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

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AUG 20 2001

KIM M. EATON
YAKIMA COUNTY CLERK

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA)
RIVER DRAINAGE BASIN, IN)
ACCORDANCE WITH THE PROVISIONS OF)
CHAPTER 90.03, REVISED CODE OF)
WASHINGTON,)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Plaintiff,)
vs.)
JAMES J. ACQUAVELLA, ET AL.,)
Defendants)

No. 77-2-01484-5

MEMORANDUM OPINION AND ORDER
RE: EXCEPTIONS TO SUPPLEMENTAL
REPORT OF REFEREE SUBBASIN 7
(REECER CREEK)

I. INTRODUCTION

This Court held a hearing May 10, 2001 to consider late claims and exceptions filed in regard to the Second Supplemental Report of Referee for Subbasin 7 dated January 17, 2001 (Second Supplemental Report). Carol and Donlee Moore (Claim No. 00515), Pautzke Bait Company (Claim No. 01724), Pat and Mary Burke (Claim No. 01469), James and Kimberly Stinnette (Claim No. 06041) and the Department of Ecology appeared and participated in the hearing. The Court, having been fully advised by the parties through written exceptions and oral argument, makes the following rulings in regard to the above named parties.

II. ANALYSIS

a. Pautzke Bait Co. (Claim No. 01724)

Pautzke Bait Company (Pautzke) filed two exceptions to the Second Supplemental Report along with the declaration of Gene Wade. The factual basis surrounding Pautzke's exceptions is relatively complex and both pertain to the Wade Ranch and the filing of two RCW 90.14 claims for use of water on that ranch.

The history of the Wade Ranch is as follows. The property was patented to David Fisher on April 10, 1882. When Mr. Fisher subsequently deeded the property, he did so together with all irrigating ditches and water rights appurtenant thereto. Second Supplemental Report at 29.

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1 Accordingly, the Referee found, and the Court agrees, that the riparian rights at issue here were
2 exercised prior to 1932. In about 1916, Guy Wade began renting the property and ultimately
3 purchased it in 1928. Declaration of Gene Wade at 3. Gene Wade, raised on the property, began
4 renting and operating the Wade Ranch in 1938 and continued that operation until its sale in 1975 to
5 the Jarmans. He acquired the property in 1945. The ranch, which was a developed operation in
6 1916 when the Wades began to farm it, was irrigated from prior to 1916 to the present.

6 To understand how the Wade Ranch is irrigated, an explanation (and translation) of the
7 creek names is necessary. Creek name confusion is common in this area. In his declaration, Mr.
8 Wade explains that what Ecology has referred to as Currier Creek, he knew as Reecer Creek.
9 Similarly, for what the state calls Reecer Creek, Mr. Wade used the name Spring Creek. To aid the
10 understanding of this analysis, the Court will cite to the names as denominated by the state, with the
11 names used by Mr. Wade in parentheses. Hence, Currier Creek (Reecer Creek) and Reecer Creek
12 (Spring Creek). The Wade Ranch is riparian to both creek systems. There is no water course
13 known as "Spring Creek" in the area (except to Mr. Wade) nor has the claimant introduced evidence
14 indicating that Reecer Creek is known to others by that name.

13 Pautzke irrigates a total of 72 acres – 61 with diversions from Reecer (Spring) Creek and 11
14 with a single diversion from Currier (Reecer) Creek. According to a report filed by Richard Bain,
15 1,377.8 acre-feet per year are required to irrigate the ranch. Water is diverted at four points:
16 takeouts 1-3 are from Reecer (Spring) Creek and takeout 4 is from Currier (Reecer) Creek. The
17 maximum diversion, which is from Takeout 3 is 6.67 cfs, while Takeout 1 was measured at 3.32
18 cfs, Takeout 2 at 5.64 cfs, and Takeout 4 is at 6.32 cfs. The Reecer (Spring) Creek water irrigates
19 the northerly portion of the ranch while Currier (Spring) Creek is diverted for the irrigation of the
20 lower 11 acres. There are 9 irrigation withdrawals each year from each takeout, with each session
21 lasting two days. According to Mr. Bain, the water duty on the eastern portion of the property
22 averages 12.8 acre-feet per acre, but the property on the west side of the ranch has a much higher
23 water duty. Pautzke also claims that 10 acre-feet per year is used from the creeks for stock water.

