the right be confirmed with the point of diversion that is presently being
2 exercised, unless another party objects on the basis that the new point of
3 diversion is injuring an existing right. If a claimant testifies to an intent to
4 change the point of diversion, but had not made the change at the time of the
5 hearing, the point of diversion shall remain as described on the certificates, and
6 the claimant shall be directed to comply with the requirements of RCW 90.03.380.

7
8 DIVERSIONARY STOCK WATER

9 The certificates that issued as a result of the 1921 adjudication of Wenas
10 Creek identify irrigation as the only use authorized. Neither the Report of
11 Referee or the Decree discuss stock water in any manner. It is clear from the
12 testimony relating to the history of settlement in the Wenas Valley that the
13 settlers owned and raised livestock. It is not clear how the animals received
14 their water. Many of the water rights confirmed in the adjudication were for lands
15 riparian to Wenas Creek. Livestock raised on those lands could have access to the
16 creek, enabling them to drink directly from the creek. Lands that were not
17 riparian to the creek received their water via gravity flow ditches. Livestock
18 would have access to those ditches and could have drunk from the ditches, a
19 practice that continues today on some ranches.

20 There has been testimony about historic stock watering practices in the
21 basin, however, due to the lack of water rights for that use, the Referee must
22 conclude that stock watering was either non-diversionary on riparian lands or
23 incidental to irrigation practices on non-riparian lands. Water would be available
24 for stock watering in irrigation ditches during the irrigation season where the
25 stock had access to drink from the ditches. There is no indication that water was
26

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1 being provided specifically for stock watering either during or after the
2 irrigation season.

3 The non-diversionary, riparian stock watering is covered by the stock water
4 stipulation. When the testimony supports it, diversionary stock watering will be
5 recommended for confirmation in conjunction with irrigation uses only during
6 irrigation season. The quantity of water confirmed for diversionary stock watering
7 will be an annual quantity, expressed in acre-feet per year. Due to the lack of
8 certificates for this specific use, no additional instantaneous quantity beyond
9 that being confirmed for irrigation can be confirmed.

10
11
12 VII. TESTIMONY AND REFEREE'S ANALYSES

13 Plaintiff Testimony

14 Ms. Kerry O'Hara, Assistant Attorney General, represented the Plaintiff State
15 of Washington, Department of Ecology.

16 The State introduced into evidence the following generic exhibits:

<u>Number</u>	<u>Description</u>
SE-1	Map - Subbasin No. 15
SE-2	Map - Subbasin No. 15, Inset A
SE-3	Map - Subbasin No. 15, Inset B
SE-4	Manual of Individual Water Supply Systems
SE-5	Irrigation Requirements for Washington & Estimates and Methodology
SE-6	Conveyance Loss/Gain - Subbasin 15
SE-7	Supplemental Documentary Information - Subbasin 15
SE-8	Binder with Copies of Certificates of Change, Water Right Certificates, Permits, Relinquishments and Recissions and Water Right Claims (two binders)

23 Additionally, oral testimony was given by Rynear Huffman, Investigations Unit
24 Supervisor, Ecology Adjudication Section, and Stan Isley, Water Rights Enforcement
25 and Complaint Investigator, Central Regional Office of the Department of Ecology.

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1 Claimant Testimony

2 105 defendants filed statements of claim or notices of appearance. All
3 claimants and their legal counsel, if so represented, are as follows:

4 Court
Claim

5 <u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
6 00204 (A)04297	John Ashbaugh 791 Fletcher Lane	Wade E. Gano, Attorney PO Box 1410	26, 198, 215, 235
7 00472 (A)01364	Selah, WA 98942	Yakima, WA 98907	268
8			
9 00945 (A)04298	John Ashbaugh & Lynn Ashbaugh	Wade E. Gano, Attorney PO Box 1410	27, 190 215, 236
10 02212	791 Fletcher Lane Selah, WA 98942	Yakima, WA 98907	245, 271
11			
12 02157	Lynn Ashbaugh 791 Fletcher Lane	Wade E. Gano, Attorney PO Box 1410	30, 215 217
13	Selah, WA 98942	Yakima, WA 98907	
14 00702 (A)01381	Scott Baird, et al. & Jerri Baird	James P. Hutton, Attorney Velikanje, Moore & Shore, Inc., PS	33, 256
15	David Jones & Patricia Jones	405 E Lincoln Avenue	
16	4706 Lincoln Avenue Yakima, WA 98908	Yakima, WA 98901	
17			
18 01460 (A)07607	Thomas A. Bass, Jr. & Carol Ann Bass		34, 215 266, 273
19	1131 Maloy Road Selah, WA 98942		300
20 00234 (A)01380	Robert L. Beebe 4280 N Wenas		215, 217
21	Selah, WA 98942		
22 01200	Jerald Beers & Dorthy Beers		215, 217
23	1214 N Lombardy Ln Oak Harbor, WA 98277-8111		
24			
25			
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1	01783	Victor L. Berg & Tennis Berg 1070 Brathoude Selah, WA 98942	Vernon E. Fowler, Jr., Attorney PO Box 160 Selah, WA 98942	39, 215 280
3	00434	Arthur E. Bertelsen	James P. Hutton, Attorney	42, 215
4	(A)01379	19760 N Wenas Road Selah, WA 98942	Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	246
6	02206	Boise Cascade Corporation	Dennis J. Dunphy, Attorney	44, 215 302, 303
7	(A)03119	Legal Department	Schwabe, Williamson, Ferguson & Burdell	
8	(A)05238	PO Box 50 Boise, ID 83707	1420 5th Ave. No. 3400 Seattle, WA 98101-2339	
10	01159	Estate of John H. Boyd c/o John C. Boyd 560 Boyd Road Selah, WA 98942		215, 217
13	01638	Mary Helen Brimbel 1575 NW 3rd Gresham, OR 97030		49, 215 224, 268
15	00455	Arthur W. Briscoe & Violet Ora Briscoe 14762 N Wenas Road Selah, WA 98942		51, 304
17	02212	Bruce Buchanan & Karron M. Buchanan 912 Gore Road Selah, WA 98942	Vernon E. Fowler, Jr., Attorney PO Box 160 Selah, WA 98942	27, 215 219, 269
20	07476	Bruce Buchanan 912 Gore Road Selah, WA 98942	Vernon E. Fowler, Jr., Attorney PO Box 160 Selah, WA 98942	52, 288
22	00423	Paulette L. Buckley		71, 215
23	(A)01377	20445 SW Bermuda CT Aloha, OR 97007-3738		252
24	01626	Orville G. Byers 805 Lindy Lane Yakima, WA 98901		56, 215 217

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1	01570	Everett Calahan & Dorothy Calahan 9031 4th Avenue Seattle, WA 98108	122, 215 217
2			
3	01652	Alfred M. Calvert 8084 N Wenas Road Selah, WA 98942	58, 215 237
4			
5	01492	Florence W. Calvert	James P. Hutton, Attorney 60, 215
6	(A)02414	c/o John Holt Calvert 140 Wise Acre Road Yakima, WA 98901	Velikanje, Moore & 238 Shore, Inc. PS 405 E. Lincoln Avenue Yakima, WA 98901
7			
8	00438	Hazel Cameron	61, 215
9	(A)01378	13030 N Wenas Road Selah, WA 98942	225, 285
10			
11	00614	David Cardenas	215, 216
12	(A)03246	& Pascale Cardenas 1711 S Wenas RD Selah, WA 98942-9723	217
13	01222	Christensen Family Trust	Ronald E. Long, Agent 64, 216
14	01647	631 Little Kalama Road Woodland, WA 98674	Agro-Serv 217, 219 Box 4004 Chinook Tower 247 Yakima, WA 98901
15			
16	01570	Mark S. Clippinger & Susan R. Clippinger 120 Knopps Landing Selah, WA 98942-9774	122, 216 218
17			
18	00223	Stan Coffin	James P. Hutton, Attorney 68, 216
19	(A)01384	Ruth Coffin Richard Coffin Christopher Coffin Thomas Coffin Sarah Coffin Nancy Hutton James Hutton Jonathan Hutton	Velikanje, Moore & 298 Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
20			
21			
22			
23	00448	Mr. & Mrs. Thomas F. Colligan, Jr.	70, 257
24	(A)01374		
25			
26			
27			

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1	00423	Donald F. Cox	James P. Hutton, Attorney 71, 216
2	(A)01377	& Alvera A. Cox	Velikanje, Moore & 252
3		1151 Longmire Lane	Shore, Inc., PS
4		Selah, WA 98942	405 E Lincoln Avenue
5			Yakima, WA 98901
6	00872	Crest Air, Inc.	John H. Rayback, Attorney 73, 218
7		7401 N Wenas Road	PO Box 98082
8		Selah, WA 98942	Des Moines, WA 98198
9	01191	Ray E. Day	James P. Hutton, Attorney 75, 216
10		& Tola R. Day	Velikanje, Moore & 258, 299
11		470 Sisk Road	Shore, Inc., PS
12		Selah, WA 98942	405 E. Lincoln Avenue
13			Yakima, WA 98901
14	06278	Ronald L. Dixon	193, 216
15		& Marcia L. Dixon	226
16		452 Clover Springs Road	
17		Naches, WA 98937	
18	00702	Marian Easton	33, 256
19	(A)01381	1766 San Luis Road	
20		Walnut Creek, CA 94596	
21	01644	Cliff Egge	113, 216
22		& Liz Egge	239, 248
23		10570 N Wenas Road	
24		Selah, WA 98942	
25	01742	Robert D. Elliott	129, 289
26		& Verna Mae Elliott	
27		191 Longmire Lane	
28		Selah, WA 98942	
29	01602	Alvin G. Evans	76, 216
		& Betty L. Evans	218
		3955 N Wenas RD	
		Selah, WA 98942-9701	
	01389	Lee R. Evans	184, 218
		& Alma Faye Evans	
		831 Brathovde Road	
		Selah, WA 98942	

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1	01570	Michael L. Frausto Rudolph Frausto & Cheryl L. Pyeatt 710 Adobe Way Selah, WA 98942	122, 216 218
2			
3			
4	02131	Rudolph Frausto & Konnie Frausto 710 Adobe Way Selah, WA 98942	77, 221
5			
6	01111	Grant S. Green & Eveleth S. Green 21200 N Wenas Road Selah, WA 98942	80, 216 281
7			
8			
9	01906	Tom Green c/o James S. Berg PO Box 526 Yakima, WA 98907-0526	James P. Hutton, Attorney 83, 216 Velikanje, Moore & 274 Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
10			
11			
12	01570	Leo E. Guertin & Clo Guertin 16819 78th Ave NW Stanwood, WA 98292-9162	122, 218
13			
14	01612	Harvey Hagedorn & Mary E. Hagedorn 116 E 2nd Avenue Selah, WA 98942	Sarah Geary Ottem 172, 216 Velikanje, Moore & 282 Shore, Inc., PS 405 E. Lincoln Avenue Yakima, WA 98901
15			
16			
17			
18	00563	Charles W. Hamil & Diana Hamil 6810 N. Wenas Road Selah, WA 98942	215, 218
19			
20			
21	01250	Colleen A. Hargraves (Jones) 161 Sisk Road Selah, WA 98942	85, 216 286
22			
23	00498 (A)02108 (A)06790	E. Lee Hargroves & Linda L. Hargroves 4091 N Wenas Road Selah, WA 98942	87, 216 283
24			
25			
26			
27			
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1	00435	Don Hazen	James P. Hutton, Attorney 89, 216
2	(A)01376	7241 Highway 12	Velikanje, Moore & 255
3		Naches, WA 98937	Shore, Inc., PS
			405 E Lincoln Avenue
			Yakima, WA 98901
4	00436	Thomas S. Hazen	James P. Hutton, Attorney 94, 216
5	(A)01375	& Charlain E. Hazen	Velikanje, Moore & 249, 290
6	(A)06527	3260 S Wenas Road	Shore, Inc., PS
		Selah, WA 98942	405 E Lincoln Avenue
			Yakima, WA 98901
7	01576	John Hermanson	98, 216
8		& Sandra E. Hermanson	221
9		531 Adobe Way	
10		Selah, WA 98942	
11	00875	Hillcrest Angus, Inc.	John H. Rayback 73, 218
12		7401 N Wenas Road	PO Box 98082
13		Selah, WA 98942	Des Moines, WA 98198
14	01913	Fred L. Hoff	101, 216
15		15019 SE 14th Street	218
16		Bellevue, WA 98007	
17	01644	Bob Homier	113, 216
18		& Bev Homier	239, 250
19		10220 N Wenas Road	
20		Selah, WA 98942-9717	
21	06782	Galen H. Hoover	Randal L. Ommen, Attorney 104, 216
22		& Patricia L. Hoover	222 N 3rd Street 270, 291
23		908 North "J" Street	Yakima, WA 98902 292, 301
24		Tacoma, WA 98403	
25	01270	Leo Hursh	133, 275
26		& Carolyn Hursh	
27		712 Longmire	
28		Selah, WA 98942	
29	00874	Iowa Flats Ditch Company	John H. Rayback 108, 218
			PO Box 98082
			Des Moines, WA 98198

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1	00390	Nathan E. Jenkins & Cecelia K. Jenkins Eugene Jenkins & Barbara Jenkins 1382 Longmire Lane Selah, WA 98942	Sarah Geary Ottem Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	111, 259
2				
3				
4	01644	Gary F. Johnson & Wanda J. Johnson 10191 N Wenas Road Selah, WA 98942		113, 218
5				
6				
7	02034	Norman K. Johnson, et al. & Marilyn R. Johnson 710 Longmire Lane Selah, WA 98942		133, 276
8				
9	01570	Richard A. Karel & Mary J. Karel 60 Knopps Landing Selah, WA 98942		122, 216 218
10				
11				
12	02116	Richard Kauntz 3664 N Wenas Road Selah, WA 98942		215, 218
13				
14	00493	Chuck Kisner		118, 216
15	00494	9590 N. Wenas Road Selah, WA 98942		220, 277 306
16	01570	Roy J. Knopp & Miriam Knopp 702 S 57th Avenue Yakima, WA 98908		122, 216 218
17				
18				
19	01604	William B. Lawrence & Patricia S. Lawrence PO Box 118 Selah, WA 98942		137, 216 260
20				
21	00432	Lazy Heart B, Inc.	James P. Hutton, Attorney	124, 216
22	(A)01362	543 Sisk Road Selah, WA 98942	Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901	227, 293
23				
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1	00759	Larry S. Lefors & Judy C. Lefors 602 S 32nd Avenue Yakima, WA 98902	Vernon E. Fowler, Jr. Attorney PO Box 160 Selah, WA 98942	126, 216 218
2				
3	01570	John M. Levien 1971 McGonagle Road Selah, WA 98942		122, 216 218
4				
5	07728	David M. Longmire & Linda D. Longmire 9550 No. Wenas Road Selah, WA 98942		127, 216 278
6				
7				
8	01270	Jerry Longmire		129, 133
9	01742	& Dorothy Longmire & Laura Longmire 330 Longmire Lane Selah, WA 98942		216, 228 279, 294
10				
11	04613	David H. Mabee & Sara L. Mabee 2311 S Wenas Road Selah, WA 98942		193, 216 218
12				
13				
14	01644	Paul Madison & Helen Madison 150 Dusty Puddle Selah, WA 98942		113, 216 240, 251
15				
16	02318	George W. Marcott & Linda M. Marcott 10061 Highway 12 Naches, WA 98937		136, 216 261
17				
18				
19	01604	Homer W. Marney & Anna M. Marney 11804 Meadow Court Yakima, WA 98908-9536		137, 216 262
20				
21	01197	Leo W. Maybee & Marian J. Maybee PO Box 613 Moxee, WA 98936		215, 218
22				
23				
24	00437 (A)01355	Charles Douglas Mayo John Strand Mayo 2741 S Wenas Road Selah, WA 98942	Vernon E. Fowler, Jr., Attorney PO Box 160 Selah, WA 98942	140, 216 218
25				
26				

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1	00804	Charles Douglas Mayo	Vernon E. Fowler, Jr.,	141, 216
	00805	& John Strand Mayo	Attorney	218, 295
2	00806	2741 S Wenas Road	PO Box 160	
	00807	Selah, WA 98942	Selah, WA 98942	
3	05225	John Strand Mayo	Vernon E. Fowler, Jr.,	145, 216
4	05226	& Nancy Clair Mayo	Attorney	241, 242
	05227	2770 S Wenas Road	PO Box 160	287
5		Selah, WA 98942	Selah, WA 98942	
6	01611	Robert M. Messer	Sarah Geary Ottem	172, 216
	01612	& Mary L. Rennie	Velikanje, Moore &	282
7		2231 Longmire Lane	Shore, Inc., PS	
8		Selah, WA 98942	405 E. Lincoln Avenue	
			Yakima, WA 98901	
9	01072	Allen F. Miller		148, 263
		& Elaine E. Miller		
10		120 N Mitchell Drive		
		Yakima, WA 98908		
11	00861	Marian E. Moore		150, 216
12		251 Adobe Way		218
		Selah, WA 98942		
13	01501	Austin J. Murray		151, 243
14		& Ramona A. Murray		253
		6281 S Wenas Road		
15		Selah, WA 98942		
16	01606	David D. Murray		154, 218
17		& Paula S. Murray		
		5870 S Wenas Road		
18		Selah, WA 98942		
19	07512	Craig J. Nedrow	Vernon E. Fowler, Jr.,	154, 218
		& Judy L. Nedrow	Attorney	
20		10081 N. Wenas Road	PO Box 160	
		Selah, WA 98942	Selah, WA 98942	
21	07513	Edith L. Nedrow	Vernon E. Fowler, Jr.,	157, 218
22		10161 N Wenas Road	Attorney	
		Selah, WA 98942	PO Box 160	
23			Selah, WA 98942	
24	00761	Donald A. Nichols		215, 218
25		& Lois R. Nichols		
		5215 W Clearwater Ave #57		
26		Kennewick, WA 99336-1900		

27 REPORT OF REFEREE
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1	02205	Northwestern Fruit & Produce Co. c/o Frank Emmons PO Box 80 Yakima, WA 98904	James P. Hutton, Attorney 159, 218 Velikanje, Moore & Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
4	01013	Bud Owens & Jean Owens PO Box 129 Selah, WA 98942-0129	163, 217 244, 299
6	01508	Person & Person Inc. James E. Person, President 13410 8th Street E Sumner, WA 98390	187, 217 267
9	00853	Stephen J. Picatti 14821 N Wenas Road Selah, WA 98942	166, 218
11	07159	Quirt Pierce 2381 S Wenas RD Selah, WA 98942	193, 218
13	00684	James E. Poisel & Lucinda Poisel 7160 N Wenas Road Selah, WA 98942	168, 217 220, 229
15	00435	Alfred Pope & Patricia Pope Hallie Person 14192 N Wenas RD Selah, WA 98942	89, 216, 217, 296
16	(A)01376		
17			
18	01906	Merton G. Raine 20710 N Wenas Road Selah, WA 98942	83, 217 274
19			
20	01050	Gordon S. Reid & Pearl Reid 2060 Longmire Lane Selah, WA 98942	170, 217 264
21			
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1	01611	Lorraine P. Rennie 2203 Longmire Lane Selah, WA 98942	Sarah Geary Ottem Velikanje, Moore & Shore, Inc., PS 405 E. Lincoln Avenue Yakima, WA 98901	172, 217
2				
3				
4	01612	Lorraine P. Rennie & Robert Rennie (Deceased) 2203 Longmire Lane Selah, WA 98942	Sarah Geary Ottem Velikanje, Moore & Shore, Inc., PS 405 E. Lincoln Avenue Yakima, WA 98901	172, 217 282
5				
6				
7	01626	Jim L. Rice & Julie A. Rice 481 Adobeway Road Selah, WA 98942		56, 218
8				
9				
10	00448 (A)01374	Violet Virginia Richards 1190 Longmire Lane Selah, WA 98942	Sarah Geary Ottem Velikanje, Moore & Shore, Inc., PS 405 E. Lincoln Avenue Yakima, WA 98901	70, 257
11				
12				
13	04613	Lee Rider 262 Taylor Road Selah, WA 98942		193, 217 230
14				
15	01570	Jim Root & Kari Root 210 Knopps Landing Selah, WA 98942		122, 217 218
16				
17				
18	00862 01021	Delores A. Rupel PO Box 311 Selah, WA 98942		174, 175 217, 222
19				
20	00862	Thomas Robert Rupel PO Box 311 Selah, WA 98942		175, 217 222
21				
22	00697 (A)01383	Lyle R. Schneider 10680 N Wenas Road Selah, WA 98942	Lawrence E. Martin Halverson & Applegate 311 N. Fourth Street Yakima, WA 98901	178, 217 223, 231 234, 244 254, 300
23				
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1	01389	Alice C. Schuller & Estate of Michael J. Schuller 710 Highway 821 N#80 Yakima, WA 98901-9323	184, 218
2			
3	00882	Seven Seas Trust	186, 218
4	06496	Merle Shuyler Beverlie Shuyler 910 Buffalo Road Selah, WA 98942	186, 217 284
5			
6			
7	01508	Kieth Sterling & Katherine Sterling 2020 SW 120th Street Seattle, WA 98146	187, 218
8			
9	00945	E. E. Stohsner	Wade E. Gano, Attorney 190, 217
10	(A)04298	& Helen R. Stohsner 555 Goodlander Rd #119 Selah, WA 98942-9467	PO Box 1410 245, 271 Yakima, WA 98907
11			
12	00437	The Haywire Outfit Inc.	140, 216
13	(A)01355	c/o Charles Douglas Mayo 2741 S Wenas Road Selah, WA 98942	218
14			
15	04514	John E. Turner & Ricki K. Turner 2501 S. Wenas Road Selah, WA 98942	193, 217 232
16			
17			
18	00472	Wenas Irrigation District	James P. Hutton, Attorney 198, 305
19	(A)01364	543 Sisk Road Selah, WA 98942	Velikanje, Moore & 307 Shore, Inc., PS 405 E Lincoln Avenue Yakima, WA 98901
20			
21	00390	Karen Wickstrom 1384 Longmire Lane Selah, WA 98942	111, 217 265
22			
23	02218	Zale Kay Wood & Diane L. Wood 14170 N Wenas Road Selah, WA 98942	James P. Hutton, Attorney 208, 297 Velikanje, Moore & Shore, Inc., PS 405 E. Lincoln Avenue Yakima, WA 98901.
24			
25			
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1	01783	Michael Wright & Debra E. Wright 110 Sage Trail Road #43 Yakima, WA 98901		39, 217 280
2				
3	02109	WA State Department of Wildlife PO Box 43200 Olympia, WA 98504-3200	William Frymire, AAG Wildlife PO Box 40100 Olympia, WA 98504-0100	209, 217 218
4				
5				
6	00589 (A)00590	WA State Dept. of Natural Resources Division of Lands and Minerals PO Box 47014 Olympia, WA 98504-7014	Paul Silver, AAG DNR PO Box 40100 Olympia, WA 98504-0100	210, 217 218
7				
8				
9	00160	Miles R. Yates 2121 S Wenas Road Selah, WA 98942		210, 217 224
10				
11	00562	Hershel Zeigler 1143 S Wenas Road Selah, WA 98942		213, 217 233, 272
12				
13				

14 Specific elements of the proposed rights for the claimants are identified in
15 the Findings of Fact commencing on page 217.

16 No claims were recommended for confirmation in the Modified Plaintiff's
17 Report to the Referee for Subbasin No. 15, so all claims were scheduled to be heard
18 during the evidentiary hearing which commenced on November 30, 1992. Based upon
19 the testimony and evidence provided to the Referee, the analysis of all claims is
20 as follows:

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1
2 COURT CLAIM NO. 00204 -- John Ashbaugh
3 (A)04297

4 Court Claim No. 00204 was filed by John and Christine Ashbaugh for use of a
5 well on property in Section 12, T. 14 N., R. 18 E.W.M. On March 7, 1989, John
6 Ashbaugh filed, in his name only, an amended claim, No. 04297, for use of waters
7 from Wenas Creek on lands in Government Lots 1 and 2 of Section 5, T. 14 N.,
8 R. 18 E.W.M. Christine Ashbaugh no longer has any interest in the property.
9 Attorney Wade E. Gano represented Mr. Ashbaugh, who testified at the evidentiary
10 hearing. Jim Fletcher, a previous owner of the property, also testified through
11 oral deposition taken on November 2, 1992, and published in open court on
12 December 1, 1992.

13 According to the testimony and evidence Mr. Ashbaugh irrigates approximately
14 51 acres in Government Lot 1 and that portion of Government Lot 2 east of the South
15 Fork of Wenas Creek, in Section 5. Water is diverted from a tributary of the south
16 fork called Spring Creek near its confluence with the south fork in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
17 Section 32 and from Wenas Creek near the northwest corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
18 32. Supplemental water is provided from a well located near the center of
19 Section 32.

20 Certificate No. 43 from the previous Wenas Creek adjudication is appurtenant
21 to this property. It is a Class 6 right with an 1871 date of priority and
22 authorizes the diversion of 3.09 cubic feet per second for the irrigation of 154.4
23 acres within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M. and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
24 Section 5, T. 14 N., R. 18 E.W.M. The N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 5 is actually Government
25 Lots 1 and 2 of Section 5. The certificate authorizes use of Wenas Creek and its
26

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1 tributaries, which would include Spring Creek. According to the testimony this
2 land has continued to be irrigated without interruption since the certificate
3 issued.

4 Livestock raised on the property are able to drink directly from Wenas Creek
5 and the South Fork of Wenas Creek. This use is covered by the nondiversionary
6 stock water stipulation and no additional right will be confirmed for this use.

7 Based on the foregoing, it is recommended that a right be confirmed to John
8 Ashbaugh under Court Claim No. 00204 as amended by (A)04297 for 1.02 cubic feet per
9 second, 204 acre-feet per year from Wenas Creek and Spring Creek for the irrigation
10 of 51 acres within Government Lot 1 and that portion of Government Lot 2 lying east
11 of the South Fork of Wenas Creek in Section 5, T. 14 N., R. 18 E.W.M.

12 Upon confirmation of the proposed right, it is recommended that the Director
13 of the Department of Ecology cancel, rescind or otherwise make null and void
14 Adjudicated Certificate No. 43.

15
16 COURT CLAIM NO. 02212 -- John Ashbaugh
17 & Lynn Ashbaugh
18 Bruce Buchanan
& Karron M. Buchanan

19 Penney Farms, Inc. filed Court Claim No. 02212 for the use of waters from
20 Wenas Creek. On March 17, 1989, John Ashbaugh was joined to a portion of the claim
21 and on July 13, 1992, Penney Farms, Inc. substituted out of the claim to John and
22 Lynn Ashbaugh and Bruce and Karron Buchanan. The Ashbaughs were represented by
23 Attorney Wade E. Gano and the Buchanans were represented by Attorney Vernon E.
24 Fowler. John Ashbaugh and Bruce Buchanan testified at the evidentiary hearing. Jim
25 Fletcher, a past owner of a portion of the Ashbaugh property, testified through an
26

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1 oral deposition taken on November 2, 1992, and published in open court on
2 December 1, 1992.

3 The Ashbaughs now own and are claiming a right to irrigate the $N\frac{1}{2}SW\frac{1}{4}$ and
4 $SE\frac{1}{4}SW\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M. The Buchanans own and are claiming a
5 right for the $S\frac{1}{2}NE\frac{1}{4}$ and the $NE\frac{1}{4}SE\frac{1}{4}$ of Section 31, T. 15 N., R. 18 E.W.M. lying
6 northeast of the South Wenas Road and the $SW\frac{1}{4}NW\frac{1}{4}$ of Section 32, T. 15 N.,
7 R. 18 E.W.M. According to the testimony, the land has continually been irrigated
8 with waters from Wenas Creek since the 1921 adjudication of Wenas Creek, with the
9 exception of the portion of the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 32 lying northeast of Wenas
10 Creek. Mr. Fletcher testified that prior to the Penney Farms ownership of the
11 land, the area northeast of the creek was a swamp and not irrigated. After Penney
12 Farms acquired the property in 1975, the swamp was drained. Mr. Ashbaugh testified
13 that he irrigates a total of 90 acres, which is consistent with the testimony that
14 the land northeast of the creek is not irrigated. Mr. Buchanan testified that he
15 irrigates 139 acres with waters from Wenas Creek.

16 The land is sprinkler irrigated using hand and wheel lines. Water is diverted
17 from the South Fork of Wenas Creek in the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24, T. 15 N.,
18 R. 17 E.W.M. and transported through the Purdin Ditch. Both the Ashbaughs and the
19 Buchanans have wells that provide supplemental water when the creek flow declines.
20 Livestock raised on the properties have access to and drink from the South Fork of
21 Wenas Creek, which is a non-diversionary use, and from Purdin Ditch, a diversionary
22 use. Mr. Ashbaugh is also claiming a right to use an unnamed spring in the $NE\frac{1}{4}SW\frac{1}{4}$
23 of Section 32 for stock watering. Apparently this use began in the mid-1970's when
24 Penney Farms drained the swamp and diverted the spring flow to a cistern or sump
25 from which water is pumped to stock tanks. In order to establish a water right for
26

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1 a water use initiated in the 1970's the permitting procedures of RCW 90.03 must be
2 followed. There is no evidence that a permit was obtained from the Department of
3 Ecology for this use.

4 There are three certificates from the 1921 adjudication that are appurtenant
5 to the lands now owned by the Ashbaughs and the Buchanans. Certificate No. 50 is a
6 Class 12 right with an 1879 date of priority that authorized the diversion of 2.23
7 cubic feet per second for the irrigation of 111.6 acres in the $S\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}SE\frac{1}{4}$ of
8 Section 31. Mr. Buchanan testified that he is irrigating 99 acres within that
9 portion of the described place of use lying northeast of the South Wenas Road. His
10 proportionate share of that certificate would be 1.98 cubic feet per second for the
11 irrigation of 99 acres. Certificate No. 47 is a Class 3 right with an 1865 date of
12 priority that authorized the diversion of 4.0 cubic feet per second for the
13 irrigation of 160 acres in the $W\frac{1}{2}NW\frac{1}{4}$ of Section 32, the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 31, and
14 the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 30. Mr. Buchanan is irrigating 40 acres in the $SW\frac{1}{4}NW\frac{1}{4}$ of
15 Section 32 and his proportionate share of this certificate would be 1.0 cubic feet
16 per second for the irrigation of 40 acres. Certificate No. 51 is a Class 6 right
17 with an 1871 date of priority that authorized the diversion of 3.20 cubic feet per
18 second for the irrigation of 160 acres in the $SE\frac{1}{4}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$ and $SE\frac{1}{4}SW\frac{1}{4}$ of
19 Section 32. The Ashbaughs are irrigating 90 acres within that place of use and
20 their proportionate share of the certificate would be 1.8 cubic feet per second for
21 the irrigation of 90 acres.

22 Based on the foregoing, the Referee finds that a right cannot be confirmed to
23 the Ashbaughs for the use of an unnamed spring for stock watering. However, rights
24 to the use of waters from the South Fork of Wenas Creek are recommended for
25 confirmation as follows:

26
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1 To John and Lynn Ashbaugh, a right with a June 30, 1871, date of priority, for
2 the diversion of 1.8 cubic feet per second, 270 acre-feet per year for the
3 irrigation of 90 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ lying southwest of the South Fork of Wenas
4 Creek and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32.

5 To Bruce and Karron Buchanan, a right with a June 30, 1865, date of priority
6 for 1.0 cubic feet per second, 160 acre-feet per year from the for the irrigation
7 of 40 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 and with a June 30, 1879, date of priority
8 for 1.98 cubic feet per second, 297 acre-feet per year for the irrigation of 99
9 acres and 5 acre-feet per year for stock water within that portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ and
10 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31 lying northeast of the South Wenas Road. The confirmed rights
11 shall carry a provision that identifies the use of supplemental ground water.

12 Livestock drinking directly from the South Fork of Wenas Creek and other
13 surface water sources, such as springs, on the claimants' property is covered by
14 the non-diversionary stock water stipulation and no additional rights will be
15 confirmed.

16 Upon confirmation of the proposed rights, it is recommended that the Director
17 of the Department of Ecology cancel, rescind or otherwise make null and void
18 Adjudicated Certificate No. 47, 50 and 51.

19
20
21 Court Claim No. 02157 -- Lynn Ashbaugh (Sutton)

22 A Statement of Claim was submitted by Lynn Sutton, who is now Lynn Ashbaugh,
23 and Lee Dallas Sutton for the use of waters from Wenas Creek. Following their
24 divorce Lynn Ashbaugh acquired all title and interest in the property described in
25 the claim. Attorney Wade E. Gano represented Mrs. Ashbaugh. John Ashbaugh
26

27 REPORT OF REFEREE
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1 testified at the evidentiary hearing. Jim Fletcher also testified concerning the
2 land described in the claim through an oral deposition taken on November 2, 1992,
3 and published during the evidentiary hearing on December 1, 1992.

4 The land described in Court Claim No. 02157 is described as Parcels 1, 3 and
5 4 of Short Plat recorded in Book "D" of Short Plats, page 76, records of Yakima
6 County and is a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 15 N.,
7 R. 18 E.W.M. lying southwest of the North Wenas Road, consisting of 13 acres.
8 According to Mr. Ashbaugh's testimony, approximately 10 acres are currently being
9 irrigated in the portion of the property that lies below the Iowa Flat Ditch.
10 Mrs. Ashbaugh is not claiming a portion of the certificate that issued to the Iowa
11 Flat Ditch Company, the ditch is being used simply for conveyance. Water is
12 released from the ditch to flood irrigate pasture land. The land lying above the
13 Iowa Flat Ditch had previously been irrigated, however, not during the time Mr.
14 Ashbaugh has been familiar with the property. Mr. Ashbaugh was not familiar with
15 water use on any of the land prior to 1974.

16 Jim Fletcher testified through his deposition that his father and brother once
17 owned the property described in Court Claim No. 2157. The land was not cleared
18 during his father's ownership, but was cleared and irrigated from a well during his
19 brother's ownership. The testimony would indicate that the land was not irrigated
20 from Wenas Creek until sometime after his brother died in the mid-1950's.

21 Portions of two certificates from the 1921 Wenas Creek adjudication are
22 appurtenant to the land described in the claim. Certificate No. 43 is a Class 6
23 right with an 1871 date of priority. It authorized the diversion of 3.09 cubic
24 feet per second for the irrigation of 154.4 acres within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32,
25 T. 15 N., R. 18 E.W.M. and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 5, T. 14 N., R. 18 E.W.M.

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1 Certificate No. 56 is a Class 13 right with an 1880 date of priority. It
2 authorized the diversion of 1.07 cubic foot per second for the irrigation of 53.5
3 acres within the S 185 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ less the W 40 feet for
4 county road of Section 32, T. 15 N., R. 18 E.W.M. and a 10 acre parcel lying in
5 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32.

6 The testimony of various claimants in this case has made it apparent that
7 certificates issued authorizing irrigation of lands that were not being irrigated
8 at the time of the decree. It was not uncommon for "inchoate" rights to be
9 confirmed through adjudications in the early 1920's, because beneficial use was not
10 consistently considered a factor in establishing riparian water rights as long as
11 the landowner was diligently pursuing putting the water to use. The State Supreme
12 Court has since held in Department of Ecology v. Abbott, 103 Wn.2d 686, 694 P.2d
13 1071 (1985) that riparian water right holders had 15 years after the adoption of
14 the State Water Code, RCW 90.03, to put to use those rights or they would be
15 forfeited. Beneficial use under a riparian water right had to be made prior to
16 December 31, 1932, or the right was forfeited.

17 The testimony of Mr. Fletcher was that by the mid-1950's the land described in
18 Court Claim No. 2157 had not been irrigated with waters from Wenas Creek.
19 Therefore, the portion of the riparian rights evidenced by Certificates No. 43 and
20 56 that were appurtenant to those lands were forfeited on December 31, 1932. As a
21 result, the Referee cannot recommend confirmation of a water right to Lynn Ashbaugh
22 under Court Claim No. 2157.

23 According to the testimony, livestock raised on the property drink directly
24 from Wenas Creek. This type of use is covered by the non-diversionary stock water
25 stipulation and additional rights are not necessary.

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1 It is recommended that the Director of the Department of Ecology cancel,
2 rescind or otherwise make null and void Adjudicated Certificates No. 43 and 56.
3

4 Court Claim No. 00702 -- Scott Baird, et al.
5 (A)01381 & Jerri Baird
6 David Jones
& Patricia Jones
7 Marian Easton

8 A Statement of Claim was submitted by Scott and Jerri Baird and David and
9 Patricia Jones. On August 10, 1992, Marian Easton was joined to the claim as an
10 additional party defendant. Ms. Easton was represented by Attorney Sarah Geary
11 Ottem and testified at the evidentiary hearing.

12 The land described in the claim consists of Lot 1 of Short Plat recorded in
13 Book Q, Page 3, roughly encompassing the east 1553 feet of the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of
14 Section 24, T. 15 N., R. 17 E.W.M. The land is currently owned by Marian Easton
15 who filed a Motion to be Joined to the claim when the original claimants failed to
16 complete the paperwork to substitute parties. Ms. Easton operates a horse ranch on
17 the property and irrigates approximately 24 acres. The horses have access to
18 Purdin Ditch, which flows through the property and drink directly from the ditch.
19 Ms. Easton testified that she begins irrigating the property around March 15 and
20 her class water runs out by the end of June. She is a member of the Wenas
21 Irrigation District and receives supplemental water for the remainder of the
22 season. She is assessed for 24 acres and the district stores 1.3 acre-feet for
23 each assessed acre.

24 Ms. Easton's property is within the place of use described on Certificate No.
25 22 from the 1921 adjudication of Wenas Creek and she is claiming her proportionate
26 share of the certificate. Certificate No. 22 is a Class 10 right with an 1877 date

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1 of priority. It authorized the diversion of 2.21 cubic feet per second for the
2 irrigation of 110.6 acres within the N $\frac{1}{2}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24, T. 15 N.,
3 R. 17 E.W.M. The proportionate share of the certificate that would be appurtenant
4 to the Easton property is 0.48 cubic foot per second for the irrigation of 24
5 acres. Ms. Easton testified that approximately 70 acre-feet of natural flow water
6 is used to irrigate the land. The testimony shows that this land has continued to
7 be irrigated since the certificate issued in 1921.

8 Based on the foregoing testimony and evidence, the Referee recommends that a
9 right be confirmed under Court Claim No. 0702 with a June 30, 1877, date of
10 priority for the diversion of 0.48 cubic foot per second, 70 acre-feet per year
11 from Wenas Creek for the irrigation of 24 acres and 2 acre-feet per year for stock
12 water.

13 The right shall carry the provision that the land receives supplemental water
14 from the Wenas Irrigation District. Upon confirmation of the proposed right, it is
15 recommended that the Director of the Department of Ecology cancel, rescind or
16 otherwise make null and void Adjudicated Certificate No. 22.

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18
19 COURT CLAIM NO. 01460 -- Thomas A. Bass, Jr.
(A)07607 & Carol Ann Bass

20 A Statement of Claim was submitted to the Court by Thomas A. Bass, Jr. and
21 Carol Ann Bass for the use of waters from Wenas Creek and an unnamed spring.
22 Thomas A. Bass, III, testified at the evidentiary hearing.

23 The claimants own over 1,000 acres of land in the Wenas Valley and are
24 asserting a right to use waters from Wenas Creek to irrigate a portion of the land
25
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29

1 they own in the S $\frac{1}{2}$ of Section 11, the NE $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, T. 16 N.,
2 R. 16 E.W.M. They are also claiming a right to use an unnamed spring(s).

3 The record is inconsistent in regards to water use on the claimants' property.
4 The amended Court claim states that 263 acres are being irrigated with waters from
5 Wenas Creek. The State's Investigation Reports seem to state that 282 acres are
6 being irrigated, however, review of State's Exhibit SE-1 shows approximately 205
7 acres irrigated. Mr. Bass testified that 200 acres are irrigated. Where there are
8 inconsistencies that cannot be explained, the Referee gives greatest weight to
9 uncontested testimony of witnesses at the hearing.

10 State's Exhibit SE-1 identifies two diversions from Wenas Creek within the
11 Bass ownership, one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 and one in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
12 11, plus a third diversion about 800 feet upstream from the northerly property
13 line, in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. The investigation reports identify three
14 diversion locations, two of which are located within the Bass ownership and are
15 shown on the map. The third identified diversion is also located within the
16 claimant's property, but is not shown on the map. It is located approximately 300
17 feet downstream from the diversion shown on the map in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11
18 and, according to the States's Investigation Report, is also within the SE $\frac{1}{4}$ SW $\frac{1}{4}$. An
19 exhibit submitted by a neighboring landowner is a map from the 1921 adjudication of
20 Wenas Creek and shows the second, downstream, diversion near the section line
21 between Sections 11 and 14. The Referee, therefore, believes that in spite of it
22 not being on the State's exhibit map, the diversion does exist and is being used by
23 the claimants.

24 Four certificates from the 1921 adjudication are appurtenant to the
25 claimants' land. Certificate No. 8 is a Class 17 right with an 1887 date of
26

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1 priority, authorizing the diversion of 2.40 cubic feet per second from Wenas Creek
2 for the irrigation of 120 acres in the S $\frac{1}{2}$ of Section 11, T. 16 N., R. 16 E.W.M.
3 The authorized point of diversion is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. Approximately 70
4 acres are currently being irrigated within the S $\frac{1}{2}$ SE $\frac{1}{4}$ west of the North Wenas Road,
5 the E $\frac{1}{2}$ SW $\frac{1}{4}$ east of Wenas Creek and west of the North Wenas Road, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ west of
6 Wenas Creek and the E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ west of Wenas Creek and east of the Cascade Orchard
7 Ditch. This land is being irrigated with waters diverted from the creek at two
8 locations, one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 and the second in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
9 Section 11.

10 Certificate No. 20 is a Class 11 right with an 1878 date of priority,
11 authorizing the diversion of 3.20 cubic feet per second from Wenas Creek for the
12 irrigation of 160 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ NE $\frac{1}{4}$, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
13 Section 14, T. 16 N., R. 16 E.W.M. Following issuance of Certificate of Change,
14 recorded in Volume 1, Page 16, the authorized points of diversion are within the
15 NW $\frac{1}{4}$ of Section 11 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. Approximately 28 acres are being
16 irrigated within that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14 lying east
17 of Wenas Creek. The points of diversion being exercised to irrigate this land lie
18 within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, although the lowermost diversion is very close to
19 the section line between Sections 11 and 14. From the map that is in the record,
20 this diversion could be either in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 or the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
21 Section 14.

22 Certificate No. 87 is a Class 13 right with an 1880 date of priority
23 authorizing the diversion of 2.50 cubic feet per second from Wenas Creek for the
24 irrigation of 125 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, the E $\frac{1}{2}$ NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14.
25 The authorized point of diversion is in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. Approximately
26

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1 107 acres are being irrigated within that portion of the $N\frac{1}{2}NE\frac{1}{4}$ lying east of Sunset
2 Ditch and west of the North Wenas Road, that portion of the $SE\frac{1}{4}NE\frac{1}{4}$ lying west of
3 the North Wenas Road and the $NE\frac{1}{4}SE\frac{1}{4}$, all in Section 14. The diversion being used
4 to irrigate this land is in the $SE\frac{1}{4}SW\frac{1}{4}$ of Section 11.

5 Certificate No. 21, a Class 13 right, authorized the diversion of .80 cubic
6 foot per second from Wenas Creek for the irrigation of 40 acres in the $NE\frac{1}{4}SW\frac{1}{4}$ of
7 Section 14. According to the evidence that land is no longer irrigated.

8 Mr. Bass testified that the land they now irrigate has been irrigated during
9 their entire 32 year ownership of the property. He testifies that irrigation
10 generally starts around May 1, but could be earlier, and for their class of water
11 rights never extends past June 30.

12 It is apparent from the record that points of diversion have been changed or
13 added for the rights described in Certificates No. 8 and 20, apparently without
14 complying with the change procedures in RCW 90.03.380. There was no testimony to
15 indicate when these changes occurred, but there also has been no testimony to
16 indicate that the change was adverse to existing right holders.

17 According to Mr. Bass' testimony, two ponds have been constructed on the
18 property since 1973 for stock watering. Water from the irrigation ditches can be
19 used to fill the ponds. This does not entail an additional diversion of water as
20 the livestock could drink directly from the ditches. The stock also drink from
21 Wenas Creek. The claimants pasture 110 cow/calf pairs, 20 horses, 35 feeder calves
22 and assorted swine and fowl, all of which drink from whatever surface water sources
23 are available. During the winter months water from a domestic well is also used to
24 water the livestock. Water is not diverted from the creek during the winter months
25 for livestock watering.

26
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1 The Court claim and amended claim identify spring(s) as sources of water, but
2 do not identify location of the spring(s) nor specify the uses being made of the
3 spring(s). The State's Investigation Report identifies a spring in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$
4 of Section 10 being used by the claimant for stock water. However, Section 10 is
5 owned by the Washington State Department of Natural Resources (DNR), also a
6 claimant in this proceedings. Mr. Bass testified that his family leases land in
7 Section 10 for cattle rangeland. There was no testimony about the quantity of
8 water diverted from the spring or the number of cattle that use the spring. DNR
9 did not appear at the evidentiary hearing to present testimony related to the
10 claim. There is no evidence that a claim was filed pursuant to the requirements of
11 RCW 90.14.

12 Based on the foregoing, the Referee concludes that rights stemming from the
13 1921 adjudication of Wenas Creek are appurtenant to the claimants' land. Although
14 there was conflicting evidence about the number of acres irrigated and the number
15 and locations of the points of diversion, the Referee believes that the
16 preponderance of the evidence supports the recommendation that rights be confirmed
17 as follows:

18 With a June 30, 1878, date of priority, a right to divert 0.56 cubic foot per
19 second, 84 acre-feet per year from Wenas Creek for the irrigation of 28 acres in
20 that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T. 16 N., R. 16 E.W.M.
21 lying east of Wenas Creek.

22 With a June 30, 1880, date of priority, a right to divert 2.14 cubic feet per
23 second, 321 acre-feet per year from Wenas Creek for the irrigation of 107 acres in
24 that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ lying east of Sunset Ditch and west of the North Wenas
25
26

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1 Road, that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of the North Wenas Road and the NE $\frac{1}{4}$ SE $\frac{1}{4}$,
2 all being within Section 14, T. 16 N., R. 14 E.W.M.

3 With a June 30, 1887, date of priority, a right to divert 1.4 cubic feet per
4 second, 210 acre-feet per year from Wenas Creek for the irrigation of 70 acres
5 within that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of the North Wenas Road, the E $\frac{1}{2}$ SW $\frac{1}{4}$
6 lying east of Wenas Creek and west of the North Wenas Road, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying west
7 of Wenas Creek and the E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ lying west of Wenas Creek and east of the Cascade
8 Orchard Ditch, all in Section 11, T. 16 N., R. 16 E.W.M..

9 An additional 1 acre-foot per year is recommended under each right for stock
10 watering.

11 There was insufficient testimony and evidence presented to allow the Referee
12 to recommend confirmation of a water right for use of any unnamed springs, either
13 on the claimants property or on land leased from the Washington State Department of
14 Natural Resources.

15 Upon confirmation of the proposed rights, it is recommended that the Director
16 of the Department of Ecology cancel, rescind or otherwise make null and void
17 Adjudicated Certificates No. 8, 20, 21 and 87.

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19
20
21 COURT CLAIM NO. 01783 -- Victor L. Berg
22 & Tennis Berg
Michael Wright
& Debra E. Wright

23 A Statement of Claim was filed with the Court by Victor L. and Tennis Berg for
24 the use of waters from Wenas Creek. On December 19, 1991, Michael Wright and Debra
25

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 E. Wright were joined to the claim. Attorney Vernon E. Fowler represented the
2 claimants and Victor Berg testified at the evidentiary hearing.

3 At the time the claim was filed, the Bergs owned 37 acres of land in the
4 NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 14 N., R. 18 E.W.M. They have since sold five acres to
5 the Wrights. Water is pumped from Wenas Creek with a 7.5 BHP pump, and fields of
6 hay and pasture are sprinkler irrigated. According to Mr. Berg's testimony, 25
7 acres are irrigated within the property retained by the Bergs and four acres are
8 irrigated within the property sold to the Wrights.

9 The claimants are basing their claim to a water right on a certificate that
10 issued to the Iowa Flat Ditch Company following the 1921 Wenas Creek Adjudication.
11 Certificate No. 34 is a Class 14 right with an 1881 date of priority that
12 authorized the diversion of 22.19 cubic feet per second by the ditch company for
13 the irrigation of 1109.5 acres. A portion of the certificate was appurtenant to 20
14 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M.. On September 16,
15 1935, Cecil Husted obtained Certificate of Change recorded in Volume 1, Page 146,
16 which allowed him to change the point of diversion for this portion of the
17 certificate, amounting to 0.40 cubic foot per second, from the diversion into the
18 Iowa Flat Ditch to a point located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12. On April 6, 1950,
19 Mr. Husted was issued Certificate of Change recorded in Volume 1, Page 282,
20 allowing him to change the place of use for 0.20 cubic foot per second, being a
21 portion of the 0.40 cubic foot per second granted under Certificate of Change No.
22 146, to the W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 14 N., R. 18 E.W.M.

23 Certificate No. 34 authorized the use of 0.02 cubic foot per second for each
24 acre irrigated. According to the certificate, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12 had a right
25 for the irrigation of 20 acres and Certificate of Change No. 146 authorized
26

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1 changing the point of diversion for 0.40 cubic foot per second, which would be the
2 instantaneous quantity authorized for the irrigation of 20 acres. When Certificate
3 of Change recorded in Volume 1, Page 282 transferred the place of use for 0.20
4 cubic foot per second of the right to the $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 13, 10 acres of that
5 right was transferred along with the instantaneous quantity. Therefore, the
6 Berg/Wright property enjoys a right stemming from Certificate No. 34 as
7 subsequently changed for the use of 0.20 cubic foot per second for the irrigation
8 of 10 acres within the $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 13. There is nothing in the record to
9 indicate the existence of any other water rights appurtenant to the claimants'
10 property.

11 The testimony indicates that as long as the Bergs have been familiar with the
12 property it has been irrigated with waters from Wenas Creek. Mr. Berg testified
13 that he needs six acre-feet per year to irrigate his land and that the irrigation
14 season is from April 1 to October 31. However, he also testified that creek water
15 is not available after mid-June and he has no supplemental water supply. The
16 maximum quantity of water he could apply to his land in the best water year would
17 be 3 acre-feet per year per acre irrigated.

18 Based on the foregoing information, it is recommended that a right be
19 confirmed under Court Claim No. 01783 with a June 30, 1881, date of priority for
20 the use of 0.20 cubic foot per second, 30 acre-feet per year from Wenas Creek for
21 the irrigation of 10 acres in the $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 13, T. 14 N., R. 18 E.W.M.
22 The testimony also indicated that livestock raised on the property drink directly
23 from Wenas Creek as it flows through the property. This stock water use is covered
24 by the non-diversionary stock water stipulation and an additional right will not be
25 confirmed for this use.

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 Upon confirmation of the proposed right, it is recommended that the Director
2 of the Department of Ecology cancel, rescind or otherwise make null and void
3 Certificate of Change recorded in Volume 1, Page 282.

4
5 COURT CLAIM NO. 00434 -- Arthur E. Bertelsen
6 (A)01379

7 Arthur E. Bertelsen filed a Statement of Claim with the Court and on
8 August 26, 1981, filed an amended claim. Mr. Bertelsen appeared and testified at
9 the evidentiary hearing.

10 Mr. Bertelsen owns land in Sections 28, 29 and 30, T. 16 N., R. 17 E.W.M.
11 There are five certificates stemming from the 1921 Wenas Creek Adjudication
12 appurtenant to his property as follows: Certificate No. 3, as changed by
13 Certificates of Change Recorded in Volume 1-4, Pages 114 and 115, is a Class 7
14 right with an 1872 date of priority. The portion appurtenant to the Bertelsen
15 property authorized the diversion of 0.36 cubic foot per second from Wenas Creek
16 for the irrigation of 18 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30. The authorized points
17 of diversion are within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30. The remainder of
18 the certificate is appurtenant to neighboring land owned by Burton Newland.
19 Certificate No. 4, also a Class 7 right, authorized the diversion of 2.13 cubic
20 feet per second from Wenas Creek for the irrigation of 106.6 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$,
21 the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30. The authorized points of diversion are
22 within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. Certificate No. 5, a
23 Class 20 right with an April 1888 date of priority, authorized the diversion of
24 0.40 cubic foot per second from Wenas Creek for the irrigation of 19.8 acres within
25 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30. Certificate No. 31, a Class 17 right with an 1884 date

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27 REPORT OF REFEREE
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1 of priority, authorized the diversion of 0.80 cubic foot per second from Wenas
2 Creek for the irrigation of 39.99 acres in the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.
3 16 N., R. 17 E.W.M. Certificate No. 84, a Class 16 right with an 1883 date of
4 priority authorized the diversion of 0.75 cubic foot per second for the irrigation
5 of 37.3 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 16 N., R. 17 E.W.M.

6 Mr. Bertelsen testified that the land described in Certificates No. 5, 31, and
7 84 have not been irrigated during his ownership of the land and he questioned
8 whether the land had ever been irrigated. He stated that those certificates should
9 be relinquished.

10 According to the evidence, the land described in the claim was owned by Milton
11 Burge at the time of the 1921 adjudication. Vernie Jones Newland owned the land
12 from 1937 until it was sold to Mr. Bertelsen on August 10, 1970. Approximately 125
13 acres have continuously been farmed and irrigated during the Newland and Bertelsen
14 ownerships. Class 7 rights appurtenant to the irrigated portion of his property
15 authorize the irrigation of 124.6 acres. Mr. Bertelsen became ill in 1986 and
16 health problems have prevented him from irrigating the fields. He intends to
17 resume this practice in the near future. Water is diverted from Wenas Creek at
18 three different locations authorized in Certificates No. 3 and 4. Mr. Bertelsen
19 testified that when he resumes irrigation he may want to pump directly from the
20 creek on his property rather than diverting into gravity flow ditches. He needs to
21 talk with a representative of the Department of Ecology's Central Regional Office
22 to determine the need to comply with the requirements of RCW 90.03.380 pertaining
23 to changes in points of diversion.

24 Mr. Bertelsen raises cattle on his land. The cattle can drink from the
25 irrigation diversions, directly from Wenas Creek, or from three unnamed springs in
26

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1 Section 30. The springs are undeveloped and the stock drink directly from the
2 spring outflow. This type of stock watering is covered by the non-diversionary
3 stock water stipulation. One of the springs had historically been used to provide
4 domestic water to Mr. Bertelsen's home. However, this use ceased in 1971 when a
5 domestic well was drilled. Any water right for using this spring for domestic
6 supply has relinquished due to six successive years of nonuse prior to initiation
7 of this adjudication, RCW 90.14.160.

8 Based on the foregoing, it is recommended that a right be confirmed to Arthur
9 E. Bertelsen with a June 30, 1872, date of priority for the diversion of 2.49 cubic
10 feet per second, 747.6 acre-feet per year from Wenas Creek for the irrigation of
11 124.6 acres and 1 acre-foot per year for stock watering, within the $W\frac{1}{2}NE\frac{1}{4}$, the
12 $SE\frac{1}{4}NE\frac{1}{4}$, the $NE\frac{1}{4}NW\frac{1}{4}$ and the $NE\frac{1}{4}SE\frac{1}{4}$ of Section 30, T. 16 N., R. 17 E.W.M..

