

FILED  
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YAKIMA RIVER BASIN  
MAY 9 PM 2 18  
**WATER RIGHTS ADJUDICATION**

KIM M. EATON, YAKIMA COUNTY CLERK

EX-1000  
SHERIFF OF  
YAKIMA COUNTY

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

## REPORT OF REFEREE

**RE: SUBBASIN NO. 11  
(MANASTASH)**

Submitted to:

The Honorable Walter A. Stauffacher  
Yakima County Superior Court

REPORT OF REFEREE - VOLUME 17

9720

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

4           IN THE MATTER OF THE DETERMINATION )  
5           OF THE RIGHTS TO THE USE OF THE    )  
6           SURFACE WATERS OF THE YAKIMA RIVER )  
7           DRAINAGE BASIN, IN ACCORDANCE WITH )  
8           THE PROVISIONS OF CHAPTER 90.03,    )           No. 77-2-01484-5  
9           REVISED CODE OF WASHINGTON,        )  
10    )           REPORT OF REFEREE  
11           THE STATE OF WASHINGTON,         )           Re: Subbasin No. 11  
12           DEPARTMENT OF ECOLOGY,         )           (Manastash)  
13    )  
14    )  
15    Plaintiff,    )  
16    )  
17    v.              )  
18    )  
19    JAMES J. ACQUAVELLA, et al.,    )  
20    )  
21    Defendants    )  
22    )  
23    )

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24    To the Honorable Judge of the above named Court, the following  
25    report is respectfully submitted:

26    I. BACKGROUND

27    This report concerns the determination of a portion of the surface  
28    water rights of the Yakima River Drainage Basin, specifically those  
29    rights located within Subbasin No. 11, the Manastash Subbasin. The  
30    criteria used by the Referee in the evaluation of claims in this  
31    subbasin, consisting of applicable law and bases for water right  
32    determinations, can be found in the Report of the Referee to the Court,  
33    Preface to Subbasin and Major Category Reports, Volume 2, dated May 18,  
34    1988.

35    Evidentiary Hearings were conducted by the Referee beginning on  
36    November 2, 1989, and concluding November 21, 1989.

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## II. FIELD INVESTIGATIONS

Field surveys were conducted by the Department of Ecology staff during 1987 and 1988 to obtain information on existing water use patterns in Subbasin No. 11 for use in the adjudication proceedings. Ditches, pipelines and pumps were located and mapped. Map exhibits were prepared to show all pertinent features. Aerial photographs and topographic maps of the area, in addition to county assessor's plats, were utilized in conjunction with on-site field investigation.

### III. WATER DUTY

The volumes of water required for various uses in Subbasin No. 11 were set forth during testimony by a witness for the plaintiff and witnesses appearing on behalf of individual claimants. There was much contention about the validity of the testimony and evidence presented by the witness for the plaintiff and entry of the testimony and evidence offered by the witness was objected to by attorneys representing several of the claimants in the subbasin. Where possible, the Referee proposes to rely on the testimony of witnesses appearing on behalf of the individual claimants.

The maximum duty of water for the various uses in Subbasin No. 11 will be calculated by the Referee, in the absence of definitive testimony or other evidence, according to the following formulae:

B. Irrigation Water -- Where specific testimony is lacking concerning annual water duty the Referee will use 7.5 acre-feet per year per acre irrigated, which will represent a maximum annual water volume for irrigating lawn, garden,

1 alfalfa, pasture grass, and timothy hay--the predominant irrigation uses in this  
2 area. This water duty has been testified to as being the average requirement on  
3 many of the farms in the basin and is consistent with the quantity of water awarded  
4 in Gray and Geddis v. Johnson, et al., (hereafter Gray), Kittitas County Superior  
5 Court Decree No. 99 and 100, April 18, 1891.

6 The maximum rate of diversion or withdrawal will be calculated on the basis of  
7 1.0 cubic foot per second (449 gallons per minute) for each 40 acres of irrigation,  
8 irrespective of the type of crop. This is reflective of the rate of diversion  
9 authorized in Gray, supra, which is the basis for most of the historic water rights  
10 in this subbasin. Therefore, for each irrigated acre, the Referee has calculated  
11 the maximum instantaneous rate of diversion to be 0.025 cubic foot per second (11.2  
12 gallons per minute). It is the opinion of the Referee that the aforementioned duty  
13 of water is a reasonable maximum application rate for the soil and topographic  
14 conditions in Subbasin No. 11. These volumes and rates of water application will be  
15 employed by the Referee when quantitative evidence of the rate and volume of a right  
16 was neither submitted nor made clear during testimony.

17

18 IV. STIPULATIONS

19 During the Prehearing Conference held on June 15, 1989, two procedures were  
20 adopted by the Referee, without objection as follows:

21 1. "All exhibits entered and testimony taken at the hearing on claims may be  
22 utilized by any party in the proof of a claim or the contesting of a claim  
whenever relevant and material."

23 2. "The description of lands set forth in the claims of respective claimants  
24 is the correct description of the lands for which the water right is claimed  
and that such claim will constitute proof of the ownership thereof in the  
absence of a contest as to such title."

25 Additionally, the Plaintiff's Report to the Referee--Subbasin No. 11  
26 recommended to the Referee that water rights be confirmed for non-diversionary stock

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1 and wildlife watering and that they be confirmed as senior in priority regardless of  
2 the priority of other rights confirmed in this cause as follows:

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

7 2. Waters in natural watercourses in the subbasin shall be retained when  
8 naturally available, in an amount not to exceed 0.25 cubic foot per second  
(cfs), for wildlife watering uses in such watercourses as they flow across or  
9 are adjacent to lands, which are now used as pasture or range for wildlife.  
Retention of such water shall be deemed senior (or first) in priority.

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

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

19 20 5. Nothing in this stipulation mandates that any lands, associated with water  
rights or water retention as provided herein, shall be reserved for wildlife  
21 purposes."

22 The Menastash Water Ditch Association, through their attorney, Harrison K.  
23 Dano objected to portions of the Plaintiff's Report to the Referee, including the  
24 provision for confirmation of rights for non-diversionary stock and wildlife  
25 watering. Initially the objection was based on a lack of information concerning the  
26 basis of the recommendation and was amended on November 2, 1989, to specifically

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1 state that the recommendation conflicts with prior adjudication and appropriation  
2 rights established long before the stock water uses claimed.

3       The Menastash Ditch Water Association was awarded a Class 2 right with an 1872  
4 date of priority in the 1891 Kittitas County Superior Court case, Gray, supra. The  
5 association contends that allocating a senior right in the basin to non-diversionary  
6 stock watering would conflict with it's water right under that decree. Testimony  
7 and evidence submitted by the ditch association at the evidentiary hearing were that  
8 a stretch of Manastash Creek below their diversion naturally goes dry and attempts  
9 to maintain a flow of 0.25 cubic foot per second in the creek through this stretch  
10 would be futile. The association is concerned that their diversion would be  
11 regulated in attempts to maintain the designated flow in the creek. A survey  
12 conducted in November 1988 by a consultant hired by the association consisted of  
13 measurement of the creek's flow when possible and observations of its  
14 characteristics. Nine diversion points were identified and attempts made to measure  
15 the creek's flow at or below each diversion. Below the Reed Ditch diversion in the  
16 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, approximately 7.14 cubic feet per second was measured in the  
17 creek and comparable flows were observed in the creek at the Cove Road bridge.  
18 Flow in the creek diminished as it traversed the SW $\frac{1}{4}$  of Section 7 and the creek bed  
19 was dry from the center of Section 7 to the point where West Side Canal crosses the  
20 creek in the SE $\frac{1}{4}$  of Section 5, except for occasional, isolated pools of standing  
21 water in the creek bed.

22       This indicates to the Referee that water is not naturally available at all  
23 times the entire length of Manastash Creek. The language in the stipulation is very  
24 specific requiring "Waters in natural watercourses in the subbasin shall be retained  
25 when naturally available, in an amount not to exceed 0.25 cubic foot per

1 second . . . " (emphasis added). If there are stretches of the creek where water is  
2 naturally not available, then the stipulation would not be binding.

3 Attorney Dano has argued in his supplemental trial memorandum to the Court  
4 that the doctrine of res judicata should be applied honoring the priorities  
5 established and quantities of water allocated in Gray, supra. It is his position  
6 that Gray, supra, adjudicated all of the water rights in Manastash Creek. The  
7 record does not support that position. The only use of water identified in the  
8 decision and the quantities of water being used by the parties and carried forward  
9 to the decree were for irrigation of the lands described in the pleading submitted  
10 to the Court. At no point in either the Decree or the Decision is stock water  
11 identified as a use, yet it is evident from the testimony heard by the Referee that  
12 use of the land for livestock grazing predates entry of Decree No. 99 and 100. The  
13 testimony also indicates that land along Manastash Creek was used for livestock  
14 grazing prior to water being applied for irrigation of crops. This leads the  
15 Referee to believe that in some cases rights were established for stock watering  
16 prior to rights being established for irrigation. It is the Referee's belief that  
17 the failure of Decree No. 99 and 100 to award rights for stock watering from  
18 Manastash Creek does nothing to dilute the validity of those rights. The testimony  
19 consistently established the strong probability that lands along Manastash Creek  
20 were used for livestock grazing from the time the valley was first settled. Said  
21 livestock certainly watered directly from the creek wherever there was access. The  
22 Referee does not accept the assertion that the current non-diversionary stock water  
23 use is a result of modern subdividing of the lands along the creek channel.

24 The Referee, therefore, incorporates the non-diversionary stock water  
25 recommendation proposed by the Plaintiff.  
26

1                   V. LAND DESCRIPTIONS

2                 In the interest of minimizing future controversy and confusion relating to  
3 confirmed rights, the Referee has chosen to reduce legal descriptions of properties  
4 to the smallest reasonable legal subdivisions in which are contained the actual  
5 places of use.

6                   VI. WATER RIGHT PRIORITIES

7                 When testimony and evidence leading to a confirmed right are no more specific  
8 with respect to the priority date than the year, the Referee has elected to use the  
9 30th of June as representing a midpoint of that particular year. In those cases  
10 when the priority to be confirmed is no more specific than the month, the last day  
11 of that month will be used. The priority dates for water rights awarded in Decree  
12 No. 99 and 100 were no more specific than the year the rights were established;  
13 therefore, all rights herein recommended for confirmation that stem from that decree  
14 shall have June 30 as the month and day of priority.

15                   VII. SPECIAL ISSUES

16                 Prior Decrees

17                 Many of the defendants in this case are basing their water rights on prior  
18 decrees in the Manastash Basin, principally Decree No. 99 and 100 filed on April 18,  
19 1891, in the case of Gray and Geddis v. Johnson, et al., (hereafter Gray).  
20 Preceding that decree was the Court's Decision that contained the Findings of Fact  
21 and Conclusions of Law on which the final decree was based. The decree awarded to  
22 the plaintiffs and many of the defendants and intervenors the right to use waters  
23 from Manastash Creek and established 17 classes of water rights based on the date  
24 the right was initiated.

1       The right was quantified in California "miners inches", in which 40 inches  
2 equals one cubic foot per second, or one inch equals 0.025 cubic foot per second.  
3       The quantity of water authorized to each party could be used in April, May and June  
4 and half that quantity could be used the remainder of the year. The decree did not  
5 identify the number of acres that could be irrigated with the water that was  
6 awarded, however, the Decision stated that one inch of water was sufficient to  
7 irrigate one acre of land in April, May and June, and one-half inch of water was  
8 sufficient to irrigate one acre the remainder of the year, except on a few specified  
9 parcels. Therefore, except for those specified parcels, the Referee shall consider  
10 that one acre was irrigated for each inch of water awarded in the decree and will  
11 consider that to be a limitation on the rights confirmed in Decree No. 99 and 100.

12      The decree awarded rights to individuals and did not specify the lands on  
13 which the waters were to be used. However, the decision implied that pleadings  
14 submitted by each of the parties contained legal descriptions of the lands owned and  
15 on which creek water was being used. Water rights are appurtenant to the land on  
16 which the water is used and, since June 6, 1917, can only be transferred to other  
17 lands when approved by the Department of Ecology, or one of its predecessor  
18 agencies, upon a finding that the transfer will not impair other existing water  
19 rights, RCW 90.03.380.

20      Lacking legal descriptions in the decree, it became difficult, as land was  
21 sold to determine who had decreed rights to use water. As a result, according to  
22 the record, an unidentified individual researched the pleading filed with Kittitas  
23 County Superior Court and developed a "Schedule of Rights" that identified the class  
24 of right awarded in the decree, the number of inches awarded, legal description of  
25 the lands contained in the pleading and the landowner at the time the schedule was  
26 prepared. By the time the schedule was prepared, some of the rights confirmed for

1 lands lying in the lower part of the basin near the Yakima River had been sold and  
2 transferred to other lands. This generally occurred when the West Side Irrigating  
3 Company was extended into the Manastash Creek basin and in most cases the schedule  
4 identified to whom the right had originally been confirmed, sometimes with the  
5 Section, Township, and Range of the lands. The distribution system for the  
6 irrigating company was completed prior to June 6, 1917, when the Surface Water Code  
7 was adopted. Most of the transfers occurred prior to the establishment of a formal  
8 procedure for transferring water rights. Therefore, little documentation exists for  
9 many of the transfers.

10 Several defendants have represented this schedule to be the document used by  
11 both the irrigators in the basin and the Department of Ecology for determining who  
12 has water rights stemming from the 1891 Decree. At the evidentiary hearing, the  
13 department did not present any testimony or evidence related to this schedule or its  
14 use by the department. However, on June 12, 1987, in a hearing before the Court,  
15 the department offered a proposed Order Pendente Lite, which the Court signed, for  
16 regulating diversions on Manastash Creek. Attached to the Order was a copy of the  
17 Schedule of Rights. The testimony during the June 12, 1987, hearing was that the  
18 Schedule of Rights is the best information available for implementing the decree and  
19 that when it has been challenged, the challenge was not supported by the factual  
20 situation. Lacking testimony to the contrary, the Referee believes the document  
21 represents the historical basis for the department's regulation on Manastash Creek.  
22 During the evidentiary hearing there was no contest to the validity and  
23 applicability of this schedule; therefore, the Referee shall use the document for  
24 establishing the legal description of lands to which the water rights confirmed in  
25 the decree are appurtenant.

26

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1      Return Flow

2      Many of the defendants in this subbasin assert rights to the use of return  
3      flow waters. The Court has used the definition of "return flows" contained in 2  
4      Hutchins, Water Rights Laws in the Nineteen Western States (1974), page 568 as  
5      follows:

6      "Return flow" is water diverted for irrigation or other use that returns to  
7      the stream from which it is diverted, or to some other stream, or that would  
do so if not intercepted by some obstacle.

8      The Court considers return flow waters to include waste water and seepage  
9      water. Several of the defendants cite the judgment in Stevens, et al v. Shoemake,  
10     Superior Court of Kittitas County, Washington (October 28, 1910) as the foundation  
11     for their claim to return flow waters. The cited portion of the decree cited  
12     discusses "the prior right to the use water of the stream and water course . . . ,  
13     including such water as is occasioned by increase, waste, and seepage resulting from  
14     irrigation . . . Stevens v. Shoemake, supra, was decided in 1910, prior to  
15     construction of most of the Yakima Project and prior to development of the Kittitas  
16     Reclamation District.

17     The defendants who are claiming return flow water all lie below the Kittitas  
18     Reclamation District canals that serve lands within the Manastash Subbasin. The  
19     contract between the United States and the Kittitas Reclamation District  
20     specifically addresses return flow waters within the reclamation district boundaries  
21     as follows:

22     "34. (a) The United States does not abandon or relinquish any of the waste,  
23     seepage or return flow-waters attributable to the irrigation of the lands to  
which water is supplied under this contract. All such waters are reserved and  
24     intended to be retained for the use and benefit of the United States as a  
source of supply for the project.

25     (b) If suitable drainage or return-flow water from any part of the  
26     project shall at any time be or become available at points where it can be  
used on lands within the District, the United States may supply such water as  
27     a part of the supply to which the lands in the District are entitled."

1 Therefore, return flow waters that originate from the Kittitas Reclamation  
2 District system may be considered by the United States to be part of the water to  
3 which district lands are entitled, or part of the four acre-feet per acre that is  
4 delivered to district patrons.

5 Additionally, in a recent Washington State Supreme Court case, State of  
6 Washington, D.O.E. v. U. S. Bureau of Reclamation, et al., 118 Wn.2d 761 (1992), the  
7 Supreme Court held that the appropriator of water retains its rights to use the  
8 water so long as the water remains within the boundaries of the appropriator's  
9 property and that only Federal agencies and those entities with whom they contract  
10 have authority to make decisions regarding the distribution of water within a  
11 Federal irrigation project. The Supreme Court found that the Federal government  
12 through the Bureau of Reclamation was the appropriator of water in a Federal project  
13 and had control of the water until it left the project boundaries.

14 The return flow water derived from irrigation practices using water from the  
15 Kittitas Reclamation District and the Westside Irrigating Company canals or seepage  
16 from the canals would be considered foreign return flows as the water in these  
17 canals is diverted from the Yakima River outside of Subbasin 11. The Washington  
18 State Court of Appeals has held in the case of Dodge v. Ellensburg Water Co., 46 Wn.  
19 App. 77, 82, 729 P.2d 631, that ". . . no water rights, prescriptive or otherwise,  
20 exist in these waters." In a much earlier case, Elgin v. Weatherstone, 123 Wash.  
21 429, 212 P. 562 (1923), the Washington Supreme Court ruled that foreign waters are  
22 of a vagrant or fugitive nature and may be used by the first person who can take  
23 them from the stream where they are found. The ruling also found that the fact  
24 that a riparian owner was first to appropriate vagrant surplus waters in a creek did  
25 not give him the exclusive right to take it the next year.

1       The above cited cases lead the Referee to conclude that rights cannot be  
2 confirmed for the use of return flow waters that originate from the application of  
3 water from either the Kittitas Reclamation District or West Side Irrigating Company  
4 canals, or seepage from those canals. Therefore, the only possible rights to return  
5 flow waters that could exist in the Manastash Subbasin would be return flows  
6 resulting solely from the use of surface waters originating within the subbasin,  
7 such as Manastash Creek. In order for the Referee to recommend that rights be  
8 confirmed for use of return flow waters, the defendants would need to show that the  
9 return flows originated from use of creek water, not Yakima Project water or foreign  
10 return flows; evidence of the quantity of return flow water used; historic use of  
11 the water; and the legal foundation for the water use. Without that specific  
12 testimony the Referee cannot recommend confirmation of rights for use of return flow  
13 water.

14

15    VIII. TESTIMONY AND REFEREE'S ANALYSES

16    Plaintiff Testimony

17       The Plaintiff State of Washington, Department of Ecology, was represented by  
18 Charles B. Roe, Jr., Senior Assistant Attorney General and Ceil Buddeke, Assistant  
19 Attorney General.

20       The plaintiff introduced into evidence the following generic exhibits:

NUMBER	DESCRIPTION
SE-1	Map -- Inset A, Subbasin No. 11
SE-2	Map -- Subbasin No. 11
SE-3	Water Right Certificates, Permits, Claims, Temporary Permits and Certificates of Change, RE: Subbasin No. 11
SE-4	Washington State University Research Bulletin XB 0925, 1982, <u>Irrigation Requirements for Washington -- Estimates and</u> <u>Methodology</u>

1 SE-20

2 U. S. Department of Agriculture Soil Conservation Service, 1974  
3 Irrigation Guide, Benton, Kittitas, Walla Walla & Yakima  
4 Counties

5 Additionally, oral testimony was given by Clay Keown, Field Investigator,  
6 Ecology Adjudication Section, and Richard Szymarek, Supervisor of Field Staff,  
7 Ecology Adjudication Section.

8 Claimant Testimony

9 One hundred and fourteen statements of claim were filed for use of surface  
10 waters within Subbasin No. 11. All claimants and their legal counsel, if  
11 represented, are as follow:

<u>Court</u>	<u>Claim</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s) No.</u>
13	0878	Lee R. and Carolyn Akker Rt 6, Box 1775 Ellensburg, WA 98926	Cone, Gilreath, Cole, Ellis & Korte P. O. Box 499 Ellensburg, WA 98926	25, 179, 181
16	4705	Ernest W. and Margaret L. Allan 18022 - 5th NE Seattle, WA 98155		26, 181
18	1946 2253	Lawrence and Arlein Anderson Rt 6, Box 685 Ellensburg, WA 98926	F. Steven Lathrop P. O. Box 1088 Ellensburg, WA 98926	28, 179
20	1950	Anderville Farms, Inc. Rt 6, Box 685 Ellensburg, WA 98926	F. Steven Lathrop P. O. Box 1088 Ellensburg, WA 98926	28, 179, 190
22	4678	Dolores W. Ayers Rt 1, Box 870 Ellensburg, WA 98926		33, 181
24	2293	Rick A. Baker Rt. 6 Box 900 Ellensburg, WA 98926		37, 181

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1	1420	Wilhelm and Joan Bakke Rt 1, Box 1010 Ellensburg, WA 98926	37, 179, 181
2	1896	Floyd and Lorna Bangerter P. O. Box 6052 Kent, WA 98064	F. Steven Lathrop P. O. Box 1088 Ellensburg, WA 98926
3	1593	Haldon J. and Ulma J. Baumann Rt 1, Box 1070 Ellensburg, WA 98926	38, 179, 219
4	2299	David R. Bean Rt 6, Box 1705 Ellensburg, WA 98926	40, 181
5	2291	Ken Beckley Rt 6, Box 715 Ellensburg, WA 98926	42, 179, 181
6	1812	Melissa L. Belsaas	Richard T. Cole
7	1948	Rt 1, Box 1088 Ellensburg, WA 98926	P. O. 499 Ellensburg, WA 98926
8	2293	Robert Belsaas Rt 1, Box 1031 Ellensburg, WA 98926	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926
9	2266	William Bews, Jr. Rt. 1, Box 375 Ellensburg, WA 98926	37, 181
10	2249	Marco Bicchieri Rt 1, Box 361 Ellensburg, WA 98926	45
11	0931	Bart G. Bland	Kenneth D. Beckley
12	1723	Rt 1, Box 1154	P. O. Box 858
13	4410	Ellensburg, WA 98926	Ellensburg, WA 98926
14	1723	Larry and Harriett L. Bland	46, 181
15	4410	Rt 1, Box 1155 Ellensburg, WA 98926	47, 194, 214
16	2206	Boise Cascade Corporation Legal Dept. - ATTN: Joe Munson P. O. Box 50 Boise, ID 83707	Harrison K. Dano P. O. Box 1159 Moses Lake, WA 98837
17	2287	George B. Brain Rt 6, Box 660 Ellensburg, WA 98926	E. P. Swain, Jr. Ferguson & Burdell 1420 Fifth Avenue, #3400 Seattle, WA 98101-2339
18			53, 180, 208
19			55, 180, 214
20			
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1	1011	James E. and Lillian J. Brooks Rt 6, Box 540 Ellensburg, WA 98926	57, 180, 181
2	1055	Thomas C. and Kathleen Brunson Rt 1, Box 320 Ellensburg, WA 98926	58, 180, 213
3	4569	Vernon Burghart Rt 1, Box 883 Ellensburg, WA 98926	33, 181
4	0104	Burlington Northern Railroad Co. Anne M. Blythe, Atty 3800 Continental Plaza - 777 Main St Fort Worth, TX 76102	61, 180, 181
5	0715	Kenneth R. and Ruth I. Carpenter 1112 Brooklane Ellensburg, WA 98926	61
6	0987	Edmund T. and Margery Christian Rt 1, Box 966 Ellensburg, WA 98926	61, 180, 190, 199, 215
7	1820	Richard D. Chubb 246 13th Street SE Auburn, WA 98002	F. Steven Lathrop P. O. Box 1088 Ellensburg, WA 98926
8	2237	Donald J. and Sharon A. Cocheba Rt 5, Box 777 Ellensburg, WA 98926	65, 180, 181
9	1969	Richard T. and Lynn Cole Rt 1, Box 1090 Ellensburg, WA 98926	42, 180, 181
10	1079	William R. and Dorothy C. Cole Rt 6, Box 800 Ellensburg, WA 98926	65, 180, 181
11	1846	Brian H. and Tamara M. Cooke Rt 1, Box 918 Ellensburg, WA 98926	69. 195
12	1898	Harold and Judy Crose RR 1, Box 386 Soap Lake, WA 98851	73, 180, 181
13	0178	James M. and Pamela Jo Daly Rt. 6, Box 1715 Ellensburg, WA 98926	73, 181