22 The Referee recommended a right for a diversion from Currier (Reecer) Creek for the
23 irrigation of 38 acres. Pautzke, in an effort to present the historical use of the ranch and its water
24 supply, indicated that Currier (Reecer) Creek is used for only 11 acres. The Referee did not
25 recommend a right from Reecer (Spring) Creek because of some problems with the RCW 90.14

1 claim (WRC No. 008348) that was filed by Mr. Wade to protect that water right. Essentially, the
2 source of water was named something different and the point of diversion was erroneously reported.

3 Pautzke has filed two exceptions, but in essence requests the Court to review the entire
4 claim in light of information that was uncovered when Mr. Wade was located and a declaration
5 obtained. Ecology has agreed that the Court may use that declaration as evidence in its analysis
6 even though Mr. Wade was unavailable for cross-examination. The claimant has done an excellent
7 job of presenting information to assist the Court in understanding what is clearly a long-term use of
8 water. The issues surrounding the claim are based exclusively on how the RCW 90.14 claims
9 match up with that historical use.

10 The first issue pertains to the location of the point of diversion for irrigation of "field 2" in
11 the NE1/4 of Section 33. The Referee granted a right for irrigation of 38 acres in "field 2" with a
12 point of diversion 30 feet south and 20 feet west of the northeast corner of Section 33, T. 18N., R.
13 18 E.W.M. The description used by the Referee stems from that provided in one of the RCW 90.14
14 claims (WRC No. 008349). Claimant indicates that only the lower portion of field 2, an area of
15 about 11 acres, is irrigated with Currier (Reecer) Creek water and that the point of diversion is
16 actually located approximately 900 feet south and 20 feet west of the northeast corner of Section 33.
17 Both of the point of diversion locations lie within the NE1/4NE1/4 of Section 33.

18 The Court finds that the location of the point of diversion requested by claimant
19 substantially complies with the requirement of RCW 90.14. According to RCW 90.14.050, the
20 statement of claim for each right shall include substantially "the legal description, with reasonable
21 certainty, of the point or points of diversion." Here, the point of diversion set forth in the claim and
22 the point of diversion location set forth in the exception are within the same quarter-quarter section.
23 That constitutes "reasonable certainty" as required by the statute and furthers the aim of the statute
24 of "providing adequate records for administration of the state's waters and notifying the State that
25 the water was being put to beneficial use." Ecology v. Adsit, 103 Wn.2d 698, 694 P.2d 1065
(1985).

The next issue pertaining to Currier (Reecer) Creek is the instantaneous quantity of water
that is diverted for the irrigation of 11 acres. Claim No. 008349 indicates that 2 cfs are diverted for
the irrigation of 38 acres with an annual use totaling 480 acre-feet. Claimant asserts that it has
diverted 6.32 cfs for the irrigation of 11 acres with a total of 226 acre-feet per year. Obviously,
nothing set forth in the claim quite matches up with the right being asserted. However, perfect

1 compliance with RCW 90.14 is not required; only substantial compliance. Adsit, supra. Mr.
2 Wade's Declaration does not discuss any historic uses of water except to state that the information
3 in the 90.14 claims was conservative given "in accordance with the warning we were given not to
4 overstate the claim." Declaration at p. 2. Did Gene Wade substantially comply with RCW 90.14
5 when he filed WRC No. 008349 claiming a right to divert 2 cfs when the current practice is to
6 divert 6.32 cfs? Ecology did not object to Pautzke's use of the RCW 90.14 claims or otherwise ask
7 the Court to find that Mr. Wade had not substantially complied with the statute. Ecology requested
8 that the Court base its water right on past beneficial use rather than need and also take into
9 consideration the water duty testimony supplied by the Bureau of Reclamation for the upper basin.
10 The Court notes at the outset that Pautzke has not filed a request for amendment of this water claim.

