

*RECEIVED*

**YAKIMA RIVER BASIN**

**WATER RIGHTS ADJUDICATION**

97 MAR -4 AM 3:59  
KIM M. EATON  
EX OFFICIO CLERK  
SUPERIOR COURT  
YAKIMA, WASHINGTON

**FILED**  
MAR 04 1997

KIM M. EATON, YAKIMA COUNTY CLERK

The State of Washington, Department of Ecology v.

James J. Acquavella, et al.

Yakima County Superior Court Cause No. 77-2-01484-5

**SUPPLEMENTAL  
REPORT OF REFEREE**

**Re: SUBBASIN NO. 8  
(THORP)**

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

REPORT OF REFEREE - VOLUME 19A

12,241

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

3                   IN THE MATTER OF THE DETERMINATION )  
4                   OF THE RIGHTS TO THE USE OF THE     )  
5                   SURFACE WATERS OF THE YAKIMA RIVER )  
6                   DRAINAGE BASIN, IN ACCORDANCE WITH )       No. 77-2-01484-5  
7                   THE PROVISIONS OF CHAPTER 90.03,    )  
8                   )    REPORT OF REFEREE  
9                   THE STATE OF WASHINGTON,        )    PURSUANT TO ORDER ON  
10                  DEPARTMENT OF ECOLOGY,        )    EXCEPTIONS OF  
11                  )    MARCH 9, 1995  
12                  Plaintiff,                      )  
13                  )  
14                  v.                                )  
15                  )  
16                  James J. Acquavella, et al., )  
17                  )  
18                  Defendants.                    )  
19                  )

---

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

22                  The Order issued by the court on the March 9, 1995, ruled upon several  
23                  exceptions to the Report of Referee and remanded certain exceptions to the Referee,  
24                  with instructions, for further evaluation and subsequent recommendations to the  
25                  Court.

26                  The claims remanded to the Referee are identified as follows:

27                  Harold E. Chamberlin and Sherry A. Chamberlin, Claim No. 02316

28                  Gerald D. Detwiler and Carol L. Detwiler, Claim No. 02074

29                  Douglas A. Dicken, Claim No. 01722

30                  David W. Fudacz and Lyla M. Fudacz, Claim No. 04817

31                  Larry T. Fudacz, Claim No. 04818

32                  Elwin Gibson and Patricia Gibson and Irwin Loucks and Dorothy Loucks,  
33                  Claim No. 02046

34                  Charles Gust, Claim No. 01560

35                  SUPPLEMENTAL REPORT OF REFEREE  
36                  Re: Subbasin No. 8

37                  Referee's Office  
38                  15 W. Yakima Ave Ste. 200  
39                  Yakima, WA 98902-3401

1 Ivan Hutchinson and Mildred Hutchinson, Claim No. 00876  
2 James Ogden, Claim No. 01961  
3 Robert F. Lapan and Linda L. Lapan, Claim No. 01446  
4 Vernon G. Meyer and Ellen F. Meyer, Claim No. 01875  
5 Murray Pacific Corporation and Roger C. Sparks and Rita M. Sparks and  
Dale Dyk and Bart G. Bland and Dave Duncan & Sons and James V. Leishman  
and Duncan Family Trust and Douglas A. Dicken, Claim No. 00931  
6  
7 Packwood Canal Company, Inc., Claim No. 00785  
8 Gene Panattoni and Sally Panattoni, Claim No. 01208  
9 Peoples National Bank of Washington, Claim No. 00738  
10 Theiline P. Scheumann, Claim No. 01335  
11 Randell Shannon and Tresa Shannon, Claim No. 01809  
12 Virginia Anderson, Claim No. 00500  
13 Thorp Town Ditch Association, Claim No. 00725  
14 Larry O. Hillis and Veralene Hillis, Claim No. 01705  
15 Wynn Vickerman, Claim No. 00596  
16 Norma Jean Wilcox, Claim No. 01971  
17 Willowbrook Farms Ltd. Partnership, Claim No. 00520  
18 3 Bar G Ranch, Inc., Claim No. 02068  
19 Ecology's exception to the annual quantity of water recommended for  
20 confirmation to Richard O. and Rita Hutchinson, Claim No. 00877 and Ecology's  
21 exception asking for a definition of the term "supplemental" as used by the Referee  
22 and the Court were denied by the Court.

23 On February 10, 1995, the Court entered a Memorandum Opinion Re: RCW 90.14  
24 and Substantial Compliance, incorporating the Court's earlier oral ruling  
25  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

28 Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 concerning substantial compliance. Exceptions making substantial compliance with  
2 RCW 90.14 arguments filed by the following claimants were denied by the Court:

- 3 1. Claim No. 02068, 3 Bar G Ranch
- 2 2. Claim No. 00932 & 17500, Dave Duncan, et al.
- 3 3. Claim No. 04817, 04818, 04942, Larry, David & Lyla Fudacz
- 4 4. Claim No. 02046, Claude & Lillian Gibson, Elwin & Patricia Gibson, Erwin  
5 & Dorothy Loukes
- 6 5. Claim No. 00829, Ronald & Margaret McMillian
- 6 6. Claim No. 01809, Randell & Teresa Shannon

7 On July 19, 1995, the Court entered a Memorandum Opinion Re: Priority Date -  
8 Date of Patent or Date of Entry addressing the proof needed to establish priority  
9 dates. The Referee will look to that opinion when considering evidence presented  
10 concerning priority dates. The claimants who filed exceptions specifically on  
11 priority date were Dale & Jewel Black (now Dickens), Claim No. 01722; Harold &  
12 Sherry Chamberlin, Claim No. 02316; Larry & Veralene Hillis, Claim No. 00894, 01705  
13 & 01204; and Willowbrook Farms, Claim No. 00520. Additionally, the Court entered a  
14 Memorandum Opinion on January 31, 1995, related to the exceptions filed by  
15 Grousemont Farms, Ivan and Mildred Hutchinson and Vernon and Ellen Meyer. That  
16 opinion guided the Referee in addressing those exceptions later in this report.

17 Hearings, for the purpose of opening the record for testimony and evidence  
18 relating to the exceptions, were conducted by the Referee beginning on June 5,  
19 1995. The Department of Ecology was represented by Assistant Attorney General Jo  
20 Messex Casey.

21  
22 COURT CLAIM NO. 00500 -- Virginia Anderson

23 Court Claim No. 00500 was filed jointly by Arthur G. Thayer and John J. Thayer  
24 who did not appear at the original evidentiary hearing because of John Thayer's  
25 death and Arthur's poor health. Margaret A. Thayer, a sister, succeeded to the  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 property and filed an Exception to the Referee's Report for Subbasin No. 8 (Thorp).  
2 Ms. Thayer sought an opportunity to present evidence in support of Court Claim  
3 No. 00500 via the supplemental hearing. Prior to the supplemental hearing date,  
4 Margaret Thayer sold the property to Virginia Anderson. Ms. Anderson appeared at  
5 the supplemental hearing providing testimony regarding current water use on the  
6 property. Richard T. Cole, Ms. Anderson's attorney, offered exhibits DE-S36  
7 through DE-S40 and submitted a Motion to the Court seeking substitution of Virginia  
8 Anderson for Margaret Thayer. Ms. Anderson owns approximately  $2\frac{1}{4}$  acres in the  
9 SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, T. 18 N., R. 18 E.W.M.

10 The deeds represented by exhibits DE-S37 (S38 and S40) will be addressed  
11 sequentially. Exhibit DE-S37 is a 1941 deed from Winona R. Nelson to the City of  
12 Ellensburg transferring interest in a 60 cubic feet per second (cfs) Yakima River  
13 water right for the Reed Mill. The Referee does not believe this deed has any  
14 relationship to the historical water use of Hatfield Canyon Creek/Packwood Canal,  
15 or, for that matter, the  $2\frac{1}{4}$  acre parcel owned by Virginia Anderson. Exhibit DE-S38  
16 is a deed from W. A. Stevens, et ux., to the City of Ellensburg dated 1903. This  
17 deed coveys a parcel of land for a ditch right-of-way (Packwood Canal) requiring a  
18 bridge and flume construction as specified between the parties. The source of  
19 water for the proposed flume is not given nor is the land described. The deed  
20 provides only a general picture of land in the vicinity being cultivated and  
21 irrigation water being part of the farming practice in 1903. It appears from  
22 exhibit DE-S39 (Chain of Title) that the Stevens family owned land within the  
23 NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, T. 18 N., R. 18 E.W.M. as early as May 27, 1882. Steven's  
24 interest in Hatfield Canyon Creek water is best described in a June 11, 1902,  
25 agreement between W. A. Stevens and J. N. Burch (DE-25 Claimant Charles Gust  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 Subbasin No. 8). Stevens and Burch were settling conflicting claims to water  
2 flowing across from or arising on the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 31, T. 18 N., R. 18 E.W.M.  
3 said waters collectively described as Hatfield Canyon Creek. Stevens was  
4 acknowledged as enjoying the first right to use all said water on the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
5 Section 31, T. 18 N., R. 18 E.W.M. and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N.,  
6 R. 18 E.W.M. Any water in excess of the water used upon those lands was to be  
7 split equally between Stevens and Burch and used accordingly as each chose.  
8 Stevens apparently owned the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 and the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 30,  
9 T. 18 N., R. 18 E.W.M.

10 Exhibit DE-S40 is a deed dated 1911 between W. A. Stevens and the City of  
11 Ellensburg which conveys land for an addition to the 50 foot right of way purchased  
12 in 1903. The Referee found no language in DE-S40 that would provide foundation for  
13 a water right under Court Claim No. 00500. None of the historical documents in the  
14 record establishes water use or a water right for the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29.

15 Testimony provided by Virginia Anderson established that a 2 horsepower (hp)  
16 pump delivers water from a distribution ditch off the Packwood Canal through a  
17 sprinkler system to about 2 acres of lawn and gardens. The claimant owns two  
18 shares of Packwood Canal water and is claiming an independent right from Hatfield  
19 Canyon Creek for the same 2 acres. Water Right Claim (WRC) No. 115766 was filed by  
20 Arthur Thayer & John Thayer for the Anderson property and has been entered into the  
21 record in compliance with RCW 90.14. Because of the recent ownership change,  
22 Virginia Anderson's testimony was based upon knowledge gained through recent  
23 conversations with third parties. Consequently, evidence regarding the historical  
24 use and quantification was not presented. A flume is purported to have carried  
25 Hatfield Canyon Creek over the Packwood Canal and to have been the original source

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 of irrigation water for the Anderson 2+ acre parcel. Although the record does not  
2 reflect when the unidentified Steven's Flume was abandoned, clearly, it was many  
3 years ago.

4 It has been established via testimony and exhibits presented in support of the  
5 Packwood Canal Company claims that Hatfield Canyon Creek flows into the canal at a  
6 point on the north section line of Section 32, T. 18 N., R. 18 E.W.M. at a point  
7 about 550 feet east of the northwest corner of Section 32. That confluence is  
8 approximately one quarter of a mile downstream from the Anderson property.

9 In the Report of Referee for Subbasin No. 11, the Referee recommends  
10 confirmation to Packwood Canal Company 2.5 cfs; 1032.55 acre-feet per year from  
11 Hatfield Canyon Creek for irrigation of 154 acres. The place of use recommended  
12 includes that portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, T. 18 N., R. 18 E.W.M. lying  
13 north easterly of Packwood Canal. Ms. Anderson's property lies within that parcel.  
14 Her only access to irrigation water is via the Packwood Canal. Considering the  
15 deficient record, the Referee recommends that a right to use of Hatfield Canyon  
16 Creek water not be confirmed under Court Claim No. 00500.

17  
18 COURT CLAIM NO. 02177 -- Harold E. Chamberlin  
19 02316 & Sherry A. Chamberlin

20 The Chamberlins are successors in ownership of the property associated with  
21 Court Claim Nos. 2316 (Estate of J. R. and Fern Newman, Newman's Island Ranch) and  
22 2177 (Harley Burns). There was no appearance at the evidentiary hearing in support  
23 of Claim No. 2177, consequently no diversionary rights were recommended.  
24 Essentially, Claim No. 2177 appears to duplicate Claim No. 2316 for which testimony  
25 and evidence were entered into the record. The Referee recommended confirmation of  
26 a 100 acre irrigation right for Yakima River water delivered through the Mill

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 Ditch, with a priority date of June 30, 1892. An exception was filed with the  
2 Court by Harold and Sherry Chamberlin, the current owners of Newman's Island Ranch  
3 who are represented by attorney Jeff Slothower.

4 The Chamberlins excepted to the priority date recommended by the Referee,  
5 contending that the Notice of Water Right filed by John Mills establishes a  
6 priority date of December 3, 1879, for their property. Although not included in  
7 the Chamberlin's exception, issues were raised during the supplemental hearing by  
8 Mr. Slothower as to the legal description (place of use) and number of acres  
9 irrigated. During reevaluation of the record regarding the place of use, acres  
10 irrigated and priority date, the Referee relied upon aerial photograph exhibits  
11 DE-82, DE-85 and DE-71 (Court Claim No. 0872, Richard Hutchinson) as well as chain  
12 of title documents and the James Mills Notice of Appropriation.

13 During review of the record, several inconsistencies were identified which  
14 resulted in a fairly comprehensive rewrite of the Referee's original  
15 recommendation. The first matter to resolve is the appropriate legal description  
16 for the land owned and irrigated by Harold and Sherry Chamberlin. The only legal  
17 description provided to the Court does not reflect all of the ownership as  
18 described by Mr. Chamberlin during testimony at the supplemental hearing.

19 The following place of use description is used in the Report of Referee for  
20 Subbasin 8: that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 and that portion of  
21 Section 12 lying between the Yakima River and Thorp Mill Ditch in T. 18 N.,  
22 R. 17 E.W.M. That description excludes any portion of the ownership lying westerly  
23 of the Mill Ditch. The area in question lies westerly of the Mill Ditch and  
24 easterly of the Railroad right-of-way in the NE $\frac{1}{4}$  of Section 11, T. 18 N.,  
25 R. 17 E.W.M.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       Testimony of Mr. Bakeman at the evidentiary hearing characterized Newman's  
2 Island Ranch as having a single chain of title, beginning in 1892 with John M.  
3 Newman's purchase of Northern Pacific Railroad land in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 11.  
4 The following presentation of the chain of title history will clear up this  
5 misconception. The chain of title for the Chamberlin lands is far more complex  
6 than the evidence presented at the original hearing suggests and as reflected in  
7 the Referee's Report. In fact, portions of four separate chains of title are  
8 encompassed within the property known as Newman's Island Ranch and the earliest  
9 date of ownership interest is January 1, 1881. The Chamberlins are asserting that  
10 the appropriate Yakima River water right for their property is for 160 acres of  
11 irrigation with a priority date of December 3, 1879, based on the Mills' Notice of  
12 Water Right. There is no document in the record suggesting that the intent of  
13 James Mills was to provide irrigation water for these four separate parcels. In  
14 fact, only one of the four parcels which comprise what is now known as Newman's  
15 Island Ranch, the James McGinnis homestead, is referenced in that Notice of  
16 Appropriation.

17       Although the Referee's Report recommended a priority date of June 30, 1895,  
18 for the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M., that 80 acre parcel was sold  
19 on contract by the Northern Pacific Railroad to John M. Newman on January 1, 1881.  
20 The Thorp Mill Ditch, for which a Notice of Appropriation was filed by John Mills  
21 in December of 1879, is located just north of the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 11. It is  
22 reasonable to conclude that use of water conveyed through the Mill Ditch would have  
23 occurred shortly immediately after the land was purchased from the Northern Pacific  
24 Railroad. Section 11 is not riparian to the Yakima River, therefore, water rights  
25 had to have been established under the Prior Appropriation Doctrine. The Referee  
26

27       SUPPLEMENTAL REPORT OF REFEREE  
28       Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 concludes that the date of sale from the railroad to John Newman is the appropriate  
2 date to recommend based upon prior appropriation.

3 The earliest reference in the chain of title for the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12,  
4 T. 18 N., R. 17 E.W.M. is a March 3, 1900, probate proceeding involving Sarah  
5 Newman. The patent for this 40 acres ultimately issued to John Newman on May 22,  
6 1923. The NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12 is not riparian to the Yakima River, therefore,  
7 evidence of water use prior to 1917 is necessary in order to show that a water  
8 right was established for the land.

9 The patent for the S $\frac{1}{2}$ NW $\frac{1}{4}$  and the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 12 was issued to James  
10 McGinnis on December 1, 1882. However, it is clear from the references in the  
11 James Mills Notice of Water Right that James McGinnis was in possession of this  
12 land on June 9, 1881. The final piece of the property lies within the homestead of  
13 Joe Ceolapham, in the W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.  
14 Mr. Ceolapham acquired a patent dated December 28, 1888, however, the record  
15 contains a reference to the receiver's receipt for this homestead dated January 29,  
16 1887. The McGinnis and Ceolapham homesteads are riparian to the Yakima River.

17 Upon studying the 1977 aerial photograph (DE-85), it is clear that the Mill  
18 Ditch discharges into a Yakima River slough west of the northwest corner of the  
19 Chamberlin property. The Referee has concluded that James Mills' Notice of Water  
20 Right was not intended to establish a priority date for lands below the confluence  
21 of the Mill race and the Yakima River slough. It seems most probable that James  
22 McGinnis and the other downstream owners simply took advantage of the water in the  
23 ditch at some time after the mill was put into operation.

24 Given that premise, the Referee recommends that the priority dates for  
25 riparian land be based upon the earliest date efforts were taken to separate the  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 lands from the public domain, if that date is in the record, or, alternately, the  
2 patent date. Regarding the James McGinnis riparian lands, the reference in the  
3 James Mills Notice shows he occupied the S $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 12, T. 18 N.,  
4 R. 17 E.W.M. on June 9, 1881, the date the receiver's receipt was signed.

5 The appropriate priority date under the Riparian Doctrine for the Joe  
6 Ceolapham homestead in the W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.  
7 is January 29, 1887, when the Receiver's Receipt was signed.

8 The record is scant as to the non-riparian lands in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12.  
9 Sarah Newman's name appears for a probate proceeding involving that property dated  
10 March 3, 1900. Since this 40 acre parcel is not riparian to the Yakima River, the  
11 date of occupation does not adequate foundation for the priority date. Although  
12 early use of water for irrigation of this parcel is only established by inference,  
13 it is reasonable to recommend an right under the Prior Appropriation since the  
14 Thorp Mill Ditch was running adjacent to the property in 1900 and irrigation of the  
15 land likely commenced shortly after the land was occupied. The priority date which  
16 the Referee shall recommend will be the date which reflects the earliest documented  
17 ownership. Although this date is a few years later than for the adjoining lands,  
18 the Referee notes that the Patent did not issue for this parcel until May 22, 1923,  
19 which suggests that development was slower than most other homesteads in the area.

20 The Referee looked to the testimony and aerial photographs DE-85, DE-82 and  
21 DE-71 (from Court Claim No. 0877, Richard Hutchinson) to evaluate the number of  
22 irrigated acres and their location. This assessment was deemed appropriate to  
23 estimate the extent of perfection. These are all 1977 photographs and reflect the  
24 extent of irrigation in 1977. It is clear that in June of 1977, 5 or 6 acres of  
25 land within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 were being irrigated easterly of the Mill

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 Ditch/Yakima River slough confluence. There were also 15-16 acres being irrigated  
2 within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12. There were 44-45 acres being irrigated or which  
3 had been irrigated within the S $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 12. Finally, 10-11 acres  
4 were or had been irrigated within the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 12.

5 During testimony at the supplemental hearing Mr. Chamberlin indicated that he  
6 had observed remnants of historic ditches on the property, but that the system had  
7 been changed to pumps, pipes and sprinklers years before he purchased the property.  
8 Unfortunately, there is no record as to the distribution of those ditches over the  
9 ranch or their capacity to serve various fields via flood irrigation. The current  
10 system includes a 50 horsepower (hp) electric pump and 3000 feet of buried mainline  
11 with risers. The original pipeline was 4" diameter, above ground and installed in  
12 1968. At one time, there were 96 sprinkler pipes fed by 8 inch mains and 4 inch  
13 submains. Exhibit DE-82, an aerial photo, depicts the location of the current 50  
14 hp pump and the buried mainline. The fields adjacent to the mainline all lie  
15 easterly of the Railroad and, as described above, comprise a total of 75-80 acres  
16 of irrigated area of which about 22 acres are located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
17 Section 12 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11.

18 At the supplemental hearing, Mr. Chamberlin testified that he owned land  
19 between Mill ditch and the Railroad which is not mapped in his ownership on  
20 Exhibit SE-1. The Referee used the following legal description in the schedule of  
21 recommended water rights on Page 164 of the Report of Referee: That portion of the  
22 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 and Section 12, T. 18 N., R. 17 E.W.M. lying westerly of the  
23 Yakima River and easterly of the Thorp Mill Ditch. The description used appears to  
24 exclude lands owned by the Chamberlins (labeled Burns on SE-1) and the adjoining  
25 parcel to the northwest. There is no evidence in the record that indicates

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 historical irrigation of these lands although the 1977 photographs show cleared  
2 fields in that area.

3       Although no exception as to the Referee's recommendation for confirmation of a  
4 right to irrigate 100 acres was filed by the Chamberlins, testimony at the  
5 supplemental hearing suggests that they contend 160 acres have historically been  
6 irrigated. The Referee has re-evaluated the irrigated acres as explained above due  
7 to the priority date question and the acreage issue. The record does not support  
8 the current 100 acre recommendation due to limits of the sprinkler system which has  
9 been completely relied upon since 1968. Lacking a record as to delivery of  
10 irrigation water to any land other than the sprinkler irrigated area since 1968, it  
11 appears that any water rights in excess of the lands that have been sprinkler  
12 irrigated were relinquished due to more than five years of nonuse (See  
13 RCW 90.14.170). The Referee concludes that the assertion of 160 acres of historic  
14 irrigation should be rejected and that the maximum number of acres for which a  
15 right can be recommended should be 80 acres. Water Right Claim (WRC) No. 056256  
16 filed by Fern Newman in December of 1973, in response to RCW 90.14, indicates that  
17 80 acres had historically been irrigated and 80 acres were currently being. During  
18 review of WRC No. 056256, the Referee noted that an error appears to have been made  
19 when Fern Newman described the point of diversion. Clearly, the diversion point is  
20 and has been into the Mill Ditch, in Section 3, T. 18 N., R. 17 E.W.M., whereas  
21 Section 4 is referenced in WRC No. 056256. The balance of the point of diversion  
22 description seems to be consistent with the Mill Ditch headgate.

23       The Referee concludes that four separate rights should be confirmed and the  
24 quantity of water proportioned according to the number of acres under each priority  
25 date. The Referee recommends that the following rights be confirmed from the

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 Yakima River based on the water duty of 0.025 cubic foot per second (cfs) and  
2 6 acre-feet per acre:

3 (1) With a priority date of January 29, 1887, 0.325 cfs and 78 acre-feet per  
4 year for irrigation of 13 acres within that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, lying west of the Yakima River and east of the Thorp Mill Ditch.

5 (2) With a June 9, 1881, priority date, a right to 1.125 cfs, 270 acre-feet  
6 per year for the irrigation of 45 acres in the N $\frac{1}{2}$ SW $\frac{1}{4}$  and the S $\frac{1}{2}$ NW $\frac{1}{4}$  of  
Section 12.

7 (3) With a March 3, 1900, priority date, 0.40 cfs, 96 acre-feet per year for  
8 the irrigation of 16 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.

9 (4) With a January 1, 1881, priority date, 0.15 cfs, 36 acre-feet per year  
for irrigation of 6 acres lying within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11.

10 All of the recommended places of use lie westerly of the Yakima River and  
easterly of the Thorp Mill Ditch in T. 18 N., R. 17 E.W.M.

11 Lines 1-22 on Page 164 of the Referee's Report Subbasin 8 are deleted and  
12 replaced by the four schedule of rights recommended under Court Claim Nos. 02316  
13 and 02177 at Pages 109, 110, 117, 128.

14 Due to an oversight, the stock water right recommended on Page 119,  
15 Lines 10 $\frac{1}{2}$ -11 $\frac{1}{2}$  of the Referee's Report was not included in the schedule of rights  
16 referenced above. The Referee has incorporated the 1 acre-foot stock water right  
17 in the water right with a recommended priority date of June 9, 1881, see page 110,  
18 of this report.

19  
20 COURT CLAIM NO. 02074 -- Gerald D. Detwiler  
21 & Carol L. Detwiler

22 Exceptions to the Referee's recommendation for Court Claim No. 02074 in the  
23 Report of Referee for Subbasin No. 8 (Thorp) were filed with the Court by the  
24 Detwilers and by the Department of Ecology (Ecology). Subsequent to the original  
25  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 hearing on December 8, 1989, the Detwilers purchased the subject property from  
2 Audrey Irene Evans Woodburn and were substituted for Ms. Woodburn.

3 In summary, the Detwilers represented by their attorney, Richard T. Cole,  
4 assert that the number of acres confirmed should be 5 instead of 4 and that a water  
5 duty of 14.4 acre-feet per year per acre should be utilized to calculate the annual  
6 quantity. Ecology seeks a reduction in the authorized irrigation season  
7 commensurate with the summer decline in the water source.

8 The earliest sources of water used on the Detwiler property were springs and a  
9 spring-fed stream via gravity flow for irrigation of pasture and/or hay. In  
10 subsequent years, the Taneum Ditch and Kittitas Reclamation District (KRD) Canal  
11 were constructed in the vicinity. Those sources served to augment the spring water  
12 supply as did return flow from neighboring irrigated fields. Due to fairly recent  
13 contouring changes on up slope fields and elimination of ditches, return flow  
14 sources have all become less available. Any water right to which the Detwiler  
15 property is entitled as patrons of the Taneum Ditch Company or the KRD Have been  
16 addressed through the claims of those entities. The return flow water which flows  
17 through the Detwiler property is foreign return flow as the source is either Taneum  
18 Creek or the Yakima River. Mr. and Mrs. Detwiler are not asserting a water right  
19 for the return flows through Court Claim No. 02074 and none has been recommended  
20 for confirmation; however, it is clear from testimony that most of the irrigation  
21 water being pumped is return flow.

22 With the facts as presented, it is appropriate to eliminate the limitation to  
23 the annual quantity provision as requested in the Detwiler Exception. Therefore,  
24 Lines 1-4 on Page 70 and Lines 21 and 22, Page 164 of the Report of Referee for  
25 Subbasin No. 8 are deleted.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 Carol Detwiler testified at the Remand Hearing that 5 acres are now being  
2 irrigated and should be confirmed under Court Claim No. 02074. The extent of the  
3 right which can be confirmed under the Riparian Doctrine is limited to the historic  
4 development that occurred no later than December 31, 1932. Del Evans testified  
5 during the original hearing that a maximum of 4 acres had historically been  
6 irrigated with the remaining lands being marshy or brush, etc. An additional one  
7 acre has been cleared and irrigated since the Detwilers acquired the property.  
8 The Referee, therefore, does not alter the original recommendation that a right be  
9 confirmed for the irrigation of 4 acres.