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1	2270	Robert Dean 1112 Cooper Road McCleary, WA 98557	69, 195
2	0931	Douglas A. Dicken 200 - 116 Ave. NE Bellevue, WA 98004	120, 181
3	1478	Terry L. and Vonda Draney Rt 1, Box 943 Ellensburg, WA 98926	Hugh M. Spall P. O. Box 831 Ellensburg, WA 98926 156, 200
4	0931	Dave Duncan & Sons Duncan Family Trust Rt. 1 Box 740 Ellensburg, WA 98926	120, 181
5	0931	Dale Dyk Rt 1, Box 760 Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Moses Lake, WA 98837 120, 181
6	4426	Wallace Enger Rt 1, Box 1092B Ellensburg, WA 98926	74, 181
7	1478	Peter and Nora Evans RR 1, Box 949 Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Moses Lake, WA 98837 156, 201
8	4521 4522 4523 4524	May Moffet Mitchell Gage 911 E. Washington Street Ellensburg, WA 98926	75, 220
9	2260	Robert and Avadene Gardinier Robert Y. and Wanda Gardinier Rt 6, Box 640 Ellensburg, WA 98926	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926 77, 180, 191
10	1554	Steve Gilbert and Krisha Frank Rt 1, Box 1056 Ellensburg, WA 98926	80, 181
11	2272	Tom Hamberg 103 East 3rd Ellensburg, WA 98926	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926 80, 181

1	0477	Clarence and Hazel J. Harrell 3121 Hanson Road Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Moses Lake, WA 98837	33, 84, 180, 181, 183, 191, 202, 205, 206
2	4637			
3				
4	1949	George and Barbara Helleson Rt 1, Box 1093 Ellensburg, WA 98926		88, 180, 196
5				
6	0502	Ernest C. and Eleanor Hinckle Rt. 1 Box 380 Ellensburg, WA 98926		90
7				
8	1060	Estate of John C. Hoffman C/O Hilda and W.O. Salter Rt 6, Box 690 Ellensburg, WA 98926		91, 180, 181
9				
10	0988	Michael and Sandra Hoffman Rt 1, Box 1016 Ellensburg, WA 98926		92, 180, 181
11				
12	1769	David B. and Lucia S. Hubbard Rt 1, Box 255 Ellensburg, WA 98926		93, 181
13				
14	2270	Bruce Johnson C/O Kenneth D. Beckley	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926	69, 195
15				
16	0551	Joe and Sharon Juinta Rt. 1 Box 368 Ellensburg, WA 98926		94
17				
18	1215	Kamiakin Water Assoc.		94, 181
19	2144	ATTN: Robert N. Howell 13540 - 25th N.E. Seattle, WA 98125		
20				
21	0193	David L. Keithly		96, 181
22	0826	Walter H. Kembel and Margaret E. Nelson Rt 6, Box 665 Ellensburg, WA 98926	Richard T. Cole P. O. Box 499 Ellensburg, WA 98926	105, 217
23				
24	1554	Oenone J. Kinman 11802 21st SW Seattle, WA 98146		80, 181
25				
26				
27				
28		<b>REPORT OF REFEREE</b> Re: Subbasin No. 11	17	

1	2026	Lyle F. R. and Ruth M. Knudson 6228 129th Avenue SE Bellevue, WA 98006	96, 180, 182
2			
3	1954	Ray and Linda Knudson Rt 6, Box 585 Ellensburg, WA 98926	96, 181
4			
5	0822	Edwin L. and Roberta Kuehl Rt 1, Box 1025 Ellensburg, WA 98926	97, 181
6			
7	1446	Robert F. and Linda L. Lapan Rt 1, Box 290 Ellensburg, WA 98926	James E. Hurson P. O. Box 499 Ellensburg, WA 98926 97, 180, 181
8			
9	1976	Andrew Jack Leinbach Rt. 1 Box 1092-A Ellensburg, WA 98926	99, 181
10			
11	1772	Harold L. and Gloria P. Lindstrom Rt 1, Box 890 Ellensburg, WA 98926	33, 206
12			
13	0931	Michael James and Wendy Lee Mahoney 1131 Cypress Point Drive Placentia, CA 92670	120, 181
14			
15	1553	Deva Martenson Rt 2, Box 1190 Ellensburg, WA 98926	100, 180, 184
16			
17	1978	Marshall and Doris Mason Rt. 1, Box 335 Ellensburg, WA 98926	102
18			
19	0516	Garry and Dawn Mathews RR 1, Box 1059 Ellensburg, WA 98926	102, 181
20			
21	2283	John Richard Matthews Rt 1, Box 1015 Ellensburg, WA 98926	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926 103, 180, 185
22			
23	1849	James W. and Janine P. McDermott Rt 6, Box 1224 Ellensburg, WA 98926	105, 182
24			
25	1951	Charles McElevey 4341 SW Concord Street Seattle, WA 98136	Richard T. Cole P. O. Box 499 Ellensburg, WA 98926 42, 182
26			
27			
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1	0826	Brian and Carol Mellergaard Rt 1, Box 1175 Ellensburg, WA 98926	John P. Gilreath P. O. Box 499 Ellensburg, WA 98926	105, 180, 217
2	0982	Laurin C. and Marjorie Mellergaard Rt 6, Box 1080 Ellensburg, WA 98926		110, 181
3	0950	Menastash Water Ditch Association c/o Dale Dyk Rt 1, Box 760 Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Moses Lake, WA 98837	113, 192
4	0522	George E. Mills Rt 6, Box 695 Ellensburg, WA 98926		118, 180, 181
5	0770	Woodly and Deloris Moore Rt 1, Box 1094 Ellensburg, WA 98926		119, 196
6	0555	John B. and Marion Moser Rt. 1 Ellensburg, WA 98926		120
7	0931	Murray Pacific Corporation C/O James M. Murray Suite 1750, 1st Interstate Plaza Tacoma, WA 98402	Robert L. Fraser	120, 181
8	4536	Marjorie J. Muzzall Rt. 1 Box 885 Ellensburg, WA 98926		33, 204
9	2288	Lucille Alby Nicholson 7514 Cole Avenue Highland, CA 92346		136
10	1671	Ron and Judy Nickels Rt 1, Box 1009 Ellensburg, WA 98926		103, 180, 186
11	1449	Ramon and Marion Nielsen Rt 6, Box 705 Ellensburg, WA 98926		125, 180, 181
12	1953	Harold Orr 4001 Aurora Ave North Seattle, WA 98103		125, 180, 181

1	0785 4801	Packwood Canal Company, Inc. C/O Thomas C. Brunson, President Rt 1, Box 320 Ellensburg, WA 98926	Hugh M. Spall P. O. Box 831 Ellensburg, WA 98926	127, 211
2	0659	Pacific NW Conference of the United Methodist Church		127, 182
3	1478	Howard and Mary Page Rt 1, Box 945 Ellensburg, WA 98926		156, 182
4	1208	Gene and Sally Panattoni Rt 1, Box 265 Ellensburg, WA 98926		134, 182
5	1670	Martin Pederson Rt 6, Box 1215 Ellensburg, WA 98926		135, 180, 182
6	0538	Gerald E. Platt, et al 306 Oak Street Ellensburg, WA 98926		136, 182
7	2272	James L. and Maxine Podkranic RR 1, Box 1160 Ellensburg, WA 98926		80, 182
8	0657	Eugene J. and Yvonne Prater Rt 1, Box 940 Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Ellensburg, WA 98926	136, 180, 186, 187, 188
9	0633	Wilhelm and Bertie Pross P. O. Box 533 Ellensburg, WA 98926		140
10	4816	Brent Renfrow and Karen A. Raymond Rt 1, Box 1091 Ellensburg, WA 98926		140, 189
11	0931	Scott F. and Mary Jo Repp Rt. 1, Box 557 Ellensburg, WA 98926		120, 182
12	0328	Carroll D. and Beverly J. Richards Rt 1, Box 975 Ellensburg, WA 98926		143, 210, 211
13	1153	Bob A. and Gwen C. Rock P. O. Box 1017 Ellensburg, WA 98926		69, 180, 197

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1	4584	Lee W. Roe and Kathlyn E. Hitch Rt 1, Box 1059A Ellensburg, WA 98926	145, 218	
2	1684	Virginia Ronne Rt 6, Box 785 Ellensburg, WA 98926	147, 182	
3	0923	Dean A. and Dorothy I. Ross Rt 1, Box 900 Ellensburg, WA 98926	33, 207	
4	1060	Hilda and W.O. Salter Rt. 6, aBox 690 Ellensbur, WA 98926	91, 180, 182	
5	1771	Joseph L. and Doris M. Schwab Rt 1, Box 905 Ellensburg, WA 98926	147, 193	
6	1029	Second Century Farms, Inc. Rt 1, Box 950 Ellensburg, WA 98926	148	
7	2270	Mel and Jodee Shenyer C/O Richard Cole P. O. Box 638 Ellensburg, WA 98926	69, 182	
8	1896	K. Bruce and Jean G. Skibeness 20927 - 28th Ave W Lynnwood, WA 98036	John P. Winbauer P. O. Box 1088 Ellensburg, WA 98926	150, 198, 209
9	0380	Robert M. and Irma Smith Rt 1, Box 369 Ellensburg, WA 98926	Hugh M. Spall P. O. Box 831 Ellensburg, WA 98926	152, 182
10	0258	Wayne and Margaret Smith Rt 1, Box 1005 Ellensburg, WA 98926		153, 203, 209
11	0578	Theodore and Colleen Sonstegaard Rt. 1, Box 1100 Ellensburg, WA 98926		166, 212
12	0538	Joseph and Billie Jo Sorenson 305 South Maple Ellensburg, WA 98926		136, 182
13	1770	Lawrence E. and Sula F. Spannagel Rt 1, Box 895 Ellensburg, WA 98926		33, 182

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1	1029	Roger and Rita Sparks	120, 148,
	1478	Rt 1, Box 950	156, 180,
2	0931	Ellensburg, WA 98926	203
3	1078	H. John and Bette J. Spence	65, 180,
		Rt 1, Box 780	182
4		Ellensburg, WA 98926	
5	1462	Jay and Bette Sprouse	163, 180,
		3200 Capital Mall Drive SW #M202	182
6		Olympia, WA 98502	
7	1968	Charles and Margaret Steward	163, 180,
		RR 1, Box 1145	199
8		Ellensburg, WA 98926	
9	2011	Mike Stougaard	John P. Winbauer
		312 Ridgeview Lane	P. O. Box 1088
10		Ellensburg, WA 98926	Ellensburg, WA 98926
11	1967	Ewing Stringfellow	82, 182
		P. O. Box 393	
12		North Bend, WA 98045	
13	3204	Edward L. and Anna G. Sullivan	166, 212
		Rt 1, Box 1109	
14		Ellensburg, WA 98926	
15	0500	Margaret A. Thayer	169
		Rt. 1, Box 370	
16		Ellensburg, WA 98926	
17	0340	Thomas H. and Celestina A. Thelen	170, 182
		Rt 1, Box 1042 C	
18		Ellensburg, WA 98926	
19	2068	Three Bar G Ranch, Inc.	170, 215
		Rt 1, Box 435	
20		Ellensburg, WA 98926	
21	1964	John G. and Carol J. Tucker	173, 182
22	0658	Robert A. and Wauneta M. Tugwell	173, 182
		Rt 6, Box 1760	
23		Ellensburg, WA 98926	
24	2276	United States of America*	Charles E. O'Connell, Jr.
			U.S. Dept. of Justice
25			P. O. Box 44378
26			Washington, DC
			20026-4378

1	0987	Eugene E. and Rhodesa M. Walsh 2800 - 10th Ave W Seattle, WA 98119	61, 190, 199, 215
2	0589	Washington State, Department of Natural Resources ATTN: Miriam Louckers Lands & Metals Div - MS LB-13 Olympia, WA 98504	Paul Silver, Asst. Attorney General Washington State, Dept. of Natural Resources MS: PB-71 Olympia, WA 98504
3	2109	Washington State, Department of Wildlife 600 North Capitol Way Olympia, WA 98504	William Frymire, Asst. Attorney General Temple of Justice Mail Stop PB-53 Olympia, WA 98504
4	1773	Larry C. and Senta K. Watson Rt 1, Box 275 Ellensburg, WA 98926	175, 180, 182
5	0373	H. H. and Marjorie A. Weeber 3406 Englewood Avenue Yakima, WA 98902	177, 180
6	1821	Mr. and Mrs. Lynn Weissenfels Rt. 1 Box 1087 Ellensburg, WA 98926	Richard T. Cole P. O. Box 499 Ellensburg, WA 98926
7	0578	Wayne W. Wells, et al C/O Theodore Sonstegaard Rt 1, Box 1100 Ellensburg, WA 98926	42, 182 166, 212
8	1085	Leroy A. and Elizabeth Werkhoven 451 Ingalls Lane Wapato, WA 98951	178, 183
9	1629	West Side Irrigating Company* Glenn Gregory, President P. O. Box 396 Ellensburg, WA 98926	Halverson and Applegate P. O. Box 526 Yakima, WA 98907-0526
10	1183	Doris E. and Fred H. Westberg 2252 Chambers Lake Drive Lacey, WA 98503	178, 183
11	2192	Charley and Jean Wheeler Rt 1, Box 1065 Ellensburg, WA 98926	24, 221

1	1819	Larry Whitlatch Rt 1, Box 1094-A Ellensburg, WA 98926	179, 183
2	0907	Burton J. and Carol M. Williams 23057 SE Lk Wilderness Dr. Maple Valley, WA 98038	38, 180, 220
3	4632	Mitchell F. and Dorita S. Williams P O Box 361 Mercer Island, WA 98040	26, 183
4	1077	William L. and Carol J. Wood Rt 6, Box 805 Ellensburg, WA 98926	65, 183
5	0950,	Carl D. Wray	179, 183
6	0980	RFD 1 Ellensburg, WA 98926	

11 \*Major Claimants whose rights will be considered through the Major Claimant Pathway  
identified in Pre-Trial Order No. 8.

12  
13 The following listed claimants are those whose claims, either in whole or in  
14 part, were recommended for confirmation in the Plaintiff's Report to the Referee  
15 (Pages 11 and 12), and to which no exceptions were taken.

16  
17 Name Court Claim No.  
18 Washington State Department of Natural Resources 0589  
19 Charley and Jean Wheeler 2192  
20  
21

22 Specific elements of the proposed rights for each claimant are identified in  
the Findings of Fact commencing on Page 180.

23 The remaining claims (consisting of those claims for which no recommendation  
24 for confirmation was made) were scheduled to be heard during the evidentiary trial  
25 which commenced on November 2, 1989. Based upon the testimony and evidence provided  
26 to the Referee, the analysis of all remaining claims follows:

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1    COURT CLAIM NO. 0878 -- Lee R. and Carolyn Akker

2       Lee and Carolyn Akker submitted a Claim to the Court for the use of McCarl  
3 Creek for stock water, irrigation and maintaining a fish pond. They were  
4 represented by Richard Cole and Mr. Akker appeared at the evidentiary hearing to  
5 testify concerning the claim.

6       The record shows that the Akkers acquired their property in 1969. At that  
7 time, it and a parcel to the north, were being irrigated from McCarl Creek using a  
8 five horsepower pump retained by the previous owner who continued to own the  
9 northern parcel. The Akkers irrigate approximately two and a half acres using a two  
10 horsepower pump and an underground sprinkler system. Water from the creek is also  
11 pumped into a pond that they constructed for raising fish. A few years ago McCarl  
12 Creek and the pond were dry during a portion of the summer, killing the fish. The  
13 pond has not been restocked with fish, but the Akkers have continued to use the pond  
14 for watering the three to five head of cattle they routinely raise and for water  
15 fowl habitat.

16       The property owned by the Akkers was part of a larger parcel homesteaded by  
17 Rosannah Griffin, with a patent issuing on November 20, 1880. Mr. Akker was not  
18 able to provide any testimony concerning historic irrigation on the property prior  
19 to his purchase. Decree No. 99 and 100 did not award any water rights to the  
20 property owned by the Akkers, however, that decree dealt with waters from Manastash  
21 Creek and its branches. McCarl Creek is not connected to Manastash Creek and,  
22 therefore, rights to its use were not discussed. McCarl Creek surfaces near the  
23 west section line of Section 9, T. 17 N., R. 18 E.W.M., near the West Side Canal and  
24 flows to the east into the Yakima River. Water Right Claims No. 112266 and 112267  
25 were filed in compliance with the requirements of RCW 90.14.

26  
27       REPORT OF REFEREE

28       Re: Subbasin No. 11

1       In order to recommend that a right be confirmed under the Prior Appropriation  
2       Doctrine, there must be evidence that water use began prior to June 6, 1917. Under  
3       the Riparian Doctrine, the land must be riparian to the water source, must have  
4       separated from federal ownership, and water use must have begun prior to December  
5       31, 1932. There is no evidence to establish use of water from McCarl Creek prior to  
6       those significant dates, therefore, the Referee cannot recommend that water rights  
7       be confirmed to Lee R. and Carolyn Akker under Court Claim No. 0878.

8       These claimants have shares in the West Side Irrigating Company, a Major  
9       Claimant whose rights will be addressed through the Major Claimant Pathway.

10      Livestock on the Akker property drink directly from McCarl Creek and this use  
11      is covered by the non-diversionary stock water right recommended for the Akkers in  
12      the Plaintiff's Report to the Referee.

13      COURT CLAIM NO. 4705 -- Ernest W. and Margaret L. Allan  
14      COURT CLAIM NO. 4632 -- Mitchell F. and Dorita S. Williams

15      Statements of Claim were submitted to the Court by the above named defendants  
16      for the use of waters from Manastash Creek for irrigation and stock watering. They  
17      were represented by Attorney Richard Cole. Ernest Allan and Mitchell Williams  
18      testified at the evidentiary hearing in support of the claims. The land now owned  
19      by the Allans and Williams was once under common ownership and the Allans assert the  
20      same foundation for their water right as the Williams. Mr. and Mrs. Allan own  
21      approximately 13 acres that they purchased in 1983 from Joe Davis. Mr. Davis  
22      provided them with a statement that when he purchased the property in 1972 or 1973  
23      it was planted in hay and alfalfa and irrigated from Manastash Creek through the  
24      Manastash Creek Ditch. The Allans have not themselves irrigated the land.

25      Mr. and Mrs. Williams own several parcels of land, but are claiming water  
26      rights for Manastash Creek for three parcels totaling 10.5 acres in size, with

27      REPORT OF REFEREE

28      Re: Subbasin No. 11

1 approximately 9.5 acres historically irrigated. They purchased the property in 1989  
2 from Dale Watson, who provided them a statement that when he purchased the property  
3 in 1972 or 1973 it was planted in hay and alfalfa and was irrigated from the  
4 Manastash Creek Ditch. He continued to irrigate a portion of the land for several  
5 seasons.

6 The Allan property and most of the Williams property lies in the SE $\frac{1}{4}$  of  
7 Section 11, T. 17 N., R. 17 E.W.M.. A small portion of the Williams land lies in  
8 the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M. Neither Mr. Allan or Mr.  
9 Williams was able to provide testimony or evidence concerning the historical use of  
10 the land prior to the 1960's. Mr. Williams did testify that his land was owned by  
11 Ernest M. Maddux in the early 1900's and that Mr. Maddux had acquired from D. H.  
12 Wescott and W. C. Wright water rights that had been decreed to them in 1891.  
13 However, the evidence shows that these water rights were acquired for use in the  
14 N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 14, not the SE $\frac{1}{4}$  of Section 11, which is where most of the land owned  
15 by the Williams and all the land owned by the Allans is located. Additionally, two  
16 1915 quit claim deeds transfer land, including the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 14 from a  
17 descendant of Ernest Maddux to Minnie Zehner. Deva Martensen, a defendant in this  
18 proceeding, is claiming for her land in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 14 the water rights  
19 that Minnie Zehner acquired along with the land from the Maddux family.

20 Gene Prater with the Menastash Creek Ditch Association testified that since  
21 1959 he has not been aware of any diversion from the association's ditch onto the  
22 Allan or Williams property and there is no legal foundation for the use of water  
23 from the ditch. The Referee notes that the property lies outside the service area  
24 identified for the Menastash Creek Ditch Association when their claim was presented  
25 and also outside the area identified in Decree No. 99 and 100 as being served by the  
26 ditch.

There was no evidence submitted to show that water right claims were filed for either the Allan or Williams property to meet the requirements of Chapter 90.14 RCW. The purpose of that chapter, as expressed in section 90.14.010 was "to provide adequate records for efficient administration of the state's water resources, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use." Section 90.14.071 provides:

Any person claiming the right to divert or withdraw waters of the state as set forth in RCW 90.14.041, who fails to file a statement of claim as provided in RCW 90.14.041, 90.14.051, and 90.14.061, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right.

Due to lack of testimony or evidence to show the existence of 90.14 claims for either of the two properties, historic use on the property and the foundation for a water right, the Referee cannot recommend that rights be confirmed to either Ernest W. and Margaret L. Allan or Mitchell F. and Dorita S. Williams.

COURT CLAIM NO. 1946 -- Lawrence and Arlein Anderson  
COURT CLAIM NO. 1950 -- Anderville Farms, Inc.  
COURT CLAIM NO. 2253 -- Anderville Farms, Inc.; Lawrence A. Anderson and  
L. Arlein Anderson; Alfred J. Anderson (formerly  
Clay McMechan, Jr.)

The above referenced Claims were submitted to the Court for use of surface waters in the Manastash Creek subbasin. The Andersons and Anderville Farms were represented by Attorney John Winbauer. Mr. Anderson and Richard C. Bain, Jr., a consultant hired by Anderville Farms, Inc., testified at the evidentiary hearing. Clay McMechan, Jr. did not appear at the hearing.

Anderville Farms, Inc., is owned by the Andersons and involves two farms, one referred to as the Brown Road Place and the other the Payne Place. The Payne Place encompasses 121 acres, with 120 irrigated acres in four fields. Irrigation water is provided from Manastash Creek and the Kittitas Reclamation District (KRD), which assesses for 120 acres, via Anderson Ditch No. 1. The Payne Place includes lands

1 identified in Court Claim No. 2253 filed by Clay McMechan, Jr., lying west of the  
2 West Side Canal. At the time of the hearing it was not clear whether Anderville  
3 Farms, Inc., had acquired ownership interest in, or leased the land. On September  
4 22, 1992, Clay McMechan, Jr. substituted Anderville Farms, Inc.; Alfred J. Anderson;  
5 Lawrence A. Anderson and L. Arlein Anderson as defendants for Claim No. 2253. The  
6 predominant crop is timothy hay with grain rotation and the fields can be irrigated  
7 by either sprinklers or surface application. At the time the Andersons began  
8 farming the Payne Place in 1962, it was planted in pasture that was rill irrigated.  
9 By the mid-1980's they had changed the distribution system to sprinklers, but have  
10 begun phasing out the forage crops and planting timothy hay. According to Mr.  
11 Bain's testimony, timothy is not compatible with sprinkler application, so they are  
12 again reverting to surface application of irrigation water. One 20 acre field is  
13 currently being sprinkler irrigated. Mr. Bain measured the flow from one of the  
14 ditch take-outs utilized on the Payne Place at 2.66 cubic feet per second and has  
15 estimated that it takes 19.7 acre-feet per acre to irrigate the fields by surface  
16 methods and 7.5 acre-feet per acre to sprinkle irrigate the 20 acre field.

17 The claims to water rights for the Payne Place are based on Gray, supra, which  
18 awarded a Class 2 right to Charles Morehead for 120 inches. The Schedule of Rights  
19 shows that the water was to be used in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 and the  
20 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M., most of which is part of the Anderville  
21 Farms, Inc. claim. Counsel also represented that the lands within the Payne Place  
22 that are owned by Clay McMechan and farmed by Anderville Farms, in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
23 Section 8, enjoy a portion of the right confirmed to A. Barnes in Gray, supra. At  
24 the time of the decree, A. Barnes owned the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section  
25 4, NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, all in T. 17 N., R. 18 E.W.M.  
26 However, according to the schedule of rights from the decree, the right that was  
27

1 awarded to A. Barnes was for the lands he owned in Sections 4, 5, and 9, not the  
2 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. Forty inches of that right was exercised on the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
3 Section 9, which is also part of the McMechan claim; however, there was no testimony  
4 about water use on that land.