13 Upon confirmation of the proposed rights, it is recommended that the Director
14 of the Department of Ecology cancel, rescind or otherwise make null and void
15 Adjudicated Certificates No. 3, 4, 5, 31, and 84.

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18
19 COURT CLAIM NO. 02206 -- Boise Cascade Corporation
20 (A)03119
21 (A)05238

22 Boise Cascade Corporation submitted a Statement of Claim to the Court for the
23 use of numerous surface water sources in the Yakima River Basin. Several of the
24 sources identified in the claim lie within the Wenas Creek Subbasin. John Hess,
25 Chief Forester for Boise Cascade, presented testimony concerning use of water from
26 those sources. Boise Cascade Corporation was represented by Attorney Dennis
27 Dunphy.

28 REPORT OF REFEREE
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1 Boise Cascade is asserting a right to use water from 22 different sources in
2 Subbasin No. 15 and five locations on the North Fork of Wenas Creek. The water is
3 used either for stock watering or timber harvesting. Boise Cascade Corporation
4 filed claims pursuant to RCW 90.14 for each source and point of diversion
5 identified in the Court Claim as being within Subbasin No. 15.

6 Much of the Boise Cascade land is timberland that is leased to ranchers for
7 livestock grazing. In some cases water sources have been developed with diversions
8 to stock tanks or ponds, but generally the livestock drink directly from the water
9 source. This type of non-diversionary stock watering is covered by the
10 non-diversionary stock water stipulation that has been adopted and no additional
11 water right will be confirmed.

12 The claimant identified five diversions for stockwater at the following
13 locations:

14 Boise Cascade No. 79 - NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 16 N., R. 16 E.W.M.

15 Boise Cascade No. 88 - SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T. 16 N., R. 16 E.W.M.

16 Boise Cascade No. 95 - SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 16 N., R. 17 E.W.M.

17 Boise Cascade No. 194 - SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T. 17 N., R. 16 E.W.M.

18 Boise Cascade No. 196 - NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T. 17 N., R. 16 E.W.M.

19 The animal carrying capacity of the land is 725 animal unit months (AUM) and
20 Boise Cascade estimates that 20 gallons per head per day is used for an annual
21 water use of 1.3 acre-feet per year. Mr. Hess testified that Boise Cascade
22 property is used for livestock grazing for five months of the year, beginning in
23 April. Boise Cascade is claiming a water right under the Riparian Doctrine with
24 the date of priority for the right being the date the land separated from federal
25 ownership. That date for diversions No. 79 and 88 is May 10, 1896; for diversion
26

27 REPORT OF REFEREE

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1 No. 95 is March 10, 1922; and for diversion No. 194 and 196 is January 16, 1896.
2 The record shows that except for diversion No. 95, the land was owned by Northern
3 Pacific Railroad by the late 1800's and sold to private individuals no later than
4 1929. In order to establish a water right under the Riparian Doctrine, the land
5 had to separate from Federal ownership prior to June 6, 1917, and water had to be
6 used prior to December 31, 1932. While it is not clear that the Northern Pacific
7 Railroad would have used water on the land, it is reasonable to believe that
8 shortly after the land left railroad ownership, the new owners would have made use
9 of the land. The general testimony in the subbasin has made it clear this was a
10 farming and ranching area from the time it was first settled. The new owners
11 certainly owned livestock and developed water sources for stock watering. It is
12 reasonable for the Referee to conclude that stock watering rights were established
13 prior to December 31, 1932. However, diversion No. 95 presents a different
14 circumstance. That land did not leave Federal ownership until March 10, 1922, so
15 a right cannot have been established under the Riparian doctrine. In order to
16 establish a right under the Prior Appropriation Doctrine, water had to have been
17 used prior to June 6, 1917. The Referee cannot assume that is the case since the
18 land was not privately owned at that time. While it is possible the land was
19 occupied and water used while it was under Federal ownership, no evidence was
20 presented to allow the Referee to reach that conclusion. Therefore, the Referee
21 cannot recommend that a stock water right be confirmed for diversion No. 95. The
22 Referee does recommend that stock water rights be confirmed for the four other
23 diversions (79, 88, 194 and 196) as follows:

24 With a May 10, 1895, date of priority, 0.02 cubic foot per second, 0.65
25 acre-foot per year for stock water from two unnamed springs located in the
26

27 REPORT OF REFEREE
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1 SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 16 N., R. 17 E.W.M. and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17,
2 T. 16 N., R. 16 E.W.M. With a January 16, 1896, date of priority, 0.02 cubic foot
3 per second, 0.65 acre-foot per year for stock water from two unnamed springs
4 located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, both in
5 T. 17 N., R. 16 E.W.M.

6 Boise Cascade is asserting a right to use water for timber harvesting from six
7 points of diversion located as follows:

8 Boise Cascade No. 82 - North Fork of Wenas Creek and Dry Creek in the E $\frac{1}{2}$; the
9 S $\frac{1}{2}$; and the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3, T. 16 N., R. 16 E.W.M.

10 Boise Cascade No. 84 - North Fork of Wenas Creek in the NW $\frac{1}{4}$ of Section 11,
11 T. 16 N., R. 16 E.W.M.

12 Boise Cascade No. 87 - South Fork of Wenas Creek and Cow Canyon in the S $\frac{1}{2}$ S $\frac{1}{2}$;
13 the S $\frac{1}{2}$ N $\frac{1}{2}$; and the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 17, T. 16 N., R. 16 E.W.M.

14 Boise Cascade No. 192 - Hudson Creek in the E $\frac{1}{2}$ of Section 21, T. 17 N.,
15 R. 16 E.W.M.

16 Boise Cascade No. 199 - North Fork of Wenas Creek in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of
17 Section 34, T. 17 N., R. 16 E.W.M.

18 Boise Cascade No. 202 - North Fork of Wenas Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
19 Section 35, T. 17 N., R. 16 E.W.M.

20 Boise Cascade uses each of these diversion points to fill tank trucks that are
21 used to water down the logging roads used during timber harvesting. Water is
22 needed to protect the integrity of the road bed and reduce dust. Each location is
23 used once every five to eight years as the nearby area is logged. Annual water use
24 ranges from a low of 0.66 acre-foot per year for points 87 and 192 to a high of
25 3.14 acre-feet per year at point 84. Boise Cascade is asserting that this land has
26

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1 been used for timber harvesting since its predecessor owners, Cascade Lumber
2 Company and Ellensburg Lumber Company, acquired the property in the early 1900's.
3 Testimony in behalf of Boise Cascade claims in other subbasins was that portable
4 sawmills were used at logging sites rather than hauling the logs to a central
5 location, as is the present practice. The portable sawmills required water for
6 their operation. Boise Cascade proposes that water use associated with timber
7 harvesting has changed from use at a portable sawmill to road maintenance required
8 to haul logs to the current central sawmill. The water use is still associated
9 with timber harvesting and the water is still being used in the same general area.
10 Although Boise Cascade did not offer any estimate of how much water was needed to
11 operate the portable sawmills, it is reasonable to assume that it would have been
12 at least as much as the small quantity now used for road maintenance.

13 The lands associated with four of the diversions separated from Federal
14 ownership on May 10, 1895, and were owned by lumber companies by July 22, 1907.
15 However, the lands associated with diversions No. 192 and 199 were owned by private
16 individuals until December 23, 1941, when they were sold to Cascade Lumber Company.
17 The Referee can find nothing in the record to show that the individuals were
18 engaged in timber harvesting and would have used water for that purpose.

19 The water used for timber harvesting comes from one of the forks of Wenas
20 Creek or a tributary stream. The Referee cannot find in the record any
21 certificates from the 1921 Wenas Creek adjudication appurtenant to the Boise
22 Cascade land. The purpose of the 1921 adjudication was to settle claims for Wenas
23 Creek and its tributaries and the Court determined that the only water available
24 for appropriation subsequent to the decree was waters from an unprecedented or
25 extraordinary flood which cannot be beneficially used on riparian lands. The owners
26

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1 of the Boise Cascade lands at the time of the adjudication were not named parties,
2 which could indicate an oversight or could indicate that there had been no water
3 use at the time of the adjudication. Due to the lack of certificates for the Boise
4 Cascade lands, the Referee cannot find a basis for confirming water rights for the
5 use of waters from Wenas Creek or its tributaries. Therefore, it is recommended
6 that the remainder of the Boise Cascade claim be denied.

7
8
9 COURT CLAIM NO. 01638 -- Mary Helen Brimbel

10 A Statement of Claim was filed with the Court by Grayce Laney for the use of
11 waters from Wenas Creek. Mrs. Laney died in 1985 and her daughter, Mary Helen
12 Brimbel is now the owner of the property. Ms. Brimbel and John Mayo, who has
13 leased and farmed the property for the last 13 years, testified at the evidentiary
14 hearing.

15 The land owned by Ms. Brimbel lies in the $E\frac{1}{2}SW\frac{1}{4}$, the $SW\frac{1}{4}SW\frac{1}{4}$, and the $SW\frac{1}{4}SE\frac{1}{4}$ of
16 Section 11, T. 14 N., R. 18 E.W.M. Water rights are being claimed for the
17 irrigation of 100 acres with water from Wenas Creek. The basis for that claim is
18 three certificates that issued as a result of the 1921 Wenas Creek Adjudication.
19 Certificate No. 12 is a Class 12 right with an 1879 date of priority authorizing
20 the diversion of 0.24 cubic foot per second for the irrigation of 12.08 acres in
21 the $S\frac{1}{2}SW\frac{1}{4}$ of Section 11. Certificate No. 13 is a Class 1 right with an 1867 date
22 of priority authorizing the diversion of 2.52 cubic feet per second for the
23 irrigation of 126.26 acres in the $SE\frac{1}{4}SE\frac{1}{4}$, the $W\frac{1}{2}SE\frac{1}{4}$ of Section 11 and the $SW\frac{1}{4}SW\frac{1}{4}$ of
24 Section 12. Certificate No. 16 is a Class 2 right with an 1868 date of priority
25 authorizing the diversion of 2.50 cubic feet per second for the irrigation of
26

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1 124.91 aces in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11. All of Certificate No. 12
2 and portions of Certificates No. 13 and 16 are appurtenant to the land described in
3 Court Claim No. 01638.

4 Ms. Brimbel testified that when her father was alive the land was ditch
5 irrigated and recalled the area south of Wenas Creek and north of the South Wenas
6 Road in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11 being irrigated. She could not testify
7 specifically about other parts of the property being irrigated. The State's
8 Investigation Report states that 15 acres were being irrigated at the time of the
9 inspection and the area mapped as irrigated on State's Exhibit SE-2 coincides with
10 the area Ms. Brimbel recalled being irrigated. The same area appears irrigated in
11 the aerial photograph provided by John Mayo (DE-308). Mr. Mayo testified that he
12 irrigates approximately 15 acres. If additional land besides the 15 acres
13 identified by the State has historically been irrigated, there is nothing in the
14 record to allow the Referee to determine when it was last irrigated. Livestock
15 have been raised on the property and drink directly from Wenas Creek and an unnamed
16 spring on the property. This type of non-diversionary stock water use is covered
17 by the stock water stipulation and additional rights will not be confirmed.

18 Miles Yates, a neighboring landowner, submitted copies of aerial photographs
19 that he believes show most of the Brimbel property unirrigated. However, the copy
20 quality is too poor to reach that conclusion.

21 The testimony and evidence before the Referee has been insufficient to
22 adequately show that beneficial use beyond the current irrigation of 15 acres has
23 continued on the Brimbel property. Based on that, the Referee can only recommend
24 confirmation of rights for the irrigation of 15 acres. Three of those acres lie in
25 the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 and have a Class 2 right and 12 acres lie in the SE $\frac{1}{4}$ SW $\frac{1}{4}$
26

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29

1 and have a Class 12 right. Therefore, the Referee recommends that a right be
2 confirmed under Court Claim No. 01638 with a June 30, 1879, date of priority for
3 the use of 0.24 cubic foot per second, 48 acre-feet per year from Wenas Creek for
4 the irrigation of 12 acres in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 lying north
5 of the South Wenas Road; and with a June 30, 1868, date of priority 0.06 cubic foot
6 per second, 12 acre-feet per year from Wenas Creek for the irrigation of 3 acres in
7 that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 lying south of Wenas Creek.

8 Upon confirmation of the proposed rights, it is recommended that the Director
9 of the Department of Ecology cancel, rescind or otherwise make null and void
10 Adjudicated Certificate No. 12, 13, and 16.

11
12
13 COURT CLAIM NO. 00455 -- Arthur W. Briscoe
14 & Violet Ora Briscoe

15 The Briscoes submitted a Statement of Claim to the Court for the use of an
16 unnamed spring for domestic supply. Mrs. Briscoe testified at the evidentiary
17 hearing.

18 According to the testimony and evidence, Mr. and Mrs. Briscoe's home was
19 constructed in 1910 and has received water for domestic supply from a spring
20 located north of the North Wenas Road in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 15 N.,
21 R. 17 E.W.M. since that time. The spring is also used for irrigating the lawn
22 around the house. In 1974 Mr. Briscoe filed Water Right Claim No. 040696 pursuant
23 to the requirements of RCW 90.14 protecting the right to use the spring.

24 At the hearing Mrs. Briscoe also presented testimony about use of a second
25 spring located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2. The spring was developed in 1958 or
26

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1 1959 and piped to stock tanks that are shared with their neighbor, Don Hazen. In
2 order to establish a water right for a use initiated in 1958 or 1959, compliance
3 with the permit requirements of RCW 90.03 is required. There is nothing in the
4 record to show that either the Briscoes or Don Hazen obtained a permit from a
5 predecessor agency to the Department of Ecology for this use. Therefore, the
6 Referee cannot recommend that a water right be confirmed for use of the spring in
7 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2.

8 The Referee does recommend that a right be confirmed under Court Claim No.
9 00455 with a June 30, 1910, date of priority for the use of the unnamed spring in
10 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 in the amount of 0.02 cubic foot per second, 2 acre-feet
11 per year for continuous single domestic supply, including lawn and garden
12 irrigation.

13
14 COURT CLAIM NO. 07476 -- Bruce Buchanan

15 Bruce Buchanan filed a Statement of Claim for the use of waters from Wenas
16 Creek and an unnamed draw tributary to Wenas Creek. During the evidentiary hearing
17 he amended the claim to include an unnamed spring used for domestic supply.
18 Attorney Vernon Fowler represented Mr. Buchanan, who testified at the evidentiary
19 hearing.

20 Claim No. 07476 is for lands owned by Mr. Buchanan in Section 18, T. 14 N.,
21 R. 19 E.W.M., near the confluence of Wenas Creek and the Yakima River. According
22 to the testimony, 60 acres in Government Lots 1 and 2 of Section 18 are irrigated
23 with waters from Wenas Creek when creek water is available. Mr. Buchanan is
24 claiming a Class 17 right for this property and water is generally not available
25 for this class of water after the month of June. Water is pumped from the creek at
26

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1 a point in Government Lot 1 of Section 18 using a 20 BHP pump into a buried
2 mainline. The pasture is irrigated using four sets of handlines, with 40
3 sprinklers per handline. Mr. Buchanan testified that he uses water from mid-March
4 until mid-October. Water from the Naches-Selah Irrigation District is used when
5 creek water is not available.

6 Certificate No. 83 from the 1921 Adjudication of Wenas Creek is a Class 17
7 right with an 1884 date of priority. The land owned by Mr. Buchanan is within the
8 place of use described on the certificate. Certificate No. 83 authorized the
9 diversion of 1.2 cubic feet per second from Wenas Creek for the irrigation of 60
10 acres within the $W\frac{1}{2}SW\frac{1}{4}$, the $E\frac{1}{2}NW\frac{1}{4}$, the $NE\frac{1}{4}SW\frac{1}{4}$ and Government Lots 1 and 2 of
11 Section 18, T. 14 N., R. 18 E.W.M. Mr. Buchanan is claiming the entire certificate
12 is appurtenant to his irrigated lands in Government Lots 1 and 2. No other
13 claimant is asserting ownership of any portion of this certificate and there is
14 nothing in the record to show that the other land described in the certificate is
15 being irrigated with waters from Wenas Creek.

16 Mr. Buchanan's family acquired the property described in Claim No. 07476 in
17 1938. At that time a portion of the land was irrigated pasture and a dairy
18 operation. This use continued after the Buchanans acquired the land. According to
19 the testimony, waters from Wenas Creek were being used to irrigate the land in
20 Government Lots 1 and 2 in 1938 and it is Mr. Buchanan's belief that use had
21 continued since the certificate issued in 1921.

22 Waters from an unnamed draw are also being used to irrigate a portion of the
23 Buchanan land. Water is diverted from a pond in the draw located in the $SW\frac{1}{4}$ of
24 Government Lot 1 in Section 18 and piped to an area along Wenas Creek in the
25 $SE\frac{1}{4}NW\frac{1}{4}$, the $NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$, and the $NW\frac{1}{4}SE\frac{1}{4}$ of Section 18. Water is released from the
26

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1 pipe to flood irrigate a 17.5 acre pasture north and east of the creek. Although
2 claiming a right to divert 1.2 cubic feet per second from the drainage, Mr.
3 Buchanan testified that 0.35 cubic foot per second is actually used, which is the
4 quantity normally used to irrigate 17.5 acre. Mr. Buchanan testified that water
5 from the draw has been used to irrigate his land since his family acquired the
6 property in 1938. There was no testimony to show this use was initiated prior to
7 that time. Although the 1921 decree did confirm water rights for tributaries to
8 Wenas Creek, there was no right confirmed for a diversion of water from this draw.
9 Mr. Buchanan filed Water Right Claim No. 152724 in 1974 pursuant to the
10 requirements of RCW 90.14. Water Right Claim No. 152724 asserted a right to use an
11 unnamed pond in Section 18 for the irrigation of 20 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$
12 and the south 361.5 feet of the west 361.5 feet of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18. This
13 claim would appear to be for the unnamed draw described in Court Claim No. 07476.
14 It states that water was first used in the year 1940.

15 In order to establish a water right under the Prior Appropriation Doctrine the
16 evidence must show that water use was initiated prior to June 6, 1917. To
17 establish a water right under the Riparian Doctrine, the land must be riparian to
18 the water source, must have separated from Federal ownership prior to June 6, 1917,
19 and water used prior to December 31, 1932. There was no testimony or evidence
20 presented to show any of this occurred. Water uses initiated subsequent to these
21 significant dates must be authorized by a certificate or permit issued by the State
22 Department of Ecology or one of its predecessor agencies. Again there is no
23 evidence this occurred.

24 Mr. Buchanan is also claiming a right to use an unnamed spring located in the
25 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 for domestic supply. The testimony was that a house
26

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1 constructed around 1950 receives its water for domestic supply from the spring.
2 The testimony was not adequate to show that the water use began within the time
3 frame necessary to establish a water right under either the Riparian or Prior
4 Appropriation Doctrines. Additionally, there is nothing in the record to show that
5 a water right claim was filed under RCW 90.14 or that a permit or certificate was
6 obtained pursuant to RCW 90.03.

7 Livestock raised on the Buchanan property drink directly from water sources on
8 and flowing through the property. There was no testimony of a diversionary stock
9 water use. Non-diversionary stock watering is covered by the stock water
10 stipulation and no additional right will be confirmed for this type of use.

11 Based on the foregoing, the Referee cannot recommend confirmation of a right
12 for use of either the unnamed draw or the unnamed spring. The Referee does
13 recommend confirmation of a water right under Court Claim No. 07476 for the use of
14 Wenas Creek with an June 30, 1884, date of priority for the use of 1.2 cubic feet
15 per second, 240 acre-feet per year from Wenas Creek for the irrigation of 60 acres
16 within Government Lots 1 and 2 of Section 18, T. 14 N., R. 18 E.W.M. This right
17 shall contain a provision that water from the Naches-Selah Irrigation District is
18 also used on this land.

19 The Naches-Selah Irrigation District is a Major Claimant in this proceeding
20 and the district's rights will be determined during hearings through the Major
21 Claimant pathway established in Pre-Trial Order No. 8.

22 Upon confirmation of the proposed right, it is recommended that the Director
23 of the Department of Ecology cancel, rescind or otherwise make null and void
24 Adjudicated Certificate No. 83.

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1
2 COURT CLAIM NO. 01626 -- Orville G. Byers
3 Jim L. Rice
4 & Julie A. Rice

5 A Statement of Claim was submitted by Orville G. Byers for the use of waters
6 from Wenas Creek for irrigation. On November 27, 1991, Jim L. and Julie A. Rice
7 were joined to the Claim. Jim Rice testified at the evidentiary hearing.

8 The Rices own five acres described as the west 440 feet of the south 495 feet
9 of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M. They are asserting a right to
10 irrigate four acres and water livestock with waters from Wenas Creek. They are
11 basing this claim on Certificate No. 13 from the 1921 adjudication of Wenas Creek.
12 Certificate No. 13 issued to Cleman Dairy and is a Class 1 right with an 1867 date
13 of priority. It authorized the diversion of 2.52 cubic feet per second for the
14 irrigation of 126.26 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11 and the
15 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M. Three certificates of change of point
16 of diversion were issued by the Department of Ecology or its predecessor agency for
17 Certificate No. 13, but all three are appurtenant to the lands in Section 11. The
18 Referee notes that although the lands described on the certificate encompass 160
19 acres, the certificate only authorizes the irrigation of 126.26 acres, leaving
20 approximately 33 acres not covered by the certificate.

21 According to Mr. Rice's testimony, he and his wife acquired the property in
22 1983 from Mr. Byers and built their home in 1985. At the time they purchased the
23 property it was not being irrigated. Approximately two acres referred to as being
24 on the bluff had once been planted to hay and irrigated, presumedly with water from
25 Wenas Creek. Mr. Rice testified that prior to his purchase, it had been "years and
26 years" since it had been irrigated, but was unable to establish when it had been

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1 last irrigated. Sagebrush had begun to grow in the field prior to their purchase
2 in 1983. He was not aware of Mr. Byers irrigating the bluff area. The remainder
3 of the Rice land was referred to as bottom land. When Mr. Byers purchased the
4 property in 1969 or 1970 the bottom land was undeveloped and in native vegetation,
5 used solely for rangeland. Mr. Byers cleared some of it and irrigated sporadically
6 from the creek, but by the time the Rices bought in 1983 that land was overgrown
7 with brush and had to be cleared again. Mr. Rice also testified that several
8 springs emerged on the property subirrigating the lower piece, making irrigation
9 unnecessary. Livestock grazing on the bottom land have access to Wenas Creek and
10 drink directly from the creek. Livestock on the bluff are watered from the
11 domestic well.

12 Although the claimants are currently irrigating a portion of their land with
13 waters from Wenas Creek and intend to eventually irrigate a total of four acres, it
14 is not clear that any portion of Certificate No. 13 is appurtenant to their
15 property. The testimony is clear that the three acres in the bottom land were not
16 irrigated until 1969 or 1970. The certificates issued as a result of the 1921
17 adjudication can only be appurtenant to lands that have historically been irrigated
18 with waters from Wenas Creek or one of its tributaries. The remaining two acres on
19 the bluff apparently were irrigated at one time with waters from Wenas Creek.
20 There is evidence of an abandoned ditch that may have at one time carried creek
21 water to the Rice property and could have served the lands on the bluff. However,
22 Mr. Rice was not able to provide evidence of when the water was last used on the
23 property, stating that it was "years and years ago". Since he as not aware of
24 Mr. Byers having irrigated the land, the relinquishment of the water right that may
25 be appurtenant to the lands on the bluff is a real possibility. RCW 90.14.160
26

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1 provides that anyone entitled to divert waters of the state who voluntarily fails
2 without sufficient cause to beneficially use all or any part of said right for any
3 period of five successive years after the effective day of this act (July 1, 1967)
4 shall relinquish such right or portion thereof. Consequently, if water from Wenas
5 Creek was not used to irrigate the lands on the bluff for five successive years
6 after July 1, 1967, the portion of the right appurtenant to those lands would have
7 relinquished. Due to the uncertainly about continued beneficial use of the water
8 subsequent to July 1, 1967, for the lands on the bluff and lack of historic
9 beneficial use on the bottom lands, the Referee cannot recommend that a right be
10 confirmed to Jim L. and Julie A. Rice under Court Claim No. 01626.

11
12 COURT CLAIM NO. 01652 -- Alfred M. Calvert

13 A Statement of Claim was submitted for the use of waters from Wenas Creek for
14 irrigation. Alfred Calvert testified at the evidentiary hearing.

15 The Claimant's property lies within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ east of Wenas Creek and the
16 SE $\frac{1}{4}$ NW $\frac{1}{4}$ south of the North Wenas Road, in Section 4, T. 14 N., R. 18 E.W.M. He rill
17 irrigates 51 acres of potatoes and corn. After the crop is harvested cattle graze
18 on the land, drinking directly from Wenas Creek. This type of non-diversionary
19 stock water use is covered by the stock water stipulation. Mr. Calvert testified
20 that his class of creek water is generally not available after mid-June and at
21 times is not available by mid-May when he often first begins irrigating. When
22 creek water is not available he irrigates from two wells. There are some years
23 creek water is not available at all and he relies solely on the well water.

24 The land has been in the Calvert family since the early 1900's and has
25 consistently been irrigated since that time. Certificate No. 6 from the 1921 Wenas
26

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1 Creek Adjudication is appurtenant to the property. This Class 6 right with an 1871
2 date of priority authorizes the diversion of 1.93 cubic feet per second for the
3 irrigation of 96.5 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ north and east of Wenas Creek and
4 the NW $\frac{1}{4}$ SW $\frac{1}{4}$ north of Wenas Creek, all in Section 4, T. 14 N., R. 18 E.W.M.

5 Alfred Calvert is claiming 51 acres of this right. The remainder of the
6 right is being claimed by Florence Calvert in Court Claim No. 01492, which asserts
7 a right for 45 acres. The proportionate instantaneous quantity for the 51 acres
8 would be 1.02 cubic feet per second.

9 Mr. Calvert did not provide testimony concerning the annual quantity of water
10 needed to water his crops, however, testimony shows that neighboring property uses
11 4 acre-feet per acre irrigated which is consistent with the standard duty
12 considered necessary for this area.

13 Based on the foregoing it is recommended that a right be confirmed to Alfred
14 Calvert with a June 30, 1871, date of priority for the diversion of 1.02 cubic feet
15 per second, 204 acre-feet per year from Wenas Creek for the irrigation of 51 acres.
16 The right shall carry a provision concerning the supplemental ground water supply.

17 Upon confirmation of the proposed right, it is recommended that the Director
18 of the Department of Ecology cancel, rescind or otherwise make null and void
19 Adjudicated Certificate No. 6.

1
2 COURT CLAIM NO. 01492 -- Florence W. Calvert
3 (A)02414

4 Florence W. Calvert submitted a Statement of Claim for the use of waters from
5 Wenas Creek. Ms. Calvert has since passed away and Attorney James Hutton
6 represented the estate. Ms. Calvert's son, Robert Calvert, testified at the
7 evidentiary hearing.

8 The claimant's property consists of approximately 54 acres lying within the $W\frac{1}{2}$
9 of Section 4, T. 14 N., R. 18 E.W.M., of which 45 acres are irrigated with waters
10 from Wenas Creek. Water is diverted from the creek at a point in Government Lot 4
11 of Section 4, approximately 600 feet north of the claimant's property. The land is
12 planted to pasture, hay and grain crops. The testimony was that the property has
13 been in the Calvert family since the early 1900's and has consistently been
14 irrigated since that time until the 1991 irrigation season. The family intends to
15 resume the irrigation practice when the estate is finalized.

16 Certificate No. 6 from the 1921 Wenas Creek is appurtenant to the property.
17 It is a Class 6 right with an 1871 date of priority authorizing the diversion of
18 1.93 cubic feet per second for the irrigation of 96.5 acres in the $S\frac{1}{2}NW\frac{1}{4}$, the
19 $NE\frac{1}{4}SW\frac{1}{4}$ north and east of Wenas Creek and the $NW\frac{1}{4}SW\frac{1}{4}$ north of Wenas Creek, all in
20 Section 4, T. 14 N., R. 18 E.W.M. A claim is being asserted for the proportionate
21 share of that certificate which would be appurtenant to 45 acres, or 0.90 cubic
22 foot per second.

23 According to the testimony, Class 6 water is not available after the first of
24 July. Well water is used to supplement the creek supply. The testimony was that
25 186.9 acre-feet per year is used to irrigate this property. Livestock have been
26

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1 raised on the property and drink directly from Wenas Creek. This type of use is
2 covered by the non-diversionary stock water stipulation. No additional rights will
3 be confirmed for this type of use.

4 Based on the foregoing, it is recommended that a right be confirmed under
5 Court Claim No. 01492 with a June 30, 1871, date of priority for the use of .90
6 cubic foot per second, 186.9 acre-feet per year from Wenas Creek for the irrigation
7 of 45 acres. The right will carry a provision that this is the maximum annual
8 quantity of water that may be used under this right and any ground water right the
9 land may enjoy.

10 Upon confirmation of the proposed right, it is recommended that the Director
11 of the Department of Ecology cancel, rescind or otherwise make null and void
12 Adjudicated Certificate No. 6.

13
14
15 COURT CLAIM NO. 00438 -- Hazel Cameron
16 (A)01378

17 Statement of Claim No. 00438 was filed with the Court for the use of surface
18 waters in Subbasin No. 15. Mrs. Cameron, represented by Attorney James Hutton,
19 testified at the evidentiary hearing along with Ray Day, who farms the property.

20 According to the testimony, 150 acres of pasture, alfalfa, and grain are
21 irrigated within the $E\frac{1}{2}NW\frac{1}{4}$ east of Wenas Creek, the $W\frac{1}{2}NE\frac{1}{4}$, and the $NE\frac{1}{4}SE\frac{1}{4}$ of
22 Section 13, T. 15 N., R. 17 E.W.M.. Up to 200 cow/calf pairs are raised on the
23 property and drink directly from Wenas Creek and the irrigation ditches that
24 traverse the property. There are three diversions that can be used. The diversion
25 into the Cameron Ditch in the $SE\frac{1}{4}SW\frac{1}{4}$ of Section 12 is most frequently used. A
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1 diversion in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13 is used if corn is grown and rill irrigated
2 in the field between the forks of Wenas Creek near the center of Section 13. A
3 third diversion in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 has historically been used, but not in
4 the last 10 to 15 years. Mrs. Cameron would like the opportunity to use that
5 diversion again if she finds it necessary. Water is pumped from the conveyance
6 ditches into pressurized sprinkler systems using 25 BHP and 15 BHP pumps. This
7 land receives supplemental water from the Wenas Irrigation District. Mrs. Cameron
8 is assessed by the district for 135 acres. The district stores 1.3 acre-feet of
9 water for each acre assessed. Richard Bain, a consultant hired by the district,
10 presented a report that stated five acre-feet per acre is needed to irrigate the
11 lands within the district boundaries when that quantity is available.

12 There are two certificates from the 1921 Wenas Creek Adjudication appurtenant
13 to the Cameron property. Certificate No. 7 is a Class 2 right with an 1870 date of
14 priority. It authorized the diversion of 3.2 cubic feet per second from Wenas
15 Creek for the irrigation of 160 acres within the E $\frac{1}{2}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$ NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$
16 of Section 13. The authorized points of diversion are within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the
17 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13. A portion of the place of use
18 on Certificate No. 7 is owned by Lazy Heart B, Inc. and they are claiming a 60 acre
19 share of the certificate. That is consistent with Mrs. Cameron's claim to 100
20 acres under the certificate. The proportionate quantity of water would be 2 cubic
21 feet per second. A statement submitted in the claimant's behalf shows a total use
22 of 435.6 acre-feet per year under this right.

23 Certificate No. 57A is a Class 15 right with an 1882 date of priority. It
24 authorized the diversion of 0.80 cubic foot per second from Wenas Creek for the
25 irrigation of 40 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13. The authorized points of
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 diversion are within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
2 Section 2. There was no testimony or evidence to show that the diversion in
3 Section 2 has been maintained. Although the certificate authorizes the irrigation
4 of 40 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, State's Exhibit SE-2, a map of the subbasin, shows
5 only 30 acres being irrigated. The extent of a right is limited to continued
6 beneficial use. There was no testimony of the map being inaccurate, nor did the
7 claimant provide any evidence of a transfer of a portion of the right. The State's
8 Investigation Report states 150 acres are irrigated and it may be that more than
9 100 acres are irrigated within the portion of Certificate No. 7's place of use
10 owned by the claimant. Lacking information to resolve the questions, the Referee
11 must conclude that only 30 acres of the right described in Certificate No. 57A have
12 continued to be irrigated.

13 An assertion was made that a portion of a Class 15 right awarded to Robert
14 Rennie for use in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13 is somehow appurtenant to
15 the Cameron land. Certificate No. 70 documents that right. There was no testimony
16 or evidence presented to support this assertion. The Cameron land is not described
17 in the certificate nor is there evidence of a change in place of use. The Referee,
18 therefore, must conclude that no portion of Certificate No. 70 is appurtenant to
19 the Cameron property.

20 Based on the foregoing, the Referee recommends that a right be confirmed to
21 Hazel Cameron with a June 30, 1870, date of priority for the use of 2.0 cubic feet
22 per second, 435.6 acre-feet per year for the irrigation of 100 acres and 3
23 acre-feet per year from Wenas Creek for stock water, within that portion of the
24 E $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of Wenas Creek, the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N.,
25 R. 17 E.W.M.

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28 Re: Subbasin No. 15
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1 It is also recommended that a right be confirmed to Mrs. Cameron with a
2 June 30, 1882, date of priority for the use of 0.60 cubic foot per second, 89.1
3 acre-feet per year from Wenas Creek for the irrigation of 30 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
4 Section 13, lying southwest of the North Wenas Road.

5 Both rights shall carry a provision that the land receives supplemental water
6 from the Wenas Irrigation District.

7 Upon confirmation of the proposed rights, it is recommended that the Director
8 of the Department of Ecology cancel, rescind or otherwise make null and void
9 Adjudicated Certificates No. 7 and 57A.

10
11 COURT CLAIM NO. 01222 -- Christensen Family Trust
12 01647

13 Claim No. 01222 was filed by Pearl L. James and Claim No. 01647 was filed by
14 Bruce C. West, with both claims describing the same lands. The Christensen Family
15 Trust was joined to both claims in November 1992. Ron Long, agent for the
16 Christensen Family Trust, testified at the evidentiary hearing. The Christensen
17 Family Trust apparently acquired the property in 1988.

18 The trust owns parcels of land in the SE $\frac{1}{4}$ of Section 30, the S $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ of
19 Section 29 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 32, T. 15 N., R. 18 E.W.M.. They are asserting
20 rights to irrigate the land under several certificates that issued as a result of
21 the 1921 Wenas Creek Adjudication.

22 Certificate No. 46 is a Class 4 right with an 1871 date of priority. It
23 authorized the diversion of 4.0 cubic feet per second for the irrigation of 160
24 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.
25 The trust owns a 20 acre parcel within this place of use, being the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
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1 Section 30. However, according to Mr. Long's testimony, this 20 acre parcel has
2 never been irrigated with waters from Wenas Creek. The land benefits from
3 sub-irrigation, but there has been no diversion of water to the land nor is there
4 an irrigation distribution system. The Referee concludes that any right this land
5 may have enjoyed under this certificate has relinquished due to a long and
6 continuous period of nonuse.

7 Certificate No. 47 is a Class 3 right with an 1865 date of priority that
8 authorized the diversion of 4.0 cubic feet per second for the irrigation of 160
9 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of
10 Section 32, all in T. 15 N., R. 18 E.W.M.. The trust owns the S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
11 Section 30 and according to the testimony approximately 18 of the 20 acres have
12 historically been irrigated. Depending on the weather, water is diverted as early
13 as March 15 and irrigation season ends by mid-October. At the time of the State's
14 investigation only about 8 of the 18 acres were being irrigated. However, Mr. Long
15 testified that prior to the trusts' ownership, the land west of the creek was being
16 irrigated and a 1977 aerial photograph of the area confirms this testimony. The
17 proportionate share of this certificate appurtenant to the trust land in the
18 S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30 is 0.45 cubic foot per second for the irrigation of 18
19 acres. The Referee recommends that a right be confirmed to the claimants in that
20 amount with a June 30, 1865, date of priority.

21 Certificate No. 108 is a Class 7 right with an 1872 date of priority that
22 authorizes the diversion of 4.0 cubic feet per second for the irrigation of 160
23 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29,
24 all in T. 15 N., R. 18 E.W.M. The trust owns the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29 and
25 irrigates that portion lying west of the North Wenas Road. Approximately 17 acres
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1 are being irrigated within that parcel and the testimony indicates this land has
2 been irrigated regularly since the certificate issued. This land is also irrigated
3 from around March 15 until October 15. The proportionate share of the certificate
4 that the land would enjoy is 0.425 cubic foot per second for the irrigation of 17
5 acres. The Referee recommends that a right be confirmed to the claimants in that
6 amount with a June 30, 1872, date of priority.

7 Certificate No. 48 is a Class 10 right with an 1877 date of priority. It
8 authorized the diversion of 1.52 cubic feet per second for the irrigation of 76
9 acres in all of Section 29, T. 15 N., R. 18 E.W.M., EXCEPT the $W\frac{1}{2}SW\frac{1}{4}$ and the
10 $SW\frac{1}{4}NW\frac{1}{4}$. The trust owns the $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$ and the $S\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$ of Section 29. According to
11 the testimony this land was once irrigated with waters from Wenas Creek transported
12 through the Longmire Ditch. The land is no longer being irrigated with creek water
13 and Mr. Long could not testify how long it had been since it was irrigated with
14 water from the creek. Testimony of witnesses for other claimants leads the Referee
15 to conclude that Longmire Ditch has not been used to transport water into this area
16 since the mid-1960's. In 1992 a portion of Longmire Ditch was used to carry water
17 to the Nedrow and Christensen Family Trust land. However, that apparently was the
18 first time in over 25 years that that had occurred. Based on that information, the
19 Referee concludes that any right the land may have enjoyed under Certificate No. 48
20 has relinquished for non-use under the provisions of RCW 90.14.160.

21 Certificate No. 81 is a Class 13 right with an 1880 date of priority that
22 authorized the diversion of 1.88 cubic feet per second for the irrigation of 93.85
23 acres in the $N\frac{1}{2}NE\frac{1}{4}$ and the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M. The trust
24 owns most of the $N\frac{1}{2}NE\frac{1}{4}$ and that portion of the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 32 lying east of
25 the North Wenas Road. Again, when the land was irrigated with water from Wenas
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 Creek it was transported through the Longmire Ditch, which has not serviced this
2 area for 25 years. For the same reasons expressed previously when discussing
3 Certificate No. 48, the Referee find that the portion of Certificate No. 81 that
4 was appurtenant to the trust lands has relinquished.

5 The trust land is within the boundaries of the Wenas Irrigation District and
6 the trust is a member of the district. According to Mr. Long's testimony, the
7 trust has 40 reservoir units for the land west of the North Wenas Road and 170
8 units for the land east of the road. The district records show the trust being
9 assessed for 210 shares, but it appears only the land west of the North Wenas Road
10 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29 and east of the South Fork of Wenas Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$
11 of Section 30 actually receive district water. The district stores 1.3 acre-feet
12 of water for each acre assessed. Both rights being recommended for confirmation
13 shall carry a provision that states the land receives supplemental water from the
14 Wenas Irrigation District. Livestock on the property drink directly from Wenas
15 Creek and the South Fork of Wenas Creek. This use is covered by the
16 non-diversionary stock water stipulation.

17 Upon confirmation of the proposed rights, it is recommended that the Director
18 of the Department of Ecology cancel, rescind or otherwise make null and void
19 Adjudicated Certificates No. 46, 47, 48, 81, 108 and Certificate of Change Recorded
20 in Volume 2, Page 783.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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2 COURT CLAIM NO. 00223
3 (A)01384

-- Stan Coffin
Ruth Coffin
Richard Coffin
Christopher Coffin
Thomas Coffin
Sarah Coffin
Nancy Hutton
James Hutton
Jonathan Hutton

7 A Statement of Claim was submitted to the Court by the above named
8 individuals. James Hutton appeared at the evidentiary hearing and testified in
9 support of the claim.

10 The record shows that the claimants own approximately 5,100 acres of land
11 within the Wenas Creek Subbasin. They are claiming a right for domestic supply for
12 two cabins and stock watering. A water system has been developed and serves a
13 cabin approximately 800 feet south of the north quarter corner of Section 21, T. 16
14 N., R. 16 E.W.M. and one located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21. Livestock corralled
15 near the cabin in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21 are also watered from this system. The
16 water source is an excavated creek bed. The creek bed at times is dry, however,
17 the excavation apparently is adequate to capture the shallow ground water that is
18 hydraulically connected to the creek.

19 There are approximately 400 cow/calf pairs that range on the claimants
20 property from April 1 to October 31. The Court claim identified that water is
21 diverted for these animals, however, the only diversion discussed at the hearing
22 was to the cabins and corral. The testimony indicated that the cattle drink
23 directly from surface water sources encountered throughout the claimants ownership.
24 The stock water stipulation would cover this use.

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1 According to the testimony the cabins were constructed prior to 1900, but an
2 exact date was not given. However, land was predominately settled in the Wenas
3 Valley between 1867 and 1900 and the record shows that neighboring land owned by
4 the claimants was settled in 1885. Therefore, it is reasonable to conclude that
5 this land was settled around 1885 and construction of a home would accompany that
6 settlement.

7 Water Right Claims No. 120490 and 118049 were filed for the land in Section
8 21, T. 16 N., R. 16 E.W.M. pursuant to the requirements of RCW 90.14.

9 Certificates No. 73 and 74 from the 1921 Wenas Creek Adjudication are
10 appurtenant to lands owned by the claimants in Section 23, T. 16 N., R. 16 E.W.M..
11 Mr. Hutton testified that the land has not been irrigated during the 30 years he
12 has been familiar with the property and to his knowledge was not irrigated prior to
13 that. RCW 90.14.160 provides that a right to divert or withdraw state's waters
14 acquired through an adjudication that voluntarily goes unused for five or more
15 successive years is relinquished.

16 Based on the foregoing, the Referee recommends that a right be confirmed under
17 Court Claim No. 00223 with a June 30, 1885, date of priority for 0.03 cubic foot
18 per second, 3 acre-feet per year from an unnamed spring/stream for domestic supply
19 for two cabins and stock water. The Referee finds that the water rights described
20 in Certificates No. 73 and 74 have relinquished under the provisions of RCW
21 90.14.160 and, therefore, does not recommend confirmation of a right for irrigation
22 on the property described in those certificates.

23 Upon confirmation of the proposed right, it is recommended that the Director
24 of the Department of Ecology cancel, rescind or otherwise make null and void
25 Adjudicated Certificates No. 73 and 74.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1
2 COURT CLAIM NO. 00448 -- Thomas F. Colligan, Jr.
3 (A)01374 & Mrs. Thomas F. Colligan, Jr.
4 Violet Virginia Richards

5 Mr. and Mrs. Thomas F. Colligan, Jr. filed a Statement of Claim with the
6 Court. On May 30, 1992, Violet Virginia Richards was joined to the claim.
7 Ms. Richards, represented by Attorney Sarah Geary Ottem, and Ray Day a previous
8 owner of the property, testified at the evidentiary hearing.

9 Ms. Richards purchased the property described in Court Claim No. 00448 from
10 the Colligans in 1983, but was not substituted for them at that time. The
11 Colligans current whereabouts are unknown resulting in Ms. Richards being joined to
12 the claim rather than substituting in their place. Ms. Richards owns Lot 2 of
13 Short Plat Q-3, which is the east 1504 feet of the $S\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of Section 24, T. 15 N.,
14 R. 17 E.W.M. Her property is 20 acres in size, with 19 acres being irrigated with
15 waters from Wenas Creek. Creek water is diverted into the Purdin Ditch in the
16 $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24 and pumped from the ditch into her irrigation system near the
17 southwest corner of the property. Livestock grazing on the property drink directly
18 from Purdin Ditch. She generally has approximately 45 animals.

19 Ms. Richards' property is within the place of use described on Certificate No.
20 22 from the 1921 adjudication of Wenas Creek and she is claiming a proportionate
21 share of that certificate for the 19 irrigated acres. Certificate No. 22, a Class
22 10 right with an 1877 date of priority, authorized the diversion of 2.21 cubic feet
23 per second from Wenas Creek for the irrigation of 110.6 acres within the $N\frac{1}{2}SE\frac{1}{4}$ and
24 the $S\frac{1}{2}NE\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.. The proportionate share of the
25 certificate that would be appurtenant to Ms. Richards' property is 0.38 cubic foot
26 per second for the irrigation of 19 acres.

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1 The testimony shows that this land has continued to be irrigated since the
2 certificate issued in 1921. Natural flow water is available under the certificate
3 until mid to late June. Irrigation usually begins around March 15 and continues
4 until October. After the end of June, supplemental water from the Wenas Irrigation
5 District is used. The district assesses the land for 19 acres and stores 1.3
6 acre-feet per assessed acre. Ms. Richards testified that approximately 60.8
7 acre-feet per year of natural creek flow is used. An additional two acre-feet per
8 year would be needed for diversionary stock watering.

9 Based on the foregoing, it is recommended that a right be confirmed to Violet
10 V. Richards and Mr. and Mrs. Thomas F. Colligan, Jr. with a June 30, 1877 date of
11 priority for the diversion from the South Fork of Wenas Creek of 0.38 cubic foot
12 per second, 60.8 acre-feet per year for the irrigation of 19 acres and 2 acre-feet
13 per year for stock water.

14 The right shall carry the provision that the land receives supplemental water
15 from the Wenas Irrigation District. Upon confirmation of the proposed rights, it
16 is recommended that the Director of the Department of Ecology cancel, rescind or
17 otherwise make null and void Adjudicated Certificate No. 22.

18
19
20 COURT CLAIM NO. 00423 -- Donald F. Cox
(A)01377 & Alvera A. Cox
Paulette L. Buckley

21 A Statement of Claim was submitted by Donald F. and Alvera A. Cox. Paulette
22 L. Buckley was joined to the claim on November 20, 1992. The claimants were
23 represented by Attorney Sarah Geary Ottem. Paulette Buckley, who is the Cox's
24 daughter, and Jerry Longmire testified at the evidentiary hearing.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 At the time the claim was filed Mr. and Mrs. Cox owned Government Lot 1 of
2 Section 30, Government Lots 3 and 4 of Section 19, both in T. 15 N., R. 18 E.W.M.
3 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M. Since that time, Ms. Buckley
4 has acquired Government Lot 1 of Section 30, and Government Lots 3 and 4 of Section
5 19, T. 15 N., R. 18 E.W.M.. Her parents continue to reside on the land through a
6 life estate.

7 According to the testimony, the land described in the claim consists of 149
8 acres, of which 130 acres are irrigated with waters from Wenas Creek. Water is
9 diverted from the creek into Purdin Ditch in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24. Four
10 withdrawal points on the ditch have been used in the past to irrigate the land.
11 Currently water is withdrawn from the ditch only near the northwest corner of the
12 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24. The fields are irrigated with portable hand lines and wheel
13 lines. Ms. Buckley testified that 3.08 cubic feet per second, 3.57 acre-feet per
14 year per acre irrigated of natural flow water is used between April 1 and June 30.
15 After July 1, supplemental water from the Wenas Irrigation District is used to
16 irrigate the land. The district assesses Ms. Buckley and Mr. and Mrs. Cox for 100
17 acres and stores 1.3 acre-feet per acre assessed. Up to 150 cow/calf pairs graze
18 on this land and drink directly from Purdin Ditch. This would require
19 approximately 0.06 cubic feet per second, 6 acre-feet per year for stock water. The
20 testimony showed continuous beneficial use from the 1930's to the present.

21 Certificate No. 82 from the 1921 Wenas Creek adjudication is appurtenant to
22 the claimant's land. It is a Class 8 right with an 1875 date of priority and
23 authorized the diversion of 3.08 cubic feet per second for the irrigation of 154
24 acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ (Government Lot 1) Section 30, W $\frac{1}{2}$ SW $\frac{1}{4}$ (Government Lots 3 and
25 4) Section 19, T. 15 N., R. 18 E.W.M. and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17
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1 E.W.M. The authorized points of diversion are in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
2 Section 24. At some point in the past these diversions were abandoned in favor of
3 using Purdin Ditch. Although Ms. Buckley stated that 3.08 cubic feet per second is
4 used, the proportionate share of the right that would be appurtenant to 130
5 irrigated acres is 2.6 cubic feet per second. The 1921 decree specifically limited
6 the water rights to 0.02 cubic foot per second per acre irrigated.

7 Based on the foregoing, it is recommended that a right be confirmed under
8 Court Claim No. 00423 with a June 30, 1875, date of priority for the diversion from
9 the South Fork of Wenas Creek of 2.6 cubic feet per second, 464.1 acre-feet per
10 year for the irrigation of 130 acres and and 6 acre-feet per year for stock water.
11 The right shall carry the provision that the land receives supplemental water from
12 the Wenas Irrigation District.

13 Upon confirmation of the proposed right, it is recommended that the Director
14 of the Department of Ecology cancel, rescind or otherwise make null and void
15 Adjudicated Certificate No. 82.

16
17 COURT CLAIM NO. 00872 -- Crest Air, Inc.

18 COURT CLAIM NO. 00875 -- Hillcrest Angus, Inc.

19 Statements of Claim were filed by Crest Air, Inc. and Hillcrest Angus, Inc.
20 for the use of waters from Wenas Creek for cattle watering. Attorney John Rayback
21 represented the two entities and Paul Rickman, president of both organizations,
22 testified at the evidentiary hearing.

23 Both claims are asserting a right to use Wenas Creek water for cattle watering
24 on lands in the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M. lying south of the North
25 Wenas Road. Mr. Rickman questioned the filing of a claim in the name of Crest Air,
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 Inc., implying whomever filed the claim had no authority to do so. Mr. Rayback
2 filed both of the claims for Crest Air and Hillcrest Angus.

3 Mr. Rickman testified that stock water was supplied through a ditch that
4 diverted water from Wenas Creek, crossed John Mayo's property, went through the
5 land described in the court claims, and continued east onto the James Poisel
6 property. Water has not flowed through this ditch to the Crest Air/Hillcrest Angus
7 land for a number of years. Mr. Rickman was not able to testify as to how long it
8 had been since water was conveyed through the ditch. He has been watering his
9 livestock from wells located on the property. The State's map exhibit, SE-2, does
10 not show a ditch crossing the Mayo land to the Crest Air/Hillcrest Angus property.

11 Additionally, there was no testimony or evidence presented to show that a
12 right had been established for stock watering on this property. The witness did
13 not identify a certificate appurtenant to the property. This land is included in
14 the Iowa Flats certificate, however, the testimony did not indicate that water was
15 provided through the Iowa Flat Ditch. Also, Certificate of Change, recorded in
16 Volume 1, Page 283 issued to Merlin O. Belcher transferring 0.19 cubic foot per
17 second of the Iowa Flat Ditch Company right from the $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$ of Section 4,
18 T. 14 N., R. 18 E.W.M. to the $SE\frac{1}{4}$ of Government Lot 1 of Section 4, T. 14 N.,
19 R. 18 E.W.M., thereby removing any right the land may have enjoyed. This
20 certificate of change issued on May 10, 1950.

21 Based on the foregoing, the Referee cannot recommend the confirmation of any
22 water rights under Court Claims No. 00872 and 00875.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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2 COURT CLAIM NO. 01191 -- Ray E. Day
3 & Tola R. Day

4 A Statement of Claim was filed by Ray E. and Tola R. Day for the use of waters
5 from Wenas Creek for the irrigation of 44 acres. The Days were represented by
6 Attorney James Hutton. Mr. Day, Hazel Cameron and Violet Briscoe testified in
7 support of the claim.

8 The Days irrigate 44 acres within the $SE\frac{1}{2}SW\frac{1}{2}$ and the west 1,000 feet of the
9 $SW\frac{1}{4}SE\frac{1}{4}$ of Section 13, T. 15 N., R. 17 E.W.M.. Two certificates from the 1921
10 decree are appurtenant to their property. Certificate No. 62 is a Class 10 right
11 with an 1877 date of priority. It authorized the diversion of 3.20 cubic feet per
12 second for the irrigation of 160 acres within the $N\frac{1}{2}NE\frac{1}{4}$ of Section 24 and the $S\frac{1}{2}SE\frac{1}{4}$
13 of Section 13. Four points of diversion are authorized by the certificate, one
14 being within the $SW\frac{1}{4}SE\frac{1}{4}$ of Section 13, which is used by the Days. The Days are
15 claiming 30 acres of this right and that contention was not challenged at the
16 hearing.

17 Certificate No. 63 is a Class 19 right with an 1886 date of priority. It
18 authorized the diversion of 0.28 cubic foot per second for the irrigation of 14
19 acres within the $S\frac{1}{2}SW\frac{1}{4}$ of Section 13. Certificate of Change recorded in Volume
20 1-4, Page 179 authorized changing the point of diversion to the $SW\frac{1}{4}SE\frac{1}{4}$ of Section
21 13. The Days are claiming this entire right.

22 According to the testimony, irrigation on this land has continued since the
23 decree was entered in 1921. Water is withdrawn from the South Fork of Wenas Creek
24 near the Day's north property line. Supplemental water is provided by the Wenas
25 Irrigation District. Although only 44 acres are irrigated, the Days are assessed
26

27 REPORT OF REFEREE
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1 for 70 acres and receive 1.3 acre-feet per year for each acre they are assessed.
2 Since their rights are a very low class, the Days do not receive water past June 30
3 and need the additional water from the district to get through the irrigation
4 season. The Days also raise up to 500 head of cattle and 40 horses. The livestock
5 drink directly from Wenas Creek as it traverses the Day property. There is
6 diversionary stock water use.

7 Based on the foregoing, it is recommended that a right be confirmed to Ray E.
8 and Tola R. Day with a June 30, 1877, date of priority for the use of 0.60 cubic
9 foot per second, 95.6 acre-feet per year from Wenas Creek for the irrigation of 30
10 acres. It is also recommended that a right be confirmed with a June 30, 1886, date
11 of priority for the diversion of 0.28 cubic foot per second, 41.58 acre-feet per
12 year from Wenas Creek for the irrigation of 14 acres.

13 Both rights shall carry a provision that supplemental water is used from the
14 Wenas Irrigation District.

15 Upon confirmation of the proposed rights, it is recommended that the Director
16 of the Department of Ecology cancel, rescind or otherwise make null and void
17 Adjudicated Certificates No. 62 and 63.

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21 COURT CLAIM NO. 01602 -- Alvin G. Evans
& Betty L. Evans

22 A Statement of Claim was submitted by the Evans for the use of waters from
23 Wenas Creek and unnamed springs for livestock watering. Mr. Evans testified at the
24 evidentiary hearing.