10 No exception was taken to the instantaneous quantity of 0.04 cubic foot per  
11 second (cfs) which was recommended by the Referee from two springs that flow into a  
12 common creek channel and two ponds where pumps have been installed. Those pumps  
13 are reported to have capacities far in excess of the 0.04 cfs produced by the  
14 springs. The ponds are intended to store the limited spring water so that  
15 practical pumping to sprinkler systems is possible. The pumps also intercept  
16 return flow water during periods when it flows through the creek and ponds.

17 The fact that the number of springs providing water to the Detwiler property  
18 have in recent years been reduced to two or three is undisputed. Testimony also  
19 reflects that the flow of those springs is markedly decreased from historic levels  
20 and, in fact, by early summer of most recent years the springs cease flowing. The  
21 low yield and dry springs was not the case during the years when the water right  
22 was perfected and in wet years may not be in the future. Based upon these facts,  
23 the Referee finds that the water right perfected was for a normal irrigation season  
24 as reflected in the schedule of rights. While Ecology is correct in its conclusion  
25 that the springs are unlikely to produce the recommended 0.04 cfs throughout each  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 irrigation season, it is appropriate to confirm a right based upon historic  
2 perfection. Lack of availability due to natural conditions is sufficient cause to  
3 prevent relinquishment RCW 90.14.140.

4 The final exception to be addressed is Detwiler's assertion that the water  
5 duty should be 14.4 acre-feet per year per acre or 72 acre-feet for 5 acres.  
6 Having previously concluded that the right originally perfected is limited to 4  
7 acres, we need to consider the appropriate water duty for the 4 acres. During  
8 presentation of the case in support of Court Claim No. 02074 at both the original  
9 hearing and the remand hearing, the claimant requested adoption of the same water  
10 duty as neighboring properties. Testimony on the subject of water duty within  
11 Subbasin 8 was extensive due to the large variation between the various fields  
12 (i.e., soils, crops, topography, and irrigation systems). An additional factor in  
13 the testimony was conveyance loss, which is not applicable for the Detwiler  
14 property. Although Mr. Cole suggests that a more or less uniform water duty was  
15 adopted for the area, the record is clear that was not the case. In the current  
16 factual situation, it is not necessary to deliberate on the matter, since pumping  
17 0.04 cfs continuously for the recommended irrigation season will yield only  
18 16.8 acre-feet per year. Therefore, the current recommendation of 16.8 acre-feet  
19 per year is the maximum attainable from the water source.

20 The Referee recommends confirmation of a water right for use of an unnamed,  
21 spring-fed pond for irrigation of 4 acres from April 1 through October 31, in the  
22 quantities of 0.04 cfs; 16.8 acre-feet per year. The point of diversion is located  
23 1,520 feet north and 375 feet west from the southeast corner of Section 9, being  
24 within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 18 N., R. 17 E.W.M.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 During the Referee's review of the record, it became apparent that the  
2 appropriate legal description for the Detwiler's property should be as follows:

3 Commencing at the southeast corner of Section 9, T. 18 N., R. 17 E.W.M.;  
4 thence north along the east line of said Section 9, 1588.3 feet; thence W 32.7  
5 feet to the true point of beginning of this description; thence N 42°20' W  
6 88.7 feet; thence S 72°58' W 195.7 feet; thence S 86°44' W 230.1 feet; thence  
7 S 78°34' W 187.2 feet; thence S 88°55' W 262.9 feet; thence south 100.0 feet;  
8 thence continuing south to the south line NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9; thence easterly  
9 along said south line to a point which bears S 15°15' W from said true point  
10 of beginning; thence N 15°15' E to a point which bears S 15°15' W 100.0 feet  
11 from the said true point of beginning; then N 15°15' E 100.0 feet to the true  
12 point of beginning.

13 The schedule of rights as presented on Page 164 of the Subbasin 8 Referee's Report  
14 shall be amended as set forth above and Lines 11 $\frac{1}{2}$  through 22 are deleted and  
15 replaced by the schedule of rights set forth on Page 126 of this supplemental  
16 report.

17 COURT CLAIM NO. 01722 -- Douglas A. Dicken

18 Dale and Jewel Black, represented by Hugh M. Spall, Attorney At Law, filed  
19 exceptions to the Report of Referee for Subbasin No. 8 (Thorp). The exceptions  
20 pertain to their own Court Claim No. 01722 and to the claim of Thomas and Kathleen  
21 Brunson Court Claim No. 01055. On June 30, 1995, Douglas A. Dicken was substituted  
22 for the Blacks as the party for Court Claim No. 01722.

23 Exceptions were filed regarding the Referee not recommending confirmation of  
24 water rights to the Black's property from Hatfield Canyon Creek and two springs.  
25 Dale and Jewel Black sought an opportunity to provide to the Court additional  
26 testimony and exhibits which would address compliance with Chapter 90.14 of the  
27 Revised Code of Washington (RCW) and historic water use. Evidence to be presented  
28 was to include water right claims filed by Rod J. Burruel, a previous owner of the  
Black property, for Hatfield Canyon Creek and a spring.

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       Mr. Black did not appear at the supplemental hearing , although Mr. Spall did  
2 represent the Blacks and offered exhibits DE-S74, DE-S75 and DE-S76 (Chain of Title  
3 Documents) and Water Right Claim (WRC) Nos. 121388 & 121389 into evidence.

4       The Black's exception to Court Claim No. 01055, Thomas and Kathleen Brunson,  
5 relates to water rights recommended for confirmation for the Brunson property from  
6 Sheep Pasture Creek. Mr. Spall advised the Court that Mr. and Mrs. Black had  
7 withdrawn their exception as to use of irrigation water from the "Big Spring" for  
8 their property as proof of historic use was not available to them. Due to that  
9 change in the Black claim, they have no further interest in their exception against  
10 the claim of Thomas and Kathleen Brunson Court Claim No. 01055. Sheep Pasture  
11 Creek arises in the area of the "Big Spring."

12      The remaining issues to be deliberated include whether or not the water right  
13 claims filed by Mr. Burrue (Claim Nos. 121388 and 121389) satisfy the filing  
14 requirements of RCW 90.14 regarding the house spring and an unnamed stream flowing  
15 across the Black property.

16      WRC No. 121388 claims a right for irrigation of 65 acres and stock water from  
17 Hatfield Canyon Creek at a point of diversion located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31,  
18 T. 18 N., R. 18 E.W.M. Hatfield Canyon Creek flows through that legal subdivision,  
19 however, there was no evidence presented to support use of that source on the Black  
20 property. The record clearly states that there is no means of getting Hatfield  
21 Canyon Creek water to the Black property. The Blacks now contend that the source  
22 is an unnamed stream on their property and that Mr. Burrue and Mr. Black simply  
23 made an error in nomenclature. Thus, they contend that WRC No. 121388 was filed on  
24 the unnamed stream from which the Blacks divert. There was no testimony to support  
25 that contention, therefore, the Referee concludes that WRC No. 121388 is not

27      SUPPLEMENTAL REPORT OF REFEREE  
28      Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 ambiguous on its face and that the described point of diversion is indeed located  
2 on Hatfield Canyon Creek. Therefore, the Referee's conclusion that no water right  
3 claim was filed on the unnamed stream should be affirmed.

4 Mr. Burruel filed WRC No. 121389 on a short form claiming ground water as a  
5 source for a domestic supply. Mr. Black did not appear to provide testimony  
6 supporting his contention that Mr. Burruel made an error in distinguishing the  
7 source as ground water, rather than surface water. Although Mr. Spall suggests  
8 that no well exists on the Black property, the record is silent in that regard.  
9 Mr. Black did testify that water from the smaller spring is used at the house and  
10 barn, but provided no historic use or quantification testimony regarding that use.  
11 Lacking that clarifying testimony, the Referee concludes that WRC No. 121389 has  
12 not been established as being a filing on the house spring. Further, there is no  
13 record upon which a right could be quantified even if a water right claim had been  
14 filed. The original finding of the Referee should stand and a right not be  
15 confirmed under Court Claim No. 01722.

16

17 COURT CLAIM NO. 04817 -- David W. Fudacz  
18 (A)04942 & Lyla M. Fudacz

19 COURT CLAIM NO. 04818 -- Larry T. Fudacz

20 Attorney Richard T. Cole filed exceptions for David Fudacz relative to the  
21 Report of Referee for Subbasin No. 8 (Thorp). The exceptions relate to the  
22 findings of the Referee that all irrigation water rights associated with Court  
23 Claims 04817, 04818 and 04942 were waived and relinquished due to deficiencies in  
24 filing of Water Right Claims (WRC) as prescribed by RCW 90.14. The Court denied  
25 the claimant's substantial compliance arguments and their attempts to amend their

26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 RCW 90.14 claim through their exceptions, see the Court's Order On Exceptions for  
2 Subbasin No. 8 (Thorp) dated March 9, 1995.

3 Although the Court did not specifically refer the question of priority date to  
4 the Referee, that issue was the fourth exception filed by Fudacz. The claimants  
5 are asserting a priority date of June 30, 1889. The record is clear that a patent  
6 was issued to Rueben Pardee on February 28, 1897, for the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
7 Section 11, T. 18 N., R. 17 E.W.M. within which the Fudacz farmstead lies. The  
8 evidence indicates that the springs were in existence before the Westside Canal was  
9 put into service around 1890 and that flow from the springs increased dramatically  
10 over the next 20 years. Spring water has been used via pipelines and ditches to  
11 irrigate the 7.71 acre field and presumably supplied stock water to the adjoining  
12 4.12 acre field to the west. Testimony indicates that water is not run through the  
13 pipeline running north between the two Dave Fudacz parcels during the  
14 non-irrigation season. Therefore, the Referee recommends that the diversionary  
15 stock water right previously recommended be modified to eliminate the  
16 non-irrigation season and to reduce the annual quantity from 2 acre-feet per year  
17 to 1 acre-foot. Thus, Page 166, Line 4 is amended to read April 15 through  
18 October 31. The priority date of February 28, 1897, is appropriate as it reflects  
19 the patent date. The Riparian Doctrine has been relied upon lacking evidence to  
20 substantiate an earlier date. The Referee acknowledges that steps to sever the  
21 land from Federal ownership began earlier than 1897; however, the record lacks  
22 specific dates other than the homestead patent on which to base the priority date.  
23 The exception states that there is evidence that water was first used in 1884;  
24 however, that evidence was not brought to the Referee's attention.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       The Referee recommends that a diversionary stock water right be issued to the  
2 Fudacz's as described above.  
3  
4

5       COURT CLAIM NO. 02046    -- Elwin Gibson  
6                                  & Patricia Gibson  
7                                  Irwin Loucks  
8                                  & Dorothy Loucks

9       The Referee recommended confirmation of two water rights: One from a spring  
10 located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M. having a June 20, 1878,  
11 priority date, and the other being the Yakima River at a point in common with the  
12 diversion for the Thorp Mill Ditch having a priority date of December 28, 1888.  
13 The recommended Yakima River water right is for substantially fewer acres than  
14 encompassed by the claimants' farming practices. Exceptions to the Report of  
15 Referee relating to Court Claim No. 02046 were filed with the Court by Richard T.  
16 Cole on behalf of the claimants and by Jo Messex Casey, Assistant Attorney General,  
17 on behalf of Plaintiff State of Washington Department of Ecology (Ecology).  
18 Ecology requests refinement of the place of use for the spring water.

19       Claimants Gibson and Loucks assert that Water Right Claim (WRC) No. 118943  
20 substantially complies with the filing requirements of RCW 90.14 for their combined  
21 ownership. The basis for that conclusion is that Ben Gibson, the signatory on the  
22 claim form, mistakenly omitted major portions of their ranch ownership. Gibson and  
23 Loucks further contend that the Referee had both sufficient facts and the  
24 discretion to amend WRC Claim No. 118943 to include all of the claimant's land  
25 located within the SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12 and the NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 13,  
T. 18 N., R. 17 E.W.M. The Court has ruled via Memorandum Opinion RE: RCW 90.14  
and Substantial Compliance that amendments to water right claims is exclusively a

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 function of Ecology RCW 90.14.065. However, the Referee is allowed to interpret or  
2 make judgments regarding RCW 90.14 claims as supported by the evidence and  
3 testimony.

4 The Referee was directed via the Order on Exceptions to reevaluate the content  
5 of RCW 90.14, WRC No. 118943 and to take additional testimony regarding the  
6 quantities of water, priority date and place of use description.

7 Ben Gibson signed and filed WRC No. 118943 for the Yakima River and  
8 WRC Nos. 118942 and 118944 for drains on June 19, 1974. All three of the water  
9 right claims filed by Mr. Gibson describe discrete portions of the property now  
10 owned by claimants Gibson and Loucks. The three claims and the September 23, 1994,  
11 affidavit of Ben Gibson were studied, as was the record created during the hearings  
12 on December 11, 1989, and June 6, 1995. The place of use description entered on  
13 each of the referenced RCW 90.14 claims is distinctly expressed as quarter-quarter  
14 or smaller portions of Sections 12 and 13, T. 18 N., R. 17 E.W.M. In addition, the  
15 number of acres irrigated statement fits perfectly with the size of the place of  
16 use descriptions. The Referee can only conclude that the three referenced claims,  
17 including Claim No. 118943, were all carefully and deliberately completed to  
18 reflect discreet irrigated portions of the Gibson ownership. Claim No. 118943  
19 asserts a right to irrigate 60 acres and describes the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13 and the  
20 S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12 all within T. 18 N., R. 17 E.W.M. which is a 60 acre parcel.  
21 The Referee has adjusted the place of use to deviate slightly from the literal  
22 reading of the place of use on WRC No. 118943. The 42 acres irrigated within the  
23 56 acres owned by Mr. and Mrs. Loucks lie easterly of the concrete head ditch  
24 running north to south more or less down the center line of Section 12.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       The claimant's exception as to the proper legal description for use of the  
2 Yakima River water is well taken, therefore, the Referee recommends that the land  
3 to which Yakima River water be appurtenant for irrigation purposes is the Loucks  
4 property which is specifically described as follows:

5 PARCEL A:

6 That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M., lying  
7 westerly of the Yakima River and southerly of the Burlington Northern  
Railroad Company's right-of-way.

8 PARCEL B:

9 That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M., lying  
10 southerly of the Burlington Northern Railroad Company's right-of-way and  
11 east of the east boundary of the existing cement irrigation ditch; such  
ditch being situated 5 feet more or less east of the east boundary of an  
existing road and the northerly extension of said road.

12 PARCEL C:

13 The NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M.; EXCEPT a tract of land  
14 bounded by a line beginning at the southeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of said  
section and running thence north along the east boundary line of said  
15 quarter of quarter section 605 feet more or less; thence N 45°48' W to a  
point on the low water mark of the east bank of the Yakima River; thence  
southerly along said low water mark of said bank to the south boundary  
16 line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; and thence N 39°12' E along said boundary line 300  
feet more or less to the point of beginning.

17 PARCEL D:

18 That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M., lying  
19 east of the east boundary of the existing cement irrigation ditch which  
20 ditch is situated 5 feet more or less east of the east boundary of an  
existing road and the northerly extension of said road.

21       The claimants also excepted to the quantity of water recommended.

22 Because there was no testimony about the instantaneous quantity of water  
23 diverted, the original recommendation was based on the standard water  
24 duty for the basin, 0.02 cubic foot per second (cfs); 6.6 acre-feet per  
25 year for each acre irrigated. The claimants excepted and testified at

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 the supplemental hearing that 20 acre-feet per acre is used to irrigate  
2 the land. A right is being asserted for the instantaneous quantity  
3 claimed on WRC No. 118943 (5.0 cfs) which is roughly consistent with the  
4 size and estimated capacity of the headgate structure at the Mill Ditch  
5 turnout. This quantity is higher than what is normally used, however,  
6 the property lies along the Yakima River with porous soils underlain with  
7 river gravels. The testimony indicated that water is diverted and used  
8 for irrigation continuously, however, continuous diversion of water at  
9 the instantaneous rate of 5.0 cfs would result in the entire 840  
10 acre-feet being diverted in 85 days.

11       Forty to 45 horses or equivalent numbers of cattle have been grazed  
12 on the Loucks' property with access to the ditches during irrigation  
13 season. A total of 2 acre-feet of stock water is estimated to satisfy  
14 stock water needs during the irrigation season.

15       The point of diversion described on WRC No. 118943 is 2120 feet  
16 north and 1020 feet west from the southeast corner of Section 2,  
17 T. 18 N., R. 17 E.W.M. That point appears to be the location where an  
18 old flood channel of the Yakima River is shown on State Exhibit SE-1.  
19 This point of diversion was described as being close to the Mill Ditch  
20 diversion in the Referee's Report, however, it actually is approximately  
21 one mile downstream from the Mill Ditch headworks. It appears from the  
22 record that the change of point of diversion to the Mill Ditch occurred  
23 before the turn of the century, therefore, the Referee has used the Mill  
24 Ditch point of diversion which is located 1150 feet north and 75 feet  
25 west from the east quarter corner of Section 3, T. 18 N., R. 17 E.W.M.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       The Claimants excepted to the priority date recommended by the  
2 Referee, therefore, it was necessary to reexamine the chain of title  
3 documents. The NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M., along with  
4 most of the rest of Section 13, was separated from the public domain via  
5 a patent to the Northern Pacific Railway on November 4, 1895. The record  
6 contains an earlier record for that parcel in the form of a Warranty Deed  
7 from the Northern Pacific Railroad Company to W. D. Kilmore dated  
8 March 1, 1890, which is the earliest date in the record documenting steps  
9 to sever the land from Federal ownership. This action established a  
10 priority date of March 1, 1890, under the Riparian Doctrine for the  
11 estimated 27 acres of irrigation within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13 (parcel  
12 C). The remaining 15 acres of irrigation lie within that portion of the  
13 SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M. lying  
14 easterly of the concrete head ditch. The S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 12, T. 18 N.,  
15 R. 17 E.W.M. was part of the homestead of Joe Ceolapahan and is reflected  
16 by a patent dated December 28, 1888. The earliest date in the record  
17 reflecting steps to sever the land from Federal ownership is the  
18 Receiver's Receipt, dated January 24, 1887 (exhibit submitted by the  
19 Chamberlins for adjoining lands). Thus, the priority date for the 15  
20 acres irrigated within the S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  (parcel A) is December 28, 1888.  
21 However, the claimants are asserting a priority date based on the Thorp  
22 Mill Ditch Notice. The record does not indicate that the subject lands  
23 were intended to be served under the original Thorp Mill Ditch Notice;  
24 therefore, the Referee does not believe that filing of that notice  
25 established a water right for the claimants land in Section 12.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       The Referee recommends that a right be confirmed under Court Claim  
2 No. 2046 to Irwin and Dorothy Loucks with a March 1, 1890, date of  
3 priority for the diversion of 3.2 cfs; 540 acre-feet per year for the  
4 irrigation of 27 acres and 1.5 acre-feet per year for stock watering in  
5 portions of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 and with a January 29,  
6 1887, date of priority a right to divert 1.80 cfs; 300 acre-feet per year  
7 for the irrigation of 15 acres and 0.5 acre-foot per year for stock  
8 watering in that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12 lying  
9 easterly of the concrete head ditch (see Page 23 for an exact legal  
10 description).

11       The Ecology exception regarding a refinement of the place of use for  
12 spring water within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M. will  
13 be resolved by changing the place of use to the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ . The remaining  
14 components of the June 30, 1878, right for 9.5 acres of irrigation and  
15 stock water will remain unchanged. Thus, Line 9 $\frac{1}{2}$  on Page 151 shall be  
16 amended to read: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M. In  
17 addition, Line 22 $\frac{1}{2}$  on Page 87 is amended by replacing "SW $\frac{1}{4}$ SW $\frac{1}{4}$ " with  
18 "NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ."

19       The record contains testimony and exhibits which deal with use of  
20 spring water and/or return flow water on the Gibson property.  
21 Specifically, WRC Nos. 118944 and 118942 describe ground water and drain  
22 sources entering the property from the lands lying to the west. It seems  
23 clear from the record that the claims should have been filed as surface  
24 water sources since the water is flowing in a ditch system from spring  
25 and/or swamp areas. The ditches carry significant quantities of return  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 flow water with the estimates indicating irrigation season flows of at  
2 least three times the winter flow. Also contained in the record are  
3 statements that the spring areas did not exist before the Westside Canal  
4 was constructed. The Gibsons do use surface water from the various drain  
5 ditches to irrigate those portions of their property reflected on  
6 exhibit SE-1 with shading or stippling. The number of acres served from  
7 each surface water source is not discernible from the current record.  
8 During the supplemental hearing, Mr. Cole and Mr. Gibson asked for, and  
9 were allowed, one week to prepare and submit into the official record a  
10 detailed map of the areas served via spring water. The exhibit number  
11 DE-S23 was reserved for that potential exhibit. The map was not  
12 provided.

13 Due to an incomplete and often contradictory record, the Referee has  
14 no choice but to recommend denial of those portions of Court Claim  
15 No. 02046 relating to use of drain/spring water not specifically  
16 recommended in this supplemental report.

17

18 COURT CLAIM NO. 01560 -- Charles Gust

19 Charles Gust, represented by Richard Cole, Attorney, filed  
20 exceptions with the Court due to failure of the Referee to recommend  
21 confirmation of water rights for the Gust property. Two separate water  
22 courses are utilized by Mr. Gust and the northerly source has been  
23 similarly used by predecessors since at least the early 1900s.

24 Mr. Gust filed Water Right Claim (WRC) Nos. 022734 and 022735 with  
25 the Department of Ecology (Ecology) as required by Chapter 90.14 RCW thus

26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 preserving any historic water rights. WRC No. 022734 asserts a right to  
2 20 gallon per minute (gpm); 2 acre-feet per year for one-half acre of  
3 lawn and garden irrigation from Hatfield Canyon Creek which is on the  
4 south side of the Gust parcel adjacent to the north shoulder of Robinson  
5 Canyon Road. Mr. Gust has a 1½ horsepower (hp) pump installed in that  
6 water course which supplies eight Rainbird sprinklers in a single set.  
7 The pumping capacity is reported to be approximately 55 gpm with the  
8 current irrigation system. There was no house or lawn and garden on that  
9 3 acre parcel before 1971 and no pump in Hatfield Canyon Creek.

10 Mr. Gust irrigates the 2.5 acre pasture which lies north of his home  
11 site via flood irrigation from a water source located on the north  
12 boundary of the Gust parcel. The record seems clear that the pasture  
13 irrigation began during the late 1800's. WRC No. 022735 was filed by  
14 Mr. Gust with Ecology asserting a right to 450 gpm, 10 acre-feet per year  
15 for irrigation of that 2.5 acres from the described spring-fed source.  
16 The season of use claimed by WRC No. 022735 is May until October.

17 In preparation for offering supplemental evidence, Mr. Gust and  
18 Wynn Vickerman, a neighboring claimant, hired Richard Bain, a  
19 professional engineer, to measure the flow in the two channels during  
20 non-irrigation season. Measurements were taken on the Vickerman property  
21 during February and March 1995 with the intent to determine how much  
22 natural flow was available. Mr. Bain testified that the ditch companies  
23 were not delivering water during February and March of 1995. Subsequent  
24 testimony provided by Dale Dyk of the Menastash Ditch Company established  
25 that Menastash Ditch delivers stock water all winter and spring. Of the  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 6.0 cubic feet per second (cfs) carried in Menastash Ditch, as much as  
2 3.0 cfs is turned out into ditches which ultimately feed into Hatfield  
3 Canyon Creek. Mr. Dyk also testified that very little natural flow water  
4 is in Hatfield Canyon Creek at the West Side Canal crossing as the  
5 springs which feed the creek are relatively small. His observation is  
6 that most of the water in Hatfield Canyon Creek is return flow.

7       The highest flow measured in Hatfield Canyon Creek by Mr. Bain was  
8 2.1 cfs and the highest flow measured in the unnamed north channel was  
9 0.48 cfs. Lacking definitive data regarding natural flow in Hatfield  
10 Canyon Creek, the Referee proposes to use 25 percent of the 2.1 cfs  
11 measured flow as the natural flow component. Whereas substantial  
12 quantities of foreign water are carried in Hatfield Canyon Creek during  
13 the non-irrigation season, the flow in the unnamed spring-fed stream is  
14 predominantly natural flow during February and March. Although the  
15 natural flow available during the irrigation season will be different, it  
16 seems likely that the period of measurement would reflect a fair  
17 representation of the natural flow in the unnamed stream.

18       The supplemental evidence presented has resolved the question as to  
19 availability of natural flow at the two Gust diversions. It is therefore  
20 possible to reevaluate Court Claim No. 01560 as to the two sources  
21 claimed. The basis for these water rights could be either the riparian  
22 or appropriative doctrines. In the case of the pump on Hatfield Canyon  
23 Creek at the south side of the Gust property, water use has been  
24 described as beginning in 1971. The record is silent as to irrigation of  
25 the half acre home site before 1971. Possibly, it was part of the larger  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 pasture area, however, there is no testimony suggesting that it was  
2 irrigated from Hatfield Canyon Creek. First use of water in 1971 does  
3 not satisfy the criteria for confirmation of a right under either the  
4 prior appropriation or riparian doctrine; and there is no evidence that  
5 Mr. Gust complied with the permit procedures of RCW 90.03, therefore, the  
6 Referee recommends no confirmation for Hatfield Canyon Creek.

7 Mr. Gust irrigates 2.5 acres from the unnamed channel on his north  
8 property line using 250 gpm through a 6-inch pipeline. Mr. Bain measured  
9 a flow of 0.48 cfs during the spring as described above. The 2.5 acres  
10 were first irrigated many years prior to December 31, 1932, and the water  
11 source is adjacent to the irrigated land, therefore, the Riparian  
12 Doctrine is the appropriate foundation for a water right. The Gust  
13 parcel is a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.  
14 which was separated from the public domain via a land patent to Robert  
15 Hatfield dated June 30, 1882. Based upon the measured natural flow of  
16 0.48 cfs, the Referee recommends confirmation of right with a June 30,  
17 1992, date of priority, in the quantities of 0.48 cfs; 14.4 acre-feet per  
18 year for irrigation of 2.5 acres from April 1 through October 31 and  
19 0.5 acre-foot per year for stock water. The irrigation practice is to  
20 divert 0.48 cfs for 24 hours so as to cover the entire 2.5 acres and to  
21 repeat the cycle about 15 times per season.

22

23

24

25

26

27

SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1  
2     COURT CLAIM NO. 00894   -- Larry O. Hillis  
3                               01705   & Veralene Hillis

4     COURT CLAIM NO. 01204   -- Larry O. Hillis

5         Larry and Veralene Hillis own two farms located in Subbasin No. 8, the  
6 Robinson Canyon Farm, Court Claim No. 01204, and the Killmore Road Farm, Court  
7 Claim Nos. 00894 and 01705. The three claims assert rights to water from Robinson  
8 Canyon Creek for irrigation and stock water.