11 The only test this Court has for measuring whether or not a party has substantially complied
12 is that set forth in Adsit and whether or not "the substantive information the applicant supplied met
13 the legislative intent by providing adequate records for administration of the state's waters and
14 notifying the State that the water was being put to beneficial use." Based on information supplied
15 by Pautzke, the Court does not believe this burden has been met. In a nutshell, there is considerable
16 difference between 2 cfs and 6.32 cfs and no real explanation was supplied to explain that
17 difference. Mr. Wade stated many things in his Declaration, but in regard to historic water use only
18 repeated the quantities that were in the claim and noted the "instantaneous and annual amounts were
19 underestimated in accordance with the warning we were given not to overstate the claims." In its
20 review of the Second Supplemental Report, the Court notes that the Referee often utilized 0.03 cfs
21 per acre as a water duty. For the 11 acres, that would amount to only 0.33 cfs. Pautzke did indicate
22 that they only use the water for 18 days each year. Under that irrigation scheme, 0.33 cfs would be
23 inadequate. A use of 2 cfs for 18 days would amount to a diversion of 72 acre-feet per year; about
24 6.5 acre-feet per year which is a bit less than the Referee has recommended for rights in Subbasin 7.
25 The Court would also note that no explanation was provided as to how much of the water was
comprised of natural flow and how much was foreign return flow, for which a right cannot be
established. Toward that end, absent historic evidence, it is impossible for the Court to know how
much natural flow water was diverted prior to the installation of the many canals in the Subbasin 7
area that may affect the quantity of available water in the Currier (Reecer) Creek channel.

Based on the fact that the only evidence regarding the past use of water was supplied in the
RCW 90.14 claim and restated by Mr. Wade (albeit with a caveat), the best method available to the

1 Court is to examine WRC No. 008349 and determine proportionately what 11 acres would require.
2 If 480 acre-feet is used to irrigate 38 acres, then 11 acres would require 139 acre-feet. In order to
3 deliver that quantity over the course of 18 days, a diversion of 3.86 cfs would be needed. The Court
4 will therefore confirm a right to divert 3.86 cfs, 139 acre-feet per year during the irrigation season
5 which runs from April 1 to October 15 for the irrigation of 11 acres in the SE1/4NE1/4 of Section
6 33, T. 18 N., R. 18 E.W.M. lying east of Reecer Creek. The point of diversion shall be 900 feet
7 south and 20 feet west of the northeast corner of Section 33, T. 18 N., R. 18 E.W.M. The date of
8 priority shall be April 10, 1882. To the extent Pautzke wishes to amend its water right claim to
9 modify the instantaneous quantity, they are directed to RCW 90.14.065 and the process set forth
10 therein.

11 Exception 2 concerns the Referee's recommendation that no right be confirmed for the use
12 of Reecer (Spring) Creek. As stated previously, Reecer (Spring) Creek is diverted at three points
13 for the irrigation of 61 acres in the NE1/4NE1/4 of Section 33 and the SE1/4SE1/4 of Section 28.
14 The Referee cited two issues with Water Right Claim No. 008348 that led to his decision. The claim
15 form indicates on its face that the diversion is from Spring Creek at a location that is 1700 feet south
16 and 1100 feet west from the northeast corner of Section 29. The Referee was unaware of a Spring
17 Creek in the vicinity of the Wade Ranch and the only water source in the NE1/4 of Section 29 at the
18 point described in the claim is Willow Ditch, which carries water diverted from Dry Creek.
19 Although the Wade Ranch is riparian to Reecer (Spring) Creek (thereby making it the logical source
20 of the water right), there was no mention of that water course on the claim, nor did the claim
21 describe a diversion location on that creek.

22 Pautzke's response has been twofold. First, it has sought to amend the claim through the
23 provisions of RCW 90.14.065. See Attachment to Exceptions filed February 26, 2001. Ecology
24 has yet to issue a decision on that amendment request. Although the Court would have preferred to
25 have the amendment decision before it prior to issuing this opinion, there is no indication that the
26 decision will be forthcoming any time soon. Finality for claimants in Subbasin 7 is important. The
27 Court will therefore proceed and consider Pautzke's exceptions without the amendment decision.

28 Pautzke's second strategy was to provide additional information to convince the Court that
29 Mr. Wade substantially complied with RCW 90.14 to protect the right to divert from Reecer
30 (Spring) Creek. Accordingly, Pautzke submitted to this Court the Declaration of Gene Wade. Mr.
31 Wade declares two salient facts that bear on the Court's decision. First, he indicates that what he

1 refers to as Spring Creek is called Reecer Creek by Ecology on its exhibits and what Ecology calls
2 Currier Creek was known to him as Reecer Creek. The Referee has noted the confusion regarding
3 Currier/Reecer Creek, see Second Supplemental Report at 30, and determined that identification of
4 creek names differing from Ecology's records on a RCW 90.14 claim is insignificant for purposes
5 of quantifying a water right. The Court agrees. That Mr. Wade denominated the source differently
6 on the claim form than is recognized by Ecology is not fatal to protecting the water right.