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1 The Evans own land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12 south of Wenas Creek and the
2 N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 14 N., R. 18 E.W.M.. According to Mr. Evans
3 testimony, he purchased the land in Section 12 from Gordon Vose in 1971. During
4 Mr. Vose's ownership the land was irrigated with waters from Wenas Creek from a
5 diversion located on land now owned by Lee Hargroves. A portion of the Iowa Flat
6 Ditch Company certificate is appurtenant to the SW $\frac{1}{4}$ SE $\frac{1}{4}$, for the irrigation of 19.4
7 acres. Mr. Hargroves claimed that right was appurtenant to the lands he owns in
8 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12 and he is irrigating over 19.4 acres with waters from
9 Wenas Creek. The Evanses have never irrigated their land with a diversion from
10 Wenas Creek. Mr. Evans believes that the land is subirrigated due to its location
11 next to the creek. Any water right that may have been appurtenant to the land has
12 relinquished due to five or more successive years of nonuse.

13 Livestock raised on the Evans property drink directly from Wenas Creek or from
14 a pond located near the east property line in Section 13. The pond is fed by the
15 flow from two adjacent springs. The testimony appears to indicate that the springs
16 naturally flow into the pond, rather than being diverted to the pond. These
17 non-diversionary stock water uses are covered by the stock water stipulation and no
18 other right will be confirmed under Court Claim No. 01602.

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20
21 COURT CLAIM NO. 02131 -- Rudolph Frausto
& Konnie Frausto

22 A Statement of Claim was filed by Rudolph and Konnie Frausto for the use of
23 waters from Wenas Creek for irrigation and stock water. Larry Villegas,
24 Mr. Frausto's nephew, testified at the evidentiary hearing.

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1 Mr. Frausto owns 20 acres in the $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 14 N.,
2 R. 18 E.W.M.. He is claiming a right to irrigate 15 acres with waters from Wenas
3 Creek and an unnamed stream that flows from a spring located in the $SW\frac{1}{4}SE\frac{1}{4}$ of
4 Section 11. According to the testimony, Mr. Frausto pumps approximately 20 gallons
5 per minute from Wenas Creek to sprinkler irrigate a portion of his land and also
6 flood irrigates a portion using water from the unnamed stream. Several 500 gallon
7 tanks are filled with water and used to irrigate shade trees and pasture grass
8 immediately surrounding the trees. It was not clear how the tanks were filled with
9 water. Water from the unnamed stream also subirrigates a portion of the land.
10 There was no testimony to show the existence of an actual diversion from the
11 unnamed stream.

12 Certificate No. 13, a Class 1 right with an 1867 date of priority, from the
13 1921 adjudication is appurtenant to the Frausto property. It authorized the
14 diversion of 2.52 cubic feet per second for the irrigation of 126.26 acres in the
15 $SE\frac{1}{4}SE\frac{1}{4}$ and the $W\frac{1}{2}SE\frac{1}{4}$ of Section 11 and the $SW\frac{1}{4}SW\frac{1}{4}$ of Section 12, T. 14 N.,
16 R. 18 E.W.M. Certificate of Change recorded in Volume 1, Page 1001, which issued
17 in 1969, is also appurtenant to the Frausto property. It changed the point of
18 diversion of 0.315 cubic foot per second to a point in the $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 11
19 for use in the $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 11. Apparently at the time the certificate of
20 change was issued 0.315 cubic foot per second was being used to irrigate the
21 $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 11. The certificate authorized sufficient water for 0.02 cubic
22 foot per second per irrigated acre, so 0.315 cubic foot per second could be used on
23 15.75 acres.

24 According to Mr. Villegas' testimony, the Fraustos have owned the land since
25 1977. There was no testimony about how long the land has been irrigated by the
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1 Fraustos in the manner described. In 1967 the legislature adopted RCW 90.14, which
2 contained provisions for relinquishing unused water rights. RCW 90.14.160 provided
3 that any person entitled to divert water through an appropriation authorized
4 through a general adjudication who voluntarily fails, without sufficient cause, to
5 use all or part of said right for five successive years after the effective date of
6 the act relinquishes the unused portion of the right. A sufficient cause is a
7 legal proceeding, such as this adjudication, that effects the water right or the
8 land. After 1977 when this case was filed, a water right could not be relinquished
9 for nonuse. However, if the right or a portion of the right is unused for five
10 successive years between 1967 and 1977, the unused portion relinquishes.

11 The testimony indicates that between 1969 and 1977 the use of water from Wenas
12 Creek changed dramatically with significantly less water being used since 1977 than
13 in the past. The witness was unable to testify about water use on the property
14 prior to 1977, so the Referee does not know when the full right was exercised. Do
15 to that lack of information, the Referee can only confirm a right to the extent it
16 is presently being exercised.

17 Therefore, based on the testimony and evidence, the Referee recommends that a
18 right be confirmed with a June 30, 1867, date of priority for the diversion of 0.04
19 cubic foot per second, 12 acre-feet per year for the irrigation of 15 acres within
20 the $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M.. It is recognized that this
21 quantity of water will provide only marginal irrigation for the land.

22 The Referee cannot recommend that a right be confirmed for use of the unnamed
23 stream because there was no testimony of an actual diversion from this source.
24 There also was testimony that livestock drink directly from Wenas Creek and the
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1 unnamed stream. This type of nondiversionary use is covered by the stock water
2 stipulation and no additional right will be confirmed.

3 Upon confirmation of the proposed right, it is recommended that the Director
4 of the Department of Ecology cancel, rescind or otherwise make null and void
5 Adjudicated Certificate No. 13 and Certificate of Change recorded in Volume 1, Page
6 1001.

7
8
9 COURT CLAIM NO. 01111 -- Grant S. Green
10 & Eveleth S. Green

11 A Statement of Claim was filed with the Court for the use of waters from Wenas
12 Creek for irrigation and stock watering. Gary Green, the claimants' son, testified
13 at the evidentiary hearing on behalf of the claim.

14 The claimants own approximately 410 acres of land in a portion of the E $\frac{1}{2}$ of
15 Section 24, T. 16 N., R. 16 E.W.M. and the W $\frac{1}{2}$ of Section 19, T. 16 N., R. 17
16 E.W.M.. Two certificates stemming from the 1921 Wenas Creek Adjudication are
17 appurtenant to this land. Certificate No. 28, a Class 13 right with an 1881 date
18 of priority authorized the diversion of 1.43 cubic feet per second from Wenas Creek
19 for the irrigation of 71.5 acres in the W $\frac{1}{2}$ of Section 19, T. 16 N., R. 17 E.W.M..
20 The authorized points of diversion are in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, and the NE $\frac{1}{4}$ SW $\frac{1}{4}$
21 and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 16 N., R. 16 E.W.M. Certificate No. 27, a Class 14
22 right with an 1882 date of priority authorized the diversion of 1.16 cubic feet per
23 second from Wenas Creek for the irrigation of 58 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and
24 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 16 N., R. 16 E.W.M.. Certificate of Change recorded in
25 Volume 1-4, Page 175 authorized changing the point of diversion for Certificate No.

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1 27 to a point 400 feet east and 100 feet south from the center of Section 24, in
2 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24.

3 According to the testimony and evidence, a maximum of 130 acres were irrigated
4 on the Green's land prior to their acquiring it in 1946. Approximately 40 acres
5 were irrigated from the creek using gravity flow ditches during the first few years
6 it was owned by the Greens. Subsequently the land was leased with some irrigation
7 occurring between 1948 and 1958. In 1962 Grant Green retired from the military and
8 moved onto the property. Little was done to irrigate the land until 1972 when he
9 began consistently irrigating a seven acre field and periodically irrigating a 15
10 acre field from the creek. This was accomplished by using a portable 7 HP diesel
11 engine and Peerless pump. The Dalton Ditch and the Dalton-Burge Ditch carry water
12 diverted from Wenas Creek to neighboring downstream property. Livestock pastured
13 on the Green property are able to drink from these ditches when they carry water.
14 Water from these ditches are not used to irrigate any of the Green property.

15 Besides Wenas Creek the claimant is asserting rights to use several other
16 surface water sources, including Dry Creek, Evans Canyon, Middle Fork Canyon, two
17 unnamed canyons for stock water, domestic supply, and lawn and garden irrigation.
18 There was testimony that these water uses are ongoing and were observed in the
19 early 1970's. However, there was no testimony to establish a legal foundation for
20 the use of water, such as evidence to show that the water uses were initiated early
21 enough to establish a water right under either the Prior Appropriation Doctrine or
22 the Riparian Doctrine. Additionally, there is no evidence that RCW 90.14 claims
23 were filed for these sources and adjudicated certificates did not issue for them in
24 1921. Consequently, the Referee cannot recommend that water rights be confirmed
25 for any of these miscellaneous surface water sources on the claimants' property.
26

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1 It is apparent that water rights from Wenas Creek were established for the
2 claimants' property prior to the 1921 adjudication and Certificates 27 and 28
3 memorialized those rights. However, the only beneficial use that has continued is
4 stock watering from the ditches that traverse the property and the irrigation of 22
5 acres in the SW $\frac{1}{4}$ of Section 19. The remainder of the water rights have
6 relinquished under the provisions of RCW 90.14.160. Mr. Green argues there is a
7 sufficient cause that operates to prevent relinquishment, however, this argument is
8 not persuasive. There is no testimony that would indicate that water was
9 consistently unavailable for the years 1968 to 1977 and the operation of legal
10 proceedings, namely this adjudication, did not commence until October of 1977.
11 Therefore, the Referee finds that the right encompassed in Certificate No. 27 and
12 the unused portion of the right encompassed in Certificate No. 28 has relinquished.

13 The Referee recommends that a right be confirmed to Grant S. Green, Sr., and
14 Eveleth S. Green with a June 30, 1881, date of priority for the diversion from
15 Wenas Creek of 0.44 cubic foot per second, 66 acre-feet per year for the irrigation
16 of 22 acres and 1 acre-foot per year for stock watering. During the 1970's the
17 claimant changed the point of diversion being used from the authorized point to
18 three possible points in the SW $\frac{1}{4}$ of Section 19. Although they sought and obtained
19 authorization from the Department of Ecology to change the point of diversion under
20 Certificate No. 27, the same authorization was not sought for Certificate No. 28.
21 Since the change in point of diversion occurred fairly recently and the use at the
22 new point of diversion did not continue and the right has not been exercised for
23 approximately 15 years, the Referee recommends that the right be confirmed at the
24 points of diversion authorized in the certificate and the claimants be directed to
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1 the Department of Ecology to file an application to change the point of diversion
2 pursuant to the provisions of RCW 90.03.380.

3 Upon confirmation of the proposed rights, it is recommended that the Director
4 of the Department of Ecology cancel, rescind or otherwise make null and void
5 Adjudicated Certificates No. 27 and 28 and Certificate of Change Recorded in Volume
6 1-4, Page 175.

7
8
9 COURT CLAIM NO. 01906 -- Tom Green
10 Merton G. Raine

11 A Statement of Claim was submitted by Tom Green for the use of waters from
12 Wenas Creek and an unnamed spring. Merton Raine was joined to the claim on
13 December 2, 1991. Mr. Raine testified at the evidentiary hearing.

14 According to the testimony, Tom Green and Merton Raine are partners. They own
15 the E $\frac{1}{2}$ of Section 19 and that portion of the SW $\frac{1}{4}$ of Section 19, T. 16 N.,
16 R. 16 E.W.M. lying southeast of the Grant Green property. The testimony and
17 evidence show that the portion of the property lying southwest of the North Wenas
18 Road has historically been irrigated from the Dalton and Dalton-Burge Ditches that
19 divert water from Wenas Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
20 24, both in T. 16 N., R. 16 E.W.M. The state's investigation report identified
21 approximately 45 acres as being irrigated with waters from Wenas Creek. Mr. Raine
22 thought that figure was low, but did not testify to how many acres he thought were
23 being irrigated with creek water. He stated that a total of 80 acres were being
24 irrigated, but some of that was being irrigated solely with waters from a well. He
25 did testify that the land irrigated with creek water was southwest of the North
26

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1 Wenas Road and the state's exhibit map shows all but a very small area of one to
2 two acres being irrigated. An attachment to the claim filed with the court is a
3 county parcel map that shows this area consisting of 69.40 acres. Based on that
4 the Referee finds that 68 acres is the extent of current irrigation from Wenas
5 Creek on this property.

6 The irrigated land lies within the place of use described on Certificate No.
7 26 from the 1921 Wenas Creek adjudication. That certificate is a Class 13 right
8 with an 1880 date of priority. It authorized the diversion of 1.40 cubic feet per
9 second from Wenas Creek for the irrigation of 69.76 acres within the $W\frac{1}{2}SE\frac{1}{4}$ and the
10 portion of the $W\frac{1}{2}$ of Section 19 owned by Tom Green and Merton Raines. The
11 authorized diversion is within the $SW\frac{1}{4}SW\frac{1}{4}$ of Section 13, T. 16 N., R. 16 E.W.M.,
12 presumedly into the Dalton Ditch. Testimony and evidence were submitted to show
13 the efforts made in the past to keep both the Dalton and Dalton-Burge Ditches open
14 to serve the Green/Raine property. However, at the time of the state's
15 investigation, water was being pumped from the creek at a point in the $SE\frac{1}{4}SW\frac{1}{4}$ of
16 Section 19, near the center of the irrigated field. This change in point of
17 diversion occurred several years ago, apparently without compliance with the change
18 procedures provided in RCW 90.03.380.

19 A pond was excavated in 1980 at the site of a natural spring. Livestock drink
20 directly from the pond and occasionally water is pumped from the pond for
21 supplemental irrigation. There is no evidence that a water right permit and
22 certificate was obtained for this spring/pond development as required in RCW
23 90.03.250 through 90.03.330. That is the only method for establishing a water
24 right for a use initiated in 1980.

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1 The livestock on the property also have access to Wenas Creek and drink
2 directly from the creek. The non-diversionary stock water stipulation adequately
3 covers this type of use.

4 Based on the foregoing, it is recommended that a water right be confirmed to
5 Tom Green and Merton Raine with a June 30, 1880, date of priority for the diversion
6 of 1.36 cubic feet per second, 204 acre-feet per year from Wenas Creek for the
7 irrigation of 68 acres. However, due to the lack of a certificate issued pursuant
8 to RCW 90.03, a right cannot be confirmed for use of the unnamed pond.

9 Upon confirmation of the proposed right, it is recommended that the Director
10 of the Department of Ecology cancel, rescind or otherwise make null and void
11 Adjudicated Certificate No. 26.

12
13
14 COURT CLAIM NO. 01250 -- Colleen A. Hargraves (Jones)

15 Claim No. 01250 was submitted to the Court for the use of waters from Wenas
16 Creek for irrigation. At the evidentiary hearing stock water was added as a use.
17 Colleen A. Hargraves testified at the evidentiary hearing.

18 According to the testimony and evidence, Mrs. Hargraves owns the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and
19 most of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13 lying southwest of the North Wenas Road, T. 15 N.,
20 R. 17 E.W.M.. She irrigates 62 acres with water from Wenas Creek. Up to 42
21 cow/calf pairs and 8 horses have been raised on the property with stock water being
22 provided from either Wenas Creek or a well. Wenas Creek flows through the corner
23 of one field where the stock drink directly from the creek. This non-diversionary
24 use is covered by the stock water stipulation. Cameron Ditch cuts across a portion
25 of her property to deliver water to the neighboring Messer/Hagedorn/Rennie land.
26

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1 Although at this time the Cameron Ditch does not carry the Hargraves irrigation
2 water, her stock still drink directly from the ditch.

3 Until 1980 the Cameron Ditch and the Rennie Ditch were used to carry creek
4 water to irrigate the Hargraves property. In 1980 Mrs. Hargraves installed a 25
5 BHP pump on Wenas Creek near the southwest corner of the property and began using a
6 pressurized sprinkler system. There is nothing in the record to show that she
7 complied with the change requirements of RCW 90.03.380. She may revert to a
8 gravity system in the future and wishes to retain the original diversion point.

9 Certificate No. 70, a Class 15 right with an 1882 date of priority, authorized
10 the diversion of 1.28 cubic feet per second from Wenas Creek for the irrigation of
11 63.77 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13. A portion of the place of
12 use on the certificate is not owned by Mrs. Hargraves, but the owners of that land
13 have not filed a claim or made an appearance asserting ownership of a portion of
14 Certificate No. 70. Therefore, the Referee concludes that the right described in
15 Certificate No. 70 is appurtenant to the land owned by Mrs. Hargraves. The land
16 also receives supplemental water from the Wenas Irrigation District. The district
17 assesses Mrs. Hargraves for 70.99 acres and delivers 1.3 acre-feet per acre
18 assessed.

19 Based on the foregoing, the Referee recommends that a right be confirmed to
20 Colleen Hargraves with a June 30, 1882, date of priority for the diversion of 1.24
21 cubic feet per second, 186 acre-feet per year for the irrigation of 62 acres and
22 0.02 cubic foot per second, 2 acre-feet per year for stock water.

23 This right shall carry a provision that states supplemental water is provided
24 by the Wenas Irrigation District. Upon confirmation of the proposed rights, it is
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1 recommended that the Director of the Department of Ecology cancel, rescind or
2 otherwise make null and void Adjudicated Certificate No. 70.

3
4 COURT CLAIM NO. 00498 -- E. Lee Hargroves
5 (A)02108 & Linda L. Hargroves
6 (A)06790

7 A Statement of Claim was submitted by Gordon Vose for the use of waters from
8 Wenas Creek. On February 21, 1989, E. Lee Hargroves was substituted for Mr. Vose
9 and subsequently submitted an amended claim. Mr. Hargroves testified at the
10 evidentiary hearing.

11 The Hargroves are claiming a right to divert 0.89 cubic foot per second from
12 Wenas Creek and an unnamed spring for the irrigation of 23 acres and stock water in
13 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M.. A 7.5 BHP pump withdraws water
14 from Wenas Creek and the land is irrigated with a wheel line and a gun sprinkler.
15 Flow from the spring being claimed by the Hargroves enters Wenas Creek upstream of
16 the pump location and is withdrawn as part of the Wenas Creek water. The land is
17 planted to hay and pasture. Livestock raised drink either from Wenas Creek, the
18 unnamed stream below the spring, or from a pond located on the Hargroves property.
19 The pond is physically separated from Wenas Creek and does not receive any of the
20 water diverted from the creek. It appears to be fed from the shallow ground water
21 in the area.

22 The Hargroves are basing their claim to a water right on Certificate No. 34
23 from the 1921 Wenas Creek Adjudication, which is a Class 14 right issued to Iowa
24 Flat Ditch Company. That Certificate authorized the diversion of 22.19 cubic feet
25 per second for the irrigation of 1109.5 acres. The certificate further described
26 the number of acres that could be irrigated within each subdivision identified

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1 within the place of use, showing 19.4 acres authorized for irrigation in the SW $\frac{1}{4}$ SE $\frac{1}{4}$
2 of Section 12. On November 30, 1973, Gordon Vose was issued Certificate of Change
3 recorded in Volume 1-3, Page 57, authorizing him to change the point of diversion
4 for 0.39 cubic foot per second from Certificate No. 34 to a point in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
5 Section 12. That quantity of water is the proportionate share of the quantity on
6 the certificate for 19.4 acres. The diversion being used by the Hargroves is in
7 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12.

8 The Hargroves are also claiming a second certificate of change as being
9 appurtenant to their property. Gordon Vose was also issued Certificate of Change
10 recorded in Volume 1-3, Page 58, authorizing him to change the point of diversion
11 for 0.50 cubic foot per second from Certificate No. 34 to a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
12 Section 12. It is not clear to which lands this certificate of change would be
13 appurtenant. Certificate No. 34 did not describe the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 as lands
14 the certificate was appurtenant. It is possible that a diversion in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
15 Section 12 could be used to serve lands other than those in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, but based
16 on the record before the Referee no assumptions can be made concerning the lands
17 benefiting from this portion of the right. The Hargroves did not present any
18 evidence to prove that the right described in Certificate of Change recorded in
19 Volume 1-3, Page 58 is appurtenant to their land. The quantities authorized in the
20 two certificates of change are considerably higher when combined than what would be
21 reasonable for irrigating 23 acres.

22 The testimony and evidence support the conclusion that a right exists for the
23 irrigation of 19.4 acres within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12. Therefore, the Referee
24 recommends that a right be confirmed under Court Claim 00498 with a June 30, 1881
25 date of priority for the diversion of 0.39 cubic foot per second, 58.2 acre-feet
26

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29

1 per year for the irrigation of 19.4 acres. The non-diversionary stock water uses
2 are covered by the stock water stipulation and no additional right will be
3 recommended. Since the spring flows into Wenas Creek above the diversion from the
4 creek, and there is no separate appropriation of the spring water, its use will be
5 considered part and parcel of the creek right.

6 Upon confirmation of the proposed right, it is recommended that the Director
7 of the Department of Ecology cancel, rescind or otherwise make null and void
8 Adjudicated Certificate No. 34 and Certificate of Change recorded in Volume 1-3,
9 Page 57.

10
11 COURT CLAIM NO. 00435 -- Don Hazen
12 (A)01376 Alfred Pope
13 & Patricia Pope
Hallie Person

14 A Statement of Claim was filed with the Court by Don Hazen. On January 3,
15 1992, Alfred and Patricia Pope and Hallie Person were joined to the claim.
16 Attorney James Hutton represented the claimants. Don Hazen, Patricia Pope, Hazel
17 Cameron and Rosella Calvert testified in support of the claim.

18 Hazen and Sons, a partnership consisting of Clyde Hazen and sons, Don and Tom
19 Hazen, purchased approximately 300 acres of land, most of which is described in the
20 claim filed with the Court. Sixty-five acres of rangeland was sold to John
21 Fletcher in 1965 and that land is not described in the Court claim. At the time of
22 the Hazen purchase, 30 acres were irrigated orchard, 70 acres irrigated hay and
23 pasture, and the balance was rangeland. In 1950 they began removing the orchard
24 and consistently irrigated 100 acres of hay since the 1950's. A dairy was operated
25 on the property until 1973. The partnership dissolved in 1968 with Don Hazen

26
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1 becoming the sole owner of the property. There are approximately 300 head of
2 livestock raised on the Hazen property. Currently they are watered from the
3 domestic well, but have in the past been allowed access to Wenas Creek. In the
4 future they may again have access to the creek and the non-diversionary stock water
5 stipulation would apply.

6 There are four certificates from the 1921 Wenas Creek Decree that are
7 appurtenant to the land described in the Court Claim. Certificate No. 76 is a
8 Class 9 right with an 1876 date of priority authorizing the diversion of 1.23 cubic
9 feet per second from Wenas Creek for the irrigation of 61.5 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$
10 of Section 11 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, T. 15 N., R. 17 E.W.M.. Certificate No.
11 75 is a Class 17 right with an 1884 date of priority that authorized the diversion
12 of 0.40 cubic foot per second from Wenas Creek for the irrigation of 20 acres in
13 the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11. Certificate No. 104 is a Class 17 right with an 1884 date
14 of priority that authorized the diversion of 0.18 cubic feet per second from Wenas
15 Creek for the irrigation of 9 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, Tract 1, Plat
16 A, Wenas Highland Orchard Tracts. Certificate No. 106 is a Class 9 right with an
17 1876 date of priority that authorized the diversion of 0.08 cubic foot per second
18 for the irrigation of 4 acres in Tract 1, Plat A, Wenas Highlands Orchard Tracts.
19 The point of diversion authorized by all the certificates is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$
20 of Section 2, T. 15 N., R. 17 E.W.M. Although there currently is not an existing
21 diversion at that point, historic maps show a diversion and a ditch called the
22 Yakima Highlands Canal, beginning at that location and continuing downstream
23 through the the lands described in the claim. The record shows that the Kayser
24 Ditch apparently was at approximately the same location prior to construction of
25 the Yakima Highland Canal. Obviously the point of diversion described in the
26

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1 certificates issued in 1921 was changed to four pump locations in the NE $\frac{1}{4}$ of
2 Section 11. There was no testimony to indicate when this occurred, nor is there
3 any evidence of compliance with the change procedures identified in RCW 90.03.380.

4 In 1990 Mr. Hazen sold 117 acres lying south and west of Wenas Creek to Alfred
5 and Patricia Pope and Hallie F. Person. Ms. Person's interest in the land has
6 since been sold to Bill Barry, the Pope's son-in-law. Mr. Hazen retained
7 approximately 66 acres of land, of which all but one-half acre is irrigated, in the
8 SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 south of the North Wenas Road, the NE $\frac{1}{4}$ of Section 11 north
9 of Wenas Creek and south of the North Wenas Road and a portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ of
10 Section 12 north of Wenas Creek and south of the North Wenas Road, all in T. 15 N.,
11 R. 17 E.W.M. Water is diverted from the creek at three points utilizing a 5 BHP
12 and two 30 BHP pumps. The Popes and Mr. Barry irrigate 24 acres in the portion of
13 the NE $\frac{1}{4}$ of Section 11 lying south of Wenas Creek. According to a map they
14 submitted as an exhibit, approximately 20 of the irrigated acres lie in the E $\frac{1}{2}$ NE $\frac{1}{4}$
15 and the remaining four acres lie in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11. They divert water
16 from the creek using a 30 BHP pump. The rest is unirrigated rangeland. The Popes
17 raise 65 to 75 head of livestock, which drink directly from Wenas Creek and are,
18 therefore, covered by the non-diversionary stock water stipulation.

19 Mr. Hazen testified that the combined Class 9 rights (Certificates No. 76 and
20 106), which authorize the irrigation of 65.5 acres, are appurtenant to the 65 acres
21 he has continued to own and irrigate. Although this testimony was uncontested, the
22 next claimant to testify, Diane Wood, asserted a claim to a portion of Certificate
23 No. 76. The Wood property is in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, immediately adjacent to
24 the Hazen property. Mrs. Wood, who was also represented by Attorney James Hutton,
25 testified that their land has historically been irrigated from Wenas Creek and at
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1 the time of the prior adjudication was owned by H. C. Schumacher, the name on the
2 certificate. Mrs. Wood provided copies of letters dated April and May 1940 to
3 Charles Bartholet, Supervisor of Hydraulics, showing 10 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
4 Section 12 irrigated from Wenas Creek and questioning whether a portion of the
5 Schumacher Class 9 right was appurtenant to that land. Nothing was submitted to
6 show what response was received from Mr. Bartholet.

7 Approximately six acres of Mr. Hazen's irrigated lands lie within Lot 2 of
8 Wenas Highland Orchard Tracts, within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
9 Section 2, which is outside of the place of use described on Certificates No. 76
10 and 106. The Class 9 rights are not appurtenant to this portion of his property;
11 therefore, only 55.5 of the 61.5 acres authorized for irrigation in Certificate No.
12 76 are appurtenant to the Hazen property. There is nothing in the record to show
13 the existence of a water right certificate appurtenant to the land in Lot 2 of
14 Wenas Highland Orchard Tracts.

15 Mrs. Pope testified that the Class 17 rights are appurtenant to their land.
16 However, the Class 17 rights only authorized the use of water in the W $\frac{1}{2}$ NE $\frac{1}{4}$ of
17 Section 11; and 20 of the 24 acres being irrigated appear to lie in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
18 Section 11. There has been no testimony to indicate that a change in place of use
19 occurred. Additionally, the historic maps in the record only show four acres south
20 of Wenas Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11 being irrigated.

21 Both Mr. Hazen and Mrs. Pope testified that the irrigation season for their
22 classes of rights ends by June 15. Supplemental water is provided by the Wenas
23 Irrigation District and is used from June 15 through the remainder of the
24 irrigation season. The district assesses Mr. Hazen for 52.23 acres in Section 11
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29

1 and 15.70 acres in Section 12 and the Popes for 160.03 acres in Section 11 and
2 10.20 acres in Section 12. The district delivers 1.3 acre-feet per acre assessed.

3 The record does not provide a clear picture of the status of water rights that
4 may be appurtenant to the Hazen and Pope property and historical use to support
5 those certificates. Much of the land that is irrigated south of Wenas Creek is
6 within an area not described in any of the certificates. It may be that a change
7 in place of use occurred, but that assertion was not made by the claimants. Were
8 that assertion to be made, evidence to support that position would be necessary,
9 such as specific location of the lands originally irrigated, the date the transfer
10 occurred and any additional facts about the transfer that may be available.

11 Between Don Hazen and the Woods, a right is being asserted for the irrigation of
12 78.5 acres based on a certificate that authorizes the irrigation of 61.5 acres.
13 The Referee can only recommend confirmation of a 61.5 acre right. The Woods
14 provided copies of correspondence to Charles Bartholet, Supervisor of Hydraulics
15 either questioning whether the right should be divided or taking a position that
16 the certificate should be proportionately divided between the $E\frac{1}{2}NE\frac{1}{4}$ Section 11 and
17 $W\frac{1}{2}NW\frac{1}{4}$ Section 12. However, there is nothing in the record to show the decision
18 reached by the supervisor. During the hearing neither the Woods nor their attorney
19 challenged Mr. Hazen's assertion that the entire certificate was appurtenant to his
20 property, except by presenting their claim. However, Mr. Hazen is only irrigating
21 approximately 55.5 acres within the place of use authorized on Certificate No. 76.

22 Based on the foregoing, the Referee recommends that a right be confirmed to
23 Don Hazen with a June 30, 1876 date of priority for the use of 1.19 cubic feet per
24 second, 178.5 acre-feet per year from Wenas Creek for the irrigation of 59.5 acres.
25 Because there are only four acres being irrigated on the Pope property within the
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1 place of use for the certificates, it is recommended that a right be confirmed to
2 Alfred and Patricia Pope with a June 30, 1884, date of priority for the diversion
3 of 0.08 cubic foot per second, 12 acre-feet per year from Wenas Creek for the
4 irrigation of 4 acres. Although additional land is being irrigated there is
5 nothing in the record to establish a legal basis for use of Wenas Creek waters.
6 The Wenas Irrigation District assesses the Popes for 170.3 acres, so storage water
7 may be the only source of supply for the additional acres.

8 Both rights shall carry the provision that the lands receive supplemental
9 water from the Wenas Irrigation District.

10 Upon confirmation of the proposed rights, it is recommended that the Director
11 of the Department of Ecology cancel, rescind or otherwise make null and void
12 Adjudicated Certificates No. 75, 76, 104 and 106.

13
14 COURT CLAIM NO. 00436 -- Thomas S. Hazen
15 (A)01375 & Charlain E. Hazen
16 (A)06527

17 A Statement of Claim was submitted to the Court by Burt Newland for the use of
18 Wenas Creek and two unnamed springs. On September 17, 1991, Thomas S. Hazen and
19 Charlain E. Hazen were substituted for Mr. Newland. Two amendments have been filed
20 on the claim. Thomas Hazen and Burton Newland testified at the evidentiary
21 hearing.

22 Rights are being asserted for the use of waters from Wenas Creek and two
23 unnamed springs for irrigation, stock water, and domestic supply within the $W\frac{1}{2}SW\frac{1}{4}$
24 and that portion of the $SW\frac{1}{4}NW\frac{1}{4}$ of Section 29, T. 16 N., R. 17 E.W.M. lying south of
25 the North Wenas Road. Two certificates, and possibly a third, from the 1921 Wenas
26 Creek Adjudication are appurtenant to the claimants' property. Certificate No. 3,

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1 as amended by Certificate of Change Recorded in Volume 1-4, Page 115, is a Class 7
2 right with an 1872 date of priority. The portion appurtenant to the Hazen property
3 consists of 0.36 cubic foot per second from Wenas Creek for the irrigation of 18
4 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29. Certificate No. 23 is a Class 17 right with an
5 1884 date of priority that authorized the diversion of 0.57 cubic foot per second
6 from Wenas Creek for the irrigation of 28.3 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29. A
7 second Class 17 right issued to Carl Dalton, the individual named in Certificate
8 No. 23, and the Hazens are claiming this right is appurtenant to the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
9 Section 19, south of the North Wenas Road. Certificate No. 24 authorized the
10 diversion of 0.02 cubic foot per second for the irrigation of 1 acre. The legal
11 description on the certificate and in the decree would seem to describe a piece of
12 property in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, in that the place of beginning for the legal
13 description is on the centerline of Section 29, 302.5 feet east of the quarter
14 corner common to Sections 29 and 32 and then you are directed to go east 452 feet
15 to the county road. However, the point that is 302 feet east of the quarter corner
16 common to Sections 29 and 32 is not on a centerline and is over 1,000 feet from the
17 North Wenas Road. The legal description would make sense if the starting point was
18 302 feet from the quarter corner common to Sections 29 and 30. The description
19 would then mirror the legal description for a small parcel of land owned by the
20 Hazens, to which they feel the certificate is appurtenant. Mr. Hazen is asserting
21 that this right authorized the diversion of water from an unnamed spring in the
22 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29. This spring is being used to irrigate approximately one acre
23 in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, south of the road and for stock watering. The information in the
24 record does not support this assertion. The point of diversion described in the
25 certificate is the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, through which Wenas Creek flows. There is
26

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1 no evidence to show the certificate authorized the use of a spring rather than
2 Wenas Creek. Additionally, there is no evidence that a RCW 90.14 claim was filed
3 for the spring, nor was there sufficient testimony to show that use of the spring
4 began during the time frames necessary to establish a right under either the Prior
5 Appropriation or Riparian Doctrines.

6 The testimony shows that the land now irrigated with waters from Wenas Creek
7 has continually been irrigated with creek water since the water rights confirmed in
8 the 1921 decree were established. There is conflicting information about the
9 number of acres that are being irrigated. The state's investigation reports state
10 that 35 acres are being irrigated with waters from Wenas Creek and approximately 22
11 of those acres receive supplemental water from an unnamed spring located in the SE $\frac{1}{4}$
12 of Section 30. Mr. Hazen testified that 42 acres are being irrigated from the
13 creek and an additional 20 acres are irrigated from the spring, for a total of 62
14 acres. Two of the exhibits submitted by Mr. Hazen are a copy of a Yakima County
15 Assessor's Map for Section 29 and an aerial photograph. On both of these, section
16 and quarter section lines are shown and Mr. Hazen has drawn lines around the
17 portion of his property for which he is claiming an irrigation right. The land
18 that has been irrigated all appears to lie in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the portion of the
19 SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying south of the North Wenas Road. This would consist of approximately 42
20 acres total, however, some of this land cannot be irrigated. Wenas Creek traverses
21 the property, there appears to be a farmstead with several buildings near the North
22 Wenas Road and the southerly part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ appears to be in its natural state,
23 lacking cultivation. It would appear that the State's estimate of 35 irrigated
24 acres is accurate.

25
26
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1 According to Mr. Hazen, a 20 acre field south of Wenas Creek is also irrigated
2 with waters from an unnamed spring in the SE $\frac{1}{4}$ of Section 30. Water Right Claim No.
3 038163 was filed by Burton C. Newland pursuant to the requirements of RCW 90.14 and
4 claims a right to divert 0.40 cubic foot per second, 80 acre-feet per year from an
5 unnamed spring in the SE $\frac{1}{4}$ of Section 30 for the irrigation of 20 acres in that
6 portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29 south of Wenas Creek. The claim identifies
7 1872 as the date water was first used, however, there was no testimony of historic
8 use of the spring. Although there was ample evidence submitted to support the
9 existence and continued use of water rights for diversions from Wenas Creek, there
10 was no testimony to establish a legal foundation for a water right to specifically
11 use the spring in Section 30, including testimony about historic use.

12 Based on the foregoing, the Referee recommends that rights be confirmed for
13 the diversion of waters from Wenas Creek as follows:

14 With a June 30, 1872, date of priority, 0.36 cubic foot per second, 54
15 acre-feet per year from Wenas Creek for the irrigation of 18 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
16 Section 29, T. 16 N., R. 17 E.W.M.

17 With a June 30, 1884, date of priority, 0.34 cubic foot per second, 51
18 acre-feet per year from Wenas Creek for the irrigation of 17 acres in that portion
19 of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T. 16 N., R. 17 E.W.M.
20 lying south of the North Wenas Road.

21 The Referee cannot recommend that rights be confirmed under Court Claim No.
22 00436 for the use of the two unnamed springs due to lack of a legal foundation for
23 the existence of a water right, evidence of historic use, and lack of a 90.14 claim
24 for the spring in Section 29.

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1 Upon confirmation of the proposed rights, it is recommended that the Director
2 of the Department of Ecology cancel, rescind or otherwise make null and void
3 Adjudicated Certificates No. 3, 23, and 24 and Certificates of Change Recorded in
4 Volume 1-4, Pages 115 and 116.

5
6 COURT CLAIM NO. 01576 -- John Hermanson
7 & Sandra E. Hermanson

8 A Statement of Claim was submitted to the Court by Herbert A. & Mary Ann
9 Nelson for use of waters from Wenas Creek for irrigation of 15 acres. Mr. Nelson
10 testified at the evidentiary hearing and at that time amended the claim to include
11 use of two unnamed springs. John & Sandra Hermanson were substituted for the
12 Nelsons on September 2, 1993.

13 According to the testimony and evidence, the Nelsons own the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
14 Section 11, T. 14 N., R. 18 E.W.M. and irrigate approximately 15 acres of pasture
15 lying north of Wenas Creek. In the past they have raised up to 20 cow/calf pairs
16 on this land and when present the livestock drink directly from Wenas Creek.

17 Certificate No. 13 from the 1921 adjudication of Wenas Creek, as amended by
18 Certificate of Change recorded in Volume 1, Page 1000 is appurtenant to the
19 Nelsons' property. The certificate of change authorized changing the point of
20 diversion for a portion of Certificate No. 13 in the amount of 0.315 cubic foot per
21 second to be appurtenant specifically to the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 14 N.,
22 R. 18 E.W.M. The point of diversion authorized is located approximately 400 feet
23 north and 275 feet west of the southeast corner of Section 11. The proportionate
24 acreage from the certificate that would be appurtenant to the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
25 11 would be 15 acres. Mr. Nelson testified that it was his belief that the land
26

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1 has continuously been irrigated with waters from Wenas Creek since the certificate
2 issued. He testified that he uses 2.5 acre-feet per year to irrigate his land and
3 that he generally irrigates in June, July and August. Certificate No. 13 is a
4 Class 1 right, which would have a 1867 date of priority.

5 The livestock also have access to two ponds that are fed by unnamed springs
6 located on the claimant's property. One spring is located near the southeast
7 corner of the Nelson's property. This spring has been developed and water piped
8 to a stock watering pond. The pond was excavated shortly before the Nelson's
9 purchased the property in 1973. At the time of their purchase, this spring also
10 was used for domestic supply for the home on the property. In 1977 the spring's
11 flow declined and a well was constructed for that purpose. There is some
12 indication that the spring was also used for irrigation in the past. Mr. Nelson
13 testified that he thought the spring had been used for domestic supply for 30 years
14 prior to his purchase and possibly longer. However, there was no testimony that
15 would establish the age of the residence on the property. The land was part of the
16 Cleman family holdings in the early 1900's. The Cleman family had extensive
17 holdings in the Wenas Valley, evidenced by the large number of certificates that
18 issued in 1921 following the adjudication of Wenas Creek. There was no testimony
19 that would allow the Referee to conclude that this particular piece was the
20 location of the Cleman family homestead.

21 The certificates that issued as a result of the 1921 adjudication issued only
22 for Wenas Creek and its major tributaries and only for the purpose of irrigation.
23 There were no certificates issued for domestic supply, stock watering, or any other
24 use of small springs. Since the rights to use springs in the Wenas Creek basin
25 apparently were not previously adjudicated, a water right claim had to be filed
26

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1 pursuant to RCW 90.14 if a right is being asserted for a use beginning prior to
2 June 6, 1917. The Nelsons filed Claim No. 134211 pursuant to RCW 90.14 for use of
3 the spring located near the southeast corner of their property asserting a right is
4 for the use of the spring for fish propagation. Mr. Nelson testified that they
5 used the pond for that purpose for a couple years in the mid-1970's, but that use
6 had ceased by 1975. They are not now asserting a right for that use. There was no
7 90.14 claim filed for use of the spring for either stock watering or domestic
8 supply. Because of the lack of a 90.14 claim and lack of testimony about historic
9 use dating prior to establishment of the Surface Water Code on June 6, 1917, the
10 Referee cannot recommend that a right be confirmed for use of the unnamed spring
11 located approximately 250 feet north and 35 feet west from the southeast corner of
12 Section 11.

13 A second spring is located approximately 300 feet north and 460 feet west of
14 the southeast corner of Section 11. This spring source had not been developed for
15 appropriation. Water from the spring flows into a natural occurring pond and
16 livestock, when present, drink directly from the pond. This type of stock watering
17 is covered by the non-diversionary stock water stipulation and no additional water
18 right will be confirmed.

19 Based on the foregoing it is recommended that a right be confirmed to the
20 Hermansons with a June 30, 1867, date of priority for the use of 0.315 cubic foot
21 per second, 37.5 acre-feet per year from Wenas Creek for the irrigation of 15 acres
22 in the $E\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M. lying north of Wenas Creek.

23 Upon confirmation of the proposed right, it is recommended that the Director
24 of the Department of Ecology cancel, rescind or otherwise make null and void
25
26

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29

1 Adjudicated Certificate No. 13 and Certificate of Change recorded in Volume 1, Page
2 1000.

3
4 COURT CLAIM NO. 01913 -- Fred L. Hoff

5 Fred L. Hoff submitted a claim to the Court for the use of Horse Spring,
6 Newland Creek and Wenas Creek for irrigation and stock water. Testimony in support
7 of this claim was presented at the evidentiary hearing by Mr. Hoff, Burton Newland,
8 a previous owner of the land, and Tom Hazen, who has leased and farmed the land
9 since 1974.

10 According to the testimony and evidence, Mr. Hoff owns approximately 430 acres
11 in Sections 28, 29 and 32, T. 16 N., R. 17 E.W.M. He is claiming a right to
12 irrigate 12 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29 with waters from Wenas Creek and 30
13 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32 with waters from Newland Creek. He
14 also is asserting a right for stock watering from Newland and Wenas Creeks and
15 domestic lawn and garden irrigation from a spring. Stock pastured in the fields
16 can either drink directly from the creeks or from the irrigation canal that carries
17 water from Newland Creek to the irrigated land in Section 32. Livestock drinking
18 directly from the creek are covered by the non-diversionary stock water
19 stipulation.

20 The testimony shows that Carl Dalton owned the land subsequent to the Wenas
21 Decree. Burt Newland purchased it in 1936 and owned the land until 1971 when he
22 sold it to Fred Hoff. Mr. Hoff farmed the land himself until 1974 when he leased
23 it to Tom Hazen, who has farmed it until the present. Mr. Newland entered into an
24 agreement in 1945 with the Wenas Valley Soil Conservation District for managing his
25 farm. The agreement showed 50 acres in Section 32 being cultivated and farmed,
26

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1 however, it is unclear whether the entire 50 acres were being irrigated. The farm
2 map did show additional "dry pasture" fields, so it is possible the 50 acres were
3 irrigated.

4 Three certificates stemming from the Wenas Decree are appurtenant to the
5 claimant's property. Certificate No. 25 is a Class 25 right with a 1904 date of
6 priority that authorized the diversion of 0.15 cubic foot per second for the
7 irrigation of 7.65 acres in the $W\frac{1}{2}NW\frac{1}{4}$ and $NW\frac{1}{4}NW\frac{1}{4}$ of Section 32. The point of
8 diversion is in the $SE\frac{1}{4}NE\frac{1}{4}$ of Section 31, which would place it on what Mr. Hoff
9 refers to as Newland Canyon. There was no testimony of continued water use in the
10 $W\frac{1}{2}NW\frac{1}{4}$ of Section 32. Certificate No. 31 is a Class 17 right with a 1884 date of
11 priority that authorized the diversion of 0.80 cubic foot per second from Wenas
12 Creek for the irrigation of 39.99 acres in the $SE\frac{1}{4}$ and $SE\frac{1}{4}SW\frac{1}{4}$ of Section 29.
13 There was no testimony of continued irrigation in the portion of the $SE\frac{1}{4}SW\frac{1}{4}$ and $SE\frac{1}{4}$
14 of Section 29 that is owned by Mr. Hoff. Certificate No. 85 is a Class 14 right
15 with an 1881 date of priority that authorized the diversion of 1.17 cubic feet per
16 second from a point on Wenas Creek in the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 19, for the irrigation
17 of 58.3 acres in the $E\frac{1}{2}NW\frac{1}{4}$ and $W\frac{1}{2}NE\frac{1}{4}$ of Section 32. The testimony indicates that
18 approximately 30 acres have been irrigated within the $W\frac{1}{2}NE\frac{1}{4}$ of Section 32, however,
19 the source of water being used is Newland Creek, not Wenas Creek. Additionally,
20 Mr. Hoff appears to be irrigating 12 acres in the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 29 for which no
21 certificates have issued.

22 Mr. Hoff appears to be relying on four water right claims he filed pursuant to
23 RCW 90.14 for using waters from both Wenas Creek and Newland Creek. Water Right
24 Claims No. 137905 through 137908 were filed claiming rights to irrigate using water
25 from those two creeks. The claims identify 1910 as the date water was first used.
26

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1 The purpose of filing a claim under RCW 90.14 was to document water uses initiated
2 prior to adoption of the Surface Water Code on June 6, 1917, and the Ground Water
3 Code on June 6, 1945. However, Wenas Creek and its tributaries were adjudicated
4 with the final decree being signed in 1921. Any defendant to that action who was
5 found to hold a valid right to use water was confirmed a right in that decree and a
6 certificate issued. The owners of the Hoff property at the time of that
7 adjudication were defendants and received water right certificates; therefore, any
8 claims to use waters from Wenas Creek or its tributaries were settled at that time
9 and a RCW 90.14 claim cannot independently represent a valid water right.

10 There may have been changes in place of use, points of diversion and sources
11 of water made in the past, but that assertion was not made by the defendant, nor
12 was there any evidence presented in that regard. Therefore, with the limited
13 information currently before the Referee a recommendation to confirm irrigation
14 rights for use of waters from either Wenas Creek or Newland Creek cannot be made.

15 Mr. Hoff is also asserting a water right for domestic lawn and garden
16 irrigation from a spring located near his home in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32.
17 Approximately one-half acre is irrigated. There was no testimony of historic water
18 use dating back prior to 1917 when the Surface Water Code was adopted.
19 Additionally, the only RCW 90.14 claim filed for the spring stated it was only
20 being used for stock water. Therefore, the Referee cannot conclude that the spring
21 was first used for domestic supply prior to June 6, 1917. If the use began after
22 that date, compliance with the permit requirements of RCW 90.03 would have been
23 necessary in order to establish a water right. Due to the foregoing, the Referee
24 cannot recommend that a water right be confirmed for use of the spring for domestic
25 irrigation.

26
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1 It is recommended that the Director of the Department of Ecology cancel,
2 rescind or otherwise make null and void Adjudicated Certificates No. 25, 31 and 85.

3
4 COURT CLAIM NO. 06782 -- Galen H. Hoover
5 & Patricia L. Hoover

6 A Statement of Claim was submitted by the Hoovers for the use of waters from
7 Wenas Creek, its tributaries and an unnamed spring. They were represented by
8 Attorney Randall L. Ommen. Galen Hoover, Merton Raines, lessee of the property,
9 Burt Newland, a neighboring landowner, and Eleanor Feser, daughter and
10 granddaughter of former owners, testified at the evidentiary hearing regarding this
11 claim.

12 The Hoovers own approximately 1,107 acres of land in the Wenas Valley lying in
13 Sections 33 and 34, T. 16 N., R. 17 E.W.M. and Sections 3 and 4, T. 15 N.,
14 R. 17 E.W.M. They are claiming a right to irrigate 109 of those acres with waters
15 from Wenas Creek. The land that is being irrigated lies in that portion of the SE $\frac{1}{4}$
16 of Section 33 lying southwest of the North Wenas Road, that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$
17 of Section 34 lying southwest of the North Wenas Road, the N $\frac{1}{2}$ of Government Lot 4
18 of Section 3 and the northeast corner of Government Lot 1 of Section 4, T. 15 N.,
19 R. 17 E.W.M.. Mr. Hoover estimates that 109 acres are being irrigated.

20 The irrigated land is currently planted in hay and pasture. Water is pumped
21 from the creek using a portable centrifugal pumped powered by a power take-off from
22 a tractor. Wheel lines and impact sprinklers are used to irrigate the fields. Mr.
23 Hoover testified that creek water is used to irrigate the land as long as it is
24 available, but due to the low priority of his rights, creek water often is not
25 available. Mr. Hoover applied to the Department of Ecology and received a
26

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1 supplemental ground water right that allows him to irrigate the fields when creek
2 water is not available. Ground Water Certificate No. G4-28180C authorizes the
3 withdrawal of 850 gallons per minute, 270 acre-feet per year from the well for the
4 supplemental irrigation of 90 acres. Mr. Hoover testified that if he pumped 850
5 gallons per minute from April 20 to October 15, which the 1920 Report of Referee
6 identified as the normal irrigation season above Wenas Lake, 678 acre-feet per year
7 would be used to irrigate his land. However, there was no testimony that this is
8 the normal irrigation practice. The Report of Examination for the ground water
9 certificate stated that 3 acre-feet per year per acre is the water duty for alfalfa
10 and pasture crops for this area. The 1921 decree and certificates did not contain
11 an annual quantity of water for the rights confirmed. However, the Report of
12 Referee did state that this area is a low duty of water and acknowledged that the
13 water duty for Yakima Project lands (lands in the Yakima Valley receiving
14 irrigation water from the Bureau of Reclamation's Yakima Irrigation Project) ranged
15 from 1.82 to 3.36 acre-feet per acre. Three acre-feet per year per acre irrigated
16 should be adequate, and as Mr. Hoover testified due to the low class of the rights
17 appurtenant to his property, creek water is generally not available.

18 Five certificates stemming from the 1921 adjudication of Wenas Creek are
19 appurtenant to the portion of the Hoover property that is being irrigated.
20 Certificate No. 36 is a Class 17 right with an 1884 date of priority that
21 authorized the diversion of 0.67 cubic foot per second for the irrigation of 33.5
22 acres in the SE $\frac{1}{4}$ of Section 33. Certificate No. 38 is a Class 17 right that
23 authorized the diversion of 0.62 cubic foot per second for the irrigation of 31
24 acres within the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 33. The evidence indicates that 64.5 acres are
25 being irrigated within the SE $\frac{1}{4}$ of Section 33 so these two certificates have
26

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29

1 continued to be exercised to their full extent. Certificate No. 37, a Class 12
2 right with an 1879 date of priority authorized the diversion of 0.18 cubic foot per
3 second for the irrigation of 9.8 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34. That is
4 consistent with the number of acres that are currently being irrigated in this
5 subdivision. Certificate No. 35 is a Class 17 right that authorized the diversion
6 of 0.36 cubic foot per second for the irrigation of 18 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of
7 Section 3. The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3 is the same as Government Lot 4 of Section 3.
8 The irrigated lands lie in the N $\frac{1}{2}$ of Government Lot 4 and there appears to be
9 approximately 13 acres irrigated. Certificate No. 68 is a Class 22 right with an
10 1894 date of priority that authorized the diversion of 0.50 cubic foot per second
11 for the irrigation of 25 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and Government Lot 1 of Section 4.
12 There are only 2.5 acres currently irrigated within Government Lot 1 of Section 4
13 and there was no testimony of irrigation in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4.

14 Mr. Hoover is claiming to enjoy at least a portion of the rights described in
15 Certificates No. 97 and 98 which issued to the Wenas/Yakima Corporation.
16 Certificate No. 97 authorized the diversion of 1.22 cubic feet per second for the
17 irrigation of 60.75 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and
18 NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 15 N., R. 17 E.W.M.. Certificate No. 98 authorized the
19 diversion of 0.32 cubic foot per second for the irrigation of 16 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$
20 the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3. While Mr. Hoover does own a portion of the
21 place of use described on Certificates No. 97 and 98, there has been no testimony
22 to show that the portion he owns is presently or has ever been irrigated. The
23 certificates describe substantially more acreage than is authorized for irrigation
24 and most of the described land is outside of Mr. Hoover's ownership.

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1 Mr. Hoover testified that an average of 100 head of stock are raised on his
2 property, with as many as 400 head. He further stated that 400 head was beyond the
3 carrying capacity of the land and it would not support that many for any length of
4 time. The stock on the property, regardless of the number, drink directly from
5 natural sources and would, therefore, be covered by the non-diversionary stock
6 water stipulation.

7 There are two ponds on the property and it is not clear from the evidence
8 whether they are excavated or naturally occurring. One pond is used solely for
9 non-diversionary stock watering and the other is occasionally used to hold either
10 creek or well water. Water is pumped from the creek or well to the pond and then
11 pumped from the pond to the irrigated fields. There is no evidence that a separate
12 water right has been established for use of any natural occurring water that may be
13 in the pond.

14 Eleanor Feser and Burt Newland testified about past irrigation of the property
15 in the 1920's and 1930's. Based on their testimony and that of Mr. Hoover it is
16 apparent that the water rights appurtenant to the irrigated portion of the Hoover
17 land have continued to be put to beneficial use as water is available. There is
18 some inconsistency concerning the number of irrigated acres. Mr. Hoover testified
19 that he felt 109 acres were being irrigated. Mr. Newland testified that he recalls
20 between 80 and 90 acres being irrigated. The ground water certificate that issued
21 supplemental to the Wenas Creek certificates authorized the irrigation of 90 acres
22 and the map submitted by the state with their investigation report indicates
23 approximately 90 acres being irrigated. The preponderance of the evidence shows
24 that 90 acres are being irrigated: 64.5 acres in the SE $\frac{1}{4}$ of Section 33, 9.8 acres
25 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, which are the limits on the certificates for those two
26

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1 sections, 13 acres in Government Lot 4 of Section 3 and 2.5 acres in Government Lot
2 1 of Section 4.

3 Based on the foregoing the Referee recommends that the following rights be
4 confirmed to Galen H. and Patricia L. Hoover for the use of waters from Wenas
5 Creek:

6 With a June 30, 1879, date of priority, 0.18 cubic foot per second, 29.4
7 acre-feet per year for the irrigation of 9.8 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34,
8 T. 16 N., R. 17 E.W.M. southwest of the North Wenas Road.

9 With a June 30, 1884, date of priority, 1.29 cubic foot per second, 193.5
10 acre-feet per year for the irrigation of 64.5 acres in the SE $\frac{1}{4}$ of Section 33,
11 T. 16 N., R. 17 E.W.M. southwest of the North Wenas Road.

12 With a June 30, 1884, date of priority, 0.26 cubic foot per second, 39
13 acre-feet per year for the irrigation of 13 acres in the N $\frac{1}{2}$ of Government Lot 4,
14 Section 3, T. 15 N., R. 17 E.W.M..

15 With a June 30, 1894, date of priority, 0.05 cubic foot per second, 7.5
16 acre-feet per year for the irrigation of 2.5 acres in the NE $\frac{1}{4}$ of Government Lot 1
17 of Section 4, T. 15 N., R. 17 E.W.M..

18 The rights shall carry a provision that the land enjoys a supplemental ground
19 water right. Upon confirmation of the proposed rights, it is recommended that the
20 Director of the Department of Ecology cancel, rescind or otherwise make null and
21 void Adjudicated Certificate No. 35, 36, 37, 38 and 68.

22
23 COURT CLAIM NO. 00874 -- Iowa Flats Ditch Company

24 The Iowa Flats Ditch Company submitted a Statement of Claim to the Court for
25 the use of waters from Wenas Creek for the irrigation of 1,000 acres and stock
26

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1 water. Attorney John Rayback represents the ditch company and Paul Rickman,
2 president of the ditch company, testified at the evidentiary hearing.