9         The Referee's Report Subbasin No. 8 (Thorp) dated May 9, 1994, recommends  
10 confirmation of three separate water rights to Hillis with priority dates of May 4,  
11 1880; January 7, 1896; and September 22, 1906. The later two of the three are  
12 appurtenant to irrigated fields lying within the northeasterly portion of the  
13 Robinson Canyon Farm whereas the May 4, 1880, priority right lies within the NW $\frac{1}{4}$  of  
14 Section 26, T. 18 N., R. 17 E.W.M. on the Killmore Road Farm.

15         Veralene and Larry Hillis, through their attorney Jeff Slothower, and the  
16 Department of Ecology (Ecology) filed with the Court exceptions to the Report of  
17 Referee. Hillis excepts to the priority dates of January 7, 1896, and  
18 September 22, 1906, for the Robinson Canyon Farm, as well as to the number of acres  
19 and the instantaneous and annual quantities recommended for each of the three  
20 rights. Hillis also excepts to the lack of a confirmed water right for  
21 diversionary or riparian stock water.

22         Ecology excepted to the annual quantities recommended, place of use, lack of a  
23 definition of the term "Supplemental Water Rights" and has reasserted its position  
24 regarding foreign return flow water. The Court has ruled that a definition is not  
25 necessary for "Supplemental Water Rights" and also ruled that water rights cannot

27     SUPPLEMENTAL REPORT OF REFEREE  
28     Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 be confirmed for use of foreign return flow water. Therefore, the Referee proposes  
2 no further consideration of those Ecology exceptions.

3 Ecology's exception as to the Referee's recommended annual quantity was based  
4 upon mathematical calculation of the total number of days in the irrigation season  
5 multiplied by the instantaneous quantity. Ecology is correct in asserting that the  
6 Referee erred in the calculations. Hillis did not except to the short season  
7 recommended, however, in their reply to Ecology's exceptions, Hillis contends that  
8 Ecology failed to provide a basis for using 91 days as a season limit. In any case  
9 the Court remand does refer to a need for more information on season of use and  
10 quantities.

11 Mr. Bain, an engineer retained by Hillis, testified that return flow water is  
12 a minor component of the surface water available on the Hillis' farms, however, the  
13 Referee believes return flow needs to be considered. The greatest potential for  
14 capture and reuse of foreign return flow water is on the Killmore Road Farm where a  
15 system of collection ditches and gravity pipes deliver return flow water to a pump  
16 at the NE corner of the ranch from which point it is pumped upgradient to sprinkler  
17 systems. Since a vast majority of the irrigation water used on the Killmore Road  
18 farm and neighboring lands to the north is from the Kittitas Reclamation District,  
19 the return flow that results must be characterized as foreign and Yakima Project  
20 return flows. The Court has ruled that rights cannot be granted for foreign return  
21 flow or Yakima Project return flows, but that capture and reuse of local return  
22 flow water can be the basis for confirmation of a water right.

23 Testimony presented during the supplemental hearing establishes the irrigation  
24 season as running from March 15 until October 31. It is clear, however, that the  
25 vast majority of the creek water is available between March 15 and mid-June in an  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 average year. There are years when storms or a late spring will provide some water  
2 during the balance of the season and these waters are significant to the farming  
3 operation, however, these quantities of water are typically small or of short  
4 duration. Historically, water has been used as it was available, especially for  
5 diversionary stock water.

6 To address the Hillis' exception as to priority date, it has been necessary to  
7 reevaluate the chains of title and the various documents contained in exhibit  
8 DE-15, which relate to water rights. It is obvious from a review of the ownership  
9 records for the Hillis property that no single priority date could be applicable to  
10 the various water rights for use of Robinson Canyon Creek. It is interesting to  
11 note that the only parcel in the various chains of title which is riparian to  
12 Robinson Canyon Creek is the SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M. Therefore,  
13 that is the only parcel for which the Riparian Doctrine would apply.

14 The Referee recommended confirmation of two water rights for Claim No. 01204.  
15 The first is for 0.22 cubic foot per second (cfs); 72.6 acre-feet per year for  
16 irrigation of 11 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, T. 18 N., R. 17 E.W.M.,  
17 with a priority date of January 7, 1896. It is noted that there is a typographical  
18 error in the Referee's Report on Page 165, Line 19: "T. 17 N." is corrected to  
19 read: "T. 18 N." The Referee had erroneously applied the Riparian Doctrine to the  
20 lands in the NW $\frac{1}{4}$  of Section 35, resulting in a priority date of January 7, 1896  
21 based upon the patent date. It is also noted that the place of use described is  
22 smaller than the 11 acres recommended. The Riparian Doctrine is not applicable to  
23 land within Section 35 as that land is not riparian to Robinson Creek, therefore,  
24 the date must be amended.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

The United States issued a patent to the Northern Pacific Railroad for all of Section 35, T. 18 N., R. 17 E.W.M. on January 7, 1896. A deed dated December 17, 1897, conveys the  $N\frac{1}{2}NE\frac{1}{4}$  of Section 35 from Northern Pacific to Edgar Pease. The  $NW\frac{1}{4}$  of Section 35 was sold by Northern Pacific to W. M. Stenson via a deed dated December 30, 1896.

The second right recommended in the Referee's Report under Court Claim No. 01214 has a September 22, 1906, priority date for diversion of 0.07 cfs; 23.1 acre-feet per year for irrigation of 3.5 acres. The place of use is described as being portions of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M. The patent for the SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M. is not in the record, therefore, the Referee will rely upon the chain of title sheet which reflects the patent recording date of September 22, 1906, to Clarence Pease.

In their "Summary of Larry Hillis Claims to Robinson Creek", the Hillis' suggest that the 1891 Manastash Creek decision, Gray, supra speaks to water use within the SW $\frac{1}{4}$  of Section 26. However, Clarence Pease, the property owner at the time of the Decree, is not among the owners listed as a Watt Ditch water user or as one of the ditch developers. Although the Hillis' refer the Court to the Watt Ditch development as foundation for asserting an earlier priority date, the Referee finds no clear connection. Similarly, reference to Edgar Pease, who was a co-developer of the Watt Ditch, seems misguided as Edgar did not own the SW $\frac{1}{4}$  of Section 26 or the NW $\frac{1}{4}$  of Section 35.

C. W. Pease recorded a Water Right Notice on April 7, 1908, claiming a right to 200 inches of the waters of Robinson Canyon Creek. The Notice wording indicates it was for future use of water within the SW $\frac{1}{4}$  of Section 26 and the NW $\frac{1}{4}$  of Section 35, T. 18 N., R. 17 E.W.M. The SW $\frac{1}{4}$  of Section 26 is riparian to Robinson

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

1 Canyon Creek whereas the NW $\frac{1}{4}$  of Section 35 is not riparian. The Chain of Title  
2 reflects a sale of the NW $\frac{1}{4}$  of Section 35 from C. W. Pease to Fred Barker on  
3 October 1, 1904. Therefore, it is not clear what continuing interest C. W. Pease  
4 had in the NW $\frac{1}{4}$  of Section 35 on April 7, 1908, when he filed the Water Right  
5 Notice.

6 During the supplemental hearing, Mr. Hillis amended Court Claim No. 01204 for  
7 the Robinson Canyon Farm. At the original evidentiary hearing, the testimony was  
8 that 192.1 acres had historically been irrigated with water diverted from Robinson  
9 Canyon Creek. Hillis' amended claim asserts that a total of 66.7 acres have  
10 historically been irrigated by diversions from Robinson Canyon Creek within the  
11 northeasterly portion of the Robinson Canyon Farm. The specific fields upon which  
12 creek water is asserted to have been used are described as Fields 1, 2, and 3 of  
13 Tract 785 and Fields 3, 4, 10, 11 and 12 of Tract 4844. Testimony indicates that  
14 all of the identified fields, except Field 12 of Tract 4844, have Kittitas  
15 Reclamation District (KRD) water supplied to them via pipelines. Most of the  
16 fields have sprinkler systems with gravity pressure because the KRD Canal is  
17 significantly higher in elevation.

18 The record created during the supplemental hearing does not support Hillis'  
19 claim that 66.7 acres have been historically irrigated with water from Robinson  
20 Canyon Creek. Both Ecology, via exhibit SE-18, and Mr. Bain, via exhibit DE-17,  
21 describe only the limited acres of irrigation encompassed in the two water rights  
22 recommended for confirmation by the Referee's Report. The Referee notes that the  
23 point of diversion is relatively low on the property and is, in fact, lower in  
24 elevation than some of the fields for which rights are alleged. The ability to

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 gravity irrigate this farm from Robinson Canyon Creek is further restricted by the  
2 hilly fields and the presence of drainage draws.

3 Although Hillis urges confirmation of a single priority date of July 15, 1881,  
4 the record does not support that date. The Referee recommends that the date as  
5 previously set forth in the Report of Referee September 22, 1906, be affirmed for  
6 the land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26 and a date of April 7, 1908, be confirmed for  
7 the fields located within the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 35 based upon the C. W. Pease Notice  
8 of Water Right.

9 Stock have historically been grazed on the Robinson Canyon Farm throughout the  
10 year. The portion of the farm lying north of the County Road and south of the  
11 creek has access for riparian stock water, therefore, Mr. and Mrs. Hillis, under  
12 Claim No. 01204 should be added to the list of claims/claimants recommended for  
13 non-diversionary stock water (Referee's Report Page 148). The property lying south  
14 of the County Road does not have riparian stock water access. Stock water has been  
15 provided to the area via the gravity irrigation ditches whenever creek water was  
16 available. Diversionary stock water has been provided to 50 cow/calf pairs year  
17 around which would require 2 acre-feet per year. During the irrigation season, an  
18 instantaneous quantity of 0.02 cfs would satisfy the stock needs. This quantity  
19 would be incidental to delivery of irrigation water under the 1908 water right.  
20 During the non-irrigation season, 0.25 cfs is deemed to be adequate to carry stock  
21 water into Section 35 (Fields 1 and 2). Although testimony was offered regarding  
22 water necessary for ice bridge formation, the stream would not appear to carry  
23 sufficient flow during severe cold periods to accomplish the desired effect.

24 The remaining issue for the Robinson Canyon Farm is the capacity of the ditch,  
25 which diverts water from the creek. Although no measured flow record exists,  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 Mr. Hillis estimates that the ditch can carry about two-thirds of the maximum  
2 measured during the spring of 1995 in the Killmore Road Farm ditch, therefore, the  
3 ditch capacity would be approximately 2.65 cfs. There is no testimony as to ditch  
4 loss, however, the ditch is relatively short and the irrigated fields are small.  
5 The Referee has concluded that a flow higher than the previously recommended  
6 0.02 cfs; 6.6 acre-feet per year per acre is justified. With flood irrigation and  
7 the short run-off season, a quantity of 0.10 cfs; 8.5 acre-feet per acre (as  
8 calculated by Mr. Bain) would be appropriate. Thus, the total instantaneous flow  
9 diverted through the Robinson Canyon Farm Diversion would be 1.45 cfs and the  
10 annual quantity would be 123.25 acre-feet per year for 14.5 acres. These  
11 quantities represent the total recommended for the Robinson Canyon Farm. The  
12 quantities for the two water rights are set forth as follows:

13 With an April 7, 1908, priority date, 1.10 cfs; 93.5 acre-feet per year for  
14 irrigation of 11 acres and 0.02 cfs; 1 acre-foot for stock water during the period  
15 March 15 through October 31 and 0.25 cfs; 1 acre-foot from November 1 through  
16 March 14. The water is to be used within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, T. 18 N.,  
17 R. 17 E.W.M.

18 With a September 22, 1906, priority date, 0.35 cfs; 29.75 acre-feet per year  
19 for the irrigation of 3.5 acres from March 15 through October 31, within that  
20 portion of the north 450 feet of the east 300 feet of the west 850 feet of the  
21 N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M., all lying south  
22 of the creek. Lines 10 $\frac{1}{2}$ -18 $\frac{1}{2}$  on Page 165 of the Referee's Report and Lines 11 $\frac{1}{2}$ -20  
23 on Page 167 are deleted and replaced respectively by the schedule of rights as  
24 presented on Pages 130 and 131.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       The patent for the NW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M was issued on  
2 March 25, 1891, to Thomas A. Clark. Northern Pacific acquired a patent to all of  
3 Section 27, T. 18 N., R. 17 E.W.M. on January 16, 1896, however, the record  
4 contains a document which establishes that Thomas A. Clark purchased, on contract  
5 from Northern Pacific, the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 27 on January 1, 1881. The earliest  
6 reference to a sale of the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 27 by Northern Pacific is June 6, 1899,  
7 when Thomas Clark received a deed to that eighty acres. The deed from Northern  
8 Pacific to Thomas Shelton is dated February 11, 1903, for the W $\frac{1}{2}$  of Section 27,  
9 T. 18 N., R. 17 E.W.M.

10     Under Court Claim Nos. 00894 and 01705, the Referee recommended confirmation  
11 of a right with a May 4, 1880, priority date for diversion of 0.81 cfs; 267.3  
12 acre-feet per year from Robinson Canyon Creek for irrigation of 40.5 acres within a  
13 portion of the Killmore Road Farm. Hillis took exception to the instantaneous  
14 quantity, acre-feet per year, acres irrigated, season of use, failure of the  
15 Referee to recommend confirmation of a diversionary stock water right and finally  
16 to the lack of a recommendation for a water right from the pond located within the  
17 NE $\frac{1}{4}$  of Section 27, T. 18 N., R. 18 E.W.M. Ecology's exceptions to the Killmore  
18 Road Farm recommendations were addressed earlier in this supplemental report.

19     Hillis amended Court Claims Nos. 00894 and 01705 via testimony and evidence  
20 presented at the Supplemental Hearing. The acres claimed to have been historically  
21 irrigated from Robinson Canyon Creek were reduced from 273.2 to 223.2 including  
22 portions of Fields 4, 6, and 9-18 of Killmore Road farm. Testimony establishes  
23 that stock (80 horses) utilize water flowing through the irrigation ditches and/or  
24 from ponds. Hillis offered into evidence a table of dates and flows of Robinson  
25 Canyon Creek ditch for the period from March 15 through May 30, 1995. The

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 diversion records reflect a peak flow of 4.01 cfs and fairly steady flows for three  
2 weeks. The diversion quantities declined beginning in early April and by May 30,  
3 1995, 1.04 cfs was being diverted into the ditch. The Referee notes that 1995 was  
4 a fairly typical year for spring run-off. A rough calculation based upon the data  
5 suggests that approximately 500 acre-feet of water was diverted between March 15  
6 and May 30, 1995.

7 Testimony provided by Mr. Hillis and Mr. Bain establishes a fairly complete  
8 description of the composite irrigation system currently in use on Killmore Road  
9 Farm. There is, however, very little in the record regarding the historic gravity  
10 flow ditch system as to capacity or location on the property. There is, however,  
11 ample evidence to show that changes in points of diversion and or alignment of  
12 ditches have occurred.

13 Mr. Hillis relies upon the affidavit of Kitsmiller for the priority date of  
14 May 4, 1880, for the entire Killmore Road Farm. Kitsmiller's Water Right Notice  
15 specifically identified the NW $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M. as the lands  
16 upon which the water was to be used. The only RCW 90.14 Water Right Claims filed  
17 (by Edward Tucker and Don Ulmer) are appurtenant to the NW $\frac{1}{4}$  of Section 26.  
18 Therefore, it is clear that the Tuckers and the Ulmers claimed water only for the  
19 lands covered by the Kitsmiller Affidavit which did not include the E $\frac{1}{2}$ NE $\frac{1}{4}$  of  
20 Section 27.

21 The Tucker Water Right Claim (WRC) No. 28943 describes his point of diversion  
22 as being located one-quarter mile westerly from the current point of diversion.  
23 Mr. Ulmer did not describe a point of diversion, however, he did describe the ditch  
24 entry point onto his property which would be in the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26. The ditch  
25 entered his land at the southwest property corner. There is no explanation in the  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 record as to the one mile distance between the diversion described in the  
2 Kitsmiller affidavit and the current diversion on Robinson Canyon Creek. In fact,  
3 there is no evidence to suggest that the original point of diversion was ever  
4 perfected. It is without doubt that irrigation water has been diverted since  
5 pre-1900 and that significant changes have occurred in the creek diversion. Change  
6 of diversions and ditch alignments do affect which lands can be served by a gravity  
7 flow irrigation system.

8 As the result of a property sale on November 3, 1928, from John Killmore to  
9 O. M. Meline, one-quarter of the creek flow was transferred to Meline along with  
10 the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26, T. 18 N., R. 18 E.W.M. Presumably, three-quarters of the  
11 water right remained appurtenant to the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26 as there is no evidence  
12 of the right being changed pursuant to the RCW 90.03.380 change procedures.

13 A water right claim was not filed as required by RCW 90.14 for diversion of  
14 water from the pond located within the NE $\frac{1}{4}$  of Section 27, therefore, any  
15 diversionary right that may have been perfected has been forfeited or relinquished  
16 (see RCW 90.14.071). To the extent that stock have riparian access to natural  
17 ponds, the stockwater stipulation is applicable to the Hillis Claims Nos. 01705 and  
18 00894. Larry O. and Veralene Hillis will therefore be added to the non-diversionary  
19 riparian stock water list on Page 148 of the Referee's Report.

20 In the initial assessment of Court Claim Nos. 00894 and 01705, the Referee  
21 recommended confirmation of a right for 40.5 acres of irrigation, of which 10 acres  
22 are described as being the easterly ten acres of the S $\frac{1}{2}$ NW $\frac{1}{4}$  and the remaining 30.5  
23 acres are located within E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ . This ratio matches the  
24 three-quarter to one-quarter division reflected in the Killmore deed to Meline. The  
25 places of use are also within the NW $\frac{1}{4}$  of Section 26 described in the Kitsmiller

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 Notice and the Ulmer and Tucker Water Right claims. It seems clear that use of  
2 Robinson Canyon Creek water for lands within the NE $\frac{1}{4}$  of Section 27 is not supported  
3 by any evidence of historic use or a water right claim filed as required by RCW  
4 90.14.

5 Remaining issues to consider are the appropriate instantaneous quantity and  
6 the annual quantity. During 1995, considered to be a good water year, Mr. Hillis  
7 measured a maximum diversion of 4.01 cfs. Mr. Hillis testified that serious ditch  
8 losses occur between the KRD canal and the Killmore Farm boundary. Although a  
9 quantity has not been provided, the Referee has concluded that the three-quarter  
10 mile ditch to the west line of Section 26 could be expected to lose 25% of the  
11 diverted water or 1.00 cfs. If we back calculate using the 1995 diversion  
12 measurements, 500 acre-feet diverted minus 125 acre-feet of ditch loss, leaves 375  
13 acre feet for irrigation of 40.5 acres. The Referee then compared the  
14 theoretically applied water to the crop demand as calculated by Mr. Bain (8.5  
15 acre-feet per acre). The 1995 water available seems to have been approximately  
16 equal to the annual demand, however, the seasonal distribution is very poor with  
17 the peak instantaneous quantities available only in the spring.

18 Having considered all of the above, the Referee recommends confirmation of a  
19 May 4, 1880, water right with the instantaneous quantity of 4.00 cfs; 375 acre-feet  
20 per year for irrigation of 40.5 acres within the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , the W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the  
21 E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M. and 25% of the diversion be  
22 confirmed as carriage loss and that the season of use be confirmed from March 15  
23 through October 31 for irrigation and continuously for stock water.

24 Stock water use has historically been a part of the farming operation. The  
25 Referee recommends confirmation of a right for 4 acre-feet per year for the 80 head  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 of horses grazed on the farm year around. The instantaneous quantity of 0.02 cfs;  
2 acre-feet is to be confirmed for the irrigation season coincidental to delivery  
3 of irrigation water. Water availability in the creek under severe winter  
4 conditions is likely to be minimal, however, 0.5 cfs is a reasonable quantity to  
5 overcome ditch loss and ice buildup. The winter stock water season runs from  
6 November 1 through March 14 with a limit of 2 acre-feet. Lines 1-9½ on Page 156 of  
7 the Referee's Report are deleted and replaced by the schedule of rights entry on  
8 Page 109 of this supplemental report.

9

10 COURT CLAIM NO. 00876 -- Ivan Hutchinson  
11 (A)02389 & Mildred Hutchinson

12 COURT CLAIM NO. 01875 -- Vernon G. Meyer  
13 & Ellen F. Meyer

14 Ivan and Mildred Hutchinson and Vernon G. and Ellen F. Meyer filed an  
15 exception to the language used in the Report of Referee for Subbasin No. 8  
describing the water they use as "waste water".

16 The Court granted their exception in Memorandum Opinion Re: Subbasin 8  
17 Exceptions of Ivan and Mildred Hutchinson, Court Claim No. 0876, and Vernon G. and  
18 Ellen F. Meyer Court Claim No. 1875; Theiline Scheumann & Grousemont Farm, Claim  
19 No. 1335, dated January 31, 1995. The Court directed the Referee to remove the  
20 words "waste water" from the portion of the Report of Referee addressing the  
21 Hutchinson and Meyer claims. The Referee amends the Report of Referee for Subbasin  
22 No. 8 to remove the word "waste" on page 103, line 12; page 111, line 23, and page  
23 112, line 3. The Referee recognizes that their rights stem from the Kittitas  
24 Reclamation District and Taneum Canal Company.

25

26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       The Court in its Memorandum Opinion, supra., extended its previous rulings  
2 concerning limiting agreements and use of return flows to all water diverters in in  
3 the basin, stating that an appropriator has the right to recapture used water;  
4 specifically, that water users within the Taneum Canal Company and Kittitas  
5 Reclamation District are able to make a second use of some of the distributing  
6 entities diverted water. The use takes place within the boundaries of the  
7 distributing entity and the rights to that reused water are a matter between the  
8 distributing entities and their contractees.  
9

10      COURT CLAIM NO. 01961 -- James Ogden

11      The Referee recommended confirmation of a water right from a spring under the  
12 riparian doctrine with a priority date of November 14, 1883. The recommendation is  
13 for a domestic supply and one-half acre of irrigation in the quantities of 0.25  
14 cubic foot per second (cfs) and 2 acre-feet per year. The only exception filed  
15 with the Court and subsequently remanded to the Referee for taking additional  
16 testimony related to the place of use. The Department of Ecology (Ecology)  
17 requested that the 20-acre place of use be reduced to better reflect the  $\frac{1}{2}$  acre of  
18 irrigation recommended.  
19

20      During the Supplemental Hearing, additional exception issues were raised by  
21 Ecology and Jeff Slothower, Attorney for Betsy Ogden. Neither Ms. Casey, Assistant  
22 Attorney General representing Ecology, nor Mr. Slothower objected to the expanded  
23 areas of exception. Betsy Ogden testified and offered into evidence a series of  
24 photographs of the spring development, cistern and stock watering facilities. The  
25 Referee has concluded that the record as augmented during the supplemental hearing  
26 provides a far better factual basis upon which a judgment can be rendered than was

27      SUPPLEMENTAL REPORT OF REFEREE  
28      Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 available for the initial Report of Referee. Therefore, the expanded exception  
2 issues have been evaluated and will be addressed in this Supplemental Report to the  
3 Court.

4 Ms. Ogden's exhibits DE-9 and DE-10 were offered in support of the claimant's  
5 view of the character of the water source (i.e., surface water rather than ground  
6 water and use of water for livestock). Also pictured is the pump on the cistern  
7 and the piping system in the pump room. Ogden provided clearly defined markings on  
8 exhibit map SE-1 showing the location of the barn and one-half acre which is  
9 irrigated. Therefore, the Referee has the facts upon which the place of use can be  
10 refined as well as a means to more accurately determine the appropriate  
11 instantaneous quantity. Ms. Ogden also attempted to clarify the water right claim  
12 issue (i.e., the ground water designation on WRC 13059). She testified that the  
13 house is served by a well, not from the spring. No domestic supply comes from the  
14 spring, just year-round stock water and irrigation of one-half acre of grass around  
15 the stable area.

16 Ecology argued that the Court should not confirm a water right for the  
17 facilities being described as a spring since it is actually a shallow well making  
18 WRC 13059 errorless. Ground water is not within the jurisdiction of the Yakima  
19 River Basin Adjudication.

20 During review of the record, the Referee noted what appears to be a  
21 typographical error regarding the instantaneous quantity (i.e., 0.25 cfs). The  
22 logical quantity would be 0.025 cfs, which would more closely reflect the 10  
23 gallons per minute (gpm) reported on WRC 13059. Obviously, the 1½ inch gravity  
24 flow pipe reported in the Ecology Field Investigation Report SE-61 cannot carry  
25 0.25 cfs.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       The spring versus well issue is in fact a coin toss, as typically developed  
2 springs are by definition very shallow ground water intercepts. Here we have a  
3 spring area with a spring box dug into the slope above the spring outbreak. The  
4 water in the spring box is below the land surface and runs via a gravity flow pipe  
5 to the place of use. This technique of developing springs and use of the described  
6 screened enclosure provide better sanitation.

7       Although Ogden is very dependent upon use of the gravity system for stock  
8 water, the Referee recommended that stock water not be confirmed due to the lack of  
9 a statement on WRC 13059 that stock water was a historic use. Domestic use was  
10 recommended for approval, although it is now clear that water is not used or  
11 claimed for in-house domestic supply. The uses claimed are year-round stock water  
12 and one-half acre of irrigation.

13      The critical component in this instance is the intent of Maurice Balcom in  
14 filing WRC 013059. Since there is a domestic well on the property, the Referee  
15 concludes that Mr. Balcom filed WRC 13059 for that well. WRC 013059 indicates that  
16 the well was first used in 1947. That well no doubt replaced the spring as the  
17 water source for the house. The point of withdrawal described on WRC 013059 is  
18 some 300 feet from the point of diversion for the subject spring. The Referee  
19 therefore concludes that the correct recommendation to the Court is to not confirm  
20 a water right for the spring due to a lack of a RCW 90.14 claim for that source.  
21 The Referee's initial recommendation was based upon the misconception that the  
22 spring was being used for domestic supply and that there was no well on the  
23 property.

24      Although a recommendation to deny confirmation of a water right to the spring  
25 appears to result in a hardship for Ogden, it actually does not. Use of the  
26

27      SUPPLEMENTAL REPORT OF REFEREE  
28      Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 developed spring area seems to satisfy the definition used by Ecology for ground  
2 water.

3 Ground water can be used under the exemption clause of RCW 90.44.050, if the  
4 use is less than 5,000 gallons per day and less than one-half acre of noncommercial  
5 irrigation. Use of water for stock would fall within that exemption as would the  
6 grass area which is irrigated. Failure to file a water right claim for this  
7 shallow well would result in loss of the historic priority date due to the waiver  
8 and relinquishment provisions of RCW 90.14, but a new priority date of  
9 July 1, 1974, would be the logical result, due to the permit exemption clause of  
10 RCW 90.44. June 30, 1974, was the end of the filing period for RCW 90.14 claims,  
11 thus RCW 90.44 alone would control on July 1, 1974.