7 The second salient fact presented by Mr. Wade pertains to the point of diversion description.
8 He indicates that he made a typographical error in reporting the diversion to be in Section 29 on the
9 claim form. Mr. Wade demonstrates that if the same description (1700 feet south and 1100 feet
10 west from the northeast corner) is plotted in Section 28 rather than Section 29, then the historical
11 diversion is located on Reecer Creek and is one of the historical diversions used within the Wade
12 Ranch. The land irrigated from Reecer (Spring) Creek is riparian to that creek. No party, including
13 Ecology, has countered Mr. Wade's explanation of the RCW 90.14 filing.

14 The Court rules that Pautzke Bait has substantially complied with RCW 90.14. Although
15 Ecology is considering Pautzke's amendment request at this time, there is adequate evidence before
16 the Court to support a decision based on substantial compliance. The Referee has indicated that
17 creek names in this area are somewhat subjective and arbitrary. Second Supplemental Report of
18 Referee at 30. Mr. Wade has a long-term connection to the area (at least dating back to the 1920's)
19 and his explanation regarding the source of water is helpful in assisting the Court to understand the
20 intent of the RCW 90.14 claim. There is no evidence in the record to refute Mr. Wade's testimony
21 that Reecer Creek was known locally as Spring Creek. Similarly, no party has identified a different
22 source of water in the area also known as Spring Creek. Therefore, the Court finds that Spring
23 Creek and Reecer Creek are the same water course.

24 Although the incorrect section was identified, that error is rather obvious when the location
25 is plotted on the correct section. Further, no conveyance diverts water from Willow Ditch to the
26 Wade Ranch and the claim indicates that the legal doctrine utilized is "appropriated riparian."
27 Although that response may be internally inconsistent or contradictory, the Court interprets the
28 response by Mr. Wade to the doctrine information request to be riparian modified by
29 "appropriated." Although that terminology could be subject to many meanings, the Court believes
30 Mr. Wade was attempting to express that he had a riparian right that had been diverted. The main
31 water source flowing through the acreage identified as the place of use is Reecer Creek. Wade

1 Ranch is not riparian to Willow Ditch. Finally, the place of use is correctly identified and would
2 provide ample notification the water was being beneficially used and allow Ecology to administer
3 the state's water. Ecology v. Adsit, 103 Wn.2d. 698, 704, 694 P.2d 1065 (1985).

4 The Court is also cognizant of Pautzke's request for confirmation of additional points of
5 diversion and diversion quantities that differ from what is contained in Water Right Claim No.
6 008348. To add points of diversion, Pautzke must utilize the provisions set forth in RCW 90.03.380.
7 The Court cannot read into a RCW 90.14 claim that which is not there.

8 Based on the fact that the only evidence regarding past use of water was supplied in the
9 RCW 90.14 claim and restated by Mr. Wade (albeit with a caveat), the best method available to the
10 Court in quantifying Pautzke's right is to examine WRC No. 008348 and determine proportionately
11 how much water 61 acres would be entitled to based on the claimed quantity. The instantaneous
12 quantity diverted at that point of diversion was noted by Mr. Bain to be 3.32 cfs – well within the
13 amount set forth in the RCW 90.14 claim. The Court will confirm a right to divert 3.32 cfs for the
14 irrigation of 61 acres in the NE1/4NE1/4 of Section 33 and the SE1/4SE1/4 of Section 28, T. 18 N.,
15 R. 18 E.W.M. Pautzke indicates that a diversion of 1,151 acre-feet is required to irrigate the 61
16 acres. Claim No. 008348 shows that 960 acre-feet are diverted for irrigating 85 acres;
17 approximately 11.3 acre-feet per acre. Based on an 11.3 acre-feet per year water duty, the Court will
18 grant a right to divert 690 acre-feet per year for the 61 acres. The point of diversion shall be a point
19 1,700 feet south and 1,100 feet west of the northeast corner of Section 28, T. 18 N., R. 18 E.W.M.
20 Pautzke is already on the list authorizing stock water. The period of use shall be April 1 to October
21 15.

18 b. Pat and Mary Burke (Claim No. 01469)

19 The Referee recommended a right be confirmed to the Burkes for use of a spring that arises on
20 their property for irrigation of 10 acres, domestic use, and stock watering. Second Supplemental
21 Report at p. 104. The Burkes do not object to the Referee's quantification, but argue that this
22 quantification only identifies the consumptive use of the water. At the May 10, 2001 hearing, the
23 Court granted the Burke's exception to insert the words "Consumptive use of" at page 104, line 6.5
24 at the beginning of the section entitled "quantity." Ecology did not object to this modification.