3 The Court Claim filed by the ditch company asserts a right to divert 16.4
4 cubic feet per second from Wenas Creek for the irrigation of 1,000 acres and stock
5 water in Sections 2, 3 and 4, T. 14 N., R. 18 E.W.M. and Sections 19, 28 and 30,
6 T. 15 N., R. 19 E.W.M.. The claimed point of diversion is in the SW $\frac{1}{4}$ of
7 Section 32, T. 15 N., R. 18 E.W.M.. The 1921 Wenas Creek Decree was identified as
8 the basis for the claimed right, however, the appropriate certificate was not
9 identified. The State's investigation identified Certificate No. 34, a Class 14
10 right with an 1881 date of priority as having issued to the Iowa Flat Ditch
11 Company. Certificate No. 34 authorized the diversion of 22.19 cubic feet per
12 second for the irrigation of 1109.5 acres within Sections 1, 2, 3, 4 and 12,
13 T. 14 N. R. 18 E.W.M. as the authorized place of use. The point of diversion
14 described in the certificate is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T. 15 N.,
15 R. 18 E.W.M..

16 The Iowa Flat Ditch Company did not provide any testimony in support of this
17 claim, except for testimony about a dam constructed in the ditch in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
18 Section 33, T. 15 N., R. 18 E.W.M.. There was no testimony about the quantity of
19 water diverted into the ditch, the number of acres currently or historically
20 irrigated from the ditch, number of stock watered from the ditch or the location of
21 the land irrigated from the ditch. Mr. Rayback asserted that res judicata applied
22 based on the 1921 court decree and that testimony was not necessary. He also
23 asserted that the State had the burden of proof, rather than his client. This
24 contention is not supported, however. The burden proof concerning the existence of
25 a water right rests with the water user, United States v. Ahtanum Irrigation

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1 District, 124 F.Supp. 818 (1954) and United States v. Humboldt Lovelock Irrigation
2 Light and Power Co., 97 F.2d 38 (1938).

3 Prior to 1985 several motions were filed with the Court concerning the res
4 judicata effect of existing court decrees within the Yakima River Basin. On
5 January 28, 1985, the Court held a hearing on these motions and on June 21, 1985,
6 issued a memorandum opinion and subsequently an order dated September 6, 1985,
7 concerning res judicata as it pertains to this case.

8 The claimants that filed the motions argued that the common law doctrine of
9 res judicata applies to the existing decrees within the Yakima Basin.

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

13 The Court ruled that this doctrine will certainly apply to some or all of
14 the prior judgments or decrees within the basin. The claimants need not go
15 behind the decree to justify the rights granted. However, the Court recognized
16 that other factors would have to be considered by the Referee in determining
17 whether to confirm a water right based on an existing decree. For example,
18 prior to 1967 water rights could be lost through adverse possession.
19 Similarly, in 1967 the Legislature enacted RCW 90.14.160 - .180, which provides
20 that any water divertor who abandons or fails, without sufficient cause, to
21 beneficially use all or any part of such diversion for five successive years
22 relinquishes the same. These statutes may be applied in a general adjudication
23 such as the matter sub judice. See RCW 90.14.200(2). The Court went on to
24 state at page 12 of the memorandum opinion that the judgments and decrees may
25 very well be binding on all of the parties thereto and prima facie evidence of
26 water rights as against those not parties thereto. The quality of the evidence

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1 presented by any claimant before the Referee at the evidentiary hearings may
2 well have some bearing on the weight or effect to be given to each such
3 judgment or decree (emphasis added). Mr. Rayback, in behalf of the ditch
4 company, chose not to present any evidence for the Referee to consider.

5 Based on the foregoing, the Referee concludes that res judicata does apply
6 as far as determining whether a water right existed for the Iowa Flats Ditch
7 Company following the 1921 adjudication of Wenas Creek. However, due to the
8 lack of evidence the Referee cannot determine to what extent, if any,
9 beneficial use has continued. Therefore, the Referee cannot recommend that a
10 right be confirmed under Court Claim No. 00874 to the Iowa Flats Ditch Company.

11 It is recommended that the Director of the Department of Ecology cancel,
12 rescind or otherwise make null and void Adjudicated Certificate No. 34.

13
14 COURT CLAIM NO. 00390 -- Nathan E. Jenkins
15 & Cecelia K. Jenkins
16 Eugene Jenkins
17 & Barbara Jenkins
18 Karen Wickstrom

19 A Statement of Claim was submitted to the Court by the Jenkins for the use of
20 waters from the South Fork of Wenas Creek for irrigation of 20 acres. On
21 January 8, 1992, Floyd and Karen Winegar were joined to the Claim and on January 7,
22 1994, that portion of the claim was transferred to Karen Winegar Wickstrom. The
23 Jenkinse were represented by Attorney Sarah Geary Ottem. Nathan Jenkins, Jerry
24 Longmire and Allen Razy testified at the evidentiary hearing.

25 The Jenkinse originally owned a 20 acre parcel described as Parcel 3 of Short
26 Plat 79-268, which was the $W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M. They
27 subdivided their land in Short Plat 91-80, consisting of two lots. Lot No. 1,

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1 purchased by Floyd and Karen Winegar, consists of 18 acres, of which 17.5 are
2 irrigated. The Jenkinses retained Lot 2, encompassing two acres, of which 1.5
3 acres are irrigated. According to the testimony the 19 acres currently being
4 irrigated within the two lots have continuously been irrigated since the land was
5 settled by Charlie and Ruth Cowan in the late 1800's.

6 Certificate No. 22 from the 1921 adjudication of Wenas Creek is appurtenant to
7 the land described in Claim No. 00390. It is a Class 10 right with an 1877 date of
8 priority and authorized the diversion of 2.21 cubic feet per second for the
9 irrigation of 110.6 acres within the $S\frac{1}{2}NE\frac{1}{4}$ and $N\frac{1}{2}SE\frac{1}{4}$ of Section 24. Points of
10 diversion are authorized in the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 13 and the $NW\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NE\frac{1}{4}$ and
11 $SE\frac{1}{4}NE\frac{1}{4}$ of Section 24. Water to serve the Jenkins and Winegar lands are diverted
12 into the Purdin Ditch in the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24. The testimony indicates that at
13 least a portion of the water for this land was originally diverted from Wenas Creek
14 into the now abandoned Cameron, Collis and Pollard Ditch. There has been no
15 testimony to assist the Referee in determining when this ditch was abandoned, but
16 apparently use of the Purdin Ditch to serve this land coincided with the
17 abandonment.

18 The proportionate share of the certificate Ms. Wickstrom would have is 0.35
19 cubic foot per second for the irrigation of 17.5 acres and the Jenkins would have
20 0.03 cubic foot per second for the irrigation of 1.5 acres. The testimony was that
21 natural flow water is available under the certificate until late June after which
22 time supplemental water is provided by the Wenas Irrigation District. The district
23 assesses the land for 20 shares and provides 1.3 acre-feet per share. Mr. Jenkins
24 testified that 3.20 acre-feet per year per acre is used from the creek.

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1 Up to 45 head of livestock are raised on the Wickstrom property. The
2 livestock have access to and drink from both Purdin Ditch, which would be a
3 diversionary use, and from Wenas Creek, which is a non-diversionary use covered by
4 the stipulation.

5 Based on the foregoing, it is recommended that rights be confirmed to the
6 Jenkinses and Karen Wickstrom with a June 30, 1877, date of priority for the use of
7 waters from the South Fork of Wenas Creek as follows:

8 Jenkins - 0.03 cubic foot per second, 4.8 acre-feet per year for the
9 irrigation of 1.5 acres.

10 Wickstrom - 0.35 cubic foot per second, 56 acre-feet per year for the
11 irrigation of 17.5 acres and 2 acre-feet per year for stock water.

12 The rights will carry a provision that the lands receive supplemental water
13 from the Wenas Irrigation District. Upon confirmation of the proposed rights, it
14 is recommended that the Director of the Department of Ecology cancel, rescind or
15 otherwise make null and void Adjudicated Certificate No. 22.

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17
18 COURT CLAIM NO. 01644 -- Gary F. Johnson
19 & Wanda J. Johnson
20 Cliff Egge
21 & Liz Egge
22 Paul Madison
& Helen Madison
Bob Homier
& Bev Homier

23 Gary F. and Wanda J. Johnson filed a Statement of Claim for the use of waters
24 from Wenas Creek for the irrigation of 142 acres and stock watering. On
25 January 21, 1992, Paul and Helen Madison, Bob and Bev Homier and Cliff and Liz Egge
26

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1 were joined to the claim. Gary Johnson, Clifford Egge, Helen Madison and Robert
2 Homier testified at the evidentiary hearing. Attorney Sarah Geary Ottem
3 represented the Madisons and Homiers.

4 Mr. and Mrs. Johnson originally owned the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.
5 15 N., R 18 E.W.M. lying west of the North Wenas Road, Lot 1 of Short Plat 80-172,
6 which is a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29 east of the North Wenas Road and the
7 S $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M. Sometime in 1990 they sold
8 all of the land except Lot 1 of Short Plat 80-172. The original ownership
9 consisted of 142 acres. The land was irrigated with waters from Wenas Creek
10 utilizing two inter-connected systems to distribute water. Water is diverted from
11 the creek into a pond located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30. A 25 BHP pump withdraws
12 water from the pond into the irrigation system. Water is also diverted from the
13 creek into a sump located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. A 15 BHP pump withdraws
14 water from the sump. Livestock have historically been raised on the property and
15 the stock had access to drink from the creek. There was no testimony of a
16 diversionary stock water use.

17 The claim for a water right for this land is based on two certificates from
18 the 1921 Wenas Creek adjudication. Certificate No. 46, as changed by Certificate
19 of Change Recorded in Volume 2, Page 783, is a Class 4 right with an 1871 date of
20 priority that authorized the diversion of 4.0 cubic feet per second for the
21 irrigation of 160 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. Certificate
22 No. 108 is a Class 7 right with an 1872 date of priority that authorized the
23 diversion of 4.0 cubic feet per second for the irrigation of 160 acres in the
24 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29. These certifiates
25 issued to David Longmire and the testimony was that the land stayed in the Longmire
26

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1 family until the 1960's. The testimony also shows that most of the land continued
2 to be irrigated during the Longmire ownership and up to the present.

3 The exception to this is the 2.8 acre parcel that the Johnsons retained.
4 Mr. Johnson testified that it has not been irrigated during his ownership of the
5 land, which began in 1980. Longmire Ditch borders the property on the east and the
6 Johnsons identified this ditch as the historical conveyance system for creek water
7 to irrigate their parcel. The Johnsons purchased this particular piece of property
8 from Edith Nedrow. The testimony during the presentation of the Nedrow claims was
9 that in the mid-1960's, Earl Nedrow constructed a well and used water from the well
10 for irrigation. From that point forward Longmire Ditch has not been used to
11 irrigate any of the land in the Nedrow's ownership, which would include the land
12 now owned by the Johnsons. It is not clear whether the Johnson's land was
13 irrigated from the Nedrow well. RCW 90.14.160 provides that any person who fails
14 to use a water right acquired through appropriation, custom or general adjudication
15 for five or more successive years relinquishes that right or the unused portion of
16 the right. RCW 90.14.140 provides several "sufficient causes" that prevent
17 relinquishment of the right, but there has been no testimony or evidence to show a
18 sufficient cause exists to prevent relinquishment in this case.

19 Cliff and Liz Egge own the $N\frac{1}{2}S\frac{1}{2}NE\frac{1}{4}$ of Section 30 lying west of the North Wenas
20 Road, which consists of 35 acres. The entire parcel is irrigated alfalfa and oat
21 hay, except for approximately half an acre where the house, barn and corrals are
22 located. The evidence shows that approximately 0.60 cubic foot per second is
23 withdrawn from the creek using a 15 BHP pump. Irrigation starts within the first
24 couple weeks of April and continues until the end of September. The Wenas
25 Irrigation District provides supplemental water of 1.3 acre-feet per assessed
26

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1 share, which is used when natural flow creek water is no longer available. The
2 Egge property is assessed for 33.8 shares. An exhibit submitted by Mr. Egge
3 estimates that between 5.5 and 6.0 acre-feet per acre per year is potentially
4 needed to irrigate the land.

5 The Homiers own the South 740 feet of the NE $\frac{1}{4}$ of Section 30, which is
6 approximately 50 acres in size. They irrigate 45 acres of alfalfa and oat hay.
7 The sump previously discussed is on their property and is used to provide the water
8 for their irrigation system. They also receive supplemental water from the Wenas
9 Irrigation District in the same quantity as the Egges. Mr. Homier estimated that
10 they use approximately 4.86 acre-feet per year per acre irrigated. There was no
11 testimony concerning the instantaneous rate of diversion for the property.

12 The Madisons own the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30 and that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
13 Section 29 lying west of the North Wenas Road. The parcel is 58.2 acres in size
14 with 57 acres of alfalfa being irrigated. They also receive supplemental water
15 from the Wenas Irrigation District and are assessed for 70.61 shares. The Madisons
16 are claiming a right to use 4.95 acre-feet per acre. There was no testimony
17 concerning the instantaneous rate of diversion for their property. The pond
18 previously described is located on the Madison property and is part of their
19 distribution system.

20 The testimony has consistently shown that natural creek flow for Class 4 and 7
21 water rights lasts only until approximately July 15 and June 30 respectively.
22 After that time these claimants rely on Wenas Irrigation District for supplemental
23 water. Neither the Madisons or the Homiers provided any evidence of actual water
24 use, instead relying on the instantaneous quantity authorized in the certificate
25 appurtenant to their land. The estimates of annual water need were based on
26

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1 assuming continual diversion of the proportionate share of the quantity authorized
2 in the certificate, or for the Egges continual diversion of the measured
3 instantaneous quantity, rather than a calculation based on the irrigation practices
4 of the individual landowners. All of the parties irrigate hay that is cut once
5 during the April to July period. During hay cutting and baling the land is not
6 irrigated so it is inappropriate to assume continuous diversion. Testimony by
7 other claimants in the area and by expert witnesses for the United States, leads
8 the Referee to conclude that no more than 3 acre-feet per acre irrigated of natural
9 flow creek water would be used. A portion of each of the parties land lies within
10 the place of use of both certificates. Due to the different priority dates of the
11 certificates, the Referee must estimate the number of irrigated acres within each
12 ownership covered by the different certificates.

13 Based on the foregoing, the Referee recommends that rights be confirmed for
14 the use of Wenas Creek as follows:

15 For Cliff and Liz Egge, with a June 30, 1871, date of priority, 0.26 cubic
16 foot per second, 45 acre-feet per year for the irrigation of 15 acres within the
17 $N\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$ of Section 30 and with a June 30, 1872, date of priority, 0.34 cubic foot
18 per second, 60 acre-feet per year for the irrigation of 20 acres within the
19 $N\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$ of Section 30.

20 For Paul and Helen Madison, with a June 30, 1871, date of priority, 0.975
21 cubic foot per second, 117 acre-feet per year for the irrigation of 39 acres in the
22 $NE\frac{1}{4}SE\frac{1}{4}$ of Section 30 and with a June 30, 1872, date of priority, 0.45 cubic foot
23 per second, 54 acre-feet per year for the irrigation of 18 acres in the $W\frac{1}{2}SW\frac{1}{4}$ of
24 Section 29 west of the North Wenas Road.

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1 For Bob and Bev Homier, with a June 30, 1871, date of priority, 0.56 cubic
2 foot per second, 67.5 acre-feet per year for the irrigation of 22.5 acres in the
3 south 746 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and with a June 30, 1872, date of
4 priority, 0.56 cubic foot per second, 67.5 acre-feet per year for the irrigation of
5 22.5 acres in the south 740 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30.

6 All rights shall carry the provision that the land receives supplemental water
7 from the Wenas Irrigation District. The non-diversionary stock water use that
8 occurs on the land under each ownership is covered by the stock water stipulation.

9 The Referee finds that any right that may have been appurtenant to the 2.8
10 acre parcel now owned by Gary and Wanda Johnson has relinquished under the
11 provisions of RCW 90.14.160 and RCW 90.14.200. Therefore, it is recommended that a
12 right not be confirmed to the Johnsons under Court Claim No. 01644.

13 Upon confirmation of the proposed rights, it is recommended that the Director
14 of the Department of Ecology cancel, rescind or otherwise make null and void
15 Adjudicated Certificates No. 108 and 46 and Certificate of Change recorded in
16 Volume 2, Page 783.

17
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19
20 COURT CLAIM NO. 00493 -- Chuck Kisner
00494

21 Statements of Claim were filed by L. W. and Blanche M. Gano for the use of
22 waters from Wenas Creek and an infiltration trench and spring. Chuck Kisner
23 appeared at the evidentiary hearing to testify in support of the claims.
24 Mr. Kisner testified that he is purchasing the property from the Ganos.

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26
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1 Mr. Kisner owns the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and a portion of the
2 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.. According to his testimony he
3 irrigates approximately 85 acres with waters from Wenas Creek and an infiltration
4 pond/trench. Water is diverted from the creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
5 T. 15 N., R. 18 E.W.M. and carried to the pond through six inch buried pipe. Water
6 is then pumped from the pond using a 10 BHP pump. A creek, locally known as Spring
7 Creek, exits the pond and carries overflow to the South Fork of Wenas Creek. Up to
8 115 cow/calf pairs and 17 horses have been raised on the land and drink from the
9 South Fork of Wenas Creek, Spring Creek, Wenas Creek and the infiltration pond.
10 The non-diversionary stock water stipulation covers this type of livestock
11 watering.

12 Mr. Kisner is claiming Class 3 water rights from the 1921 adjudication for his
13 property. However, review of the records show that only the portion of his land in
14 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 enjoy a Class 3 right.
15 Certificate No. 47 is the Class 3 right and it authorized the diversion of 4.0
16 cubic feet per second for the irrigation of 160 acres in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 32,
17 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30. Mr. Kisner's land in the
18 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 is not within the place of use for Certificate No. 47.
19 Certificate No. 81, which is a Class 13 right authorized the diversion of 1.80
20 cubic feet per second for the irrigation of 93.85 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$
21 of Section 32. Therefore, the irrigated lands owned by Mr. Kisner in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
22 Section 32 have a Class 13 right. Class 13 rights have an 1880 date of priority.
23 The Referee believes that the Class 3 right would enjoy an 1865 date of priority.
24 The land is riparian to Wenas Creek and was identified as being riparian in the
25 Report of Referee for the 1921 adjudication of the creek. That Report of Referee
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 15
29

1 identified that the date the land described in the certificate was settled in 1865
2 and the water right initiated in 1871. The ranking in the original decree was
3 based on the 1871 date, however, one of the qualifications at the end of the decree
4 attempted to make the Class 3 right equal with the Class 1 and 2 rights for lands
5 settled in 1867 and 1870.

6 The proportionate share of the Class 3 right that Mr. Kisner's land would
7 enjoy is 2.0 cubic feet per second for the irrigation of 80 acres in the $NE\frac{1}{4}NE\frac{1}{4}$ of
8 Section 31 and the $NW\frac{1}{4}NW\frac{1}{4}$ of Section 32. The proportionate share of the Class 13
9 right would be 0.10 cubic foot per second for the irrigation of five acres in a
10 portion of the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 32.

11 The previous owners of the property, the Ganos, obtained a certificate from
12 the State for use of the infiltration trench/pond. Ground Water Certificate No.
13 4801-A, with an October 22, 1962, date of priority authorized the diversion of 225
14 gallons per minute, 200 acre-feet per year from the trench for the irrigation of 50
15 acres in the $N\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 31, the $N\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$ and portion of the $NE\frac{1}{4}NW\frac{1}{4}$ of
16 Section 32. The right carried the provision that the authorized quantity of water
17 was less any amount utilized for the irrigation of these same lands under existing
18 rights. The Findings of Fact and Decision that preceded issuance of the
19 certificate identified Wenas Creek water rights as being appurtenant to the
20 property and that creek water was not available the entire irrigation season in
21 some years.

22 The Court has previously ruled that ground water rights will not be determined
23 during this adjudication. However, documents filed with Court Claim No. 00493 lead
24 the Referee to question whether the source described in Ground Water Certificate
25 No. 4801-A is actually a ground water source. The Findings of Fact and Decision
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 repeatedly refer to a spring source at the site of the pond/trench excavation. Mr.
2 Kisner testified that water is available from the pond even when creek water is not
3 being diverted into the pond. The conclusions in the Findings of Fact and Decision
4 state that it is difficult to categorize the waters as surface or ground water and
5 found that it was not necessary. At this time, however, it is necessary to reach a
6 conclusion on whether surface or ground water is being utilized. Based on the
7 evidence presented, the Referee concludes that surface water is being appropriated.

8 Based on the foregoing, the Referee recommends that a right be confirmed under
9 Court Claim No. 00493 with an October 22, 1962, date of priority for the withdrawal
10 of 225 gallons per minute, 180 acre-feet per year from an infiltration pond/trench
11 for the irrigation of 45 acres in the $N\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ of Section 31, the $NW\frac{1}{4}NW\frac{1}{4}$ of Section
12 32 and that portion of the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 32 described as follows: Beginning at
13 a point 150 feet south from the northwest corner of said $NE\frac{1}{4}NW\frac{1}{4}$; thence $S\ 38^{\circ}\ E\ 460$
14 feet, more or less; thence $N\ 51^{\circ}\ E\ 200$ feet, more or less, to the south right of
15 way of the North Wenas Road; thence southeasterly along said right of way 600 feet,
16 more or less, to a point on the west line of said $NE\frac{1}{4}NW\frac{1}{4}$; thence north along said
17 line 1,140 feet, more or less, to the point of beginning; All in T. 15 N.,
18 R. 18 E.W.M.

19 It is recommended that the following rights be confirmed for the use of waters
20 from Wenas Creek: With a June 30, 1865, date of priority, 2.0 cubic feet per
21 second, 320 acre-feet per year for the irrigation of 80 acres in the $NE\frac{1}{4}NE\frac{1}{4}$ of
22 Section 31 and the $NW\frac{1}{4}NW\frac{1}{4}$ of Section 32. With a June 30, 1880, date of priority,
23 for the diversion of 0.10 cubic foot per second, 15 acre-feet per year for the
24 irrigation of 5 acres in that portion of the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 32 described as
25 follows: Beginning at a point 150 feet south from the northwest corner of said
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1 NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence S 38° E 460 feet, more or less; thence N 51° E 200 feet, more or
2 less, to the south right of way of the North Wenas Road; thence southeasterly along
3 said right of way 600 feet, more or less, to a point on the west line of said
4 NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence north along said line 1140 feet, more or less, to the point of
5 beginning; All in T. 15 N., R. 18 E.W.M.

6 Since the right to use the infiltration pond is supplemental to the Wenas
7 Creek water rights, the confirmed rights shall carry a provision that indicates the
8 maximum amount of water that can be used under a combination of the rights. Upon
9 confirmation of the proposed rights, it is recommended that the Director of the
10 Department of Ecology cancel, rescind or otherwise make null and void Adjudicated
11 Certificates No. 47 and 81 and Ground Water Certificate No. 4801-A.

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14 COURT CLAIM NO. 01570 -- Roy J. Knopp
15 & Miriam Knopp
Rudolph Frausto
16 & Cheryl L. Pyeatt
Richard A. Karel
17 & Mary J. Karel
Mark S. Clippinger
18 & Susan R. Clippinger
Jim Root
19 & Kari Root
Leo E. Guertin
20 & Clo Guertin
John M. Levien
21 Everett Calahan
& Dorothy Calahan
22 Michael L. Frausto

23 A Statement of Claim was filed with the Court by Roy J. and Miriam Knopp. On
24 November 4, 1991, the other parties were joined to the claim. Mr. Knopp appeared
25 at the evidentiary hearing and testified about his knowledge of the historical
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 water use on all of the property he owned at the time the claim was originally
2 filed and then testified specifically about the 12 acres still owned at the time of
3 the hearing. Leo Guertin, Mark Clippinger, and Larry G. Villegas, representing
4 Rudolph Frausto, testified about the individual parcels purchased from the Knopps.
5 John M. Levien purchased from Brian L. and Denise E. Krahn and on January 24, 1994,
6 were substituted for the Krahns on the claim. The Krahns, Everett D. and Dorothy
7 A. Calahan, Richard A. and Mary J. Karel, and Jim and Kari Root did not appear at
8 the hearing.

9 Mr. and Mrs. Knopp purchased the land described in Court Claim No. 01570 in
10 1947 from Roy Knowles and at that time the land was irrigated with waters from
11 Wenas Creek carried through the Cleman Ditch. In 1956 the State Department of
12 Hydraulics, a predecessor to the Department of Ecology, required the installation
13 of weirs on Wenas Creek diversions. Many of the landowners did not comply and
14 after that the Knopps had trouble getting water through the ditch. They eventually
15 stopped using the ditch, but could not identify exactly when that happened, just
16 that it was quite a few years ago. Since then there has not been a diversion of
17 water from the creek to serve the Knopp property. Part of it has been subirrigated
18 due to the irrigation practices on the neighboring Schneider property to the west.

19 In the late 1980's the Knopps subdivided the property and sold most of it to
20 the parties that have been joined to the claim. The Guertins and Clippingers own
21 portions that have been subirrigated and the Clippingers also use a well to
22 irrigate. Rudolph Frausto fills a 500 gallon tank with water from Wenas Creek and
23 spills the water onto the land, flood irrigating.

24 In 1967 the State legislature adopted RCW 90.14 which contained sections that
25 provided for relinquishment of unused water rights. RCW 90.14.160 provides that a
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 person entitled to divert water through an appropriation authorized by a general
2 adjudication who voluntarily fails to beneficially use water for five successive
3 years after the effective date of the act, relinquishes the water right or unused
4 portion. Although Mr. Knopp was not specific about when use of Cleman Ditch
5 ceased, the testimony would indicate that it was shortly after 1956 and certainly
6 would have occurred by 1967. Therefore, by 1972 the water right appurtenant to the
7 Knopp property for use of water from Wenas Creek had relinquished due to nonuse.

8 Based on the foregoing, the Referee cannot recommend the confirmation of any
9 rights under Court Claim No. 01570.

10 It is recommended that the Director of the Department of Ecology cancel,
11 rescind or otherwise make null and void Adjudicated Certificate No. 14.

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14
15 COURT CLAIM NO. 00432 -- Lazy Heart B, Inc.
(A)01362

16 A Statement of Claim to the Court was filed by Lazy Heart B., Inc. for the use
17 of surface water within Subbasin No. 15. The defendant was represented by Attorney
18 James Hutton and Rosella Calvert testified at the evidentiary hearing.

19 According to the testimony and evidence the claimants irrigate approximately
20 106 acres of cropland and a one-half acre lawn in the NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 13,
21 T. 15 N., R. 17 E.W.M. with waters from Wenas Creek. Water is diverted from the
22 creek at a point in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13 and carried in an open ditch through
23 the property. Three pumps, two 20 BHP and one 1 BHP pump, located on the ditch
24 convey the water to pressurized sprinkler systems. The smallest pump is used to
25 irrigate the lawn area around the homestead. A second diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 Section 12, T. 15 N., R. 17 E.W.M. has historically been used to irrigate a portion
2 of the property, but that diversion and the ditch leading from it have not been
3 used since 1977. Mrs. Calvert testified they would like the option of being able
4 to use it again in the future. Mrs. Calvert testified that they use 0.02 cubic
5 foot per second and between 2.98 and 3.63 acre-feet per year per acre irrigated,
6 depending on the class of the right.

7 Two certificates from the Wenas Creek 1921 adjudication are appurtenant to the
8 Lazy Heart B property. Certificate No. 7 is a Class 2 right with an 1870 date of
9 priority. It authorizes the diversion of 3.2 cubic feet per second for the
10 irrigation of 160 acres in the $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, and $NW\frac{1}{4}SE\frac{1}{4}$ of Section 13. The
11 portion of the $E\frac{1}{2}NW\frac{1}{4}$ of Section 13 lying west of Wenas Creek is owned by Lazy Heart
12 B Ranch and they are claiming a right for the irrigation of 60 acres under this
13 right. The owner of the remaining land described in Certificate No. 7, Glen and
14 Hazel Cameron are claiming a right for the irrigation of 100 acres under that
15 certificate. Certificate No. 65 is a Class 17 right with an 1884 date of priority.
16 It authorizes the diversion of 0.97 cubic foot per second for the irrigation of
17 48.4 acres in the $N\frac{1}{2}SW\frac{1}{4}$ and $W\frac{1}{2}NW\frac{1}{4}$ of Section 13. It would appear that
18 approximately 46.5 acres are being irrigated under this right. Lazy Heart B Ranch
19 is assessed by the Wenas Irrigation District and receives supplemental water from
20 the district for the 106 acres of cropland irrigated. The district delivers 1.3
21 acre-feet per acre assessed.

22 Rights are also being claimed for the use of two unnamed springs for stock
23 watering. However, the testimony indicated that there are no diversion facilities
24 at the springs. The stock drink directly from the source. This type of stockwater
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28 Re: Subbasin No. 15

1 use is covered by the non-diversionary stock water stipulation and no additional
2 right will be confirmed.

3 Based on the foregoing, it is recommended that rights be confirmed to Lazy
4 Heart B Ranch under Court Claim No. 00432 as follows:

5 With a June 30, 1870, date of priority a right for the diversion of 1.2 cubic
6 foot per second, 217.8 acre-feet per year from Wenas Creek for the irrigation of 60
7 acres.

8 With a June 30, 1884, date of priority a right for the diversion of 0.93 cubic
9 foot per second, 138.6 acre-feet per year from Wenas Creek for the irrigation of
10 46.5 acres.

11 These rights shall carry the provision that the lands receive supplemental
12 water from the Wenas Irrigation District.

13 Upon confirmation of the proposed rights, it is recommended that the Director
14 of the Department of Ecology cancel, rescind or otherwise make null and void
15 Adjudicated Certificates No. 7 and 65.

16
17 COURT CLAIM NO. 00759 -- Larry S. Lefors
18 & Judy C. Lefors

19 The Lefors submitted a Statement of Claim to the Court for the use of waters
20 from Wenas Creek. They were represented by attorney Vernon Fowler and Judy Lefors
21 testified at the evidentiary hearing.

22 The defendants own land in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section
23 33, T. 15 N., R. 18 E.W.M. Their land lies within the place of use described on
24 Certificate No. 41 from the 1921 adjudication of Wenas Creek. However, the Lefors
25 are claiming a right only for the use of Wenas Creek for non-diversionary stock
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1 watering. According to Mrs. Lefors testimony, they do not divert creek water for
2 any purpose. They have up to 40 head of livestock that they raise on the portion
3 of the property in Section 32 that have access to Wenas Creek and drink directly
4 from the creek.

5 This type of water use is covered by the non-diversionary stock water
6 stipulation. In light of the testimony that there is no other use of waters from
7 Wenas Creek, the Referee does not recommend that any further rights be confirmed
8 under Court Claim No. 00759.

9 It is recommended that the Department of Ecology cancel, rescind or otherwise
10 make null and void Adjudicated Certificate No. 41.

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14 COURT CLAIM NO. 07728 -- David M. Longmire
& Linda D. Longmire

15 A Statement of Claim was submitted by David M. and Linda D. Longmire for the
16 use of Wenas Creek for irrigation of 10 acres. David Longmire testified at the
17 evidentiary hearing.

18 The Longmires own 10.2 acres of land in the S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T. 15 N.,
19 R. 18 E.W.M.. Of that, approximately six acres lying west of the North Wenas Road
20 are irrigated with waters from Wenas Creek. A 1 BHP pump near the north property
21 line supplies the irrigation system consisting of rubber hoses and impact
22 sprinklers. Stock on the property drink directly from the creek. According to the
23 testimony this land has continued to be irrigated since water rights were confirmed
24 during the 1921 adjudication.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 The Longmires land is within the place of use described in Certificate No. 56
2 from the earlier adjudication. That Class 13 right, with an 1880 date of priority,
3 authorized the diversion of 1.07 cubic feet per second for the irrigation of 53.5
4 acres. The triangular shaped parcel now owned by the Longmires is specifically
5 described on this certificate, along with other land. The proportionate share of
6 the certificate that would be appurtenant to the six irrigated acres would be 0.12
7 cubic foot per second. However, the evidence shows that the system that has been
8 installed and used since the late 1960's only is capable of withdrawing 0.09 cubic
9 foot per second, which is the extent of the beneficial use that has continued since
10 that time.

11 Mr. Longmire has asserted that a Class 3 water right is appurtenant to the
12 portion of his land that lies west of Wenas Creek. The Longmire Ditch previously
13 served the property under the Class 13 right and there was no mechanism to pipe
14 water from the Longmire Ditch to the lands west of the creek. However,
15 Mr. Longmire did not identify a Class 3 right that would be appurtenant to his
16 land. The only Class 3 right confirmed in 1921 was to David Longmire, the current
17 claimant's grandfather. That right is appurtenant to lands in the $W\frac{1}{2}NW\frac{1}{4}$ of Section
18 32, the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 31 and the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M..
19 There has been no testimony or evidence submitted to show that a portion of the
20 Class 3 right was transferred to lands in the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 32.

21 Based on the foregoing, the Referee recommends that a right be confirmed to
22 the Longmires under Court Claim No. 07728 with a June 30, 1880, date of priority
23 for the use of 0.09 cubic foot per second, 24 acre-feet per year for the irrigation
24 of six acres. Livestock watering directly from the creek is covered by the
25
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27 REPORT OF REFEREE
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29

1 non-diversionary stock water stipulation and no additional right will be confirmed
2 for that use.

3 The Referee notes that Mr. Longmire testified that he irrigates into October
4 with waters from Wenas Creek. Previous testimony has indicated that by the end of
5 June water is no longer available for the lower classes of water, including Class
6 13. The Longmires are not members of the Wenas Irrigation District, but have on
7 one occasion purchased water from the district for use late in the season.

8 Upon confirmation of the proposed right, it is recommended that the Director
9 of the Department of Ecology cancel, rescind or otherwise make null and void
10 Adjudicated Certificate No. 56.

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14 COURT CLAIM NO. 01742 -- Jerry Longmire
15 & Dorothy Longmire
16 Laura Longmire
17 Robert D. Elliott
18 & Verna Mae Elliott

19 A Statement of Claim was submitted by Owen J. and Glenda L. Faxon for the use
20 of waters of Wenas Creek. On November 25, 1991, Laura, Jerry and Dorothy Longmire
21 were substituted for the Faxons. Robert D. and Verna Mae Elliott were joined to
22 the claim on October 9, 1992. Jerry Longmire and Robert Elliott testified at the
23 evidentiary hearing.

24 Court Claim No. 01742 asserts a right to use waters from Wenas Creek for the
25 irrigation of 170 acres and stock watering. According to Mr. Longmire's testimony,
26 prior to selling a portion of the property to the Elliotts, he owned the E $\frac{1}{2}$ NW $\frac{1}{4}$ and
27 Government Lots 2, 3 and 4 of Section 30, T. 15 N., R. 18 E.W.M. and he irrigated
28 all of that land lying east of Purdin Ditch and north of the South Wenas Road. The

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1 total acreage owned was approximately 180 acres. There are 9 acres south of the
2 South Wenas Road and approximately 6.5 acres west of Purdin Ditch in Government
3 Lots 3 and 4 that have not been irrigated. The Elliotts own the 6.5 acres west of
4 the ditch that are not irrigated along with approximately 2 acres east of the ditch
5 that have historically been irrigated. Although Mr. Longmire's testimony and the
6 State's Investigation Report both indicate that 175 acres have been irrigated, the
7 evidence indicates that only 164.5 acres have historically been irrigated. The
8 Elliotts own two of those irrigated acres, leaving 162.5 acres in the Longmire
9 ownership.

10 Water from the South Fork of Wenas Creek carried in the Purdin Ditch is used
11 to irrigate the land. Mr. Longmire testified that water use generally begins
12 around mid-March. Water is withdrawn from the ditch near the west quarter corner
13 of Section 30 and at a point on the boundary line between Government Lots 3 and 4.
14 Some of the water withdrawn from the ditch is piped to a sump located near the
15 center of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30 and then pumped into the distribution system. A
16 natural spring existed at the location of the sump, but the spring has since gone
17 dry. There was no testimony to indicate that water rights were established for any
18 of the natural spring water that may have been available in the past at the sump.

19 There are three certificates from the 1921 Wenas Creek adjudication that are
20 appurtenant to portions of the land described in Court Claim No. 01742.
21 Certificate No. 44 is a Class 15 right with an 1884 date of priority that
22 authorized the diversion of 2.0 cubic feet per second for the irrigation of 100
23 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{2}$ NW $\frac{1}{4}$ (Government Lots 2, 3 and 4) of Section 30, T. 15 N.,
24 R. 18 E.W.M.. Mr. Longmire testified that Class 15 water is available only until
25 mid-June of each year. Certificate No. 45 is a Class 2 right with an 1870 date of
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1 priority that authorized the diversion of 0.80 cubic foot per second for the
2 irrigation of 40 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30. Certificate No. 55 is also a
3 Class 2 right that authorized the diversion of 0.80 cubic foot per second for the
4 irrigation of 40 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30. The point of diversion
5 authorized by Certificate No. 44 is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17
6 E.W.M., which is where Purdin Ditch diverts from the creek. The points of
7 diversion authorized by Certificates No. 45 and 55 were legally changed in 1979
8 when Certificates of Change Recorded in Volume 1-4, Pages 162 and 165 issued.
9 Those certificates of change authorized changing the points of diversion to a point
10 in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N., R. 17 E.W.M., supposedly to Purdin Ditch.
11 However, as previously stated, Purdin Ditch diverts in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24,
12 approximately one-quarter of a mile south of the point described in the
13 certificates of change. It would appear that an error was made in the certificates
14 of change when the diversion for Purdin Ditch was described. This error does not
15 reflect on the ability of the Court to confirm these rights.

16 Mr. Longmire testified that up to 400 cow/calf pairs have been raised on the
17 property in the past. Stock can drink directly from the South Fork of Wenas Creek,
18 which is a non-diversionary use covered by the stock water stipulation, or from
19 Purdin Ditch, which would be a diversionary use. As discussed earlier in the
20 report, the certificates that issued as a result of the 1921 adjudication did not
21 specifically identify stock watering as an authorized use of water. This use is
22 incidental to the irrigation use authorized by the certificates and, therefore, can
23 only occur during the irrigation season.

24 It would appear that following Mr. Elliot's purchase of the portion of the
25 land that borders Purdin Ditch, that livestock on Mr. Longmire's remaining property

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1 will no longer have access to the ditch. Irrespective of that, a diversionary
2 stock water right has been established for the property. However, in order for
3 this right to be exercised in the future, some adjustments to the distribution
4 system may be necessary in order to continue providing stock water from Purdin
5 Ditch.

6 Based on the foregoing, it is recommended that the following rights be
7 confirmed for the use of waters from the South Fork of Wenas Creek under Court
8 Claim No. 01742:

9 A right to the Longmires with a June 30, 1870, date of priority for the
10 diversion of 1.60 cubic feet per second, 320 acre-feet per year for the irrigation
11 of 80 acres within the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.

12 A right to the Longmires with a June 30, 1884, date of priority for the
13 diversion of 1.65 cubic feet per second, 247.5 acre-feet per year for the
14 irrigation of 82.5 acres and 10 acre-feet per year for stock watering within
15 Government Lot 2 and a portion of Government Lots 3 and 4, Section 30, T. 15 N.,
16 R. 18 E.W.M.

17 A right to the Elliotts with a June 30, 1884, date of priority for the
18 diversion of 0.04 cubic foot per second, 6 acre-feet per year for the irrigation of
19 2 acres, and 2 acre-feet per year for stock watering within a portion of Government
20 Lots 3 and 4, Section 30, T. 15 N., R. 18 E.W.M.

21 Upon confirmation of the proposed rights, it is recommended that the Director
22 of the Department of Ecology cancel, rescind or otherwise make null and void
23 Adjudicated Certificates No. 44, 45 and 55 and Certificates of Change recorded in
24 Volume 1-4, Pages 162 and 165.

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2 COURT CLAIM NO. 01270 -- Laura Longmire
3 Jerry Longmire
4 & Dorothy Longmire
5 Leo Hursh
6 & Carolyn Hursh

7
8 COURT CLAIM NO. 02034 -- Norman K. Johnson, et al.
9 & Marilyn R. Johnson

10 A Statement of Claim was filed by Jerry, Dorothy and Laura Longmire for the
11 use of waters from Wenas Creek. On May 29, 1992, Leo Hursh and Carolyn Hursh were
12 joined to the claim. Norman K. and Marilyn R. Johnson filed Claim No. 2034 after
13 they purchased a portion of the land described in Court Claim No. 01270 from the
14 Longmires. Due to this, the land described in Claim No. 2034 is also described in
15 Claim No. 1270, however, the Johnsons were not joined to Claim No. 1270.

16 When the Longmires filed Court Claim No. 1270 they owned the $E\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}SE\frac{1}{4}$
17 of Section 25, T. 15 N., R. 17 E.W.M. and were claiming a right to use waters from
18 Wenas Creek to irrigate 30 acres in the $E\frac{1}{2}NE\frac{1}{4}$ and provide stock water in both the
19 $E\frac{1}{2}NE\frac{1}{4}$ and $NE\frac{1}{4}SE\frac{1}{4}$ of Section 25. According to Mr. Longmire's testimony his
20 grandfather acquired the land in the late 1800's and it has been in his family ever
21 since that time. Water has continuously been diverted from the creek and delivered
22 through Purdin Ditch to the property since that time. The irrigated land lies east
23 of Purdin Ditch. Mr. Johnson testified that he begins using water in March, but
24 did not specify when in March. Other landowners on Purdin Ditch have testified to
25 using water by March 15, so that is the date the Referee will use for the beginning
26 of the water use season.

27 Certificate No. 54 from the 1921 Wenas Creek Adjudication is appurtenant to
28 the land. It is a Class 13 right with an 1880 date of priority and authorized the

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1 diversion of 0.60 cubic foot per second from the creek for the irrigation of 30
2 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25. The point of diversion described in the
3 certificate is within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, which is where Purdin Ditch diverts
4 from the creek.

5 The Longmires have sold the portion of the land in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 25
6 described as Lot 3 of Short Plat recorded in Book K of Short Plats, page 3 to Leo
7 and Carolyn Hursh. They are claiming a right to irrigate 3.5 acres within Lot 3,
8 lying east of the ditch. Part of an exhibit offered by the State contained a
9 statement that Leo Hursh was issued Ground Water Certificate No. G4-28778C
10 contingent upon him relinquishing his portion of Certificate No. 54. The
11 relinquishment is not in the record, nor was there any testimony relating to the
12 relinquishment. Norman and Marilyn Johnson purchased Lots 1 and 2 of Short Plat
13 recorded in Book K of Short Plats, Page 3 and are claiming a right under Court
14 Claim No. 2034 to irrigate 12 acres. The Longmires retained the rest of the E $\frac{1}{2}$ NE $\frac{1}{4}$
15 of Section 25 and are claiming a right to irrigate 15 acres. The claims of the
16 three parties match the number of acres actually being irrigated within each
17 ownership. Each party is claiming to have the proportionate share of the
18 certificate appropriate for their parcel.

19 The land is not assessed by the Wenas Irrigation District. However,
20 Mr. Johnson and Mr. Hursh testified that they lease shares on a yearly basis and
21 through this mechanism use district water for supplemental irrigation.
22 Mr. Longmire has a well that is used as a supplemental supply when creek water is
23 not available.

24 All three parties raise livestock on their property that drink from Purdin
25 Ditch. According to Mr. Longmire's testimony stock water is diverted from the
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1 creek and carried in Purdin Ditch during the winter months. Other landowners
2 downstream from the Longmire's property also use Purdin Ditch to carry stock water
3 in the winter months. Mr. Longmire testified that this practice has been going on
4 since at least 1900. However, there were no water rights confirmed in the 1921
5 Wenas Creek Adjudication for stock watering. The Referee has concluded that since
6 there were no stock water rights confirmed, diversionary stock watering must have
7 been incidental to irrigation rights confirmed and could only occur during the
8 normal irrigation season. See Page 11 of this report.

9 Based on the foregoing it is recommended that rights be confirmed for the use
10 of waters from the South Fork of Wenas Creek with an June 30, 1880, date of
11 priority as follows:

12 Norman K. and Marilyn R. Johnson, 0.24 cubic foot per second, 36 acre-feet per
13 year for the irrigation of 12 acres; 1 acre-foot per year for stock water.

14 Leo and Carolyn Hursh, 0.06 cubic foot per second, 9 acre-feet per year for
15 the irrigation of 3 acres; 1 acre-foot per year for stock water.

16 Jerry, Dorothy and Laura Longmire, 0.30 cubic foot per second, 45 acre-feet
17 per year for the irrigation of 15 acres; 1 acre-foot per year for stock water.

18 The rights being recommended for Mr. and Mrs. Hursh and the Longmires will
19 carry a provision that a ground water right might be appurtenant to the property.

20 Upon confirmation of the proposed rights, it is recommended that the Director
21 of the Department of Ecology cancel, rescind or otherwise make null and void
22 Adjudicated Certificate No. 54.

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2 COURT CLAIM NO. 02318 -- George W. Marcott
3 & Linda M. Marcott

4 The Marcotts submitted a Statement of Claim to the Court that included uses of
5 waters from Wenas Creek for irrigation and stock water. Mr. Marcott testified at
6 the evidentiary hearing.

7 Mr. and Mrs. Marcott own approximately 20.5 acres of land described as Lot 4
8 of Short Plat No. 79-268, which is approximately the $E\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$ of Section 24,
9 T. 15 N., R. 17 E.W.M. All of the land except a corral area of about half an acre
10 is irrigated with waters from Wenas Creek. Water is diverted from the creek into
11 Purdin Ditch in the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24. A 7.5 BHP pump is situated on the ditch
12 near the southwest corner of the property withdrawing water from the ditch into the
13 distribution system. Handlines with up to 40 sprinklers are used to irrigate the
14 land. Stock are also raised on the property, although Mr. Marcott was not clear
15 about the maximum number that might be on the property. The stock drink from
16 Purdin Ditch, which would represent a diversionary use, and from the creek, which
17 would be a non-diversionary use covered by the stock water stipulation.

18 The Marcott property is within the place of use described on Certificate No.
19 22 which issued following the 1921 Wenas Creek Adjudication. Certificate No. 22 is
20 a Class 10 right, with an 1877 date of priority, which authorized the diversion of
21 2.21 cubic foot per second for the irrigation of 110.6 acres within the $N\frac{1}{2}SE\frac{1}{4}$ and
22 $S\frac{1}{2}NE\frac{1}{4}$ of Section 24. Several points of diversion are authorized, including one in
23 the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24, which is where Purdin Ditch diverts from the creek. The
24 proportionate share of Certificate No. 22 that would be appurtenant to the Marcott
25 property is 0.40 cubic foot per second for the irrigation of 20 acres. The
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1 testimony shows that this land has continued to be irrigated since the certificate
2 issued. Besides the Marcotts, rights are being asserted under this certificate by
3 Allen and Elaine Miller, Nathan Jenkins, et al, Floyd and Karen Winegar, Scott
4 Baird and Thomas Colligan.

5 According to the testimony, irrigation begins in late March and continues into
6 October. Natural flow creek water is available under the certificate until the end
7 of June. Subsequent to that supplemental water from the Wenas Irrigation District
8 is used. The Marcotts are assessed by the district for 20 shares and the district
9 provides 1.3 acre-feet of water per share.

10 Based on the foregoing, the Referee recommends that a right be confirmed to
11 George W. and Linda M. Marcott with a June 30, 1877, date of priority for the use
12 of 0.40 cubic foot per second, 60 acre-feet per year from Wenas Creek for the
13 irrigation of 20 acres and 0.02 cubic foot per second, 2 acre-feet per year from
14 Wenas Creek for stock water. The right shall carry a provision that the land
15 receives supplemental water from the Wenas Irrigation District.

16 Upon confirmation of the proposed rights, it is recommended that the Director
17 of the Department of Ecology cancel, rescind or otherwise make null and void
18 Adjudicated Certificate No. 22.

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21 COURT CLAIM NO. 01604 -- Homer W. Marney
22 & Anna M. Marney
William B. Lawrence
& Patricia S. Lawrence

23 A Statement of Claim was filed by Homer W. and Anna M. Marney for the use of
24 waters from Wenas Creek. On January 26, 1988, William B. Lawrence and Timothy L.
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1 Fauth were joined to the Claim. On June 19, 1989, the portion of the claim held by
2 Timothy Fauth was transferred to William Lawrence. H. W. Marney and Patricia
3 Lawrence testified at the evidentiary hearing.

4 At the time the claim was filed, Homer and Anna Marney owned the $N\frac{1}{2}NE\frac{1}{4}$ of
5 Section 24, T. 15 N., R. 17 E.W.M.. Since that time they sold much of the land,
6 retaining that portion of the $N\frac{1}{2}N\frac{1}{2}NE\frac{1}{4}$ of Section 24 east of Wenas Creek. Initially
7 a portion of the remaining land was owned by Timothy Fauth and a portion owned by
8 William Lawrence. Mr. Lawrence purchased the Fauth property in 1989.

9 Certificate No. 62 from the 1921 adjudication of Wenas Creek is appurtenant to
10 the land owned by the Marneys and Mr. Lawrence. It is a Class 10 right with an
11 1877 date of priority, authorizing the diversion of 3.20 cubic feet per second for
12 the irrigation of 160 acres in the $N\frac{1}{2}NE\frac{1}{4}$ of Section 24 and the $S\frac{1}{2}SE\frac{1}{4}$ of Section 13.
13 Defendants Ray Day and Gordon Reid are claiming the portion of the certificate that
14 is appurtenant to lands in Section 13. Points of diversion are authorized at
15 several locations, including in the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24, which is where both the
16 Marneys and Mr. Lawrence divert their water. The proportionate share of the
17 certificate that would be appurtenant to the $N\frac{1}{2}NE\frac{1}{4}$ of Section 13 is 1.60 cubic feet
18 per second for the irrigation of 80 acres. According to the testimony, the land
19 has continued to be irrigated since the certificate issued in 1921.

20 The Marneys own 28 acres of land and Mr. Marney testified that the entire 28
21 acres are irrigated. The State's Investigation Report stated only 23 acres were
22 being irrigated and the State's map showed approximately five acres at the east end
23 of the property not irrigated. There was no explanation of the discrepancy between
24 the State's report and map and the claimant's testimony. Since the State did not
25 present a witness, the Referee will be guided by the claimant's testimony. The
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1 Marneys withdraw water from the creek using a 10 BHP pump located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
2 Section 24 and irrigate with handlines. Prior to their purchase the land was flood
3 irrigated.

4 The Lawrences own approximately 52 acres and irrigate 43 acres with waters
5 from Wenas Creek. Their pumps are located on Purdin Ditch, immediately below where
6 it separates from Wenas Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24. The Lawrences have two
7 10 BHP pumps and irrigate using wheel lines.

8 The testimony was that irrigation starts around the end of March and by June
9 30 natural flow creek water is no longer available. After that time they continue
10 to irrigate using water provided by the Wenas Irrigation District. The records
11 show that Mr. Lawrence is assessed by the district for 40 shares, however, the
12 district's assessment records do not show the Marneys being assessed. The district
13 delivers 1.3 acre-feet per acre assessed. Livestock on both properties drink from
14 the creek and on the Lawrence property also from Purdin Ditch, which diverts from
15 the creek near the center of their property. Up to 200 head of sheep have been
16 pastured on the Lawrence property. Recently they have had between 20 and 30 head
17 of stock. The non-diversionary stock water stipulation covers stock drinking
18 directly from the source.

19 Based on the foregoing it is recommended that rights be confirmed with a
20 June 30, 1877, date of priority as follows:

21 To Homer W. and Anna M. Marney, for the diversion of 0.56 cubic foot per
22 second, 84 acre-feet per year from Wenas Creek for the irrigation of 28 acres in
23 the North 722.80 feet of the that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24, T. 15 N.,
24 R. 17 E.W.M. lying east of the south branch of Wenas Creek.

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1 To William B. Lawrence, for the diversion of 0.86 cubic foot per second, 129
2 acre-feet per year from Wenas Creek for the irrigation of 43 acres and 0.02, 2
3 acre-feet per year for stock water, in Lots 1, 2, and 3 of Short Plat, Recorded in
4 Book 81, Page 60, Records of Yakima County, being a portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of
5 Section 24, T. 15 N., R. 17 E.W.M..

6 These rights will carry a provision that the land receives supplemental water
7 from the Wenas Irrigation District.

8 Upon confirmation of the proposed rights, it is recommended that the Director
9 of the Department of Ecology cancel, rescind or otherwise make null and void
10 Adjudicated Certificate No. 62.

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13 COURT CLAIM NO. 00437 -- Charles Douglas Mayo
14 (A)01355 John Strand Mayo
15 The Haywire Outfit Inc.

16 Court Claim No. 00437 was originally filed by Thomas S. Hazen for the use of
17 waters from Wenas Creek for irrigation and stock water. On March 31, 1992, Charles
18 Douglas Mayo and John Strand Mayo, dba The Haywire Outfit, Inc., were substituted
19 for Mr. Hazen on the claim. However previously, Court Claims No. 00804, 00805,
20 00806 and 00807 had been filed by the Mayos for the same lands as described in
21 Court Claim No. 00437, therefore, Claim No. 00437 is duplicative and shall be
22 denied.

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2 COURT CLAIM NO. 00804 -- Charles Douglas Mayo
3 00805 & John Strand Mayo
4 00806
5 00807

6 The above listed claims were submitted to the Court by Charles Douglas Mayo
7 and John Strand Mayo for the use of waters from Wenas Creek for irrigation. During
8 testimony, non-diversionary stock water was added as a use. Attorney Vernon Fowler
9 represented the Mayos and John Mayo testified at the evidentiary hearing.

10 According to Mr. Mayo's testimony, they own approximately 200 irrigated acres
11 in the S $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4 and the NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 14 N.,
12 R 18 E.W.M., lying northeast of the South Wenas Road. The primary crop is alfalfa
13 hay with a barley rotation. The land is sprinkler irrigated with wheel lines and
14 portable hand lines. Two wells provide supplemental water and are used when the
15 flow in the creek is insufficient to meet the irrigation needs. Generally creek
16 water is only available into the month of June. Mr. Mayo testified that 3.5
17 acre-feet per year per acre irrigated is needed to adequately irrigate the hay
18 crop.

19 The Mayos are basing their claim to water rights on four certificates that
20 issued as a result of the 1921 adjudication of Wenas Creek. Court Claim No. 00804
21 is claiming a right to divert 2.39 cubic feet per second, 480 acre-feet per year
22 from Wenas Creek for the irrigation of 119.7 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, the
23 NE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 9, T. 14 N., R. 18 E.W.M. Certificate No. 107, a
24 Class 7 right with a July 10, 1872, date of priority is cited as the basis for this
25 claim. The certificate authorized the diversion of 2.39 cubic feet per second for
26 the irrigation of 119.7 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 9,
27 T. 14 N., R. 18 E.W.M.. The point of diversion described on the certificate was

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1 within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.. In 1974 Certificate of
2 Change recorded in Volume 1-3, Page 38 added a point of diversion for 1.0 cubic
3 feet per second of the right in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 14 N., R. 18 E.W.M. and
4 in 1990 Certificate of Change recorded in Volume 1-4, Page 205 added a point of
5 diversion for 0.40 cubic foot per second in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. Apparently
6 the diversion in Section 32 is no longer being used, however, a diversion in the
7 NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5 has replaced the one in Section 32. Mr. Mayo stated that an
8 application for change of point of diversion has been filed with the Department of
9 Ecology pursuant to the requirements of RCW 90.03.380.