12  
13 COURT CLAIM NO. 01446 -- Robert F. Lapen  
14 & Linda L. Lapen

15 The Referee's Report for Subbasin No. 8 (Thorp) recommends confirmation of a  
16 water right to the Lapens with a June 30, 1885, priority date to 0.0313 cubic foot  
17 per second (cfs); 11 acre-feet per year from the Yakima River. The Lapens, in  
18 association with their attorney Richard Cole, filed exceptions with the Court. The  
19 Lapens concur with the recommended water right, but bring to the Court's attention  
20 two typographical errors in the Referee's Report. The first one pertains to the  
21 description of the lands owned by the Lapens. The Court directed the Referee to  
22 correct the Report at Page 157, Line 19, changing "Section 31" to read  
23 "Section 32." The second error relates to the Lapen's ownership within the SE $\frac{1}{4}$ NE $\frac{1}{4}$   
24 of Section 32, T. 18 N., R. 18 E.W.M. Lapen refers to Page 43, Line 7 of the  
25 Referee's Report which describes the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32. Although the Court  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 directed the Referee to correct this reference to read SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, it is  
2 not appropriate to make that change. Lapan asserts that the sentence is discussing  
3 the 40 acre tract within which his property lies. Clearly, the sentence is  
4 discussing the lands described in the United States Bureau of Reclamation/City of  
5 Ellensburg Agreement of 1913. The Referee therefore has concluded that Lapan's  
6 property is properly described throughout the report with the single typographical  
7 correction as discussed above (Page 157, Line 19).

8

9

10 COURT CLAIM NO. 00931 -- Murray Pacific Corporation  
(A)01750 Roger C. Sparks  
11 & Rita M. Sparks  
Dale Dyk  
Bart G. Bland  
12 Dave Duncan & Sons  
James V. Leishman  
13 Duncan Family Trust  
Douglas A. Dicken

14 Court Claim No. 00931 was filed with the Court by Murray Pacific Corporation  
15 on August 28, 1981. Prior to the evidentiary hearing for Subbasin No. 8 (Thorp),  
16 Murray Pacific sold their ranch to several parties. David Duncan and Sons, Duncan  
17 Family Trust, and High Valley Land, Inc. (Duncan) purchased 919 acres of the Murray  
18 Pacific tract. An Exception to the Report of Referee for Subbasin No. 8 (Thorp)  
19 was filed in behalf of Duncan who was represented by Attorney Jeff Slothower. The  
20 exception relates to the location of the Subbasin boundary through the Duncan  
21 property and to the possible adverse effect that an arbitrary boundary might have  
22 on the claimants' rights to use return flow water. The subbasin boundary exception  
23 along with other exceptions to the Report of Referee for Subbasin No. 11  
24 (Manastash) will be addressed in that Supplemental Report of the Referee. The  
25 Duncans further objected to the Referee's failure to recommend confirmation of a

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 diversionary water right for a spring located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36,  
2 T. 18 N., R. 17 E.W.M.

3 Of the exceptions filed with the Court in relation to Court Claim No. 00931,  
4 the only issue exclusive to Subbasin No. 8 is the unnamed spring located in the  
5 SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36. During the colloquy at the Subbasin No. 8 exceptions hearing  
6 on December 8, 1994, the Court invited council for the Duncans to produce a copy of  
7 a water right claim and have it admitted into the record during the remand hearing.

8 The sole source of water from which a right is asserted by Duncan within  
9 Subbasin No. 8 is an unnamed spring. Court Claim No. 00931 asserts a water right  
10 from the subject spring for irrigation and stock water. The Referee reported to  
11 the Court via the Report of Referee, that no water right claim (Revised Code of  
12 Washington [RCW] 90.14) had been entered into the record for the spring located  
13 within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36, T. 18 N., R. 17 E.W.M. In addition to the lack of  
14 a water right claim, the Referee noted that the record was unclear as to the  
15 claimants' distinction between artesian wells on the property and springs and there  
16 was no evidence of quantification and use patterns for the water. Based upon the  
17 record available, the Referee did not recommend confirmation of a diversionary  
18 water right to Duncan under Court Claim No. 00931.

19 During the remand hearing for Subbasin No. 8, several exhibits were  
20 introduced and admitted in behalf of Duncan's Court Claim No. 00931. Water Right  
21 Claim (WRC) Nos. 051003 and 051004 were identified as exhibits DE-S52 and DE-S51,  
22 respectively. Both of the WRCs are filed pursuant to RCW 90.14.051 under the short  
23 form option and submitted to the Department of Ecology (Ecology) for registration  
24 on December 17, 1973. Selection of the short form option limited the protected  
25 water right to a maximum of 5,000 gallons per day for domestic supply, stock water

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 or up to one-half acre of noncommercial irrigation. The claims were filed by High  
2 Valley Ranch and the source of water indicated on the face of the claims is ground  
3 water. The purpose of use on each claim includes domestic supply, stock water, and  
4 irrigation of lawn and garden which are consistant with the use of the short form  
5 claim. The place of use claimed on WRC No. 051004 is the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 36,  
6 T. 18 N., R. 17 E.W.M. and the place of use for WRC No. 051003 is the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
7 Section 36, T. 18 N., R. 17 E.W.M. No further information is contained on the  
8 claims as to the nature of the source, its location or point of diversion, date of  
9 first use, or quantities of water claimed. The Referee was directed by council for  
10 Duncan to WRC No. 051003 (DE-S52) as the claim filed on the subject spring.

11 Neither WRC No. 051003 or 051004 describe a point of diversion or the  
12 specific source, other than characterizing it as ground water. There are  
13 farmsteads located within each of the described 40 acre tracts that could  
14 reasonably be expected to have an actual ground water source, such as a well. No  
15 explanation is contained in the record as to why the apparent ground water short  
16 form claims should be concluded to be the water right foundation for the unnamed  
17 spring located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36.

18 Testimony provided by Richard Bain at the Subbasin No. 11 evidentiary hearing  
19 on November 21, 1989, Pages 109 and 110, establishes that two artesian wells are  
20 located on the Duncan property which are used exclusively for domestic supply on  
21 the ranch. The Referee must question whether WRC Nos. 051003 and 051004 were  
22 intended for those wells. Mr. Bain also indicated that the Duncan water sources  
23 include springs, although he provided limited information as to the characteristics  
24 of any springs. On Page 118, Lines 8 and 9, the term "artesian springs" is used  
25 and on Lines 12 and 13 of that page we see that the instantaneous amount of  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 diversion for the springs is not measurable, further stating on Lines 19 and 20 on  
2 Page 118, that "Annual rate of diversion is not measurable on the springs".

3 Council characterizes an agreement between W. T. Conant, James McQueen,  
4 et ux., and James Prater dated February 27, 1909, (DE-S53) as authorizing use of  
5 water from the subject spring for domestic supply, stock water, and irrigation by  
6 parties James McQueen, et ux., and James Prater. The agreement provides no place  
7 of use, purpose of use, or quantification of the water used via the then existing  
8 ram pump by W. T. Conant. The agreement, in fact, prohibits use of surplus spring  
9 water for any purpose during the irrigation season, except for domestic supply and  
10 stock water and that only after satisfaction of Conant's needs. The property owned  
11 by Mr. McQueen and Mr. Prater is not described, however, the property of Mr. Prater  
12 would appear to lie east of Section 36 of T. 18 N., R. 17 E.W.M.

13 Packwood Canal Company exhibit DE-143 contains a document which establishes  
14 that W. T. Conant bought the SW $\frac{1}{4}$  of Section 36, T. 18 N., R. 17 E.W.M. from the  
15 State of Washington on December 8, 1903.

16 The spring location marked on exhibit SE-1 is at a point approximately 400  
17 feet north and 500 feet west of the south quarter corner of Section 36, T. 18 N.,  
18 R. 17 E.W.M. within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36. According to testimony, the spring  
19 water discharges from an 8-inch diameter woodstave pipe at an estimated rate of  
20 0.75 to 1.0 cubic foot per second (cfs) with a constant flow year around. The  
21 source of the water in the pipe is unknown. The discharge flows into Menastash  
22 Ditch within a short distance and is subsequently used by Duncan in conjunction  
23 with Manastash Creek water for irrigation and stock water in Section 36.

24 If there is in fact an irrigation or diversionary stock water use which  
25 pre-dates 1917, a water right claim would have been required to protect that right

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 from relinquishment (RCW 90.14.071). Although WRC No. 051003, or No. 051004 as an  
2 alternate, are asserted by the claimant to be the required filing, the Referee has  
3 concluded that other than the commonality of Section 36, T. 18 N., R. 17 E.W.M.,  
4 there is no other basis upon which the Court could determine either one of the two  
5 short form claims were indeed a filing on the unnamed spring located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
6 of Section 36. The Referee, therefore, recommends to the Court that no  
7 diversionary stock water or irrigation right be confirmed for the unnamed spring  
8 source asserted under Court Claim No. 00931.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1  
2      COURT CLAIM NO. 00785 -- Packwood Canal Company, Inc.  
3                        (A)04801

4      Exceptions to the Report of Referee for Subbasin No. 8 (Thorp) were filed in  
5 behalf of Packwood Canal Company by their attorney Hugh Spall. Packwood excepts to  
6 the denial of water rights for the Yakima River, Robinson Canyon Creek, an unnamed  
7 creek, Middle Creek and Fogey Creek. Packwood asserts substantial compliance with  
8 the requirements of RCW 90.14 as to beneficial use of Yakima River water and  
9 requests an opportunity to augment the record regarding quantification and historic  
10 use for each of the sources claimed.

11     The City of Ellensburg Notice of Appropriation dated June 27, 1903, was for  
12 diversion of 150 cfs from the Yakima River to furnish power for general city  
13 purposes to be used in the City of Ellensburg. Thus, at its inception the canal  
14 was to be used exclusively for power generation. As the City began to negotiate  
15 for the necessary ditch and power house right of way, issues of interrupted  
16 irrigation systems arose. A series of deeds are in the record, and described in  
17 summary below, which reflect the agreements negotiated between the City and the  
18 various land owners over whose land the canal crossed:

19  
20      EXHIBIT NO.      NAME      DATE

21      DE-128      A.B. Hawn      October 30, 1903  
22      Flume over canal 40" capacity; for portions of Sections 13 and 24, at  
north end of the canal

23      DE-129      R.E. Wallace      February 3, 1909

24      DE-133      Ed Pease      June 17, 1911

25      6" pipe discharge into canal and an equal diversion from canal; for  
portions of Section 19; DE-133 acknowledges sale of land to Wallace  
26      along with 40" from canal; Pease retains 60" from canal. Therefore,  
total diversion from canal is 100".

27      SUPPLEMENTAL REPORT OF REFEREE  
28      Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 DE-130 Ed Pease December 26, 1903  
2 DE-132  
3 DE-133  
4 Diversions of 100" to replace intercepted water and two flumes over  
canal, 150" each; for a portion of Section 19 (DE-133 divided 100",  
60" for land Pease retained, 40" for land sold to Wallace, see above)

5 DE-142 Burt Pease September 28, 1903  
6 Two 12" flumes over canal; 25" water box on canal, to replace water  
intercepted by canal; for a portion of Section 32, near powerhouse

7 DE-137 Joseph J. Hanlon January 4, 1904  
8 Three flumes over canal and replace 100" of intercepted West Side  
ditch water; for a portion of Section 30

9 DE-138 W.A. Stevens October 3, 1903  
10 DE-139

11 Three flumes, 150" each and allow diversion of 5 cfs from canal of  
intercepted water; for portions of Section 29 and 30

12 DE-140 W.A. Stevens August 25, 1903  
13 City to construct drain; portion of Section 32

14 DE-141 J.N. Burch August 8, 1903  
15 Two flumes 100" each; conveyed to city all intercepted water except  
500" which could be diverted from canal for portions of Section 29 and  
32

16 DE-135 J.E. Rego October 27, 1903  
17 Three flumes 150" each; limited to 300" for irrigation and stock  
purposes from canal April 1 - July 10; 175" between July 10 and  
November 1; canal to intercept total flow of Cabin Creek to prevent  
flood water damage on grantors land below canal; for a portion of  
NE $\frac{1}{4}$ SE $\frac{1}{4}$  and NE $\frac{1}{4}$  of Section 30 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19

18 DE-131 J.E. Rego June 30, 1911  
19 Conveyed land, retaining right to farm portions of Section 30 and 19

20 DE-134 J. E. Rego April 27, 1911  
21 City agrees to maintain a level of water in the canal sufficient  
during irrigation season to irrigate the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Sec. 19 lying north  
and east of the canal

22 The agreements predominantly deal with methods of maintaining  
23 pre-existing irrigation practices on the property through which the canal  
24 was being constructed. This was to be accomplished by either constructing  
25

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 flumes over the canal or allowing the canal to intercept existing streams or  
2 ditches and placing diversions in the canal to release the intercepted  
3 water. Additionally, the Stevens, J. N. Burch and J. E. Rego agreements,  
4 besides addressing existing water sources, also allow for the withdrawal of  
5 water from the canal without identifying that it is to replace intercepted  
6 water being used by the landowner, leading the Referee to believe that an  
7 additional right was being established beyond that already held by the  
8 landowner. One agreement with J. E. Rego, DE-134, specifically required  
9 that the City of Ellensburg would maintain a level of water in the canal  
10 sufficient at all times during the irrigation season to enable the  
11 irrigation of lands in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, with water addressed in  
12 earlier deeds (presumably DE-131 and 135).

13 The other agreements that discuss only the need to construct flumes or  
14 allow for the withdrawal of water from the canal as replacement for  
15 intercepted water lead the Referee to conclude that no additional rights  
16 were established beyond those already held by the landowner, i.e., no right  
17 to use the water diverted from the Yakima River. Packwood Canal Company  
18 asserts that the intercepted water was replaced with Yakima River water.  
19 Their position is that the intercepted water is swept downstream so the  
20 water withdrawn from the canal in replacement must be from another source.  
21 There is no information in the record that would support that conclusion,  
22 nor was there sufficient evidence presented that would allow the Referee to  
23 conclude that rights to use Yakima River water had been established for the  
24 lands then owned by A. B. Hawn (no right is being asserted for this land),  
25 R. E. Wallace (NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 19, now owned by Grousemont), Ed Pease (SW $\frac{1}{4}$ NW $\frac{1}{4}$   
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 of Sec. 19, now owned by Grousemont), Burt Pease (NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec. 32, portion  
2 now owned by Brunson), and Joseph J. Hanlon (E $\frac{1}{2}$ NE $\frac{1}{4}$  of Sec. 30, now owned by  
3 Black). However, it is evident that water rights for these lands had been  
4 established prior to 1903 for use of streams that were intercepted by the  
5 canal.

6 In 1913, the U.S. Bureau of Reclamation and the City of Ellensburg  
7 signed an agreement that recognized that the city's original 150 cfs  
8 appropriation for power purposes from the Yakima River was senior in  
9 priority to the 1905 Federal withdrawal of the unappropriated surface waters  
10 in the Yakima Basin. The city acknowledged that the Federal withdrawal had  
11 priority over any rights the city may claim in excess of 150 cfs in its  
12 municipal power ditch, but under the terms of the agreement would be allowed  
13 to divert for power purposes up to an additional 600 cfs. The city also  
14 agreed to "return the diverted water into the Yakima River, together with  
15 all accessions to the flow by seepage; subject, however, to such water  
16 rights for irrigation as may now be vested." The agreement named the  
17 persons and lands to which the rights were appurtenant are as follows:

18 J. E. Rego - portions of the E $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19 and the  
19 NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 30

20 John Burch - portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29 and the  
21 NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32

22 Mrs. Hanna E. Wallace - portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 and  
23 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18

24 W. A. Stevens - portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29

25 Ed. Pease - portions of SW $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19

26 Burt Pease - portions of NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       The Referee believes that the intent of this portion of the agreement  
2 was to prevent the city from allowing withdrawals from the canal for any new  
3 irrigation uses, so that the water diverted from the Yakima River and  
4 seepage water into the canal would be discharged into the river, save any  
5 water used on the lands listed in the agreement. The landowners listed in  
6 the 1913 agreement all had pre-1913 agreements with the city that allowed  
7 for the withdrawal of water from the canal. The Referee estimates that a  
8 total of approximately 424 acres were identified as being potentially  
9 irrigated with water from the canal in 1913. The Referee does not believe  
10 this agreement addressed in any way the water rights of landowners whose  
11 water was flumed over the canal.

12      Subsequent to the 1913 agreement, a decision was made not to maintain  
13 the flumes over the power canal. The previously flumed water was in many  
14 cases allowed to flow directly into the canal and the water was rediverted  
15 to the irrigated lands to the east. The dates when this occurred at the  
16 various locations is not in the record.

17      On February 4, 1957, the City of Ellensburg and William Packwood et.  
18 al. signed two stipulations which settled civil actions initiated by the  
19 city, regarding the city's plans for abandonment of the Ellensburg Power  
20 Canal, and the following day, the city signed a quit claim deed transferring  
21 to Packwood Canal Company Inc. all right, title, and interest in the real  
22 estate upon which the headworks, canal and powerhouse were constructed.

23      On August 17, 1972, the Department of Ecology (Ecology) approved a  
24 change of point of diversion and place of use for 70 cubic feet per second  
25 of the City of Ellensburg's claimed Yakima River water right. The change

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 authorizes transfer of a 70 cfs power generation right to the Kittitas  
2 Reclamation District (KRD 54). As a condition of the change approval, the  
3 City of Ellensburg relinquished all their remaining interest in the 150 cfs  
4 Yakima River appropriation (KRD 50; items 1, 4, and 5). The record does not  
5 contain sufficient information to assist the Referee in determining whether  
6 this relinquishment could have any affect on the rights then held by  
7 Packwood Canal Company or its individual patrons.

8       As best the Referee can determine with the evidence presently in the  
9 record, the following land could have had a right to Yakima River water  
10 conveyed through the Packwood Canal: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 29 (now owned by Brunson and small holdings); the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
12 Section 32 (now owned by 3 Bar G and Brunson); the E $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
13 Section 19 (now owned by Grousemont) and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30 (now owned  
14 by 3 Bar G); all lying east of the Packwood Canal. Approximately 121 acres  
15 are being irrigated from Packwood Canal within the lands that the Referee  
16 believes could have had rights established for use of water from the Yakima  
17 River. The priority date for those lands would be the date the city filed  
18 an agreement with the landowner to provide water from the canal. Since the  
19 agreements also require use of flumes or replacement water, the lands also  
20 appear to have had existing rights to creeks west of the canal.

21       Turning to the substantial compliance argument by Packwood, although  
22 Packwood Canal Company filed twelve separate water right claims with Ecology  
23 on June 26, 1974, in response to the requirements of RCW 90.14, none of  
24 those claims describe on its face use of Yakima River water. Each of the  
25 Water Right Claims No.'s 124574 - 124585 include an identical attachment

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1      titled "Supplement to Water Right Claims," for the Packwood Canal Company,  
2      Frank Gregerich Jr., President. Mr. Gregerich also signed each of the  
3      twelve water right claims referenced above.

4                Packwood asserts, via testimony of Tom Brunson, that the information  
5      contained on the supplement sheet was provided by Packwood with the intent  
6      to file a claim for use of Yakima River water. Tom Brunson testified that  
7      he was the president of the Packwood Canal Company at the time the water  
8      right claims were prepared and submitted to Ecology, however, the water  
9      right claims on their face and on the supplement state that Frank Gregerich  
10     Jr. was the president.

11               Seven of the claims filed by Packwood are for underground drain  
12     systems which discharge into the Packwood Canal. The other five were filed  
13     on Robinson, Fogey, Hatfield Canyon, an unnamed creek and Middle Creek.  
14     Each of the claims, including the ground water claims, has attached to it  
15     the Packwood Supplement Sheet. A literal reading of the Supplement  
16     indicates that it presents a brief history of the Packwood Canal. It was  
17     included specifically in response to item number 6 on the claim form (legal  
18     description of lands on which the water is used). The closing paragraph of  
19     the Supplement describes the relationship of the individual Packwood Canal  
20     Company claims to each other. The first, third, fourth and seventh  
21     paragraphs set forth below contain the essence of the supplement sheet:

22               "Beginning in 1903 the City of Ellensburg obtained rights of way and  
23     constructed a canal for power generation purposes. The canal took  
water from the Yakima River in the E $\frac{1}{2}$ NE $\frac{1}{4}$  Section 13 Twp. 18 N. Rge. 17  
24     E.W.M. and terminated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32 Twp. 18 N. Rge. 17  
E.W.M."

1        "The canal intercepted landowner's irrigation systems which provided  
2        water to lands north and east of the canal and south and west of the  
3        Yakima River."

4        "As a consideration in the conveyance of canal rights of way and in  
5        subsequent agreements the landowners required that the City provide  
6        them with the water to which they were entitled by diversions from the  
7        canal or by flumes across it."

8        "This water right claim is one of 12 claims filed by the Company and  
9        which are a summary of the individual water right claims filed by the  
10      land owners using water from the canal system from the various sources  
11      and points of diversion shown."

12      Packwood attributes to the supplement sheet statements regarding City  
13      of Ellensburg water delivery commitments that are not correct. The  
14      following statement by Packwood is attributed to the supplement sheet,  
15      "Packwood, as successor in interest to the City of Ellensburg was fulfilling  
16      the City's obligation to divert and deliver Yakima River water to its  
17      shareholders for the purpose of replacing waters intercepted by the canal."

18      The Supplement Sheet does not contain that language or any language  
19      regarding delivery of Yakima River water for irrigation and makes no  
20      reference to any instantaneous or annual quantity of river water. The  
21      supplement does say that the City power canal intercepted landowner's  
22      irrigation systems. It also states that by individual agreements,  
23      arrangements were made to flume the existing irrigation systems over the  
24      canal or to allow diversions from the canal to replace intercepted water.

25      As explained in paragraph three of the supplement sheet, the City agreed  
26      only to provide the irrigators with the water to which they were previously  
27      entitled. The Referee has earlier in this report discussed the various City  
28      of Ellensburg/land owner agreement documents. The Referee believes that the  
      supplement was Packwoods attempt to identify the location of the canal and

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 explain the practice of intercepting creek water and delivering the  
2 intercepted water to the entitled property owners.

3 Packwood urges the Court to conclude that on each of the twelve RCW  
4 90.14 Water Right Claims that the Yakima River was intended to be added as  
5 an alternate source to the one named. By this line of reasoning, Packwood  
6 contends that the lack of instantaneous and annual quantities on the summary  
7 sheet, for the Yakima River, would be overcome as they would be identical to  
8 the primary named sources. If this scenario is adopted, the composite  
9 Yakima River claim would equal the twelve water right claims, or 45 cubic  
10 feet per second. Packwood asserts a Yakima River water right of 150 cfs;  
11 although the record contains no data as to current or historic quantities  
12 diverted from the Yakima River. Packwood simply refers to the City of  
13 Ellensburg Notice of Appropriation for 150 cfs for power generation. At no  
14 point does the supplement state that Yakima River water is being diverted.

15 It is noteworthy how meticulously Packwood completed twelve water  
16 right claims, including seven on ground water. The Court is urged to  
17 presume that Packwood would deliberately relegate their Yakima River claim  
18 to, at best, an imprecise and incomplete, filing. The Referee respectfully  
19 recommends to the Court that Packwood be denied as to substantial compliance  
20 with RCW 90.14 for the Yakima River claim.

21 Packwood also excepted to the lack of confirmation of a water right  
22 for use of Fogey Creek, Robinson Canyon Canyon Creek, Middle Creek and an  
23 unnamed creek. Other subbasin claimants, including Packwood Canal Company  
24 patrons, during the presentation of their own claims testified about the  
25 history of irrigated agriculture within the service area of Packwood Canal.  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 The record from both the initial hearing and the supplemental hearing for  
2 claimants whose lands lie above the Packwood Canal contains numerous  
3 exhibits and extensive testimony establishing that local ranches had been  
4 fully developed many years prior to the Ellensburg Power Canal's  
5 construction. Water rights for use of the creeks intercepted by Packwood  
6 Canal were not established by the canal company or the City of Ellensburg,  
7 but by the individual landowners before agreements were executed for  
8 obtaining easements prior to construction of the canal. Testimony and the  
9 various deeds explain that the Ellensburg Power Canal merely served as a  
10 collection system for natural flow and return flow. Construction of the  
11 canal allowed development of revised conveyance systems on the various farms  
12 which would efficiently distribute water to previously irrigated fields.  
13 The record suggests that the canal in the vicinity of the J.E. Rego farm was  
14 not yet built in 1911. Any water rights which are ultimately confirmed for  
15 use on lands within the Packwood service area are based upon rights  
16 perfected by the individual property owners prior to the City of Ellensburg  
17 agreements.

18 Packwood is asserting that Middle Creek and an unnamed creek in  
19 Section 32 are two water sources which were originally flumed over the  
20 canal. The Referee did not initially recommend confirmation of a water  
21 right due to uncertainty over location of these water sources and lack of  
22 evidence of historic use. At the supplemental hearing the testimony was  
23 that Middle Creek flows into Packwood Canal in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32.  
24 The 90.14 claim filed for Middle Creek was purported to contain a  
25 typographical error, thereby erroneously stating that the diversion was in  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. An exhibit entered into the record is an aerial  
2 photo which also purports to show the location of Middle Creek; however, on  
3 the aerial photo the creek is shown as being in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32,  
4 emanating out of an irrigated field along Robinson Canyon Road, south of  
5 Hatfield Canyon Creek. The location of Middle Creek shown on the aerial  
6 photo, with no natural drainage above the creek, would lead the Referee to  
7 conclude that only return flow waters would be in the creek. There is a  
8 natural drainage above Packwood Canal, which meets the canal in the SE $\frac{1}{4}$ NW $\frac{1}{4}$   
9 of Section 32, which could actually be Middle Creek, but due to the  
10 contradictory evidence, the Referee cannot make that conclusion. The  
11 unnamed creek is also marked on the aerial photograph and is adjacent to the  
12 Thorp Highway in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32. This unnamed creek also begins  
13 in irrigated fields with no natural drainage that obviously feeds the creek.  
14 This again leads the Referee to believe it is fed from return flow waters.  
15 Therefore, the Referee does not recommend that rights be confirmed for these  
16 two sources.

17 Packwood Canal Company is asserting rights to use several underground  
18 drains that discharge into the canal. Evidence was presented to show that  
19 these drains discharge into the canal during the winter months when their  
20 should not be return flows contributing to the flow. However, the flow of  
21 these drains diminishes in the winter and they could be capturing shallow  
22 ground water in the area. Of course, ground water is not being adjudicated  
23 in this proceeding. The Referee is also aware that Taneum Canal carries  
24 water into the area during the winter months, which could be contributing to  
25 the flow in the drains. There also is nothing in the record to show when  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 these drains might have first been used. The RCW 90.14 claims filed for the  
2 drains indicate dates of first use in the 1950's through 1970's. In order  
3 for there to be an existing right for uses initiated during that time period  
4 a permit or certificate should have been obtained through the procedures in  
5 RCW 90.03 or 90.44.