5 Although Mr. Bain testified that the water requirement for irrigating the  
6 Payne Place was 19.7 acre-feet per year for each acre of timothy hay that is  
7 irrigated, the decree resulting from Gray, supra, awarded 7.7 acre-feet per year for  
8 each acre irrigated. That is the maximum that can be recommended for confirmation  
9 for rights that were awarded in that decree.

10 Water Right Claim No. 118627 was filed on behalf of Barnes Ditch to meet the  
11 requirements of RCW 90.14, for a diversion of 240 inches from Manastash Creek for  
12 irrigation and farming on the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
13 Section 8. There was no evidence submitted to show the existence of a water right  
14 claim filed pursuant to RCW 90.14 for the lands owned by Anderville Farms, Inc. in  
15 the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5.

16 Joseph and Doris Schwab own approximately three acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
17 5 and irrigate 2.5 acres from Manastash Creek. They are claiming two inches of the  
18 Morehead Class 2 right that is appurtenant to the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and on Page  
19 147 of this report it is recommended that they be confirmed a right for that  
20 quantity.

21 The Referee recommends that a right be awarded to Anderville Farms based on  
22 the Gray, supra, decree with a June 30, 1872, date of priority for the use of 2  
23 cubic feet per second from April 1 to June 30 and 1 cubic foot per second from July  
24 1 to October 31, 604 acre-feet per year for the irrigation of 80 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
25 and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. Without a 90.14 claim for the lands

1 in the SW<sup>1/4</sup>SE<sup>1/4</sup> of Section 5, the Referee cannot recommend that a right be confirmed  
2 for that land.

3 The claimants receive supplemental irrigation water from the Kittitas  
4 Reclamation District (KRD) for the Payne Place. KRD is a major claimant whose  
5 rights will be addressed through the Major Claimant Pathway.

6 The Brown Road Farm is 179 acres in size, with 163 acres of irrigated timothy  
7 hay. Included are 3.7 acres owned by Lawrence and Arlein Anderson who filed Court  
8 Claim No. 1946 for that parcel. The 3.7 acres are managed and farmed as part of the  
9 total 163 irrigated acres of the Brown Road Farm and the testimony and evidence  
10 presented during the hearing applies to both ownerships. A portion of the Brown  
11 Road Farm was purchased by Anderville Farms in 1960, with the remainder purchased in  
12 1976. As with the Payne Place, pasture was the crop at the time of purchase and  
13 since the mid-1980's has gradually been replaced with timothy hay. Mr. Bain  
14 estimated that the water requirement for irrigating the Brown Road Farm is 18.3  
15 acre-feet per acre irrigated. A 300 head dairy is also located on the farm and 15  
16 acre-feet per year is needed for watering the stock in the dairy. This farm is  
17 irrigated with waters from Manastash Creek and West Side Canal delivered via  
18 Anderson Ditch No. 2 and Spring Creek.

19 Counsel asserted that Manastash Creek water rights for the Brown Road Farm  
20 were awarded in Gray, supra; however, review of the decree does not show rights  
21 being awarded for that land, nor was there any testimony or evidence to show that  
22 water rights were later transferred to the property. During Attorney Winbauer's  
23 opening statement at the Evidentiary Hearing, he indicated that Anderville Farms was  
24 basing a portion of their right on a Class 3 right awarded in the Decree to John  
25 Sharp. The chain of title for the Brown Road Farm does show that John Sharp owned  
26 the property in the late 1800's; however, the Schedule of Rights that has been

1 entered into evidence by several parties shows that John Sharp sold all but 25  
2 inches of the Class 3 right he was awarded after most of his land came under the  
3 West Side Canal. It goes on to note that the 25 inches is probably used on the  
4 portion of land still owned by the Sharps that is above the ditch. None of the  
5 Brown Road Farm is above the West Side Canal.

6 Water Right Claim No. 141080 was filed by Anderville Farm pursuant to RCW  
7 90.14 for the use of waters from Manastash Creek and West Side Canal for irrigation  
8 of 128.5 acres for the Brown Road Farm. The testimony was insufficient to allow  
9 for a determination that a right to the use of waters from Manastash Creek exists  
10 for the Brown Road Farm. Therefore, the Referee does not recommend that a right be  
11 confirmed.

12 The West Side Irrigating Company is a major claimant whose water rights will  
13 be determined through the Major Claimant Pathway.

14 Water Right Claims No. 141075 through 141078 were filed for the use of drains  
15 to irrigate six acres within a portion of the Brown Road Farm. In addition to  
16 Manastash Creek and West Side Canal, Spring Creek is used to irrigate the portion of  
17 Brown Road Farm located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 and the N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9.  
18 Water is diverted from Spring Creek in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9. Mr. Bain measured  
19 this flow at 2.53 cubic feet per second. Mr. Anderson testified that Spring Creek  
20 as it flows through the NW $\frac{1}{4}$  of Section 9 is fed by seepage waters from the West Side  
21 Canal and drains from neighboring irrigated fields. According to Mr. Anderson,  
22 Spring Creek goes dry during the winter months. Based on the testimony, the  
23 Referee concludes that at least some of the water used from Spring Creek and the  
24 drains described in Water Right Claims No. 141075 through 141078 result from foreign  
25 return flows from West Side Canal and the application of Kittitas Reclamation  
26 District water updrainage from the Anderville property. Rights cannot be confirmed

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1 for the use of this water unless there is specific testimony that would allow the  
2 Referee to determine that the water is the result of the application of Manastash  
3 Creek on lands updrainage. Additionally, no evidence was submitted to show the  
4 legal foundation under which a right to the use of Spring creek was established.  
5 Based on the foregoing, the Referee cannot recommend that a right be confirmed for  
6 the use of waters from Spring Creek.

7 Livestock on the Anderville Farms, Inc. and Anderson property drink directly  
8 from Manastash Creek and Spring Creek. This use is covered by the non-diversionary  
9 stock water right recommended for the Andersons and Anderville Farms, Inc. in the  
10 Plaintiff's Report to the Referee.

11

12 COURT CLAIM NO. 4678 -- Dolores W. Ayers  
13 COURT CLAIM NO. 4569 -- Vernon G. and Jeanette K. Burghart  
14 COURT CLAIM NO. 4536 -- Margorie J. Muzzall  
15 COURT CLAIM NO. 4637 -- Clarence & Hazel Harrell  
16 COURT CLAIM NO. 1772 -- Harold L. and Gloria P. Lindstrom  
17 COURT CLAIM NO. 0923 -- Dean A. and Dorothy I. Ross  
18 COURT CLAIM NO. 2909 -- Lawrence F. and Sula F. Spannagel

19 The above listed Statements of Claim were filed with the Court for the use of  
20 waters of Manastash Creek for irrigation and stock watering. Each claimants own a  
21 portion of what is known as Flynn Orchards. Wayne Smith, Harold Lindstrom and Dean  
22 Ross testified at the evidentiary hearing concerning the historical development on  
23 all of the defendants' property. Kenneth Beckley, attorney at law, represented all  
24 of the defendants.

25 The defendants' property was owned by S. R. Geddis in the late 1800's and was  
26 awarded 20 inches of Class 6 water rights through Gray, supra. That decree  
27 determined that each inch of water was equivalent to 0.025 cubic foot per second and  
28 was sufficient for the irrigation of one acre. By April 1, 1919, the land was owned  
by James P. Flynn, from whom the name Flynn Orchards originated. As the name would

1 indicate, orchards were on the land for a number of years. By the early 1950's the  
2 land had been subdivided and now consists of nine parcels under separate ownership.  
3 The land is irrigated with waters from Manastash Creek via Reed Ditch and Flynn  
4 Orchard Ditch and the Kittitas Reclamation District (KRD). The defendants believe  
5 that creek water is generally available until around the first of July and from that  
6 point on KRD water is relied on in order to continue irrigating the land.

7 Approximately 60 percent of the land is flood irrigated and the remainder is  
8 sprinkler irrigated with the primary crop being pasture. A portion of the land that  
9 is sprinkler irrigated is lawns and landscape areas around the homes that have been  
10 constructed on the parcels. The ditches that deliver water to the property run  
11 through the Harrell Ranch and delivery of water is dependent on management of that  
12 ranch. The landowners within Flynn Orchards estimate that they use four acre-feet  
13 per year for each acre irrigated by sprinklers and five acre-feet per year for each  
14 acre flood irrigated.

15 Dolores Ayers owns a three acre parcel with a house and outbuildings that  
16 occupy approximately half an acre, so two and a half acres are actually irrigated.  
17 She also has horses that are watered from the ditch. There was no evidence  
18 submitted to indicate that a water right claim was filed for her property pursuant  
19 to the requirements of RCW 90.14.

20 Vernon G. and Jeanette K. Burghart are the owners of a 1.3 acre parcel on  
21 which a home has been constructed, so approximately one acre is actually irrigated.  
22 There is nothing in the record to indicate that a water right claim was filed for  
23 her property pursuant to the requirements of RCW 90.14.

24 Margorie J. Muzzall (the original claimants were Walter C. and Dale A. Emken)  
25 own a three acre parcel on which a home and outbuildings have been constructed,  
26 leaving approximately 2.5 acres irrigated. A ditch is also used to supply stock

1 water for cattle that are pastured on the property. Water Right Claim No. 124850  
2 was filed by Mr. Emken for his use of Manastash Creek in response to the  
3 requirements of RCW 90.14.

4 Clarence & Hazel Harrell (Ted B. Johnson was the original claimant) are the  
5 owners of a three acre parcel, of which approximately two and a half acres are  
6 irrigated after discounting the portion of the property on which a house and  
7 outbuildings have been constructed. There is no evidence that a water right claim  
8 was filed for the property to meet the requirements of RCW 90.14.

9 Harold L. and Gloria P. Lindstrom own a 1.5 acre parcel, of which  
10 approximately 1.25 acres are irrigated due to the home constructed on the land. The  
11 Court Claim filed by the Lindstroms included stock watering as a use of the water,  
12 but Mr. Lindstrom testified that they do not have stock and are not pursuing that  
13 portion of the claim. Water Right Claim No. 143552 was filed by the Lindstroms for  
14 their use of Manastash Creek in compliance with the requirements of RCW 90.14.

15 Dean A. and Dorothy I. Ross own a three acre parcel that has a home and  
16 outbuildings. Approximately 2.5 acres are actually irrigated. Water Right Claim  
17 No. 143467 was filed by Mr. and Mrs. Ross for their use of Manastash Creek pursuant  
18 to the requirements of RCW 90.14.

19 Lawrence E. and Sula F. Spannagel (the original claimant was H. G. Wight) own  
20 a three acre parcel, of which 2.5 acres are actually irrigated due to a home and  
21 outbuildings being constructed on the land. They also water their stock from the  
22 ditch. There is no record of a water right claim having been filed for this  
23 property as required by RCW 90.14. The Plaintiff's Report to the Referee  
24 recommended that a non-diversionary stock water right be confirmed to the  
25 Spannagels. However, the testimony shows that their stock drink from a ditch rather

1 than a natural water course; therefore, the recommendation was inappropriate and  
2 will not be accepted.

3 Based on the testimony and evidence presented, it is evident that a right was  
4 established for the lands now owned by the aforementioned defendants and identified  
5 in Gray, supra, as a Class 6 right for 20 inches, or 0.50 cubic foot per second.  
6 The date of priority for this Class 6 right appears to be June 30, 1878. Although a  
7 right was established for all of the property now owned by the defendants, the  
8 portion of the right that was appurtenant to the lands now owned by Dolores Ayers,  
9 Vernon G. and Jeanette K. Burghart, Clarence & Hazel Harrell, and Lawrence E. and  
10 Sula F. Spannagel have relinquished for failure to comply with the requirements of  
11 RCW 90.14. The Referee, therefore, cannot recommend that rights be confirmed to  
12 those defendants.

13 The Referee does recommend that rights be confirmed with a June 30, 1878, date  
14 of priority for the other defendants for the use of Manastash Creek as follows:  
15 Margorie J. Muzzall, 0.0625 cubic foot per second from April 1 to June 30 and  
16 0.03125 cubic foot per second from July 1 to October 31, 18.8 acre-feet per year for  
17 the irrigation of 2.5 acres, 0.02 cubic foot per second, one acre-foot per year for  
18 stock water; Harold L. and Gloria P. Lindstrom, 0.03 cubic foot per second from  
19 April 1 to June 30 and 0.015 cubic foot per second from July 1 to October 31, 9.37  
20 acre-feet per year for the irrigation of 1.25 acres; Dean A. and Dorothy I. Ross,  
21 0.0625 cubic foot per second from April 1 to June 30 and 0.03125 cubic foot per  
22 second from, July 1 to October 31; 18.8 acre-feet per year for the irrigation of 2.5  
23 acres. Because Kittitas Reclamation District water is available as a supplemental  
24 supply for each of these claimants, the rights herein confirmed shall contain a  
25 provision that the annual quantity authorized is the maximum that can be used to

1 irrigate the property under this right and any rights they may enjoy through the  
2 reclamation district.

3 As a Major Claimant, the Kittitas Reclamation District's rights will be  
4 addressed during the Evidentiary Hearings to be held specifically for the Major  
5 Claimants.

6

7 COURT CLAIM NO. 2293 -- Rick A. Baker and Robert Belsaas

8 A Statement of Claim was submitted to the Court by Robert Belsaas for the use  
9 of waters from two unnamed drains and Manastash Creek for irrigation and stock  
10 watering. On September 29, 1989, Rick A. Baker was joined to the claim as an  
11 additional party defendant. Neither Mr. Baker or Mr. Belsaas made an appearance as  
12 scheduled during the evidentiary hearing to provide testimony regarding their claim  
13 to a water right. Consequently, the Referee cannot recommend confirmation of a  
14 water right to these defendants.

15

16 COURT CLAIM NO. 1420 & 4459(A) -- Wilhelm and Joan Bakke

17 A Statement of Claim was submitted by the Bakkes for the use of waters from  
18 Manastash Creek for the irrigation of 17.5 acres and stock watering. Joan Bakke  
19 appeared at the evidentiary hearing to testify in behalf of the claim.

20 According to the testimony, these defendants own approximately 17.5 acres that  
21 are planted in pasture, with a small area of fruit and nut trees. They pasture a  
22 small herd of sheep or cattle. The land is irrigated using water from the Kittitas  
23 Reclamation District only, with no diversion from Manastash Creek for any purpose.  
24 Manastash Creek flows through the property and when there is water in the creek, the  
25 stock drink directly from it. Stock water from springs on the property when the  
26 creek is dry, which is usually from July 1 until mid to late winter.

27

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1 Water Right Claim No. 116968 was filed by Mr. Bakke in response to the  
2 requirements of RCW 90.14 for the use of springs for stock watering.

3 There was no testimony to indicate that there has been a historical practice  
4 of irrigating this property from Manastash Creek. The Plaintiff's Report to the  
5 Referee recommended that a non-diversionary right for stock watering be confirmed  
6 for the Bakkes; therefore, it is recommended that no additional rights be confirmed  
7 under Court Claims No. 1420 and 4459(A).

8 The Kittitas Reclamation District is a major claimant whose water rights will  
9 be determined through the Major Claimant Pathway.

10  
11 COURT CLAIM NO. 1593 -- Haldon J. and Ulma J. Baumann  
12 COURT CLAIM NO. 0907 -- Burton J. and Carol M. Williams

13 Statements of Claim were submitted to the Court by the above named defendants  
14 for the use of waters from Manastash Creek. The Williams also claimed a right to  
15 use an unnamed spring. Haldon Baumann, Burton Williams, May Mitchell Gage and Wayne  
16 Smith testified at the evidentiary hearing.

17 According to the testimony and evidence, Section 15, T. 17 N., R. 17 E.W.M.  
18 was part of a land grant from the Federal government to the Northern Pacific Railway  
19 Co. under a patent issued on January 16, 1896. In 1906 the railway sold Section 15  
20 to Alonzo Sackett.

21 Alonzo Sackett was a named defendant in A. Barnes et al v. Ole Belsaas, et al,  
22 Kittitas County Superior Court Decree No. 4448, April 23, 1912. The plaintiffs in  
23 that case were successors to parties awarded water rights in Gray, supra, and the  
24 defendants were landowners along Manastash Creek, who began using creek water  
25 subsequent to the judgment. Barnes, supra, restrained the defendants from  
26 interfering with the plaintiff's use of water previously granted in Gray, supra, and

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28 Re: Subbasin No. 11

1 from diverting water from the creek except when there is sufficient water in the  
2 creek to supply the plaintiffs the quantity to which they are entitled.

3       The Superior Court decision was appealed to the Court of Appeals, which  
4 affirmed the judgment. The Court of Appeals decision contained the fact that the  
5 defendants' appropriations of water began after 1883. It is reasonable to conclude  
6 that since Alonzo Sackett was a defendant he was using creek water in 1912 when the  
7 Barnes judgment was entered. May Mitchell Gage and Wayne Smith both testified that  
8 in the early 1920's they were aware that the lands now owned by the Williams and the  
9 Baumanns were irrigated and there were irrigation ditches on the property. The  
10 Williams and Baumanns each own a small portion of the N½ of Section 15, T. 17 N., R.  
11 17 E.W.M. and have each irrigated between five and six acres. They had not been  
12 irrigating most of their property for the last few years prior to the hearing  
13 because they had been told by someone, who may have been a stream patrolman, that  
14 they did not have any legal right to divert water from the creek.

15       The Williams have a 2 BHP pump on the creek and irrigate with handlines. The  
16 Baumanns have a 1 BHP pump and also irrigate with handlines. Neither could identify  
17 how much water they are using from the creek. Both parties are claiming water for  
18 stock watering. However, the testimony indicates there is no actual diversion for  
19 stock. When livestock are on the property they drink directly from the water  
20 sources available to them, including Manastash Creek, an unnamed spring, and a pond.

21       The Williams are also claiming water from a spring for domestic supply. The  
22 spring is located on the Baumann property and is piped to the Williams. It was used  
23 continuously for domestic supply until 1970 when a well was drilled. The Williams  
24 still maintain the system so the spring may be used as a backup supply in case they  
25 have problems with the well. Both Mr. Smith and Ms. Gage testified that they

1 assumed the original house on the Williams property, built in the early 1900's,  
2 received its domestic water from the spring.

3 Water Right Claims No. 073856, 028556 and 028557 were filed pursuant to RCW  
4 90.14 for the use of Manastash Creek and served to protect the creek rights enjoyed  
5 by the defendants. There is nothing in the record to show that a 90.14 claim was  
6 filed for use of the spring.

7 Based on the testimony and evidence it is apparent that both the Williams and  
8 the Baumanns enjoy a water right to Manastash Creek under the Riparian Doctrine with  
9 a January 16, 1896, date of priority. As identified in Decree No. 4448, this right  
10 is junior to the rights awarded in Decree No. 99 and 100. Since neither of the  
11 parties could identify the quantities of water being used, the Referee recommends  
12 that the rights be confirmed using the standard water duty of 0.025 cubic foot per  
13 second and 7.5 acre-feet per year per acre irrigated. It is recommended that rights  
14 be confirmed as follows:

15 Haldon J. and Ulma J. Baumann - 0.150 cubic foot per second; 45.00 acre-feet  
16 per year from Manastash Creek for the irrigation of six acres.

17 Burton J. and Carol M. Williams - 0.150 cubic foot per second; 45.00 acre-feet  
18 per year from Manastash Creek for the irrigation of six acres.

19 Due to the lack of a 90.14 claim the Referee cannot recommend confirmation of  
20 a right to the Williams for use of the spring for domestic supply. The non-  
21 diversionary stock water stipulation adequately describes and protects the stock  
22 water rights for these defendants.

23

24 COURT CLAIM NO. 2299 -- David R. Bean

25 William Dikeman submitted this Claim to the Court for the use of an unknown  
26 surface water source, possibly waste water, and the Yakima River via Fogerty Ditch.

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 The defendant was represented by Attorney Kenneth Beckley. Sharon Dikeman appeared  
2 at the evidentiary hearing and testified concerning the claim. The portion of the  
3 Yakima River from which Fogerty Ditch diverts is within Subbasin No. 12. The  
4 defendant's claim to that source has been addressed in the Report of Referee for  
5 Subbasin No. 12.

6 According to the testimony and evidence, William Dikeman acquired the property  
7 in 1980 and subsequently irrigated about 42 acres of pasture and alfalfa in the NE $\frac{1}{4}$   
8 of Section 15, T. 17 N., R. 18 E.W.M. Irrigation water for the property comes from  
9 several surface water sources. Water from both Manastash Creek and the West Side  
10 Irrigating Company is carried to the property through Keach Ditch. Two ditches  
11 carrying irrigation return flow from neighboring farms are also utilized to irrigate  
12 the property.

13 Mrs. Dikeman testified that she was able to trace ownership of this land back  
14 to the Damman family who owned it in the late 1800's. J. D. and Sabrinah Damman  
15 were parties to Gray, supra, and were awarded 200 inches of Class 3 water. However,  
16 the Schedule of Rights previously entered into evidence shows that by the time the  
17 schedule was prepared the Dammans had sold their rights to Manastash Creek because  
18 the land was then under the West Side Ditch. The rights had been sold to  
19 individuals who owned the NW $\frac{1}{4}$  of Section 16, the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 6, and the W $\frac{1}{2}$ NW $\frac{1}{4}$   
20 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. and now are being claimed by  
21 defendants Laurin Mellergaard, Brian Cooke, Bob Rock, Melvin Shenyer, and Edmund  
22 Christian. Mrs. Dikeman was uncertain that Manastash Creek water actually was  
23 diverted into the Keach Ditch for their property. She and her husband have not  
24 taken any action to divert creek water for their use. Water that comes to their  
25 property through the Keach Ditch could be solely West Side Irrigation Company water.

26 No evidence was presented to show that a water right claim was registered in

1 accordance with the provisions of RCW 90.14 for use of any surface water source in  
2 Subbasin No. 11 on this property.

3 Testimony and evidence were insufficient to establish that water rights to  
4 Manastash Creek were still appurtenant to the property. Due to this and the lack of  
5 a 90.14 claim, the Referee cannot recommend that a water right be confirmed for  
6 David R. Bean who was substituted for the Dikemans on November 26, 1991. Rights  
7 that may be enjoyed from the West Side Irrigating Company will be addressed in the  
8 Major Claimant pathway.

9 COURT CLAIM NO. 2291 -- Ken Beckley

10 A Statement of Claim was submitted to the Court for the use of waters from  
11 Manastash Creek and the Yakima River. Mr. Beckley did not make an appearance as  
12 scheduled during the evidentiary hearing to provide testimony regarding his claim to  
13 a water right. Consequently, the Referee cannot recommend confirmation of a water  
14 right to this defendant. It is noted that the property apparently receives  
15 irrigation water from the West Side Irrigating Company, which is a Major Claimant in  
16 this proceedings. West Side's rights will be addressed in the Major Claimant  
17 Pathway identified in Pre-Trial Order No. 8.

18 Livestock on the Beckley property drink directly from Manastash Creek and the  
19 Yakima River. This use is covered by the non-diversionary stock water right  
20 recommended for Mr. Beckley in the Plaintiff's Report to the Referee.

22 COURT CLAIM NOS. 1812 & 1948 -- Melissa L. Belsaas (Newby)

23 COURT CLAIM NO. 1969 -- Richard T. and Lynn Cole

23 COURT CLAIM NO. 1951 -- Charles and Karin McElevey

24 COURT CLAIM NO. 1821 -- Mr. and Mrs. Lynn Weissenfels

25 The claims listed above were filed with the Court for the use of waters from  
26 Manastash Creek, an unnamed stream, and waste water. Melissa Belsaas Newby was  
27 substituted for Paul L. and Ellen J. Brooks on Claim No. 1812 in 1987, and in 1985

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1 for Steven P. and Peggy J. Brooks on Claim No. 1948. The interest in Claim No.  
2 1821, filed by Harold D. Umland, was transferred to the Weissenfels in 1984.  
3 Attorney Richard T. Cole represented each of the claimants and testified in regard  
4 to his own claim. Also testifying were Melissa and David Newby, Lynn Weissenfels,  
5 Jesse Baird, and Charles McElevey.