24 c. Carol and Donlee Moore (Claim No. 00515)

25 The Moores filed a late exception March 13, 2001. No party objected to the Court allowing the
late exception and the Court ruled that it would consider it at the May 10, 2001 hearing.

1 Claim No. 00515 was originally filed by Edythe Days. Ronald and Carilyn Wilcox were joined
2 to the claim on April 7, 1994. The Moores were joined to the claim on March 14, 2001 as
3 successors to the Wilcoxes. The Moores own over 8 acres in the SE1/4NE1/4 of Section 19, T.
4 18N., R. 18 E.W.M. which includes the former residence of Ms. Days. Historically, water was
5 diverted to the property through the Wold Ditch to irrigate pasture and water livestock.

6 Referee Clausung provided considerable analysis of the historic use of water in the SE1/4NE1/4
7 of Section 19 in regard to the claims of Arnulfo & Gloria Rodriguez (also joined to Claim No.
8 00515) and Susan Bangs (Claim No. 00622). See Second Supplemental Report at 36-37. No
9 evidence has been presented to contradict those factual findings and the Court incorporates that
10 analysis into this decision. In sum, this parcel was at one time riparian to the Yakima River and
11 steps were taken to sever land from the public domain on May 24, 1884, with water beneficially
12 used prior to December 31, 1932. Id.

13 In terms of water use, Ms. Moore indicated they acquired the property in 1998 and divert water
14 from a ditch that runs across their property to irrigate 6 acres of pasture for goats and miniature
15 horses. There are two ditches that traverse the Moores property, one of which is the Wold Ditch,
16 and it appears that the Moore's have utilized the other ditch, as the Wold Ditch in their proximity is
17 in disrepair. Also, the Referee noted in his analysis of the Rodriguez/Bangs claim that water had
18 not been allowed to flow to the property once owned by the Days in light of the Referee's initial
19 determination that no water right could be confirmed. Ms. Moore's testimony is consistent with
20 that finding. The Moores have diverted water with a one h.p. pump from the alternative source and
21 the water is ultimately sprinkled on the pasture. No hay is taken from the property at this time. Ms.
22 Moore also testified that the Wilcoxes had used water on the property through flood irrigation.

23 As mentioned in the Second Supplemental Report, Lloyd Days filed Water Right Claim No.
24 143458 pursuant to the requirements of RCW 90.14. The Moores are successors to the Days. Mr.
25 Days asserted a right to use 2 cfs, 200 acre-feet per year for the irrigation of 16.18 acres in the
SE1/4NE1/4 of Section 19, T. 18 N., R. 18 E.W.M. The Referee has confirmed rights to the
Rodríguezes and Ms. Bangs in the total amount of 8.04 acres in the SE1/4NE1/4 of Section 19. Id.
at 38. The Referee, based on rights confirmed to other Wold Ditch users, also determined that a
water use of 0.03 cfs and 7 acre-feet per acre was an appropriate duty for the lands owned by the
two claimants. Id. Accordingly, the Rodríguezes and Ms. Bangs were confirmed a total of 56 acre-

1 feet and 0.24 cfs for the 8 acres irrigated. The Court will use the same quantities in determining the
2 rights of the Moores.

3 Therefore, the Court confirms a right to the Moores, to be inserted at page 70, line 12 of the
4 Schedule of Rights in the Second Supplemental Report for use of the Yakima River with a May 24,
5 1884 priority date. The Moores are entitled to divert 0.18 cubic feet per second, 42 acre-feet per
6 year for the irrigation of 6 acres in Parcel. No. 181819-100009 and located as follows: that portion
7 of the SE1/4NE1/4 of Section 19, T. 18 N., R. 18 E.W.M. lying Northeasterly of the Northeasterly
8 right of way of Primary State Highway No. 3, Westside Canal to Bull Road, Except Days Short
9 Plat, as described and/or delineated on Kittitas County Short Plat Volume "A: of Short Plats and
10 Except the right of way of county road, known as Klocke Road, along the East line thereof. The
11 point of diversion described in Water Right Claim No. 143458 is where the Wold Ditch separates
12 from the Olson Ditch in the SW1/4SW1/4 of Section 7, T. 18 N., R. 18 E.W.M. The actual
13 diversion from the Yakima River is in the NW1/4SE1/4 of Section 12, T. 18 N., R. 17 E.W.M.,
14 second Supplemental Report at 37, and shall be the point of diversion for the Moore right. Ms.
15 Moore indicated they may be taking water from a difference conveyance, but the RCW 90.14 claim
16 is the limit of the right at this time. If they are using a ditch that diverts water from a location
17 different than authorized herein, they will need to contact Ecology and pursue a change in the point
18 of diversion pursuant to RCW 90.03.