6 Packwood Canal Company is asserting a right to waters from Fogey  
7 Creek. The only canal company patron with land that could have reasonably  
8 been irrigated with Fogey Creek water prior to construction of the canal is  
9 Grousemont Farms. Part of the evidence put on in support of Grousemont  
10 Farms' own claim was a map of the farm showing the source of water used to  
11 irrigate each of their fields. Grousemont Farms is independently asserting  
12 a right for Fogey Creek for land they own in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  of  
13 Section 19 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18, which are irrigated with creek  
14 water piped over the canal. The Grousemont lands in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  and a  
15 portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 19 are irrigated with water delivered by  
16 Packwood Canal. Fogey Creek dumps into the canal near the southeast corner  
17 of Section 13, T. 18 N., R. 17 E.W.M. A takeout near the northwest corner  
18 of Section 19 withdraws water from the canal for irrigating the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
19 Section 19, where 15.2 acres are irrigated. The Referee believes this is  
20 the only land now owned by Grousemont and irrigated from Packwood that would  
21 logically have been irrigated from Fogey Creek prior to construction of the  
22 canal. The rest of the land irrigated with water from Packwood is in the  
23 vicinity of Robinson Canyon Creek. Grousemont Farms is irrigating  
24 approximately 71.5 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 19 with water  
25 delivered from Packwood Canal.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       3 Bar G Ranch irrigates approximately 93 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of  
2 Section 19 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30. J. E. Rego was the owner of  
3 Section 19 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30 in 1903 and signed the agreement  
4 reflected in DE-135. It is apparent from that agreement that water  
5 originating west of the canal was being used to irrigate the Rego land, three  
6 flumes to each carry 150 inches of water (3 cfs), for a total of 9 cfs, were  
7 to be constructed. Rego was also allowed to withdraw from April 1 to  
8 July 10 100 inches of intercepted water and from July 10 to November 1 75  
9 inches of intercepted water. Given the lay of the Rego land, either Fogey  
10 Creek or Robinson Canyon Creek water could have been used to irrigate  
11 different portions of the Rego land.

12      The only other land within the Packwood Canal Company service area  
13 that the Referee could reasonably conclude might have been served by  
14 Robinson Canyon Creek is the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 30, was owned by Dale and  
15 Jewel Black at the time of evidentiary hearing (Douglas Dickens has since  
16 been substituted for the Blacks). That land was owned by Joseph J. Hanlon  
17 in 1904 when an agreement, DE-137, was signed with Ellensburg. That  
18 agreement required construction of three flumes, undefined size, and allowed  
19 for the withdrawal of 100 inches of West Side Irrigating Company water that  
20 was intercepted by the canal. The Dickens irrigate 68 acres with Packwood  
21 water. They still receive West Side water for 9 acres. The Ellensburg Golf  
22 Club buys water from Packwood and irrigates the golf course in the W $\frac{1}{2}$ W $\frac{1}{2}$  of  
23 Section 29 with water delivered through the canal. They are not a  
24 shareholder in the canal company and their exact relationship with the canal  
25 company is not real clear. The golf course lies within land that was owned  
26

27      SUPPLEMENTAL REPORT OF REFEREE  
28      Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 by W. A. Stevens in 1903 and the Stevens agreement provided for three flumes  
2 to serve portions of Sections 29 and 30 and use of 5 cfs of intercepted  
3 water from the canal. However, it is not clear to the Referee what water  
4 would have historically been used on this land needing to be flumed over the  
5 canal or intercepted by the canal. Robinson Canyon Creek is over a half  
6 mile away from the land to the northwest and Hatfield Canyon is downdrainage  
7 quite a ways from the land.

8       Richard Bain measured the flow in Fogey Creek where it is intercepted  
9 by Packwood Canal in March of 1995 in order to determine the flow in the  
10 creek when it is least affected by return flows or imported water. He  
11 measured flows of 13.9 cfs on March 14, 1995 and 6.57 cfs on March 31, 1995.  
12 The Referee, however, believes these figures are not reflective of strictly  
13 natural flow. Taneum Canal Company diverts large quantities of water from  
14 Taneum Creek during winter months for stock watering. Conveyance water is a  
15 significant portion of the water diverted. The Taneum Canal ends at  
16 Robinson Canyon, which is downstream from Fogey Creek. During testimony,  
17 Mr. Bain acknowledged that the flow he measured in Fogey Creek could have  
18 been influenced by Taneum Creek water and, therefore, would not truly  
19 reflect only Fogey Creek water. The Fogey Creek flow at the point measured  
20 by Mr. Bain is used by Grousemont Farms and any remaining water in the creek  
21 flows into the Packwood Canal. Mr. Bain measured the flow in Robinson  
22 Canyon Creek in March of 1995 at 22.7 cfs and 19.5 cfs. As with Fogey  
23 Creek, these flow measurements could have reflected imported Taneum Creek  
24 water.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       The Referee finds that a total of 248 acres are being irrigated in  
2 areas where the Packwood Canal could have picked up Fogey Creek and/or  
3 Robinson Canyon Creek. Those are the only two named surface water sources  
4 west of the canal that could have been carried in the flumes described in  
5 the various agreements and deeds previously discussed. The Rego agreement  
6 reflects use of up to 11 cfs from April 1 to July 10 and 10.5 cfs from July  
7 10 to November 1. The Hanlon agreement did not specify the size of the  
8 flumes. However, it would not be unreasonable to presume that 3 cfs would  
9 have been used to irrigate the 68 acres. The smallest flume size identified  
10 in the agreements that mention the size of the flume is 100 inch capacity.  
11 Recognizing that the measurements by Mr. Bain may reflect some imported  
12 water, that is still the best information available to the Referee.  
13 Robinson Canyon Creek flows substantially more than Fogey Creek very early  
14 in the spring, but both creeks decline quickly as spring progresses, with  
15 natural flow being replaced by return flows. The Referee believes that only  
16 one of the flumes described in the Rego agreement would have carried Fogey  
17 Creek water. Therefore, it is recommended that rights be confirmed for the  
18 diversion of 1 cfs from Fogey Creek and 11 cfs April 1 to July 10 and 10.5  
19 cfs from July 10 to November 1 from Robinson Canyon Creek into Packwood  
20 Canal. Recognizing that this instantaneous quantity will only be available  
21 for a short period of time and then will decrease rapidly, the Referee  
22 recommends an annual quantity of 744 acre-feet per year for the irrigation  
23 of 248 acres. Although it is clear the rights were established prior to  
24 execution of the first agreements in 1903, there is nothing in the record to  
25 reflect what the date of first water use should be. At this point, due to  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 the reconfiguration of the creeks and their interception by the canal, it is  
2 very difficult to determine which lands might have been riparian to the two  
3 creeks at the time of settlement.

4 Therefore, the Referee will use June 30, 1903, as the date of priority  
5 for these rights. It is recommended that a right be confirmed for the  
6 diversion from Robinson Canyon Creek of 11 cfs from April 1 to July 10, 10.5  
7 cfs from July 11 to November 1, 699 acre-feet per year for the irrigation of  
8 233 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 19, NW $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 30,  
9 all being northeast of the Packwood Canal and southwest of the Yakima River.  
10 The point of diversion for Robinson Canyon Creek is at a point 800 feet  
11 north and 800 feet west of the south quarter corner of Section 19, T. 18 N.,  
12 R. 18 E.W.M. It is recommended that a right be confirmed for the diversion  
13 from Fogey Creek of 1 cfs, 45 acre-feet per year for the irrigation of 15.2  
14 acres in that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 lying east of the Packwood  
15 Canal and west of the pond. The point of diversion for Fogey Creek shall be  
16 1200 feet north and 300 feet west of the southeast corner of Section 13,  
17 T. 18 N., R. 18 E.W.M.

18 The remainder of the Packwood Canal Company service area in Sections  
19 29 and 32 is located such that the only water course west of the canal that  
20 could reasonably have been expected to serve them was Hatfield Canyon Creek.  
21 In the Subbasin No. 11 Report of Referee, the Referee recommended  
22 confirmation of a water right to Packwood for use of Hatfield Canyon Creek  
23 and the canal company did not except to that recommendation. Claimants  
24 Thomas and Kathleen Brunson filed an exception to that recommendation, which  
25 will be addressed in the Supplemental Report of Referee for Subbasin No. 11.  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

COURT CLAIM NO. 01208 -- Gene Panattoni  
& Sally Panattoni

The Referee recommended confirmation of 0.02 cubic foot per second (cfs) and 1 acre-foot per year from a spring for a domestic supply to include  $\frac{1}{4}$  acre of lawn and garden irrigation. The place of use described in the Referee's Report includes the entire Panattoni ownership which is the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M., with the exception of the west 1,018.5 feet thereof and the County Road right of way. The Department of Ecology (Ecology) filed an exception with the Court which urges reduction of the place of use to a size more appropriate to the  $\frac{1}{4}$  acre confirmation. On June 16, 1995, a stipulation was filed with the Court whereby Ecology and the Panattonis agree to revision of the Referee's Report to reflect the following legal description: The North 300 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M. in the County of Kittitas, State of Washington; except the West 1,018.5 feet thereof and Except Right of Way of County Road along the South Boundary. Ecology withdrew its exception upon entry of the stipulated agreement.

The Referee's Report shall be amended on Page 125, Lines 15-17 and on Page 159, Lines 10 and 11 to reflect the legal description stipulated to by Ecology and the Panattonis.

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1  
2     COURT CLAIM NO. 00738 -- Peoples National Bank of Washington

3         The original Statement of Claim No. 00738<sup>1</sup> filed with the Court was submitted  
4 by John Penovich. Peoples National Bank of Washington acquired the property and  
5 was substituted as the claimant on May 30, 1986. A bank merger resulted in a name  
6 change to U. S. Bank of Washington during June of 1992, however, no substitution  
7 was initiated. Prior to the bank merger and name change, Ronald and Margaret  
8 McMillan purchased the ranch via contract dated April 24, 1987, without  
9 substitution as the claimant.

10         Richard T. Cole, attorney for the McMillans, filed exceptions with the Court  
11 asserting substantial compliance with RCW 90.14. The Court denied the substantial  
12 compliance exceptions and remanded Court Claim No. 00738 to the Referee to take  
13 additional evidence concerning location of the spring being used and the location  
14 of the homesite and lawn and garden area irrigated from the spring. The Court  
15 ruled that the only right that may have been protected through filing of Water  
16 Right Claim (WRC) No. 160627 was those uses identified in RCW 90.14.051; i.e.  
17 domestic supply, stock watering and the irrigation of up to one-half acre of lawn  
18 and noncommercial garden.

19         Appearing at the supplemental hearing to testify in support of the claim was  
20 Richard Bain, a consulting engineer hired by the claimants. He testified to  
21 measuring the flow of a spring area adjacent to Page Canyon Creek within the  
22

---

23  
24         <sup>1</sup>Due to a clerical error, the Order on Exceptions refers to Court Claim No.  
25 00829, rather than 00738, which is the claim number cited in the claimant's  
exception.

1 McMillan property. The measurable flow from several seeps was in the range of 1  
2 gallon per minute (gpm) of combined flow. It appeared to Mr. Bain that there had  
3 never been a pipeline from the spring box. The spring area simply discharges to  
4 the Page Canyon Creek channel which is a short distance away from the spring.  
5 Mr. Bain did not provide a location for the spring other than stating it was up  
6 gradient from the farmstead and adjacent to Page Canyon. The spring is also  
7 apparently up gradient from the uppermost of five on channel ponds.

8       Mr. McMillan was not able to appear at the supplemental hearing. An Affidavit  
9 of Ronald McMillan, Court Claim No. 0829 (wrong claim number was cited) dated  
10 May 26, 1995, was entered as exhibit DE-S28. It stated that a spring located  
11 within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 22, T. 18 N., R. 17 E.W.M. contributes to a stream  
12 which runs easterly through the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 22. There is considerable  
13 information about use of the spring for commercial irrigation which will be  
14 discounted because the only matter remanded was related to use of the spring for  
15 domestic supply and associated lawn and garden irrigation and stock watering. The  
16 affidavit concludes with a statement that the spring is also used to water one-half  
17 acre. The location of the one-half acre is not provided.

18       Submitted on September 23, 1994, as part of Mr. McMillan's exception is a  
19 Certificate of Ronald McMillan Regarding Claim 738, to which Mr. McMillan attached  
20 a map marked Exhibit A, on which he has marked the location of the spring on which  
21 WRC No. 160627 was made. The spring location marked on the map is within the  
22 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 16, T. 18 N., R. 17 E.W.M. The certificate states that the  
23 spring runs in a southeasterly direction until it runs into Page Canyon in  
24 Section 22.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 Ecology's investigation report for Claim No. 0738 identifies a spring located  
2 approximately 1150 feet south and 600 feet east from the northwest corner of  
3 Section 22 which is within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 22. The report states that the  
4 spring flows into a spring box which discharges into Page Canyon which flows  
5 easterly into a man-made pond. The Referee believes this is the same spring  
6 development testified to by Mr. Bain. There has been no evidence presented either  
7 in Mr. McMillan's statements or Mr. Bain's testimony of a system that would serve a  
8 homesite, nor has there been any testimony about the location of a homesite or the  
9 one-half acre of lawn and garden irrigation.

10 The record continues to be deficient in supplying the necessary elements to  
11 support a recommendation that a water right be confirmed; i.e. specific location of  
12 the spring, location of the homesite and lawn and garden area that is served from  
13 the spring, description of system by which water is delivered, quantification of  
14 the quantity of water used, and priority date asserted. Several different patents  
15 and homestead certificates were submitted at the initial hearing; however, without  
16 knowing where the water is used for domestic supply, the Referee cannot determine  
17 which is applicable. Additionally, if it is on land which was patented to Northern  
18 Pacific Railroad, information is needed concerning when the railroad sold the land  
19 and a homesite might have been constructed.

20 The Referee must again recommend that a water right not be confirmed under  
21 Court Claim No. 00738 due to the above described deficiencies.  
22  
23  
24  
25  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1  
2 COURT CLAIM NO. 01335 -- Theiline P. Scheumann  
3  
4

5       Theiline P. Scheumann, owner of Grousemont Farms, filed exceptions with the  
6 Court regarding the Referee's Report for Subbasin No. 8, Thorp. Lawrence E.  
7 Martin, Attorney for Ms. Scheumann, requested that the Court remand claim 01335 to  
8 the Referee for the taking of additional testimony. The record regarding early  
9 chain of title and identification of sources, quantities and acres irrigated within  
10 the various parcels was lacking; therefore, the Referee had not recommended  
11 confirmation of water rights. Mr. Bob Mundy, manager of Grousemont Farms and  
12 Richard C. Bain, P.E., a consulting engineer hired by the claimant, testified at  
13 the supplemental hearing.

14       Grousemont diverts water from Fogey Creek, Robinson Canyon Creek and an  
15 unnamed spring for irrigation of 357.3 acres. Supplemental irrigation water is  
16 obtained from West Side Canal Company for all of the lands served by Robinson  
17 Canyon Creek. Return flow (project and foreign non-project) water is a significant  
18 component of the annual water supply for irrigation of all the fields. Grousemont  
19 is not asserting water rights to foreign or project return flow water in  
20 recognition of the Court's prior rulings.

21       Grousemont also owns 110 shares in the Packwood Canal Company which serves  
22 approximately 87 acres in Section 19, T. 18 N., R. 18 E.W.M. Grousemont's claim  
23 No. 01335 does not include an independent assertion of a water right to water  
24 delivered by Packwood Canal Company. Grousemont has elected to rely upon  
25 Packwood's defense of its Court Claim No. 00785 for the irrigation rights for their  
26 110 shares, although Mr. Mundy's testimony and Grousemont's exhibits provide

27  
28 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 significant information about water rights which support deliveries from the  
2 Packwood canal. The Referee has recommended confirmation of water rights for the  
3 Packwood Canal Company from Hatfield Canyon Creek, see the Subbasin 11 Supplemental  
4 Report and Robinson Canyon Creek and Fogey Creek, see pages 52 of this report.

5 Grousemont Farms is comprised of all or portions of eight homesteads or  
6 parcels originally purchased from the Northern Pacific Railroad. Exhibit DE-S13  
7 (Grousemont water rights summary) sets forth the priority dates and quantities of  
8 water Grousemont believes should be reflected in water rights recommended for  
9 confirmation. The dates are based upon patents or purchases from the Northern  
10 Pacific Railroad. The Referee notes what he believes to be errors in the dates for  
11 three of the original ownerships reflected on Exhibit DE-S13. The Crandall  
12 homestead patent was signed on March 17, 1892, and apparently recorded on June 25,  
13 1892, which is the date relied upon by Grousemont. The signature date would be the  
14 appropriate date for establishing the priority date. The second error is related  
15 to the Rego contract purchase from the Northern Pacific Railroad. Although the  
16 deed is dated January 16, 1907, it appears that the purchase contract was signed on  
17 January 13, 1902. The Referee proposes use of the 1902 date.

18 The Bate's patent is dated August 19, 1890, however, Packwood exhibit DE-155  
19 (Kittitas County Patent Records) shows the Bates receiver's receipt recorded on  
20 January 30, 1889. The receiver's receipt reflects the homesteader complying with  
21 requirements of the homestead laws. The Referee will use the earlier date for  
22 riparian rights on the Bate's homestead.

23 In addition to the corrections Mr. Martin made during the supplemental  
24 hearing, review of the testimony has lead the Referee to identify additional errors  
25 in exhibit DE-S13. There are two errors to be corrected under the Rego ownership.  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 The first is to change the "POD" entry to read T0-5 instead of T0-6. The second is  
2 to change "ACRES IRR." for field 5 from 10 to 7.5. A third error is under the  
3 Pease (1) entry, in the column "ACRES IRR." for field 5, where 20 should replace  
4 the entry 30.

5 Although the record contains no specifics as to the water sources and points  
6 of diversion used by the individual homesteaders, it is clear that many ditches  
7 were in use throughout this area in 1903. The deeds and agreements between the  
8 City of Ellensburg and property owners for construction of the power canal speak to  
9 protection of existing water conveyance systems on nearly every homestead.  
10 Construction of the Ellensburg Power canal consequently resulted in many changes in  
11 conveyance systems. The record describes only the current Grousemont distribution  
12 system, therefore, the Referee will need to use his judgment as to how the  
13 historical uses were perfected and the appropriate water right quantifications.  
14 Testimony of witnesses for Packwood Canal Company and owners of land served by  
15 Packwood reflect a series of changes in the distribution systems as flumes and  
16 pipelines deteriorated. Although witnesses for Grousemont indicate that the  
17 current irrigation practice reflects uses similar to when the rights were  
18 perfected, the Referee believes that Grousemont's current irrigation system evolved  
19 as the ranch was assembled and irrigation technology changed. This is a logical  
20 conclusion since the lands were in several different ownerships at the time the  
21 water rights were established.

22 Ronnie Bloxham, the previous owner of the land within Grousemont Farm, filed  
23 Water Right Claim No.'s 144932, 144933, and 144934 with the Department of Ecology  
24 (Ecology) in response to the requirements of RCW 90.14. Each of the claims has a  
25 place of use description which includes the entire ranch as it existed in June of  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 1974. Grousemont Farm as it exists today does not include Tract 9 on the legal  
2 description contained in the water right claims. That tract includes most of the  
3 SE $\frac{1}{4}$  of Section 24 T. 18 N., R. 17 E.W.M.

4 Richard Bain took measurements during March of 1995 in both Robinson Creek and  
5 Fogey Creek at the Grousemont diversions. The intent of those measurements was to  
6 provide natural flow quantities, as irrigation purveyors that serve the area were  
7 believed to be shut down during March, consequently return flows would not be  
8 contributing to the measured creek flows. Mr. Bain acknowledged, however, that  
9 Taneum Canal Company runs substantial quantities of water during the non-irrigation  
10 season for stock water. That water is distributed into the creeks and major head  
11 ditches above Grousemont. It appears that Taneum Canal ends near Robinson Canyon  
12 Creek which would logically be used as a spill for excess stock and conveyance  
13 water. In addition to stock water, Taneum Canal Company has testified to making  
14 irrigation deliveries during March. The record does not contain facts as to the  
15 actual Taneum diversions into Robinson Canyon Creek or Fogey Creek when Mr. Bain  
16 made his measurements. In any case, Mr. Bain measured the flow in Robinson Canyon  
17 Creek at 22.7 cubic feet per second on March 14, 19.5 cubic feet per second on  
18 March 31 and 3.2 cubic feet per second on May 17, 1995. Although the Referee  
19 believes that the measured March flows include foreign water from Taneum Creek, the  
20 natural flow component is likely to exceed the quantity claimed by Grousemont from  
21 Robinson Canyon Creek during at least a portion of the early irrigation season.

22 Grousemont's exhibit DE-S13 (Water Rights Summary - as corrected) shows that a  
23 total of 176.7 acres are irrigated with Robinson Canyon Creek water diverted at  
24 T0-5 and 6. T0-6 serves 52 acres lying south of the creek and west of Packwood  
25 Canal. The diversion has a capacity of 4.0 cubic feet per second and serves fields

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1      9, 10 and 11. T0-5 serves 124.7 acres of which 37.6 acres, in fields 7 and 8, lie  
2      north of the creek and west of Packwood Canal. The area served east of the canal  
3      includes 87.1 acres within portions of fields 3, 5 and 6. Grousemont also delivers  
4      75 shares of West Side water and substantial quantities of return flow water  
5      through these conveyance systems. The return flow and West Side water enters  
6      Robinson Canyon Creek above T0's 5 and 6.

7      Fields 7, 8, 9, 10 and 11 are described by Mr. Bain as having upland soils  
8      requiring a water duty of 9.4 acre-feet per acre. A total of 89.6 acres are  
9      irrigated westerly of Packwood Canal, on upland soils, with Robinson Canyon Creek  
10     water. In contrast to the upland soils, the fields easterly of the canal are river  
11     bottom soils with rapid to excessive drainage characteristics. Mr. Bain testified  
12     that 25.5 acre-feet per acre are required to adequately irrigate fields 1, 2, 3, 4,  
13     5 and 6.

14     Grousemont proposes that the Court adopt a water duty for the entire farm  
15     based upon calculations of a weighted average of the upland duty of 9.4 acre-feet  
16     and the river bottom duty of 25.5 acre-feet per acre. Recognizing the seasonal  
17     decline of the natural flow sources, Grousemont suggests that the Court confirm 50  
18     percent of the weighted average, 20.2 acre-feet per acre or 10.1 acre-feet per  
19     acre. The Referee does not intend to use the average water duty as proposed by Mr.  
20     Bain, but rather to use the water duty for the specific fields as testified to by  
21     Mr. Bain. The Referee agrees it is appropriate to reduce the annual water duty by  
22     50 percent due to the seasonal characteristics of the sources.

23     Mr. Bain testified that in all probability the local return flow contribution  
24     to Robinson Canyon Creek is no more than two to three percent of the total return  
25     flow. The local contributions to Fogey Creek are calculated to be even lower. The  
26

27     SUPPLEMENTAL REPORT OF REFEREE  
28     Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 Referee has elected to consider the local return flow as a negligible quantity as a  
2 basis for considering historic water rights.

3 The upland fields 7, 8, 9, 10, 11 are served by Robinson Creek water from T0-5  
4 and 6, which respectively have capacities of 7 and 4 cubic feet per second.  
5 Although Grousemont urges confirmation of the full instantaneous quantity to each  
6 of the Robinson Creek water rights the Referee does not agree. The Robinson Creek  
7 water is used on land within portions of five homesteads. Each of those properties  
8 has a different priority date and presumably the original irrigation systems were  
9 constructed with instantaneous capacities proportionate to the field sizes.  
10 Grousemont's unified system bunches the water so that each field is irrigated over  
11 short periods of time and the full flow is rotated to the fields in a cycle  
12 commensurate with the soil type and crop. The Referee proposes to recommend  
13 instantaneous quantities based upon proportionate percentages of the specific ditch  
14 capacity for each of the water rights. Bunching the available water within the  
15 water right priority system is a farm management decision.

16 Recommendations for water rights on Robinson Canyon Creek are being made based  
17 upon Grousemont's exhibit DE-S13, and supporting documents in the record. As  
18 discussed previously, there are changes in priority dates and acres irrigated and  
19 the recommended instantaneous quantities will be proportionate according to the  
20 irrigated acres. The annual water duties will be based upon 9.4 acre feet per acre  
21 for the fields west of the canal and 25.5 acre feet per acre east of the canal with  
22 the 50 percent reduction applied to those water duties.

23 The five fields west of the canal, 7, 8, 9, 10, and 11, lie within four of the  
24 original homesteads: Robinson, Packwood, Pease(1) and Hammell. The fields north of  
25

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 the creek will be treated as a separate water right since T0-5 has a lower  
2 instantaneous flow per acre served than T0-6.

3 The river bottom fields 3, 5 and 6 are served partially through T0-5 and  
4 partially through T0-9, 10 and 11 from the Packwood Canal. Those turnouts lie at  
5 or down canal from the point where Robinson Canyon Creek spills into the canal.  
6 These turnouts appear to replace the third point of diversion from Robinson Canyon  
7 Creek described on the Bloxham RCW 90.14 water right claim. Thus, fields 3, 5 and  
8 6 receive Robinson Canyon Creek water via either T0-5 or from Packwood Canal. The  
9 total irrigated acres with Robinson Creek water within fields 3, 5 and 6 is 175.1,  
10 of which Grousemont serves 87.1 acres from T0-5 and 88 acres from Packwood.  
11 Grousemont did not put data in the record as to the instantaneous quantities  
12 diverted from Packwood Canal nor did Packwood create that record. The Referee  
13 therefore proposes to adopt the average instantaneous quantity calculated for  
14 fields served by T0-5 and 6 (0.0665 cfs per acre or a total of 5.85 cubic feet per  
15 second). The rights for the Robinson Canyon Creek water delivered through Packwood  
16 Canal will be addressed as part of the Packwood Canal Company claim, as was done  
17 for rights to Hatfield Canyon Creek in the Subbasin No. 11 Report of Referee.

18 Although the channel for Robinson Canyon Creek has been altered substantially,  
19 due to interception by Packwood Canal, the Referee has concluded that each of the  
20 five homesteads on which creek water is used are riparian to the creek. Having  
21 established the parameters, the Referee recommends confirmation of the following  
22 water rights from T0-6 (T0-6 is located on Robinson Canyon Creek, 1300 feet west  
23 and 250 feet north from the SE corner of Section 24, T. 18 N., R. 17 E.W.M.):

24 With a November 1, 1881 date of priority; 1.15 cubic feet per second, 70.5  
25 acre-feet per year to be used from March 1 through October 31, for irrigation  
26 of 15 acres within that portion of the  $SE\frac{1}{4}SW\frac{1}{4}$  of Section 19 lying southwest of  
the Packwood Canal and south of the creek, in T. 18 N., R. 18 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

With a February 1, 1882 date of priority; 0.62 cubic feet per second, 37.6 acre-feet per year to be used from March 1 through October 31, for irrigation of 8 acres within the following described parcel:

That portion of Lot 1, Section 30, T. 18 N., R. 18 E.W.M. described as follows:

A tract of land bounded by a line beginning at the northwest corner of said Section and running thence east on the north boundary line of said section, 702.1 feet; thence south  $2^{\circ} 35'$  west 311.7 feet; thence south  $55^{\circ} 13'$  west 305.4 feet to a point on the north boundary line of the right of way of county road; thence along said north boundary line of said right of way north  $48^{\circ} 34'$  west 577.9 feet to the west boundary line of said section; thence north along said west boundary line 103.25 feet to the point of beginning.