6 Testimony and evidence show that each of the claimants owns a portion of the  
7 S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13, with Mr. McElevey's ownership extending into the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
8 Section 13. Each irrigates the portion of their land lying north of the Kittitas  
9 Reclamation District (KRD) lateral and south of the Keach Ditch, which is their  
10 northern property line. The land is irrigated with Manastash Creek water via the  
11 Keach Ditch, Token Ditch, and the KRD lateral and with Yakima River water through  
12 the KRD lateral. Creek water is only available until late June or early July during  
13 most years. Some years creek water is not available after the first of June. When  
14 creek water is not available, the land is irrigated with KRD water from the Yakima  
15 River for which each of the claimants is assessed.

16 Ms. Newby is claiming a right for irrigation of 10 acres; Richard and Lynn  
17 Cole for irrigation of seven acres; Charles and Karin McElevey for irrigation of 26  
18 acres; and Lynn Weissenfels for the irrigation of 25 acres. All claim a right for  
19 stock watering on their respective properties.

20 While Water Right Claim No. 120652 was filed pursuant to RCW 90.14 for the  
21 property now owned by Richard T. Cole, there is no record that 90.14 claims were  
22 filed for the lands owned by the remainder of the claimants. All these claimants  
23 base their claim to a water right on appropriations made by Olof Hanson in the late  
24 1800's. The appropriations are described in two historical documents, an Affidavit  
25 of Water Right filed on May 31, 1890, and a deed dated August 17, 1906, transferring  
26

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1 ownership of the S $\frac{1}{2}$ NE $\frac{1}{4}$  and the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13 from Olof Hanson to Bertha  
2 Jensen.

3 use within the S $\frac{1}{2}$ N $\frac{1}{2}$  of Section 13, T. 17 N., R. 17 E.W.M., and beneficially used  
4 the water. It furthers states that these facts were not pleaded by Hanson in the  
5 action. However, water rights were awarded in the Decree for other property owned  
6 by Mr. Hanson at the time the case was being decided.

7 Mr. Cole argued that the language of the 1906 deed by which this property was  
8 conveyed to Bertha Jensen indicated that Mr. Hanson believed he had been decreed  
9 water rights for this property under the Gray, supra, decision, or that he was  
10 transferring a portion of his rights from other property to this property for Bertha  
11 Jensen. No evidence was offered to support either contention. Even if Mr. Hanson  
12 did believe that he had been awarded rights under Decree No. 99 and 100, it does not  
13 alter the Decree which specifically mentions that Hanson did not plead the facts,  
14 and was not decreed rights for this property. The Referee believes that Mr.  
15 Hanson's failure to represent his case cannot be remedied under the instant  
16 proceedings.

17 Each of the above named defendants referenced Barnes, supra, as a basis for  
18 their right. That ruling clearly indicates the Court's determination that rights to  
19 use waters from Manastash Creek were established subsequent to Gray, supra, however,  
20 those rights were junior in priority. Gray, supra, served as a quiet title action  
21 amongst the parties to the their rights to use Manastash Creek; however, it did  
22 nothing to remove from future appropriation any creek waters in excess of what was  
23 needed to satisfy the rights contained in Decree No. 99 and 100. Parties to that  
24 decree could not at its conclusion assert prior rights that were not addressed in  
25 the decree, but could subsequent to the decree establish new rights.

26  
27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1       Based on the record, it is apparent that Olof Hanson had established water  
2 rights for the S<sup>W</sup>N<sup>W</sup> of Section 13 prior to Gray, supra. However, since he failed  
3 to plead that right and was not awarded a right in the decree, the priority date for  
4 the right must be subsequent to the filing of the decree on April 18, 1891.

5       RCW 90.14.071 states that any person claiming a right to divert or withdraw  
6 water who fails to file a claim shall be conclusively deemed to have waived and  
7 relinquished any right, title, or interest in said right. Therefore, due to the  
8 failure of defendants Melissa L. Belsaas, Charles and Karin McElevey, and Mr. and  
9 Mrs. Lynn Weissenfels, or their predecessor owners, to file water right claims  
10 pursuant to the requirements of Chapter 90.14 RCW, the Referee cannot recommend that  
11 rights be confirmed for those defendants.

12       It is recommended that a right be confirmed to Richard and Lynn Cole with an  
13 April 19, 1891, date of priority a right to the use of waters of Manastash Creek in  
14 the amount of 0.175 cubic foot per second, 52.5 acre-feet per year for the  
15 irrigation of seven acres; 0.01 cubic foot per second, 1 acre-foot per year for  
16 stock water. The Plaintiff's Report to the Referee recommended that a non-  
17 diversionary stock water right be confirmed to Richard and Lynn Cole for stock  
18 drinking directly from naturally occurring springs or ponds on the Cole property.  
19 The Coles's also have rights thorough the Kittitas Reclamation District for  
20 supplemental irrigation water. The reclamation district is a major claimant whose  
21 rights will be addressed in the Major Claimant Pathway.

22  
23 COURT CLAIM NO. 2266 -- William Bews, Jr.

24       A Statement of Claim was submitted to the Court for the use of waters from  
25 Hatfield Canyon via Packwood Canal. Mr. Bews was scheduled to appear at the  
26 evidentiary hearing for Subbasin No. 8, Thorp. His claim will be addressed in the

27       REPORT OF REFEREE

28       Re: Subbasin No. 11

1 Report of Referee for Subbasin No. 8; therefore, the Referee makes no recommendation  
2 concerning his claim at this time.

3 COURT CLAIM NO. 2249 -- Marco Bicchieri

4 A Statement of Claim to the Court was submitted by Marco Bicchieri for the use  
5 of waters from Manastash Creek through the Hatfield or Amlin Ditch. Mr. Bicchieri  
6 was represented by Attorney Kenneth Beckley, who presented the claim at the  
7 evidentiary hearing without Mr. Bicchieri appearing to testify. Mr. Beckley asked  
8 that the State's Investigation Report be accepted by the Court as a description of  
9 system and operation, except that 25 acres were being irrigated rather than the 5.5  
10 acres described in the State's Report. The investigation report identified that  
11 besides water diverted from Hatfield Canyon, the property also uses water from the  
12 West Side Irrigating Company.

13 Clay Keown, the State's investigator, testified concerning the nature of the  
14 water that flows through Hatfield Canyon. The water course in the canyon does not  
15 divert water directly from Manastash Creek, but captures irrigation return flow,  
16 waste water from the Manastash Ditch and other ditches in the area and local  
17 precipitation. Dale Dyk and Gene Prater made statements relating to the source of  
18 water in the canyon and that there was no diversion from Manastash Creek to serve  
19 the property; it merely enjoying the use of water due to its physical location  
20 downdrainage from several irrigated fields.

21 Evidence was insufficient to determine whether the source of the return flow  
22 waters was from application of Manastash Creek water or from application of Kittitas  
23 Reclamation District water on irrigated fields updrainage from the Bicchieri  
24 property. Seepage from both the KRD and West Side canals could also contribute to  
25 the flows in Hatfield Canyon. Water rights cannot be established for use of return  
26

1 flows that originate from diversions outside the basin or from Yakima Project  
2 facilities, see Page 10 of this report.

3 No testimony was provided concerning historic water use on the property.

4 Review of the Schedule of Rights entered into evidence reveals that a portion of the  
5 property does lie within the lands originally served by the Menastash Ditch Water  
6 Association, however, the property is not within the place of use submitted with the  
7 association's claim to the court. Mr. Bicchieri is not asserting any rights through  
8 the association, nor does he own any shares in the association.

9 Water Right Claim No. 118740 was filed pursuant to the requirements of RCW  
10 90.14 claiming a right to use water from Manastash Creek through the Hatfield or  
11 Amlin Ditch for irrigation of 35 acres, stock water, and a fish pond.

12 Due to the lack of testimony concerning historic water use on the property,  
13 and uncertainty about the source of the return flow waters, the Referee cannot  
14 recommend that a right be confirmed to Marco Bicchieri under Court Claim No. 2249.  
15 Any rights that the defendant may enjoy through the West Side Irrigating Company  
16 will be considered when the canal company presents its claim in the Major Claimant  
17 Pathway.

18

19 COURT CLAIM NOS. 1723 & 4410(A) -- Larry and Harriet L. Bland and  
Bart Bland

20 A Claim to the Court submitted by Larry and Harriet L. Bland for the use of  
21 Manastash Creek was subsequently amended to add Bart Bland as a defendant and  
22 included use of the creek on his lands. H. K. Dano, attorney at law, represented  
23 the defendants. Bart Bland and Richard Bain, a consultant hired by the defendants,  
24 testified in support of the claim.

25 The Blands are the owners of several parcels of land within the Manastash  
26 Creek Subbasin, receiving water from various sources. One parcel, referred to as

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 the Cove Road Ranch, was purchased by Bart Bland from Murray Pacific, Inc.  
2 Determination of water rights for that parcel will be contained in the discussion  
3 pertaining to the Court Claims filed by Menastash Water Ditch Association and Murray  
4 Pacific. (see Pages 113 and 120.)

5 The Bland Home Place lies primarily within the W $\frac{1}{2}$  of Section 17, T. 17 N., R.  
6 18 E.W.M. and consists of 310 acres, of which 119 acres in the NW $\frac{1}{4}$  of Section 17 are  
7 irrigated. The main crop is timothy hay with 76 acres rill irrigated and the  
8 remaining 43 acres sprinkler irrigated using hand lines and wheel lines. Manastash  
9 Creek water is delivered to the property via Keach Ditch and the Kittitas  
10 Reclamation District (KRD) lateral. KRD water is also delivered to the property,  
11 which is assessed for 119 acres. Mr. Bain testified that based on his measurement  
12 of the water diverted through one of the nine turnouts used on the Home Place, the  
13 water requirement for the irrigation of the 119 acres is 1786 acre-feet per year  
14 with 840 of that coming from Manastash Creek. Mr. Bain measured the turnout during  
15 August 1989, when Manastash Creek water would not have been available and the  
16 claimants would have been using Kittitas Reclamation District water.

17 During testimony and through counsel's remarks, it was represented that this  
18 parcel enjoys rights confirmed through Gray, supra, as follows: 80 inches of Class  
19 3 rights confirmed to Evan Thorstenson, 24 inches of Class 11 rights confirmed to  
20 Peter J. Norling, 8 inches of Class 15 rights confirmed to C. Swanson, and 33 inches  
21 of Class 14 and 83 inches of Class 17 as successor to C. Swanson, a patron of the  
22 McDowell Ditch Company, which no longer exists. Review of the Decree and the  
23 Decision that preceded the Decree reveal that 150 inches of Class 3 water was  
24 confirmed to Evan Thorstenson; however, the Schedule of Rights shows the water was  
25 used on lands within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, both  
26 in T. 17 N., R. 18 E.W.M. and there were no Class 3 rights confirmed for the W $\frac{1}{2}$  of

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 Section 17. Additionally, the Class 11 right awarded to Peter Norling, was used in  
2 the SW $\frac{1}{4}$  of Section 7 and review of the record can find no Class 11 rights for the  
3 NW $\frac{1}{4}$  of Section 17. There was no testimony to indicate any foundation for the  
4 defendants belief that these rights are appurtenant to lands in the W $\frac{1}{2}$  of Section  
5 17.

6 There were 10 inches, or 0.25 cubic foot per second of Class 15 water  
7 confirmed to C. Swanson for the NW $\frac{1}{4}$  of Section 17. Class 15 rights enjoy a priority  
8 date of 1888. The McDowell Ditch Company was awarded a Class 14 right for 200  
9 inches and a Class 17 right for 500 inches. Bart Bland testified that the Home  
10 Place had 33 inches of the Class 14 right and 83 inches of the Class 17 right as  
11 successors to C. Swanson. The Decision that preceded Decree No. 99 and 100 stated  
12 that C. Swanson was one of the stockholders in the ditch company and owned land  
13 formerly owned by the builders of McDowell Ditch. McDowell Ditch is no longer in  
14 existence and there is nothing in the record to indicate that the water rights  
15 associated with the ditch were transferred to another point of diversion.

16 The Bland Strande Road Farm consists of 95 acres in the SW $\frac{1}{4}$  of Section 9, T.  
17 17 N., R. 18 E.W.M., with 24.1 acres lying west of the West Side Canal irrigated  
18 with waters from Manastash Creek and from the KRD system and 61.4 acres east of the  
19 canal irrigated with waters from the West Side Canal. Both the creek water and KRD  
20 water for the 24.1 acre parcel are delivered through the KRD lateral. The Blands  
21 are claiming rights to Manastash Creek for this land under the Gray, supra, Decree  
22 as follows: 20 inches of Class 3, six inches of Class 11 and two inches of Class  
23 15. As previously stated, 150 inches of Class 3 right was awarded to Evan  
24 Thorstenson, with 50 inches for use in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 and 100 inches for  
25 use in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, presumably 50 inches for  
26 each 40 acre tract, which supports the Blands claim to a Class 3 right for the

1 Strande Road Farm. There were no Class 11 or 15 rights confirmed for the SW $\frac{1}{4}$  of  
2 Section 9, nor was there any testimony to establish a foundation for the Blands  
3 belief that the land in the SW $\frac{1}{4}$  of Section 9 enjoys Class 11 and 15 water rights.

4 The Blands, as successors to Evan Thorstenson, also claim 116 inches of the  
5 McDowell Ditch Company right for the Strande Place. It would be reasonable to  
6 expect that the 24.1 acres in the SW $\frac{1}{4}$  of Section 9 lying west of the West Side Canal  
7 that are irrigated from Manastash Creek might have a right to 24 inches from the  
8 McDowell Ditch Company right, but not the claimed 116 inches. Decree No. 99 and 100  
9 specifically states that one inch of water, unless otherwise identified, is  
10 sufficient for the irrigation of one acre.

11 Mr. Bain testified that the water requirement for irrigation of timothy hay on  
12 this parcel was 22.1 acre-feet per year per acre irrigated, based on a measured  
13 diversion of 3.2 cubic feet per second from one of the three take-outs that serves  
14 this parcel. As with the Home Place, the turnout was measured in August 1989, when  
15 creek water would not have been available and Kittitas Reclamation District water  
16 would have been used. The 1891 decree apparently awarded 50 inches of water for use  
17 on the 40 acres within in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, or 1.25 inches per acre irrigated  
18 (0.03 cubic foot per second per acre), which would be 0.723 cubic foot per second  
19 for the 24.1 acres being irrigated from Manastash Creek. Based on that  
20 instantaneous quantity, 218.30 acre-feet can be withdrawn and used during the  
21 irrigation, or 9.05 acre-feet per acre irrigated. Approximately four acre-feet per  
22 acre is delivered by KRD.

23 Water Right Claim No. 115757 was filed pursuant to the requirements of RCW  
24 90.14 claiming a right to use Manastash Creek for stock watering and the irrigation  
25 of 145 acres in the E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 and the S $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 9, both

1 in T. 17 N., R. 18 E.W.M. This claim would serve to protect any rights that may be  
2 appurtenant to either the Home Place or the Strande Road Ranch.

3       The Brown Place Farm lies in the N½ of Section 15 and consists of a total of  
4 159 acres with 147.8 acres irrigated with waters from Manastash Creek and the West  
5 Side Canal. Timothy hay is planted and surface irrigated using 15.9 acre-feet per  
6 acre according to Mr. Bain's testimony. This quantity was determined by measuring  
7 in August of 1989, the water flow through two of the three turnouts serving the  
8 Brown Place Farm. The testimony alluded to rights to use Manastash Creek water  
9 stemming from Gray, supra, however, no specifics were provided nor does review of  
10 the Decree by the Referee reveal any rights having been awarded for the N½ of  
11 Section 15. There also is nothing in the record to show that a water right claim  
12 was filed for this land pursuant to the requirements of RCW 90.14.

13       The Van Etten Place consists of 20 acres of irrigated Timothy hay. The  
14 primary source of water is the West Side Canal; however, the Blands are claiming a  
15 right for an indeterminate amount of return flow and flood water.

16       The Blands are claiming rights for the use of return flow and flood water for  
17 all of the farms they own. No testimony indicated whether the source of return flow  
18 water is from application of Manastash Creek water or water from the Kittitas  
19 Reclamation District and/or the West Side Canal. Rights can only be established for  
20 use of return flows that originate within the Manastash Subbasin. Lacking specific  
21 testimony, the Referee cannot recommend that any rights be confirmed for use of  
22 return flow waters. See Page 10.

23       As justification for the use of flood waters, the Blands offered a copy of a  
24 page taken from the minutes of the November 19, 1935 meeting of the Kittitas  
25 Reclamation District. This purports to show that the district approved a request  
26 from unnamed people under the South Branch extension to connect this (the extension)

1 with the Menastash (sic) Creek and use flood waters of such creek for irrigation  
2 purposes. This was many years after adoption of the state water code, RCW 90.03,  
3 which required a permit for such use. No evidence was offered to show compliance  
4 with RCW 90.03. While KRD could authorize use of the canal, it could not grant a  
5 right to the use of the water. Consequently, a right to such use of the flood  
6 waters could not have been established.

7 Based on the testimony and evidence, it is apparent that rights were  
8 established and confirmed in Decree No. 99 and 100 for the use of waters from  
9 Manastash Creek as follows:

10 1. With a June 30, 1888, date of priority for the diversion of 0.25  
11 cubic foot per second from April 1 to June 30 and 0.125 cubic foot per  
12 second from July 1 to October 31, 75.69 acre-feet per year for the  
13 irrigation of 10 acres within the NW $\frac{1}{4}$  of Section 17, T. 17 N., R. 18  
14 E.W.M. (The Homeplace). This lands receives a supplemental supply from  
15 the Kittitas Reclamation District.

16 2. With a date of priority of June 30, 1874, for the diversion of 0.723  
17 cubic foot per second from April 1 to June 30 and 0.3615 cubic foot per  
18 second from July 1 to October 31, 218.30 acre-feet per year for the  
19 irrigation of 24.1 acres and stock watering in that portion of the SW $\frac{1}{4}$   
20 of Section 9, T. 17 N., R. 18 E.W.M. lying west of the West Side Canal  
21 and southerly of the following described line: Beginning at a point on  
22 the west line of said subdivision situated 1693.80 feet N 0°20' W of the  
23 southwest corner of said subdivision; thence N 88°40' E 548.45 feet;  
24 thence S 78°00' E 2164.43 feet to a point on the east line of said  
25 subdivision situated 1351.00 feet N 0°48'30" E of the southeast corner

1                   thereof (Bland's Strande Road Farm). This land also receives a  
2                   supplemental supply from the Kittitas Reclamation District.

3                   The Kittitas Reclamation District and West Side Irrigating Company are both  
4                   Major Claimants identified in Pre-Trial Order No. 8 and any rights that these  
5                   defendants might enjoy as patrons of those entities will be addressed during the  
6                   Evidentiary Hearings for Major Claimants.

7

8 COURT CLAIM NO. 2206 - Boise Cascade Corporation

9                   A Statement of Claim was submitted to the Court by Boise Cascade for stock  
10                  watering and timber harvesting numerous surface water sources in the Yakima River  
11                  Basin, including 15 sources within Subbasin No. 11. Dennis Dunphy, attorney at law,  
12                  represented Boise Cascade and John P. Hess, Chief Regional Forester for Central  
13                  Washington, testified at the evidentiary hearing.

14                  According to the testimony and evidence much of the Boise Cascade land is used  
15                  for stock grazing. Since most of the water sources do not have diversion works in  
16                  place, the stock drink directly from the sources as needed. This use is addressed  
17                  in the non-diversionary stock water stipulation. The Plaintiff's Report to the  
18                  Referee recommended that rights be confirmed to Boise Cascade Corporation for this  
19                  use.

20                  Two developed springs do have diversions to stock tanks. One is located in  
21                  the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R. 16 E.W.M. and the other in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
22                  Section 23, T. 17 N., R. 17 E.W.M. It is estimated that half an acre-foot per year  
23                  is used for stock watering from these two springs. Because no testimony established  
24                  the instantaneous flow from the springs into the tanks, the Referee shall assume  
25                  standard rate of 0.01 cubic foot per second testified to by witnesses for the  
26                  Department of Ecology.

1       Although no testimony indicated when these two springs were first developed,  
2 it is reasonable to assume it was at or near the time of first settlement in the  
3 area. The referee accepts Boise Cascade's Assertion that April, 1880 is the  
4 priority date. This is supported by other evidence in the record indicating the  
5 valley was being settled and irrigated as early as 1871.

6       Water Right Claim No. 084333 for the spring in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T.  
7 17 N., R. 16 E.W.M. was filed by Boise Cascade in fulfillment of the requirements of  
8 RCW 90.14. No evidence exists that a 90.14 claim was submitted for the other  
9 developed spring.

10      Boise Cascade also claimed a right to use up to 3.0 acre-feet per year of  
11 water from four other sources for such timber harvesting operations as road  
12 maintenance, dust abatement, and fire suppression. Contending that timber  
13 harvesting would have started about the same time as settlement of the area, a  
14 priority date of April 1880 was asserted. No evidence was offered in support of  
15 this contention, under either the Riparian or Appropriation Doctrines.

16      Based on the evidence, the Referee recommends that a diversionary right be  
17 confirmed to Boise Cascade with an April 30, 1880 priority date, for the use of 0.01  
18 cubic foot per second, 0.25 acre-foot per year from an unnamed spring (No. 179) for  
19 continuous stock water in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R. 16 E.W.M.  
20 Failure to file a RCW 90.14 claim for the second developed spring, prohibits the  
21 Referee from recommending that a right be confirmed for that spring. Even though  
22 90.14 claims were filed for the four sources identified for timber harvesting  
23 purposes, the Referee believes the paucity of evidence concerning historic timber  
24 harvesting in the subbasin precluded the confirmation of a right for that use. This  
25 does not prohibit the use of any available source of water for emergent conditions  
26 precipitated by fire.

1      COURT CLAIM NO. 2287 -- George B. Brain

2            A Statement of Claim was submitted by Kenneth D. Beckley as attorney and agent  
3 for George B. Brain. Dr. Brain appeared without counsel, and although stating that  
4 he merely wished to supplement the record in regard to the history of Spring Creek,  
5 he did testify about his own claim as it relates to the use of Spring Creek. Dr.  
6 Brain indicated he would be relying on the information supplied by his counsel,  
7 Kenneth Beckley, as well as the testimony of Anderville Farms, Lawrence Anderson,  
8 Richard Bain, Mellergaards, and possibly Gardinier.

9            Dr. Brain testified that the involvement of his family with the property he  
10 now owns in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 4, T. 17 N., R. 18 E.W.M., lying west of the county  
11 road, goes back to 1870. His grandfather, John Clemens Ellison, homesteaded a  
12 portion of that property (presumably the property now owned by Dr. Brain) and other  
13 property at the head of the West Side irrigation ditch. According to Dr. Brain, the  
14 West Side irrigation ditch was created by his grandfather. Dr. Brain offered no  
15 documentary evidence in support of his contention that the family's ownership  
16 extended back to 1870. To the contrary, documents submitted by Mellergaards and  
17 others indicated that the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 17 N., R. 18 E.W.M., was patented  
18 to J.L. Vaughn from the United States on February 16, 1889. An Affidavit of Water  
19 Right dated May 31, 1890, by J. L. Vaughn stated that he owned the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
20 4, and had, since 1872, appropriated 150 inches of Manastash Creek water. An 1889  
21 deed transferred all but 50 inches of the water with land sold to Thomas E. Jones.  
22 The records show Thomas Jones purchased the portion of the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4 lying  
23 east of the county road. Therefore, the 50 inches of water not sold to Jones would  
24 attach to that portion of the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4 lying west of the county road, the  
25 property now owned by Dr. Brain.