16 d. James and Kimberly Stinnette (Claim No. 06041)

17 The Stinnettes were joined to the claim of John Hardy & Donna Shore on December 11, 2000.
18 In the Second Supplemental Report, the Referee recommended a right to those claimants for 2 cfs,
19 500 acre-feet per year for the irrigation of 50 acres in Government Lot 1 and the N1/2SE1/4NE1/4
20 of Section 4, T. 18 N., R. 18 E.W.M. The Stinnettes filed an exception requesting the Court to
21 divide Claim No. 06041 between themselves and the Shores in light of future possible divisions of
22 the Shore's property. The Stinnettes have requested a right to irrigate 16 acres in Government Lot 1
23 of Section 4 lying east of Reecer Creek out of a total acreage of 22 acres. The Shores have
24 submitted no response to the Stinnette's request nor were they present at the May 10, 2001 hearing.

25 At the time of the hearing, Mr. Stinnette indicated that he had owned the property for
approximately one year and had not yet diverted water to irrigate the 16 acres. In addition, he
testified that he owned Kittitas Reclamation District water shares that were appurtenant to the 16
acres and that runoff from land to the north, also irrigated with KRD water, had been used by the

1 Stinnettes. Mr. Stinnette also stated that there were numerous ditches that divert water from Reecer
2 Creek onto his property. The testimony is not clear as to whether water had been diverted from the
3 point of diversion recommended by the Referee to the property now owned by the Stinnettes. That
4 point is located 1900 feet south and 1100 feet west of the northeast corner of Section 4 in the
5 SE1/4NE1/4 of Section 4. However, a review of DE – 427 and 428 show that the point of
6 diversion would be very near the north border of the Stinnette’s property.

7 The Court finds that James and Kimberly Stinnette have a right to irrigate 16 acres. The
8 exhibits provided to the Court are somewhat unclear in terms of the location of property owned by
9 the Stinnettes. Accordingly, the Court will rely on the legal description attached to the Motion to
10 Join/Substitute (Document No. 14699) which is as follows: 16 acres lying east of Reecer Creek
11 within Parcel B, Book 19 of Surveys at pages 122-23 under Auditor’s File No. 562208, Records of
12 Kittitas County, Washington Recorded August 11, 1993, Being a portion of the E1/2NE1/4 of
13 Section 4, T. 18 N., R. 18 E.W.M. They shall be authorized to divert 0.64 cfs, 160 acre-feet per year
14 for irrigation of 16 acres and stockwater. The point of diversion, period of use, priority date and
15 source are identical to the right confirmed under Court Claim No. 06041. If the Stinnettes wish to
16 utilize a different point of diversion, they should contact Ecology and proceed pursuant to the
17 transfer process set forth in RCW 90.03.380.

18 e. Department of Ecology

19 Ecology submitted numerous exceptions and requests for clarification. The Court orally
20 ruled on all of those matters at the May 10, 2001 hearing and those rulings are as follows.

21 *City of Ellensburg, Court Claim No. 02085*

22 The City of Ellensburg, Court Claim No. 02085 was severed from the Subbasin 7
23 proceeding and made a part of the Major Claimant pathway by order dated April 12, 2001
24 (Document No. 15068).