10 The Referee has been left with several questions concerning this certificate
11 and the lands to which it is appurtenant that prevents recommending confirmation of
12 a water right. The certificate, 1921 Decree and the Report of Referee that
13 preceded the decree state that the place of use is the SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
14 Section 9. However, Mr. Mayo is claiming the certificate is appurtenant to the
15 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4 and the copy of the decree that has been entered into the
16 record shows the number 4 substituted for the number 9 next to the SE $\frac{1}{4}$ SW $\frac{1}{4}$
17 subdivision. There is no explanation for the substitution and that change was not
18 made on the certificate that has been entered into the record. Based on the
19 record, and with no testimony to explain otherwise, the Referee must conclude the
20 certificate is appurtenant to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, not Section 4.
21 Additionally, the certificate authorized the irrigation of 119.7 acres within a
22 place of use that describes 160 acres. According to the State's exhibit,
23 approximately 135 acres are being irrigated within the area described on Court
24 Claim No. 00804. That does not conform to Mr. Mayo's testimony of the maximum
25 acreage being irrigated. Without having sufficient testimony to explain the
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1 correct legal description for the certificate and more specific testimony of where
2 the irrigated lands lay, the Referee cannot recommend confirmation of a water right
3 under Court Claim No. 00804.

4 Court Claim No. 00805 is claiming a right to divert 1.19 cubic feet per
5 second, 238 acre-feet per year from Wenas Creek for the irrigation of 59.4 acres
6 within the $S\frac{1}{2}SE\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M.. The claim is based on
7 Certificate No. 61, which is a Class 1 right with an 1867 date of priority. The
8 certificate authorized the diversion of 1.19 cubic feet per second for the
9 irrigation of 59.4 acres. In 1979 Certificate of Change recorded in Volume 1-4,
10 Page 111 changed the point of diversion to a point in the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 9,
11 T. 14 N., R. 18 E.W.M.. The place of use described in the certificate consists of
12 80 acres, yet a water right was confirmed for 59.4 acres. The state's map exhibit
13 shows the entire parcel being irrigated, however, Mr. Mayo's testimony about the
14 irrigated acreage within Sections 4 and 9 indicate that only 59 or 60 acres were
15 being irrigated. The Referee does not believe that it is in the best interests of
16 either the public or the land owner to confirm a water right that authorizes water
17 use on a parcel of land 20 acres larger than the number of acres that can be
18 irrigated without evidence of where the water is being used. Therefore, the
19 Referee does not recommend that a water right be confirmed under Court Claim No.
20 00805, but invites the Mayos to provide additional information about the irrigated
21 field configurations during the exception phase of the case.

22 Court Claim No. 00806 claims a right to divert 0.07 cubic foot per second from
23 Wenas Creek for the irrigation of 3.5 acres within the $S\frac{1}{2}SW\frac{1}{4}$ of Section 4. The
24 claim is based on Certificate No. 10, a Class 20 right with an 1888 date of
25 priority. The certificate authorized the diversion of 0.07 cubic foot per second
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1 for the irrigation of 3.5 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4. Mr. Mayo testified that
2 he had no idea which 3.5 acres this right is appurtenant to in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section
3 4. Again the Referee is faced with the same dilemma of insufficient testimony to
4 narrow the place of use to a reasonable description. Therefore, it is recommended
5 that a right not be confirmed to the Mayos under Court Claim No. 00806.

6 Court Claim No. 00807 claims a right to divert 0.31 cubic foot per second, 62
7 acre-feet per year from Wenas Creek for the irrigation of 15.4 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$
8 of Section 9. Certificate No. 9, a Class 17 right with an 1884 date of priority
9 authorized the diversion of 0.31 cubic foot per second for the irrigation of 15.4
10 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9. The point of diversion authorized is within the
11 SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.; however, Mr. Mayo testified he has
12 filed an application to change the point of diversion pursuant to the provisions of
13 RCW 90.03.380. The Mayos are irrigating approximately 15.4 acres in that portion
14 of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9 that lies north and east of the South Wenas Road, except
15 the east 213.56 feet. The area described in the claim, the land shown as irrigated
16 on the state's exhibit and the number of acres claimed for irrigation are about the
17 same. Therefore, the Referee recommends that a right be confirmed under Court
18 claim No. 00807 with a June 30, 1884 date of priority for the diversion of 0.31
19 cubic foot per second, 53.9 acre-feet per year from the South Fork of Wenas Creek
20 for the irrigation of 15.4 acres in that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9,
21 T. 14 N., R. 18 E.W.M. lying northeast of the South Wenas Road, except the east
22 213.56 feet thereof.

23 The right shall carry a provision that states a supplemental ground water
24 right may exist for the land.

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29

1 The testimony showed that at varying times during the year livestock are
2 raised on all the lands described in the four Court Claims. The livestock drink
3 directly from either the South Branch of Wenas Creek or Wenas Creek when water is
4 available. Wells are used to supplement the creek supply when necessary. This
5 type of stock watering is covered by the non-diversionary stock water stipulation,
6 and no other water right will be confirmed. The Mayos are concerned that the
7 operation of the Wenas Irrigation District negatively effects their ability to have
8 water for their livestock during the winter and early spring months. This issue is
9 addressed in the analysis for the Wenas Irrigation District claim on Page .

10 Upon confirmation of the proposed right, it is recommended that the Director
11 of the Department of Ecology cancel, rescind or otherwise make null and void
12 Adjudicated Certificates No. 9, 10, 61, 107 and Certificates of Change recorded in
13 Volume 1-3, Page 88; 1-4, Page 205; and 1-4, Page 111.

14
15
16 COURT CLAIM NO. 05225 -- John Strand Mayo
05226 & Nancy Clair Mayo
17 05227

18 John and Nancy Mayo dba Mayo Cattle Company submitted three claims to the
19 Court for the use of waters from Wenas Creek for irrigation and stock water. The
20 claimants were represented by Attorney Vernon Fowler and Mr. Mayo testified at the
21 evidentiary hearing.

22 Mr. Mayo testified that within the three adjoining parcels described in the
23 Court Claims, approximately 100 acres are being irrigated with waters from Wenas
24 Creek. Supplemental water is provided from a well located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
25 Section 5. The primary crop on the land is an alfalfa/timothy hay mix with a
26 barley rotation. Approximately 3.5 acre-feet per year is used from Wenas Creek and

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1 the well to irrigate the land. The amount of well water use is dependent on the
2 creek flow and varies year to year; although generally, creek water is not
3 available after June of an average water year. Court Claim No. 05225 was filed
4 asserting a right to use waters from Wenas Creek for the irrigation of 40 acres
5 within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T. 15 N., R. 18 E.W.M.. According to the record,
6 all of this parcel is irrigated except for approximately one-half acre where the
7 creek traverses the property. Certificate No. 57, a Class 6 right with an 1871
8 date of priority is appurtenant to the property. It authorized the diversion of
9 0.80 cubic foot per second for the irrigation of 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
10 Section 5.

11 Court Claim No. 05226 is asserting a right to irrigate 24.7 acres within the
12 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T. 14 N., R. 18 E.W.M. with waters from Wenas Creek.
13 According to the record approximately 21 acres lying northeast of the South Wenas
14 Road are being irrigated with waters from Wenas Creek. Certificate No. 71, a Class
15 15 right with an 1884 date of priority is appurtenant to the land. It authorized
16 the diversion of 0.49 cubic foot per second for the irrigation of 24.7 acres within
17 the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5.

18 Court Claim No. 05227 is claiming a right to irrigate 40.3 acres within that
19 portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M. lying south and west of
20 Wenas Creek. The testimony and evidence shows that 39.5 acres are being irrigated
21 within this portion of the Mayo ownership. Certificate No. 72, a Class 6 right
22 with an 1871 date of priority is appurtenant to the land. It authorized the
23 diversion of 0.81 cubic foot per second for the irrigation of 40.3 acres within the
24 NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4.

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1 The evidence indicates that these rights have been exercised since the
2 certificates issued as a result of the 1921 Wenas Creek Adjudication. Within the
3 lands described in the three Court Claims, the Mayos raise up to 240 cow/calf
4 pairs, ten bulls, and eight horses. The livestock drink directly from Wenas Creek
5 as it flows through their property. There is an issue between the Mayos and the
6 Wenas Irrigation District related to the wintertime operation of the district to
7 store water in Wenas Lake and its effect on maintaining sufficient water in Wenas
8 Creek for stock watering. See the Wenas Irrigation District claim for a discussion
9 on this issue.

10 Based on the foregoing, it is recommended that rights be confirmed to John
11 Strand and Nancy Clair Mayo, dba Mayo Cattle Company, as follows:

12 Under Court Claim No. 05225, with a June 30, 1871, date of priority, a right
13 for the diversion of 0.79 cubic foot per second, 138.25 acre-feet per year from the
14 South Fork of Wenas Creek for the irrigation of 39.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
15 Section 5, T. 15 N., R. 18 E.W.M.

16 Under Court Claim No. 05227, with a June 30, 1871, date of priority, a right
17 for the diversion of 0.79 cubic foot per second, 138.25 acre-feet per year from the
18 South Fork of Wenas Creek for the irrigation of 39.5 acres in that portion of the
19 N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M. lying south and west of the South Fork
20 of Wenas Creek.

21 Under Court Claim No. 05226, with a June 30, 1882, date of priority, a right
22 for the diversion of 0.42 cubic foot per second, 73.5 acre-feet per year from the
23 South Fork of Wenas Creek for the irrigation of 21 acres within that portion of the
24 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T. 15 N., R. 18 E.W.M. lying northeast of the South Wenas
25 Road.

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1 Livestock watering directly from the creek is covered by the non-diversionary
2 stock water stipulation and no additional rights will be confirmed for this water
3 use.

4 The rights confirmed shall carry a provision that references the use of ground
5 water as a supplemental source.

6 Upon confirmation of the proposed rights, it is recommended that the Director
7 of the Department of Ecology cancel, rescind or otherwise make null and void
8 Adjudicated Certificates No. 57, 71, 72.

9
10 COURT CLAIM NO. 01072 -- Allen F. Miller
11 & Elaine E. Miller

12 A Statement of Claim was filed with the Court by Roy G. and Erika M. Phelps
13 for use of waters from Wenas Creek. On October 19, 1988, Allen F. and Elaine E.
14 Miller were substituted for the Phelps. Mr. Miller testified at the evidentiary
15 hearing.

16 The Millers own 42 acres described as Lots 1 and 2 of Short Plat recorded in
17 Book Q, Page 20, records of Yakima County, lying primarily within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
18 Section 24, T. 15 N., R. 17 E.W.M.. They irrigate approximately 27 acres with
19 water diverted from the South Fork of Wenas Creek into Purdin Ditch. They have a
20 pump on the ditch at the northeast corner of their property and irrigate using a
21 wheel line and handlines, each with 35 sprinklers. Approximately 20 head of stock
22 are on the property. Water for the stock is hauled to the property. The livestock
23 do not have access to either the creek or Purdin Ditch. Mr. Miller believes that
24 when the Cameron, Pollard and Collis Ditch was used to irrigate his property the
25 stock would have had access to that ditch and would have drunk from it. Mr. Miller
26

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1 does not know when that ditch was abandoned. Pictures he submitted into evidence
2 show sagebrush plants growing along the ditch, which indicates it has been a number
3 of years since it was used. Due to the lack of testimony about when the ditch was
4 last used, which would have been the last time stock water was obtained from the
5 creek for the Miller property, the Referee must conclude that any right that may
6 have existed for stock watering has relinquished (see RCW 90.14.160).

7 The Miller's claim to irrigation water is based on Certificate No. 22 that
8 issued following the 1921 adjudication of Wenas Creek. Certificate No. 22 is a
9 Class 10 right with an 1877 date of priority, authorizing the diversion of 2.21
10 cubic feet per second from the creek for the irrigation of 110.6 acres within the
11 $N\frac{1}{2}SE\frac{1}{4}$ and $S\frac{1}{2}NE\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M. The Millers are claiming a
12 right for the irrigation of 27 of those 110.6 acres. Mr. Miller believes that his
13 land was originally irrigated from the Cameron, Pollard and Collis Ditch, which is
14 a reasonable conclusion since the abandoned ditch runs along the west boundary of
15 his irrigated land and could serve the land by gravity flow. He currently pumps
16 from the Purdin Ditch, which is below his property and could not serve the land
17 without the use of a pump. Purdin Ditch was also used by the individual from whom
18 the Millers purchased the property. Mr. Miller has filed an application with the
19 Department of Ecology to change the point of diversion for his portion of
20 Certificate No. 22. However, this does not appear to be necessary. Certificate
21 No. 22 authorizes a diversion in the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 24, which is where Purdin
22 Ditch diverts from the creek.

23 Mr. Miller testified that he begins irrigating around March 15 and uses
24 natural flow water under the certificate until the end of June. For the remainder
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1 of the season, water from the Wenas Irrigation District is used. The district
2 assesses the Millers for 37 acres and delivers 1.3 acre-feet per acre assessed.

3 Based on the foregoing, it is recommended that a right be confirmed to Allen
4 F. and Elaine E. Miller with a June 30, 1877, date of priority for the diversion of
5 0.54 cubic foot per second, 81 acre-feet per year for the irrigation of 27 acres.
6 The right shall carry the provision that the land receives supplemental water from
7 the Wenas Irrigation District.

8 Upon confirmation of the proposed rights, it is recommended that the Director
9 of the Department of Ecology cancel, rescind or otherwise make null and void
10 Adjudicated Certificate No. 22.

11
12 COURT CLAIM NO. 00861 -- Marian E. Moore

13 A Statement of Claim was filed with the Court by Virgil K. and Frances Atwood
14 for the use of waters from Wenas Creek. On March 19, 1986, Kenneth Reeser was
15 substituted for the Atwoods on the Claim. On April 6, 1993, Marian E. Moore was
16 substituted for Mr. Reeser. Dorothy Reeser testified at the evidentiary hearing.

17 The land described in the Court Claim encompasses approximately 4.1 acres in
18 the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M. According to Mrs. Reeser, she
19 and her husband acquired approximately 1.5 of those acres, but were substituted for
20 the Atwoods on the entire claim. The testimony shows that the land described in
21 the claim is currently being irrigated from a well. There was no testimony of
22 Wenas Creek ever being used to irrigate the land. Livestock have been raised on
23 the property and when present drink directly from Wenas Creek. This type of
24 non-diversionary stock water use is covered by the stock water stipulation.

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1 Certificate No. 11, a Class 12 right from the Wenas Creek Adjudication in
2 1921, is appurtenant to the claimants land. It authorizes the diversion of 2.12
3 cubic feet per second for the irrigation of 106 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
4 Section 12, T. 14 N., R. 18 E.W.M..

5 Due to the lack of testimony about historic use of water from Wenas Creek for
6 irrigation on the property described in Court Claim No. 00861, the Referee cannot
7 recommend the confirmation of a right under that claim.

8 It is recommended that the Director of the Department of Ecology cancel,
9 rescind or otherwise make null and void Adjudicated Certificate No. 11.

10
11 COURT CLAIM NO. 01501 -- Austin J. Murray
12 & Ramona A. Murray

13 A Statement of Claim was submitted by Austin J. and Ramona A. Murray for the
14 use of waters of Wenas Creek for irrigation and stock water. Mr. Murray testified
15 at the evidentiary hearing.

16 The Murrays own the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and that
17 portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ northeasterly of the South Wenas Road in Section 31, all in
18 T. 15 N., R. 18 E.W.M.. They are claiming a right to irrigate 170 acres and water
19 stock with water from Wenas Creek. Water is diverted from the South Fork of Wenas
20 Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 18 E.W.M. into Purdin Ditch. Water
21 is pumped from the ditch at two locations for the pressurized irrigation system.
22 Wheel and handlines are used to irrigate the fields. The livestock have access to
23 Purdin Ditch and drink directly from the ditch. The State's Investigation Report
24 stated that buildings, such as a home, barns, corrals and other outbuildings are
25 located on approximately 5 acres of the defendants' property. That would leave 165
26

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1 acres being irrigated. Although Mr. Murray stated that "about 170 acres" are being
2 irrigated, he also agreed with the contents of the investigation reports. The
3 Referee's review of an aerial photograph exhibit submitted by another defendant
4 confirms the State's report that buildings encompass approximately 5 acres within
5 the place of use.

6 Three certificates are appurtenant to the Murray property. Certificate No. 46
7 as changed by Certificate of Change recorded in Volume 2, Page 783, is a Class 4
8 right with an 1871 date of priority. It authorized the diversion of 4 cubic feet
9 per second for the irrigation of 160 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$ and the
10 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.. The Murrays proportionate share of
11 this certificate would be 0.40 cubic foot per second for the irrigation of 20 acres
12 in the S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30.

13 Certificate No. 53 is a Class 8 right with an 1875 date of priority. It
14 authorized the diversion of 2.2 cubic feet per second for the irrigation of 110
15 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 30 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T. 15 N.,
16 R. 18 E.W.M.. It is within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30 that the buildings are
17 located, leaving 75 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 30 being irrigated. Thirty acres
18 in that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31 lying northeast of the South Wenas Road
19 are being irrigated. Therefore, the Murrays proportionate share of this right
20 would be 2.10 cubic feet per second for the irrigation of 105 acres.

21 Certificate No. 1 is also a Class 8 right with an 1875 date of priority. It
22 authorized the diversion of 0.8 cubic foot per second for the irrigation of 40
23 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31. This entire parcel is owned and irrigated by
24 the Murrays.

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1 According to the testimony, the Murrays have owned this land since 1952 and
2 have continuously irrigated it since that time. To the best of Mr. Murray's
3 knowledge, the land has been continuously irrigated since the rights were
4 established in the late 1800's. Creek water is only available until the end of
5 June. The land in the $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$ of Section 30 is within the Wenas Irrigation
6 District which provides supplemental water when creek water is no longer available.
7 The district assesses the Murrays for 20 acres and delivers 1.3 acre-feet per acre
8 assessed. The remaining land is irrigated from a well on the Murray property after
9 the creek water is not available. There was no testimony to show whether a water
10 right exists for use of the well.

11 Based on the foregoing, the Referee recommends that rights to the use of
12 waters from the South Fork of Wenas Creek be confirmed to Austin J. and Ramona A.
13 Murray under Court Claim No. 01501 as follows:

14 With a June 30, 1871, date of priority, 0.40 cubic foot per second, 60
15 acre-feet per year for the irrigation of 20 acres in the $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$ of Section 30.
16 This right shall carry a provision that the land receives supplemental water from
17 the Wenas Irrigation District.

18 With a June 30, 1875, date of priority, 2.90 cubic feet per second, 435
19 acre-feet per year for the irrigation of 145 acres and 10 acre-feet per year for
20 stock watering within the $W\frac{1}{2}SW\frac{1}{4}$ of Section 30 and the $NW\frac{1}{4}NE\frac{1}{4}$ and that portion of
21 the $NE\frac{1}{4}NW\frac{1}{4}$ lying northeasterly of the South Wenas Road in Section 31, ALL in
22 T. 15 N., R. 18 E.W.M.

23 Upon confirmation of the proposed rights, it is recommended that the Director
24 of the Department of Ecology cancel, rescind or otherwise make null and void
25
26

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1 Adjudicated Certificates No. 1, 46 & 53 and Certificate of Change recorded in
2 Volume 2, Page 783.

3
4 COURT CLAIM NO. 01606 -- David D. Murray
5 & Paula S. Murray

6 A Statement of Claim was submitted to the Court for the use of waters from
7 Wenas Creek for irrigation. David Murray testified at the evidentiary hearing.

8 Although the Claim was filed for the use of waters from Wenas Creek for
9 irrigation, Mr. Murray testified that their land has never been irrigated with
10 creek water. The Murrays purchased the property in 1981 and at that time it was
11 sagebrush. They have since developed the property, planted orchard and are
12 irrigating it from a well. There was questioning and testimony about historical
13 stock watering associated with the property. The land has been used as range for
14 livestock in the past and the stock would have had access to drink from Purdin
15 Dtich, which runs through the property. However, there was no testimony to show
16 that an historical right had been established for that purpose.

17 Based on the foregoing, the Referee does not recommend that rights be
18 confirmed under Court Claim No. 01606.

19
20
21 COURT CLAIM NO. 07512 -- Craig J. Nedrow
22 & Judy L. Nedrow

23 A Statement of Claim was filed by the Nedrows for the use of waters from Wenas
24 Creek for irrigation and stock water. They were represented by Attorney Vernon E.
25 Fowler and Craig Nedrow testified at the evidentiary hearing.

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1 The Nedrows own a portion of the $N\frac{1}{2}SW\frac{1}{4}$ of Section 29, T. 15 N., R. 18 E.W.M.
2 lying northeast of the North Wenas Road and southwest of the Longmire Ditch. They
3 are irrigating approximately 15.5 acres of orchard. Prior to the 1992 irrigation
4 season the orchard had been irrigated from a well located on the property. During
5 the 1992 irrigation season water from Wenas Creek was used for irrigation and frost
6 protection. The Nedrows are claiming water rights for their property based on two
7 certificates that issued as a result of the 1921 adjudication. Certificate No. 48
8 is a Class 10 right that authorized the diversion of 1.52 cubic feet per second for
9 the irrigation of 76 acres in all of Section 29, except the $W\frac{1}{2}SW\frac{1}{4}$ and $SW\frac{1}{4}NW\frac{1}{4}$. The
10 Nedrows estimate that 15 of their irrigated acres lie in the $E\frac{1}{2}SW\frac{1}{4}$, which would be
11 covered by this certificate. Certificate No. 108 is a Class 7 right that
12 authorized the diversion of 4.0 cubic feet per second for the irrigation of 160
13 acres within the $SE\frac{1}{4}NE\frac{1}{4}$ of Section 30 and the $W\frac{1}{2}SW\frac{1}{4}$ and the $SW\frac{1}{4}NW\frac{1}{4}$ of Section 29.
14 The remaining one-half acre is within this area.

15 Mr. Nedrow's father owned the property until his death in 1980. He stopped
16 irrigating with Wenas Creek water in 1965 because of the difficulty in maintaining
17 the Longmire Ditch in a condition that would convey adequate water to his property.
18 In the 1950's the owners of the property in Section 19 through which Longmire Ditch
19 flowed, installed a pipeline to serve their land that had been irrigated with water
20 conveyed through Longmire Ditch. Around 1977, since the downstream landowners had
21 long since stopped using the ditch, Lyle Schneider and John Feusner, the current
22 owners of the land in Section 19, covered the ditch through their property.
23 Although the Nedrows had not used water from Wenas Creek for irrigating their land
24 since 1965, they asserted a right to supplement their ground water source.

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1 The Nedrows' land lies within the Wenas Irrigation District and they are
2 assessed by the district for 20 acres. Water from the district reservoir has also
3 not been delivered to the land between 1965 and 1992.

4 After Craig Nedrow acquired his land in 1980, he planted orchard and continued
5 irrigating with a well. In the early 1990's the orchard was large enough to make
6 it desirable to sprinkle for frost protection and he found the well would not
7 support such a use. He decided to use Wenas Creek water for this purpose and
8 cleaned the ditch and obtained permission to use the pipeline across the Schneider
9 property to convey water to the open portion of the ditch. There is an issue
10 between the Nedrows and the Schneiders about an easement and continued use of the
11 pipeline to convey water from the creek to Longmire Ditch. The Court in an Order
12 dated July 8, 1993, found that the easement issue is not properly before this Court
13 as part of the adjudication and must be resolved as a separate action.

14 The Nedrows have argued that the relinquishment provisions of RCW 90.14.160
15 which provides that a right relinquishes after five successive years of nonuse is
16 not applicable due to Section 90.14.140(2)(b) which states "If such a right is used
17 for a standby or reserve water supply to be used in time of drought or other low
18 flow period so long as withdrawal or diversion facilities are maintained in good
19 operating condition for the use of such reserve or standby water supply".

20 There is no evidence before the Referee to show that the water right issued as
21 a reserve or standby supply. The certificates do not describe such an intent.
22 There is no evidence that the defendant or his father sought and obtained
23 authorization to change the purpose of use from a primary supply to a reserve or
24 standby supply. We do not know if there was an intent to use Wenas Creek as a
25 backup supply when the use ceased in 1965. Additionally, until 1992 it is
26

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1 questionable whether the diversion facility was maintained in good operating
2 condition as required by Section 90.14.140(2)(b). Mr. Nedrow testified to
3 expending considerable time and money in 1992 in order to divert and carry water
4 through the Longmire Ditch.

5 Based on the foregoing, the Referee finds that any right that may have been
6 appurtenant to the Nedrow property described in Court Claim No. 07512 has
7 relinquished for nonuse, therefore, the Referee cannot recommend confirmation of a
8 water right to Craig and Judy Nedrow.

9
10 COURT CLAIM NO. 07513 -- Edith L. Nedrow

11 Mrs. Edith Nedrow submitted a Statement of Claim for the use of waters from
12 Wenas Creek for the irrigation of 14.5 acres. She was represented by Attorney
13 Vernon E. Fowler. Her son, Craig Nedrow, testified at the evidentiary hearing.

14 Mrs. Nedrow owns a portion of the $N\frac{1}{2}SW\frac{1}{4}$ of Section 29, T. 15 N., R. 18 E.W.M.
15 lying south of the Longmire Ditch. She currently is irrigating approximately 14.5
16 acres of orchard. Prior to the 1992 irrigation season the orchard had been
17 irrigated from a well located on the property. During the 1992 irrigation season
18 water from Wenas Creek was used for irrigation and frost protection. Mrs. Nedrow
19 is claiming water rights for her property based on two certificates that issued as
20 a result of the 1921 adjudication. Certificate No. 48 is a Class 10 right that
21 authorized the diversion of 1.52 cubic feet per second for the irrigation of 76
22 acres in all of Section 29, except the $W\frac{1}{2}SW\frac{1}{4}$ and $SW\frac{1}{4}NW\frac{1}{4}$. It appears that
23 approximately one of the irrigated acres lie in the $E\frac{1}{2}SW\frac{1}{4}$, which would be covered
24 by this certificate. Certificate No. 108 is a Class 7 right that authorized the
25 diversion of 4.0 cubic feet per second for the irrigation of 160 acres within the
26

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1 SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and the W $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29. The remaining
2 13.5 acres is within this area.

3 Mrs. Nedrow's husband farmed the property until his death in 1980. He stopped
4 irrigating with Wenas Creek water in 1965 because of the difficulty in maintaining
5 the Longmire Ditch in a condition that would convey adequate water to his property.
6 In the 1950's the owners of the property in Section 19 through which Longmire Ditch
7 flowed, installed a pipeline to serve their land that had been irrigated with water
8 conveyed through Longmire Ditch. Around 1977, since the downstream landowners had
9 long since stopped using the ditch, Lyle Schneider and John Feusner, the current
10 owners of the land in Section 19, covered the ditch through their property.
11 Although Mrs. Nedrow has not used water from Wenas Creek for irrigating their land
12 since 1965, she is asserting a right to supplement the ground water source.

13 The land lies within the Wenas Irrigation District and Mrs. Nedrow is assessed
14 for 15.23 acres. Water from the district reservoir has also not been delivered
15 since 1965.

16 After Mr. Nedrow's death in 1980, their son, Craig, planted orchard and
17 continued irrigating with a well. In the early 1990's the orchard was large enough
18 to make it desirable to sprinkle for frost protection and he found the well would
19 not support such a use. He decided to use Wenas Creek water for this purpose and
20 cleaned the ditch and obtained permission to use the pipeline across the Schneider
21 property to convey water to the open portion of the ditch. There is an issue
22 between the Nedrows and the Schneiders about an easement and continued use of the
23 pipeline to convey water from the creek to Longmire Ditch. The Court, in an Order
24 dated July 8, 1993, found that the easement issue is not properly before this Court
25 as part of the adjudication and must be resolved as a separate action.

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 The Nedrows have argued that the relinquishment provisions of RCW 90.14.160
2 which provides that a right relinquishes after five successive years of nonuse is
3 not applicable due to Section 90.14.140(2)(b) which states "If such a right is used
4 for a standby or reserve water supply to be used in time of drought or other low
5 flow period so long as withdrawal or diversion facilities are maintained in good
6 operating condition for the use of such reserve or standby water supply".

7 There is no evidence before the Referee to show that the water right issued as
8 a reserve or standby supply. The certificates do not describe such an intent.
9 There is no evidence that the defendant or her husband sought and obtained
10 authorization to change the purpose of use from a primary supply to a reserve or
11 standby supply. We do not know if there was an intent to use Wenas Creek as a
12 backup supply when the use ceased in 1965. Additionally, until 1992 it is
13 questionable whether the diversion facility was maintained in good operating
14 condition as required by Section 90.14.140(2)(b). Craig Nedrow testified to
15 expending considerable time and money in 1992 in order to divert and carry water
16 through the Longmire Ditch.

17 Based on the foregoing, the Referee finds that any right that may have been
18 appurtenant to the Nedrow property described in Court Claim No. 07513 has
19 relinquished for nonuse and cannot recommend confirmation of a water right to Edith
20 Nedrow.

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22
23 COURT CLAIM NO. 02205 -- Northwestern Fruit & Produce Co.

24 Northwestern Fruit and Produce Company submitted a Statement of Claim to the
25 Court for use of waters within Subbasin No. 15. The defendant was represented by
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 Attorney James F. Hutton and Richard Keller, owner of Northwestern Fruit and
2 Produce Company, testified at the evidentiary hearing.

3 Northwestern Fruit and Produce Company owns the $NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$,
4 and a portion of the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 29, T. 15 N., R. 18 E.W.M. Most of this
5 area is planted in orchard that is irrigated from several wells located within
6 Section 29. Northwestern is asserting a right for 1.0 cubic foot per second for
7 use on the $SW\frac{1}{4}NW\frac{1}{4}$ of Section 29 and 0.935 cubic foot per second for use on the
8 remainder of their land in Section 29. Their claim is based on two certificates
9 that issued as a result of the 1921 adjudication of Wenas Creek. Certificate No.
10 108 is a Class 7 right that authorized the diversion of 4.0 cubic feet per second
11 for the irrigation of 160 acres in the $SE\frac{1}{4}NE\frac{1}{4}$ of Section 30 and the $W\frac{1}{2}SW\frac{1}{4}$ and
12 $SW\frac{1}{4}NW\frac{1}{4}$ of Section 29, T. 15 N., R. 18 E.W.M.. The certificate authorized the
13 irrigation of all the land described on the face of the certificate and
14 Northwestern owns the 40 acres within the $SW\frac{1}{4}NW\frac{1}{4}$ of Section 29. Certificate No. 48
15 is a Class 10 right that authorized the diversion of 1.52 cubic feet per second for
16 the irrigation of 76 acres within all of Section 29, except the $W\frac{1}{2}SW\frac{1}{4}$ and $SW\frac{1}{4}NW\frac{1}{4}$.
17 The record indicates that Longmire Ditch was the historic method of conveying the
18 water authorized by these certificates to their respective places of use.

19 Mr. Keller acquired Northwestern Fruit and Produce in 1978. According to his
20 testimony the orchard was planted sometime in the 1950's. At the time he acquired
21 the land the orchard was being irrigated from several wells already constructed on
22 the property. It was his understanding that shortly prior to 1978 a pipeline was
23 installed to replace the portion of Longmire Ditch that crossed his property.
24 Wenas Creek water has not been used to irrigate the property since Mr. Keller

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 acquired the company. There was no testimony of when water from Wenas Creek was
2 last used to irrigate the Northwestern property.

3 Testimony related to claims on lands downstream from Northwestern indicates
4 that water had not been delivered to those lands through the Longmire Ditch since
5 the mid-1960's. Additionally, there was testimony of a portion of the ditch being
6 damaged due to dirt moving activities by Northwestern. The testimony was not clear
7 as far as when that damage occurred. The damage was repaired in 1992 so that Craig
8 Nedrow could use Longmire Ditch. The record reflects that was the first time water
9 had been carried in Longmire Ditch for irrigation purposes since the mid-1960's.

10 Of concern to the Referee is the apparent period of time since these rights
11 were last exercised by Northwestern. RCW 90.14.160 provides that any person
12 entitled to divert waters of the state through any appropriation authorized by an
13 adjudication who voluntarily fails without sufficient cause to beneficially use all
14 or part of said right for five successive years after the effective date of this
15 act (July 1, 1967) shall relinquish such right. The claimant has argued that
16 relinquishment did not occur because they are claiming this right as reserve frost
17 water supplementing their ground water supply. They cite RCW 90.14.140(2)(b) in
18 support of this position. The cited section provides that there will be no such
19 relinquishment: "If such right is used for a standby or reserve water supply to be
20 used in time of drought or other low flow period so long as withdrawal or diversion
21 facilities are maintained in good operating condition for the use of such reserve
22 or standby water supply."

23 There is no evidence before the Referee to show that the water right issued as
24 a reserve or standby supply. The certificates do not describe such an intent.
25 There is no evidence that the defendant, or a predecessor owner, sought and
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 obtained authorization to change the purpose of use from a primary water supply to
2 a reserve or standby supply. It is not known whether there was an intent to
3 maintain a right for a standby supply when use of water from Wenas Creek ceased.
4 Craig Nedrow testified to considerable time and expense spent in 1992 in order to
5 divert and carry water through the Longmire Ditch, raising a question as to whether
6 prior to his efforts the diversion facility was maintained in good operating
7 condition. Lastly, there also is a question whether any portion of Certificate No.
8 48 is appurtenant to the claimant's land. The place of use on the certificate
9 describes 520 acres, but only 76 acres are authorized to be irrigated. The land
10 owned by Northwestern Fruit that lies within the area described on the certificate
11 appear to all lie above the Longmire Ditch and other claimants who own land below
12 the ditch are asserting ownership of the right. Additional evidence is needed in
13 order to convince the Court that any portion of Certificate No. 48 is appurtenant
14 to lands owned by Northwestern Fruit and Produce.

15 Northwestern Fruit and Produce is within the boundaries of the Wenas
16 Irrigation District and is assessed for 36.63 shares. However, there was no
17 testimony that district water has been used on the property. District water would
18 also have been transported through the Longmire Ditch, so it is reasonable to
19 conclude that it has not been used since at least the mid-1960's.

20 Based on the foregoing, the Referee does not recommend confirmation of any
21 rights to Northwestern Fruit and Produce under Court Claim No. 02205.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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2 COURT CLAIM NO. 01013 -- Bud Owens
3 & Jean Owens

4 A Statement of Claim was filed by the Owens for the use of waters from Wenas
5 Creek for irrigation. Glenn Collins, their son-in-law, testified at the
6 evidentiary hearing.

7 Mr. Collins has lived on the property and farmed it since approximately 1980.
8 He testified that the land encompasses 80 acres and all of it is irrigated at times
9 with water from Wenas Creek. Mr. Collins testified that the Owens acquired the
10 property in 1958 and it has consistently been irrigated since that time. He did
11 not have knowledge of the use of the land prior to 1958. The record is not clear
12 about the extent of Mr. Owens ownership. Court Claim No. 01013 did not include the
13 legal description for the lands for which a water right was being claimed. The
14 State's investigation report identified only 11 acres within the portion of the
15 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M. lying south of Wenas Creek and north
16 of the South Wenas Road as being irrigated from Wenas Creek. Mr. Collins testified
17 that the Owens also own the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10 and a portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of
18 Section 10. However, it is not clear how much of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10 they
19 own, nor what the correct legal description is for that portion.

20 There are two certificates from the 1921 adjudication appurtenant to the
21 NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10. Certificate No. 90 is a Class 6 right that
22 authorized the diversion of 1.60 cubic feet per second for the irrigation of 80
23 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 10. The Owens proportionate share of this
24 certificate would be 0.80 cubic foot per second for the irrigation of 40 acres in
25 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10. Certificate No. 91 is a Class 19 right that authorized

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 the diversion of 0.32 cubic foot per second for the irrigation of 16 acres in the
2 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10. Mr. Collins testified that all of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10
3 lying north of the South Wenas Road is being irrigated and that would appear to
4 encompass approximately 16 acres.

5 Certificate No. 92 is a Class 24 right that authorized the diversion of 0.18
6 cubic foot per second for the irrigation of 6.8 acres in the SW $\frac{1}{4}$ of Section 10. If
7 some of the irrigated acres extend into the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, this certificate
8 might be appurtenant. However, Miles Yates is also claiming a right to irrigate
9 lands he owns, approximately six acres in size, in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10. The
10 Referee has not recommended confirmation of a right to Mr. Yates for his property
11 in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10 because the evidence seems to show that the land was
12 not irrigated until the 1940's. However, it is not apparent that this certificate
13 is appurtenant to the Owens property since there is nothing in the record to
14 indicate exactly which acreage is owned by the Owens and how many acres in the
15 NE $\frac{1}{4}$ SW $\frac{1}{4}$ are being irrigated. Mr. Owens identified Certificates No. 90 and 91 as
16 being the basis of his claim, but did not cite Certificate No. 92 in the claim
17 filed with the Court.

18 In spite of Mr. Collins testimony that 80 acres are being irrigated, the
19 Referee cannot find evidence of legal authority to support that claim. The portion
20 of Certificate No. 90 that appears to be appurtenant to the Owens property would
21 authorize the irrigation of 40 acres. Certificate No. 91 authorizes the irrigation
22 of 16 acres and if Certificate No. 92 is appurtenant to any of the Owens property,
23 it authorizes the irrigation of 6.8 acres, for a total of between 56 and 62.8
24 acres.

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28 Re: Subbasin No. 15

1 Mr. Collins testified that stock tanks in his corrals are filled with water
2 from Wenas Creek pumped through his irrigation system and he is asserting a right
3 for stock water. As discussed early in this Report of Referee, diversionary stock
4 watering is being considered as incidental to irrigation rights being confirmed.
5 Mr. Collins did not testify to where the corrals are located, so the Referee does
6 not know whether this use is incidental to the irrigation under Certificate No. 90
7 or 91, which have different priority dates. Therefore, the Referee cannot
8 recommend confirmation of a water right for the diversionary stock water use unless
9 this information is provided. Livestock also drink directly from Wenas Creek when
10 they are not in the corral. This nondiversionary stock water use is covered by the
11 stock water stipulation and no additional right will be confirmed.

12 With the information currently in the record, the Referee recommends
13 confirmation of the following rights to the Owens under Court Claim No. 01013:

14 With a June 30, 1871, date of priority 0.80 cubic feet per second, 120
15 acre-feet per year from Wenas Creek for the irrigation of 40 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
16 Section 10, T. 14 N., R. 18 E.W.M.

17 With a June 30, 1886, date of priority, 0.32 cubic foot per second, 48
18 acre-feet per year from Wenas Creek for the irrigation of 16 acres in that portion
19 of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10 lying north of the South Wenas Road.

20 Upon confirmation of the proposed rights, it is recommended that the Director
21 of the Department of Ecology cancel, rescind or otherwise make null and void
22 Adjudicated Certificate No. 90 and 91.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

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2 COURT CLAIM NO. 00853 -- Stephen J. Picatti

3 A Statement of Claim was submitted to the Court by Stephen J. Picatti for the
4 use of five unnamed springs. Mr. Picatti testified at the evidentiary hearing.

5 According to the testimony, Mr. Picatti has owned the property described in
6 the Court claim since 1980. At the time of his purchase, there were four developed
7 and one undeveloped springs on the property. Spring No. 1 is in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
8 Section 2 near the North Wenas Road and is undeveloped; Spring No. 2 is in the
9 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, near the south section line, and Spring No. 3 is in the
10 northeast corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11. Both are piped to a concrete cistern
11 that provides domestic supply to a home on the North Wenas Road. Spring No. 4 is
12 in the northwest corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 emerges from the ground into a
13 galvanized pipe connected to a hose that is used to irrigate 25 to 30 fruit trees.
14 When the spring is not used for irrigation the water is piped to a stock tank.
15 Spring No. 5 is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 and also emerges into a galvanized pipe
16 that carries water to a stock tank. Mr. Picatti has six horses that utilize
17 Springs No. 4 and 5. They do not have access directly to the source, only to the
18 tanks. The house that is served by Springs No. 2 and 3 was built in 1957. A
19 second house on the property receives its water from a domestic well.

20 Certificate No. 76 stemming from the 1921 Wenas Creek Adjudication includes a
21 small portion of the Picatti property within the authorized place of use. However,
22 most of the property described in the certificate lies south of the North Wenas
23 Road and is owned by Don Hazen, who is asserting a right under the certificate.
24 Additionally, Mr. Picatti testified that he does not have access to Wenas Creek
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26
27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 water and has never used water from the creek. He is not asserting a right to
2 creek water.

3 According to Mr. Picatti's testimony the land received a Homestead Patent in
4 1887 and the land has historically been used for raising livestock. Mr. Picatti
5 knew very little about the history of water use on the property, but found remnants
6 of wooden stock tanks near the springs he currently uses for stock water, leading
7 him to believe this use has continued for a substantial period of time. He was not
8 sure whether use of Spring No. 4 for irrigation began prior to the time the fruit
9 trees were planted approximately 15 years ago. There was no evidence submitted to
10 show that use of Springs No. 2 and 3 for domestic supply preceded 1957 when the
11 current home being served was built. In order to establish a water right in 1957 a
12 permit had to be obtained from a predecessor to the Department of Ecology. There
13 is no evidence this occurred. There is also no evidence that RCW 90.14 claims were
14 filed for the two springs that are being used to provide stock water or the spring
15 being used to irrigate the fruit trees. Water Right Claim No. 056064 was
16 identified as possibly being appurtenant to the claimant's property, however, it
17 describes a spring located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2. RCW 90.14.071 provides that
18 failure to file a claim waives and relinquishes any right that might have existed.

19 Based on the foregoing, the Referee cannot recommend confirmation of a water
20 right to Stephen Picatti under Court Claim No. 00853 due to lack of testimony on
21 historic use for irrigation and domestic supply and lack of evidence of 90.14
22 claims and/or permits issued pursuant to the requirements of RCW 90.03.

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28 Re: Subbasin No. 15

1
2 COURT CLAIM NO. 00684 -- James E. Poisel
3 & Lucinda Poisel

4 A Statement of Claim was submitted for the use of waters from Wenas Creek for
5 irrigation. Mr. Poisel testified at the evidentiary hearing.

6 The Poisels own slightly less than 80 acres of land in the $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ of Section
7 3 and the $NW\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.. They are claiming a right to
8 irrigate all of the land with waters from Wenas Creek. The testimony was that the
9 land has historically been irrigated with waters from Wenas Creek and this use
10 continued until 1983. The land has not been irrigated since 1983 when the ditch
11 that served the property was washed out during a flood. The Poisels do intend to
12 again irrigate the land if they are confirmed water rights through this case.
13 Livestock have routinely been raised on the property and drink directly from Wenas
14 Creek. This type of non-diversionary stock water use is covered by the general
15 stock water stipulation.

16 There are three certificates from the 1921 Wenas Creek Adjudication that
17 contain legal descriptions that include the Poisel property. The claimants are
18 asserting rights under two of the certificates and the third apparently is
19 appurtenant to adjacent land.

20 Certificate No. 58 is a Class 1 right with an 1867 date of priority that
21 authorized the diversion of 0.79 cubic foot per second for the irrigation of 39.6
22 acres in the $S\frac{1}{2}SW\frac{1}{4}$ of Section 3, T. 14 N., R. 18 E.W.M. Apparently the land owned
23 by the Poisels enjoys 19.46 acres of this right, as Robert Neslund, a previous
24 owner of the rest of the land described in Certificate No. 58, relinquished to the
25

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 State the portion of the right appurtenant to his land for the irrigation of 20.14
2 acres.

3 Certificate No. 88 is a Class 2 right with an 1870 date of priority that
4 authorized the diversion of 1.98 cubic feet per second for the irrigation of 98.8
5 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M. Certificate of
6 Change recorded in Volume 1-4, page 181, issued to Mr. Poisel authorizing him to
7 change the point of diversion for the portion of Certificate No. 88 appurtenant to
8 his land. The certificate of change allowed him to change the point of diversion
9 for 1.1 cubic feet per second for the irrigation of 55 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and
10 E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10 to a point in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4. Miles Yates, the owner
11 of a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10 is claiming a portion of Certificate No.
12 88 and Certificate of Change recorded in Volume 1, Page 255 issued to a prior owner
13 of his property.

14 Mr. Poisel is seeking authorization from the Department of Ecology to change
15 the points of diversion for his portions of Certificate No. 58 and 88 to points on
16 his property where he intends to pump the water directly from Wenas Creek rather
17 than relying on a gravity flow ditch. If the Department of Ecology does not
18 approve the applications for change, he will resume using the ditch.

19 The third certificate whose description includes the Poisel property is
20 Certificate No. 59, also a Class 2 right that authorized the diversion of 0.36
21 cubic foot per second for the irrigation of 18 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 10,
22 T. 14 N., R. 18 E.W.M.. This certificate apparently is appurtenant to lands
23 previously owned by Robert Neslund.

24 Mr. Miles Yates asserted at the hearing that Mr. Poisel's water rights have
25 relinquished due to more than five successive years of nonuse, RCW 90.14.160.

26
27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 However, the testimony has shown that the land was continuously irrigated until
2 1983. This adjudication is a legal proceeding that affects the status of water
3 rights and as such is a sufficient cause provided in RCW 90.14.140. Since October
4 1977 surface water rights in the Yakima Basin could not be relinquished for nonuse.

5 Although Mr. Poisel in his claim asserted rights to irrigate 80 acres, the
6 testimony and evidence submitted indicates that he has a right to irrigate 74.46
7 acres. Based on this evidence, the Referee recommends that rights be confirmed to
8 the Poisels for the use of waters from Wenas Creek as follows:

9 With a June 30, 1865, date of priority, 0.39 cubic foot per second, 77.84
10 acre-feet per year for the irrigation of 19.46 acres in the $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ of Section 3,
11 T. 14 N., R. 18 E.W.M. With a June 30, 1870, date of priority, 1.1 cubic feet per
12 second, 220 acre-feet per year for the irrigation of 55 acres in the $NW\frac{1}{4}NW\frac{1}{4}$ and a
13 portion of the $E\frac{1}{2}NW\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.

14
15 COURT CLAIM NO. 01050 -- Gordon S. Reid
16 & Pearl Reid

17 Gordon S. and Pearl Reid submitted a Statement of Claim to the Court for the
18 use of waters from Wenas Creek. Mr. Reid testified at the evidentiary hearing.

19 The Reids own 50 acres of land in the $S\frac{1}{2}SE\frac{1}{4}$ of Section 13, T. 15 N.,
20 R. 17 E.W.M. They are claiming a right to irrigate the 50 acres and provide stock
21 water from Wenas Creek. They are basing their claim on Certificate No. 62 from the
22 1921 adjudication of Wenas Creek. Certificate No. 62 is a Class 10 right with an
23 1877 date of priority. It authorized the diversion of 3.20 cubic feet per second
24 from Wenas Creek for the irrigation of 160 acres in the $N\frac{1}{2}NE\frac{1}{4}$ of Section 24 and the
25 $S\frac{1}{2}SE\frac{1}{4}$ of Section 13, both in T. 15 N., R. 17 E.W.M.. The points of diversion
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 described in the certificate are within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, the NW $\frac{1}{4}$ SE $\frac{1}{4}$, the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the
2 NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14. The proportionate share of that
3 certificate that is appurtenant to the Reid land is 1.0 cubic foot per second for
4 the irrigation of 50 acres.

5 According to the testimony the Reid family has owned or had control of the
6 land since 1915 and it has continuously been irrigated since that time. The point
7 of diversion used by the Reids is located in either the NW $\frac{1}{4}$ SE $\frac{1}{4}$ or the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
8 Section 13. The diversion is extremely close to the quarter section line. In 1980
9 Mr. Reid replaced the open ditch that conveyed the water to his property with a
10 buried pipeline. The water is distributed on the property by pipelines, rills and
11 open ditches. Stock pastured in the fields can drink from the open ditches and
12 also have access to Wenas Creek. Mr. Reid testified that irrigation begins in
13 March, but did not specify when in March. Other claimants have testified to
14 irrigating after mid-March, so a March 15 date for water use in the spring would be
15 reasonable. Supplemental irrigation water is provided by the Wenas Irrigation
16 District and at times from a shallow well. The well has been dry the last few
17 years and, therefore, not used. The district assesses the Reids for 50 shares and
18 delivers 1.3 acre-feet of storage water per assessed share.

19 Based on the foregoing, it is recommended that a right be confirmed to Gordon
20 S. and Pearl Reid under Court Claim No. 01050 with a June 30, 1877, date of
21 priority for the use of 1.0 cubic foot per second, 150.0 acre-feet per year from
22 Wenas Creek for the irrigation of 50 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the east 330 feet of
23 the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N., R. 17 E.W.M. It is also recommended that 2
24 acre-feet per year be confirmed for stock watering. The recommended right shall
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28 Re: Subbasin No. 15

1 carry a provision that the land receives supplemental water from the Wenas
2 Irrigation District and may receive supplemental water from a well.

3 Upon confirmation of the proposed rights, it is recommended that the Director
4 of the Department of Ecology cancel, rescind or otherwise make null and void
5 Adjudicated Certificate No. 62.

6
7 COURT CLAIM NO. 01611 -- Lorraine P. Rennie
8 Robert M. Messer
9 & Mary L. Rennie

10 COURT CLAIM NO. 01612 -- Mary E. Hagedorn
11 & Harvey Hagedorn
12 Lorraine P. Rennie
13 & Robert Rennie (Deceased)
14 Robert M. Messer
15 & Mary L. Rennie

16 Statements of Claim were received by the Court from Lorraine P. Rennie and
17 Mary E. and Harvey Hagedorn for the use of waters from Wenas Creek. On July 15,
18 1992, Robert M. Messer and Mary L. Rennie were joined to the claims. Attorney
19 Sarah Geary Ottem represented the defendants. Robert Messer, Lorraine Rennie and
20 Mary Hagedorn testified at the evidentiary hearing.

21 Both claims describe property in Government Lots 3 and 4 of Section 18,
22 T. 15 N., R. 18 E.W.M.. Originally two claims were filed because of differing
23 ownership, but it now appears best to address water rights for the entire parcel
24 through Court Claim No. 01612. The defendants are asserting a right to irrigate 25
25 acres with waters from Wenas Creek and provide water for livestock. The basis for
26 their claim is Certificate No. 69, a Class 14 right with an 1881 date of priority.
27 It authorized the diversion of 0.53 cubic foot per second from Wenas Creek for the
28 irrigation of 26.35 acres within Lots 3 and 4, and the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 18,
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1 T. 15 N., R. 18 E.W.M.. The land has been in the Rennie family since 1907 and has
2 continued to be irrigated since the certificate issued in 1921. There is, however,
3 inconsistent information about the number of acres being irrigated.

4 According to Robert Messer's testimony, 25 acres are being irrigated. This
5 estimate is based on the Wenas Irrigation District assessing the family for 25
6 acres. However, testimony by other defendants who are members of the Wenas
7 Irrigation District was that the assessed acres do not necessarily match the
8 irrigated acres. The records submitted in support of the district's claim show
9 these claimants assessed for 24.01 acres. The county parcel map submitted as an
10 exhibit shows the total ownership as being 24 acres. A 1943 SCS farm plan and
11 aerial photo shows 22 acres being irrigated and the aerial photograph John Mayo
12 brought to the evidentiary hearing shows the same area being irrigated. The
13 State's Investigation Report identified 22 acres as being irrigated. The
14 preponderance of evidence supports a conclusion that 22 acres are being irrigated
15 and have been irrigated since at least 1943. Mr. Messer testified that
16 approximately 3 acre-feet per acre irrigated is used from Wenas Creek. The Wenas
17 Irrigation District delivers 1.3 acre-feet per acre assessed, or 31.2 acre-feet for
18 24 assessed acres.

19 Since 1981, when a pipeline was installed, water from Wenas Creek has been
20 diverted at a point located in either the NW $\frac{1}{4}$ SE $\frac{1}{4}$ or NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N.,
21 R. 17 E.W.M.. The diversion is very close to the quarter section line between the
22 two subdivisions. A diversion in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 has also historically
23 been used to deliver water to this property through an open ditch. The diversion
24 in Section 12 has not been used since 1981. The claimants want the opportunity to
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1 be able to reestablish use of this diversion in the future should the need arise.
2 The open ditch still exists and is available for use.

3 A right is being claimed for use of waters from Wenas Creek for stock
4 watering. Mr. Messer testified that stock drink out of Wenas Creek directly and
5 described having to break the ice in the creek during the winter months. Wenas
6 Creek does intersect the southwest corner of the property. There was no testimony
7 that water is diverted from the creek into stock tanks. Therefore, the Referee
8 concludes there is no diversionary stock water use and the non-diversionary stock
9 water stipulation covers the stock water use being made.

10 Based on the foregoing, the Referee recommends that a right be confirmed under
11 Court Claim No. 01612 with a June 30, 1881, date of priority for the diversion of
12 0.44 cubic foot per second, 66 acre-feet per year from Wenas Creek for the
13 irrigation of 22 acres. The right will carry a provision that identifies that the
14 land obtains supplemental water from the Wenas Irrigation District. It is
15 recommended that a right not be confirmed under Court Claim No. 01611.

16 Upon confirmation of the proposed rights, it is recommended that the Director
17 of the Department of Ecology cancel, rescind or otherwise make null and void
18 Adjudicated Certificate No. 69.

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20
21 COURT CLAIM NO. 01021 -- Delores A. Rupel

22 A Statement of Claim was filed with the Court for the use of waters from Wenas
23 Creek for irrigation and stock water. Mrs. Rupel testified at the evidentiary
24 hearing.

25 Mrs. Rupel owns five acres being the south 495 feet of the east 440 feet of
26 the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M.. She is claiming a right to

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1 irrigate 4.5 acres and stock watering with waters from Wenas Creek. The livestock
2 raised on the property have access to, and drink directly out of, Wenas Creek.
3 There is no diversionary stock water use. A 2 BHP pump is used to withdraw creek
4 water, which is distributed through two inch handlines. According to Mrs. Rupel's
5 testimony, this land was owned by Cleman Dairy in the early 1900's and it has been
6 continuously irrigated since that time.

7 Certificate No. 13, a Class 1 right with an 1867 date of priority issued to
8 Cleman Dairy and is appurtenant to the claimant's land. It authorized the
9 diversion of 2.52 cubic feet per second for the irrigation of 126.26 acres in the
10 SE $\frac{1}{4}$ SE $\frac{1}{4}$, the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 14 N.,
11 R. 18 E.W.M. The proportionate share of that certificate that would be appurtenant
12 to the 4.5 acres irrigated by Mrs. Rupel is 0.09 cubic foot per second.

13 Based on the foregoing, the Referee recommends that a right be confirmed to
14 Delores A. Rupel under Court Claim No. 01021 with a June 30, 1867, date of priority
15 for the diversion of 0.09 cubic foot per second, 13.5 acre-feet per year from Wenas
16 Creek for the irrigation of 4.5 acres. Non-diversionary stock water is covered by
17 the stock water stipulation and no additional water right will be confirmed for
18 that use.

19
20
21 COURT CLAIM NO. 00862 -- Thomas Robert Rupel
& Delores A. Rupel

22 A Statement of Claim was filed with the Court by Kenneth and Bonita King for
23 the use of waters from Wenas Creek for irrigation and stock water. On August 18,
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1 1989, Thomas R. Rupel was substituted for the Kings on the claim and subsequent to
2 that Delores A. Rupel was joined. Delores Rupel testified at the evidentiary
3 hearing.