1       Although the State's Investigation Report indicated that 31 acres of Dr.  
2 Brain's property were seasonally irrigated with Manastash Creek water via Anderson  
3 Ditch, no claim to such use was ever filed by Dr. Brain under either this proceeding  
4 or RCW 90.14. In addition, nothing in the proceedings of Gray, supra, mentions J.  
5 L. Vaughn, Thomas Jones, or John Ellison as parties to the action, nor are there any  
6 rights awarded for the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4. Therefore, the Referee believes that Dr.  
7 Brain is relying on the West Side Irrigating Company for water to serve this  
8 acreage.

9       Dr. Brain testified he used Spring Creek for the irrigation of one-half acre,  
10 as indicated in his claim to the Court. Water Right Claim No. 034412 for this use  
11 was filed on a "short form". Under RCW 90.14.051, a "short form" could be used to  
12 assert a right for domestic supply, stock watering, or the irrigation of up to one-  
13 half acre of lawn and non-commercial garden. According to Dr. Brain, Spring Creek  
14 originated west of the West Side Canal and after the canal was built, a wooden,  
15 wire-wrapped pipe was used to allow Spring Creek to cross the canal. He thought  
16 that pipe was destroyed in the late 1920's. Dr. Brain testified that all of this  
17 land had been irrigated since the 1870's, although there was no specific testimony  
18 about the first use of Spring Creek.

19       Dr. Brain's property is riparian to Spring Creek. In light of his testimony  
20 that the land has been irrigated since the early 1870's, it is reasonable to  
21 conclude that Spring Creek was used to irrigate a portion of the property prior to  
22 December 31, 1932. Therefore, it is recommended that a right be confirmed for the  
23 use of Spring Creek with a February 16, 1889 date of priority, 0.0125 cubic foot per  
24 second, 3.75 acre-feet per year for the irrigation of one-half acre.

1       Livestock on the Brain property drink directly from Spring Creek and this use  
2 is covered by the non-diversionary stock water right recommended for the Dr. Brain  
3 in the Plaintiff's Report to the Referee.

4       COURT CLAIM NO. 1011 -- James E. and Lillian J. Brooks

5       A Statement of Claim was submitted to the Court by the above named defendants  
6 for the use of waters from an unnamed creek for irrigation and stock water. The  
7 Plaintiff's Report to the Referee recommended that a non-diversionary stock water  
8 right be confirmed to the Brooks. Mr. Brooks appeared at the evidentiary hearing  
9 and testified concerning this claim.

10      The Brooks own a 10.91 acre parcel of land in the N½ of Section 10, T. 17 N.,  
11 R. 18 E.W.M. Approximately 7.50 acres are irrigated from an unnamed stream that  
12 flows along the northerly line of the property. A 5 BHP pump withdraws water from  
13 the stream to irrigate the land with two inch handlines. Mr. Brooks testified that  
14 the land has been irrigated since 1949 from this source, and prior to that was  
15 irrigated from another, unidentified source. The Brooks own five share's of water  
16 from the West Side Irrigating Company. Due to their location at the end of a ditch  
17 and the number of water users above them, they rarely receive sufficient water  
18 through the ditch for their irrigation needs.

19      According to Mr. Brooks, the water they use is irrigation return flow from  
20 updrainage fields irrigated with West Side water along with seepage from the West  
21 Side canal and ditches. Although not specifically stated, testimony seemed to  
22 indicate that the return flow and seepage waters in the stream are used as a  
23 replacement for the West Side water Brooks are entitled to but seldom receive.

24      Water Right Claim No. 145058 was filed by the Brooks in order to comply with  
25 the requirements of Chapter 90.14 RCW.

27      REPORT OF REFEREE

28      Re: Subbasin No. 11

1       Testimony and evidence were insufficient to show that a right was established  
2 for the property under either the Prior Appropriation or Riparian Doctrines separate  
3 from the rights enjoyed by the West Side Irrigation Company. The earliest date in  
4 the record for use of this water source for irrigation is 1949, long after the  
5 respective dates of June 6, 1917, and December 31, 1932, for establishing a right  
6 under the Prior Appropriation or Riparian Doctrines. Although there was testimony  
7 that another source of water was used prior to 1949, that source was not identified,  
8 nor was a legal basis for this water use established.

9       Based on the testimony and evidence, the Referee cannot recommend that a right  
10 be confirmed for James E. and Lillian J. Brooks under Court Claim No. 1011. Any  
11 right they may have through ownership of shares in the West Side Irrigating Company,  
12 including the right to use return flow and seepage water, will be determined during  
13 the evaluation of West Side's claim in the Major Claimant Pathway.

14       COURT CLAIM NO. 1055 -- Thomas C. and Kathleen Brunson

15       Thomas C. and Kathleen Brunson submitted a Statement of Claim to the Court for  
16 the use of Bull Pen Creek, Sheep Pasture Creek, and Hatfield Canyon for irrigation  
17 and stock watering. Because Sheep Pasture Creek is located in Subbasin No. 8,  
18 (Thorp), it will not be discussed in detail in this report. John Gilreath, attorney  
19 at law, represented the Brunsons. Testimony was given by Thomas Brunson, his father  
20 Dan Brunson, and Richard C. Bain, Jr., a consultant hired by the defendants.

21       Thomas Brunson testified that a Patent for the land was issued in 1887, thus  
22 establishing the priority date of their creek rights under the Riparian Doctrine.  
23 However, an exhibit shows that on June 9, 1887, and May 6, 1887, the Northern  
24 Pacific Railroad sold John N. Burch the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
25 Section 29, T. 18 N., R. 18 E.W.M., indicating that patents may have issued prior to  
26 1887.

27       REPORT OF REFEREE

28       Re: Subbasin No. 11

1 On August 8, 1903, J. N. and Anna B. Burch conveyed to the City of Ellensburg  
2 two parcels of land, each totaling less than one acre, for construction of what is  
3 now called the Packwood Canal. In return, the Burches received from the city 500  
4 inches of water to be conveyed through the ditch for use on the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , the SW $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
5 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, all in T. 18 N., R.  
6 18 E.W.M. All are now owned by the Brunsons. The city also agreed to construct two  
7 flumes, each carrying 100 inches of water across the ditch to be constructed.  
8 According to Dan Brunson, these flumes were to carry water diverted from Hatfield  
9 Canyon and Bull Pen Creek. Ice buildup in the ditch often damaged the flumes, so  
10 they were removed in the 1920's. Following their removal and presently, the  
11 Hatfield Canyon water has been dumped into the Packwood Canal and withdrawn from the  
12 canal on the downhill side. An 18 inch pipeline was constructed to carry the Bull  
13 Pen Creek water under the canal.

14 The Brunson property consists of 168 total acres, with 156 acres being  
15 irrigated. The predominant crop is timothy hay in rotation with grain crops.  
16 Pasture is planted on a small portion of the acreage. Mr. Bain testified that the  
17 average crop water requirement for the Brunson property is 15.3 acre-feet per  
18 irrigated acre.

19 Mr. Bain was not able to specifically identify how much water is used from  
20 Hatfield Canyon. It serves about 30 acres as it is withdrawn from the packwood  
21 Canal on the Brunson property. The Brunsons have shares in the canal and divert a  
22 maximum of 10.08 cubic feet per second from the canal. However, the Packwood Canal  
23 Company also filed a Court Claim on behalf of its patrons for the use of Hatfield  
24 Canyon waters. Most of those who appear to have rights to use water from Hatfield  
25 Canyon and receive their water through the Packwood Canal filed their own Court  
26 Claims in the same manner as the Brunsons. Some of those patrons appeared at

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28 Re: Subbasin No. 11

1 evidentiary hearings for Subbasins 8 or 11, but many did not, apparently choosing to  
2 rely on the Packwood Canal Company's defense of their claims. In order to treat all  
3 the patrons consistently, the Referee has chosen to confirm rights to use of waters  
4 from Hatfield Canyon to the canal company rather than the individuals if the water  
5 is delivered through the canal company system. See Page 127 for the Referee's  
6 analysis of the Packwood Canal Company claim. Therefore, the Referee will not  
7 recommend that a right be confirmed to the Brunsons for the use of waters from  
8 Hatfield Canyon.

9 Mr. Bain measured the diversion from Bull Pen Creek at 5.27 cubic feet per  
10 second; however, the 1903 agreement with the City of Ellensburg stated that the  
11 flume capacities would be 100 inches or 2.5 cubic feet per second. There was no  
12 testimony to show that a larger flume was constructed, so it is reasonable to  
13 conclude that when the water use was initially established, 2.5 cubic feet per  
14 second was being used. Mr. Bain testified that waters from Bull Pen Creek were  
15 being used to irrigate 48 acres.

16 Water Right Claims No. 115648 and 115651 were filed pursuant to the  
17 requirements of RCW 90.14 for the use of Hatfield Canyon and Bull Pen Creek.

18 Based on the testimony and evidence, the Referee believes that rights were  
19 established under the Riparian Doctrine in 1887 for the use of Bull Pen Creek.  
20 Therefore, it is recommended that a right be confirmed with a priority date of June  
21 9, 1887, for the diversion of 2.5 cubic feet per second; 738 acre-feet per year from  
22 Bull Pen Creek for the irrigation of 48 acres.

23 The Plaintiff's Report to the Referee recommended that a non-diversionary  
24 stock water right be confirmed for the Brunson property.

1    COURT CLAIM NO. 0104 -- Burlington Northern, Inc.

2       Among the Statements of Claim filed by burlington Northern Inc. was one  
3       claiming the right to divert from the North Fork of Manastash Creek for stock water.  
4       The State's investigation report indicated that no diversionary stock water use was  
5       observed. Prior to the evidentiary hearing, a representative of the company advised  
6       the Referee by letter that they were in agreement with the investigation report and  
7       would not be pursuing this claim in Subbasin No. 11. However, the Referee concurs  
8       with the recommendation in the Plaintiff's Report to the Referee for a non-  
9       diversionary stock water right.

10      COURT CLAIM NO. 0715 -- Kenneth R. and Ruth I. Carpenter

11       The Carpenters submitted to the Court a Statement of Claim for the use of  
12       waters from Hatfield Canyon via Packwood Canal. However, this claim was scheduled  
13       to be heard during the evidentiary hearing for Subbasin No. 8 (Thorp). The claim  
14       will be considered in the Report of Referee for that subbasin.

15      COURT CLAIM NO. 0987 -- Edmund T. and Margery Christian and  
16                          Eugene E. and Rhodesa M. Walsh

17       A Statement of Claim to the Court was submitted by Mr. and Mrs. Christian for  
18       the use of waters from Manastash Creek, unnamed ditches, and an unnamed pond. On  
19       April 3, 1989, Eugene E. and Rhodesa M. Walsh were joined as defendants. Attorney  
20       Kenneth Beckley represented the claimants. Edmund Christian and Roger Sparks  
21       testified about the claim during the evidentiary hearing.

22       Court Claim No. 0987 was filed for 80 acres in Government Lots 6 and 7 in  
23       Section 6, T. 17 N., R. 18 E.W.M. The Walshs own 74.9 acres and the Christians own  
24       2.9 acres. A Mr. Plaster owns 2 acres in the southwest corner of Government Lot 7.  
25       Although Mr. Plaster was not joined as an additional party to this claim, Mr.  
26       Christian represented Plaster's interests in the claim during this proceeding. The

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28       Re: Subbasin No. 11

1 Christians acquired Government Lots 6 and 7 in 1954 from Don Clark. When they  
2 purchased the property it was primarily planted in pasture and Mr. Clark operated a  
3 large cattle operation. The Christians planted timothy hay, oats and pasture on the  
4 property, which was farmed by Mr. Christian's father. In 1975 they sold all but 4.9  
5 acres to the Walshs. They then subdivided the 4.9 acres, keeping 2.9 acres and  
6 selling 2 acres to Mr. Plaster.

7 Roger Sparks leases the Walsh property and has farmed it for the past 12  
8 years. Planted in timothy hay and grain, it is irrigated by surface application.  
9 Of the 74.9 acres, 71 are irrigated from a variety of sources; 65 partly irrigated  
10 from Manastash Creek; 50 from Center Drain; and 54 acres from the Kittitas  
11 Reclamation District. Mr. Sparks couldn't identify the instantaneous quantity used  
12 to irrigate the Walsh property because he often commingles the water diverted for  
13 his own property in Section 6 with the water diverted for the Walsh property in  
14 order to apply larger volumes.

15 Mr. Christian testified that he irrigates all of the 2.9 acres he retained.  
16 However, he also indicated that a home was constructed on the property. Therefore,  
17 the Referee concludes that only approximately 2.5 acres are actually irrigated. The  
18 yard and garden area is irrigated from Center Drain using a 0.5 BHP pump. The  
19 remaining acreage, planted in hay and pasture, is irrigated with waters from  
20 Manastash Creek, via Reed and Christian Ditches, and the Kittitas Reclamation  
21 District. Mr. Christian stated that the two acres owned by Mr. Plaster are also  
22 irrigated. Here too, a house was constructed on the property, thereby reducing the  
23 irrigated acreage.

24 The Walsh-Christian-Plaster property was homesteaded by J. R. Gregory, who  
25 acquired portions of rights awarded under Gray, supra. Entered into evidence was a  
26 deed transferring 25 inches of Class 1 water from E. S. Coleman to J. R. Gregory.

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1 The Schedule of Rights in evidence shows that Mary Gregory (J. R.'s widow) purchased  
2 10 inches of Class 3 water from each of J. D. Dammon and S. Dammon. In addition,  
3 the Decree awarded 20 inches of Class 16 water which is only available in April and  
4 May.

5 Mr. Sparks testified that he believed this property has been continuously  
6 irrigated since the late 1800's. He indicated that annually 7 acre-feet per acre  
7 were used to irrigated field 30; 10 to 12 acre-feet per acre have been used on field  
8 31; and 20 acre-feet per acre have been used for field 32, although he felt 25 to 30  
9 acre-feet are actually needed.

10 Decree 99 and 100 awarded one inch of water for each acre irrigated. So the  
11 65 inches of Manastash Creek water acquired by J. R. Gregory could be used to  
12 irrigate 65 acres of the Walsh-Christian-Plaster property. Testimony indicated that  
13 irrigation from Manastash Creek was occurring on 65 acres of the Walsh ownership,  
14 approximately 2 acres of the Christian property, and about 1.5 acres owned by Mr.  
15 Plaster, for a total of 68.5 acres. The record does not indicate how the different  
16 classes of water were divided over the acreage, nor does it contain legal  
17 descriptions for the three ownerships within Government Lots 6 and 7, Section 6.  
18 Lacking definitive evidence, the Referee will not attempt to divide the rights among  
19 the three owners.

20 While Mr. Christian and Mr. Sparks both testified that this property has been  
21 used historically to pasture varying numbers of livestock, neither specified a  
22 quantity of water being diverted for stock watering. The Referee assumes that the  
23 stock drink directly from the ditches carrying the irrigation water.

24 Water Right Claim No. 119630 was filed by the Christians pursuant to the  
25 requirements of RCW 90.14 for the use of Manastash Creek on the lands now owned by  
26 the Christian, Walshes, and Plaster.

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28 Re: Subbasin No. 11

1       Based on the record, the Referee recommends that rights be confirmed to Edmund  
2 T. and Margery Christian, and Eugene E. and Rhodesa M. Walsh as follows:

3       1. With a June 30, 1871 date of priority, the right to use 0.625 cubic foot  
4 per second from Manastash Creek from April 1 to June 30, and 0.3125 cubic foot per  
5 second from July 1 to October 31; 178.40 acre-feet per year for the irrigation of 25  
6 acres and 0.01 cubic foot per second, 1 acre-foot per year for stock water.

7       2. With a priority of June 30, 1874, the right to use 0.50 cubic foot per  
8 second from Manastash Creek from April 1 to June 30, 0.25 cubic foot per second from  
9 July 1 to October 31; 150.96 acre-feet per year for the irrigation of 20 acres.

10      3. With a priority of June 30, 1889, the right to use 0.50 cubic foot per  
11 second from Manastash Creek from April 1 to June 30, and 0.25 cubic foot per second  
12 from July 1 to October 31; 150.96 acre-feet per year for the irrigation of 20 acres.

13       It was testified that Center Drain primarily carries return flow water from  
14 updrainage irrigated fields and seepage from canals. Return flows from application  
15 of Kittitas Reclamation District water or seepage from the district canal is Yakima  
16 Project water for which individual rights cannot be confirmed. See Page 10.

17       Testimony was insufficient to allow the Referee to determine how much, if any, of  
18 the water diverted from Center Drain was either natural flow or return flows that  
19 originated within the Manastash Basin. Therefore, the Referee does not recommend  
20 that any rights be confirmed to the defendants for use of Center Drain.

21       The Plaintiff's Report to the Referee recommended that a non-diversionary  
22 stock water right be confirmed to the Christians for stock drinking from naturally  
23 occurring ponds or springs on their property.

COURT CLAIM NO. 1820 -- Richard D. Chubb

A Statement of Claim was submitted to the Court for the use of Manastash Creek, Reed Ditch, and waste and runoff waters for irrigation and stock water. Mr. Chubb did not make an appearance as scheduled during the evidentiary hearing to provide testimony regarding his claim to a water right. Consequently, the Referee cannot recommend confirmation of a water right to this defendant. However, the Plaintiff's Report to the Referee recommended that a non-diversionary stock water right be confirmed to Mr. Chubb.

COURT CLAIM NO. 2237 -- Donald J. and Sharon A. Cocheba

A Statement of Claim was submitted to the Court for the use of waters from Manastash Creek for irrigation, domestic, and stock water. The Cochebas did not make an appearance as scheduled during the evidentiary hearing to provide testimony regarding their claim to a water right. Consequently, the Referee cannot recommend confirmation of a water right to these defendants. However, the Plaintiff's Report to the Referee recommended that a non-diversionary stock water right be confirmed to the Cochebas.

COURT CLAIM NO. 1079 -- William R. and Dorothy C. Cole

COURT CLAIM NO. 1078 -- H. John and Bette J. Spence

COURT CLAIM NO. 1077 -- William L. and Carol J. Wood

Statements of Claim were filed with the Court by Coles, Spences, and John F. and Lois E. Breckon, who then sold and substituted to William and Carol Woods. While all Claimed rights to the use of waters from Reed Creek, Spences also claimed rights to the use of waters from Hanson Spring. All were represented during the evidentiary hearing by Judge William R. Cole, who also presented his own claim. Judge Cole, John Spence and Clarence Harrell testified about the claims.

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1       The common source claimed by these defendants was identified as both Reed  
2 Creek and Reed Ditch. Evidence indicated that it is actually a ditch, and from this  
3 point forward, the Referee will refer to it as Reed Ditch.

4       Each of these claimants owns part of a 28 acre parcel lying in the S $\frac{1}{2}$ S $\frac{1}{4}$  of  
5 Section 33, T. 18 N., R. 18 E.W.M. According to documents in the record, which is  
6 somewhat incomplete, C. A. Sander purchased the SW $\frac{1}{4}$  of Section 33 from Fred Hahn on  
7 February 23, 1887. Then on January 12, 1906, subsequent owners, William and Tennie  
8 Packwood, sold the SE $\frac{1}{4}$ S $\frac{1}{4}$  and that portion of the SW $\frac{1}{4}$ S $\frac{1}{4}$  lying south and east of the  
9 county road to William J. Sheldon. Via quit-claim, they deeded to Sheldon two  
10 ditches, one running east from their property in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 32 to Reed  
11 "Creek", and one running east from Reed "Creek" to that portion to the SW $\frac{1}{4}$ S $\frac{1}{4}$   
12 Section 33 conveyed to Sheldon. In addition, they conveyed to Sheldon a right-of-  
13 way through their property to allow construction of a third ditch to run from Reed  
14 "Creek" to the Sheldon property, together with the right to enter for purposes of  
15 constructing, repairing, renewing and enlarging said ditches, together with all the  
16 water which drains from Packwood's land and the right to convey that water through  
17 the ditches.

18       By affidavit, John B. Moser stated that in 1927 his father, J. B. Moser, owned  
19 approximately 28 acres in the SW $\frac{1}{4}$  of Section 33, and at that time, an orchard  
20 existed on the property. In that same year, his father paid William Packwood for  
21 water rights from Reed "Creek" and built a dam and head ditch on the Packwood  
22 property in the SW $\frac{1}{4}$  of Section 32. According to the affidavit, Packwood agreed to  
23 let West Side Ditch Company water be spilled into the creek on his property, where  
24 it would be picked up at the dam and run to the Moser property in Section 33. The  
25 water represented West Side shares owned by Moser.

1       A written statement of John F. Breckson, submitted by John Spence, indicated  
2 that Mr. Breckon's parents purchased 28 acres from Mosers in 1946, at which time two  
3 ditches from Reed "Creek" served those acres. According to this statement, that  
4 practice continued until about 1975, when the Hanson farm (formerly the Packwood  
5 property) was purchased by Clarence Harrell. Testimony by John Spence indicated  
6 that a pipeline was installed in the early 1980's to replace the open ditch between  
7 Reed Ditch and the 28 acre parcel, which by that time had been subdivided among  
8 several ownerships, including the claimants. He testified that the pipeline carries  
9 about 500 gallons per minute to the claimants and another five or six landowners who  
10 are not claimants. Clarence Harrell testified that the area of Reed Ditch where the  
11 claimants divert their water consists only of return flow water from upstream  
12 irrigators or water spilled by the West Side Irrigating Company, and does not carry  
13 any natural-flow Manastash Creek Water.

14       Although the claims filed by each of the defendants reference Gray, supra, as  
15 the basis of their water rights, no testimony or evidence was submitted to show that  
16 their lands were awarded water rights in that action. Review of that decree by the  
17 Referee also fails to reveal any reference to these defendants' lands.

18       John and Bette Spence own a parcel approximately 5.32 acres in size and claim  
19 water from both Reed Ditch and Hanson Spring for irrigation and stock watering. The  
20 state's investigation report indicates that approximately 4.5 acres are actually  
21 irrigated and Mr. Spence did not challenge that report. According to Mr. Spence,  
22 Hanson Spring emerges approximately 1200 feet south of the northeast corner of  
23 Section 5, very close to the section line between Sections 4 and 5. It flows in a  
24 northerly direction and then to the northeast onto the Spence property where it is  
25 used for stock watering. However, it is not clear whether the spring flows through  
26 a ditch onto the Spence property or through a natural stream channel. Also not

1 clear is whether the Spences then divert the water or the stock simply drink from  
2 the stream or ditch. The Plaintiff's Report to the Referee recommended that a non-  
3 diversionary stock water right be confirmed to John H. and Bette J. Spence, which  
4 would indicate that the stock drink directly from the stream that originates at  
5 Hanson Spring. Water Right Claim No. 054441 was filed by Mr. Spence in response to  
6 the requirements of RCW 90.14. A short form was used claiming a right to use Reed  
7 Ditch for irrigation and stock watering. RCW 90.14 provided that a short form could  
8 only be used to document the use of up to 5,000 gallons of water per day for stock  
9 watering, domestic supply, irrigation of less than one-half of lawn or noncommercial  
10 garden, or industrial supply. A short form, therefore, could not be used to  
11 document a water right for irrigation in excess of one-half acre.

12 The Coles' Statement of Claim to the Court asserts a right for the irrigation  
13 of two acres and stock watering. During the evidentiary hearing there was no  
14 testimony concerning the number of acres irrigated, nor the quantity of water used.  
15 The State's investigation report showed that approximately 0.75 acre was being  
16 irrigated at the time of the investigation and that water was used for watering  
17 stock. Water Right Claim No. 117821 was filed by the Coles pursuant to the  
18 requirements of RCW 90.14 for the use of 26 gpm, two acre-feet per year from Reed  
19 Ditch for the irrigation of 1.6 acres. There is also a pond on the Cole's property  
20 and the Plaintiff's Report to the Referee recommended that a non-diversionary stock  
21 water right be confirmed to the Coles for stock watering from a pond or spring on  
22 the Cole Property.

23 There was no testimony during the evidentiary hearing concerning the extent of  
24 current water usage on the property now owned by William and Carol Wood. The  
25 State's investigation report shows that 3.5 acres were irrigated at the time of the  
26 inspection and water was being provided for stock on the land. Water Right Claim

1 No. 065852 was filed by John Breckon in response to the requirements of RCW 90.14,  
2 for the use of 1/5 of a cubic foot per second, 40 acre-feet per year from Reed Ditch  
3 for the irrigation of 5 acres and stock water.