With a June 1, 1882 date of priority; 1.12 cubic feet per second, 68.6 acre-feet per year to be used from March 1 through October 31 for irrigation of 14.6 acres within the following described parcel:

That portion of the SE $\frac{1}{4}$  of Section 24, T. 18 N., R. 17 E.W.M. described as follows:

A tract of land bounded by a line beginning at the southeast corner of said section, and running thence west, along the south boundary line of said section; 976 feet; thence north  $48^{\circ} 45'$  west 409.5 feet; thence north  $42^{\circ} 00'$  east 575 feet; thence north  $53^{\circ} 00'$  east 437 feet; thence north  $86^{\circ} 00'$  east 558 feet to the east boundary line of said section; thence south along said east boundary line 998 feet to the point of beginning, EXCEPT:

That portion of the following described tract heretofore conveyed to Kittitas County, a municipal corporation, by deed dated June 10, 1927, recorded in book 41 of Deeds, page 398, which lies within said Tract 2: A tract of land bounded by a line beginning at the southeast corner of said Section 24 and running thence west in the line between Sections 24 and 25 a distance of 190 feet; thence on an arc of a curve to the left having a radius of 603 feet, a distance of 48 feet to the true point of beginning; thence north  $76^{\circ} 40'$  west a distance of 950 feet; thence south  $53^{\circ} 10'$  east a distance of 390 feet and thence north  $88^{\circ} 20'$  east a distance of 612 feet to the true point of beginning.

With a June 28, 1887, date of priority, 1.10 cubic feet per second, 67.7 acre-feet per year to be used from March 1 through October 31 for the irrigation of 14.4 acres within that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, T. 18 N., R. 18 E.W.M. lying south of Robinson Canyon Creek.

The balance of the upland area irrigated from Robinson Creek is in fields 7 and 8 which lie westerly of the Packwood Canal and north of the creek channel. The diversion which serves these two fields is T0-5 which has a capacity of 7.0 cubic feet per second which serves a total of 124.7 acres therefore each acre would

1 receive .056 cubic feet per second. The point of diversion is located 1100 feet  
2 west and 600 feet north from the SE corner of Section 24 T. 18 N., R. 18 E.W.M.

4 With a priority date of June 1, 1882; 0.28 cubic feet per second, 23.5  
5 acre-feet per year to be used from March 1 through October 31 for irrigation  
6 of 5 acres within that portion of the  $SE\frac{1}{4}SW\frac{1}{4}$  of Section 19, T. 18 N., R. 18  
7 E.W.M. lying north of the creek and westerly of Packwood Canal.

8 With a priority date of June 28, 1887; 1.83 cubic feet per second, 153.2 acre  
9 feet per year to be used from March 1 through October 31 for irrigation of  
10 32.6 acres within that portion of the  $W\frac{1}{2}SW\frac{1}{4}$  of Section 19 T. 18 N., R. 18  
11 E.W.M. lying westerly of Packwood canal and north of the creek.

12 Robinson Canyon Creek water is also delivered via T0-5 to portions of fields  
13 3, 5 and 6 which lie easterly of Packwood Canal. The maximum diversion across the  
14 canal based on the proportionate share analysis is 4.88 cubic feet per second. Due  
15 to the purveyor status of Packwood Canal Company and the significant difference in  
the instantaneous quantities per acre between T0-5 deliveries and Packwood  
deliveries of Robinson Canyon Creek, the Referee proposes confirmation of separate  
water rights for the acres served by each system.

16 With a priority date of June 28, 1887; 2.58 cubic feet per second, 588  
17 acre-feet per year to be used from March 1 through October 31 for irrigation  
18 of 46.1 acres within that portion of the  $NW\frac{1}{4}SW\frac{1}{4}$  and the south 500 feet of the  
19  $SW\frac{1}{4}NW\frac{1}{4}$  of Section 19 lying easterly of Packwood canal also the  $NE\frac{1}{4}SW\frac{1}{4}$  of said  
Section 19 T. 18 N., R. 18 E.W.M., except that portion of the said  $NE\frac{1}{4}SW\frac{1}{4}$   
lying southerly of a line beginning at the southwest corner of said  $NE\frac{1}{4}SW\frac{1}{4}$   
and running northeasterly to the center of Section 19.

20 With a priority date of January 13, 1902; 2.30 cubic feet per second, 523 acre  
21 feet per year, to be used from March 1 through October 31 for irrigation of 41  
22 acres within the south 500 feet of the  $SE\frac{1}{4}NW\frac{1}{4}$  and the  $SW\frac{1}{4}NE\frac{1}{4}$  of Section 19 T.  
18 N., R. 18 E.W.M.

23 Grousemont's claim asserts a right to diversionary stock water from Robinson  
24 and Fogey Creeks, as well as from an unnamed spring. Mr. Mundy, the farm manager,  
25 testified that stock are rotated out of fields which are being irrigated to prevent  
26 damage to the pastures, therefore, the stock do not have access to the irrigation

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 ditches when they are carrying water. There was no testimony of a stock water  
2 delivery system, therefore, the Referee concludes that the stock watering is  
3 non-diversionary in nature and the stock water stipulation addressed on page 4 of  
4 the original Subbasin No. 8 Report of Referee adequately covers Grousemont's use of  
5 stock water.

6 Grousemont claims Fogey Creek water for irrigation of field 1 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
7 Section 13 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18, part of field 2, which lies in the W $\frac{1}{2}$ NW $\frac{1}{4}$   
8 of Section 19 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18 and field 4 in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19,  
9 T. 18 N., R. 18 E.W.M. Fogey Creek water is delivered to the fields via a creek  
10 diversion and pipeline over Packwood Canal and via T0-2 and 3 from Packwood Canal.  
11 Fogey Creek is intercepted by the Packwood Canal above T0-2 and 3. The Referee has  
12 recommended that a right be confirmed to Packwood Canal Company for use of Fogey  
13 Creek water for the irrigation of 15.2 acres in Government Lot 2 of Section 19 (see  
14 page 129 of this report). Of the four homesteads within which land irrigated with  
15 water from Fogey Creek lies, only the Bate's homestead in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13  
16 T. 18 N., R. 17 E.W.M. is riparian to Fogey Creek. In October 1903, A.B. Hawn, at  
17 that time the owner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 13, signed an agreement with the city of  
18 Ellensburg granting a strip of land for the Power Canal. The agreement reserved a  
19 right for a flume to carry no more than 40 miners inches over the canal. There is  
20 only 4 acres east of the canal right of way within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13. That  
21 field is part of field 1 owned by Grousemont and is irrigated via the current  
22 Grousemont pipeline.

23 Since the lands within which the remaining three fields lie are not riparian  
24 to Fogey Creek and were settled by different individuals, evidence of the dates  
25 when Fogey Creek water was first used must be established. The Referee  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 acknowledges that in 1903 ditches were delivering water from west of the Packwood  
2 Canal to the N $\frac{1}{2}$  of Section 19 and agreements were made with the City of Ellensburg  
3 to construct flumes to carry this water after the Packwood Canal was built. The  
4 source of that water and the fields upon which it may have been used was not  
5 addressed in the agreements. The most likely sources would be water from West Side  
6 Ditch, springs, return flows or Fogey Creek, which is just northwest of the  
7 northwest corner of Section 19. The claimant appears to be asserting that Fogey  
8 Creek water was the source of the water to be conveyed in the flumes. Exhibits  
9 DE-129, 130, 132, 133 and DE-S32 represent respectively four (4) 1903-1909  
10 agreements with the City of Ellensburg and 1993 aerial photographs put in the  
11 record by Packwood Canal Company.

12 The SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18 was homesteaded by George Crandell, with a patent  
13 issuing on March 17, 1882. It was subsequently conveyed to Perry Pease and then to  
14 H. E. Wallace. The only evidence of historical water use in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
15 Section 18 is in the 1913 agreement between the City of Ellensburg and the United  
16 States. Mrs. Hannah E. Wallace is identified in that agreement as having vested  
17 water rights for irrigation of land in portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 and the  
18 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18. The Referee interpreted the portion of the agreement  
19 identifying vested water rights as identifying lands that were being irrigated with  
20 withdrawals from the power canal. Most of the land irrigated with water previously  
21 flumed over the power canal is not included in the agreement. There is nothing in  
22 the record to show that Fogey Creek was being used to irrigate the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
23 Section 18 prior to construction of the power canal. The Referee notes that the R.  
24 E. Wallace agreement with the City of Ellensburg specifically deals with the NW $\frac{1}{4}$ NW $\frac{1}{4}$   
25 of Section 19 and no mention is made of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       The historical facts related to Government Lots 1 and 2 ( $W\frac{1}{2}SW\frac{1}{4}$ ) of Section 19  
2 are very similar. Both government lots were owned by Ed Pease when he signed an  
3 agreement with the City of Ellensburg specifying that he could withdraw 100 inches  
4 of water from the canal to replace intercepted water and two flumes would be  
5 constructed over the canal, each with a capacity of 150 inches. Pease then sold  
6 Government Lot 1 to R. W. Wallace, along with 40 inches of the water to be  
7 withdrawn from the canal and one of the flumes. On February 3, 1909, a deed  
8 between R. E. Wallace and Ellensburg, Exhibit DE-129, addressed Wallace having a  
9 right to spill water via flume into the power canal and to take out a like quantity  
10 (up to a 6" pipe capacity). Grousemont Farms is irrigating 28 acres in Government  
11 Lot 1 with water diverted from Fogey Creek. T0-3 on the Packwood Canal, as  
12 currently located, is very likely the agreed Pease (1) turnout which was strictly  
13 for replacement of water intercepted by the power canal within the Pease (1)  
14 property. Government Lot 2 is irrigated from the Packwood Canal and a right has  
15 been recommended to Packwood Canal Company for the 15 acres irrigated in Government  
16 Lot 2.

17       The history of irrigation development on the Rego property is the most  
18 difficult component of the Grousemont claim. Rego drove a hard bargain with the  
19 City of Ellensburg which is documented in the agreement he signed on October 27,  
20 1903 (DE-135). The lands to which the agreement applies are not described,  
21 however, the agreement did specify the water could be used only on the lands then  
22 owned by Rego. Documents in the record show that Rego's ownership in Section 19 in  
23 1903 included: that portion of the  $SE\frac{1}{4}SW\frac{1}{4}$  lying northeast of the Power Canal, the  
24  $N\frac{1}{2}SE\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$  and the  $E\frac{1}{2}NW\frac{1}{4}$ . Rego also owned land east of the Power Canal in the  
25  $NE\frac{1}{4}$  of Section 30 and the  $S\frac{1}{2}SE\frac{1}{4}$  of Section 19 which Grousemont does not own. The

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 agreement states that Rego could divert 300" from the canal from April 1 through  
2 July 10 and 175" from July 10 through October 31. A further condition limited use  
3 of intercepted water to 100" April 1 through July 10 and 75" July 10 through  
4 October 31. Never was Rego to divert from the canal more than 300" April 1 through  
5 July 10 and 175" July 10 through October 31. An unspecified number of diversion  
6 points from Packwood Canal were to be constructed. Packwood exhibit DE-S32 shows  
7 two (2) turnouts in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19 and two turnouts in the NE $\frac{1}{4}$  of Section  
8 30. The rights to use water delivered through the Packwood Canal for Grousemont  
9 Farms are being addressed as part of the Packwood Canal Company Claim on page 52 of  
10 this report.

11 In addition to the water to be delivered through the canal, Rego retained the  
12 right to have three (3) flumes built over the power canal by Ellensburg with the  
13 capacity of 150 miners inches each. The location of those flumes is not specified  
14 although the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, which abuts the Packwood Canal would seem  
15 logical for one or more to carry Robinson Canyon Creek water. Cabin Creek is also  
16 referenced in the agreement, however, the location of that creek is unspecified. A  
17 ditch from Fogey Creek and flume across the Packwood Canal to the Rego property  
18 would have had to cross lands owned at the time of the agreements by Ed Pease. It  
19 seems unlikely that three flumes would have needed to be constructed for carrying  
20 Robinson Canyon Creek water into the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19. The Referee believes  
21 that it would be reasonable to presume that one of the flumes carried Fogey Creek  
22 water into the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19. There are 32 acres being irrigated  
23 in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 19 with water from Fogey Creek and 28 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$   
24 of said section.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1       Although Mr. Bain testified that throughout the 1989 irrigation season the  
2 Fogey Creek pipeline consistently carried a full pipe of 4.71 cubic feet per  
3 second, Mr. Mundy testified that 7.00 cubic feet per second is diverted from Fogey  
4 Creek into the pipeline. Since Mr. Bain measured the flow to which he testified,  
5 the Referee intends to rely on that testimony and concludes that 4.71 cubic feet  
6 per second is the capacity of the pipeline. Mr. Bain testified that the fields  
7 east of Packwood Canal need 25.5 acre-feet per year, but because of the nature of  
8 Fogey Creek, only about half of that would be available from natural creek flows.  
9 Return flows would make up the balance. The record supports a recommendation for  
10 confirmation of the following water rights for use of Fogey Creek:

11      With a priority date of January 30, 1889, 0.80 cubic feet per second and an  
12 annual quantity of 51 acre-feet per year to be used from March 1 through  
13 October 31 for the irrigation of 4 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13 T. 18  
14 N., R. 17 E.W.M. The point of diversion from Fogey Creek is described as 1300  
feet north and 400 feet west from the southeast corner of Section 13 T. 18 N.,  
R. 17 E.W.M.

15      With a priority date of June 30, 1903, 4.71 cubic feet per second, 765  
16 acre-feet per year to be used from March 1 through October 31 for the  
irrigation of 60 acres in that portion of Government Lot 1 east of Packwood  
17 Canal and that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$  west of the Yakima River, all in  
Section 19, T. 18 N., R. 18 E.W.M.

18      The rights shall both carry a provision that the total diversion between the  
two will not exceed a total of 4.71 cfs. The Referee does not believe that  
19 sufficient evidence has been presented to recommend confirmation of a water right  
20 for use of Fogey Creek on lands in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18.  
21

22      Grousemont is also asserting rights to unnamed springs arising in the NE $\frac{1}{4}$  of  
23 Section 24 T. 18 N., R. 17 E.W.M. that appear to discharge into unnamed streams or  
drains which are intercepted by Packwood Canal at the east section line of Section  
24 24 or are piped under the canal. Although the record is not entirely clear, the  
25 Referee believes that if the springs existed prior to construction of the power  
26

27      SUPPLEMENTAL REPORT OF REFEREE  
28      Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 canal, the northerly spring/stream would have flowed toward Government Lot 1 of  
2 Section 19 and the southerly spring/stream would have flowed toward Government Lot  
3 2 of Section 19. The use of these springs would most likely have been within  
4 Government Lots 1 and 2. The current irrigation practices result in the total  
5 output from these springs being applied to fields in the NE $\frac{1}{4}$  of Section 19, which  
6 is not riparian to the springs or the stream channel(s) that would emanate from the  
7 springs.

8 Grousemont did not create a clear record as to the date when the  
9 springs/stream water would have first been used on the fields in the E $\frac{1}{2}$  of  
10 Section 19. Packwood Canal Company exhibit, DE-S32 (a 1993 aerial photo) shows a  
11 drainage to the west of the canal at about the location where the pipeline  
12 undershot would be located, but the Referee does not know if this is natural  
13 drainage or created due to return flows. The water from the springs is piped under  
14 Packwood Canal. None of the agreements entered into the record mention  
15 construction of a pipeline under the canal, they all discuss flumes over the canal  
16 or withdrawals from the canal to replace intercepted water. It is not clear to the  
17 Referee that use of this water began early enough for a water right to have been  
18 established.

19 Grousemont is relying upon Water Right Claim (WRC) No. 144933 filed by Mr.  
20 Bloxham, the previous owner of Grousemont, and a substantial compliance argument  
21 for the unnamed springs arising in the NE $\frac{1}{4}$  of Section 24 T. 18 N., R. 17 E.W.M.  
22 WRC No. 144933 describes a point of diversion located within the NE $\frac{1}{4}$  of Section 25,  
23 nearly a mile south of the springs claimed under Court Claim No. 01335. Grousemont  
24 contended during the original evidentiary hearing that an error had been made by  
25 Mr. Bloxham and that they would seek amendment of the claim through Ecology. There  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 was no evidence presented to show that the claimant has sought amendment of the  
2 claim through RCW 90.14.065. The Referee is precluded from amending the claim (see  
3 RCW 90.14.065). Grousemont has not established substantial compliance for WRC No.  
4 0144933 and evidence is lacking regarding first use of the springs on the lands now  
5 being irrigated. Due to the lack of evidence of when the springs were first used  
6 and the RCW 90.14 claim not describing the correct spring location, the Referee  
7 cannot recommend confirmation of a water right from the unnamed springs/streams.

10 The Shannons filed Claim No. 01809 with the Court and Randell Shannon  
11 testified at the evidentiary hearing on December 11, 1989. No exhibits were  
12 offered at that hearing.

In response to the Report of Referee for Subbasin 8 (Thorp), an exception was filed with the Court on behalf of the Shannons by Attorney Richard T. Cole. The basis for the exception is that the filing of short form Water Right Claim (WRC) No. 106544 substantially complied with the requirements of RCW Chapter 90.14. Mr. Shannon allegedly concluded that spring water collected in a drainage channel should be claimed as ground water on WRC No. 106544. Mr. Cole requested an opportunity for submission of supporting exhibits and testimony at the remand hearing.

21 Randell Shannon testified at the remand hearing held on June 6, 1995. A Chain  
22 of Title Report was admitted into the record as was a copy of WRC No. 106544. A  
23 patent issued on December 28, 1888, to Milford A. Thorp for the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$   
24 of Section 11, T. 18 N., R. 17 E.W.M, of which Mr. and Mrs. Shannon own that  
25 portion of the E $\frac{1}{2}$ SW $\frac{1}{2}$ NE $\frac{1}{2}$  of Section 11, T. 17 N.. R. 17 E.W.M. described as follows:

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

1 Commencing at the northwest corner of said quarter quarter section, thence E 653  
2 feet; thence S 340 feet more or less to the point of beginning; thence N 48° E 151  
3 feet more or less; thence S 48° E 415 feet more or less; thence N 48° E 40 feet  
4 more or less; thence S 48° E 324 feet more or less to No. 466 Road; thence south  
5 along said road to the intersection of said road and Goodwin Road; thence west  
6 along Goodwin Road 520 feet more or less; thence N 88° W 80 feet more or less;  
7 thence N 27° W 161 feet more or less; thence north 723 feet to the point of  
8 beginning.

9       Although the testimony provided by Mr. Shannon did not contain many specific  
10 facts as to historical use, it is apparent that there was use of the spring-fed  
11 channel on the Shannon property at least from around 1900. The house was moved  
12 onto the current site in 1903 and water from springs was piped to it and the  
13 farmstead. That use was discontinued many years ago. The home has been on the  
14 Thorp Community System for about ten years and on a well for many years prior to  
15 that. Mr. Shannon testified at the supplemental hearing that the home was served  
16 by a well when the Shannons purchased the property in 1971. The Referee concludes  
17 it to be more probable than not that the "Short Form" claim was filed on the well  
18 based upon the face of WRC No. 106544 and the fact that Mr. Shannon did own and was  
19 using a well in 1974.

20       If, in fact, WRC No. 106544 was filed on the spring-fed channel and ground  
21 water was mistakenly checked, the claim is still on a short form which restricts  
22 the extent of any right which it could preserve. At best, the claim could preserve  
23 a right to use surface water for up to 5,000 gallons per day for domestic supply,  
24 stock water, and no more than one-half acre of noncommercial lawn and garden  
25 irrigation. Mr. Shannon did not testify to use of any surface water for the house  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 or garden. He did testify that stock (15 horses and 50-75 sheep) are pastured on  
2 the property. Obviously, those animals drink from any surface water present in the  
3 pasture area including the pond. If, as Mr. Shannon has testified, water from the  
4 spring-fed channel historically was used at the farmstead, that use has long since  
5 been relinquished due to nonuse RCW 90.14.160.

6 Mr. Shannon did not testify regarding use of surface water via a diversion  
7 during the nonirrigation season. Therefore, it must be concluded that stock drink  
8 from the pond during that period. Use of water from riparian sources on the  
9 Shannon property is covered by the Stock Water Stipulation as reflected in the  
10 Referee's Report. In conclusion, the Referee recommends that the Report of the  
11 Referee be affirmed as written and a right not be confirmed under Court Claim  
12 No. 01890.

13

14 COURT CLAIM NO. 00725 -- Thorp Town Ditch Association

15 A water right was recommended for confirmation to the Thorp Town Ditch  
16 Association by the Department of Ecology in its Plaintiff's Report to the Referee  
17 signed on July 31, 1989. In spite of making that recommendation to the Court,  
18 Ecology took exception to the place of use contained in that recommendation. The  
19 Court remanded Claim No. 00725 to the Referee to address the place of use  
20 exception.

21 Prior to the supplemental hearing, Thorp Town Ditch Association submitted to  
22 Ecology a legal description for the lands they serve from the ditch. Ecology had  
23 this legal description filed with the Court. There was no statement by Ecology  
24 that this legal description resolved their exception; however, Thorp Town Ditch  
25 Association did not appear at the supplemental hearing, nor did Ecology raise the  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 issue any further. Therefore, the Referee shall incorporate the legal description  
2 provided by the association into the original recommendation that a right be  
3 confirmed.

4       The Referee recommends that page 163, line 20 of the Report of Referee for  
5 Subbasin No. 8 be amended to read: All that portion of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11,  
6 T. 18 N., R. 17 E.W.M. easterly of the westerly boundary line of tax parcel 6 lying  
7 between the Thorp Highway and the railroad; all of Blocks 1 and 2 of the Thorp  
8 townsite between Thorp Highway and Main Street; the easterly one-half of Block 1  
9 between Main Street and Chester Street; the triangular piece of land in the  
10 NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 lying between 2nd Street and Goodwin Road; all of those  
11 portions of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 lying west  
12 of the Thorp Highway; that half of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 which is  
13 northeasterly of a diagonal line extending from the northwest corner of the  
14 SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  to the southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ .

15       Although the Thorp Town Ditch Association did not take exception to the right  
16 that was recommended for confirmation, the Referee notes that a right was  
17 recommended for the irrigation of 15.5 acres. In the document submitted with the  
18 new legal description, the association stated that the water is used to irrigate 23  
19 lawns, 13 gardens, and 15.5 acres of hay and pasture. It appears that the only  
20 right recommended for the association was for the irrigation of the 15.5 acres of  
21 hay and pasture. The acreage, and likely the quantity of water that was  
22 recommended, is not sufficient for the lawns and gardens that are being irrigated  
23 from the Thorp Town Ditch. They may want to consider taking exception to the  
24 acreage and quantity of water recommendation.

25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1  
2 COURT CLAIM NO. 00596 -- Wynn Vickerman

3 Mr. Vickerman, represented by Attorney Richard T. Cole, filed exceptions with  
4 the Court requesting an opportunity to supplement the record regarding natural flow  
5 versus foreign return flow and or ditch company deliveries. Also to be offered was  
6 additional evidence as to quantities of water used currently and historically.

7 Mr. Vickerman has established that irrigation and stock water are diverted  
8 from two separate sources for use on his 6.6 acre parcel located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
9 Section 30, T. 18 N., R. 18 E.W.M. The property was separated from the public  
10 domain via a land patent to Robert Hatfield which is dated June 30, 1882. The two  
11 water sources are adjacent to the land upon which the water is used. The water use  
12 from both sources was initiated before December 31, 1932. Both stream channels  
13 have been altered to accomodate the county road alignment or field configurations,  
14 therefore the original channel locations are unknown.

15 Mr. Vickerman irrigates a total of 6.25 acres of which one-half acre is lawn  
16 and garden around the house. This lawn area is irrigated via a 2 horsepower (hp)  
17 electric pump and a sprinkler system with two sets. The pump is reported to  
18 deliver about 65-70 gallons per minute (gpm). Stock water is provided through a  
19 gravity flow pipeline which is also used for delivery of water from the two sources  
20 to irrigate the pasture.

21 Mr. Vickerman filed Water Right Claims (WRC) No. 050494 (Hatfield Canyon  
22 Creek) and No. 050495 (unnamed stream). The claims each assert a right to use 37  
23 acre-feet per year for irrigation of 7.541 acres. The date of first use is given  
24 as 1954, which is when Mr. Vickerman purchased the property. Mr. Vickerman has  
25 sold a one-acre parcel since the original evidentiary hearing leaving approximately

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       6.6 acres in his ownership. A legal description has not been provided which  
2 reflects the current ownership. Testimony is that about 5.75 acres are irrigated  
3 pasture and about 0.5 acre lawn and garden.

4       Mr. Bain was asked to estimate the capacity of the gravity flow pipes at the  
5 respective diversions. Measurements were not taken, therefore, his estimates are  
6 within a range. The Hatfield Canyon Creek diversion estimate was between 1.0 and  
7 2.5 cfs with the 10-inch gravity pipe running full and between 0.25 and 0.33 cfs  
8 from the northern source with the 10-inch pipe running one-third full. The Referee  
9 proposes to use quantities that are reasonable for the respective sources, the  
10 small acreage being irrigated and the local water duty.

11      The north source is used only to irrigate a 0.75 acre patch in the pasture  
12 which is hard to water from Hatfield Canyon Creek. The point of diversion is  
13 located 1,250 feet west and 950 feet north from the southeast corner of Section 30,  
14 T. 18 N., R. 18 E.W.M. The 0.25 cfs is considered an appropriate instantaneous  
15 quantity, especially since this source is used only to supplement the water  
16 delivered from Hatfield Canyon Creek. Testimony was provided that irrigation was  
17 on an 8-10 day rotation throughout the irrigation season from Hatfield Canyon Creek  
18 and as needed from the northern source. If a legal description of the place of use  
19 were in the record, the Referee could recommend confirmation of a water right in  
20 the following quantities: 5 acre-feet per year from the north channel based on ten  
21 irrigation cycles per year for 24 hours at a flow of 0.25 cfs.

22      Mr. Vickerman testified that water is diverted from Hatfield Canyon Creek for  
23 three days with about 8-10 days between irrigation cycles. Thus, 15 cycles could  
24 be required during a typical irrigation season. He also stated that 14 acre-feet  
25 per acre would be the appropriate water duty based on testimony in support of

1 neighboring farming practices. The 5.75 acres would require 80.5 acre-feet at 14  
2 acre-feet per acre.