4 The testimony shows that Thomas Rupel originally purchased 11.2 acres in the
5 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M. from Kenneth and Bonita King. At the
6 time of purchase the land was being irrigated with waters from Wenas Creek.
7 Mrs. Rupel testified that the land has continually been irrigated since the time it
8 was owned by Cleman Dairy in the early 1900's. The land is sprinkler irrigated
9 with water withdrawn from the creek using a 7.5 BHP pump located on property owned
10 by Mrs. Rupel just east of the land described in Court Claim No. 00862.

11 Certificate No. 13, a Class 1 right from the 1921 Wenas Creek Adjudication, is
12 appurtenant to the land described in Court Claim No. 00862. It issued to Cleman
13 Dairy and authorized the diversion of 2.52 cubic feet per second for the irrigation
14 of 126.26 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
15 Section 12, T. 14 N., R. 18 E.W.M..

16 According to Mrs. Rupel's testimony, a 2.5 acre parcel was sold to Dennis
17 Wiggins and the sales contract specifically withheld the water rights from the
18 sale. It is the Rupels intent to retain the water rights appurtenant to the 2.5
19 acre parcel for use on the 8.7 acres they still own. Mr. Wiggins is not a party to
20 this case and has not asserted ownership of a surface water right for the land he
21 purchased from the Rupels.

22 There is nothing in the record to show that the Rupels have legally
23 transferred the water right off the land they sold to Mr. Wiggins. Although
24 Mrs. Rupel stated their intent was to retain the water right appurtenant to the 2.5
25 acre parcel, they actually appear to be intending to transfer the water right from
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1 the 2.5 acre parcel to the 8.7 acre parcel they continue to own. At this point
2 they have done nothing to accomplish that transfer. RCW 90.03.380 provides in
3 pertinent part, "The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land or place
5 upon which the same is used: PROVIDED, HOWEVER, that said right may be transferred
6 to another or to others and become appurtenant to any other land or place of use
7 without loss of priority of right theretofore established, if such change can be
8 made without detriment or injury to existing rights." The section then provides a
9 procedure for applying to the Department of Ecology for authorization to change the
10 place of use. The Rupels have presented to the Court no proof that they have
11 contractually retained that water right and even if they provided that proof, they
12 would hold a water right that was not appurtenant to any piece of property and,
13 therefore, could not be used.

14 In order to confirm a water right, the Referee must describe the land to which
15 a right is appurtenant. The only land that the water right for the 2.5 acres could
16 be appurtenant at this time is the land the Rupels sold to Dennis Wiggins. In
17 light of this, the Referee will recommend confirmation of a water right for the
18 entire 11.2 acre parcel described in Court Claim No. 00862. The Rupels are
19 directed to contact the Central Regional Office of the Department of Ecology
20 concerning the procedure they must follow in order to seek authorization to
21 transfer the water right from the 2.5 acre parcel owned by Dennis Wiggins to their
22 8.7 acre parcel.

23 The Referee recommends that a right be confirmed to Thomas R. and Delores A.
24 Rupel with a June 30, 1867, date of priority for the diversion of 0.224 cubic foot
25 per second, 33.6 acre-feet per year from Wenas Creek for the irrigation of 11.2
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1 acres in the east 220 feet of the west 660 feet of the south 495 feet and the north
2 405 feet of the south 900 feet of the west 935 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12,
3 T. 14 N., R. 18 E.W.M.
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5

6 COURT CLAIM NO. 00697 -- Lyle R. Schneider
7 (A)01383

8 A Statement of Claim was submitted to the Court by Lyle R. Schneider for the
9 use of waters from Wenas Creek and two unnamed springs for irrigation and stock
10 water. Mr. Schneider was represented by Attorney Lawrence E. Martin. John
11 Feusner, Mr. Schneider's son-in-law, testified at the evidentiary hearing.

12 Mr. Schneider is claiming surface water rights for three different ranches in
13 the Wenas Valley. One is located in the NW $\frac{1}{4}$ of Section 7, T. 15 N., R. 18 E.W.M.
14 A right is being claimed for stock watering from an unnamed spring located in the
15 the S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7. Water is diverted from the spring to stock tanks. The
16 presently used tanks were installed in the late 1940's or early 1950's, but there
17 are remnants of wood stave tanks that indicate a considerably earlier water use of
18 this purpose. This property reportedly was used by a man by the name of Kandle for
19 raising livestock in the mid to late 1800's. According to the Report of Referee
20 for the 1921 Decree, Robert Kandle settled on other nearby land owned by
21 Mr. Schneider in 1870 and Mr. Schneider believes use of this spring dates to
22 approximately the same time. Water Right Claim No. 128670 was filed by
23 Mr. Schneider pursuant to RCW 90.14, documenting the use of this spring for stock
24 water. Mr. Feusner did not provide any testimony about the amount of water used
25 from this spring or the number of cattle that routinely graze in the area.
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1 However, the State's Investigation Report stated that 100 cow/calf units normally
2 have access to this site. A quantity of 0.04 cubic foot per second, 8 acre-feet
3 per year should be adequate for that number of animals.

4 The second ranch is located in Sections 19 and 30, T. 15 N., R. 18 E.W.M.,
5 with the irrigated land being within that portion of the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ lying west of
6 the North Wenas Road and the E $\frac{1}{2}$ SW $\frac{1}{4}$ in Section 19 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30 lying
7 west of the North Wenas Road. Three hundred acres are irrigated with waters from
8 Wenas Creek under rights stemming from the 1921 Decree or from the Wenas Irrigation
9 District. Mostly hay and pasture is planted, with some grain rotation. They begin
10 irrigating on March 1 if water is available and irrigate until October 15. Their
11 "class" water, authorized by adjudicated certificates is not available by the end
12 of June and irrigation district water is relied on until the end of the season.
13 The district assesses Mr. Schneider for 414.60 acres and delivers 1.3 acre-feet per
14 acre assessed. Three certificates are appurtenant to portions of the Schneider
15 property and are the basis for the claimed water right.

16 Certificate No. 39 is a Class 2 right with an 1870 date of priority. It
17 authorized the diversion of 1.6 cubic feet per second for the irrigation of 80
18 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19. The authorized
19 point of diversion is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19. Certificate No. 40 is a
20 Class 8 right with an 1875 priority date. It authorized the diversion of 1.5 cubic
21 feet per second for the irrigation of 75 acres within the W $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
22 Section 19 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30. The authorized points of diversion are in
23 the NW $\frac{1}{4}$ NW $\frac{1}{4}$, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19. Certificate No. 93 is a Class
24 5 right with a May 1871 date of priority. It authorized the diversion of 2.75
25 cubic feet per second for the irrigation of 144.92 acres in Lots 1 and 2, the
26

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1 SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19. The authorized point of diversion is within
2 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13. The testimony and evidence has been sufficient to show
3 that these certificates have continued to be exercised in the years since they
4 issued. Apparently over the years the points of diversion have changed for
5 Certificates No. 39 and 93, probably as the system was upgraded to eliminate long
6 gravity flow ditches. Notes on the exhibits indicate that in 1992 Mr. Schneider
7 applied to the Department of Ecology for authorization under RCW 90.03.380 to
8 change the point of diversion for these two certificates. Apparently the
9 department has not acted on these applications.

10 Mr. Schneider has also claimed a Class 16 right for the irrigation of 18 acres
11 within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19. However, the Referee cannot locate in the Decree
12 a Class 16 right for this property. Certificate No. 95, which issued to the Wenas
13 Ditch Company, was identified in testimony as the appropriate certificate, but it
14 does not include the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 within the place of use. Even if the
15 claimant was able to identify a certificate that includes the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19,
16 the right appears to have relinquished. According to the testimony, that land has
17 not been irrigated during the Schneider ownership, which began in 1965. RCW
18 90.14.160 provides that effective in 1967, if an adjudicated right is voluntarily
19 unused for five successive years without sufficient cause, the right relinquishes.
20 Mr. Schneider has tried to argue that unavailability of water, one of the
21 "sufficient causes" identified in RCW 90.14.140, prevented the right from
22 relinquishing. The Referee is not convinced. The testimony has shown that water
23 is available for Class 16 and lower class rights early in the irrigation season.
24 Mr. Schneider was not aware he had a Class 16 certificate (if in fact he does)
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1 until recently; without knowledge of the right there can be no intention to
2 exercise the right.

3 Certificate No. 49, a Class 10 right issued to David Longmire and describes
4 the property irrigated as the $NW\frac{1}{4}NW\frac{1}{4}$ of Section 19, which would be lands owned by
5 Mr. Schneider. However, Certificate No. 93 is already appurtenant to that land and
6 the evidence shows that R. F. Tomlin, not David Longmire, owned the land at the
7 time the certificates issued. Other rights confirmed for David Longmire in the
8 1921 decree were for lands in Sections 29 and 30, leading the Referee to conclude
9 that the certificate contains a typographical error in the place of use.

10 The third ranch lies in the $E\frac{1}{2}NW\frac{1}{4}$, the $SW\frac{1}{4}NE\frac{1}{4}$ and the $NW\frac{1}{4}SE\frac{1}{4}$ of Section 11, T.
11 14 N., R. 18 E.W.M.. One hundred fifty three acres are irrigated within this
12 ranch. Portions of three certificates are appurtenant to the lands owned by
13 Mr. Schneider. A portion of Certificate No. 13, as amended by Certificate of
14 Change recorded in Volume 1-4, Page 216, authorized the diversion of 0.64 cubic
15 foot per second 160 acre-feet per year from Wenas Creek for the irrigation of 32
16 acres in the $NW\frac{1}{4}SE\frac{1}{4}$ of Section 11. The portion of Certificate No. 13 not amended
17 by the referenced certificate of change is appurtenant to other lands. Certificate
18 No. 14, as amended by Certificate of Change recorded in Volume 1-4, Page 217,
19 authorized the diversion of 1.60 cubic feet per second, 400 acre-feet per year from
20 Wenas Creek for the irrigation of 80 acres within the $SE\frac{1}{4}NW\frac{1}{4}$ and $SW\frac{1}{4}NE\frac{1}{4}$ of Section
21 11. Certificate No. 18, as amended by Certificate of Change recorded in Volume
22 1-4, Page 218, authorized the diversion of 0.66 cubic foot per second, 165
23 acre-feet per year for the irrigation of 33 acres in the $SE\frac{1}{4}NW\frac{1}{4}$ of Section 11.
24 Certificate No. 13 is a Class 1 water right with an 1867 date of priority,
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1 Certificate No. 14 is a Class 6 water right with an 1871 date of priority, and
2 Certificate No. 18 is a Class 21 right with an 1890 date of priority.

3 There appears to be less land irrigated than is being asserted by the
4 claimant. The certificates authorize the irrigation of 112 acres within the
5 $SE\frac{1}{4}NW\frac{1}{4}$, the $SW\frac{1}{4}NE\frac{1}{4}$ and the $NW\frac{1}{4}SE\frac{1}{4}$ of Section 11 and that is consistent with the
6 State's Exhibit map after it was corrected by Mr. Feusner. Mr. Feusner also
7 testified and indicated on the map that the lands in the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 11 lying
8 south of the ditch were irrigated from Wenas Creek. This area is approximately 15
9 acres in size, for a total of 127 acres being irrigated from Wenas Creek.

10 The testimony was that five acre-feet per acre is used to irrigate the
11 Schneider lands. The testimony also was that natural flow creek water is not
12 available after June 30 and from that point forward reservoir water from the Wenas
13 Irrigation District is used for the lands in Sections 19 and 30.

14 Mr. Schneider is also claiming a right to use an unnamed spring for stock
15 watering. The testimony was that the spring is undeveloped and stock are allowed
16 to drink directly from the spring source. This type of use is covered by the
17 non-diversionary stock water stipulation and no additional right is necessary.

18 Based on the foregoing, the Referee recommends that rights be confirmed to
19 Lyle R. Schneider under Court Claim No. 00697 as follows:

20 With a June 30, 1870, date of priority under the Riparian Doctrine, a right
21 for 0.04 cubic foot per second, 8 acre-feet per year from an unnamed spring for
22 continuous stock watering within the $S\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ and $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ of Section 7, T. 15 N.,
23 R. 18 E.W.M..

24 With a June 30, 1870, date of priority a right for the diversion of 1.6 cubic
25 feet per second, 386.5 acre-feet per year from Wenas Creek for the irrigation of 80
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1 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, both in
2 T. 15 N., R. 18 E.W.M..

3 With a June 30, 1875, date of priority a right for the diversion of 1.5 cubic
4 feet per second, 362 acre-feet per year from Wenas Creek for the irrigation of 75
5 acres within the W $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, all
6 in T. 15 N., R. 18 E.W.M..

7 With a May 30, 1871, date of priority a right for the diversion of 2.75 cubic
8 feet per second, 664 acre-feet per year for the irrigation of 144.92 acres within
9 Lots 1 and 2, the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 15 N., R. 18 E.W.M..

10 With a June 30, 1867, date of priority, 0.64 cubic foot per second, 154.6
11 acre-feet per year from Wenas Creek for the irrigation of 32 acres within the
12 NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M..

13 With a June 30, 1871, date of priority, 1.60 cubic feet per second, 386.5
14 acre-feet per year from Wenas Creek for the irrigation of 80 acres within the
15 SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M..

16 With a June 30, 1890, date of priority, 0.30 cubic foot per second, 72.4
17 acre-feet per year from Wenas Creek for the irrigation of 15 acres within that
18 portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M. lying south of the old
19 Cleman Ditch.

20 Upon confirmation of the proposed rights, it is recommended that the Director
21 of the Department of Ecology cancel, rescind or otherwise make null and void
22 Adjudicated Certificates No. 13, 14, 18, 39, 40 and 93 and Certificates of Change
23 recorded in Volume 1-4, Pages 216, 217, and 218.

24 The rights confirmed for lands served by the Wenas Irrigation District shall
25 contain a provision that states they receive supplemental water from the district.
26

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1 runoff from the application of district water or leakage from the canal. He
2 testified that he approached the district about purchasing shares and was told it
3 was not necessary, since the water ends up on his property, available for his use,
4 anyway.

5 Michael Schuller filed Water Right Claim No. 098868 pursuant to the
6 requirements of RCW 90.14. It documents a claim to a water right for the use of
7 300 gallons per minute from a natural drainage for irrigation of 30 acres. The
8 date of first water use identified on the form is 1946, which is the year the
9 Schullers first used the water. In order for the claim to represent a valid water
10 right the water had to have been put to use prior to June 6, 1917, unless the land
11 is riparian to the water source. If a right is claimed under the Riparian
12 Doctrine, the water had to first be used prior to December 31, 1932. There has
13 been insufficient testimony to allow the Referee to conclude that water was first
14 used by these significant dates. Additionally, it is not clear that the water used
15 is state's water to allocate. There is nothing in the record to indicate the
16 boundaries for the Naches-Selah Irrigation District, however, the testimony
17 indicates the district serves lands in the vicinity. The water appears to result
18 from the application of district water or leakage from its canal. While it remains
19 within the exterior boundaries of the district, the water is not state's water
20 available for appropriation.

21 Based on the foregoing, the Referee cannot recommend that a water right be
22 confirmed under Court Claim No. 01389. If the water being used does indeed come
23 from the Naches-Selah Irrigation District system, use can continue under whatever
24 agreement exists between the Evans and the district.

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1
2 COURT CLAIM NO. 00882 -- Seven Seas Trust

3 Seven Seas Trust submitted a Statement of Claim to the Court for use of waters
4 from Wenas Creek. There was no appearance by a representative of Seven Seas Trust
5 at the evidentiary hearing, therefore, the Referee cannot recommend confirmation of
6 a water right under Court Claim No. 00882. It is noted that several other
7 claimants appear to now own the land described in Court Claim No. 00882 and those
8 claimants did appear and testify in behalf of their claims.
9

10
11 COURT CLAIM NO. 06496 -- Merle Shuyler
12 Beverlie Shuyler

13 A Statement of Claim was submitted by the Shuylers for the use of waters from
14 Wenas Creek for irrigation of six acres. Mr. Shuyler testified at the evidentiary
15 hearing.

16 The Shuylers own the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M. and
17 irrigate approximately six acres of pasture and hay in the portion of their
18 property lying north and east of Wenas Creek. Water is withdrawn from the creek
19 with a 7.5 BHP pump and handlines are used for distribution of the irrigation
20 water. Livestock raised on the property drink directly from Wenas Creek.

21 The Shuylers are basing their claim on Certificate No. 34 from the 1921
22 adjudication. Certificate No. 34 issued to Iowa Flat Ditch Company with an 1881
23 date of priority authorizing the diversion of 22.19 cubic feet per second for the
24 irrigation of 1,109.5 acres. The certificate specifically authorized the
25 irrigation of 20 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M.. In
26 1978, Certificate of Change recorded in Volume 1-4, Page 163, issued to Gary L.

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1 Blevens (the individual the Shuylers purchased from in 1978) and Merle E. Shuyler
2 authorizing them to change the point of diversion of 0.20 cubic foot per second for
3 the irrigation of 10 acres in the $W\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 12. The diversion was moved
4 to a point 200 feet north and 1,620 feet east of the south quarter corner of
5 Section 12.

6 According to Mr. Shuylers testimony the land was being irrigated by Gary
7 Blevens when they purchased it in 1978 and there was evidence of an abandoned
8 diversion system on the property.

9 Based on the foregoing it is recommended that a right be confirmed under Court
10 Claim No. 06496 with a June 30, 1881, date of priority for the diversion of 0.12
11 cubic foot per second, 18 acre-feet per year for the irrigation of 6 acres in the
12 $SW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$ of Section 12, T. 14 N., R. 18 E.W.M.. The non-diversionary stock water
13 use is covered by the stock water stipulation and no other right will be confirmed.

14 Upon confirmation of the proposed right, it is recommended that the Director
15 of the Department of Ecology cancel, rescind or otherwise make null and void
16 Adjudicated Certificate No. 34 and Certificate of Change recorded in Volume 104,
17 Page 163.

18
19
20 COURT CLAIM NO. 01508 -- Kieth Sterling
& Katherine Sterling
21 Person & Person Inc.

22 A Statement of Claim was submitted to the Court by Kieth Sterling and
23 Katherine Sterling for the use of waters from Wenas Creek and unnamed springs. On
24 May 13, 1992, Person and Person, Inc. was joined to the claim. James Person
25 appeared and testified at the evidentiary hearing. Mr. Person presented evidence
26 in the form of a Purchaser's Assignment of Contract and Deed showing that Person

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1 and Person, Inc., has acquired all interest in the lands described in Court Claim
2 No. 01508.

3 The lands described in the claim consists of the NW $\frac{1}{4}$, the N $\frac{1}{2}$ SW $\frac{1}{4}$, and the
4 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14, T. 16 N., R. 16 E.W.M.. Rights
5 are being asserted for the irrigation of 140 acres from Wenas Creek or its
6 tributaries and stock water from unnamed springs. Two certificates from the 1921
7 Wenas Creek adjudication are appurtenant to the property. Certificate No. 78, a
8 Class 11 right with an 1878 date of priority authorized the diversion of 2.40 cubic
9 feet per second for the irrigation of 120 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 14 and the
10 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T. 16 N., R. 16 E.W.M. The authorized points of diversion
11 are in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of
12 Section 14. Certificate No. 77, a Class 16 right with an 1883 date of priority
13 authorized the diversion of 0.40 cubic foot per second for the irrigation of 20
14 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13. The authorized point of diversion is in the
15 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11.

16 Apparently the diversion from Wenas Creek in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 serves
17 the lands that had been irrigated in Section 13. Sometime in the past, the county
18 road (North Wenas Road) encroached into the ditch that carried water into Section
19 13 and destroyed the ditch. This ditch has not been used during Person and
20 Person's ownership of the land. Mr. Person was not able to provide any testimony
21 concerning when the ditch was last used and did not testify to an alternate
22 diversion point on Wenas Creek. He stated that the only portion of the right that
23 could be considered relinquished is Certificate No. 77 for irrigation of 20 acres
24 in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13. However, Mr. Person did not testify that any of the
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1 land in Section 13 was being irrigated or had been irrigated in the recent past.
2 The State's Exhibit Map, SE-1 does not show any irrigated land in Section 13.

3 There is evidence of irrigation in the $S\frac{1}{2}SE\frac{1}{4}$ of Section 14. A diversion from
4 the South Fork of Wenas Creek, located in the $SW\frac{1}{4}SE\frac{1}{4}$ of Section 14, is used to
5 irrigate approximately eight acres, also in the $SW\frac{1}{4}SE\frac{1}{4}$ of Section 14. A diversion
6 from a tributary of the South Fork of Wenas Creek, called Dippin Vat Canyon in the
7 investigation report, located near the south section line of Section 14, is used to
8 irrigate approximately five acres in the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 14. Both of these
9 diversions and the irrigation practice appear to be authorized by Certificate
10 No. 78. Both of these diversions provide water to livestock that drink directly
11 from the irrigation ditches. Approximately 85 head of livestock of various breeds
12 have been kept on the claimants property and require water.

13 There are several undeveloped springs within the claimant's property that are
14 available for livestock watering. There is no diversion involved, the stock drink
15 directly from the source. This use is covered by the nondiversionary stock water
16 stipulation.

17 A right is also being asserted for domestic supply from an unnamed spring.
18 According to the State's Investigation Report a spring in the $NW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$ of Section
19 13 has been developed and serves a residence located in the $N\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ of Section 13.
20 However, there was no testimony about historic use of the spring for domestic
21 supply, such as when the spring was first developed, when the first home was built
22 on the property, whether the spring was the original source of water for the first
23 home, and is the existing residence the originally constructed home or a
24 replacement for the first home? Without this information, the Referee cannot
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1 determine that a right exists for this use. Therefore, a recommendation cannot be
2 made to confirm a water right for domestic use of the spring.

3 Based on the testimony and evidence, it is apparent that the claimant's
4 property enjoyed water rights stemming from the 1921 adjudication of Wenas Creek.
5 There was insufficient testimony about continued beneficial use on the lands in
6 Section 13 for the Referee to recommend that a right be confirmed for this land.
7 However, the Referee does recommend that a right be confirmed for the land in
8 Section 14 as follows:

9 With a June 30, 1878, date of priority for the diversion of 0.16 cubic foot
10 per second, 24 acre-feet per year from the South Fork of Wenas Creek for the
11 irrigation of 8 acres in that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14 lying north of
12 South Fork of Wenas Creek and southwest of Wenas Creek and 0.10 cubic foot per
13 second, 15 acre-feet per year from Dippin Vat Canyon for the irrigation of 5 acres
14 in that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14 lying south of both Wenas Creek and the
15 South Fork of Wenas Creek. An additional 1 acre-foot per year from each source is
16 recommended for stock watering.

17 Upon confirmation of the proposed rights, it is recommended that the Director
18 of the Department of Ecology cancel, rescind or otherwise make null and void
19 Adjudicated Certificates No. 77 and 78.

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22 COURT CLAIM NO. 00945 -- E. E. Stohsner
(A)04298 & Helen R. Stohsner
John Ashbaugh
23 & Lynn Ashbaugh

24 E. E. and Helen R. Stohsner filed a Statement of Claim for use of waters from
25 Wenas Creek. In 1989 the claim was amended to include adjoining land they had
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1 purchased and a claim for the use of Wenas Creek and an unnamed spring on the newly
2 acquired land. On April 24, 1992, John and Lynn Ashbaugh were joined to the claim.
3 Attorney Wade E. Gano represents the claimants and John Ashbaugh testified at the
4 evidentiary hearing. Jim Fletcher also testified concerning this claim in an oral
5 deposition taken on November 2, 1992, and published in open court on December 1,
6 1992. The Stohsners own the property and the Ashbaughs currently farm the land.
7 Lynn Ashbaugh is the Stohsner's daughter.

8 The claim as amended covers land lying in the SE $\frac{1}{4}$ of Section 32, T. 15 N.,
9 R. 18 E.W.M. According to the testimony there are approximately 65 acres irrigated
10 with waters from Wenas Creek and Spring Creek in that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of
11 Section 32 owned by the Stohsners and approximately 13.5 acres irrigated with water
12 from Wenas Creek in the portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32 owned by the Stohsners.
13 Mr. Fletcher testified that the land in the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32 was once owned by
14 his family and was irrigated with waters from Wenas Creek and Spring Creek, a
15 spring-fed side channel of the South Fork of Wenas Creek. His family never owned
16 the lands in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32, but recalls it being irrigated at the time
17 his family owned the neighboring property.

18 There are three certificates from the 1921 Wenas Creek Adjudication that are
19 appurtenant to the claimants' property. Certificate No. 43 is a Class 6 right with
20 an 1871 date of priority. It authorized the diversion of 3.09 cubic feet per
21 second from Wenas Creek and its tributaries for the irrigation of 154.4 acres
22 within the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M. and the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 5,
23 T. 14 N., R. 18 E.W.M. Spring Creek is a tributary of Wenas Creek and, therefore,
24 would be an authorized source of water in the certificate. The Ashbaughs are also
25 asserting a right for a portion of this certificate under Court Claims No. 2157 and
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1 00204 (also amendment 04297A). The total right being asserted under the three
2 court claims for the lands described in the certificate does not exceed the 154.4
3 acres authorized for irrigation. Certificate No. 67 is also a Class 6 right that
4 authorizes the diversion of 0.07 cubic foot per second for the irrigation of 3.6
5 acre. The place of use described on the certificate is a 3.66 acres parcel in the
6 $W\frac{1}{2}SE\frac{1}{4}$ of Section 32 identified as Parcel No. 42004 in the defendants' exhibits.
7 Approximately 65.2 acres are being irrigated in the $W\frac{1}{2}SE\frac{1}{4}$ of Section 32 under
8 authority of these two Class 6 certificates and the proportionate quantity of water
9 would be 1.3 cubic feet per second.

10 Certificate No. 41 is a Class 12 right with an 1879 date of priority. It
11 authorized the diversion of 1.50 cubic feet per second for the irrigation of 75
12 acres in the $NW\frac{1}{4}NW\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M., the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 32,
13 T. 15 N., R. 18 E.W.M. and the $S\frac{1}{2}SW\frac{1}{4}$ of Section 33, T. 15 N., R. 18 E.W.M. The
14 current owners of the $NW\frac{1}{4}NW\frac{1}{4}$ of Section 4 and the $S\frac{1}{2}SW\frac{1}{4}$ of Section 33 have not
15 submitted a claim with the court and are not parties to this case. The claimants
16 are irrigating approximately 9.3 acres within the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 32. Additional
17 land is being irrigated in the $NE\frac{1}{4}SE\frac{1}{4}$ of Section 32, however, the claimants did not
18 identify, nor has the Court been able to locate, a certificate that is appurtenant
19 to this land. The proportionate share of Certificate No. 41 that would be
20 appurtenant to the claimants' land in the $SE\frac{1}{4}SE\frac{1}{4}$ of Section 32 would be 0.19 cubic
21 foot per second for the irrigation of 9.3 acres.

22 According to the testimony, livestock raised on the property drink directly
23 from Wenas Creek, the South Fork of Wenas Creek and Spring Creek. This type of
24 non-diversionary stock water use is covered by the stock water stipulation and an
25 additional right will not be confirmed. The testimony also indicates that a well
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1 is used to provide supplemental irrigation water when creek water is no longer
2 available later in the irrigation season.

3 Based on the foregoing, it is recommended that rights be confirmed under Court
4 Claim No. 00945, as amended by (A)04298, as follows:

5 With a June 30, 1871, date of priority, 1.3 cubic feet per second, 260.8
6 acre-feet per year from Wenas Creek and Spring Creek for the irrigation of 65.2
7 acres in a portion of the $W\frac{1}{2}SE\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.

8 With a June 30, 1879, date of priority, 0.19 cubic foot per second, 37.2
9 acre-feet per year from Wenas Creek for the irrigation of 9.3 acres and 1 acre-foot
10 for stock water in Lots 1 and 2 of Short Plat No. 79-81, being within the $SE\frac{1}{4}SE\frac{1}{4}$ of
11 Section 32, T. 15 N., R. 18 E.W.M.

12 Upon confirmation of the proposed rights, it is recommended that the Director
13 of the Department of Ecology cancel, rescind or otherwise make null and void
14 Adjudicated Certificates No. 41, 43 and 67.

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16 COURT CLAIM NO. 04514 -- John E. Turner
17 & Ricki K. Turner

18 COURT CLAIM NO. 04613 -- Lee Rider
19 David H. Mabee
& Sara L. Mabee

20 COURT CLAIM NO. 06278 -- Ronald L. Dixon
& Marcia L. Dixon

21 COURT CLAIM NO. 07159 -- Quirt Pierce
22

23 The above Statements of Claim were filed for the use of waters from Wenas
24 Creek. Ronald Dixon, David Mabee, Lee Rider, Ricki Turner and Terry Morgan
25 testified at the evidentiary hearing. Court Claim No. 07159 was filed by Terry and
26 Cindy Morgan. On December 2, 1993, Quirt Pierce was substituted for the Morgans.

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1 The land described in the claims lies within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10,
2 T. 14 N., R. 18 E.W.M. and was under one ownership until approximately 1985 when it
3 apparently was subdivided and began to be sold. The record shows from the early
4 1900's until 1958 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10 was owned by William Ogburn. In 1958
5 his widow sold the land to Marie Rach Passmore and the land subsequently passed
6 through several owners until Don Williams purchased it in 1983. He is the owner
7 who subdivided and sold parcels to the claimants.

8 Certificate No. 60 from the 1921 Wenas Creek Adjudication, a Class 2 right
9 with an 1870 date of priority, is appurtenant to the lands described in the claims.
10 It authorized the diversion of 0.58 cubic foot per second for the irrigation of
11 29.2 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M. The maps from the
12 1921 adjudication do not show which 29 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10 were being
13 irrigated at the time of the adjudication, however, there is approximately 8 acres
14 south of the South Wenas Road for which a water right is not being claimed at this
15 time, so it would be reasonable to assume that land does not enjoy a portion of the
16 certificate.

17 The Turners talked to several of the past owners and testified that the land
18 owned by the Ogburns continued to be irrigated until the late 1970's or early
19 1980's. Miles Yates, a neighboring landowner, contends that the land was not
20 irrigated in the 1970's and any water rights appurtenant to the property have
21 relinquished due to the provisions in RCW 90.14.160. In support of that contention
22 Mr. Yates submitted copies of aerial photographs that purport to show the land was
23 not being irrigated between the early 1970's and the mid-1980's. However, the
24 quality of those copies makes it impossible to determine whether the land was
25 irrigated. Mr. Yates did not provide any other evidence or testimony to support
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1 his position that the rights have relinquished. In 1985 the Turners and Don
2 Williams filed with the Department of Ecology an application to change the point of
3 diversion and a portion of the place of use under Certificate No. 60. The
4 department's investigation at that time concluded that the right had been exercised
5 through the late 1970's and that the sufficient causes provided cited in RCW
6 90.14.140 applied preventing relinquishment of the water right. The testimony at
7 the evidentiary hearing also support that conclusion.

8 The application for change filed with the Department of Ecology was approved
9 authorizing the Turners to divert 0.14 cubic foot per second from Wenas Creek at a
10 point approximately 150 feet east and 950 feet north of the west quarter corner of
11 Section 10, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, for the irrigation of 7 acres in
12 Lot 1 of Short Plat recorded in Book 84, Page 209, being a portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$
13 of Section 10 and the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9.

14 Ronald and Marcia Dixon own approximately 15.5 acres described as Lot 1 of
15 Short Plat recorded in Book 89, Page 157, and irrigate 14.5 acres with water from
16 Wenas Creek. Mr. Dixon testified that there are remnants of the old gravity system
17 on his property and that the evidence provided by the Turners about water use in
18 the 1960's and 1970's also pertains to his property. The land is currently being
19 irrigated using handlines and sprinklers. A 7.5 BHP pump withdraws water from the
20 creek into the distribution system.

21 Court Claim No. 04613 was originally filed by David and Sara Mabee claiming a
22 right to irrigate 9.8 acres described as Lot 1 of Short Plat recorded in Book 89,
23 Page 157. Lee Rider was substituted for the Mabees on the claim, but the Mabees
24 were joined back on January 30, 1992. Dave Mabee testified that they originally
25 purchased 10 acres from Don Williams in 1986. They subsequently sold 8 acres to
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1 Lee Rider and retained 2 acres for themselves. Approximately 4 to 5 of the 8 acres
2 have been irrigated from Wenas Creek in the recent past and Mr. Rider intends to
3 resume irrigating only the land that the Mabees irrigated during their ownership.
4 The remaining land will not be irrigated. Neither Mr. Rider nor Mr. Mabee knew how
5 long it had been since the 3 to 4 unirrigated acres had been irrigated, or if it
6 ever had been irrigated. There was no evidence of the gravity system seen on the
7 Dixon property extending to the portion of the Rider property that has not recently
8 been irrigated. The Mabees currently own two acres of land, but it is not clear
9 where the two acres are. Mr. Mabees' testimony would lead the Referee to believe
10 that it is part of Lot 4 of Short Plat recorded in Book 89, Page 157. However, on
11 the State's map exhibit, Mr. Mabee drew his property where Lot 3 of the Short Plat
12 would be located. The Mabees did not provide a legal description for their
13 property. According to Mr. Mabees' testimony, the two acre parcel was irrigated
14 with waters from Wenas Creek during the 1992 irrigation season, but he is not aware
15 of it being irrigated prior to that with creek water. Additionally, he has no
16 intention of continuing to irrigate with creek water. He has applied to the
17 Department of Ecology to obtain a ground water permit that would enable him to
18 irrigate with well water.

19 There is also some uncertainty about the legal description for the
20 Morgan/Pierce property. The legal description contained in Claim No. 07159 for the
21 land being irrigated is simply 2 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 14 N.,
22 R. 18 E.W.M.. The State's Investigation Report identifies the land as being Lot 2
23 of Short Plat No. 84-210, however, an attachment to Ronald Dixon's claim shows the
24 plat as being Short Plat No, 89-157. Mr. Morgan testified that the land is now
25 being irrigated from a well and does not know whether the land has ever been
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1 irrigated with waters from the creek. He also testified that he does not intend to
2 irrigate with creek water but was advised by the Department of Ecology to file a
3 claim and to file an application to change from a creek diversion to a well.

4 Although the record does contain a general statement that the land owned by
5 William Ogburn has continued to be irrigated into the 1970's, there is still
6 uncertainty about whether all the land once owned by Mr. Ogburn was irrigated.
7 Certificate No. 60 authorized the irrigation of 29.2 acres out of the 40 acres in
8 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10. Therefore, there was land within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ that was not
9 being irrigated and did not enjoy a portion of that certificate. Where the
10 testimony and evidence have not been sufficient for the Referee to conclude that
11 historic irrigation took place, a right cannot be confirmed, which is the case for
12 the Mabee, Pierce (Morgan), and a portion of the Rider properties. Additionally,
13 there is insufficient information in the record as to the correct and accurate
14 legal description for the Morgan and Mabee property to allow confirmation of a
15 water right.

16 The claimants that own land through which Wenas Creek flows testified that
17 livestock drink directly from the creek. This use is covered by the stock water
18 stipulation and no other right will be confirmed.

19 Based on the foregoing, it is recommended that rights be confirmed for the use
20 of waters from Wenas Creek with a June 30, 1870, date of priority as follows:

21 To John E. and Ricki K. Turner, 0.14 cubic foot per second, 28 acre-feet per
22 year for the irrigation of 7 acres.

23 To Lee Rider, 0.08 cubic foot per second, 16 acre-feet per year for the
24 irrigation of 4 acres.

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1 To Ronald L. and Marcia L. Dixon, 0.29 cubic foot per second, 58 acre-feet per
2 year for the irrigation of 14.5 acres.

3 The Dixon, Turner and Rider properties may have a supplemental ground water
4 right appurtenant and the rights, therefore, will carry a provision referencing the
5 possible existence of a ground water right.

6 The Referee cannot recommend that rights be confirmed to David H. and Sara L.
7 Mabee or Quirt Pierce.

8 Upon confirmation of the proposed rights, it is recommended that the Director
9 of the Department of Ecology cancel, rescind or otherwise make null and void
10 Adjudicated Certificate No. 60.

11 COURT CLAIM NO. 00472 -- Wenas Irrigation District
12 (A)01364 John Ashbaugh

13 A Statement of Claim and an amended claim were filed with the Court by the
14 Wenas Irrigation District for the use of waters from Wenas Creek. On March 17,
15 1989, John Ashbaugh was joined to the claim. The irrigation district was
16 represented by Attorney James Hutton, and John Feusner and Ray Day testified on
17 behalf of the district. Attorney Vernon Fowler, representing John Mayo and Haywire
18 Ranch, and Attorney Wade E. Gano, representing John and Lynn Ashbaugh, also
19 appeared along with their clients to address the relationship between the operation
20 of the irrigation district's dam and the availability of stock water for riparian
21 landowners below Fletcher Lane. Stan Isley with the Department of Ecology's
22 Central Regional Office also testified concerning the department's regulatory
23 activities in the Wenas Valley.

24 The Wenas Irrigation District was formed in 1925 and obtained ownership of a
25 dam and reservoir site located in Section 2, T. 15 N., R. 17 E.W.M.. A prior owner
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1 of the dam had begun construction in 1910 and the dam was improved and enlarged by
2 the district in 1925. The dam was repaired and again enlarged in 1981. At the
3 present time the storage capacity of the dam and reservoir is 3,033 acre-feet. Of
4 that quantity, 300 acre-feet must be retained in the reservoir for fish habitat,
5 leaving 2,733 acre-feet available for use on the lands within the district. The
6 district assesses 2,013.5 acres, and the testimony was that is the number of acres
7 that have been irrigated with the stored water. There may be less acres irrigated
8 in any given year due to temporary transfers of shares within the district.

9 Many of the district's patrons are also individual claimants in this
10 proceeding. Through the testimony of four claimants who are also assessed by the
11 district it became apparent there is a relinquishment issue pertaining to the
12 district that must be addressed. The lands owned by Claimants Craig Nedrow, Edith
13 Nedrow and Northwestern Fruit and Produce Company were once served by the Longmire
14 Ditch. Use of that ditch ceased around 1965 and well water used to irrigate the
15 land. Water from Wenas Creek, either natural flow or stored water from the
16 reservoir, has not been delivered to their land since 1965. The portion of the
17 Christensen Family Trust land in Sections 29 and 32, T. 15 N., R. 18 E.W.M. lying
18 east of the North Wenas Road also have not received water from Wenas Creek since
19 1965 and are irrigated with well water. These four entities are assessed for a
20 total of 205.5 acres on lands that do not receive water from the district
21 (Christensen Family Trust does receive district water for lands in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
22 Section 32 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33 and those shares are not being considered
23 in this discussion). Any person entitled to divert or withdraw waters of the state
24 through an appropriation authorized under RCW 90.03.330, 90.44.080 or 90.44.090 who
25 abandons the same, or who voluntarily fails, without sufficient cause, to
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1 beneficially use all or any part of said right to withdraw for any period of five
2 successive years shall relinquish such right or portion thereof . . RCW 90.14.180.
3 There is nothing in the record that would allow the Referee to conclude there has
4 been a sufficient cause to prevent relinquishment. There also is nothing in the
5 record to show that the shares had been transferred to other water users within the
6 district.

7 The district is asserting a water right to store 1300 acre-feet of water from
8 Wenas Creek in its reservoir with an August 4, 1925, date of priority and a right
9 to store an additional 1733 acre-feet with a September 7, 1979, date of priority.
10 This assertion is based on certificates issued by the State pursuant to RCW 90.03.
11 Certificate No. 2054, with a priority date of August 4, 1925, issued to the Wenas
12 Irrigation District, authorizing the storage of 1300 acre-feet per year behind an
13 impounding structure located in the SW $\frac{1}{4}$ of Section 2, T. 15 N., R. 17 E.W.M..
14 Certificate No. 2053, also with an August 4, 1925, date of priority, authorized the
15 use of the stored water for irrigation of 2013.5 acres in the NE $\frac{1}{4}$ of Section 11,
16 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 12, the N $\frac{1}{2}$, SE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 13, the NE $\frac{1}{4}$,
17 N $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, all in T. 15 N., R. 17 E.W.M.; the SW $\frac{1}{4}$ of Section
18 18, the NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 19, the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$
19 and E $\frac{1}{2}$ of Section 30, the W $\frac{1}{2}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$
20 of Section 31, the NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, all in T. 15 N.,
21 R. 18 E.W.M. The application and permit that preceded the certificates, along with
22 other documents entered as exhibits by the irrigation district, identified that the
23 water to be stored would be flood waters that could not be beneficially used by
24 holders of adjudicated certificates.

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1 Certificate No. R4-26435C, with a September 7, 1979, date of priority
2 authorized the storage of an additional 1733 acre-feet per year for the irrigation
3 of 2500 acres. The certificate authorized storage from October 17 through March
4 31. The place of use authorized in Certificate No. R4-26435C is identical to the
5 legal description on Certificate No. 2053. Although Certificate No. R4-26435C
6 authorized the irrigation of 2500 acres with waters stored in the reservoir, there
7 is nothing in the record to indicate more than 2,013.5 acres have been irrigated.
8 In fact the as previously stated, at the time Certificate No. R4-26435C issued only
9 1808 acres were being irrigated within the district. The certificate issued
10 subject to the following three provisions:

11 The natural flow of Wenas Creek must be passed through the dam from
12 April 1 through October 16 of each irrigation season, such that outflow
equals inflow.

13 The district shall construct wiers both above and below the reservoir to
14 measure the water flowing into and out of the reservoir and maintain such
records of flow on a daily basis.

15 The operation of the reservoir shall comply with the provisions of the
16 agreement between the Wenas Irrigation District and the Washington State
Game Department (now Department of Wildlife).

17
18 According to the record, in 1985 and 1990 the Wenas Irrigation District added
19 new lands to the boundaries of the district. The order adding the lands provided
20 that the annexed parcels of land shall not receive water and delivery from the
21 district itself, but may receive water attributed to other parcels already within
22 the district pursuant to arrangements between landowners. The order adding the
23 lands stated the district followed the statutory provisions contained in RCW
24 87.03.560 through 87.03.605. The lands added to the district are not within the
25 legal description described on any of the water right certificates issued to the
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1 district. There is nothing in the record to show that the district followed the
2 procedures identified in RCW 90.03.380 to change the place of use on the water
3 right certificates. A recent amendment to RCW 90.03.380 allows a change of place
4 of use by an individual water user of water provided by an irrigation district upon
5 approval of the change by the board of directors of the district if the use of
6 water continues within the irrigation district. However, this provision only
7 applies for transfers within the district when the water right authorizes water use
8 on all of the district lands. The Wenas Irrigation District water rights do not
9 authorize the use of water on the lands that have recently been added to the
10 district boundaries. A right can only be confirmed for the lands described on the
11 certificates.

12 Certificate of Change, recorded in Volume 1, Page 112, issued to the Wenas
13 Irrigation District on April 1, 1931. The document states that the district was
14 "granted a permit to change the point of diversion of 40 c.f.s. or a part thereof,
15 of the waters of Wenas Creek during a part of each irrigation season for storage
16 purposes, changing from points within the Wenas Irrigation District to a point
17 situated in the E½ of Sec. 3, Twp. 15 N., Rge. 17 E.W.M." You must read the
18 Findings and Decision that preceded that certificate of change in order to fully
19 understand the intent of the change. The application for change was filed by the
20 Wenas Irrigation District and three trustees of the district acting on behalf of
21 themselves and all owners of lands within the district. The purpose of the change
22 was to allow the holders of decreed water rights from the 1921 Wenas Creek
23 Adjudication to have their water stored in the reservoir after April 1 instead of
24 using it to irrigate their land. The stored water would then be released later in
25 the season when the natural flows in the creek had declined. This practice would
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1 occur only if the reservoir had not been filled to capacity by flood waters.
2 Although a single certificate of change issued and did not identify the rights
3 being changed, it appears it was intended to apply to all adjudicated certificates
4 that issued for lands within the Wenas Irrigation District. Neither the witnesses
5 for the district nor the individual claimants who are district patrons presented
6 any testimony or evidence to show that the district has operated as permitted by
7 the certificate of change. In order for there to be sufficient evidence to show
8 that the change had been perfected, claimants would have to testify to having
9 allowed the district to store their class water at a time when they normally would
10 have used the water to irrigate their lands. This testimony is lacking.

11 As earlier stated in this report there is an issue between the irrigation
12 district and downstream riparian owners concerning operation of the dam and its
13 effect on instream stock water rights during the winter and spring. The district
14 asserts that following the 1921 decree, riparian landowners are only entitled to
15 the quantities of water contained in their certificates and any excess waters that
16 could be beneficially applied to the land. By implication, they are not entitled
17 to water for instream uses because those uses were not identified in the decree.
18 The district also takes the position that prior to construction of the reservoir
19 the creek was dry in the late summer months, therefore, water was not available for
20 instream uses. A 1910 to 1911 U.S.G.S. study of Wenas Creek is cited for this
21 conclusion. In spite of an assertion by the district that this conflict is the
22 result of people unfamiliar with the valley buying land and moving into the area,
23 the record shows correspondence in the 1930's and 1940's between the county
24 watermaster and the Supervisor for Hydraulics (one of the Department of Ecology's
25 predecessor agencies) on this same issue. Unfortunately only a portion of the
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1 correspondence was provided the Court, so a clear picture of the position taken at
2 that time by the Supervisor of Hydraulics is not available. However, one letter
3 did state that sufficient water should be left in the stream for stock use if it
4 will flow through without freezing up. The district also pointed out that not all
5 of the land owners filed claims pursuant to RCW 90.14 for instream stock water use.
6 RCW 90.14.041 requires the filing of a claim only for those claiming a right to
7 withdraw or divert water. Therefore, a claim is not needed to protect those
8 instream stock water uses.

9 The 1921 Decree addressed only diversionary water rights, certificates issued
10 only for irrigation and neither the Report of Referee nor Decree specifically
11 addressed stock water. The evidence has clearly shown that by 1865 the Wenas
12 Valley was being settled and the first water appropriations made. The testimony
13 has been very consistent that these early settlers owned livestock and the
14 livestock on riparian land drank from Wenas Creek. Therefore, rights to sufficient
15 flow in the creek for instream stock water coincide with settlement of the land and
16 predate the rights acquired by the Wenas Irrigation District. The non-diversionary
17 stock water stipulation developed by the Department of Ecology was intended to
18 address this situation.

19 The district stated that historically Wenas Creek has experienced low flows
20 during the mid to late summer months and prior to construction of the dam would be
21 dry at times. The evidence does support that contention, however, the severity of
22 the condition varies year to year according to precipitation patterns. Return flow
23 from irrigated lands within the district boundaries does contribute to the flow in
24 the creek. However, riparian owners are not concerned about having sufficient
25 water for instream stock watering during the irrigation season. Their concern is
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1 during the winter months, after the district begins storing water behind the dam.
2 The district must release some of the water that flows into the reservoir in order
3 for there to be sufficient flow in the creek downstream of the dam for instream
4 stock watering. The testimony indicates that after the dam was enlarged and
5 Certificate No. R4-26435C issued allowing storage of water from October 16 through
6 March 31, there was not always adequate flow in the creek for instream stock
7 watering below Fletcher Lane. Since November of 1991, in compliance with an Order
8 Pendente Lite the district has released from the dam sufficient water during the
9 non-irrigation season months to maintain a flow of 0.25 cubic foot per second at
10 Miles Yates property in the NW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.. The
11 testimony indicates this practice has provided sufficient water to satisfy the
12 instream stock water needs of the riparian owners below Fletcher Lane. There is
13 nothing in the record to allow the Referee to quantify the amount of water that the
14 district must release from the dam in order to maintain the identified flow.

15 The Court finds that the storage rights of the Wenas Irrigation District are
16 junior to the riparian, instream stock water rights held by downstream landowners
17 who also have adjudicated certificates appurtenant to their land. Sufficient water
18 must be released from the dam from October 16 to March 31 to provide an adequate
19 flow of water for instream stock watering. The district's operation since the
20 issuance of the pendente lite order in November of 1991 appears to be adequate to
21 satisfy those rights and should continue.

22 It is recommended that rights be confirmed to the Wenas Irrigation District
23 as follows:
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1 With an August 4, 1925, date of priority a right to store 1300 acre-feet per
2 year for the irrigation of 1,808 acres. The place of use shall be that which
3 appeared on Certificate No. 2053.

4 With a September 7, 1979, date of priority a right to store 1733 acre-feet
5 per year for the irrigation of 1,808 acres. The place of use shall be that which
6 appeared on Certificate No. R4-26435C. This right is subject to the following
7 provisions:

8 The natural flow of Wenas Creek must be passed through the dam from
9 April 1 through October 16 of each irrigation season, such that outflow
equals inflow.

10 The district shall construct wiers both above and below the reservoir to
11 measure the water flowing into and out of the reservoir and maintain such
records of flow on a daily basis.

12 The operation of the reservoir shall comply with the provisions of the
13 agreement between the Wenas Irrigation District and the Washington State
Game Department (now Department of Wildlife).

14 Upon confirmation of the above rights, it is recommended that the Director of
15 the Department of Ecology, cancel, rescind or otherwise make null and void Surface
16 Water Certificate No. 2053, Reservoir Certificate No. 2054, Reservoir Certificate
17 No. R4-26435C and Certificate of Change recorded in Volume 1, Page 112.

18 Due to a misunderstanding or miscommunication between John Ashbaugh and a
19 representative of the Department of Ecology, Mr. Ashbaugh was joined to the Wenas
20 Irrigation District claim for a claim to natural flow waters for use on the SW $\frac{1}{4}$ of
21 Section 12, T. 15 N., R. 17 E.W.M.. He is irrigating 67.4 acres within that
22 portion of the SW $\frac{1}{4}$ of Section 12 lying southwest of the North Wenas Road. Water is
23 diverted from the creek at a point in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12 and piped to his
24 property, which is flood irrigated. He raises up to 250 cow/calf pairs on the
25 land. There was no testimony of a diversionary stock water use so the Referee must
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1 conclude that the stock drink directly from Wenas Creek, which flows through the
2 property.

3 Mr. Ashbaugh is basing his claim on Certificate No. 94 which issued as a
4 result of the 1921 Wenas Creek Adjudication. A Class 12 right, with an 1879 date
5 of priority, authorized the diversion of 1.35 cubic feet per second for the
6 irrigation of 67.4 acres. Mr. Ashbaugh testified that he begins irrigating in late
7 April and the Class 12 water is generally available until sometime in June. He
8 testified that a well is located on the property and provides supplemental
9 irrigation water. The land lies within the exterior boundaries of the Wenas
10 Irrigation District and the district assessment records show John Ashbaugh being
11 assessed for 67.5 acres in Section 12, T. 15 N., R. 17 E.W.M.. Mr. Ashbaugh did
12 not testify to using district water.

13 Based on the foregoing information, it is recommended that a water right be
14 confirmed to John Ashbaugh for the use of 1.35 cubic feet per second, 202.5
15 acre-feet per year from Wenas Creek for the irrigation of 67.4 acres. The right
16 shall carry the provision that a maximum of 270 acre-feet per year can be used
17 under this right and any other water rights that may be appurtenant to this land.

18 Upon confirmation of the proposed right, it is recommended that the Director
19 of the Department of Ecology cancel, rescind or otherwise make null and void
20 Adjudicated Certificate No. 94.

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2 COURT CLAIM NO. 02218 -- Zale Kay Wood
3 & Diane L. Wood

4 A Statement of Claim was filed by Zale and Diane Wood for the use of waters
5 from Wenas Creek for irrigation. The Woods were represented by Attorney James
6 Hutton and Mrs. Wood testified at the evidentiary hearing.

7 The Woods own a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 15 N.,
8 R. 17 E.W.M. lying south and west of the North Wenas Road. They are claiming a
9 right to irrigate 17 acres with waters from Wenas Creek. They are basing their
10 claim on Certificate No. 76, a Class 9 right, from the 1921 Wenas Creek
11 Adjudication. Said certificate authorizes the diversion of 1.23 cubic feet per
12 second from Wenas Creek for the irrigation of 61.5 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of
13 Section 11 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12.

14 The testimony and evidence show that at least some portion, and perhaps all,
15 of the Wood property has been irrigated with waters from Wenas Creek since at least
16 1925. The Woods maintain that the use dates to 1884, the priority date on
17 Certificate No. 76 and there has been no testimony to the contrary. However, a
18 neighboring landowner, Don Hazen, irrigates 55.5 acres within the place of use on
19 Certificate No. 76 and is claiming the entire certificate is appurtenant to lands
20 he owns and irrigates in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, the NE $\frac{1}{4}$ of Section 11, and the
21 W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, all in T. 15 N., R. 17 E.W.M.. In 1940 the Supervisor of the
22 Department of Hydraulics (a predecessor to the Department of Ecology) was
23 questioned concerning whether Certificate No. 76 was appurtenant to any of the land
24 now owned by the Woods. The Supervisor's determination is not part of this record.
25 The Referee has recommended that a right be confirmed to Don Hazen under

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1 Certificate No. 76 for the 55.5 acres that is within the place of use described in
2 Certificate No. 76. That would leave six acres that could be appurtenant to the
3 Wood land. A map developed during the 1921 adjudication of Wenas Creek shows most
4 of the land now owned by the Woods as being irrigated.

5 This land lies within the Wenas Irrigation District and receives supplemental
6 water from the district. The district assesses the Woods for 10 acres and delivers
7 1.3 acre-feet per acre assessed.

8 Based on the foregoing, the Referee recommends that a right be confirmed to
9 Zale K. and Diane L. Wood with a June 30, 1884, date of priority for the diversion
10 of 0.12 cubic foot per second, 18 acre-feet per year from Wenas Creek for the
11 irrigation of 6 acres.

12
13 COURT CLAIM NO. 02109 -- WA State Department of Wildlife

14 A Statement of Claim was submitted to the Court by The Washington State
15 Department of Wildlife. There was no appearance at the evidentiary hearing in
16 support of the claim, therefore, the Referee cannot recommend that a right be
17 confirmed under Court Claim No. 02109. The State's Investigation Report identified
18 nondiversionary livestock and wildlife watering from natural sources within the
19 Department of Wildlife ownership. This type of use is covered by the
20 nondiversionary stock water stipulation.
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COURT CLAIM NO. 00589 -- WA State Dept. of Natural Resources
(A)00590

A Statement of Claim was submitted to the Court by the Washington State Department of Natural Resources. There was no appearance by a representative of the department at the evidentiary hearing in support of the claim. Several individual claimants in Subbasin No. 15 testified to leasing land owned by the Department of Natural Resources on which there were diversions from spring sources to stock water tanks. However, they could not identify specifically the locations of the springs or the quantity of water being used; therefore, the Referee cannot recommend that a right be confirmed under Court Claim No. 00589. The Statement of Claim and the State's Investigation Report indicate non-diversionary livestock and wildlife watering from several surface water sources within the Department of Natural Resources ownership. This use is covered by the nondiversionary stock water stipulation.

COURT CLAIM NO. 00160 -- Miles R. Yates

A Statement of Claim was filed for the use of waters from Wenas Creek for irrigation and stock water. Mr. Yates testified at the evidentiary hearing.