4 All three of the claimants are asserting 1890 as the date their rights were  
5 initiated, however, there was no testimony to show the significance of that date or  
6 how a right was established at that time.

7 Mr. Harrell provided the only testimony concerning the nature of the water in  
8 Reed Ditch where these claimants have their point of diversion and no one contested  
9 Mr. Harrell's testimony that Reed Ditch did not carry Manastash Creek water at this  
10 point, only return flow. See Page 10 of this report concerning return flow waters.  
11 Since there is nothing in the record to establish that the water diverted is either  
12 Manastash Creek water or return flow with its origins within the Manastash Creek  
13 basin, the Referee cannot recommend that rights be confirmed to these claimants  
14 beyond the non-diversionary stock water rights discussed earlier.

15

16 COURT CLAIM NO. 1846 -- Brian H. and Tamara M. Cooke  
17 COURT CLAIM NO. 1153 -- Robert A. and Gwen C. Rock  
18 COURT CLAIM NO. 2270 -- Bruce Johnson, Robert J. Dean and  
Mel and Jodee Shenyer

19 Statements of Claim were filed by Brian H. and Tamara M. Cooke and Robert A.  
20 and Gwen C. Rock for the use of waters in Subbasin 11. A Statement of Claim was  
21 also filed by Bruce Johnson with Robert J. Dean and Mel and Jodee Shenyer being  
22 joined to that claim in June 1989. Brian Cooke, Robert Dean, and Mel Shenyer  
23 testified at the evidentiary hearing.

24 These defendants are all claiming water rights based on the rights awarded to  
John Steigler in Gray, supra. According to the testimony and evidence John Steigler  
25 was a predecessor owner of the land now owned by each of the claimants. The decree  
26 awarded to John Steigler 40 inches of Class 9 rights (with an 1881 date of priority)

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1 for use in the W $\frac{1}{4}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. On April 13,  
2 1915, Mrs. K. A. France sold John Steigler 60 inches of Class 3 water (with an 1874  
3 date of priority) that had previously been used on the N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
4 Section 15, T. 17 N., R. 18 E.W.M., being a portion of the water decreed to J. D.  
5 Dammon in Decree No. 99 and 100. Although the deed did not show where the water  
6 sold to Mr. Steigler was to be used, the schedule of rights entered into evidence  
7 shows 60 inches of Class 3 water for John Steigler to be used in the W $\frac{1}{4}$ NW $\frac{1}{4}$  and  
8 SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M.

9 Water is diverted from Manastash Creek at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7,  
10 T. 17 N., R. 18 E.W.M. into a ditch running northeast into the NW $\frac{1}{4}$  of Section 8.  
11 The ditch delivers water to the Dean, Cooke, and Rock properties and then on to  
12 Anderville Farm.

13 Brian and Tamara Cooke own the East 215 feet of the West 745 feet of the  
14 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, consisting of 6.5 acres, of which approximately 4.5 acres are  
15 irrigated pasture. Water is withdrawn from the ditch using one 2 BHP and one 5 BHP  
16 pump with three inch handlines used to distribute the water. Bob and Gwen Rock own  
17 the West 315 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, consisting of 9.5 acres, of which two  
18 acres are irrigated pasture. A 1.5 BHP is used to withdraw water from the ditch  
19 and handlines used to distribute the water. Mel and Jodee Shenyer own the S $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20 Section 8 and irrigate almost all of the 80 acres within their ownership. According  
21 to the testimony, 65 acres are planted to timothy hay and 15 acres are pasture,  
22 although a home, with associated lawn and garden area, and other buildings are  
23 located within the 80 acre parcel. The Shenyer property is irrigated using three  
24 wheel lines and some handlines. Water is diverted from the creek into a pond that  
25 is located near the southeast corner of the property and pumped from the pond using  
26 a 45 BHP pump.

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1 Robert Dean owns the SE<sup>1</sup>NE<sup>1</sup> of Section 7, flood irrigating 36 acres of  
2 pasture. According to the Schedule of Rights, this property does not enjoy any of  
3 the Class 3 right that was sold to John Steigler. However, an updated copy of the  
4 Schedule of Rights entered as an exhibit by Roger Sparks, shows that a portion of  
5 the Class 5 right (with a priority date of 1877) awarded to Olof Hanson was  
6 appurtenant to the SE<sup>1</sup>NE<sup>1</sup> of Section 7. The decree awarded water based on one inch  
7 of water for each acre irrigated; since 36 acres are being irrigated, 36 inches  
8 would be appurtenant to the parcel.

9 These claimants all testified that they use Manastash Creek water when it is  
10 available, but that after July 1 they generally have to rely on KRD water as the  
11 creek is dry. Until the creek goes dry, stock are watered from the creek, either by  
12 directly drinking from the creek or drinking from ditches that divert irrigation  
13 water from the creek. After July 1, springs located on the Shenyer property and  
14 Roger Sparks property to the west are used to water the stock.

15 Pursuant to the requirements of RCW 90.14, Water Right Claim No. 120827 was  
16 filed for the use of Manastash Creek for the irrigation of 77 acres within the  
17 NW<sup>1</sup>NW<sup>1</sup> of Section 8 and the SE<sup>1</sup>NE<sup>1</sup> of Section 7, portions of which are owned by the  
18 Cookes, Rocks, and Deans. Additionally Water Right Claim No. 120826 was filed for  
19 the use of an unnamed spring for stock water and irrigation in the NW<sup>1</sup>NW<sup>1</sup> of Section  
20 8. However, no RCW 90.14 claims were registered for the S<sup>1</sup>SW<sup>1</sup> of Section 8,  
21 currently owned by the Shenyers.

22 Due to the lack of a claim registered pursuant to RCW 90.14, the Referee  
23 cannot recommend that a right be confirmed to the Shenyers for their use of  
24 Manastash Creek.

25 Sufficient testimony and evidence were submitted for the Referee to recommend  
26 that rights be confirmed to Bob A. and Gwen C. Rock and Brian H. and Tamara M.

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1 Cooke, with a June 30, 1874, date of priority for the use of Manastash Creek as  
2 follows:

3 Bob A. and Gwen C. Rock - 0.05 cubic foot per second from April 1 to June 30  
4 and 0.025 cubic foot per second from July 1 to October 31, 10 acre-feet per year for  
5 the irrigation of two acres and stock watering. The Plaintiff's Report to the  
6 Referee also recommended that a non-diversionary stock water right be confirmed for  
7 the Rocks.

8 Brian H. and Tamara M. Cooke - 0.14 cubic foot per second from April 1 to June  
9 30 and 0.07 cubic foot per second from July 1 to October 31, 22.5 acre-feet per year  
10 for the irrigation of 4.5 acres and stock watering.

11 It is recommended that rights be confirmed to Bruce Johnson and Robert J.  
12 Dean, under Claim No. 2270, for the use of Manastash Creek with a June 30, 1877,  
13 date of priority for the use of 0.90 cubic foot per second from April 1 to June 30  
14 and 0.45 cubic foot per second from July 1 to October 31, 271.45 acre-feet per year  
15 for the irrigation of 36 acres.

16 The testimony reflects that springs arising on the Sparks and Shenyer property  
17 are used for stock watering when the creek is dry. However, there was insufficient  
18 testimony to determine whether water is diverted from the sources to stock tanks or  
19 the stock simply drink directly from the spring. Due to the lack of testimony the  
20 Referee cannot recommend that rights be confirmed for diversionary stock watering.  
21 However, should the stock drink directly from the water source, the non-diversionary  
22 stock water stipulation would cover that use. Any rights that these claimants may  
23 have to waters delivered by the Kittitas Reclamation District, will be considered  
24 when the KRD's claim is addressed during the Major Claimant Pathway.

1      COURT CLAIM NO. 1898 -- Harold and Judy Crose

2      A Statement of Claim was submitted to the Court by Richard P. and Florence L.  
3      Nobach for the use of waters from Manastash Creek for stock watering and irrigation  
4      of ten acres. On July 20, 1990, Harold and Judy Crose were substituted for the  
5      Nobaches as defendants. Judy Crose appeared at the evidentiary hearing to present  
6      testimony in support of the claim and was represented by Richard Cole.

7      Although the Statement of Claim asserted a right to use the creek for  
8      irrigation purposes, during testimony Ms. Crose amended the claim to just stock  
9      water for two mules. Both Manastash Creek and Reed Ditch flow through their  
10     property and the livestock drink directly out of the creek and ditch with no actual  
11     diversion. The Plaintiff's Report to the Referee recommended the confirmation of  
12     non-diversionary stock watering rights for those defendants who had stock that drank  
13     directly from the source of water and Richard P. and Florence L. Nobach were  
14     included in that recommendation. This recommendation would adequately protect the  
15     right of stock to drink directly from Manastash Creek. However, stock drinking from  
16     Reed Ditch is a diversionary water use, as the water is diverted from Manastash  
17     Creek into Reed Ditch.

18     In order to confirm a right for diversionary stock water, there must be  
19     testimony or evidence of historical use of the property for raising stock and a  
20     claim must have been filed pursuant to RCW 90.14. Neither of these were provided,  
21     therefore, the Referee cannot recommend that a right be confirmed for diversionary  
22     stock watering.

23      COURT CLAIM NO. 0178 -- James M. and Pamela Jo Daly

24      A Statement of Claim was submitted to the Court for the use of an unnamed  
25     source for irrigation. The Dalys did not make an appearance as scheduled during the  
26     evidentiary hearing to provide testimony regarding their claim to a water right.  
27

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28      Re: Subbasin No. 11

1 Consequently, the Referee cannot recommend confirmation of a water right to these  
2 defendants.

3

4 COURT CLAIM NO. 4426 -- Wallace L. and Geraldine J. Enger

5 A late-filed Statement of Claim for the use of waters from Manastash Creek was  
6 submitted to and approved by the Court for Wallace L. and Geraldine J. Enger. Mr.  
7 Enger appeared during the evidentiary hearing in support of the claim, but without  
8 the benefit of a State's investigation report.

9 According to the testimony, the Engers own ten acres described as the  
10 W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M. Since they purchased the property  
11 in 1978 they have irrigated approximately eight acres using water from the Kittitas  
12 Reclamation District via the Jensen Ditch. They are claiming a right to use water  
13 from Manastash Creek via Keach Ditch for irrigation and stock watering; however,  
14 during their ownership there has been no diversion of water from Keach Ditch onto  
15 their property. Livestock grazing in the pasture through which Keach Ditch flows  
16 drink directly from the ditch.

17 The defendants' property was part of a larger parcel that had been owned by  
18 Freda Olds. According to Mr. Enger, Ms. Olds told him that the land had always been  
19 used to raise livestock; however, there was no specific testimony about historic  
20 irrigation practice on the property. Another defendant in this case, Wayne Wells,  
21 testified that when he moved into the area in 1934 the N $\frac{1}{4}$  of Section 13 was not  
22 being irrigated, but was used to pasture livestock. There were no rights confirmed  
23 for this property in Gray, supra. However, Brent Renfrow and Karen Raymond,  
24 presented evidence concerning the transfer of a right that would appear to be  
25 appurtenant to the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. See Page 140 of this report for the

1 recommendation on their claim and a full discussion of the right that was  
2 transferred.

3 It also is not apparent that a water right claim was filed for the property  
4 pursuant to the Claims Registration Act, RCW 90.14. The Engers purchased the  
5 property from Thomas Triggs, who did not file a claim. However, the testimony did  
6 not reflect whether Mr. Triggs was the owner of the property during the filing  
7 period of 1969 through 1974. Freda Olds did register a claim; however, rather than  
8 providing a legal description of the lands the claim was appurtenant to, she  
9 attached a map showing the location of those lands. The map or a copy of the map  
10 has not been provided the court.

11 Based on the lack of evidence to show historic water use on the property from  
12 Manastash Creek and the uncertainty of a 90.14 water right claim for the land, the  
13 Referee cannot recommend that a right be confirmed for Wallace L. and Geraldine J.  
14 Enger.

15 The Kittitas Reclamation District is a Major Claimant in this proceeding. Any  
16 rights that the defendants may have through the district shall be addressed when the  
17 district's claim is considered during the Major Claimant Pathway.

18

19 COURT CLAIM NOS. 4521, 4522, 4523, 4524 -- May Moffet Mitchell Gage

20 Statements of Claim were submitted to the Court by the defendant for the use  
21 of three springs and a pond lying within the Manastash Basin. Testimony was given  
22 during the evidentiary hearing by Ms. Gage.

23 The testimony shows that the defendant owns 160 acres of land that were  
24 homesteaded by her father, Frederick Moffet, under a patent issued on March 8, 1907.  
25 According to Ms. Gage, the homestead application was filed in 1902 and the  
26 development of that land occurred between 1910 and 1912. Her father planted

1 approximately five acres of timothy hay in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14, T. 17 N., R. 16  
2 E.W.M., which he irrigated from a spring located in the southwest corner of that  
3 subdivision. Irrigation of this hay field ceased during the 1920's. The NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
4 Section 14 is mostly timber land and has not been developed. There is an  
5 undeveloped spring in the northwest corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14, but there  
6 currently is no diversion from that source. A pond is located in the southeast  
7 corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14 and extends into the southwest corner of the  
8 NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14. Livestock on the defendant's property drink directly from the  
9 pond and this non-diversionary use is covered in the stock water stipulation.

10 Near the northeasterly corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, a home has been  
11 constructed and approximately four acres of orchard, lawn and garden are being  
12 irrigated from a spring near the center of the subdivision. According to Ms. Gage,  
13 use of this spring dates back to 1910 to 1912 and has continued uninterrupted.  
14 Water is delivered from the spring by gravity flow and currently there are 12  
15 faucets that come off the line for irrigation of the acreage.

16 There is a ten acre area that is suitable for irrigation and possibly a  
17 homesite that Ms. Gage's son is considering for development some time in the future.  
18 This area has not been irrigated in the past or developed in any way. This  
19 adjudication proceedings is for the determination of existing rights for ongoing  
20 beneficial uses of water, not for establishing new water rights for potential future  
21 uses. There are procedures for establishing new rights provided for in RCW 90.03  
22 and Ms. Gage or her son should contact the Central Regional Office of the Department  
23 of Ecology concerning any new uses of water they are considering.

24 Ms. Gage filed four water right claim forms pursuant to the requirements of  
25 Chapter 90.14 RCW. These claims were filed for the use of three springs and the  
26 pond that are located on her property.

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1       Based on the foregoing testimony, the Referee finds that rights were  
2 established under the Riparian Doctrine with a priority date of 1902, when the  
3 homestead application was filed for the use of two springs for irrigation. However,  
4 the use of one of the springs for irrigation in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14 ceased in  
5 the 1920's and pursuant to the provisions of Chapter 90.14 RCW, the right that  
6 existed has relinquished due to the long period of non-use. The Referee does  
7 recommend that a right be confirmed with a June 30, 1902, date of priority for the  
8 use of the spring located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, for 0.13 cubic foot per  
9 second, 22 acre-feet per year for single domestic supply, stock watering and the  
10 irrigation of four acres.

11  
12     COURT CLAIM NO. 2260 - Robert Y. and Wanda Gardinier  
13    Robert M. and Avadene Gardinier

14      A Statement of Claim was submitted to the Court by the above named defendants  
15 for the use of waters from Manastash Creek, numerous drains, and a drain-spring.  
16 With representation by Attorney Ken Beckley, Robert M. Gardinier testified at the  
17 hearing.

18      The Gardiniers own two non-contiguous parcels and each will be discussed  
19 separately. One parcel is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18  
20 E.W.M. lying south of Hanson Road and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 lying south of Brown  
21 Road. The West Side Canal runs through the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and the land east of  
22 the canal is irrigated primarily with waters from the canal and the land west of the  
23 canal is irrigated with water from Manastash Creek. A 10 BHP pump is placed on the  
24 creek and delivers water to a 16 sprinkler wheel line that is used to irrigate  
25 timothy hay. Previously corn had been planted and irrigated using surface  
26 application. The State's Investigation Report identified that 13 acres were being  
27 irrigated south of Manastash Creek, however, according to Mr. Gardinier the area

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1 north of the creek has previously been irrigated. He did not indicate how many  
2 additional acres that would encompass, but it would appear to be approximately four  
3 acres for a total of 17 acres that have been irrigated.

4 The Gardiniers are basing their claim to a water right on a Class 2 right  
5 awarded to A. Barnes in Gray, supra, for 80 inches of water from Manastash Creek for  
6 use in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4. A Class 2 water right  
7 would have an 1872 date of priority. Although sufficient water was awarded to  
8 irrigate the entire 80 acre tract from Manastash Creek, apparently the creek has  
9 only continued to be used on the approximately 17 acres west and above the West Side  
10 Canal. The remaining land that has continued to be irrigated receives water from  
11 the West Side Canal and return flow water from drains on the property.

12 Mr. Gardinier testified that with the current crops he uses between six and  
13 eight acre-feet per year per acre irrigated, but would need between 18 and 22 acre-  
14 feet per year per acre if he again planted the land in corn and used rill  
15 irrigation. However, only 7.5 acre-feet per year per acre irrigated can be  
16 delivered to the property with the instantaneous rate of delivery confirmed in Gray,  
17 supra.

18 Water Right Claim No. 118627 was filed by Barns Ditch for the use of Manastash  
19 Creek to irrigate several parcels of land. One parcel is the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5  
20 owned by Robert Gardinier. The diversion described in the claim is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$   
21 of Section 7, where a ditch diverts from the creek and serves lands to the west of  
22 the Gardinier property. It appears that the Gardiniers have changed the point of  
23 diversion they use to a pump location on their property.

24 Based on the foregoing information, the Referee recommends that a right be  
25 confirmed to the Gardiniers with a June 30, 1872, date of priority for the use of  
26 0.425 cubic foot per second from April 1 to June 30 and 0.21 cubic foot per second

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1 from July 1 to October 31; 127.5 acre-feet per year for the irrigation of 17 acres,  
2 within that part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 lying west of the West Side Canal.

3 The second parcel owned by the Gardiniers is most of Section 9, T. 17 N., R.  
4 18 E.W.M. Much of the land in this parcel is irrigated with water from the West  
5 Side Canal and return flows captured in drains that emerge at various locations  
6 throughout the property. Mr. Gardinier did not testify concerning the quantity of  
7 water used from these drains or provide any historic testimony about the use. As  
8 discussed on Page 10 of this report, rights can only be confirmed for use of return  
9 flows if it can be established that the return flow water does not result from the  
10 use of Yakima Project water and if there is sufficient historical testimony to  
11 establish the existence of a water right. There has been insufficient testimony to  
12 allow the Referee to recommend that a right be confirmed for use of return flow  
13 water.

14 A portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 lying west of the West Side Canal and  
15 north of an irrigation ditch is irrigated from Manastash Creek and the portion of  
16 the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9 lying north of McCarl Creek is irrigated from McCarl Creek.  
17 Mr. Gardinier did not provide any testimony about the historic use of Manastash  
18 Creek water on the land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 nor did review of Decree No. 99  
19 and 100 and the Schedule of Rights reveal a water right for that parcel. There also  
20 is no evidence that a water right claim was filed pursuant to RCW 90.14 for this  
21 use.

22 The testimony reflects the belief that McCarl Creek has been used to irrigate  
23 the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9 north of the creek since prior to 1900, however, there also  
24 is no 90.14 claim filed for that water use. Water Right Claim No. 003216 was filed  
25 by Margaret Brondt for use of Carlyle Creek, which could be McCarl Creek, for the  
26 irrigation of 30 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9. There was no assertion by Mr.

1 Gardinier that Claim No. 003216 was intended to be for his use of McCarl Creek in  
2 the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9.

3 Based on the above, the Referee cannot recommend that rights be confirmed to  
4 the Gardiniers for use of either Manastash Creek or McCarl Creek for their lands in  
5 Section 9. The West Side Irrigating Company is a Major Claimant and the Company's  
6 water rights will be considered in the Major Claimant pathway identified in Pre-  
7 Trial Order No. 8. The Gardiniers were confirmed a non-diversionary stock water  
8 right in the Plaintiff's Report to the Referee.

9  
10 COURT CLAIM NO. 1554 -- Steve Gilbert and Krisha Frank  
Oenone J. Kinman

11 A Statement of Claim was submitted to the Court by Jeris W. and Joyce  
12 Ninnemann for the use of waters of Manastash Creek for irrigation and domestic  
13 supply. On August 5, 1993, Steve Gilbert and Krisha Frank and Oenone J. Kinman were  
14 substituted on the claim. There was no appearance during the evidentiary hearing to  
15 provide testimony regarding the claim to a water right. Consequently, the Referee  
16 cannot recommend confirmation of a water right to these defendants.

17  
18 COURT CLAIM NO. 2272 -- Tom Hamberg and James L. Podkranic

19 A Statement of Claim was filed with the Court by Tom Hamberg for the use of  
20 waters from Manastash Creek. James L. Podkranic who was joined as a defendant for a  
21 portion of the claim on October 24, 1989, and represented by Attorney Kenneth  
22 Beckley, appeared at the evidentiary hearing to testify in behalf of the claim. Mr.  
23 Hamberg did not appear at the hearing.

24 According to the testimony and evidence, the Court Claim submitted by Tom  
25 Hamberg was for use of waters from Manastash Creek for lands within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
26 Section 8, T. 17 N., R. 18 E.W.M. In 1989, James L. Podkranic purchased the SW $\frac{1}{4}$ SE $\frac{1}{4}$

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1 of Section 8, EXCEPT the East 495 feet, which reportedly was purchased by Ken Wolfe,  
2 who has not been joined to the Claim.

3 Mr. Podkranic owns 25 acres and is claiming a portion of a Class 3 right that  
4 was awarded to Evan Thorstenson or Evan Strande in Gray, supra, in 1891. The  
5 Schedule of Rights in evidence shows Evan Thorstenson (Evan Strande) as having a  
6 Class 3 right for 100 inches of water to be used in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 and the  
7 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9. The home that is on the property is listed in the National  
8 Historic Registry. Mr. Podkranic was told by neighbors that the house must be at  
9 least 90 years old, that other buildings on the property are older than the house  
10 and that the land had been farmed since the buildings were constructed.

11 Water for this property is diverted from Manastash Creek into the Jensen  
12 Ditch, deposited in the KRD lateral than runs along Manastash Road and then diverted  
13 from the lateral near Mr. Podrankic's west property line. Mr. Podrankic also owns  
14 shares in the KRD and uses that water when sufficient creek water is not available,  
15 commonly after July 1. He flood irrigates approximately 23 acres of pasture and hay  
16 crops. Water diverted from the creek is also used to water 14 head of cattle and  
17 three horses.

18 No evidence was offered to show that a previous owner of the property  
19 submitted a water right claim in accordance with the provisions of RCW 90.14.  
20 Failure to file such a claim effectively relinquished any right that the property  
21 may have enjoyed to the use of waters from Manastash Creek. Therefore, the Referee  
22 cannot recommend that a right be confirmed under Court Claim No. 2272. Any rights  
23 that the property may enjoy through the KRD will be addressed through the KRD claim  
24 in the Major Claimant Pathway.

COURT CLAIM NO. 1967 -- Ewing Stringfellow  
COURT CLAIM NO. 2011 -- Michael and Kristi Stougaard

A Statement of Claim was filed with the Court by Warren and Mary Hand for the use of waters of Manastash Creek. On October 25, 1988, Ewing Stringfellow was joined as an additional party to the claim. Statement of Claim No. 2011 was filed with the Court by John and Diana Ressler who substituted to Michael and Kristi Stougard on February 15, 1989. Ewing Stringfellow, who purchased the property described in the claim from the Hands was represented by Kenneth Beckley, attorney-at-law. Jerome J. Kaufman, lessee of the property, testified at the evidentiary hearing. Mr. and Mrs. Stougard, did not appear at the hearing to testify in support of the claim.