3 If that information is used as a starting point and the lower instantaneous  
4 diversion of 0.525 cfs is adopted, about one acre-foot per day could be applied to  
5 the pasture. The Referee concludes that there has been use of 0.525 cfs and 80.5  
6 acre-feet per year for irrigation of 5.75 acres plus 1 acre-foot per year for  
7 diversionary stock water. A provision will be incorporated for the 5 acre-feet  
8 diverted from the northerly source such that it is supplemental to the 80.5  
9 acre-feet diverted from Hatfield Canyon Creek -- the total from both sources not to  
10 exceed 80.5 acre-feet per year for irrigation of 5.75 acres.

11 The final component of the Vickerman claim is use of the 2 hp pump located on  
12 Hatfield Canyon Creek for irrigation of a lawn and garden up to one-half acre. Mr.  
13 Vickerman testified that the pump is rated at 65-70 gpm with the installed  
14 sprinkler system. He uses two sets of sprinklers on a schedule of 12 hours per set  
15 once a week during the irrigation season. If 65 gpm (.145 cfs) is applied for 24  
16 hours, 0.29 acre-foot would have been delivered. That rate of application every  
17 week for at least 25 weeks during the irrigation season calculates to approximately  
18 7 acre-feet. The water duty for flood irrigation has been reported to be in the  
19 range of 14 acre-feet per acre, therefore, the much more efficient sprinkler  
20 irrigation practice should require far less water as discussed above. It is the  
21 Referee's conclusion that the appropriate water duty would be 7.0 acre-feet per  
22 acre or 3.5 acre-feet for the one-half acre lawn and garden. Although there was no  
23 direct testimony regarding historic irrigation via the gravity system on the  
24 one-half acre home site, it is under the original ditch (now Vickerman's 10" PVC  
25 pipeline) and would have most likely been part of the irrigated pasture. The total  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 acre-feet per year from Hatfield Canyon Creek shall not exceed 84 for the 5.75  
2 acres of pasture and 0.5 acre of lawn and garden. The maximum instantaneous  
3 diversion shall not exceed 0.525 cfs inclusive of the lawn pump and the gravity  
4 pipeline.

5 The 2 hp pump is located only a short distance from the point of diversion  
6 which supplies the gravity pipeline, therefore, the second point of diversion  
7 should not need approval under Chapter 90.03.380 of the Revised Code of  
8 Washington (RCW). The point of diversion for the gravity flow system is located at  
9 a point 1,300 feet west and 25 feet north from the southeast corner of Section 30,  
10 T. 18 N., R. 18 E.W.M. The lawn and garden pump is located 40 feet east of the  
11 gravity diversion. The irrigation season for the lawn system is reported to run  
12 from April 1 through October 31 in dry years. The historic right was for  
13 irrigation of a common field, thus the season of April 1 through October 31 will be  
14 recommended. The priority date for both portions of the water right is June 30,  
15 1882, as discussed earlier in this analysis.

16 Although the record contains sufficient quantification information to  
17 recommend confirmation of two water rights under Court Claim No. 00596, there is no  
18 legal description of the property currently owned by Mr. Vickerman. Lacking a  
19 place of use description, the Referee will not be able to recommend confirmation of  
20 Mr. Vickerman's water rights. If a legal description is provided at the exception  
21 hearing for the Subbasin 8 Supplemental Report, two water rights can be confirmed  
22 as set forth above.

1  
2 COURT CLAIM NO. 01971 -- Norma Jean Wilcox  
3 (A)04311

4       The Department of Ecology brought to the Court's attention an error in the  
5 point of diversion for the spring located in the lawn of the Wilcox home. The  
6 correct point of diversion from that spring is 1650 feet north and 50 feet west  
7 from the southeast corner of Section 11, T. 18 N., R. 18 E.W.M. Therefore, Lines 7  
8 and 8 on Page 163 of the Referee's Report are deleted and replaced by the preceding  
9 description.

10     During review of the record, the Referee noted that the lawn and home area are  
11 not completely encompassed by the legal description in the Referee's Report. The  
12 appropriate correction is to utilize the following legal description: That portion  
13 of the southeast quarter of Section 11, T. 18 N., R. 17 E.W.M. described as  
14 follows: commencing at the east quarter corner of said section; thence S 950 feet  
15 more or less to the point of beginning; thence, S 79° W 117 feet more or less;  
16 thence, S 55° W 117 feet more or less; thence, W 130 feet more or less; thence,  
17 S 260 feet more or less; thence, east to the right of way of the Thorp Highway; and  
18 thence north to the point of beginning. Line 9½ on Page 163 of the Referee's  
19 Report is deleted and replaced with the preceding legal description.

20  
21 COURT CLAIM NO. 00520 -- Willowbrook Farms Ltd. Partnership  
22 (A)05669

23     Paul and Marjorie J. Harrel filed Claim No. 00520 with the Court. On June 8,  
24 1994, the Court approved the Harrel Motion to Substitute Willowbrook Farms, Ltd.  
25 for Paul and Marjorie Harrel as claimants under Court Claim No. 00520.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 On September 23, 1994, Willowbrook Farms, Ltd., represented by Attorney Jeff  
2 Slothower, filed exceptions with the Court to the Report of Referee regarding Court  
3 Claim No. 00520. The basic thrust of the exception is that the Referee erred in  
4 failing to recommend confirmation of a water right for use of all the water flowing  
5 in Fogey Creek. The priority date asserted is June 30, 1871, which relies on the  
6 five year relation back theory for land patents. The claimant asserts that  
7 confirmation of a water right should have been based upon the standard water duty  
8 of 0.02 cubic foot per second (cfs); 4 acre-feet per acre for the 150 acres  
9 currently irrigated and the discharge estimates developed by Richard Bain.

10 The Referee's Report correctly states that Willowbrook Farms encompasses a  
11 gross area of 611 acres, however, omitted from the described lands was the E $\frac{1}{2}$ SE $\frac{1}{4}$  of  
12 Section 15, T. 18 N., R. 17 E.W.M., which is part of the Willowbrook Farms, Inc.,  
13 property. Fogey Creek water is not used on the lands in the SE $\frac{1}{4}$  of Section 15.  
14 Paul Harrel testified that his family has had "full ownership" of the property that  
15 is now part of the ranch since 1917; however, the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14 was not  
16 owned by the Harrel family until 1941. It appears that a portion of the current  
17 611 acre ranch is the result of progressive purchases over many years,  
18 predominantly during the early 1900's. The Referee's point in exploring sequential  
19 purchases is to suggest that irrigation practices very likely changed as new  
20 parcels were acquired. Examples of changing ownership include: (1) the 1911  
21 contract purchase of 80 acres from Calkins; (2) the 1917 deed from Calkins to  
22 Harrel, which includes the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
23 E $\frac{3}{4}$ N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 23, all in T. 18 N., R. 17 E.W.M.

24 When determining priority dates for water rights established under the  
25 Riparian Doctrine, the dates of various property separations from public domain  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 must be considered. At least three separate chains of title are involved in the  
2 current Willowbrook Farms ownership. Each of those three chains relate to land  
3 that is riparian to Fogey Creek, each having significantly different dates of  
4 separation from Federal ownership (i.e., the Jason Forgey homestead - June 30,  
5 1876, the Herman Page homestead - June 6, 1890, and the Northern Pacific Railway  
6 Company parcel [E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23, T. 18 N., R. 17 E.W.M.] - November 4,  
7 1895). It is obvious that the record does not support Willowbrook having a single  
8 priority date for water rights that might exist for the use of Fogey Creek water.

9       The preceding historical matters become critical components when  
10 quantification of a water right(s) is deliberated. As stated in the Willowbrook  
11 exception, the Referee agrees that historically there has been use of Fogey Creek  
12 for irrigation on some of the lands now owned by Willowbrook, and, in fact, there  
13 is no particular issue regarding use of all the creek flow at various times. The  
14 questions that need to be addressed involve quantifying that right, determining  
15 where the right(s) was perfected, and the appropriate priority date for any right  
16 confirmed. Each of the early owners had opportunities to divert water and perfect  
17 riparian rights. The record is clear that 150 acres are currently served by  
18 ditches and pipelines, which carry Fogey Creek water in various combinations with  
19 other water.

20       Testimony provided by Paul Harrel established that during certain extreme  
21 drought years where early runoff occurs, water has been used from Fogey Creek for  
22 irrigation in early February. Mr. Harrel also testified that even in better than  
23 average years, such as 1995, Fogey Creek flows are very low by early April.  
24 Measurement of the flow on April 1, 1995, by Mr. Harrel shows that the flow had  
25 declined to 1.66 cfs.

26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1       The flows measured by Mr. Harrel during the period of March 9 through April 7,  
2       1995, covered the runoff period which peaked on March 9 and 10 at 10.0 cfs. From  
3       that point, the flow declined steadily until April 1 when the flow dropped below  
4       2.0 cfs. These measurements contrast sharply with the hypothetical flows  
5       calculated by Richard Bain and as presented at the December 1989 Evidentiary  
6       Hearing. Mr. Bain based his water budget analysis on data available for Manastash  
7       Creek and the Wilson-Naneum drainage basins. Both of those drainages are very much  
8       larger than Fogey Creek and their respective water sheds lie at relatively high  
9       elevations with substantial timber cover. The Fogey Creek drainage is very small,  
10      at a low elevation and has almost no timber cover. The measurements collected by  
11      Paul Harrel reflect an early runoff period of short duration (March), whereas  
12      Mr. Bain predicted a more protracted runoff peak extending into May. Mr. Harrel  
13      observed essentially a dry creek bed at the Kittitas Reclamation District (KRD)  
14      canal crossing on May 21, 1995. The Referee has concluded that the predicted 1270  
15      acre-feet per year (R. Bain testimony) from Fogey Creek is not realistic and that  
16      the most likely period when irrigation flows would be available would be during the  
17      months of February through April. Even during that period, the first warm spring  
18      weather appears to prompt a quick runoff over about 30 days. Unusual storm events  
19      or a late spring could no doubt result in occasional limited availability outside  
20      that period. If the 1995 flow measurements taken by Paul Harrel represent an  
21      above average water year, as testimony indicates, the production of Fogey Creek  
22      clearly does not approach the 1270 acre-feet per year calculated by Richard Bain.  
23      In fact, the volume discharged during the 1995 measurement period was 350 acre-feet  
24      or less. In order to beneficially use all of that quantity for irrigation, the  
25      irrigator must have not only the ditch capacity to handle the 10 cfs peak flow but  
26  
27

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 also to rapidly change ditch and turnout settings to accommodate the discharge  
2 changes.

3 Numerous Water Right Claims (WRC) were filed by A. V. and Paul Harrel in  
4 February of 1973, however, all the claims are on ground water drain systems, except  
5 for WRC No. 024277 which asserts a right to Fogey Creek water. WRC No. 024277  
6 asserts a right to 3 cfs, whereas flows of at least 10 cfs have been measured by  
7 Paul Harrel and apparently used on the farm. In the Willowbrook amended Court  
8 Claim, a right is asserted to all of the available flow in the creek.  
9 WRC No. 024277 indicates that a right is claimed for the irrigation of 100 acres  
10 and that 100 acres were being irrigated at within the SW $\frac{1}{4}$  of Section 14, T. 18 N,  
11 R. 17 E.W.M. The record does not establish that Fogey Creek water was actually  
12 used to irrigate 100 acres within the SW $\frac{1}{4}$  of Section 14.

13 Testimony is that currently 150 acres are irrigated with Fogey Creek water and  
14 have been since early in the century; however, the exhibits indicate that Fogey  
15 Creek water is currently used outside the SW $\frac{1}{4}$  of Section 14 (i.e., within the S $\frac{1}{2}$ SE $\frac{1}{4}$   
16 of Section 14 and the E $\frac{3}{4}$ N $\frac{1}{2}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 23,  
17 T. 18 N., R. 17 E.W.M.). None of the water right claims filed, including those  
18 filed on ground water drains, describe a place of water use in Section 23. Only  
19 one point of diversion from Fogey Creek is identified on WRC No. 024277 and that  
20 closely matches diversion point "B" marked on exhibit DE-27. While Mr. Harrel  
21 testified to using five diversions, it appears to the Referee that the diversion  
22 described in WRC No. 024277 could not physically serve the SW $\frac{1}{4}$  of Section 14 by  
23 gravity flow nor could any of the diversions currently being used. The Referee was  
24 left with no explanation of the discrepancy between the RCW 90.14 claim and the  
25 current points of diversion and place of use of the water. The various water right  
26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 claims filed by Mr. Harrel, including those filed on ground water drains, all  
2 identify either the SW $\frac{1}{4}$  and/or the SE $\frac{1}{4}$  of Section 14 as the place where water is  
3 used. Since Paul Harrel completed the RCW 90.14 claims and is farming the  
4 property, the inconsistency between the current practice and the right asserted in  
5 WRC No. 024277 should have been addressed. No evidence was introduced regarding  
6 compliance with the requirements of RCW 90.03.380 for approval of changes of place  
7 of use and or point of diversion by the Ecology.

8 It is the Referee's opinion that WRC No. 024277 effectively limits the size of  
9 any irrigation right which can be confirmed to something very close to 100 acres  
10 and 3 cfs. That instantaneous quantity is consistent with the quantity requested  
11 by Willowbrook in its exception. Although Mr. Harrel testified to a larger  
12 quantity being measured in the creek and subsequently diverted, the Referee has  
13 concluded that any claim to Fogey Creek water other than within the quantities  
14 contained in WRC No. 024277 has been forfeited as provided in RCW 90.14.071. At  
15 the instantaneous rate of 3 cfs, approximately 200 acre-feet per year could be  
16 diverted during the spring runoff period testified to by Mr. Harrel.

17 The Referee does not recommend that a right be confirmed to Willowbrook Farms  
18 for use of Fogey Creek due to the unexplained discrepancies between the RCW 90.14  
19 claim and the current practice. The Referee does not believe that the intent of  
20 RCW 90.14 was met in filing a claim form that describes entirely different land  
21 than is being irrigated and substantially fewer acres than is now being irrigated.

1  
2 COURT CLAIM NO. 02068 -- 3 Bar G Ranch, Inc.

3       3 Bar G Ranch, Inc. filed exceptions to the Reports of Referee for Subbasin  
4 No. 11. Some of the exceptions filed by 3 Bar G Ranch also involve Subbasin No. 8,  
5 however, they will be addressed solely in the Supplemental Report of Referee for  
6 Subbasin No. 11.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

## **FINDINGS OF FACT**

I, DOUGLAS CLAUSING, as Referee in this proceeding, having carefully examined the testimony and evidence, do hereby make the following Findings of Fact pursuant to the Order on Exceptions entered by this court on March 9, 1995:

Based upon the additional testimony and evidence obtained at either the exception hearing or the supplemental hearing, the Report of Referee - Subbasin No. 8, dated May 9, 1994, should be modified as ordered by the Court on March 9, 1995, and by recommendations made herein. Following are the rights recommended for confirmation in the May 9, 1994, Report of Referee for Subbasin No. 8, which were not modified as a result of the exceptions taken and the additional recommendations made by the Referee as a result of the Court's rulings at the exception hearing and the testimony and evidence presented at the supplemental hearing:

16 CLAIMANT NAME: **Elwin and Patricia Gibson and** COURT CLAIM NO. 02046  
**Claude and Lillian Gibson**

17 Source: An unnamed spring

18 Use: Irrigation of 9.5 acres and stock water

19 Period of Use: April 1 to October 31

20 Quantity: 0.19 cubic foot per second, 62.7 acre-feet per year for  
irrigation and 2 acre-feet per year for stock water

21 Priority Date: **June 30, 1878**

22 Point of Diversion: 1100 feet north and 550 feet east from the south quarter  
corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 18 N., R. 17 E.W.M.

23 Place of Use: The NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Dale and Lois Wells** COURT CLAIM NO. 04898  
2 Source: An unnamed spring  
3 Use: Irrigation of one-half acre and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.01 cubic foot per second, 3.3 acre-feet per year for irrigation and 2 acre-feet per year for stock water  
6 Priority Date: **June 30, 1878**  
7 Point of Diversion: 1100 feet north and 550 feet east from the south quarter corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.  
8  
9 Place of Use: The north 100 feet of the east 200 feet of the west 500 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Richard O. & Rita Hutchinson** COURT CLAIM NO. 00877  
2 Source: Yakima River  
3 Use: Irrigation of 14 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 2 cubic feet per second, 240 acre-feet per year for irrigation and 10 acre-feet per year for stock water  
6 Priority Date: **December 3, 1879**  
7 Point of Diversion: 1150 feet north and 75 feet west from the east quarter corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3, T. 18 N., R. 17 E.W.M.  
8 Place of Use: That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, lying east of the C.M. & St. P. & P. Railroad right of way and southwest of the Thorp Highway; and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 described as follows: Commencing at the south quarter corner of said section, thence west 200 feet more or less to the point of beginning; thence west to the right of way of the Thorp Highway; thence northwest 380 feet more or less along said highway; thence N 37° W 200 feet more or less to the point of beginning; AND that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11 described as follows: Commencing at the north quarter corner of said section; thence W 250 feet more or less to the point of beginning, thence west to the right of way of the Thorp Highway; thence southeast 450 feet more or less along said highway; thence N 36° E 350 feet more or less to the point of beginning, ALL in T. 18 N., R. 17 E.W.M.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **William R. Fields, Jr. and** COURT CLAIM NO. **02372**  
2 **Joy Lourena Fields**

3 Source: **Yakima River**

4 Use: **Irrigation of 2.5 acres and stock water**

5 Period of Use: **April 1 through October 31 for irrigation; continuous for**  
**stock water**

6 Quantity: **0.05 cubic foot per second, 9.25 acre-feet per year for**  
**irrigation; 0.01 cubic foot per second, 1 acre-foot per**  
**year for stock water**

7 Priority Date: **December 3, 1879**

8 Point of Diversion: **1150 feet north and 75 feet west from the east quarter**  
**corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of**  
**Section 3, T. 18 N., R. 17 E.W.M.**

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **William R. Fields, Sr.** COURT CLAIM NO. 02372  
2 Source: Yakima River  
3 Use: Irrigation of 2.5 acres and stock water  
4 Period of Use: April 1 through October 31 for irrigation; continuous for  
stock water  
5 Quantity: 0.05 cubic foot per second, 9.25 acre-feet per year for  
irrigation; 0.01 cubic foot per second, 1 acre-foot per  
year for stock water  
6 Priority Date: **December 3, 1879**  
7 Point of Diversion: 1,150 feet north and 75 feet west from the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
8 Place of Use: That portion of the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
southwest corner of said quarter-quarter section; thence  
north 650 feet, to the north right of way of Burlington  
Northern Railroad, the true point of beginning; thence  
southeasterly 163.8 feet along said right of way; thence  
N 42° E 148 feet, more or less; thence N 9° E 350 feet,  
more or less to the Thorp Mill Ditch; thence westerly  
along said ditch 300 feet, more or less, to the west line  
of said quarter-quarter section; thence south 400 feet,  
more or less, to the true point of beginning.

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Mr. and Mrs. Clifford Lindsey** COURT CLAIM NO. 01189  
2 Source: Yakima River  
3 Use: Irrigation of 3 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.06 cubic foot per second, 11 acre-feet per year  
6 Priority Date: 1,150 feet north and 75 feet west from the east quarter  
7 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
8 Section 3, T. 18 N., R. 17 E.W.M.  
9 Place of Use: The south 250 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2 lying  
10 east of the Thorp Highway and the north 175 feet of the  
11 NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, lying east of the Thorp Highway  
12 and west of the right of way of the Burlington Northern  
13 Railroad, all in T. 18 N., R. 17 E.W.M.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE Referee's Office  
28 Re: Subbasin No. 8 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Kenneth L. and Lillian G. Wilson** COURT CLAIM NO. 00718

2 Source: **Yakima River**

3 Use: **Irrigation of 3.5 acres and stock water**

4 Period of Use: **April 1 through October 31 for irrigation; continuous for  
stock water**

5

6 Quantity: **0.07 cubic foot per second, 18.25 acre-feet per year for  
irrigation; 0.01 cubic foot per second, 1.0 acre-feet per  
year for stock water**

7

8 Priority Date: **December 3, 1879**

9 Point of Diversion: **1,150 feet northe and 75 feet west of the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.**

10

11 Place of Use: **That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
south quarter corner of said section; thence west 800  
feet to the Thorp Highway; thence northwest along said  
highway 380 feet, more or less, to the true point of  
beginning; thence N 37° E 440 feet, more or less, to the  
Thorp Mill Ditch; thence northwest along said ditch to  
the Thorp Highway; thence southeast along said highway to  
the true point of beginning.**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Larry O. Hillis  
& Veralene Hillis** COURT CLAIM NO. 01705

2 Source: Robinson Canyon Creek

3 Use: Irrigation of 40.5 acres and stock water

4 Period of Use: March 15 through October 31 for irrigation

5 Quantity: 4.00 cfs; 37.5 acre-feet per year for irrigation of 40.5  
6 acres; 0.02 cfs; 2 acre-feet per year from March 15  
7 through October 31; 0.50 cfs; 2 acre-feet per year from  
November 1 through March 14 for stock water

8 Priority Date: **May 4, 1880**

9 Point of Diversion: 100 feet north and 500 feet east of the south quarter  
10 corner of Section 27, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 27, T. 18 N., R. 17 E.W.M.

11 Place of Use: The NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the east 1000 feet of  
12 the west 1900 feet N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 26, T. 18 N.,  
R. 17 E.W.M.

13 CLAIMANT NAME: **Harold E. Chamberlin  
& Sherry A. Chamberlin** COURT CLAIM NO. 02316

14 Source: Yakima River

15 Use: Irrigation of 6 acres and stock water

16 Period of Use: April 1 to October 31

17 Quantity: 0.15 cfs; 36 acre-feet per year for irrigation; 1  
18 acre-foot per year for stock water

19 Priority Date: **January 1, 1881**

20 Point of Diversion: 1150 feet north and 75 feet west of the east quarter  
21 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.

22 Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 18 N.,  
23 R. 17 E.W.M lying easterly of the Thorp Mill Ditch

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Harold E. Chamberlin** COURT CLAIM NO. 02316  
2 & **Sherry A. Chamberlin**  
3 Source: **Yakima River**  
4 Use: **Irrigation of 45 acres and stock water**  
5 Period of Use: **April 1 through October 31 for irrigation**  
6 Quantity: **1.125 cubic feet per second; 270 acre-feet per year**  
7 Priority Date: **June 9, 1881**  
8 Point of Diversion: **1150 feet north and 75 feet west of the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.**  
9 Place of Use: **That portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 12,  
T. 18 N., R. 17 E.W.M. lying westerly of the Yakima River  
and easterly of the Thorp Mill Ditch**  
10  
11  
12 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
13 (A)02619  
14 Source: **Robinson Canyon Creek**  
15 Use: **Irrigation of 15 acres**  
16 Period of Use: **March 1 through October 31**  
17 Quantity: **1.15 cubic feet per second, 70.5 acre-feet per year**  
18 Priority Date: **November 1, 1881**  
19 Point of Diversion: **250 feet north and 1300 feet west of the southeast corner  
of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24,  
T. 18 N., R. 17 E.W.M.**  
20  
21 Place of Use: **That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, T. 18 N.,  
R. 18 E.W.M. lying southwest of the Packwood Canal and  
south of Robinson Canyon Creek.**  
22  
23  
24  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
2 (A)02619

3 Source: Robinson Canyon Creek.

4 Use: Irrigation of 8 acres.

5 Period of Use: March 1 through October 31.

6 Quantity: 0.62 cfs; 37.6 acre-feet per year for irrigation.

7 Priority Date: **February 1, 1882**

8 Point of Diversion: 250 feet north and 1300 feet west from the southeast  
corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 24, T. 18 N., R. 17 E.W.M.

9 Place of Use: That portion of Lot 1, Section 30, T. 18 N., R. 18 E.W.M.,  
described as follows: A tract of land bounded by a line  
beginning at the northwest corner of said Section and  
running thence east on the north boundary of said Section  
702.1 feet; thence S 2°35" W 311.7 feet; thence S 55°13' W  
305.4 feet to a point on the north boundary line of the  
right-of-way of county road; thence along said north  
boundary line of said right-of-way N 48°34' W 577.9 feet  
to the west boundary line of said Section; thence north  
along said west boundary line 103.25 feet to the point of  
beginning.

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME:

Theiline P. Scheumann

COURT CLAIM NO. 01335

(A)02619

2 Source: Robinson Canyon Creek.

3 Use: Irrigation of 14.6 acres.

4 Period of Use: March 1 through October 31 for irrigation.

5 Quantity: 1.12 cfs; 68.6 acre-feet per year.

6 Priority Date: June 1, 1882

7 Point of Diversion: 250 feet north and 1300 feet west from the southeast  
corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 24, T. 18 N., R. 17 E.W.M.

10 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 24, T. 18 N.,  
R. 17 E.W.M., described as follows: A tract of land  
bounded by a line beginning at the southeast corner of  
said Section and running thence west along the south  
boundary line of said Section, 976.0 feet; thence  
N 48°45' W 409.5 feet; thence N 42°00' E, 575.0 feet;  
thence N 53°00' E, 437 feet; thence N 86°00' E, 558.0 feet  
to the east boundary line of said Section; thence south  
along said east boudary line 998 feet to the point of  
beginning; EXCEPT: That portion of the following  
described tract heretofore conveyed to Kittitas County, a  
municipal corporation, by deed dated June 10, 1927,  
recorded in Book 41 of Deeds, Page 398, which lies within  
said Tract 2: A tract of land bounded by a line beginning  
at the southeast corner of said Section 24 and running  
thence west in the line between Sections 24 and 25 a  
distance of 190 feet; thence on an arc of a curve to the  
left having a radius of 603 feet, a distance of 48 feet to  
the true point of beginning; thence N 76°40' W, 950 feet;  
thence S 53°10' E, 390 feet; thence N 88°20' E, 612 feet  
to the true point of beginning.