The land owned by Mr. Yates lies in a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.. The county parcel map shows his ownership to be 32.29 acres in size, but Mr. Yates believes it to be 34.29 acres. All of the land is presently irrigated except the area on which his home and outbuildings are constructed. Wenas Creek is the sole source of irrigation water

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1 on the property. Livestock can drink directly from Wenas Creek or from a pond
2 located in the $SE\frac{1}{2}SE\frac{1}{2}NW\frac{1}{4}$ of Section 10. There was no testimony about when this
3 pond was constructed and water first diverted from the creek into the pond for
4 stock watering. The pond is not part of the distribution system for irrigation of
5 the land, so the diversion is not incidental to the irrigation practice and there
6 was no testimony or evidence that a separate stock water right was established for
7 this diversion. A well provides stock water when the livestock are in a portion of
8 the pasture without access to surface water.

9 Two certificates from the 1921 Wenas Creek Adjudication are appurtenant to the
10 Yates property. Certificate No. 88, a Class 2 right with an 1867 date of priority,
11 authorized the diversion of 1.98 cubic feet per second for the irrigation of 98.8
12 acres in the $NW\frac{1}{4}NW\frac{1}{4}$ and the $E\frac{1}{2}NW\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M..
13 Certificate of Change recorded in Volume 1, Page 255, is specifically appurtenant
14 to the Yates property. It authorized changing the point of diversion for a portion
15 of Certificate No. 88 and the place of use was changed to describe the land now
16 owned by Mr. Yates in the $SE\frac{1}{2}NW\frac{1}{4}$ of Section 10. The certificate of change
17 authorized changing the point of diversion for 0.56 cubic foot per second of the
18 right to a point in the $SE\frac{1}{2}NW\frac{1}{4}$ of Section 10. Although the change certificate did
19 not specifically identify the number of acres affected by the change, the
20 proportionate share of the right for 0.56 cubic foot per second would be 28 acres.
21 Therefore, under Certificate No. 88 as changed by Certificate of Change, recorded
22 in Volume 1, Page 255, the Yates property has a Class 2 right for 0.56 cubic foot
23 per second for the irrigation of 28 acres.

24 The remainder of the Yates property lies in the $NE\frac{1}{2}SW\frac{1}{4}$ of Section 10.
25 Certificate No. 92, a Class 24 right, is appurtenant to the $SW\frac{1}{4}$ of Section 10. It
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1 authorized the diversion of 0.18 cubic foot per second for the irrigation of 6.8
2 acres in that subdivision. The authorized point of diversion is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$
3 of Section 9. Mr. Yates submitted aerial photographs with the intent of showing
4 that some of his neighbors' land has not been irrigated for a sufficient length of
5 time for the appurtenant water rights to have relinquished. The copy quality was
6 such that it was not possible for the Referee to determine that the neighboring
7 land had in fact gone unirrigated. However, it was clear in the 1945 aerial
8 photograph that the land now owned by Mr. Yates in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10 had
9 never been irrigated. Mr. Yates did not provide any testimony specific to the
10 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, just testified about his land in general. It has become
11 apparent during the evidentiary hearing that in 1921 the Referee confirmed inchoate
12 rights to riparian land owners. In some cases those inchoate rights were never put
13 to beneficial use or a significant period of time passed before the use was
14 developed. It would appear that Certificate No. 92 is one of those rights. Class
15 24 is one of the lowest classes in the Wenas Creek Decree and water would seldom be
16 available for this class after the spring freshet. The State Supreme Court in
17 State of Washington v. Abbott, 103 Wn.2d 686, 694 P.2d 1071 (1985) determined that
18 riparian rights had to be put to beneficial use by December 31, 1932, in order for
19 the right to exist. Certificate No. 92 had not been exercised by 1945 on the lands
20 Mr. Yates owns in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, therefore, the right no longer existed
21 after December 31, 1932. Based on that, the Referee cannot recommend that a right
22 be confirmed to Mr. Yates for the land he owns in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10.

23 The Referee does recommend that a right be confirmed to Mr. Yates with a
24 June 30, 1867, date of priority for the diversion of 0.56 cubic foot per second,
25 112 acre-feet per year from Wenas Creek for the irrigation of 28 acres.

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1 The Referee cannot recommend that a right be confirmed for diversionary stock
2 watering due to the lack of evidence that a right for that use was legally
3 established. However, the non-diversionary stock water stipulation covers
4 livestock drinking directly from Wenas Creek.

5 Upon confirmation of the proposed right, it is recommended that the Director
6 of the Department of Ecology cancel, rescind or otherwise make null and void
7 Adjudicated Certificate No. 92 and 88 and Certificate of Change recorded in Volume
8 1, Page 255.

9
10 COURT CLAIM NO. 00562 -- Hershel Zeigler

11 A Statement of Claim was submitted by Cloyd O. and Hazel B. Michael for the
12 use of waters from Wenas Creek. On June 21, 1989, Hershel Zeigler was substituted
13 for the Michaels on this claim. Mr. Zeigler testified at the evidentiary hearing.

14 According to the testimony and evidence, Mr. Zeigler owns the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and that
15 portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ lying north of the South Wenas Road, in Section 11,
16 T. 14 N., R. 18 E.W.M.. The total ownership is slightly more than 44 acres and
17 approximately 42 acres are being irrigated; 40 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 2 acres in
18 the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. Irrigation begins in the spring, the exact date varies
19 according to the weather, and creek water is generally available until mid-July.
20 Mr. Zeigler has a well that provides supplemental water when the creek flow
21 declines and is no longer available. The testimony did not indicate whether a
22 ground water right has issued for the well. Livestock raised on the property
23 either drink directly from Wenas Creek or are supplied water from the well. Water
24 is not pumped from the creek for watering the stock.
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1 Two certificates resulting from the 1921 adjudication of Wenas Creek are
2 appurtenant to the Zeigler property. Certificate No. 16 is a Class 2 right with an
3 1870 date of priority and authorized the diversion of 2.5 cubic feet per second for
4 the irrigation of 124.91 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 14 N.,
5 R. 18 E.W.M. The proportionate share of this right that would be appurtenant to
6 Mr. Zeigler's property is 0.80 cubic foot per second for the irrigation of 40 acres
7 in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11. Certificate No. 12 is a Class 12 right with an 1879
8 date of priority and authorized the diversion of 0.24 cubic foot per second for the
9 irrigation of 12.08 acres. The certificate describes the place of use as being in
10 Section 1, T. 14 N., R. 18 E.W.M. with a point of diversion in Section 10,
11 T. 14 N., R. 18 E.W.M. The Referee believes that Section 1 is a typographical
12 error. The 1921 decree identifies a Class 12 right to Cleman Dairy for the
13 irrigation of 12.08 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11. It is physically impossible
14 for a gravity flow diversion in Section 10 to serve land in Section 1, as Section 1
15 is quite a distance from the creek and at a much higher elevation. The
16 proportionate share of Certificate No. 12 that would be appurtenant to the
17 irrigated land owned by Mr. Zeigler in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 would be 0.04 cubic
18 foot per second for the irrigation of 2 acres.

19 The testimony shows that a dairy was operated on the land in the 1920's and it
20 has continued to be irrigated since the certificates issued. Stock watering from
21 the creek is a non-diversionary use that is covered by the stock water stipulation.

22 Based on the foregoing, it is recommended that a right be confirmed to Hershel
23 Zeigler with a June 30, 1870, date of priority for the diversion of 0.80 cubic foot
24 per second, 160 acre-feet per year from Wenas Creek for the irrigation of 40 acres
25 in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 and a right with a June 30, 1879, date of priority for
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1 the diversion of 0.04 cubic foot per second, 8 acre-feet per year from Wenas Creek
2 for the irrigation of 2 acres in that portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11,
3 T. 14 N., R. 18 E.W.M. lying north of the South Wenas Road.

4 Upon confirmation of the proposed rights, it is recommended that the Director
5 of the Department of Ecology cancel, rescind or otherwise make null and void
6 Adjudicated Certificates No. 12 and 16.

7
8 Claimants Who Did Not Appear At The Evidentiary Hearing

9 There was no appearance at the evidentiary hearing in support of the
10 following listed claims. Therefore, the Referee recommends that the claims be
11 denied in their entirety:

12 Court Claim No. 00234 & (A)01380 - Robert L. Beebe
13 Court Claim No. 01200 - Jerald & Dorthy Beers
14 Court Claim No. 01159 - Estate of John H. Boyd
15 Court Claim No. 00614 & (A)03246 - David & Pascale Cardenas
16 Court Claim No. 00563 - Charles W. and Diana Hamil
17 Court Claim No. 02116 - Richard Kauntz
18 Court Claim No. 01197 - Leo W. & Marian J. Maybee
19 Court Claim No. 00761 - Donald A. & Lois R. Nichols

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21 Claimants With Recommended Non-Diversiory Stock Water And Wildlife Rights

22 John Ashbaugh
23 Lynn Ashbaugh
24 Thomas A. Bass, Jr. and Carol Ann Bass
25 Jerald Beers and Dorthy Beers
26 Victor L. Berg and Tennis Berg
27 Arthur E. Bertelsen
28 Boise Cascade Corporation
29 Estate of John H. Boyd
Mary Helen Brimbel
Bruce Buchanan and Karron M. Buchanan
Paulette L. Buckley
Orville G. Byers
Everett Calahan and Dorothy Calahan
Alfred M. Calvert
Florence W. Calvert
Hazel Cameron

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1 David Cardenas and Pascale Cardenas
Christensen Family Trust
2 Mark S. Clippinger and Susan R. Clippinger
Christopher Coffin
3 Richard Coffin
Ruth Coffin
4 Sarah Coffin
Stan Coffin
5 Thomas Coffin
Donald F. Cox and Alvera A. Cox
6 Ray E. Day and Tola R. Day
Ronald L. Dixon and Marcia L. Dixon
7 Cliff Egge and Liz Egge
Alvin G. Evans and Betty L. Evans
8 Michael L. Frausto
Rudolph Frausto and Cheryl L. Pyeatt
9 Grant S. Green and Eveleth S. Green
Tom Green
10 Mary E. Hagedorn and Harvey Hagedorn
Colleen A. Hargraves (Jones)
11 E. Lee Hargroves and Linda L. Hargroves
Don Hazen
12 Thomas S. Hazen and Charlain E. Hazen
John Hermanson and Sandra E. Hermanson
13 Fred L. Hoff
Bob Homier and Bev Homier
14 Galen H. Hoover and Patricia L. Hoover
James Hutton
15 Jonathan Hutton
Nancy Hutton
16 Richard A. Karel and Mary J. Karel
Chuck Kisner
17 Roy J. Knopp and Miriam Knopp
William B. Lawrence and Patricia S. Lawrence
18 Lazy Heart B, Inc.
Larry S. Lefors and Judy C. Lefors
19 John M. Levien
David M. Longmire and Linda D. Longmire
20 Jerry Longmire and Dorothy Longmire
Laura Longmire
21 David H. Mabee and Sara L. Mabee
Paul Madison and Helen Madison
22 George W. Marcott and Linda M. Marcott
Homer W. Marney and Anna M. Marney
23 Charles Douglas Mayo and John Strand Mayo
John Strand Mayo and Nancy Clair Mayo
24 Robert M. Messer and Mary L. Rennie
Marian E. Moore
25 Bud Owens and Jean Owens
Hallie Person
26

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1 Person & Person Inc.
James E. Poisel and Lucinda Poisel
2 Alfred Pope and Patricia Pope
Merton G. Raine
3 Gordon S. Reid and Pearl Reid
Lorraine P. Rennie and Robert Rennie (Deceased)
4 Jim L. Rice and Julie A. Rice
Lee Rider
5 Jim Root and Kari Root
Delores A. Rupel
6 Thomas Robert Rupel and Delores A. Rupel
Lyle R. Schneider
7 Merle and Beverlie Shuyler
E. E. Stohsner and Helen R. Stohsner
8 John E. Turner and Ricki K. Turner
WA State Department of Wildlife
9 WA State Dept. of Natural Resources
Karen Wickstrom
10 Michael Wright and Debra E. Wright
Miles R. Yates
11 Hershel Zeigler

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13 VIII. FINDINGS OF FACT

14 I, JOHN E. ACORD, as Referee in this proceeding, having carefully examined
15 the testimony and evidence and having investigated Subbasin No. 15, do hereby make
16 the following Findings of Fact:

17 1. That the waters of Subbasin No. 15 and lands irrigated or waters otherwise
18 utilized therefrom are situated in both Yakima and Kittitas Counties.

19 2. That the claims to any diversionary or withdrawal rights within Subbasin No.
20 15 of the following named claimants are denied in their entirety for reason set
21 forth in the body of this report:

22 Lynn Ashbaugh (Sutton) (02157)
Robert L. Beebe
23 Jerald Beers and Dorthy Beers
Estate of John H. Boyd
24 Orville G. Byers
Everett Calahan and Dorothy Calahan
25 David Cardenas and Pascale Cardenas
Christensen Family Trust (01647)
26

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- 1 Mark S. Clippinger and Susan R. Clippinger
Crest Air, Inc.
- 2 Alvin G. Evans and Betty L. Evans
Lee R. Evans and Alma Faye Evans
- 3 Michael L. Frausto
Rudolph Frausto and Cheryl L. Pyeatt (01570)
- 4 Leo E. Guertin and Clo Guertin
Charles W. Hamil and Diana Hamil
- 5 Hillcrest Angus, Inc.
Fred L. Hoff
- 6 Iowa Flats Ditch Company
Gary F. Johnson and Wanda J. Johnson
- 7 Richard A. Karel and Mary J. Karel
Richard Kauntz
- 8 Roy J. Knopp and Miriam Knopp
Larry S. Lefors and Judy C. Lefors
- 9 John M. Levien
David H. Mabee
- 10 Leo W. Maybee and Marian J. Maybee
Charles Douglas Mayo (00437, 00804, 00805, 00806)
- 11 John Strand Mayo (00437, 00804, 00805, 00806)
Marian E. Moore
- 12 David D. Murray and Paula S. Murray
Craig J. Nedrow and Judy L. Nedrow
- 13 Edith L. Nedrow
Donald A. Nichols and Lois R. Nichols
- 14 Northwestern Fruit & Produce Co.
Stephen J. Picatti
- 15 Quirt Pierce
Jim L. Rice and Julie A. Rice
- 16 Jim Root and Kari Root
Alice C. Schuller and Estate of Michael J. Schuller
- 17 Seven Seas Trust
Kieth Sterling and Katherine Sterling
- 18 WA State Department of Wildlife
WA State Dept. of Natural Resources

19 3. That the name of the claimant(s), court claim number(s), sources of
 20 water, uses for which rights have been established, time periods when water may be
 21 used, amounts of water designated in the right, priority of water right, location
 22 of points of diversion, and description of lands to which water rights are
 23 appurtenant are as follows:
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27 REPORT OF REFEREE
 28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Bruce Buchanan** COURT CLAIM NO. 02212
 2 & **Karron M. Buchanan**
 3 Source: South Fork of Wenas Creek
 4 Use: Irrigation of 40 acres
 5 Period of Use: April 1 to October 15
 6 Quantity: 1.0 cubic foot per second, 120 acre-feet per year
 7 Priority Date: **June 30, 1865**
 8 Point of Diversion: 550 feet south and 980 feet east from the north quarter
 9 corner of Section 24, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
 10 Section 24, T. 15 N., R. 18 E.M.
 11 Place of Use: The SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.
 12 Limitations of Use: A maximum of 200 acre-feet per year may be used under this
 13 right and any ground water right that might be appurtenant
 14 to the above-described place of use.

13 CLAIMANT NAME: **Christensen Family Trust** COURT CLAIM NO. 01222
 14 Source: Wenas Creek
 15 Use: Irrigation of 18 acres
 16 Period of Use: March 15 to October 15
 17 Quantity: 0.45 cubic foot per second, 72 acre-feet per year
 18 Priority Date: **June 30, 1865**
 19 Point of Diversion: 610 feet north and 300 feet east from the southwest corner
 20 of Section 29, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
 21 T. 15 N., R. 18 E.W.M.
 22 Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.
 23 Limitations of Use: This land receives supplemental water from the Wenas
 24 Irrigation District. A maximum of 72 acre-feet per year
 25 can be used under this right and any right the land may
 26 enjoy through the Wenas Irrigation District.

27 REPORT OF REFEREE
 28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Chuck Kisner** COURT CLAIM NO. 00494

2 Source: Wenas Creek

3 Use: Irrigation of 80 acres

4 Period of Use: April 1 to October 15

5 Quantity: 2.0 cubic feet per second, 320 acre-feet per year

6 Priority Date: **June 30, 1865**

7 Point of Diversion: 340 feet north and 600 feet east from the southwest corner
8 of Section 29, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
T. 15 N., R. 18 E.W.M.

9 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32,
10 T. 15 N., R. 18 E.W.M.

11 Limitations of Use: This land enjoys a supplemental water right for use of an
12 unnamed pond. The maximum quantity of water that can be
13 applied to this land shall not exceed 320 acre-feet under
this right and the supplemental right.

14 CLAIMANT NAME: **James E. Poisel** COURT CLAIM NO. 00684
& Lucinda Poisel

15 Source: Wenas Creek

16 Use: Irrigation of 19.46 acres

17 Period of Use: April 1 to October 15

18 Quantity: 0.39 cubic foot per second, 77.84 acre-feet per year

19 Priority Date: **June 30, 1865**

20 Point of Diversion: 300 feet south and 1,200 feet west from the center of
21 Section 4, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 14 N.,
R. 18 E.W.M.

22 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T. 14 N., R. 18 E.W.M.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Rudolph Frausto** COURT CLAIM NO. 02131
2 & **Konnie Frausto**
3 Source: Wenas Creek
4 Use: Irrigation of 15 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.04 cubic foot per second, 12 acre-feet per year
7 Priority Date: **June 30, 1867**
8 Point of Diversion: 1,200 feet north and 1,058 feet west from the southeast
9 corner of Section 11, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 11, T. 14 N., R. 18 E.W.M.
11 Place of Use: The W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M.

11 CLAIMANT NAME: **John Hermanson** COURT CLAIM NO. 01576
12 & **Sandra E. Hermanson**
13 Source: Wenas Creek
14 Use: Irrigation of 15 acres
15 Period of Use: April 1 to October 15
16 Quantity: 0.315 cubic foot per second, 37.5 acre-feet per year
17 Priority Date: **June 30, 1867**
18 Point of Diversion: 400 feet north and 275 feet west from the southeast corner
19 of Section 11, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11,
20 T. 14 N., R. 18 E.W.M.
21 Place of Use: The E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M., lying
22 north and east of Wenas Creek.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: **Delores A. Rupel** COURT CLAIM NO. 01021

2 Source: Wenas Creek

3 Use: Irrigation of 4.50 acres

4 Period of Use: April 1 to October 15

5 Quantity: 0.09 cubic foot per second, 13.5 acre-feet per year

6 Priority Date: **June 30, 1867**

7 Point of Diversion: 300 feet north and 990 feet east from the southwest corner
8 of Section 12, being within the $SE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$ of Section 12,
9 T. 14 N., R. 18 E.W.M.

10 Place of Use: The south 495 feet of the east 440 feet of the $SE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$
11 of Section 12, T. 14 N., R. 18 E.W.M.

11 CLAIMANT NAME: **Thomas Robert Rupel** COURT CLAIM NO. 00862
12 & **Delores A. Rupel**

13 Source: Wenas Creek

14 Use: Irrigation of 11.2 acres

15 Period of Use: April 1 to October 15

16 Quantity: 0.224 cubic foot per second, 33.6 acre-feet per year

17 Priority Date: **June 30, 1867**

18 Point of Diversion: 300 feet north and 990 feet east of the southwest corner
19 of Section 12, being within the $SW\frac{1}{4}SW\frac{1}{4}$ of Section 12,
20 T. 14 N., R. 18 E.W.M.

21 Place of Use: The east 220 feet of the west 660 feet of the south 495
22 feet and the north 405 feet of the south 900 feet of the
23 west 935 feet of the $SW\frac{1}{4}SW\frac{1}{4}$ of Section 12, T. 14 N.,
24 R. 18 E.W.M.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Lyle R. Schneider

COURT CLAIM NO. 00697
(A)01383

2 Source: Wenas Creek

3 Use: Irrigation of 32 acres

4 Period of Use: March 1 to October 15

5 Quantity: 0.64 cubic foot per second, 154.6 acre-feet per year

6 Priority Date: June 30, 1867

7 Point of Diversion: 1,200 feet south and 500 feet east from the center of
8 Section 11, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11,
T. 14 N., R. 18 E.W.M.

9 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T. 14 N.,
10 R. 18 E.W.M. lying north of Wenas Creek.z

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Miles R. Yates COURT CLAIM NO. 00160
2 Source: Wenas Creek
3 Use: Irrigation of 28 acres
4 Period of Use: April 1 to October 15
5 Quantity: 0.56 cubic foot per second, 112 acre-feet per year
6 Priority Date: June 30, 1867
7 Point of Diversion: 250 feet north and 500 feet west from the center of
8 Section 10, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10,
9 T. 14 N., R. 18 E.W.M.
10 Place of Use: That portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10,
11 T. 14 N., R. 18 E.W.M., lying south of the following
12 described line: Beginning at a point 228 feet south and
13 55.79 feet west of the northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of
14 said section; thence southeasterly to the point of
15 terminus 425 feet south of the northeast corner of said
16 quarter-quarter section.

14 CLAIMANT NAME: Mary Helen Brimbel COURT CLAIM NO. 01638
15 Source: Wenas Creek
16 Use: Irrigation of 3 acres
17 Period of Use: April 1 to October 15
18 Quantity: 0.06 cubic foot per second, 12 acre-feet per year
19 Priority Date: June 30, 1868
20 Point of Diversion: 1,060 feet south and 920 feet west from the center of
21 Section 11, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11,
22 T. 14 N., R. 18 E.W.M.
23 Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 14 N.,
24 R. 18 E.W.M. lying south of Wenas Creek.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Hazel Cameron COURT CLAIM NO. 00438
2 (A)01378

3 Source: Wenas Creek

4 Use: Irrigation of 100 acres and stock water

5 Period of Use: April 1 to October 15

6 Quantity: 2.0 cubic feet per second, 435.6 acre-feet per year for
irrigation; 3 acre-feet per year for stock water

7 Priority Date: June 30, 1870

8 Point of Diversion: 1. 500 feet north and 1,100 feet west from the south
9 quarter corner of Section 12, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$
10 of Section 12, T. 15 N., R. 17 E.W.M.
11 2. 900 feet south and 800 feet west from the north
12 quarter corner of Section 13, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
13 of Section 13, T. 15 N., R. 17 E.W.M.
14 3. 550 feet north and 650 feet east of the west quarter
15 corner of Section 12, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
16 Section 12, T. 15 N., R. 17 E.W.M.

17 Place of Use: That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ lying east of Wenas Creek, the
18 SW $\frac{1}{4}$ NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N.,
19 R. 17 E.W.M.

20 Limitations of Use: This land receives supplemental water from the Wenas
21 Irrigation District. A maximum of 500 acre-feet per year
22 can be used under this right and any right the land may
23 enjoy through the Wenas Irrigation District.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: **Ronald L. Dixon** COURT CLAIM NO. 06278
2 & **Marcia L. Dixon**

3 Source: **Wenas Creek**

4 Use: **Irrigation of 14.5 acres**

5 Period of Use: **April 1 to October 15**

6 Quantity: **0.29 cubic foot per second, 58 acre-feet per year**

7 Priority Date: **June 30, 1870**

8 Point of Diversion: **980 feet north and 570 feet east from the west quarter
9 corner of Section 10, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 10, T. 14 N., R. 18 E.W.M.**

10 Place of Use: **That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 14 N.,
11 R. 18 E.W.M., described as follows: Beginning at a point
12 N 88°58'06" E 225.97 feet from the northwest corner of
13 said quarter quarter; thence N 88°58'06" E 657.34 feet;
14 thence S 0°11'34" S 800.52 feet; thence S 88°58'05" W
200.05 feet; thence S 0°11'34" W 393.35 feet; thence
N 66°57'26" W 201.33 feet; thence N 67°35'56" W 293.38
feet; thence N 0°11'34" W 995.01 feet to the point of
beginning; EXCEPT buildings, roads and Wenas Creek.**

15 Limitations of Use: **This land may receive supplemental water from a
16 groundwater source. A maximum of 58 acre-feet per year
17 may be used from Wenas Creek and any ground water right
18 appurtenant to the place of use.**

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Lazy Heart B, Inc.

COURT CLAIM NO. 00432
(A)01362

2
3 Source: Wenas Creek

4 Use: Irrigation of 60 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1.2 cubic feet per second, 217.8 acre-feet per year

7 Priority Date: June 30, 1870

8 Point of Diversion: 1. 900 feet south and 800 feet west from the north
9 quarter corner of Section 13, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
10 of Section 13, T. 15 N., R. 17 E.W.M.
11 2. 550 feet north and 650 feet east of the west quarter
12 corner of Section 12, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
13 Section 12, T. 15 N., R. 17 E.W.M.

14 Place of Use: That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 13, T. 15 N.,
15 R. 17 E.W.M., lying west of Wenas Creek.

16 Limitations of Use: This land receives supplemental water from the Wenas
17 Irrigation District. A maximum of 295.8 acre-feet per
18 year can be used under this right and any right the land
19 may enjoy through the district.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME:

**Jerry Longmire
& Dorothy Longmire
Laura Longmire**

COURT CLAIM NO. 01742

2
3 Source:

South Fork of Wenas Creek

4 Use:

Irrigation of 80 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

1.60 cubic feet per second, 320 acre-feet per year

7 Priority Date:

June 30, 1870

8 Point of Diversion:

550 feet south and 980 feet east from the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

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10 Place of Use:

The E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

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CLAIMANT NAME: **James E. Poisel** COURT CLAIM NO. 00684
& Lucinda Poisel

Source: Wenas Creek

Use: Irrigation of 55 acres

Period of Use: April 1 to October 15

Quantity: 1.1 cubic feet per second, 220 acre-feet per year

Priority Date: **June 30, 1870**

Point of Diversion: 300 feet south and 1,200 feet west from the center of Section 4, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M.

Place of Use: That portion of the NW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M. described as follows: Beginning at the northwest corner of Section 10; thence south 1,305.4 feet to the southwest corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence east along the south line thereof 1,283.4 feet; thence south parallel with the east line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ 228 feet; thence southeasterly in a straight line to a point on the east line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ 425 feet south of the northeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$; thence N 2°00' W along the east line of the NW $\frac{1}{4}$ to a point 289.6 feet S 2°00' E of the north line of said NW $\frac{1}{4}$; thence N 90°00' W parallel with the north line 1,960 feet, more or less; thence north 289.6 feet; thence west 671.8 feet to the northwest corner of the NW $\frac{1}{4}$ and the point of beginning of this description.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: Lee Rider COURT CLAIM NO. 04613

2 Source: Wenas Creek

3 Use: Irrigation of 4 acres

4 Period of Use: April 1 to October 15

5 Quantity: 0.08 cubic foot per second, 16 acre-feet per year

6 Priority Date: June 30, 1870

7 Point of Diversion: 825 feet north and 950 feet east from the west quarter
8 corner of Section 10, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
9 Section 10, T. 14 N., R. 18 E.W.M.

10 Place of Use: The east 455.88 feet of the north 861.58 feet of the
11 SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.; EXCEPT the
12 east 55.79 feet thereof.

13 Limitations of Use: There may be a supplemental ground water right appurtenant
14 to the above described property. A maximum of 16
15 acre-feet per year may be used under this right and any
16 ground water right that might be appurtenant to the
17 above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Lyle R. Schneider** COURT CLAIM NO. 00697
(A)01383

2 Source: Wenas Creek

3 Use: Irrigation of 80 acres

4 Period of Use: March 1 to October 15

5 Quantity: 1.6 cubic feet per second, 386.5 acre-feet per year

6 Priority Date: **June 30, 1870**

7 Point of Diversion: 1. 1,050 feet south and 950 feet east from the northwest
8 corner of Section 19, being within the $SE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ of
9 Section 19, T. 15 N., R. 18 E.W.M.
10 2. 600 feet south and 600 feet west from the center of
Section 19, being within the $NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ of Section 19,
T. 15 N., R. 18 E.W.M.

11 Place of Use: The $NW\frac{1}{4}NE\frac{1}{4}$ of Section 30 and the $SE\frac{1}{4}SW\frac{1}{4}$ of Section 19,
12 both in T. 15 N., R. 18 E.W.M.

13 Limitations of Use: This land receives supplemental water from the Wenas
14 Irrigation District. A maximum of 400 acre-feet per year
can be used under this right and any right the land may
enjoy through the district.

15 CLAIMANT NAME: **Lyle R. Schneider** COURT CLAIM NO. 00697
16 (A)01383

17 Source: An unnamed spring

18 Use: Stock water

19 Period of Use: Continuous

20 Quantity: 0.04 cubic foot per second, 8 acre-feet per year

21 Priority Date: **June 30, 1870**

22 Point of Diversion: 1,000 feet south and 700 feet west from the north quarter
23 corner of Section 7, being within the $SW\frac{1}{4}NE\frac{1}{4}NW\frac{1}{4}$ of
Section 7, T. 15 N., R. 18 E.W.M.

24 Place of Use: The $S\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ and $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ of Section 7, T. 15 N.,
25 R. 18 E.W.M.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: John E. Turner COURT CLAIM NO. 04514
2 & Ricki K. Turner

3 Source: Wenas Creek

4 Use: Irrigation of 7 acres

5 Period of Use: April 1 to October 15

6 Quantity: 0.14 cubic foot per second, 28 acre-feet per year

7 Priority Date: June 30, 1870

8 Point of Diversion: 1,142 feet north and 160 feet east from the west quarter
9 corner of Section 10, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 10, T. 14 N., R. 18 E.W.M.

10 Place of Use: Those portions of the E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 9, AND the
11 W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.,
12 described as follows: Beginning at the northeast corner
13 of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9; thence east 225.97 feet;
14 thence south 599.01 feet to the north right-of-way of the
15 South Wenas Road; thence northwest along said right-of-way
230 feet, more or less; thence north 449.4 feet; thence
N 87° W 243 feet; thence north 687.08 feet; thence
S 85°42' E 213.56 feet; thence south 230 feet, more or
less, to the point of beginning: EXCEPT buildings, roads,
and Wenas Creek.

16 Limitations of Use: A maximum of 28 acre-feet per year may be used under this
17 right and any ground water right that might be appurtenant
18 to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

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CLAIMANT NAME: **Hershel Zeigler** COURT CLAIM NO. 00562

Source: Wenas Creek

Use: Irrigation of 40 acres

Period of Use: April 1 to October 15

Quantity: 0.80 cubic foot per second, 160 acre-feet per year

Priority Date: **June 30, 1870**

Point of Diversion: 880 feet south and 700 feet east from the west quarter corner of Section 11, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M.

Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M.

Limitations of Use: A maximum of 160 acre-feet per year may be used under this right and any ground water right that might be appurtenant to the above-described place of use.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME:

Lyle R. Schneider

COURT CLAIM NO. 00697

(A)01383

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 144.92 acres

5 Period of Use:

March 1 to October 15

6 Quantity:

2.75 cubic feet per second, 664 acre-feet per year

7 Priority Date:

May 30, 1871

8 Point of Diversion:

9 1. 900 feet north and 750 feet west from the southeast
10 corner of Section 13, being within the $SE\frac{1}{4}SE\frac{1}{4}$ of
11 Section 13, T. 15 N., R. 17 E.W.M.
12 2. 750 feet south and 550 feet east of the northwest
13 corner of Section 19, being within the $NW\frac{1}{4}NW\frac{1}{4}$ of
14 Section 19, T. 15 N., R. 18 E.W.M.
15 3. 600 feet south and 750 feet west of the center of
16 Section 19, being within the $NE\frac{1}{4}SW\frac{1}{4}$ of Section 19,
17 T. 15 N., R. 28 E.W.M.

18 Place of Use:

19 Government Lots 1 and 2, the $SE\frac{1}{4}NW\frac{1}{4}$ and the $NE\frac{1}{4}SW\frac{1}{4}$ of
20 Section 19, T. 15 N., R. 18 E.W.M.

21 Limitations of Use:

22 This land receives supplemental water from the Wenas
23 Irrigation District. A maximum of 724.6 acre-feet per
24 year can be used under this right and any right the land
25 may enjoy through the district.
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REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME: John Ashbaugh COURT CLAIM NO. 00204
2 & Christine Ashbaugh (A)04297

3 Source: Wenas Creek and Spring Creek

4 Use: Irrigation of 51 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1.02 cubic feet per second, 204 acre-feet per year

7 Priority Date: June 30, 1871

8 Point of Diversion: Wenas Creek--100 feet north and 50 feet east from the
9 center of Section 32, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 32, T. 15 N., R. 18 E.W.M.

10 Spring Creek--1,140 feet north and 25 feet west from the
11 south quarter corner of Section 32, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.

12 Place of Use: Government Lot 1 of Section 5, T. 14 N., R. 18 E.W.M., AND
13 that portion of Government Lot 2 of Section 5, T. 14 N.,
14 R. 18 E.W.M., lying northeast of the following described
15 line: Beginning at the southeast corner of said Lot 2;
16 thence N 21° W 1,450 feet, more or less, to a point of
17 terminus on the north line of said lot.

18 Limitations of Use: A maximum of 204 acre-feet per year may be used under this
19 right and any ground water right that might be appurtenant
20 to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: **John Ashbaugh** COURT CLAIM NO. 02212
2 & **Lynn Ashbaugh**

3 Source: South Fork of Wenas Creek

4 Use: Irrigation of 90 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1.8 cubic feet per second, 270 acre-feet per year

7 Priority Date: **June 30, 1871**

8 Point of Diversion: 550 feet south and 980 feet east from the north quarter
9 corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

10 Place of Use: The N $\frac{1}{2}$ SW $\frac{1}{4}$ lying southwest of the South Fork of Wenas Creek
and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M..

11 Limitations of Use: A maximum of 450 acre-feet per year may be used under this
12 right and any ground water right that might be appurtenant
13 to the above-described place of use.

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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Alfred M. Calvert** COURT CLAIM NO. 01652
2 Source: Wenas Creek
3 Use: Irrigation of 51 acres
4 Period of Use: April 1 to October 15
5 Quantity: 1.02 cubic feet per second, 204 acre-feet per year
6 Priority Date: **June 30, 1871**
7 Point of Diversion: 800 feet south and 60 feet east from the northwest corner
8 of Section 4, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4,
9 T. 14 N., R. 18 E.W.M.
10 Place of Use: Those portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4,
11 T. 14 N., R. 18 E.W.M., lying south of the North Wenas
12 Road and east of the following described line: Beginning
13 at a point 283.8 feet east of the southwest corner of the
14 NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said section; thence N 15° E 207.24 feet; thence
15 N 25°30' W 168.96 feet; thence N 58°30" W 198 feet; thence
16 N 39° W 52.14 feet; thence N 47°30' E 132 feet; thence
17 N 34°45' E 198 feet; thence N 10°30' E 141.9 feet; thence
18 N 34° W 237.6 feet; thence N 3°45' E 1350 feet, more or
19 less, to the point of termination on the south
20 right-of-way on the North Wenas Road.
21 Limitations of Use: A maximum of 204 acre-feet per year may be used under this
22 right and any ground water right that might be appurtenant
23 to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
29

1 CLAIMANT NAME:

Florence W. Calvert

COURT CLAIM NO. 01492

(A)02414

2 Source:

Wenas Creek

3 Use:

Irrigation of 45 acres

4 Period of Use:

April 1 to October 15

5 Quantity:

0.90 cubic foot per second, 186.9 acre-feet per year

6 Priority Date:

June 30, 1871

7 Point of Diversion:

700 feet south and 100 feet east of the northwest corner of Section 4, being within Government Lot 4 of Section 4, T. 14 N., R. 18 E.W.M.

8 Place of Use:

9 That portion of Section 4, T. 14 N., R. 18 E.W.M. described as follows: The SW $\frac{1}{4}$ NW $\frac{1}{4}$, those portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying north and west of the following described line: Beginning at the west quarter corner of Section 4; thence east 382.14 feet; thence N 86°30' E 906.84 feet; thence S 79°30' E 166.32 feet; thence northeasterly to a point on the south line of the county road, 297 feet east of the west line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$.

10 Limitations of Use:

11 A maximum of 186.9 acre-feet per year may be used under
12 this right and any ground water right that might be
13 appurtenant to the above-described place of use.
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27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Cliff Egge** COURT CLAIM NO. 01644
2 & **Liz Egge**
3 Source: Wenas Creek
4 Use: Irrigation of 15 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.26 cubic foot per second, 45 acre-feet per year
7 Priority Date: **June 30, 1871**
8 Point of Diversion: 40 feet north and 1,110 feet east from the center of
9 Section 30, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30,
T. 15 N., R. 18 E.W.M.
10 Place of Use: The North 580 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 15 N.,
R. 18 E.W.M.
11 Limitations of Use: This land receives supplemental water from the Wenas
12 Irrigation District. A maximum of 65.28 acre-feet per
13 year can be used under this right and any right the land
may enjoy through the district.

14 CLAIMANT NAME: **Bob Homier** COURT CLAIM NO. 01644
15 & **Bev Homier**
16 Source: Wenas Creek
17 Use: Irrigation of 22.5 acres
18 Period of Use: April 1 to October 15
19 Quantity: 0.56 cubic foot per second, 67.5 acre-feet per year
20 Priority Date: **June 30, 1871**
21 Point of Diversion: 40 feet north and 1,110 feet east from the center of
22 Section 30, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30,
T. 15 N., R. 18 E.W.M.
23 Place of Use: The south 740 feet of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 15 N.,
R. 18 E.W.M.
24 Limitations of Use: This land receives supplemental water from the Wenas
25 Irrigation District. A maximum of 91.16 acre-feet per
26 year can be used under this right and any right the land
may enjoy through the district.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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CLAIMANT NAME: **Paul Madison** COURT CLAIM NO. 01644
& Helen Madison

Source: Wenas Creek

Use: Irrigation of 39 acres

Period of Use: April 1 to October 15

Quantity: 0.975 cubic foot per second, 117 acre-feet per year

Priority Date: **June 30, 1871**

Point of Diversion: 70 feet south and 1,140 feet west from the east quarter corner of Section 30, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.

Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.

Limitations of Use: This land receives supplemental water from the Wenas Irrigation District. A maximum of 180.3 acre-feet per year can be used under this right and any right the land may enjoy through the district.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: John Strand Mayo COURT CLAIM NO. 05225
2 & Nancy Clair Mayo
3 Source: South Fork of Wenas Creek
4 Use: Irrigation of 39.5 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.79 cubic foot per second, 138.25 acre-feet per year
7 Priority Date: June 30, 1871
8 Point of Diversion: 600 feet south and 1,000 feet east from the north quarter
9 corner of Section 5, being within Government Lot 2 of
10 Section 5, T. 14 N., R. 18 E.W.M.
11 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T. 14 N., R. 18 E.W.M.
12 Limitations of Use: A maximum of 138.25 acre-feet per year may be used under
13 this right and any ground water right that might be
14 appurtenant to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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CLAIMANT NAME: **John Strand Mayo** COURT CLAIM NO. 05227
& **Nancy Clair Mayo**

Source: South Fork of Wenas Creek

Use: Irrigation of 39.5 acres

Period of Use: April 1 to October 15

Quantity: 0.79 cubic foot per second, 138.25 acre-feet per year

Priority Date: **June 30, 1871**

Point of Diversion: 600 feet south and 1,000 feet east from the north quarter corner of Section 5, being within Government Lot 2 of Section 5, T. 14 N., R. 18 E.W.M.

Place of Use: Those portions of the $N\frac{1}{2}SW\frac{1}{4}$ of Section 4, T. 14 N., R. 18 E.W.M., lying south and west of Wenas Creek.

Limitations of Use: A maximum of 138.25 acre-feet per year may be used under this right and any ground water right that might be appurtenant to the above-described place of use.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: Austin J. Murray COURT CLAIM NO. 01501
2 & Ramona A. Murray
3 Source: South Fork of Wenas Creek
4 Use: Irrigation of 20 acres
5 Period of Use: March 15 to October 15
6 Quantity: 0.40 cubic foot per second, 60 acre-feet per year
7 Priority Date: June 30, 1871
8 Point of Diversion: 550 feet south and 980 feet east of the north quarter
9 corner of Section 24, being within the NW¼NE¼ of
10 Section 24, T. 15 N., R. 18 E.W.M.
11 Place of Use: The S½SW¼SE¼ of Section 30, T. 15 N., R. 18 E.W.M.
12 Limitations of Use: This land receives supplemental water from the Wenas
13 Irrigation District. A maximum of 86 acre-feet per year
14 can be used under this right and any right the land may
15 have through the district.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: Bud Owens COURT CLAIM NO. 01013
2 & Jean Owens
3 Source: Wenas Creek
4 Use: Irrigation of 40 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.80 cubic foot per second, 120 acre-feet per year
7 Priority Date: June 30, 1871
8 Point of Diversion: 250 feet south and 720 feet east from the center of
9 Section 10, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10,
10 T. 14 N., R. 18 E.W.M.
11 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, T. 14 N., R. 18 E.W.M.

12 CLAIMANT NAME: Lyle R. Schneider COURT CLAIM NO. 00697
13 (A)01383
14 Source: Wenas Creek
15 Use: Irrigation of 80 acres
16 Period of Use: March 1 to October 15
17 Quantity: 1.60 cubic feet per second, 386.5 acre-feet per year
18 Priority Date: June 30, 1871
19 Point of Diversion: 1,200 feet south and 500 feet east of the center of
20 Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11,
21 T. 14 N., R. 18 E.W.M.
22 Place of Use: The SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 14 N.,
23 R. 18 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: E. E. Stohsner COURT CLAIM NO. 00945
2 & Helen R. Stohsner (A)04298
3 John Ashbaugh
& Lynn Ashbaugh

4 Source: Wenas and Spring Creeks

5 Use: Wenas Creek--Irrigation of 55.2 acres

6 Spring Creek--Irrigation of 10 acres

7 Period of Use: April 1 to October 15

8 Quantity: 1.3 cubic feet per second, 260.8 acre-feet per year

9 Priority Date: June 30, 1871

10 Point of Diversion: Wenas Creek--300 feet south and 50 feet east from the
11 center of Section 32, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 32, T. 15 N., R. 18 E.W.M.

12 Spring Creek--1,140 feet north and 50 feet west from the
13 south quarter corner of Section 32, being within the
NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.

14 Place of Use: Wenas Creek--That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 32,
15 T. 15 N., R. 18 E.W.M. lying northeast of Dry Creek and
16 southwest of the following described line: Beginning 290
17 feet south and 30 feet east from the center of said
18 section; thence S 87° E 178.11 feet; thence S 64°30' E 196
19 feet; thence S 56° E 616 feet; thence S 55°30' E 268.21
20 feet; thence S 42° E 250 feet, more or less; thence
21 S 17° E 430 feet, more or less; thence south 235 feet,
22 more or less; thence east 80 feet to a point of terminus
on the east line of said W $\frac{1}{2}$ SE $\frac{1}{4}$. ALSO That part of the
following described parcel lying southerly of the Wenas
Road: Beginning at a point 157 feet north of the
southeast corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T. 25 N.,
R. 18 E.W.M.; thence N 734 feet to the southeast corner of
the school ground; thence W 241 feet; thence S 416 feet;
thence S 18°45' E 335 feet; thence E 134 feet to the point
of beginning.

23 Spring Creek--That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32,
24 T. 15 N., R. 18 E.W.M., lying southwest of the South Fork
of Wenas Creek.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 Limitations of Use: A maximum of 260.8 acre-feet per year may be used under
2 this right and any ground water right that might be
3 appurtenant to the above-described place of use.

4 CLAIMANT NAME: **Arthur E. Bertelsen** COURT CLAIM NO. 00434
(A)01379

5 Source: Wenas Creek

6 Use: Irrigation of 124.6 acres

7 Period of Use: April 1 to October 31

8 Quantity: 2.49 cubic feet per second, 747.6 acre-feet per year for
9 irrigation; 1 acre-foot per year for stock water

10 Priority Date: **June 30, 1872**

11 Point of Diversion: 1. 330 feet north and 330 feet east of the center of
12 Section 24, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24,
13 T. 16 N., R. 16 E.W.M.
14 2. 200 feet south and 370 feet east of the north quarter
15 corner of Section 30, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
16 Section 30, T. 16 N., R. 17 E.W.M.
17 3. 100 feet south and 460 feet west of the east quarter
18 corner of Section 30, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of
19 Section 30, T. 16 N., R. 17 E.W.M.

20 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.
21 16 N., R. 17 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: Christensen Family Trust COURT CLAIM NO. 01222
2 Source: Wenas Creek
3 Use: Irrigation of 17 acres
4 Period of Use: March 15 to October 15
5 Quantity: 0.425 cubic foot per second, 68 acre-feet per year
6 Priority Date: June 30, 1872
7 Point of Diversion: 610 feet north and 300 feet east from the southwest corner
8 of Section 29, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
9 T. 15 N., R. 18 E.W.M.
10 Place of Use: That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 15 N.,
11 R. 18 E.W.M. lying west of the North Wenas Road.
12 Limitations of Use: This land receives supplemental water from the Wenas
13 Irrigation District. A maximum of 68 acre-feet per year
14 can be used under this right and any right the land may
15 enjoy through the Wenas Irrigation District.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: **Cliff Egge** COURT CLAIM NO. 01644
2 & **Liz Egge**
3 Source: Wenas Creek
4 Use: Irrigation of 20 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.34 cubic foot per second, 60 acre-feet per year
7 Priority Date: **June 30, 1872**
8 Point of Diversion: 40 feet north and 1,110 feet east from the center of
9 Section 30, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30,
10 T. 15 N., R. 18 E.W.M.
11 Place of Use: That portion of the north 580 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
12 Section 30, T. 15 N., R. 18 E.W.M. lying west of the North
13 Wenas Road.
14 Limitations of Use: This land receives supplemental water from the Wenas
15 Irrigation District. A maximum of 83.66 acre-feet per
16 year can be used under this right and any right the land
17 may enjoy through the Wenas Irrigation District.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME:

Thomas S. Hazen
& Charlain E. Hazen

COURT CLAIM NO. 00436
(A)01375
(A)06527

3 Source:

Wenas Creek

4 Use:

Irrigation of 18 acres

5 Period of Use:

April 1 to October 31

6 Quantity:

0.36 cubic foot per second, 54 acre-feet per year

7 Priority Date:

June 30, 1872

8 Point of Diversion:

150 feet south and 200 feet east from the west quarter
9 corner of Section 29, being within the $NW\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$ of
Section 29, T. 16 N., R. 17 E.W.M.

10 Place of Use:

11 That portion of the $NW\frac{1}{4}SW\frac{1}{4}$ of Section 29, T. 16 N.,
R. 17 E.W.M. lying south of the Wenas Road and north of
12 the Burge Ditch.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME: Bob Homier COURT CLAIM NO. 01644
2 & Bev Homier
3 Source: Wenas Creek
4 Use: Irrigation of 22.5 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.56 cubic foot per second, 67.5 acre-feet per year
7 Priority Date: June 30, 1872
8 Point of Diversion: 40 feet north and 1,110 feet east from the center of
9 Section 30, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30,
10 T. 15 N., R. 18 E.W.M.
11 Place of Use: The South 740 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T. 15 N.,
12 R. 18 E.W.M.
13 Limitations of Use: This land receives supplemental water from the Wenas
14 Irrigation District. A maximum of 87.78 acre-feet per
15 year can be used under this right and any right the land
16 may enjoy through the district.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME:

**Paul Madison
& Helen Madison**

COURT CLAIM NO. 01644

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 18 acres

5 Period of Use:

April 1 to October 15

6 Quantity:

0.45 cubic foot per second, 54 acre-feet per year

7 Priority Date:

June 30, 1872

8 Point of Diversion:

70 feet south and 1,140 feet west from the east quarter corner of Section 30, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T. 15 N., R. 18 E.W.M.

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10 Place of Use:

That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 15 N., R. 18 E.W.M. lying west of the following described line: Beginning at a point 710 feet east from the southwest corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said section; thence N 13°30' W 680 feet, more or less; thence N 29° W 750 feet, more or less, to a point of terminus on the north line of the SW $\frac{1}{4}$ of said section.

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14 Limitations of Use:

This land receives supplemental water from the Wenas Irrigation District. A maximum of 82.51 acre-feet per year can be used under this right and any right the land may enjoy through the Wenas Irrigation District.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

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CLAIMANT NAME: Donald F. Cox COURT CLAIM NO. 00423
& Alvera A. Cox (A)01377
Paulette L. Buckley

Source: South Fork of Wenas Creek

Use: Irrigation of 130 acres and stock water

Period of Use: April 1 to October 15

Quantity: 2.6 cubic feet per second, 464.1 acre-feet per year for irrigation; 6 acre-feet per year for stock water

Priority Date: June 30, 1875

Point of Diversion: 550 feet south and 980 feet east from the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M., lying east of the Purdin Ditch, Government Lots 3 and 4 of Section 19, and Government Lot 1 of Section 30; both in T. 15 N., R. 18 E.W.M.

Limitations of Use: This land receives supplemental water from the Wenas Irrigation District. A maximum of 594 acre-feet per year can be used under this right and any right the land may enjoy through the Wenas Irrigation District.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME:

**Austin J. Murray
& Ramona A. Murray**

COURT CLAIM NO. 01501

2
3 Source:

South Fork of Wenas Creek

4 Use:

Irrigation of 145 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

2.90 cubic feet per second, 435 acre-feet per year for
irrigation; 10 acre-feet per year for stock water

7 Priority Date:

June 30, 1875

8 Point of Diversion:

550 feet south and 980 feet east from the north quarter
corner of Section 24, being within the $NE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

10 Place of Use:

The $E\frac{1}{2}SW\frac{1}{4}$ of Section 30, and the $NW\frac{1}{4}NE\frac{1}{4}$, and that portion
of the $NE\frac{1}{4}NW\frac{1}{4}$ of Section 31 lying northeast of the South
Wenas Road, ALL in T. 15 N., R. 18 E.W.M.

12 Limitations of Use:

A ground water right may be appurtenant to the property.

27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME: Lyle R. Schneider COURT CLAIM NO. 00697
2 (A)01383
3 Source: Wenas Creek
4 Use: Irrigation of 75 acres
5 Period of Use: March 1 to October 15
6 Quantity: 1.5 cubic feet per second, 362 acre-feet per year
7 Priority Date: June 30, 1875
8 Point of Diversion: 1,150 feet south and 950 feet east of the northwest corner
9 of Section 19, being within Government Lot 1, Section 19,
10 T. 15 N., R. 18 E.W.M.
11 Place of Use: The $W\frac{1}{2}SE\frac{1}{4}$ and $SE\frac{1}{4}SE\frac{1}{4}$ of Section 19 and the $NE\frac{1}{4}NE\frac{1}{4}$ of
12 Section 30, both in T. 15 N., R. 18 E.W.M.
13 Limitations of Use: This land receives supplemental water from the Wenas
14 Irrigation District. A maximum of 375 acre-feet per year
15 can be used under this right and any right the land may
16 enjoy through the Wenas Irrigation District.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: Don Hazen COURT CLAIM NO. 00435
2 (A)01376

3 Source: Wenas Creek

4 Use: Irrigation of 59.5 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1.19 cubic feet per second, 178.5 acre-feet per year

7 Priority Date: June 30, 1876

8 Point of Diversion: No. 1: 500 feet south and 700 feet east from the north
9 quarter corner of Section 11, being within the $NE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$
10 of Section 11;
11 No. 2: 1,100 feet south and 750 feet west from the
12 northeast corner of Section 11, being within the $SW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$
13 of Section 11;
14 No. 3: 1,150 feet south and 650 feet west from the
15 northeast corner of Section 11, being within the $SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$
16 of Section 11, ALL IN T. 15 N., R. 17 E.W.M.

13 Place of Use: That portion of Lot 1 lying south of the Wenas Highland
14 Canal and that portion of Lots 2, 3, 4, 5 and 6 all in
15 Plat "A" Unit I, Wenas Highland Orchard Tract; which is
16 located in those portions of the $E\frac{1}{2}NE\frac{1}{4}$ of Section 11 and
17 the $W\frac{1}{2}NW\frac{1}{4}$ of Section 12 lying north of Wenas Creek and
18 south of Wenas Road; ALL in T. 15 N., R. 17 E.W.M.

16 Limitations of Use: This land also receives supplemental water from the Wenas
17 Irrigation District. A maximum of 266.8 acre-feet per
18 year can be used under this right and any right the land
19 may enjoy through the district.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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CLAIMANT NAME: **Scott Baird, et al.** COURT CLAIM NO. 00702
& Jerri Baird (A)01381
David Jones
& Patricia Jones
Marian Easton

Source: Wenas Creek

Use: Irrigation of 24 acres and stock water

Period of Use: March 15 to October 15

Quantity: 0.48 cubic foot per second, 70 acre-feet per year for irrigation; 2 acre-feet per year for stock water

Priority Date: **June 30, 1877**

Point of Diversion: 550 feet south and 980 feet east from the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

Place of Use: Lot 1 of Short Plat recorded in Book Q, Page 3 being approximately that portion of the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ Section 24, T. 15 N., R. 17 E.W.M., lying east of the remnants of the Cameron, Pollard, and Collis Ditch.

Limitations of Use: This land receives supplemental water from the Wenas Irrigation District. A maximum of 101 acre-feet per year can be used under this right and any right the land may enjoy through the Wenas Irrigation District.

REPORT OF REFEREE
Re: Subbasin No. 15

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CLAIMANT NAME: **Thomas F. Colligan, Jr.** COURT CLAIM NO. 00448
& Mrs. Thomas F. Colligan, Jr. (A)01374
Violet Virginia Richards

Source: South Fork of Wenas Creek

Use: Irrigation of 19 acres and stock water

Period of Use: March 15 to October 15

Quantity: 0.38 cubic foot per second, 60.8 acre-feet per year for irrigation; 2 acre-foot per year for stock water

Priority Date: **June 30, 1877**

Point of Diversion: 550 feet south and 980 feet east from the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

Place of Use: Lot 2 of Short Plat recorded in Book Q, Page 3, records of Yakima County, being approximately the east 1,503 feet of the S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M..