The testimony and evidence show that a patent certificate issued to Walter V. Moody on January 22, 1890, for the NE $\frac{1}{4}$  of Section 18, T. 17 N., R. 18 E.W.M. However, on February 14, 1889, prior to the issuance of the patent, Mr. Moody sold the property to J. W. Vaughn. Mr. Stringfellow is the owner of the W $\frac{1}{2}$ NE $\frac{1}{4}$  and the W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 18. The Stougards own the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 18. On May 31, 1890, J. W. Vaughn filed an Affidavit of Water Right stating that he was the owner of the NE $\frac{1}{4}$  of Section 18 with valid water rights to 60 inches from Manastash Creek, 30 inches from each of the Keach and Jensen Ditches. It also stated that he was in peaceable possession of 150 inches of water from the creek. Gray, supra, awarded a Class 7 right to J. W. Vaughn for 37 inches of water from Manastash Creek through the Keach Ditch. A Class 7 water right would have an 1879 date of priority. Thirty seven inches is 0.925 cubic foot per second. According to Gray, supra, one inch of water is adequate for the irrigation of one acre of land. Therefore, the 37 inches that were confirmed to J. W. Vaughn in that decree were for the irrigation of 37 acres.

1       Jerome Kaufman testified that 61 acres are being irrigated with water from  
2 Manastash Creek through Keach Ditch and water from the Kittitas Reclamation District  
3 through Jensen Ditch. Two pumps, one 10 BHP and one 20 BHP, are located on the  
4 ditch to withdraw water into the distribution system. Nineteen acres are rill  
5 irrigated and 42 acres are sprinkler irrigated with a wheel line or handlines. Mr.  
6 Kaufman was imprecise concerning the annual amount of water used on the property.  
7 He testified to using approximately 80 acre-feet per year from the creek, but that  
8 he could have used 10 to 20 percent more water if it were available. His total  
9 water use on the property for irrigation was 324 acre-feet. This quantity would  
10 include water received from the Kittitas Reclamation District. He felt that five  
11 acre-feet per acre irrigated was not adequate and that he would need 16 acre-feet  
12 per acre to adequately irrigate the land.

13       Ewing Stringfellow owns 75 percent of the land that was confirmed a right  
14 according to the Schedule of Rights in evidence and the Stougards own 25 percent.  
15 However, the Stougards in their Claim to the Court are asserting a right for the  
16 irrigation of only 5 acres; therefore, Mr. Stringfellow's land would enjoy a right  
17 from Manastash Creek for the remaining 32 acres, but not for the 61 acres that are  
18 currently being irrigated. He may enjoy a right to irrigate the remaining acres  
19 from the Kittitas Reclamation District system. The Kittitas Reclamation District is  
20 a Major Claimant and as such, the district's rights will be considered during the  
21 proceedings of the Major Claimant pathway.

22       At the instantaneous rate of 0.64 cubic foot per second from April 1 to June  
23 30 and 0.32 cubic foot per second from July 1 to October 31, a maximum of 192.15  
24 acre-feet can be withdrawn from Manastash Creek, which would be six acre-feet per  
25 year per acre irrigated.

1 Water Right Claim No. 111233 was filed by Warren Hand for the use of Keach  
2 Ditch for stock water and the irrigation of 50 acres in the N<sup>1</sup>/4NE<sup>1</sup>/4 of Section 18,  
3 which would include both the Hand/Stringfellow property and the Stougard property.  
4 The irrigated land in the N<sup>1</sup>/4NE<sup>1</sup>/4 of Section 18 lies below the Keach Ditch and could  
5 be irrigated from the ditch by gravity flow, which would have been the practice at  
6 the time the water rights were established. There is irrigated land in the S<sup>1</sup>/4NE<sup>1</sup>/4 of  
7 Section 18 that could be irrigated from the South Branch of the Kittitas Reclamation  
8 District.

9 Based on the foregoing testimony and evidence, it is recommended that a right  
10 be confirmed to Ewing Stringfellow with a June 30, 1879, date of priority for the  
11 use of 0.64 cubic foot per second from April 1 to June 30 and 0.32 cubic foot per  
12 second from July 1 to October 31, 192.15 acre-feet per year for stock watering and  
13 the irrigation of 32 acres. Due to their failure to appear at the evidentiary  
14 hearing the Referee cannot recommend that a right be confirmed to Michael and Kristi  
15 Stougard.

16

17 COURT CLAIM NO. 0477 -- Clarence and Hazel J. Harrell

18 A Statement of Claim was submitted to the Court by Clarence and Hazel Harrell  
19 for the use of waters from Reed Creek for irrigation of 225 acres. The defendants  
20 were represented by Harrison K. Dano, attorney at law. Mr. Harrell and Richard  
21 Bain, a consultant hired by the Harrells appeared at the Evidentiary Hearing to  
22 testify in behalf of the claim.

23 The record shows that the Harrells own approximately 593 acres of land, of  
24 which 562.4 acres are irrigated utilizing several sources of water, including  
25 Manastash Creek, the West Side Canal, the Kittitas Reclamation District, and return  
26 flow waters captured and delivered through Back and Center Ditches. Timothy hay is  
27

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1 planted in rotation with grains. Rill irrigation is used on approximately 95  
2 percent of the land which is in pasture, with the remaining five percent irrigated  
3 with sprinklers. Mr. Bain testified that the water need for this farm is 12.5 acre-  
4 feet per acre irrigated, including return flow waters that are utilized. The  
5 Harrells use 20 different diversion points from Reed Creek (which actually is a  
6 ditch that diverts from Manastash Creek in Section 12, T. 17 N., R. 17 E.W.M.) and  
7 Back and Center Ditches.

8 Reed Creek is used to irrigate 350 acres within 10 of the 17 fields farmed by  
9 the Harrells. Water from the Kittitas Reclamation District is available for  
10 supplemental supply on 141 of the 350 acres. Return flow waters in Back Ditch are  
11 used to irrigate approximately 100 acres, and return flow waters in Center Ditch are  
12 used to irrigate approximately 61.4 acres and water from the West Side Canal is used  
13 to irrigate 51 acres. Water Right Claim Nos. 144792 through 144795 were filed by  
14 Clarence Harrell pursuant to RCW 90.14 to document uses of water from Reed, Center,  
15 and Back Creeks and unnamed springs for irrigation. Water Right Claim Nos. 144800  
16 and 144801 were filed for use of water from two springs for stock watering and  
17 domestic supply.

18 The Harrells are basing their claim to water rights, except for the water  
19 supplied from Kittitas Reclamation District and West Side Irrigating Company, on  
20 Decree No. 99 and 100 filed April 18, 1891, in Kittitas County Superior Court. The  
21 owner of a portion of their property at that time, Olof Hansen, was awarded 140  
22 inches of Class 1 rights for use on the W $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, T. 17 N.,  
23 R. 18 E.W.M.; S. R. Geddis, was awarded 165 inches of Class 2 rights for the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
24 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and 50 inches of Class 6 rights for the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17  
25 N., R. 18 E.W.M. Additionally, after the Decree was entered, a predecessor to the  
26 Harrells purchased 25 inches of Class 1 water originally awarded to E. S. Coleman

for use in Section 15, T. 17 N., R. 18 E.W.M. On March 28, 1950, Certificate of Change recorded in Volume 1, Page 279 issued to a Fred Hanson, who apparently was a predecessor owner of the Harrell property, authorizing the change in point of diversion of 0.50 cubic foot per second of the rights awarded in Gray, supra, from a point in the  $\text{N}\frac{1}{2}\text{N}\frac{1}{2}$  of Section 14 to the  $\text{SE}\frac{1}{4}$  of Section 11 (which was identified as the head of Reed Creek), both in T. 17 N. R. 17 E.W.M. and the change in place of use from the  $\text{NE}\frac{1}{4}$  of Section 2 and the  $\text{N}\frac{1}{2}\text{SW}\frac{1}{4}$  of Section 1, T. 17 N., R. 17 E.W.M. to the  $\text{N}\frac{1}{2}\text{SW}\frac{1}{4}$ , the  $\text{SW}\frac{1}{4}\text{SW}\frac{1}{4}$ , and the  $\text{S}\frac{1}{2}\text{NW}\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M., which is part of the Harrell ranch. This certificate of change appears to pertain to the Class 1 right that was purchased from John Burch, although the quantity of water described in the certificate of change is not accurate. The standard measure in Kittitas County in the early 1900's was a miners inch under four inch pressure, and under that measure, one miners inch was the same as 0.02 cubic foot per second, or 0.50 cubic foot per second for 25 inches. However, in Decree No. 99 and 100 a miners inch under six inch pressure was used whereby one miners inch was the same as 0.025 cubic foot per second, or 0.625 cubic foot per second for 25 inches.

John Burch sold to Olof Hansen 125 inches of Class 5 water. There was no testimony concerning when the rights were purchased, the circumstances behind the sale, or compliance with the procedures of RCW 90.03.380 to change the place of use.

The Schedule of Rights does not indicate the lands to which this right is appurtenant. The Harrell property located in the  $\text{S}\frac{1}{2}\text{SE}\frac{1}{4}$  of Section 32 and Government Lots 1, 3, and 4 of Section 5 do not appear to have rights to waters from Manastash Creek, so it may be reasonable to assume that the 125 inch Class 5 right is appurtenant to those lands. Although not testified to by Mr. Harrell and Mr. Bain, the schedule of rights for the 1891 Decree also listed 30 inches of Class 6 rights

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1      conveyed from S. R. Geddis to Ben George for the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
2      5, T. 17 N., R. 18 E.W.M., which is also part of the Harrell ownership.

3      The Harrells own a five acre parcel in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, which is  
4      irrigated with waters from Manastash Creek via Reed Ditch. A Class 5 right for 200  
5      inches is appurtenant to a 200 acre parcel that included the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7.  
6      The Harrells have a portion of that right, to the extent of 5 inches or .125 cubic  
7      foot per second.

8      The Harrells are claiming rights to use return flow or waste water that  
9      accumulates and flows in Center and Back Ditches. As discussed earlier in this  
10     report on Page 10, rights to the use of return flow waters can only be confirmed if  
11     the evidence shows that the claim is not for either foreign return flow or return  
12     flow waters that originate from part of the Yakima Project, such as from the KRD  
13     system. There has been no evidence provided by the Harrells to show that the return  
14     flows they use originate from natural water sources within this subbasin.  
15     Therefore, the Referee cannot recommend that rights be confirmed for use of return  
16     flow waters. Much of the land that is currently irrigated with return flow waters  
17     appears to have rights to the use of waters from Manastash Creek.

18     West Side Irrigating Company and the KRD are Major Claimants identified in  
19     Pre-Trial Order No. 8 and their claims, which would include water delivered to their  
20     patrons, will be addressed during the Evidentiary Hearings to be held specifically  
21     for the Major Claimants.

22     Based on the foregoing evidence, it is recommended that rights be confirmed to  
23     Clarence and Hazel J. Harrell for the use of waters from Manastash Creek as follows:

24     With a June 30, 1871, date of priority, 4.12 cubic feet per second from April  
25     1 to June 30 and 2.06 cubic feet per second from July 1 to October 31, 1244 acre-

1 feet per year for the irrigation of 145 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$ ; the SW $\frac{1}{2}$ NW $\frac{1}{4}$ ; the NE $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
2 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M.

3 With a June 30, 1872, date of priority, 4.12 cubic feet per second from April  
4 1 to June 30 and 2.06 cubic feet per second from July 1 to October 31, 1244.0 acre-  
5 feet per year for the irrigation of 80 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 5, T. 17 N., R.  
6 18 E.W.M.

7 With a June 30, 1877, date of priority, 3.12 cubic feet per second from April  
8 1 to June 30 and 1.56 cubic feet per second from July 1 to October 31, 942 acre-feet  
9 per year for the irrigation of 125 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18  
10 E.W.M. and Government Lots 1, 3, and 4 of Section 5, T. 17 N., R. 18 E.W.M.

11 With a June 30, 1878, date of priority, 0.125 cubic foot per second from April  
12 1 to June 30 and 0.062 cubic foot per second from July 1 to October 31, 37.483 acre-  
13 feet per year for the irrigation of 4.5 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17  
14 N., R. 18 E.W.M.

15 With a June 30, 1878, date of priority, 1.250 cubic feet per second from April  
16 1 to June 30 and 0.62 cubic foot per second from July 1 to October 31, 374.83 acre-  
17 feet per year for the irrigation of 40 acres in the NW $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5, T. 17 N.,  
18 R. 18 E.W.M.

19 With a June 30, 1878, date of priority, .750 cubic foot per second from April  
20 1 to June 30 and .37 cubic foot per second from July 1 to October 31, 224.47 acre-  
21 feet per year for the irrigation of 30 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
22 Section 5.

23

24 COURT CLAIM NO. 1949 -- George and Barbara Helleson

25 The above named defendants submitted a Statement of Claim to the Court for the  
26 use of waters from Manastash Creek and waste waters for stock watering and the

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1 irrigation of 10 acres. George Helleson appeared at the evidentiary hearing and  
2 testified in support of the claim. Wayne Wells, a neighboring landowner, testified  
3 in general about his knowledge of water use in the N $\frac{1}{2}$  of Section 13, T. 17 N., R. 17  
4 E.W.M., which includes the Hellesons' property.

5 During testimony, Mr. Helleson claimed stock water rights out of Keach Ditch  
6 and two branches of Jensen Ditch, which flow through the Helleson's property.  
7 According to the record, construction of the Keach Ditch began in 1871 and the  
8 Jensen Ditch in 1874. Through conversations with neighbors Mr. Helleson has become  
9 aware that livestock grazed on his property since at least the early 1900's and  
10 possibly before that time, drinking directly from the ditches. Testimony from other  
11 defendants has shown that much of the land in this area has historically been used  
12 for raising livestock, either on irrigated pasture or rangeland. It is reasonable  
13 to expect that by 1874 when the Jensen Ditch was completed that the Hellesons' land  
14 was being used to raise stock.

15 Mr. Helleson was questioned concerning the possibility of an irrigation right  
16 for his property, however, the testimony was not clear about historic irrigation  
17 practices on the defendants' land. Currently most of their land is irrigated with  
18 waters from the Kittitas Reclamation District, primarily, and from Manastash Creek,  
19 both through Jensen Ditch. There is evidence that the land was once irrigated from  
20 Keach Ditch. However, Mr. Helleson does not have any knowledge of the land being  
21 irrigated prior to the early 1940's. Although the land was not confirmed a right in  
22 Gray, supra, two defendants in this proceeding, Brent Renfrow and Karen Raymond,  
23 presented evidence concerning a transfer of a right that would appear to be  
24 appurtenant to a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13. The testimony was insufficient  
25 to determine that any of this right might be appurtenant to the portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$   
26 of Section 13 owned by the Hellesons.

1 Water Right Claim No. 149009 was filed by George Helleson pursuant to the  
2 requirements of RCW 90.14 for the use of 0.02 cubic foot per second, 16 acre-feet  
3 per year from Manastash Creek for stock watering and the irrigation of five acres.  
4 No date of first water use was provided on the claim form.

5 There was insufficient evidence to establish the existence of a water right  
6 for irrigation on the Helleson property; however, the Referee recommends that a  
7 right with a June 30, 1874, date of priority, be confirmed to George and Barbara  
8 Helleson for the diversion of 0.01 cubic foot per second, one acre-foot per year  
9 from Manastash Creek for continuous stock water. The Plaintiff's Report to the  
10 Referee recommended that a non-diversionary stock water right be confirmed for stock  
11 drinking directly from a naturally occurring pond or spring on the Helleson  
12 property. However, neither the testimony or the State's Investigation Report for  
13 the Helleson property reveal the existence of a pond or a spring that could be used  
14 for stock watering. Therefore, that recommendation will not be accepted.

15 Any rights that the claimants may enjoy through the Kittitas Reclamation  
16 District shall be addressed during the Evidentiary Hearing for the Major Claimants.

17

18 COURT CLAIM NO. 0502 -- Ernest C. and Eleanor Hinckle

19 A Statement of Claim was submitted to the Court for the use of waters from  
20 Hatfield Canyon via Packwood Canal. Mr. and Mrs. Hinckle were scheduled to appear  
21 at the evidentiary hearing for Subbasin No. 8, Thorp. Their claim will be addressed  
22 in the Report of Referee for Subbasin No. 8; therefore, the Referee makes no  
23 recommendation concerning their claim at this time.

COURT CLAIM NO. 1060 -- Estate of John C. Hoffman,  
Hilda and W. O. Salter

A Statement of Claim to the Court was submitted by the above named parties for the use of Manastash Creek. Hilda Salter appeared at the evidentiary hearing to testify in support of the claim.

The property described in the claim is in two parcels, one an 8.5 acre irrigated parcel near the center of Section 4, T. 17 N., R. 18 E.W.M. lying west of Brown Road and the second east of Brown Road with 23 of about 40 acres being irrigated. The property was purchased in 1952 and at that time a 30 head dairy was being operated. According to the testimony the land was owned by a Mr. Yokum in the late 1800's, and pigs were raised on the property. Mr. Yokum was not a party to Gray, supra, nor were there any water rights awarded in the decree to this portion of Section 4. Water Right Claim No. 060876 was filed pursuant to RCW 90.14 asserting a right to use waters from Manastash Creek for irrigation and stock water on the property described in Court Claim No. 1060.

Ms. Salter testified that they receive water from the West Side Irrigating Company. The water is dumped from the West Side Canal into Manastash Creek and then pumped from the creek onto their land. At one time Anderville Farms leased the 8.5 acre parcel and irrigated it from their ditch.

No evidence was presented to show that a water right was established for this property for the use of waters from Manastash Creek; therefore, the Referee cannot recommend that a right be confirmed under Court Claim No. 1060. It is not clear whether the only water withdrawn from the creek is from the West Side Canal. The West Side Irrigating Company is a Major Claimant and any rights that these defendants may enjoy through their association with the Company will be considered through the Major Claimant Pathway.

1       The Referee does agree with Plaintiff's Report to the Referee recommendation  
2       that a right for non-diversionary stock water be confirmed for this property.

3       COURT CLAIM NO. 0988 -- Michael and Sandra Hoffman

4       The above named defendants submitted a Statement of Claim to the Court for the  
5       use of waters from Manastash Creek for the irrigation of ten acres and stock water.  
6       Sandra Hoffman appeared at the evidentiary hearing and testified concerning the  
7       claim.

8       According to the testimony, the Hoffmans have not diverted or used water from  
9       Manastash Creek since they acquired the property in 1977. Evidence indicated that  
10      there was a diversion structure on the creek where it cuts across the northwest  
11      corner of the defendant's property, but no evidence that it diverted water for use  
12      on the Hoffman property. Additionally, Mrs. Hoffman did not provide any testimony  
13      about historic water use on the land. They currently irrigate a small orchard with  
14      their well and have an interest in using the creek for this purpose in the future  
15      and for stock watering. Their primary interest, however, is a desire to see  
16      Manastash Creek restored as a perennial stream for the aesthetic benefit to the  
17      riparian landowners.

18       This adjudication proceeding is not the proper forum for attempting to  
19      establish instream flows for Manastash Creek; a right for future use, or regulating  
20      water right holders to ensure a perennial flow in the creek. The testimony and  
21      evidence did not establish the existence of a water right for the Hoffman's  
22      property; therefore, the Referee cannot recommend that a right be confirmed under  
23      Court Claim No. 0988. The Plaintiff's Report to the Referee recommended that a non-  
24      diversionary stock water right be confirmed for the Hoffmans, and for this the  
25      Referee concurs.

1      COURT CLAIM NO. 1769 -- David B. and Lucia S. Hubbard

2      A Statement of Claim was submitted to the Court by David and Lucia Hubbard for  
3      the use of waters of Manastash Creek. Testimony in support of the claim was  
4      provided by Mr. Hubbard during the evidentiary hearing.

5      The Hubbards own approximately three acres of land and irrigate 2.5 acres of  
6      pasture, lawn and garden from Manastash Creek via Reed Ditch. Two 5 BHP pumps  
7      withdraw water from the ditch for delivery to the sprinkler system used for  
8      irrigation. The Hubbards purchased the property in 1969 from a man named Albertson  
9      and have traced the ownership back to Josephine Becker, who owned it in 1893. Mr.  
10     Hubbard believes that the land has been irrigated since Ms. Becker's ownership.

11     A Notice of Water Right was filed by Josephine Becker on May 6, 1893, claiming  
12     a right to divert 16 cubic feet per second from the Yakima River into Becker Ditch.  
13     The diversion was identified as being in the NW $\frac{1}{4}$  of Section 33, T. 18 N., R. 18  
14     E.W.M. and a map showed the ditch running southeasterly into Section 34, which is  
15     east of the Yakima River. Based on the map attached to the notice of water right it  
16     is not clear whether the diversion and ditch lie west of the river or east of it.

17     Mr. Hubbard also provided the court a copy of a Warranty Deed from Elizabeth  
18     Meek to John B. Meek dated May 16, 1921, transferring the following described  
19     property: 1/42 interest in NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T. 18 N., R. 18 E.W.M.; the SE $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
20     the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , the NW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 12 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17  
21     E.W.M., together with all water rights and irrigation ditches appurtenant thereto,  
22     including certain decreed rights in Manastash Creek. Review of the decree shows  
23     water rights to Manastash Creek for the lands in Sections 12 and 13, but not for the  
24     lands in Section 33.

25     Additionally, no evidence was presented to show that a water right claim was  
26     filed by the Hubbards pursuant to the requirements of RCW 90.14. Based on the

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1 lack of a 90.14 claim and the lack of evidence to show that a right was established  
2 for the property from Manastash Creek, the Referee cannot recommend that a right be  
3 confirmed to David B. and Lucia S. Hubbard.

4

5 COURT CLAIM NO. 0551 -- Joe and Sharon Juinta

6 A Statement of Claim was submitted to the Court for the use of waters from  
7 Hatfield Canyon via Packwood Canal. Mr. and Mrs. Juinta were scheduled to appear at  
8 the evidentiary hearing for Subbasin No. 8, Thorp. Their claim will be addressed in  
9 the Report of Referee for Subbasin No. 8; therefore, the Referee makes no  
10 recommendation concerning their claim at this time.

11

12 COURT CLAIM NOS. 1215 & 2144 -- Kamiakin Water Association

13 Court Claim No. 1215 was filed by Francis Dean Wyatt for use of waters from an  
14 unnamed spring for domestic supply and on June 9, 1989, the Kamiakin Water  
15 Association was substituted for Mr. Wyatt as a party under the claim. Court Claim  
16 No. 2144 was filed by the Kamiakin Water Association and appears to describe the  
17 same water use as Claim No. 1215. Rex Wirth, a member of the association appeared  
18 at the evidentiary hearing to testify in behalf of the claim.

19 According to Mr. Wirth, it is his belief that the land described in the Court  
20 Claims was part of a larger homestead patented June 9, 1904 by Andrew Olson, who  
21 conveyed it to Halvar Nelson.

22 Mr. Wirth understood from talking to "oldtimers" in the area that a home was  
23 constructed in 1906 and assumed that it received domestic water from the spring  
24 described in the claims. Sometime prior to 1964 this home was moved to another  
25 parcel. It is not clear whether it continued to receive water from the spring. The  
26 land that the original house currently sits on is not part of the Kamiakin Water

27

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1 Association claim. In approximately 1938 the land described in the association  
2 claim was further developed and a sawmill may have been constructed along with one  
3 or two houses that were hooked up to the spring.

4 In 1964, the land was platted and the spring upgraded to a public water supply  
5 serving six homes that were constructed following the platting. In 1972 to 1973,  
6 the flow from the spring declined. At that time a well was constructed where the  
7 spring had previously flowed. The association received Ground Water Certificate No.  
8 G3-20372C from the Department of Ecology authorizing the use of the well for  
9 domestic supply for six homes. While testimony was unclear, ten homes may be hooked  
10 up to the system at this time.

11 Water Right Claim No. 014213 was filed by the association pursuant to the  
12 requirements of Chapter 90.14 RCW showing a date of first water use as 1964.  
13 Additionally, Water Right Claim No. 002566 was filed by Joyce M. Pless who's legal  
14 description includes the association property. Any relationship between the claim  
15 filed by Ms. Pless and the association claim was not established.

16 Based on the evidence, it is the opinion of the Referee that a right may have  
17 been established in 1906 for single domestic supply from the spring that the  
18 association has used for its public water supply. Whether this use is continuing in  
19 the original house that was subsequently moved is unclear. It is clear that the  
20 water use in the homes described in the association claim did not begin until 1964  
21 when the land was platted, long after the significant dates of June 6, 1917 and  
22 December 31, 1932, when water had to be used to establish a right under either the  
23 Prior Appropriation or Riparian Doctrines. Therefore, the Referee cannot recommend  
24 that a right be confirmed to the Kamiakin Water Association under either Court Claim  
25 No. 1215 and 2144.