27 SUPPLEMENTAL REPORT OF REFEREE

Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
2 Source: Robinson Canyon Creek.  
3 Use: Irrigation of 5 acres.  
4 Period of Use: March 1 through October 31 for irrigation.  
5 Quantity: 0.28 cfs; 23.5 acre-feet per year.  
6 Priority Date: **June 1, 1882**  
7 Point of Diversion: 600 feet north and 1100 feet west from the southeast  
8 corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 24, T. 18 N., R. 17 E.W.M.  
9 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, T. 18 N.,  
10 R. 18 E.W.M. lying north of the creek and westerly of  
Packwood Canal.  
11  
12 CLAIMANT NAME: **Charles Gust** COURT CLAIM NO. 01560  
13 Source: Unnamed spring-fed stream  
14 Use: Irrigation of 2 $\frac{1}{2}$  acres and stock water  
15 Period of Use: April 1 through October 31 for irrigation and stock water  
16 Quantity: 0.48 cfs, 14.4 acre-feet per year for irrigation and  
0.5 acre-foot per year for stock water  
17 Priority Date: **June 30, 1882**  
18 Point of Diversion: 1000 feet west and 800 feet north of the southeast corner  
19 of Section 30, T. 18 N., R. 18 E.W.M.  
20 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N.,  
R. 18 E.W.M., Kittitas County, Washington, which is  
bounded by a line described as follows: Beginning at the  
southeast corner of said Section 30, thence N 19.6 feet to  
the north right-of-way boundary of the county road; thence  
N 87°37' W, along said north right-of-way boundary 541.57  
feet to the true point of beginning; thence N 87°37' W,  
211.63 feet; thence N 0°01' E, 668.40 feet; thence  
S 60°52' E, 241.63 feet; thence S 554.49 feet to the true  
point of beginning.  
21  
22  
23  
24  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8  
28

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **James and Betsy Ogden** COURT CLAIM NO. 01961  
2 Source: **Joe Watt Creek**  
3 Use: **Irrigation of 20 acres**  
4 Period of Use: **April 1 to October 31**  
5 Quantity: **0.5 cubic foot per second, 132 acre-feet per year**  
6 Priority Date: **November 14, 1883**  
7 Point of Diversion: **50 feet south and 1,150 feet west of the northeast corner  
8 of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
T. 18 N., R. 17 E.W.M.**  
9 Place of Use: **That portin of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9, T. 18 N.,  
R. 17 E.W.M., lying south of Joe Watt Canyon Road.**  
10 Limitation on Use: **This land may enjoy a right from the Kittitas Reclamation  
11 District. A maximum of 132 acre-feet per year can be used  
12 from all sources.**  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Robert F. and Linda Lapan** COURT CLAIM NO. 01446  
2 Source: **Yakima River**  
3 Use: **Irrigation of 1.25 acres**  
4 Period of Use: **April 1 through October 31**  
5 Quantity: **0.0313 cubic foot per second, 11.0 acre-feet per year**  
6 Priority Date: **June 30, 1885**  
7 Point of Diversion: **950 feet north and 1,100 feet west from the east quarter corner of Section 13, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 18 N., R. 18 E.W.M.**  
8  
9 Place of Use: **That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. described as follows: Commencing at the southeast corner of said quarter section; thence west 480 feet, more or less, thence north 460 feet, more or less, to the center of Back Creek and the true point of beginning; thence N 9°59' E 222.99 feet; thence N 69°33'40" E 20 feet, more or less, thence N 0°15'35" W 94.86 feet; thence E 85 feet, more or less, thence S 22°1'54" E 350 feet more or less to the north bank of Back Creek; thence southwest along said creek to the true point of beginning.**  
10  
11  
12  
13  
14  
15  
16 CLAIMANT NAME: **Joann S. Prater** COURT CLAIM NO. 02150  
17 Source: **An Unnamed spring**  
18 Use: **Single domestic supply**  
19 Period of Use: **Continuous**  
20 Quantity: **0.01 cubic foot per second, 1 acre-foot per year**  
21 Priority Date: **August 11, 1885**  
22 Point of Diversion: **1,250 feet south and 1,100 feet east from the west quarter corner of Section 30, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.**  
23  
24 Place of Use: **The SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.**  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Ronald and Margaret McMillian** COURT CLAIM NO. 00829

2 Source: An unnamed spring

3 Use: Single domestic supply, including irrigation of  
one-quarter acre of lawn and garden and stock water

4 Period of Use: Continuous

5 Quantity: 0.01 cubic foot per second, 1 acre-foot per year for  
domestic supply, 1 acre-foot per year for stock water

6 Priority Date: **January 18, 1896**

7 Point of Diversion: 750 feet south and 650 feet east from the north quarter  
corner of Section 22, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 22, T. 18 N., R. 17 E.W.M.

8 Place of Use: That portion of the south 300 feet of the east 250 feet of  
the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, T. 18 N., R. 17 E.W.M. lying  
east of the Taneum Ditch.

9

10 CLAIMANT NAME: **Gene and Sally Panatonni** COURT CLAIM NO. 01208

11 Source: Unnamed spring

12 Use: Single domestic supply, including irrigatin of one-quarter  
acre of lawn and garden and stock water

13 Period of Use: Continuous

14 Priority Date: **November 4, 1886**

15 Point of Diversion: 500 feet east and 660 feet north from the south quarter  
corner of Section 30, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 30, T. 18 N., R. 18 E.W.M.

16 Place of Use: The north 300 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N.,  
R. 18 E.W.M., except the west 1018.5 feet thereof and  
right of way for county road located on the south  
boundary.

17

18

19

20

21

22

23

24

25

26

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Harold E. Chamberlin** & **Sherry A. Chamberlin** COURT CLAIM NO. 02316

2 Source: Yakima River

3 Use: Irrigation of 13 acres

4 Period of Use: April 1 through October 31

5 Quantity: 0.325 foot per second; 78 acre-feet per year

6 Priority Date: **January 29, 1887**

7 Point of Diversion: 1150 feet north and 75 feet west of the east quarter corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3, T. 18 N., R. 17 E.W.M.

8 Place of Use: That portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M. lying west of the Yakima River and east of the Thorp Mill Ditch

12 CLAIMANT NAME: **Thomas C. and Kathleen Brunson** COURT CLAIM NO. 01055

13 Source: Sheep Pasture Creek

14 Use: Irrigation of 14 acres

15 Period of Use: April 1 through October 31

16 Quantity: 1 cubic foot per second, 100 acre-feet per year

17 Priority Date: **June 9, 1887**

18 Point of Diversion: 400 feet south and 150 feet east from the center of Section 29, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 18 N., R. 18 E.W.M.

20 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  lying south of Sheep Pasture Creek and west of the Yakima River, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  lying southwest of the Yakima River, all in Section 29, T. 18 N., R. 18 E.W.M.

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Ben F. and Nina M. George** COURT CLAIM NO. 01810

2 Source: An unnamed spring

3 Use: Irrigation of 12 acres

4 Period of Use: April 1 to October 31

5 Quantity: 0.25 cubic foot per second, 79.2 acre-feet per year

6 Priority Date: **June 22, 1887**

7 Point of Diversion: 800 feet south and 900 feet west of the east quarter  
8 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3,  
T. 18 N., R. 17 E.W.M.

9 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3, T. 18 N.,  
10 R. 17 E.W.M. lying east of the Thorp Mill Ditch

11 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
12 (A)02619

13 Source: Robinson Canyon Creek.

14 Use: Irrigation of 32.6 acres.

15 Period of Use: March 1 through October 31.

16 Quantity: 1.83 cfs; 153.2 acre-feet per year.

17 Priority Date: **June 28, 1887**

18 Point of Diversion: 600 feet north and 1100 feet west from the southeast  
19 corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 24, T. 18 N., R. 17 E.W.M.

20 Place of Use: That portion of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 19, T. 18 N.,  
21 R. 18 E.W.M. lying westerly of Packwood Canal and north of  
the creek.

22

23

24

25

26

27 SUPPLEMENTAL REPORT OF REFEREE Referee's Office  
28 Re: Subbasin No. 8 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
(A)02619

2 Source: Robinson Canyon Creek.

3 Use: Irrigation of 46.1 acres.

4 Period of Use: March 1 through October 31.

5 Quantity: 2.59 cfs; 588 acre-feet per year.

6 Priority Date: **June 28, 1887**

7 Point of Diversion: 600 feet north and 1100 feet west from the southeast corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24, T. 18 N., R. 17 E.W.M.

8 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and the south 500 feet of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 lying easterly of Packwood Canal; ALSO the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 19, T. 18 N., R. 18 E.W.M., EXCEPT that portion of the said NE $\frac{1}{4}$ SW $\frac{1}{4}$  lying southerly of a line beginning at the southwest corner of said NE $\frac{1}{4}$ SW $\frac{1}{4}$  and running northeasterly to the center of Section 19.

9

10

11

12

13

14 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
(A)02619

15 Source: Robinson Canyon Creek

16 Use: Irrigation of 14.4 acres

17 Period of Use: March 1 through October 31

18 Quantity: 1.10 cubic feet per second, 67.7 acre-feet per year

19 Priority Date: **June 28, 1887**

20 Point of Diversion: 250 feet north and 1300 feet west of the southeast corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24, T. 18 N., R. 17 E.W.M.

21

22 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, T. 18 N., R. 18 E.W.M. lying south of Robinson Canyon Creek and west of the Packwood Canal.

23

24

25

26

27 SUPPLEMENTAL REPORT OF REFEREE Referee's Office  
Re: Subbasin No. 8 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

28

1 CLAIMANT NAME: **Irwin Loucks**  
2 & Dorothy Loucks  
3 Source: Yakima River  
4 Use: Irrigation of 15 acres and stock water  
5 Period of Use: April 1 through October 31  
6 Quantity: 1.80 cfs; 300 acre-feet per year for irrigation and 0.50  
7 acre-feet per year for stock water  
8 Priority Date: **December 28, 1888**  
9 Point of Diversion: 1150 feet north and 75 feet west of the east quarter  
10 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
11 Section 3, T. 18 N., R. 17 E.W.M.  
12 Place of Use: Parcel A: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12,  
13 T. 18 N., R. 17 R.W.M. lying westerly of the Yakima River  
14 and southerly of the Burlington Northern Railroad  
15 Company's right-of-way.  
Parcel B: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 18 N., R. 17 E.W.M. lying southerly of the Burlington  
Northern Railroad Company's right-of-way and east of the  
east boundary of the existing cement irrigation ditch;  
such ditch being situated 5 feet more or less east of the  
east boundary of an existing road and the northerly  
extension of said road.

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
2 Source: Fogey Creek (A)02619  
3 Use: Irrigation of 4 acres  
4 Period of Use: March 1 through October 31  
5 Quantity: 0.80 cubic foot per second, 51 acre-feet per year  
6 Priority Date: **January 30, 1889**  
7 Point of Diversion: 1300 feet north and 400 feet west of the southeast corner  
8 of Section 13, being within the  $SE\frac{1}{4}SE\frac{1}{4}$  of Section 13,  
T. 18 N., R. 17 E.W.M.  
9 Place of Use: The  $E\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M.  
10 Limitation on Use: The total diversion between this right and the right to  
11 Fogey Creek with a June 30, 1903, date of priority  
delivered through the common diversion and pipeline shall  
not exceed 4.71 cfs.  
12  
13 CLAIMANT NAME: **Jennis Callahan & Lloyd K. Howry** COURT CLAIM NO. 01086  
14 Source: An unnamed spring  
15 Period of Use: Continuous  
16 Quantity: 0.02 cubic foot per second, 2 acre-feet per year  
17 Priority Date: **March 9, 1889**  
18 Point of Diversion: 500 feet north and 150 feet east of the west quarter  
19 corner of Section 13, being within the  $SW\frac{1}{4}NW\frac{1}{4}$  of  
Section 13, T. 18 N., R. 17 E.W.M.  
20 Place of Use: That portion of the  $SW\frac{1}{4}NW\frac{1}{4}$  of Section 13, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
21 southwest corner of said  $SW\frac{1}{4}NW\frac{1}{4}$ , thence N  $0^{\circ}09'11''$  W 240  
feet to the point of beginning; thence N  $0^{\circ}09'11''$  W 436.64  
feet; thence S  $86^{\circ}26'11''$  E 190.46 feet; thence S  $27^{\circ}51'15''$   
E 447.15 feet; thence S  $89^{\circ}54'00''$  W 411.87 feet to the  
22 point of beginning.  
23  
24 Limitation on Use: A maximum of 1.5 acre-feet per year can be used for lawn  
25 and garden irrigation under this right and any right  
through the West Side Irrigating Company.  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Richard O. and Rita Hutchinson** COURT CLAIM NO. 00877  
2 Source: An unnamed spring  
3 Use: Irrigation of one-quarter acre and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.02 cubic foot per second, 1 acre-foot per year for  
irrigation; 0.10 cubic foot per second, 10 acre-feet per  
year for stock water  
6 Priority Date: **July 15, 1889**  
7 Point of Diversion: 450 feet north and 25 feet east from the southwest corner  
of Section 2, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2,  
T. 18 N., R. 17 E.W.M.  
8 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
south quarter corner of said section; thence west to the  
right of way of the Thorp Highway; thence northwest 115  
feet more or less along said right of way to the point of  
beginning; thence N 27° E 200 feet more or less; thence N  
66° W 305 feet more or less; thence S 37° W 200 feet more  
or less to the right of way of the Thorp Highway; thence  
southeast along said right of way the point of beginning.

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Irwin Loucks**  
2 & Dorothy Loucks  
3 Source: Yakima River  
4 Use: Irrigation of 27 acres and stock water  
5 Period of Use: April 1 through October 31  
6 Quantity: 3.2 cfs; 540 acre-feet per year for irrigation and 1.5  
7 acre-feet per year for stock water  
8 Priority Date: March 1, 1890  
9 Point of Diversion: 1150 feet north and 75 feet west of the east quarter  
10 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
11 Section 3, T. 18 N., R. 17 E.W.M.  
12 Place of Use: Parcel C: The NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 18 N.,  
13 R. 17 E.W.M.; EXCEPT: A tract of land bounded by a line  
14 beginning at the southeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of said  
15 section and running thence north along the east boundary  
line of said quarter of quarter section 605 feet more or  
less; thence N 45°48' W to a point on the low water mark  
of the east bank of the Yakima River; thence southerly  
along said low water mark of said bank to the south  
boundary line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; and thence N 39°12' E along  
said boundary line 300 feet more or less to the point of  
beginning.  
16 Parcel D: That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13,  
17 T. 18 N., R. 17 E.W.M. east of the east boundary of the  
18 existing cement irrigation ditch which ditch is situated  
5 feet more or less east of the east boundary of an  
existing road and the northerly extension of said road.

19  
20  
21  
22  
23  
24  
25  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

COURT CLAIM NO. 02046

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Roger C. and Rita M. Sparks** COURT CLAIM NO. 01029  
2 Source: Coleman Canyon Creek  
3 Use: Irrigation of 30 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.32 cubic foot per second, 30 acre-feet per year  
6 Priority Date: **June 30, 1890**  
7 Point of Diversion: 300 feet south and 200 feet east from the center of  
8 Section 2, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, T. 17 N.,  
R. 17 E.W.M.  
9 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, T. 17 N., R. 17 E.W.M.  
10 Limitation on Use: This land may also have a supplemental right from the  
11 Kittitas Reclamation District for an additional 120  
acre-feet per year.  
  
12 CLAIMANT NAME: **Norma Jean Wilcox** COURT CLAIM NO. 01971  
13 Source: An unnamed spring  
14 Use: Irrigation of one-half acre of lawn and garden and stock  
water  
15 Period of Use: April 1 to October 31  
16 Quantity: 0.016 cubic foot per second, 1 acre-foot per year  
17 Priority Date: **June 30, 1892**  
18 Point of Diversion: 1750 feet north and 1550 feet west from the southeast  
corner of Section 11, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 18 N., R. 17 E.W.M.  
19 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the east  
quarter corner of said section; thence S 950 feet more or  
less to the point of beginning; thence, S 79° W 117 feet  
more or less; thence, S 55° W 117 feet more or less;  
thence, W 130 feet more or less; thence, S 260 feet  
more or less; thence, east to the right of way of the  
Thorp Highway; and thence north to the point of beginning.

27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Thorp Town Ditch Association** COURT CLAIM NO. 00725  
2 Source: Yakima River  
3 Use: Irrigation of 15.5 acres, stock water and fire protection  
4 Period of Use: April 1 through October 31 for irrigation, continuous for  
stock water, as needed for fire protection  
5  
6 Quantity: 0.31 cubic foot per second, 80.6 acre-feet per year for  
irrigation and fire protection; 0.02 cubic foot per  
second, 2.0 acre-feet per year for stock water  
7  
8 Priority Date: **June 30, 1893**  
9 Point of Diversion: 1150 feet north and 75 feet west from the east quarter  
corner of Section 3, being within the  $SE\frac{1}{4}NE\frac{1}{4}$  of Section 3,  
T. 18 N., R. 17 E.W.M.  
10  
11 Place of Use: All that portion of the  $NW\frac{1}{4}NE\frac{1}{4}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. easterly of the westerly boundary line of tax  
parcel 6 lying between the Thorp Highway and the railroad;  
all of Blocks 1 and 2 of the Thorp townsite between Thorp  
Highway and Main Street; the easterly one-half of Block 1  
between Main Street and Chester Street; the triangular  
piece of land in the  $NE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$  of Section 11 lying between  
2nd Street and Goodwin Road; all of those portions of the  
 $NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$ , the  $SE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$  and the  $NE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$  of Section 11  
lying west of the Thorp Highway; that half of the  
 $SW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$  of Section 11 which is northeasterly of a  
diagonal line extending from the northwest corner of the  
 $SW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$  to the southeast corner of the  $SW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$ .  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Gerald D. Detwiler** & Carol L. Detwiler COURT CLAIM NO. 02074  
2  
3 Source: An unnamed, spring-fed pond  
4 Use: Irrigation of 4 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.04 cfs; 16.8 acre-feet per year  
7 Priority Date: **November 4, 1895**  
8 Point of Diversion: 1520 feet north and 375 feet west of the southeast corner  
of Section 9, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9,  
T. 18 N., R. 17 E.W.M.  
9  
10 Place of Use: Commencing at the southeast corner of Section 9, T. 18 N.,  
R. 17 E.W.M.; thence north along the east line of said  
Section 9 1588.3 feet; thence west 32.7 feet to the true  
point of beginning of this description; thence N 42°20' W  
88.7 feet; thence S 72°58' W 195.7 feet; thence S 86°44' W  
230.1 feet; thence S 78°34' W 187.2 feet; thence  
S 88°55' W 262.9 feet; thence south 100.0 feet; thence  
continuing south to the south line NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9;  
thence easterly along said south line to a point which  
bears S 15°15' W from said true point of beginning; thence  
N 15°15' E to a point which bears S 15°15' W 100.0 feet  
from the said true point of beginning; thence N 15°15' E  
100.0 feet to the true point of beginning.  
11  
12  
13  
14  
15  
16  
17 CLAIMANT NAME: **Richard O. and Rita Hutchinson** COURT CLAIM NO. 00877  
18 Source: An unnamed spring  
19 Use: Stock water  
20 Period of Use: Continuous  
21 Quantity: 0.22 cubic foot per second, 28 acre-feet per year  
22 Priority Date: **November 4, 1895**  
23 Point of Diversion: 650 feet north and 750 feet east from the northwest corner  
of Section 11, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11,  
T. 18 N., R. 17 E.W.M.  
24  
25 Place of Use: That portion of the E $\frac{3}{4}$ S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2, T. 18 N.,  
R. 17 E.W.M.  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8  
28

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **David W. and Lyla M. Fudacz** COURT CLAIM NO. 04817  
2 Source: Two unnamed springs  
3 Use: Stock water  
4 Period of Use: April 15 to October 31  
5 Quantity: 0.02 cubic foot per second, 1 acre-foot per year  
6 Priority Date: **February 28, 1897**  
7 Point of Diversion: 1. 1,500 feet north and 200 feet east from the south  
8 quarter corner of Section 11;  
9 2. 1,400 feet north and 200 feet east from the south  
quarter corner of Section 11; BOTH being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$   
of Section 11, T. 18 N., R. 17 E.W.M.  
10 Place of Use: That portion of the E $\frac{1}{2}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. described as follows: Beginning at the east  
11 quarter corner of Section 11; thence N 89°19'11" W  
12 1,329.81 feet to a point which is the approximate center  
13 of Goodwin Road; thence S 00°17'19" W 20 feet to the south  
14 right of way boundary of said county road and the true  
15 point of beginning; thence S 00°17'19" W 187 feet; thence  
16 N 89°19'11" W parallel with the south right of way of said  
county road 820.19 feet; thence N 73°03'37" W 164.29 feet;  
thence N 00°27'51" W 131.02 feet; thence continuing N  
00°27'51" W 10 feet to a point on the south right of way  
of said county road; thence S 89°19'11" E on said road  
right of way 979.45 feet to the true point of beginning.

1 CLAIMANT NAME: **Harold E. Chamberlin**  
2 & **Sherry A. Chamberlin** COURT CLAIM NO. 02316

3 Source: **Yakima River**

4 Use: **Irrigation of 16 acres**

5 Period of Use: **April 1 to October 31**

6 Quantity: **0.40 cubic foot per second, 96 acre-feet per year**

7 Priority Date: **March 3, 1900**

8 Point of Diversion: **1150 feet north and 75 feet west of the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.**

9 Place of Use: **The NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.**

10

11 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
12 (A)02619

13 Source: **Robinson Canyon Creek.**

14 Use: **Irrigation of 41 acres.**

15 Period of Use: **March 1 through October 31.**

16 Quantity: **2.30 cfs; 523 acre-feet per year.**

17 Priority Date: **January 13, 1902**

18 Point of Diversion: **600 feet north and 1100 feet west from the southeast  
corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 24, T. 18 N., R. 17 E.W.M.**

19

20 Place of Use: **The south 500 feet of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 19, T. 18 N., R. 18 E.W.M.**

21

22

23

24

25

26

27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8 Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Packwood Canal Company, Inc.** COURT CLAIM NO. 00785  
(A)04801

2 Source: Fogey Creek

3 Use: Irrigation of 15.2 acres

4 Period of Use: April 1 to October 15

5 Quantity: 1.0 cubic foot per second, 45.6 acre-feet per year

6 Priority Date: **June 30, 1903**

7 Point of Diversion: 1200 feet north and 300 feet west of the southeast corner  
8 of Section 13, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13,  
T. 18 N., R. 18 E.W.M.

9 Place of Use: That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19, T. 18 N.,  
10 R. 18 E.W.M., lying east of the Packwood Canal and west of  
the pond.

11

12 CLAIMANT NAME: **Packwood Canal Company, Inc.** COURT CLAIM NO. 00785  
(A)04801

13 Source: Robinson Canyon Creek

14 Use: Irrigation of 233 acres

15 Period of Use: April 1 to October 31

16 Quantity: 11 cfs from April 1 to July 10, 10.5 cfs from July 11 to  
17 October 31; 699 acre-feet per year

18 Priority Date: **June 30, 1903**

19 Point of Diversion: 800 feet north and 800 feet west of the south quarter  
20 corner of Section 19, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 19, T. 18 N., R. 18 E.W.M.

21 Place of Use: That portion of the following described lands lying east  
22 of the Packwood Canal and west of the Yakima River: The  
E $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 19; the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ NE $\frac{1}{4}$  of  
Section 30, T. 18 N., R. 18 E.W.M.

23

24

25

26

27 SUPPLEMENTAL REPORT OF REFEREE Referee's Office  
Re: Subbasin No. 8 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Theiline P. Scheumann** COURT CLAIM NO. 01335  
2 Source: Fogey Creek (A)02619  
3 Use: Irrigation of 60 acres  
4 Period of Use: March 1 through October 31  
5 Quantity: 4.71 cubic feet per second, 765 acre-feet per year  
6 Priority Date: **June 30, 1903**  
7 Point of Diversion: 1300 feet north and 400 feet west of the southeast corner  
8 of Section 13, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13,  
T. 18 N., R. 17 E.W.M.  
9 Place of Use: That portion of Government Lot 1 lying east of the  
10 Packwood Canal, and that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$  lying west  
11 of the Yakima River, both in Section 19, T. 18 N., R. 18  
E.W.M.  
12 Limitation on Use: The total diversion between this right and the right to  
13 Fogey Creek with a January 30, 1889, date of priority,  
delivered through the common diversion and pipeline shall  
not exceed 4.71 cfs.  
14  
15 CLAIMANT NAME: **Larry O. Hillis** COURT CLAIM NO. 01705  
16 & **Veralene Hillis**  
17 Source: Robinson Canyon Creek  
18 Use: Irrigation of 3.5 acres; 29.75 acre-feet per year  
19 Period of Use: March 15 through October 31  
20 Quantity: 0.35 cfs; 29.75 acre-feet per year  
21 Priority Date: **September 22, 1906**  
22 Point of Diversion: 600 feet north and 1250 feet east of southwest corner of  
23 Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26,  
T. 18 N., R. 17 E.W.M.  
24 Place of Use: That portion of the north 450 feet of the east 300 feet of  
25 the west 850 feet of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 26, T. 18 N., R. 17 E.W.M. lying south of Robinson  
Canyon Creek  
26  
27 SUPPLEMENTAL REPORT OF REFEREE  
28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **William G. and Julia Charles** COURT CLAIM NO. 01074

2 Source: Robinson Creek

3 Use: Irrigation of one-quarter acre and stock water

4 Period of Use: April 1 through October 31

5 Quantity: 0.02 cubic foot per second, 2 acre-feet per year

6 Priority Date: **September 22, 1906**

7 Point of Diversion: 600 feet north and 1250 feet east from the southwest corner  
8 of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26,  
T. 18 N., R. 17 E.W.M.

9 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M.

10 CLAIMANT NAME: **Larry O. Hillis** COURT CLAIM NO. 01705

11 & **Veralene Hillis**

12 Source: Robinson Canyon Creek

13 Use: Irrigation of 11 acres and stock water

14 Period of Use: March 15 through October 31 for irrigation of 11 acres and  
15 continuously for stock water

16 Quantity: 1.10 cfs, 93.5 acre-feet per year for irrigation; 0.02  
17 cfs, 1 acre-foot per year from March 15 through  
October 31, 0.25 cfs, 1 acre-foot per year from November 1  
through March 14 for stock water

18 Priority Date: **April 7, 1908**

19 Point of Diversion: 600 feet north and 1,250 feet east of the southwest corner  
20 of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26,  
T. 18 N., R. 17 E.W.M.

21 Place of Use: N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, T. 18 N., R. 17 E.W.M.

22 Limitations of Use: The 0.25 cfs of stock water diverted between November 1  
23 and March 14 is to satisfy ditch loss and to help overcome  
ice buildup in the head ditch.

24

25

26

27 SUPPLEMENTAL REPORT OF REFEREE

28 Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: **Norma Jean Wilcox** COURT CLAIM NO. 01971  
2 Source: Two unnamed spring areas  
3 Use: Irrigation of 2 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.04 cubic foot per second, 13.2 acre-feet per year  
6 Priority Date: **June 30, 1910**  
7 Point of Diversion: 1. 1,500 feet north and 2,250 feet west of the southeast corner of Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11;  
8 2. 950 feet north and 1,950 feet west of the southeast corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11; BOTH in T. 18 N., R. 17 E.W.M.  
9  
10 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M. described as follows: Commencing at the east quarter corner of said section; thence S 950 feet more or less to the point of beginning; thence S 79° W 117 feet more or less; thence S 55° W 117 feet more or less; thence W 130 feet more or less; thence S 260 feet more or less; thence east to the right of way of the Thorp Highway; thence north to the point of beginning.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

The aforementioned changes shall be incorporated into the Report of Referee dated May 9, 1994.

SIGNED and DATED at Yakima, Washington, this 4<sup>th</sup> day of March,

DOUGLAS CLAUSING, Referee

SUPPLEMENTAL REPORT OF REFEREE  
Re: Subbasin No. 8

Referee's Office  
15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401