Limitations of Use: This land receives supplemental water from the Wenas Irrigation District. A maximum of 85.5 acre-feet per year can be used under this right and any right the land may enjoy through the irrigation district.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: Ray E. Day COURT CLAIM NO. 01191
2 & Tola R. Day
3 Source: Wenas Creek
4 Use: Irrigation of 30 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.60 cubic foot per second, 95.6 acre-feet per year
7 Priority Date: June 30, 1877
8 Point of Diversion: 1,300 feet north and 550 feet east from the south quarter
9 corner of Section 13, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 13, T. 15 N., R. 17 E.W.M.
11 Place of Use: The west 1,000 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N.,
12 R. 17 E.W.M.
13 Limitations of Use: This land receives supplemental water from the Wenas
14 Irrigation District. A maximum of 155.6 acre-feet per
15 year can be used under this right and any right the land
16 may enjoy through the Wenas Irrigation District.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME:

Nathan E. Jenkins
& Cecelia K. Jenkins
Eugene Jenkins
& Barbara Jenkins

COURT CLAIM NO. 00390

2
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4 Source:

South Fork of Wenas Creek

5 Use:

Irrigation of 1.5 acres

6 Period of Use:

March 15 to October 15

7 Quantity:

0.03 cubic foot per second, 4.8 acre-feet per year

8 Priority Date:

June 30, 1877

9 Point of Diversion:

550 feet south and 980 feet east of the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

10
11 Place of Use:

Lot 2 of Short Plat 91-80 being a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

12
13 Limitations of Use:

This land receives supplemental water from the Wenas Irrigation District. A maximum of 6.75 acre-feet per year can be used under this right and any right the land may enjoy through the district.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME:

**William B. Lawrence
& Patricia S. Lawrence**

COURT CLAIM NO. 01604

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 43 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

0.86 cubic foot per second, 129 acre-feet per year for
7 irrigation; 0.02 cubic foot per second, 2 acre-feet per
year for stock water

8 Priority Date:

June 30, 1877

9 Point of Diversion:

600 feet south and 1,000 feet east from the north quarter
10 corner of Section 24, being within the $NE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$ of
Section 24, and;

11 Place of Use:

Lots 1, 2 and 3 of Short Plat recorded in Book 81, Page
12 60, Records of Yakima County, being within a portion of
the $N\frac{1}{2}NE\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

13 Limitations of Use:

This land receives supplemental water from the Wenas
14 Irrigation District. A maximum of 234 acre-feet per year
year can be used under this right and any right the land
15 may enjoy through the district.
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27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME:

George W. Marcott
& Linda M. Marcott

COURT CLAIM NO. 02318

2
3 Source:

South Fork of Wenas Creek

4 Use:

Irrigation of 20 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

0.40 cubic foot per second, 60 acre-feet per year for
irrigation; 2 acre-feet per year for stock water

7 Priority Date:

June 30, 1877

8 Point of Diversion:

550 feet south and 980 feet east from the north quarter
corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

9
10 Place of Use:

Lot 4, Short Plat 79-268, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

11
12 Limitations of Use:

This land receives supplemental water from the Wenas
Irrigation District. A maximum of 86 acre-feet per year
can be used under this right and any right the land may
enjoy through the district.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

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CLAIMANT NAME: **Homer W. Marney** COURT CLAIM NO. 01604
& **Anna M. Marney**

Source: Wenas Creek

Use: Irrigation of 28 acres

Period of Use: March 15 to October 15

Quantity: 0.56 cubic foot per second, 84 acre-feet per year for the irrigation of 28 acres

Priority Date: **June 30, 1877**

Point of Diversion: 650 feet south and 1,100 feet east from the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

Place of Use: The north 722.80 feet of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M., lying east of the south branch of Wenas Creek.

Limitations of Use: This land may receive supplemental water from the Wenas Irrigation District.

REPORT OF REFEREE
Re: Subbasin No. 15

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CLAIMANT NAME: **Allen F. Miller** COURT CLAIM NO. 01072
& **Elaine E. Miller**

Source: South Fork of Wenas Creek

Use: Irrigation of 27 acres

Period of Use: March 15 to October 15

Quantity: 0.54 cubic foot per second, 81 acre-feet per year

Priority Date: **June 30, 1877**

Point of Diversion: 550 feet south and 980 feet east from the north quarter corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.

Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M., lying east of the remnants of the Cameron, Pollard and Collis Ditch.

Limitations of Use: This land receives supplemental water from the Wenas Irrigation District. A maximum of 116.1 acre-feet per year can be used under this right and any right the land may enjoy through the district.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: **Gordon S. Reid** COURT CLAIM NO. 01050
2 & Pearl Reid

3 Source: Wenas Creek

4 Use: Irrigation of 50 acres and stock water

5 Period of Use: March 15 to October 15

6 Quantity: 1 cubic foot per second, 150 acre-feet per year for
irrigation; 2 acre-feet per year for stock water

7 Priority Date: **June 30, 1877**

8 Point of Diversion: 900 feet south and 1,300 feet west from the east quarter
9 corner of Section 13, being within either the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ or
the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N., R. 17 E.W.M.

10 Place of Use: The east 330 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
11 13, T. 15 N., R. 17 E.W.M., EXCEPT right-of-way for
12 Longmire Lane and Sisk Road.

13 Limitations of Use: This land receives supplemental water from the Wenas
14 Irrigation District and may receive supplemental water
15 from a well. A maximum of 215 acre-feet per year can be
16 used under this right, any ground water right that may
17 exist, and any right the land may enjoy through the
18 district.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Karen Wickstrom COURT CLAIM NO. 00390
2 Source: South Fork of Wenas Creek
3 Use: Irrigation of 17.5 acres and stock water
4 Period of Use: March 15 to October 15
5 Quantity: 0.35 cubic foot per second, 56 acre-feet per year for
6 irrigation; 2 acre-feet per year for stock water
7 Priority Date: June 30, 1877
8 Point of Diversion: 550 feet south and 980 feet east from the north quarter
9 corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
10 Section 24, T. 15 N., R. 17 E.W.M.
11 Place of Use: Lot 1 of Short Plat 91-80, records of Yakima County, being
12 a portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 15 N.,
13 R. 17 E.W.M.
14 Limitations of Use: This land receives supplemental water from the Wenas
15 Irrigation District. A maximum of 78.75 acre-feet per
16 year can be used under this right and any right the land
17 may enjoy through the district.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME:

Thomas A. Bass, Jr.
& Carol Ann Bass

COURT CLAIM NO. 01460
(A)07607

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 28 acres and stock water

5 Period of Use:

April 1 to October 15

6 Quantity:

0.56 cubic foot per second, 84 acre-feet per year for
irrigation; 1 acre-foot per year for stock water

7 Priority Date:

June 30, 1878

8 Point of Diversion:

9 1. 200 feet west from the south quarter corner of
10 Section 11, being within either the $SE\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$ of
11 Section 11, or the $NE\frac{1}{4}NE\frac{1}{4}NW\frac{1}{4}$ of Section 14, T. 16 N.,
12 R. 16 E.W.M.
2. 300 feet north and 350 feet west of the south quarter
corner of Section 11, being within the $SE\frac{1}{4}SW\frac{1}{4}$ of
Section 11, T. 16 N., R. 16 E.W.M.

13 Place of Use:

That portion of the $NW\frac{1}{4}SE\frac{1}{4}$ and $SW\frac{1}{4}NE\frac{1}{4}$ of Section 14,
T. 16 N., R. 16 E.W.M., lying east of Wenas Creek.

27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Person & Person Inc.** COURT CLAIM NO. 01508
2 Source: South Fork of Wenas Creek
3 Use: Irrigation of 8 acres and stock water
4 Period of Use: April 1 to October 15
5 Quantity: 0.16 cubic foot per second, 24 acre-feet per year for
6 irrigation; 1 acre-foot per year for stock water
7 Priority Date: **June 30, 1878**
8 Point of Diversion: 300 feet north and 10 feet east from the south quarter
9 corner of Section 14, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 14, T. 16 N., R. 16 E.W.M.
11 Place of Use: That portion of the SW $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 14, T. 16 N.,
12 R. 16 E.W.M., lying southwest of Wenas Creek and north of
13 the South Fork of Wenas Creek

13 CLAIMANT NAME: **Person & Person Inc.** COURT CLAIM NO. 01508
14 Source: Dippin Vat Canyon
15 Use: Irrigation of 5 acres and stock water
16 Period of Use: April 1 to October 15
17 Quantity: 0.10 cubic foot per second, 15 acre-feet per year for
18 irrigation; 1 acre-foot per year for stock water
19 Priority Date: **June 30, 1878**
20 Point of Diversion: 100 feet north and 500 feet east from the south quarter
21 corner of Section 14, being within the SE $\frac{1}{2}$ SW $\frac{1}{2}$ of
22 Section 14, T. 16 N., R. 16 E.W.M.
23 Place of Use: That portion of the SE $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 14, T. 16 N.,
24 R. 16 E.W.M. lying south of Wenas Creek and south of the
25 South Fork of Wenas Creek
26

27 REPORT OF REFEREE
28 Re: Subbasin No. 15
29

1 CLAIMANT NAME: **John Ashbaugh** COURT CLAIM NO. 00472
2 (A)01364

3 Source: Wenas Creek

4 Use: Irrigation of 67.4 acres

5 Period of Use: April 1 to October 15

6 Quantity: 1.35 cubic feet per second, 202.5 acre-feet per year

7 Priority Date: **June 30, 1879**

8 Point of Diversion: 500 feet north and 660 feet east from the west quarter
9 corner of Section 12, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
Section 12, T. 15 N., R. 17 E.W.M.

10 Place of Use: That portion of the SW $\frac{1}{4}$ of Section 12, T. 15 N.,
R. 17 E.W.M. lying southwesterly of the North Wenas Road

11 Limitations of Use: A maximum of 270 acre-feet per year can be used under this
12 right and any other water rights that may be appurtenant
13 to the land.

14 CLAIMANT NAME: **Mary Helen Brimbel** COURT CLAIM NO. 01638

15 Source: Wenas Creek

16 Use: Irrigation of 12 acres

17 Period of Use: April 1 to October 15

18 Quantity: 0.24 cubic foot per second, 48 acre-feet per year

19 Priority Date: **June 30, 1879**

20 Point of Diversion: 1,060 feet south and 920 feet west from the center of
21 Section 11, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11,
T. 14 N., R. 18 E.W.M.

22 Place of Use: That portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T. 14 N.,
23 R. 18 E.W.M. lying north of the South Wenas Road.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Bruce Buchanan** COURT CLAIM NO. 02212
2 & **Karron M. Buchanan**
3 Source: South Fork of Wenas Creek
4 Use: Irrigation of 99 acres and stock water
5 Period of Use: April 1 to October 15
6 Quantity: 1.98 cubic feet per second, 297 acre-feet per year for
7 irrigation; 5 acre-feet per year for stock water
8 Priority Date: **June 30, 1879**
9 Point of Diversion: 550 feet south and 980 feet east from the north quarter
10 corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
11 Section 24, T. 15 N., R. 17 E.W.M.
12 Place of Use: Those portions of Section 31, T. 15 N., R. 18 E.W.M.
13 described as follows: The S $\frac{1}{2}$ NE $\frac{1}{4}$ lying northeast of the
14 South Wenas Road EXCEPT the north 320 feet of the W $\frac{1}{2}$
15 thereof; AND the NE $\frac{1}{4}$ SE $\frac{1}{4}$ lying northeast of the South Wenas
16 Road.
17 Limitations of Use: A maximum of 495 acre-feet per year may be used under this
18 right and any ground water right that might be appurtenant
19 to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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CLAIMANT NAME: **Galen H. Hoover** COURT CLAIM NO. 06782
& Patricia L. Hoover

Source: Wenas Creek

Use: Irrigation of 9.8 acres

Period of Use: April 1 to October 15

Quantity: 0.18 cubic foot per second, 29.4 acre-feet per year

Priority Date: **June 30, 1879**

Point of Diversion: Various points on the creek between a point 100 feet north of the southwest corner of Section 34 and a point 450 feet west of the southwest corner of Section 34, all in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 16 N., R. 17 E.W.M.

Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 16 N., R. 17 E.W.M. lying southwest of the North Wenas Road

Limitations of Use: A maximum of 29.4 acre-feet per year may be used under this right and any ground water right that might be appurtenant to the above-described place of use.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME:

**E. E. Stohsner
& Helen R. Stohsner
John Ashbaugh
& Lynn Ashbaugh**

COURT CLAIM NO. 00945
(A)04298

4 Source:

Wenas Creek

5 Use:

Irrigation of 9.3 acres and stock water

6 Period of Use:

April 1 to October 15

7 Quantity:

0.19 cubic foot per second, 37.2 acre-feet per year for
irrigation; 1 acre-foot per year for stock water

8 Priority Date:

June 30, 1879

9 Point of Diversion:

400 feet north and 40 feet west from the center of
Section 32, being within the $SE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ of Section 32,
T. 15 N., R. 18 E.W.M.

11 Place of Use:

Lots 1 and 2 of Short Plat No. 79-81, Recorded under
Auditor's file No. 2543517, Yakima County, being within
the $N\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M.

13 Limitations of Use:

A maximum of 37.2 acre-feet per year may be used under
this right and any ground water right that might be
appurtenant to the above-described place of use.

27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME:

Hershel Zeigler

COURT CLAIM NO. 00562

2 Source:

Wenas Creek

3 Use:

Irrigation of 2 acres

4 Period of Use:

April 1 to October 15

5 Quantity:

0.04 cubic foot per second, 8 acre-feet per year

6 Priority Date:

June 30, 1879

7 Point of Diversion:

880 feet south and 700 feet east from the west quarter corner of Section 11, being within the $SE\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M.

9 Place of Use:

That portion of the $N\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ of Section 11, T. 14 N., R. 18 E.W.M. lying north of the South Wenas Road

10 Limitations of Use:

A maximum of 8 acre-feet per year may be used under this right and any ground water right that might be appurtenant to the above-described place of use.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME: Thomas A. Bass, Jr. COURT CLAIM NO. 01460
2 & Carol Ann Bass (A)07607

3 Source: Wenas Creek

4 Use: Irrigation of 107 acres and stock water

5 Period of Use: April 1 to October 15

6 Quantity: 2.14 cubic feet per second, 321 acre-feet per year for
irrigation; 1 acre-foot per year for stock water

7 Priority Date: June 30, 1880

8 Point of Diversion: 300 feet north and 350 feet west from the south quarter
9 corner of Section 11, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
10 Section 11, T. 16 N., R. 16 E.W.M.

11 Place of Use: That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ lying east of the Sunset Ditch
12 and west of the North Wenas Road; that portion of the
13 SE $\frac{1}{4}$ NE $\frac{1}{4}$ lying west of the North Wenas Road and the NE $\frac{1}{4}$ SE $\frac{1}{4}$
14 all in Section 14, T. 16 N., R. 16 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME:

Tom Green
Merton G. Raine

COURT CLAIM NO. 01906

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 68 acres

5 Period of Use:

April 1 to October 15

6 Quantity:

1.36 cubic feet per second, 204 acre-feet per year

7 Priority Date:

June 30, 1880

8 Point of Diversion:

450 feet north and 650 feet west from the south quarter corner of Section 19, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T. 16 N., R. 17 E.W.M.

9
10 Place of Use:

That portion of the S $\frac{1}{2}$ of Section 19, T. 16 N., R. 17 E.W.M., lying southwest of the Wenas Road and southeast of a line beginning at a point 865 feet east of the southwest corner of said Section 19; thence N 29°30' E 2,161.5 feet to a point of terminus on the south right-of-way of the Wenas Road.

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13 Limitations of Use:

A maximum of 204 acre-feet per year may be used under this right and any ground water right that might be appurtenant to the above-described place of use.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME:

Leo Hursh
& Carolyn Hursh

COURT CLAIM NO. 01270

2
3 Source:

South Fork of Wenas Creek

4 Use:

Irrigation of 3 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

0.06 cubic foot per second, 9 acre-feet per year for
irrigation; 1 acre-foot per year for stock water

7 Priority Date:

June 30, 1880

8 Point of Diversion:

550 feet south and 980 feet east from the north quarter
corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

9
10 Place of Use:

The south 300 feet of Lot No. 3, Short Plat K-3, within
the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 15 N., R. 17 E.W.M., lying
east of the Purdin Ditch.

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12 Limitations of Use:

A maximum of 12 acre-feet per year may be used under this
right and any ground water right that might be appurtenant
to the above-described place of use.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME:

**Norman K. Johnson, et al.
& Marilyn R. Johnson**

COURT CLAIM NO. 02034

2
3 Source:

South Fork of Wenas Creek

4 Use:

Irrigation of 12 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

0.24 cubic foot per second, 36 acre-feet per year for
irrigation; 1 acre-foot per year for stock water

7 Priority Date:

June 30, 1880

8 Point of Diversion:

550 feet south and 980 feet east from the north quarter
corner of Section 24, being within the $NE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

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10 Place of Use:

Lots 1 and 2, of Short Plat K-3, which lies within the
 $NE\frac{1}{4}NE\frac{1}{4}$ of Section 25, T. 15 N., R. 17 E.W.M.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME: **Chuck Kisner** COURT CLAIM NO. 00494

2 Source: Wenas Creek

3 Use: Irrigation of 5 acres

4 Period of Use: April 1 to October 15

5 Quantity: 0.10 cubic foot per second, 15 acre-feet per year

6 Priority Date: **June 30, 1880**

7 Point of Diversion: 340 feet north and 600 feet east from the southwest corner
8 of Section 29, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
9 T. 15 N., R. 18 E.W.M.

10 Place of Use: That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 described as
11 follows: Beginning at a point 150 feet south, more or
12 less, from the northwest corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence
13 S 38° E 460 feet, more or less; thence N 51° E 200 feet,
14 more or less, to the south right-of-way of the North Wenas
15 Road; thence southeasterly along said right-of-way 600
16 feet, more or less; thence S 60°56'40" E 910 feet, more or
17 less, to a point on the west line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence
18 north along said line 1,140 feet, more or less, to the
19 point of beginning.

20 Limitations of Use: This land enjoys a supplemental water right for use of an
21 unnamed pond. The maximum quantity of water that can be
22 used on this land under this right or the supplemental
23 right shall not exceed 20 acre-feet per year.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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CLAIMANT NAME: David M. Longmire COURT CLAIM NO. 07728
& Linda D. Longmire

Source: Wenas Creek

Use: Irrigation of 6 acres

Period of Use: April 1 to October 15

Quantity: 0.09 cubic foot per second, 24 acre-feet per year

Priority Date: June 30, 1880

Point of Diversion: 1,100 feet south and 900 feet west from the north quarter corner of Section 32, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 T. 15 N., R. 18 E.W.M.

Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, T. 15 N., R. 18 E.W.M. described as follows: Beginning at the southwest corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence north 29.23 feet; thence N 60°56'40" E 915 feet, more or less, to the southwesterly right-of-way of North Wenas Road; thence southeasterly along said right-of-way to the south line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence west 1,060 feet, more or less, to the point of beginning.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: Laura Longmire COURT CLAIM NO. 01270
2 Jerry Longmire
3 & Dorothy Longmire
4 Source: South Fork of Wenas Creek
5 Use: Irrigation of 15 acres and stock water
6 Period of Use: March 15 to October 15
7 Quantity: 0.30 cubic foot per second, 45 acre-feet per year for
8 irrigation; 1 acre-foot per year for stock water
9 Priority Date: June 30, 1880
10 Point of Diversion: 550 feet south and 980 feet east from the north quarter
11 corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
12 Section 24, T. 15 N., R. 17 E.W.M.
13 Place of Use: That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T. 15 N.,
14 R. 17 E.W.M. lying east of Purdin Ditch
15 Limitations of Use: A maximum of 60 acre-feet per year may be used under this
16 right and any ground water right that might be appurtenant
17 to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Victor L. Berg COURT CLAIM NO. 01783
2 & Tennis Berg
3 Michael Wright
& Debra E. Wright
4 Source: Wenas Creek
5 Use: Irrigation of 10 acres
6 Period of Use: April 1 to October 15
7 Quantity: 0.20 cubic foot per second, 30 acre-feet per year
8 Priority Date: **June 30, 1881**
9 Point of Diversion: 230 feet south and 540 feet west from the northeast corner
10 of Section 13, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13,
T. 14 N., R. 18 E.W.M.
11 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 14 N., R. 18 E.W.M.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME:

**Grant S. Green
& Eveleth S. Green**

COURT CLAIM NO. 01111

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 22 acres and stock water

5 Period of Use:

April 1 to October 15

6 Quantity:

0.44 cubic foot per second, 66 acre-feet per year for irrigation; 1 acre-foot per year for stock water

7 Priority Date:

June 30, 1881

8 Point of Diversion:

9 1. 330 feet north and 500 feet east of the southwest
10 corner of Section 13, being within the $SW\frac{1}{4}SW\frac{1}{4}$ of
11 Section 13, T. 16 N., R. 16 E.W.M.
2. 850 feet south and 900 feet west of the east quarter
corner of Section 24, being within the $NE\frac{1}{4}SE\frac{1}{4}$ of
Section 24, T. 16 N., R. 16 E.W.M.

12 Place of Use:

13 That portion of the $S\frac{1}{2}$ of Government Lot 3 and Government
14 Lot 4, Section 19, T. 16 N., R. 17 E.W.M. lying north of
15 Wenas Creek and northwest of the following described line:
16 Beginning at the southeast corner of the $SW\frac{1}{4}$ of Section
17 19, thence westerly on the south line 1,914 feet to the
18 true point of beginning; thence northeasterly 2,161.5 feet
19 to a point 231 feet east of the northwest corner of the
20 $SE\frac{1}{4}SW\frac{1}{4}$ said point being on the North Wenas Road and the
21 terminus of this line.
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27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME:

Mary E. Hagedorn
& Harvey Hagedorn
Lorraine P. Rennie
& Robert Rennie (Deceased)
Robert M. Messer
& Mary L. Rennie

COURT CLAIM NO. 01612

5 Source:

Wenas Creek

6 Use:

Irrigation of 22 acres

7 Period of Use:

April 1 to October 15

8 Quantity:

0.44 cubic foot per second, 66 acre-feet per year

9 Priority Date:

June 30, 1881

10 Point of Diversion:

11 1. 950 feet south and 1,320 feet west from the east
12 quarter corner of Section 13, being within either the
13 SW $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ or SE $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N.,
R. 17 E.W.M.
14 2. 400 feet north and 750 feet east of the west quarter
15 corner of Section 12, being within the SW $\frac{1}{2}$ NW $\frac{1}{4}$ of Section
16 12, T. 15 N., R. 17 E.W.M.

14 Place of Use:

Those portions of Government Lots 3 and 4 (W $\frac{1}{2}$ SW $\frac{1}{4}$) of
Section 18, T. 15 N., R. 18 E.W.M. lying east of Longmire
Lane and southwesterly of Wenas Road, EXCEPT the west 125
feet of the south 645 feet thereof.

16 Limitations of Use:

17 This land receives supplemental water from the Wenas
18 Irrigation District. A maximum of 97.2 acre-feet per year
19 can be used under this right and any right the land may
20 enjoy through the district.

27 REPORT OF REFEREE

28 Re: Subbasin No. 15

1 CLAIMANT NAME: E. Lee Hargroves COURT CLAIM NO. 00498
2 & Linda L. Hargroves (A)02108
(A)06790

3 Source: Wenas Creek

4 Use: Irrigation of 19.4 acres

5 Period of Use: April 1 to October 15

6 Quantity: 0.39 cubic foot per second, 58.2 acre-feet per year

7 Priority Date: June 30, 1881

8 Point of Diversion: 584 feet north and 973 feet east from the south quarter
9 corner of Section 12, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
10 12, T. 14 N., R. 18 E.W.M.

11 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T. 14 N.,
12 R. 18 E.W.M., described as follows: Beginning at a point
13 212.6 feet north from the south quarter corner of said
14 section; thence east 111 feet; thence S 76°35' E 114.22
15 feet; thence S 70°08' E 345 feet; thence S 10°00'47" E
16 96.14 feet; thence east 114.78 feet; thence N 33°25'33" E
17 520 feet, more or less; thence north 600 feet, more or
18 less; thence west 945 feet, more or less; thence south 418
19 feet, more or less; thence east 172 feet, more or less;
20 thence south 195 feet, more or less; thence west 172 feet,
21 more or less; thence south 230 feet, more or less, to the
22 point of beginning.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

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CLAIMANT NAME: Merle Shuyler COURT CLAIM NO. 06496
Beverlie Shuyler
Source: Wenas Creek
Use: Irrigation of 6 acres
Period of Use: April 1 to October 15
Quantity: 0.12 cubic foot per second, 18 acre-feet per year
Priority Date: June 30, 1881
Point of Diversion: 200 feet north and 1,125 feet west from the southeast corner of Section 12, being within SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 14 N., R. 18 E.W.M.
Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, T. 14 N., R. 18 E.W.M. lying north of Wenas Creek.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: Hazel Cameron

COURT CLAIM NO. 00438
(A)01378

2
3 Source: Wenas Creek

4 Use: Irrigation of 30 acres

5 Period of Use: April 1 to October 15

6 Quantity: 0.60 cubic foot per second, 89.1 acre-feet per year

7 Priority Date: June 30, 1882

8 Point of Diversion: 1. 550 feet north and 650 feet east of the west quarter
9 corner of Section 12, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section
10 12, T. 15 N., R. 17 E.W.M.
11 2. 500 feet north and 1,100 feet west of the south
12 quarter corner of Section 12, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of
13 Section 12, T. 15 N., R. 17 E.W.M.

14 Place of Use: That portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, T. 15 N.,
15 R. 17 E.W.M. lying southwest of the North Wenas Road.

16 Limitations of Use: This land receives supplemental water from the Wenas
17 Irrigation District. A maximum of 150 acre-feet per year
18 can be used under this right and any right the land may
19 enjoy through the Wenas Irrigation District.
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28 REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: Colleen A. Hargraves (Jones) COURT CLAIM NO. 01250

2 Source: Wenas Creek

3 Use: Irrigation of 62 acres and stock water

4 Period of Use: April 1 to October 15

5 Quantity: 1.24 cubic feet per second, 186 acre-feet per year for
6 irrigation; 0.02 cubic foot per second, 2 acre-feet per
year for stock water

7 Priority Date: **June 30, 1882**

8 Point of Diversion: 1. 500 feet north and 1,100 feet west from the south
9 quarter corner of Section 12, being within the $SW\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$
of Section 12, T. 15 N., R. 17 E.W.M.
10 2. 950 feet south and 1,300 feet west from the east
quarter corner of Section 13, being within the $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$
11 of Section 13, T. 15 N., R. 17 E.W.M.
12 3. 400 feet north and 750 feet east of the west quarter
corner of Section 12, being within the $SW\frac{1}{4}NW\frac{1}{4}$ of Section
12, T. 15 N., R. 17 E.W.M.

13 Place of Use: The $NE\frac{1}{4}SE\frac{1}{4}$ and that portion of the $SE\frac{1}{4}NE\frac{1}{4}$ of Section 13,
14 T. 15 N., R. 17 E.W.M., lying west of an old ditch which
runs parallel to Wenas Road.

15 Limitations of Use: This land receives supplemental water from the Wenas
16 Irrigation District. A maximum of 278.3 acre-feet per
17 year can be used under this right and any right the land
may enjoy through the district.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: John Strand Mayo COURT CLAIM NO. 05226
2 & Nancy Clair Mayo
3 Source: South Fork of Wenas Creek
4 Use: Irrigation of 21 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.42 cubic foot per second, 73.5 acre-feet per year
7 Priority Date: June 30, 1882
8 Point of Diversion: 600 feet south and 1,000 feet east from the north quarter
9 corner of Section 5, being within Government Lot 2 of
10 Section 5, T. 14 N., R. 18 E.W.M.
11 Place of Use: That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, T. 14 N.,
12 R. 18 E.W.M., lying northeast of the South Wenas Road;
13 EXCEPT that portion described as follows: Beginning at a
14 point on the north right-of-way of the South Wenas Road
15 1,020 feet south and 450 feet west from the east quarter
16 corner of said Section 5; thence N 16° E 233.91 feet;
17 thence N 43°30' W 436 feet; thence N 14° E 180 feet, more
18 or less; thence N 74° W 250.05 feet; thence S 12°30' W
19 286.01 feet to the north right-of-way of the South Wenas
20 Road; thence southeasterly along said right-of-way 710
21 feet, more or less, to the point of beginning.
22 Limitations of Use: A maximum of 73.5 acre-feet per year may be used under
23 this right and any ground water right that might be
24 appurtenant to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: Bruce Buchanan COURT CLAIM NO. 07476
2 Source: Wenas Creek
3 Use: Irrigation of 60 acres
4 Period of Use: March 15 to October 15
5 Quantity: 1.2 cubic feet per second, 240 acre-feet per year
6 Priority Date: June 30, 1884
7 Point of Diversion: 700 feet south and 1000 feet east of the northwest corner
8 of Section 18, being within Government Lot 1 of
9 Section 18, T. 14 N., R. 19 E.W.M.
10 Place of Use: Government Lots 1 and 2 of Section 18, T. 14 N.,
11 R. 19 E.W.M.
12 Limitations of Use: This land also receives water from the Naches-Selah
13 Irrigation District. A maximum of 240 acre-feet per year
14 may be used under this right and any right the land may
15 enjoy through the irrigation district.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: **Robert D. Elliott** COURT CLAIM NO. 01742
2 **& Verna Mae Elliott**

3 Source: South Fork of Wenas Creek

4 Use: Irrigation of 2 acres and stock water

5 Period of Use: March 15 to October 15

6 Quantity: 0.04 cubic foot per second, 6 acre-feet per year for
irrigation; 2 acre-feet per year for stock water

7 Priority Date: **June 30, 1884**

8 Point of Diversion: 550 feet south and 980 feet east from the north quarter
9 corner of Section 24, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
24, T. 15 N., R. 17 E.W.M.

10 Place of Use: That portion of Government Lots 3 and 4 of Section 30,
11 T. 15 N., R. 18 E.W.M. described as follows: Commencing
12 at the northwest corner of the SW $\frac{1}{4}$ of said section; thence
13 south along the west line thereof 827.90 feet to the point
14 of beginning; thence south 600.55 feet; thence east 46.00
15 feet; thence south 49.44 feet; thence N 80°48'50" E 631.60
16 feet; thence N 13°56'50" E 189.29 feet; thence N 31°47'40"
17 W 411.42 feet; thence N 87°57'50" W 488.80 feet to the
18 point of beginning; EXCEPT that portion of the described
19 parcel lying west of Purdin Ditch.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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1 CLAIMANT NAME: **Thomas S. Hazen**
2 **& Charlain E. Hazen**

COURT CLAIM NO. 00436
(A)01375
(A)06527

3 Source: Wenas Creek

4 Use: Irrigation of 17 acres

5 Period of Use: April 1 to October 31

6 Quantity: 0.34 cubic foot per second, 51 acre-feet per year

7 Priority Date: **June 30, 1884**

8 Point of Diversion: 150 feet south and 200 feet east from the west quarter
9 corner of Section 29, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 29, T. 16 N., R. 17 E.W.M.

10 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T. 16 N.,
11 R. 17 E.W.M., lying south of the Wenas Road and north of
12 the Burge Ditch; AND: that portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
13 said Section 29, described as follows: Beginning at a
14 point located 302.5 feet east of the west quarter corner
15 of said Section; thence east 452 feet to a point on the
16 south right of way of Wenas Road; thence northwesterly
17 along said right of way 410 feet; thence southwesterly 139
18 feet to the point of beginning.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME:

**Galen H. Hoover
& Patricia L. Hoover**

COURT CLAIM NO. 06782

2
3 Source:

Wenas Creek

4 Use:

Irrigation of 64.5 acres

5 Period of Use:

April 1 to October 15

6 Quantity:

1.29 cubic feet per second, 193.5 acre-feet per year

7 Priority Date:

June 30, 1884

8 Point of Diversion:

Various points along the creek located between a point approximately 1,000 feet south and 400 feet east of the center of Section 33 and a point approximately 100 feet north of the southeast corner of Section 33, all in the SE $\frac{1}{4}$ of Section 33, T. 16 N., R. 17 E.W.M.

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11 Place of Use:

That portion of the SE $\frac{1}{4}$ of Section 33, T. 16 N., R. 17 E.W.M. lying southwest of the North Wenas Road.

12 Limitations of Use:

A maximum of 193.5 acre-feet per year may be used under this right and any ground water right that might be appurtenant to the above-described place of use.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME: Galen H. Hoover COURT CLAIM NO. 06782
2 & Patricia L. Hoover

3 Source: Wenas Creek

4 Use: Irrigation of 13 acres

5 Period of Use: April 1 to October 15

6 Quantity: 0.26 cubic foot per second, 39 acre-feet per year

7 Priority Date: June 30, 1884

8 Point of Diversion: Various points on the creek between a point approximately
9 450 feet west of the northwest corner of Section 34 and a
10 point 750 feet south and 1,100 feet east of the northwest
11 corner of Section 34, being within Government Lot 4 of
12 Section 34, T. 15 N., R. 17 E.W.M.

13 Place of Use: The N $\frac{1}{2}$ of Government Lot 4, Section 34, T. 15 N.,
14 R. 17 E.W.M.

15 Limitations of Use: A maximum of 39 acre-feet per year may be used under this
16 right and any ground water right that might be appurtenant
17 to the above-described place of use.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
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CLAIMANT NAME: **Lazy Heart B, Inc.** COURT CLAIM NO. 00432
(A)01362

Source: Wenas Creek

Use: Irrigation of 46.5 acres

Period of Use: April 1 to October 15

Quantity: 0.92 cubic foot per second, 144 acre-feet per year

Priority Date: **June 30, 1884**

Point of Diversion: 1. 900 feet south and 800 feet west from the north quarter corner of Section 13, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T. 15 N., R. 17 E.W.M.
2. 550 feet north and 650 feet east of the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, T. 15 N., R. 17 E.W.M.

Place of Use: Those portions of the W $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, T. 15 N., R. 17 E.W.M., lying east of the remnants of the Weinman, Cameron and Pollard Ditch and west of Wenas Creek.

Limitations of Use: This land receives supplemental water from the Wenas Irrigation District. A maximum of 203.8 acre-feet per year can be used under this right and any right the land may enjoy through the Wenas Irrigation District.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME:

Jerry Longmire
& Dorothy Longmire
Laura Longmire

COURT CLAIM NO. 01742

2
3 Source:

South Fork of Wenas Creek

4 Use:

Irrigation of 82.5 acres and stock water

5 Period of Use:

March 15 to October 15

6 Quantity:

1.65 cubic feet per second, 247.50 acre-feet per year for
7 irrigation; 10 acre-feet per year for stock water

8 Priority Date:

June 30, 1884

9 Point of Diversion:

550 feet south and 980 feet east from the north quarter
10 corner of Section 24, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Section 24, T. 15 N., R. 17 E.W.M.

11 Place of Use:

Government Lots 2, 3 and 4 of Section 30, T. 15 N.,
12 R. 18 E.W.M., except the following described parcel:
Commencing at the northwest corner of the SW $\frac{1}{4}$ of Section
13 30; thence south along the west line thereof 827.90 feet
to the point of beginning; thence south 600.55 feet;
14 thence east 46.00 feet; thence south 49.44 feet; thence N
80°48'50" E 631.60 feet; thence N 13°56'50" E 189.29 feet;
15 thence N 31°47'40" W 411.42 feet; thence N 87°57'50" W
488.80 feet to the point of beginning. AND EXCEPT that
16 portion of Government Lot 4 lying south of the South Wenas
Road.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME:

Charles Douglas Mayo
& John Strand Mayo

COURT CLAIM NO. 00807

2 Source:

South Fork of Wenas Creek

3 Use:

Irrigation of 15.4 acres

4 Period of Use:

April 1 to October 15

5 Quantity:

0.31 cubic foot per second, 53.9 acre-feet per year

6 Priority Date:

June 30, 1884

7 Point of Diversion:

1,000 feet south and 760 feet west from the northeast corner of Section 9, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 14 N., R. 18 E.W.M.

8 Place of Use:

9 That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T. 14 N., R. 18 E.W.M., lying northeast of the South Wenas Road; EXCEPT that portion described as follows: Beginning at a point 1,093 feet south from the northeast corner of Section 9, T. 14 N., R. 18 E.W.M.; thence N 85°42' W 213.56 feet; thence south 964.34 feet to the point of terminus on the north right-of-way of the South Wenas Road.

10 Limitations of Use:

11 A maximum of 53.9 acre-feet per year may be used under
12 this right and any ground water right that might be
13 appurtenant to the above-described place of use.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME:

Alfred Pope
& Patricia Pope
Hallie Person

COURT CLAIM NO. 00435
(A)01376

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3 Source:

Wenas Creek

4 Use:

Irrigation of 4 acres

5 Period of Use:

April 1 to October 15

6 Quantity:

0.08 cubic foot per second, 12.0 acre-feet per year

7 Priority Date:

June 30, 1884

8 Point of Diversion:

1,150 feet north and 250 feet west from the east quarter corner of Section 11, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 15 N., R. 17 E.W.M.

9 Place of Use:

10 The NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 15 N., R. 17 E.W.M. lying south and west of Wenas Creek

11 Limitations of Use:

12 This land also receives supplemental irrigation water from the Wenas Irrigation District. A maximum of 17.2 acre-feet per year can be used under this right and any right the land may enjoy through the district.

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27 REPORT OF REFEREE

Re: Subbasin No. 15

1 CLAIMANT NAME: **Zale Kay Wood** COURT CLAIM NO. 02218
2 & **Diane L. Wood**

3 Source: **Wenas Creek**

4 Use: **Irrigation of 6 acres**

5 Period of Use: **April 1 to October 15**

6 Quantity: **0.12 cubic foot per second, 18 acre-feet per year**

7 Priority Date: **June 30, 1884**

8 Point of Diversion: **500 feet north and 500 feet east of the southwest corner**
9 **of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12,**
T. 15 N., R. 17 E.W.M.

10 Place of Use: **That part of Tracts 6 and 7 of Plat "A" of Unit 1, Wenas**
11 **Highland Orchard Tracts, recorded in Volume "E" of Plats,**
12 **page 23, records of Yakima County, Washington, and that**
13 **part of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 15 N., R. 17 E.W.M.**
14 **described as follows: Beginning at the southeast corner**
15 **of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 15 N., R. 17 E.W.M.,**
16 **running thence N 368 feet; thence N 39° W 385 feet; thence**
17 **N 3° E 200 feet; thence N 30° W 317 feet; thence S 62° W**
18 **965 feet; thence S 33° W 145 feet; thence S 76° E 204**
19 **feet; thence N 74° E 153 feet; thence N 60° E 72 feet;**
20 **thence S 84° E 90 feet; thence S 73° E 100 feet; thence S**
21 **50.5° E 80 feet; thence S 34° E 175 feet; thence S 19° E**
22 **200 feet; thence S 3° E 90 feet; thence due south 96 feet;**
23 **thence easterly along the subdivisional section line 475**
24 **feet, more or less, to the point of beginning.**

25 Limitations of Use: **This land receives supplemental water from the Wenas**
26 **Irrigation District. A maximum of 31 acre-feet per year**
27 **can be used under this right and any right the land may**
28 **enjoy through the district.**

29 REPORT OF REFEREE
Re: Subbasin No. 15

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CLAIMANT NAME: Stan Coffin
Ruth Coffin
Richard Coffin
Christopher Coffin
Thomas Coffin
Sarah Coffin
Nancy Hutton
James Hutton
Jonathan Hutton

COURT CLAIM NO. 00223
(A)01384

Source: Unnamed spring/stream
Use: Domestic supply for two cabins and stock water
Period of Use: Continuous
Quantity: 0.02 cubic foot per second, 2 acre-feet per year for domestic supply and 0.01 cubic foot per second, 1 acre-foot per year for stock water
Priority Date: June 30, 1885
Point of Diversion: 700 feet south and 200 feet west from the north quarter corner of Section 21, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T. 16 N., R. 16 E.W.M.
Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T. 16 N., R. 16 E.W.M.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: **Ray E. Day** COURT CLAIM NO. 01191
2 & **Tola R. Day**
3 Source: Wenas Creek
4 Use: Irrigation of 14 acres
5 Period of Use: April 1 to October 15
6 Quantity: 0.28 cubic foot per second, 41.58 acre-feet per year
7 Priority Date: **June 30, 1886**
8 Point of Diversion: 1,300 feet north and 550 feet east from the south quarter
9 corner of Section 13, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of
10 Section 13, T. 15 N., R. 17 E.W.M.
11 Place of Use: The east 900 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13 lying east
12 of the Weinman, Cameron and Pollard Ditch, in T. 15 N.,
13 R. 17 E.W.M.
14 Limitations of Use: This land receives supplemental water from the Wenas
15 Irrigation District. A maximum of 71.58 acre-feet per
16 year can be used under this right and any right the land
17 may enjoy through the district.

15 CLAIMANT NAME: **Bud Owens** COURT CLAIM NO. 01013
16 & **Jean Owens**
17 Source: Wenas Creek
18 Use: Irrigation of 16 acres
19 Period of Use: April 1 to October 15
20 Quantity: 0.32 cubic foot per second, 48 acre-feet per year
21 Priority Date: **June 30, 1886**
22 Point of Diversion: 250 feet south and 720 feet east from the center of
23 Section 10, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10,
24 T. 14 N., R. 18 E.W.M.
25 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T. 14 N.,
26 R. 18 E.W.M., north of the South Wenas Road.

27 REPORT OF REFEREE
28 Re: Subbasin No. 15
29

1 CLAIMANT NAME: **Thomas A. Bass, Jr.** COURT CLAIM NO. 01460
2 & **Carol Ann Bass** (A)07607

3 Source: Wenas Creek

4 Use: Irrigation of 70 acres and stock water

5 Period of Use: April 1 to October 15

6 Quantity: 1.4 cubic feet per second, 210 acre-feet per year for
irrigation; 1 acre-foot per year for stock water

7 Priority Date: **June 30, 1887**

8 Point of Diversion: 1. 400 feet south and 1300 feet west from the center of
9 Section 11, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11,
10 T. 16 N., R. 16 E.W.M.
11 2. 200 feet west of the south quarter corner of Section
11, being within either the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11 or the
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, T. 16 N., R. 16 E.W.M.

12 Place of Use: That portion of S $\frac{1}{2}$ SE $\frac{1}{4}$ lying west of the North Wenas Road;
13 that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ lying east of Wenas Creek and
14 west of the North Wenas Road, that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$
15 lying west of Wenas Creek and that portion of the E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$
lying west of Wenas Creek and east of the Cascade Orchard
Ditch, all in Section 11, T. 16 N., R. 16 E.W.M.

16 CLAIMANT NAME: **Lyle R. Schneider** COURT CLAIM NO. 00697
17 (A)01383

18 Source: Wenas Creek

19 Use: Irrigation of 15 acres

20 Period of Use: March 1 to October 15

21 Quantity: 0.30 cubic foot per second, 72.4 acre-feet per year

22 Priority Date: **June 30, 1890**

23 Point of Diversion: 1,200 feet south and 500 feet east from the center of
24 Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11,
25 T. 14 N., R. 18 E.W.M.

26 Place of Use: That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 14 N.,
27 R. 18 E.W.M. lying south of the old Cleman Ditch.

28 REPORT OF REFEREE
29 Re: Subbasin No. 15

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CLAIMANT NAME: Galen H. Hoover COURT CLAIM NO. 06782
& Patricia L. Hoover

Source: Wenas Creek

Use: Irrigation of 2.5 acres

Period of Use: April 1 to October 15

Quantity: 0.05 cubic foot per second, 7.5 acre-feet per year

Priority Date: June 30, 1894

Point of Diversion: 100 feet north of the southeast corner of Section 33,
being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 16 N.,
R. 17 E.W.M.

Place of Use: The NE $\frac{1}{4}$ of Government Lot 1 of Section 4, T. 15 N.,
R. 17 E.W.M.

Limitations of Use: A maximum of 7.5 acre-feet per year may be used under this
right and any ground water right that might be appurtenant
to the above-described place of use.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206
2 (A)03119
3 (A)05238

4 Source: Two unnamed springs
5 Use: Stock water

6 Period of Use: April 1 to August 31

7 Quantity: 0.02 cubic foot per second, 0.65 acre-foot per year

8 Priority Date: **May 10, 1895**

9 Point of Diversion: 1. 160 feet north and 800 feet east of the west quarter
10 corner of Section 17, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of
11 Section 17, T. 16 N., R. 16 E.W.M.
12 2. 500 feet north and 200 feet west of the east quarter
13 corner of Section 6, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of
14 Section 6, T. 16 N., R. 17 E.W.M.

15 Place of Use: The SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T. 16 N., R. 16 E.W.M.; the
16 SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 6, T. 16 N., R. 17 E.W.M.

17 Limitations of Use: The maximum quantity that can be used from the identified
18 sources is 0.65 acre-foot per year.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Boise Cascade Corporation**

COURT CLAIM NO. 02206

(A)03119

(A)05238

2
3 Source: Two unnamed springs

4 Use: Stock water

5 Period of Use: April 1 to August 31

6 Quantity: 0.02 cubic foot per second, 0.65 acre-foot per year

7 Priority Date: **January 16, 1896**

8 Point of Diversion: 1. 840 feet south and 400 feet west of the center of
9 Section 23, being within the $SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ of Section 23,
T. 17 N., R. 16 E.W.M.

10 2. 700 feet south and 1,100 feet east of the northwest
11 corner of Section 25, being within the $NE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ of
Section 25, T. 17 N., R. 16 E.W.M.

12 Place of Use: The $SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$ of Section 23, the $NE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ of Section 25,
13 both in T. 17 N., R. 16 E.W.M.

14 Limitations of Use: The maximum quantity of water that can be used from the
15 identified sources is 0.65 acre-feet per year

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

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CLAIMANT NAME: **Arthur W. Briscoe** COURT CLAIM NO. 00455
& Violet Ora Briscoe

Source: An unnamed spring

Use: Single domestic supply, including lawn and garden irrigation

Period of Use: Continuous

Quantity: 0.02 cubic foot per second, 2 acre-feet per year

Priority Date: **June 30, 1910**

Point of Diversion: 800 feet north and 900 feet east from the south quarter corner of Section 2, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 15 N., R. 17 E.W.M.

Place of Use: Tract 1, Plat "A" Unit 1 of Wenas Highland Orchard Tracts which lies within that portion of S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 2, T. 15 N., R. 17 E.W.M., and lying south of Wenas Road.

REPORT OF REFEREE
Re: Subbasin No. 15

1 CLAIMANT NAME: **Wenas Irrigation District** COURT CLAIM NO. 00472
2 (A)01364
3 Source: **Wenas Creek**
4 Use: **Irrigation of 1,808 acres**
5 Period of Use: **January 1 to March 31**
6 Quantity: **1300 acre-feet per year**
7 Priority Date: **August 4, 1925**
8 Point of Diversion: **1000 feet north and 1100 feet east from the southwest**
9 **corner of Section 2, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of**
10 **Section 2, T. 15 N., R. 17 E.W.M.**
11 Place of Use: **The NE $\frac{1}{4}$ of Section 11, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 12,**
12 **the N $\frac{1}{2}$, SE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 13, the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and**
13 **SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.; the SW $\frac{1}{4}$ of**
14 **Section 18, the NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ SE $\frac{1}{4}$**
15 **of Section 19, the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ of Section 30, the**
16 **W $\frac{1}{2}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29, the NE $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$**
17 **of Section 31, the NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of**
18 **Section 32, T. 15 N., R. 18 E.W.M.**
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27 Limitation on Use: **This right is for the storage and use of the authorized**
28 **quantity of water.**

27 REPORT OF REFEREE
28 Re: Subbasin No. 15

1 CLAIMANT NAME: **Chuck Kisner** COURT CLAIM NO. 00493

2 Source: An unnamed pond

3 Use: Irrigation of 45 acres

4 Period of Use: April 1 to October 15

5 Quantity: 0.50 cubic foot per second (225 gallons per minute), 180
6 acre-feet per year

7 Priority Date: **October 22, 1962**

8 Point of Diversion: 985 feet south and 210 feet east from the northwest corner
9 of Section 32, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32,
T. 15 N., R. 18 E.W.M.

10 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32,
11 and that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32 described as
12 follows: Beginning at a point 150 feet south, more or
13 less, from the northwest corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence
14 S 38° E 460 feet, more or less; thence N 51° E 200 feet,
15 more or less, to the south right-of-way of the North Wenas
16 Road; thence southeasterly along said right-of-way 600
feet, more or less; thence S 60°56'40" E 910 feet, more or
less, to a point on the west line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence
north along said line 1,140 feet, more or less, to the
point of beginning; EXCEPT, Wenas Creek, Dry Creek, Spring
Creek, an unnamed pond, roads and buildings; ALL in
T 15 N., R. 18 E.W.M.

17 Limitations of Use: This right is supplemental to existing rights from Wenas
18 Creek. The maximum annual quantity that can be used under
19 this right and the Wenas Creek right is 180 acre-feet per
20 year.
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15
29

1 CLAIMANT NAME: **Wenas Irrigation District** COURT CLAIM NO. 00472
2 (A)01364

3 Source: Wenas Creek

4 Use: Irrigation of 1,808 acres

5 Period of Use: October 17 through March 31

6 Quantity: 1733 acre-feet per year

7 Priority Date: **September 7, 1979**

8 Point of Diversion: 1000 feet north and 1100 feet east from the southwest
9 corner of Section 2, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of
Section 2, T. 15 N., R. 17 E.W.M.

10 Place of Use: The NE $\frac{1}{4}$ of Section 11, the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 12,
11 the N $\frac{1}{2}$, SE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 13, the NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and
12 SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 15 N., R. 17 E.W.M.; the SW $\frac{1}{4}$ of
13 Section 18, the NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the S $\frac{1}{2}$ SE $\frac{1}{4}$
14 of Section 19, the N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ of Section 30, the
15 W $\frac{1}{2}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 29, the NE $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$
16 of Section 31, the NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
17 Section 32, T. 15 N., R. 18 E.W.M.

18 Limitations of Use: The natural flow of Wenas Creek must be passed through the
19 dam from April 1 through October 16 of each irrigation
20 season, such that outflow equals inflow.

21 The district shall construct wiers both above and below
22 the reservoir to measure the water flowing into and out of
23 the reservoir and maintain such records of flow on a daily
24 basis.

25 The operation of the reservoir shall comply with the
26 provisions of the agreement between the Wenas Irrigation
27 District and the Washington State Game Department (now
28 Department of Wildlife).

29 Limitation on Use: This right is for the storage and use of the authorized
quantity of water.

REPORT OF REFEREE
Re: Subbasin No. 15

1 4. All prior claims to rights for surface water from Subbasin No. 15,
2 including those claims filed under the provisions of Chapter 90.14 RCW, are denied,
3 unless expressly provided for herein. The "Water Rights Claims Registry" directed
4 by RCW 90.14.111 should be supplemented with appropriate notations to the records
5 of those claims specifically identified in the "Water Right Claims" section of
6 Plaintiff's Exhibit No. SE-3.

7 5. The following Certificates of Water Right, issued by the Department of
8 Ecology or its predecessor agencies of the State of Washington, will be made null
9 and void:

10 Certificates of Surface Water Right from 1921 Adjudication

11 3001J 3002J	3029J 3030J	3057J 3058J	3085J 3086J
12 3003J 3004J	3031J 3032J	3059J 3060J	3087J 3088J
13 3005J 3006J	3033J 3034J	3061J 3062J	3089J 3090J
14 3007J 3008J	3035J 3036J	3063J 3064J	3091J 3092J
15 3009J 3010J	3037J 3038J	3065J 3066J	3093J 3094J
16 3011J 3012J	3039J 3040J	3067J 3068J	3095J 3096J
17 3013J 3014J	3041J 3042J	3069J 3070J	3097J 3098J
18 3015J 3016J	3043J 3044J	3071J 3072J	3099J 3100J
19 3017J 3018J	3045J 3046J	3073J 3074J	3101J 3102J
20 3019J 3020J	3047J 3048J	3075J 3076J	3103J 3104J
21 3021J 3022J	3049J 3050J	3077J 3078J	3105J 3106J
22 3023J 3024J	3051J 3052J	3079J 3080J	3107J 3108J
23 3025J 3026J	3053J 3054J	3081J 3082J	
24 3027J 3028J	3055J 3056J	3083J 3084J	

25 CERTIFICATES ISSUED PURSUANT TO RCW 90.03:

26 02053 02054 08122 R4-26435C

27 CERTIFICATES OF CHANGE ON CERTIFICATES ISSUED UNDER RCW 90.03:

28 Certificate of Change recorded in Vol. 1, Page 112

29 REPORT OF REFEREE
Re: Subbasin No. 15

1 CERTIFICATES OF CHANGE OF ADJUDICATED SURFACE WATER RIGHT:

2 Certificate of Change recorded in Vol. 1, Page 16
3 Certificate of Change recorded in Vol. 1, Page 146
4 Certificate of Change recorded in Vol. 1, Page 227
5 Certificate of Change recorded in Vol. 1, Page 255
6 Certificate of Change recorded in Vol. 1, Page 282
7 Certificate of Change recorded in Vol. 1, Page 283
8 Certificate of Change recorded in Vol. 2, Page 783
9 Certificate of Change recorded in Vol. 2, Page 1000
10 Certificate of Change recorded in Vol. 2, Page 1001
11 Certificate of Change recorded in Vol. 1-3, Page 57
12 Certificate of Change recorded in Vol. 1-3, Page 58
13 Certificate of Change recorded in Vol. 1-3, Page 88
14 Certificate of Change recorded in Vol. 1-4, Page 111
15 Certificate of Change recorded in Vol. 1-4, Page 114
16 Certificate of Change recorded in Vol. 1-4, Page 115
17 Certificate of Change recorded in Vol. 1-4, Page 116
18 Certificate of Change recorded in Vol. 1-4, Page 162
19 Certificate of Change recorded in Vol. 1-4, Page 163
20 Certificate of Change recorded in Vol. 1-4, Page 165
21 Certificate of Change recorded in Vol. 1-4, Page 175
22 Certificate of Change recorded in Vol. 1-4, Page 180
23 Certificate of Change recorded in Vol. 1-4, Page 181
24 Certificate of Change recorded in Vol. 1-4, Page 216
25 Certificate of Change recorded in Vol. 1-4, Page 217
26 Certificate of Change recorded in Vol. 1-4, Page 218

27 In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right
28 will be issued to those parties for whom rights were confirmed through this
29 proceeding.

REPORT OF REFEREE
Re: Subbasin No. 15

IX. CONCLUSIONS OF LAW

Confirmation of Rights

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

Duty of Water

Unless otherwise specified, the diversion of water from sources of water contained within Subbasin No. 15 for irrigation purposes shall be limited, at a maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed during each irrigation season, a total of 5 acre-feet per acre.

Irrigation Season

Unless otherwise identified within a specific water right, the irrigation season shall be defined as that period from April 1 to and including October 15 of each year. The Referee recognizes that extraordinary circumstances may dictate the application of water prior to or subsequent to the defined irrigation season, and, in that event, express approval from the Department of Ecology must be obtained annually prior to such deviation.

1 Certificates of Adjudicated Water Right

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

7
8 Administration of Water

9 The use of Subbasin No. 15 waters should be regulated by the Department of
10 Ecology on the basis of Certificates of Adjudicated Water Rights issued as a result
11 of this proceeding, and on the basis of any permits and certificates that may have
12 issued outside of this proceeding under appropriation procedures of Chapter 90.03
13 RCW. When available water in Subbasin No. 15 is insufficient to supply all rights,
14 and upon a finding that regulation is required, the Department may regulate junior
15 water rights in the interest of satisfying senior water rights.

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

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

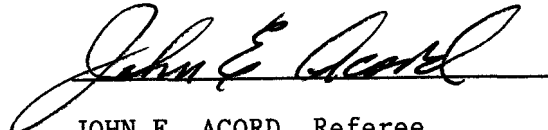
23 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person
24 authorized to use surface water from Subbasin No. 15 may be required to provide and
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27 REPORT OF REFEREE
28 Re: Subbasin No. 15

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maintain, at the water user's expense, proper diversion works and/or measuring devices. Design, installation, maintenance, and operation of such works and measuring devices will be as prescribed by the Department.

SIGNED and DATED at Yakima, Washington, this 6th day of June, 1994.


JOHN E. ACORD, Referee

REPORT OF REFEREE
Re: Subbasin No. 15