25 *Olson Ditch, Court Claim No. 00169*

Pursuant to Ecology’s request for clarification, the Court asked Olson Ditch to supply it with
a description of the place of use that was more narrow than the one contained in the Referee Second
Supplemental Report. Olson Ditch supplied that description in a May 10, 2001 filing. Ecology did
not object to the proposed legal description submitted by Olson Ditch and the Court will adopt it.
Therefore, the legal description set forth on Page 48 of the Second Supplemental Report, at line 7-
10, shall be replaced with the following. The rest of the legal description shall remain unchanged:

1 Taylor (75 ac.) – That portion of the NE1/4NE1/4 of Section 29 lying north of Willow/Scott
2 Ditch, that portion of the NW1/4NE1/4 of Section 29 lying Southeast of an open drain (1-
3 acre field) the point of beginning of which is approximately 100 feet South and 1100 feet
4 West of the NE corner of Section 29, T. 18 N., R. 18 E.W.M., which open drain runs in a
5 Southwesterly direction approximately 700 feet to the intersection of the open drain with the
6 Willow/Scott Ditch, which intersection point is approximately 700 feet South and 1500 feet
7 West of the NE corner of Section 29, T. 18 N., R. 18 E.W.M. and that portion of the
8 NW1/4NW1/4 of Section 28 south of the BNRR right-of-way, T. 18 N., R. 18 E.W.M.

9 The place of use description for the Olson Ditch water right on page 88 shall be modified on
10 lines 12.5 and 13 to replace Dry Creek Road with McManamy Road.

11 *J.P. & Jan Roan, Court Claim No. 01419*

12 The point of diversion set forth at page 52, line 7.5 of the Second Supplemental Report shall
13 be MODIFIED with the new location being a point 200 feet south and 250 feet west of the northeast
14 corner of Section 9, T. 19 N., R. 18 E.W.M.

15 The number of acres irrigated, set forth at page 52, line 3.5 of the Second Supplemental
16 Report, shall be MODIFIED with the new number being 100 acres.

17 *Pat Burke & Mary Burke, Court Claim No. 01469*

18 The place of use legal description at page 104, line 11.5 is MODIFIED to show the place of
19 use as W1/2SW1/4SW1/4 of Section 30, T. 19 N., R. 18 E.W.M.

20 The period of use, described on page 11, line 7, of the Second Supplemental Report is
21 MODIFIED to show the period of use as March 1 through October 31.

22 *Ivan & Mildred Hutchinson, Court Claim No. 00987*

23 The point of diversion, set forth at page 105, lines 8-9.5 shall be MODIFIED to show the
24 location as a point 150 feet south and 1050 feet west from the east quarter corner of Section 29, T.
25 18 N., R. 18 E.W.M.

Frank Oechsner, Court Claim No. 00576

The period of use set forth on page 84 shall be MODIFIED to show November 30.

Schaake Packing Company, Court Claim No. 01444

The place of use set forth at page 42, line 11 of the Second Supplemental Report shall be
MODIFIED to show Section 11, T. 17 N., R. 18 E.W.M.

Richard Bain, Court Claim No. 01207

Stock water shall be added as a purpose of use on page 96 of the Second Supplemental
Report.

1 *Jerry Barton , Court Claim No. 00910*

2 The Second Supplemental Report shall be MODIFIED on page 82, at line 5.5 to change the
3 annual quantity to 283 acre-feet per year.

4 *Mill Ditch Co., Court Claim No. 00626*

5 Page 83, line 5.5 of the Second Supplemental Report shall be MODIFIED in regard to the
6 annual quantity to show 84.16 acre-feet per year.

7 *Steve Merten, Court Claim No. 00750*

8 Page 85, line 17 of the Second Supplemental Report shall be MODIFIED in regard to the
9 annual quantity to show 118.8 acre-feet.

10 *Albert J. & Glenna M. Lentz, Court Claim No. 00637*

11 Page 101 of the Second Supplemental Report, line 5.5, shall be MODIFIED to change the
12 annual quantity to 428 acre-feet per year, and on line 9.5, the Section number shall be changed to
13 Section 34.

14 *Dick & Maxine Van de Graaf, Court Claim No. 01520*

15 Page 74, lines 8 and 8.5 of the Second Supplemental Report shall be MODIFIED to read
16 1,260 feet south and 500 feet east from the west quarter corner of Section 2.

17 **III. CONCLUSION**

18 The Court ORDERS that the claims addressed in this Opinion are modified to reflect the
19 Court's findings. The Court further ORDERS that those decisions be included in the Referee's
20 Schedule of Rights set forth in the Second Supplemental Report. This Memorandum Opinion and
21 Order resolves the exceptions to the Second Supplemental Report. Subbasin 7 shall therefore
22 proceed to Conditional Final Order as set forth in the Proposed Conditional Final Order
23 accompanying this Opinion. A Notice of Hearing is also included.

24 Dated this 20th day of August, 2001.

25 
Sidney Otter, Court Commissioner