1 Since rights to the use of ground water, such as from a well, are not being  
2 considered in this proceeding, the association's right to use the well described in  
3 Ground Water Certificate No. G3-20372C cannot be determined. Use of this well can  
4 continue as authorized in the certificate.

5

6 COURT CLAIM NO. 0193 -- David L. Keithly

7 A Statement of Claim was submitted to the Court for the use of an unnamed  
8 water source for irrigation. Mr. Keithly did not make an appearance as scheduled  
9 during the evidentiary hearing to provide testimony regarding his claim to a water  
10 right. Consequently, the Referee cannot recommend confirmation of a water right to  
11 this defendant.

12

13 COURT CLAIM NO. 2026 -- Lyle F. R. and Ruth M. Knudson

14 A Statement of Claim was submitted to the Court for the use of waters from the  
15 South Fork of Manastash Creek and natural springs for irrigation, domestic, stock  
16 water, and recreation. The Knudsons did not make an appearance as scheduled during  
17 the evidentiary hearing to provide testimony regarding their claim to a water right.  
18 Consequently, the Referee cannot recommend confirmation of a water right to these  
19 defendants. However, the Plaintiff's Report to the Referee did recommend that a  
20 non-diversionary stock water right be confirmed for the Knudsons. The Referee  
21 concurs with this recommendation.

22

23 COURT CLAIM NO. 1954 -- Ray and Linda Knudson

24 A Statement of Claim was submitted to the Court for the use of Manastash Creek  
25 for irrigation and stock water. The Knudsons did not make an appearance as  
26 scheduled during the evidentiary hearing to provide testimony regarding their claim

1 to a water right. Consequently, the Referee cannot recommend confirmation of a  
2 water right to these defendants.

3

4 COURT CLAIM NO. 0822 -- Edwin L. and Roberta Kuehl

5 A statement of claim was submitted to the court for the use of waters from  
6 Manastash Creek for irrigation and stock water. The Kuehls did not make an  
7 appearance as scheduled during the evidentiary hearing to provide testimony  
8 regarding their claim to a water right. Consequently, the Referee cannot recommend  
9 confirmation of a water right to these defendants.

10

11 COURT CLAIM NO. 1446 -- Robert F. and Linda Lapan

12 Robert and Linda Lapan submitted a Statement of Claim to the Court for the use  
13 of waters from an unnamed spring also known as Ainsley or Center Creek and Packwood  
14 Canal. Attorney Richard Cole represented the defendants and Mr. Lapan testified  
15 during the evidentiary hearing.

16 The Lapens own one and a half acres of land near the point where the Packwood  
17 Canal spills into the Yakima River. They divert water from the canal at the  
18 spillway into a ditch that runs along their property. They then pump from the ditch  
19 using a 2 BHP pump and irrigate with eight to ten sprinklers. Mr. Lapan stated that  
20 they irrigate the entire one and a half acres, however, a home and outbuildings are  
21 located on the property, so no more than one and a quarter acres could actually be  
22 irrigated. The Lapens also divert water from what is identified on SE-1 as Back  
23 Creek, which appears to be the northerly fork of Center Creek.

24 The evidence shows that the Lapens' property is part of a larger parcel for  
25 which Abigail Lillibridge received a patent on May 23, 1889. According to Mr.  
26 Lapan's testimony, Dan and Tom Brunson, neighboring landowners, told him that his

1 land had been irrigated since at least the early 1900's, when Dan Brunson's father  
2 purchased the neighboring land. It is Mr. Lapan's belief that the property was  
3 being irrigated at the time the Packwood Canal was constructed in 1903. Mr. Lapan  
4 was not able to provide any specific testimony about the existence of stock on his  
5 property prior to his purchase or the use of the creek for stock watering. However,  
6 the testimony of other defendants in this matter has clearly shown that the entire  
7 Manastash Basin has historically been used for raising livestock and if the  
8 defendant's land was irrigated pasture in the early 1900's, it is reasonable to  
9 conclude that there were livestock grazing on the land at that time. Back Creek  
10 flows along the edge of the Lapan's pasture. It is not clear from the testimony  
11 whether water is diverted from the creek for stock watering or whether the stock  
12 drink directly from the creek. Lacking direct testimony of a diversion for stock  
13 watering the Referee concludes that a non-diversionary use exists, which is covered  
14 by the stock watering stipulation. The Plaintiff's Report to the Referee  
15 recommended that a non-diversionary stock water right be confirmed to the Lapens.

16 Water Right Claim No. 125777 was filed by the defendants pursuant to the  
17 requirements of RCW 90.14 claiming a right to use a spring for stock watering.  
18 Water Right Claim No. 125778 was filed by the Lapens for "Ainsley and Robinson  
19 Creeks (Ellensburg Power Canal)". Robinson Creek is a stream located in Subbasin  
20 No. 8 contributing to the water carried in the Packwood Canal. There has been no  
21 testimony or evidence provided to show the location of Ainsley Creek. The point of  
22 diversion identified on Water Right Claim No. 125778 is near the point where the  
23 Packwood Canal diverts from the Yakima River. There was no assertion by the Lapens  
24 that Water Right Claim No. 125778 was filed for their use of water from Back Creek  
25 and no evidence was presented to show that the Lapens filed a claim for Back Creek.

1 RCW 90.14 provides that failure to file a claim relinquishes any right that may have  
2 existed.

3 Due to the absence of a 90.14 claim for the use of waters from Back Creek, the  
4 Referee cannot recommend that a right be confirmed to the defendants for irrigation  
5 from Back Creek. Rights for the use of water from the Packwood Canal will be  
6 addressed through the canal company's claim, see Page 127.

7

8 COURT CLAIM NO. 1976 -- Andrew Jack Leinbach

9 Lee Pokorny submitted Claim No. 1976 to the Court for the use of waters from  
10 Manastash Creek for stock water and irrigation. On November 14, 1989, Andrew Jack  
11 Leinbach was substituted as defendant. Mr. Leinbach appeared at the evidentiary  
12 hearing in support of the claim. Wayne Wells, a neighboring defendant testified  
13 about his knowledge of water use in the N $\frac{1}{2}$  of Section 13, T. 17 N., R. 17 E.W.M.,  
14 which is where the Leinbach property is located.

15 According to the testimony and evidence, the defendant owns a nine acre parcel  
16 and irrigates 1.5 acres of alfalfa primarily using water from the KRD, although  
17 previous owners have irrigated using Manastash Creek water through the Keach Ditch.  
18 Keach Ditch forms Mr. Leinbach's southerly property line. He provided a chain of  
19 title for the property and a copy of the Gray, supra, decree, on which he is basing  
20 his claim to a water right for Manastash Creek. Review of the decree and the  
21 Schedule of Rights in evidence, does not show rights awarded for use within the NW $\frac{1}{4}$   
22 of Section 13, T. 17 N., R. 17 E.W.M., which is where the Leinbach property is  
23 located. However, another defendant in this proceeding, Brent Renfrow and Karen  
24 Raymond, presented evidence concerning the transfer of a right that would appear to  
25 be appurtenant to a portion of the NW $\frac{1}{4}$  of Section 13. Wayne Wells testified that  
26 when he moved into the area in 1934, the N $\frac{1}{2}$  of Section 13 was being used to pasture

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1 livestock, but had not been irrigated and Mr. Leinbach did not provide evidence of  
2 historic irrigation on his land.

3 There is no evidence to show that a water right claim was filed for the  
4 Leinbach property pursuant to the requirements of RCW 90.14.

5 Based on the testimony and evidence, the Referee cannot recommend that a right  
6 be confirmed to Andrew Jack Leinbach under Court Claim No. 1976.

7

8 COURT CLAIM NO. 1553 -- Deva Martensen

9 Claim No. 1553 was submitted to the Court by Freda L. Olds. On February 5,  
10 1988, Deva Martensen was substituted for Ms. Olds as the defendant under this claim.  
11 Attorney Kenneth D. Beckley represented the claimant and Wayne Smith, Robert  
12 Emerson, Deva Martensen, and Milo Martensen testified in behalf of the claim.

13 According to the testimony and evidence, approximately 40 acres of pasture and  
14 hay crops have been irrigated within the lands now owned by Deva Martensen in the  
15 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, and S $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$   
16 of Section 11, all in T. 17 N., R. 17 E.W.M. By the early 1900's this land was  
17 owned by Minnie Zehner and a Mr. Stonebraker, and was planted to pasture, hay and a  
18 small orchard. Irrigation on the property has continued over the years with water  
19 from both Manastash Creek and the Kittitas Reclamation District. Of the 40 acres  
20 irrigated, 35.5 are irrigated from Manastash Creek and the KRD system and 4.5  
21 are irrigated solely from KRD waters. Creek water irrigates 20 acres through the  
22 Jensen Ditch and 15.5 acres through Keach Ditch. Numerous stock are kept on the  
23 property, generally in the neighborhood of 100 head of mixed horses and cattle, with  
24 water for the stock being provided from the ditches.

25 Ms. Martensen is basing her claim to a water right on Gray, supra. A Class 1  
26 water right, with a date of priority of 1871, for 50 inches was confirmed to

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1 Westcott and Wright who owned land in Section 23, T. 17 N., R. 18 E.W.M., which is  
2 east of the defendant's property. This land was brought under the West Side Ditch  
3 Company and the creek rights were sold, ultimately ending up under the possession of  
4 Minnie Zehner for use in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17  
5 E.W.M., according to the Schedule of Rights admitted into evidence. Ms. Martensen  
6 did not provide any evidence or testimony to show that a separate right was  
7 established for the use of water on the lands she owns in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
8 11, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. Approximately 26.5  
9 acres are irrigated from Manastash Creek within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 and nine  
10 additional acres are irrigated from the creek within that part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 11 south of the creek, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
12 Section 14. Ms. Martensen is the only claimant asserting a claim to the 50 inch  
13 right that was conveyed to Minnie Zehner. It appears that either the land  
14 description on the Schedule of Rights was incorrect, or a portion of the right has  
15 been transferred to the irrigated lands owned by Ms. Martensen in Sections 11, 12  
16 and 13. Claimants Brent Renfrow and Karen Raymond presented evidence concerning  
17 transfer of a right that would appear to be appurtenant to a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
18 Section 13; however, Ms. Martensen is not asserting a claim to a portion of that  
19 right.

20 Water Right Claims No. 154353, 154354, and 154349 were filed by Freda Olds,  
21 pursuant to the requirements of RCW 90.14, for use of waters from Manastash Creek  
22 for irrigation and stock watering in Sections 12, 13 and 14, T. 17 N., R. 17 E.W.M.

23 Based on the testimony and evidence, the Referee recommends that a right be  
24 confirmed to Deva Martensen with a priority date of June 30, 1871, for the use of  
25 0.8875 cubic foot per second, from April 1 to June 30 and 0.444 cubic foot per  
26 second from July 1 to October 31; 268 acre-feet per year from Manastash Creek for

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1 the irrigation of 35.5 acres and 0.01 cubic foot per second, 1 acre-foot per year  
2 for stock water, all within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, lying north of Manastash Road  
3 and east of the KRD lateral; that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 lying south  
4 of Manastash Creek; the South 300 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, and the  
5 N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, all in T. 17 N., R. 17 E.W.M.

6 The Plaintiff's Report to the Referee recommended that a non-diversionary  
7 stock water right be confirmed for Ms. Martensen. The rights of the Kittitas  
8 Reclamation District will be addressed through the Major Claimant pathway.  
9

10 COURT CLAIM NO. 1978 -- Marshall and Doris Mason

11 A Statement of Claim was submitted to the Court for the use of waters from  
12 Hatfield Canyon via Packwood Canal. Mr. and Mrs. Mason were scheduled to appear at  
13 the evidentiary hearing for Subbasin No. 8, Thorp. Their claim will be addressed in  
14 the Report of Referee for Subbasin No. 8; therefore, the Referee makes no  
15 recommendation concerning their claim at this time.  
16

17 COURT CLAIM NO. 0516 -- Garry and Dawn Mathews

18 A Statement of Claim was submitted to the Court by Marvin J. and Carol A.  
19 Schroeder for the use of waters from Manastash Creek for irrigation. The Schroeders  
20 did not make an appearance as scheduled during the evidentiary hearing to provide  
21 testimony regarding their claim to a water right. Consequently, the Referee cannot  
22 recommend confirmation of a water right under Court Claim No. 0516. On August 9,  
23 1990, Garry and Dawn Mathews were substituted for the Schroeders as defendants under  
24 this claim.  
25  
26  
27

1      COURT CLAIM NO. 2283 -- John Richard Matthews  
2      COURT CLAIM NO. 1671 -- Ron and Judy Nickels

3           Statements of Claim were filed by the Matthews and Nickels for the use of  
4        waters from Manastash Creek and the Matthews claim also included an unnamed spring  
5        as a source of water. John Matthews, who was represented by Attorney Kenneth  
6        Beckley, testified at the evidentiary hearing along with Ron Nickels and Wayne  
7        Smith.

8           The evidence shows that the lands owned by the defendants are part of the 120  
9        acre J. N. Weaver homestead, for which he received a patent on July 12, 1898.  
10          According to Gray, supra, Weaver was occupying the land at the time of the decision  
11        in 1891, but did not claim to have rights to the use of waters from Manastash Creek.  
12          The homestead was owned by Weaver until 1930. John Matthews purchased the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
13        Section 12, T. 17 N., R. 17 E.W.M. in 1963, selling a portion to the Nickels in  
14        1974.

15          The record shows that between 1895 and 1900, 50 inches of the Class 1 water  
16        right awarded to E. S. Coleman sold, along with 50 inches of J. P. Sharp's Class 3  
17        water right, to J. N. Weaver for use on the N $\frac{1}{4}$ SE $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12.

18          No testimony indicated how many acres have historically been irrigated within  
19        the original Weaver Homestead in Section 12. The Nickels and Mr. Matthews are the  
20        only defendants in this proceeding who own a portion of the homestead and are  
21        asserting water rights based on the transfers in 1895 and 1900. Wayne Smith, who  
22        has lived in the area since the early 1930's remembers hay and pasture being grown  
23        and horses and milk cows raised on the 40 acre parcel owned by Mr. Matthews.  
24          Currently the Nickels have a one horsepower pump that withdraws approximately 30  
25        gallons per minute (.067 cubic foot per second) directly from Manastash Creek for  
26        irrigating approximately three acres of pasture, fruit trees, lawn and garden.  
27          Since 1977, the flow in Manastash Creek has been so unreliable, that the Nickels

1 have only irrigated 1.5 acres. With creek water generally not available after July  
2 1, they use a limited amount of KRD water to supplement their creek supply.

3 Mr. Matthews owns 17 acres and irrigates approximately 15 acres of hay and  
4 pasture. Prior to 1977, he pumped directly out of Manastash Creek to irrigate the  
5 land, but has had the same experience as Mr. Nickels since that time and has not  
6 been able to depend on the creek flow to be sufficient for his irrigation needs.  
7 Since 1977, Mr. Matthews has relied on KRD water and flow from drains and a spring  
8 for his irrigation supply. Water from the springs, drains, and KRD accumulate in an  
9 earthen ditch where he has installed a five horsepower pump to withdraw water for  
10 his irrigation system. Stock on the property drink from Manastash Creek when there  
11 is water in the creek and from the earthen ditch when creek water is not available.

12 Water Right Claim No. 067774 was filed by Mr. Matthews pursuant to the  
13 requirements of RCW 90.14 for the use of waters from Manastash Creek for the  
14 irrigation of 38 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M. and,  
15 therefore, includes both the Matthews and Nickels property. There is no record of a  
16 90.14 claim being registered for the use of spring water.

17 During questioning by Gene Prater, it was implied that the property currently  
18 owned by Mr. Matthews is at a higher elevation than Manastash Creek as it flows  
19 through the property, and, therefore, could not have been irrigated from the creek  
20 without use of a pump. This line of questioning was not pursued. No specific  
21 testimony was offered about the point of diversion location or distribution system  
22 used prior to Mr. Matthew's purchase in 1963, only testimony that the land was  
23 irrigated.

24 Whether the Class 1 water right or the Class 3 water right has historically  
25 been exercised on the portion of the homestead now owned by the Nickels and Mr.  
26 Matthews was not indicated. Since no other defendant is claiming either of those

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 rights, and with no testimony to the contrary, the Referee finds that the Class 1  
2 right should be considered appurtenant to these defendants' properties.

3 The Referee recommends that rights be confirmed with a June 30, 1871, date of  
4 priority, to Ron and Judy Nickels for the use of .067 cubic foot per second, from  
5 April 1 to June 30 and 0.0375 cubic foot per second from July 1 to October 31, 21.02  
6 acre-feet per year for the irrigation of 3 acres and to John Richard Matthews for  
7 0.375 cubic foot per second from April 1 to October 30 and 0.1875 cubic foot per  
8 second from July 1 to October 31; 112.22 acre-feet per year for the irrigation of 15  
9 acres and 0.01 cubic foot per second, 1 acre-foot per year for stock watering.

10 Additionally, the Plaintiff's Report to the Referee recommended that a non-  
11 diversionary stock water right be confirmed to Mr. Matthews and the Nickels.

12 COURT CLAIM NO. 1849 -- James W. and Janine P. McDermott

13 A Statement of Claim was submitted to the Court for the use of waters from an  
14 unnamed source for irrigation and stock water. The McDermotts did not make an  
15 appearance as scheduled during the evidentiary hearing to provide testimony  
16 regarding their claim to a water right. Consequently, the Referee cannot recommend  
17 confirmation of a water right to these defendants.

19 COURT CLAIM NO. 0826

20 & 3983(A) -- Brian and Carol Mellergaard and  
Walter H. Kembel

21 Walter H. Kembel and Margaret E. Nelson submitted a Statement of Claim to the  
22 Court for the use of waters from Manastash Creek and Spring Creek. Brian and Carol  
23 Mellergaard were substituted as defendants when they purchased most of the land  
24 described in the Court Claim. Walter H. Kembel was joined back to the claim when it  
25 was determined that he had retained a small parcel of the subject land that receives  
26 water from the two creeks. The Mellergaards were represented by Attorney John

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 Gilreath and Mr. Kembel was represented by Attorney Richard C. Cole. Brian  
2 Mellergaard, Walter Kembel and Richard C. Bain, Jr., a consultant hired by the  
3 Mellergaards, testified at the evidentiary hearing.

4 The Mellergaards own 192 acres of which 145 acres of Timothy hay are irrigated  
5 with waters from Manastash Creek, Spring Creek and the West Side Irrigating Company.  
6 The farm is divided into two fields. Field 1 is 60 acres with 22 acres sprinkle  
7 irrigated and 38 acres surface irrigated. It is located in the portion of the S $\frac{1}{4}$ SE $\frac{1}{4}$   
8 of Section 4, T. 17 N., R. 18 E.W.M., east of Brown Road and the portion of the  
9 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18 E.W.M., north of Spring Creek. Takeouts No. 1  
10 uses Manastash Creek water from the Anderson Ditch near the southeast corner of the  
11 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4 to sprinkler irrigate the 22 acres approximately 0.75 cubic foot  
12 per second pumped from the ditch. Takeout No. 2 located north of takeout 1 diverts  
13 return flow water that enters the property from farms west of Brown Road to irrigate  
14 the portion of Field No. 1 that is surface irrigated. Mr. Bain testified that the  
15 sprinkled portion of the field requires 7.44 acre-feet per acre and the portion  
16 surface irrigated requires 24.2 acre-feet per acre. No testimony reflected whether  
17 the source of the return flow water diverted at Takeout No. 2 is from foreign waters  
18 carried into the basin by the West Side Irrigating Company, Yakima Project water  
19 delivered by the Kittitas Reclamation District, or Manastash Creek water. See Page  
20 10 for the basis under which the Referee can confirm a right for use of return flow  
21 waters.

22 Field 2 is 85 acres lying in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 south of Spring Creek and  
23 the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10, and is surface irrigated requiring 24.2 acre-feet per acre.  
24 Takeouts 3 and 4 divert water to this field from Spring Creek. Water from the West  
25 Side Irrigating Company is dumped into Manastash Creek and carried to the property

1 through the Anderson Ditch. Mr. Mellergaard and Mr. Kembel testified that Spring  
2 Creek generally carries approximately 2.5 cubic feet per second.

3 Mr. Kembel still owns 1.73 acres of the land described in the Court. He has  
4 built a home on it and planted lawn and garden amounting to approximately 1.5 acres.  
5 His irrigation water comes from Manastash and Spring Creeks. Mr. Kembel's  
6 familiarity with the land dates back to 1937 when he assisted his father-in-law,  
7 Thomas Jones, who had owned the land in Sections 3 and 4 since 1899, and the land in  
8 Section 10 since 1931, with the farming operation. At that time, all the land was  
9 surface irrigated and planted in grains and alfalfa hay.

10 No testimony indicated livestock were kept on either the Mellergaard or Kembel  
11 property or water used for stock watering.

12 The defendants' claim to waters from Manastash Creek are based on an Affidavit  
13 of Water Right filed by J. L. Vaughn on May 31, 1890, asserting a right to 150  
14 inches of water from Manastash Creek for lands owned by him in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section  
15 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, all in T. 17 N., R. 18 E.W.M.  
16 The affidavit stated that the water had been used since the Fall of 1872. Thomas  
17 Jones bought the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 and that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 east  
18 of the county road in 1899, along with two-thirds of the Manastash Creek water  
19 rights. Neither J. L. Vaughn or Thomas Jones were parties to Gray, supra, nor were  
20 the above described lands awarded water rights to the use of Manastash Creek waters.

21 Kittitas County Superior Court rulings subsequent to 1891, have found that  
22 water rights for Manastash Creek could be established beyond those awarded in Gray,  
23 supra; however, those water rights would be junior and bear priority dates  
24 subsequent to entry of the decree.

25 A Homestead Patent dated June 5, 1884, transferred the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10  
26 from the United States to Henry H. Davies. The defendants claim water rights for

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 Spring Creek based upon this homestead document. The exhibits submitted by the  
2 defendants include several warranty deeds showing the sale of this property, or  
3 portions of it. Charles Kineth owned the N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> of Section 10 from April 21, 1892,  
4 to March 11, 1913, when the N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 10 was sold to J. H. Gibson,  
5 "together with appurtenant Spring Creek water rights to-wit: one-half of all my  
6 Spring Creek Water." Presumably, the remaining one-half remained with the portion  
7 of the property that Mr. Kineth did not sell. By November 4, 1931, Thomas Jones  
8 owned all of the N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> of Section 10 and all of the water right that Mr. Kineth had  
9 established for that portion of Section 10. Nothing in the record quantifies the  
10 extent of the water right established by Mr. Kineth. There was no testimony  
11 concerning the number of acres he irrigated or the quantity of water diverted for  
12 use in the N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> of Section 10. Mr. Mellergaard estimated that the creek flow was  
13 approximately 2.5 cubic feet per second. While the flow through Takeout 3 was  
14 measured at 3.97 cubic feet per second, this takeout is also used to divert West  
15 Side Canal Company water. No testimony established how much water is received from  
16 West Side. Additionally, the testimony shows that besides naturally occurring  
17 springs in the NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Section 9, Spring Creek's flow is augmented by return flow  
18 waters. Nothing in the record would allow the Referee to determine whether the  
19 source of return flow water is from application of waters diverted outside the basin  
20 and carried through the West Side Canal, KRD water, or water from Manastash Creek.

21 The defendants assert a June 5, 1884, date of priority, based on the date the  
22 land was patented. Under the Riparian Doctrine, the priority date of a water right  
23 for a source that is riparian to the land is established when steps were first taken  
24 to sever the land from Federal ownership. The patent date is the only date that has  
25 been established in the record for steps having been taken to sever the land from  
26 Federal ownership. However, the Referee does not believe that the lands should be

1 considered to be riparian to Spring Creek. Review of Exhibit SE-1 shows that Spring  
2 Creek does not flow through or adjacent to the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, merely briefly  
3 intersecting the northwest corner of that subdivision. It would appear, however,  
4 that a right to use Spring Creek had been established by 1913 under the Prior  
5 Appropriation Doctrine for the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10. According to the testimony,  
6 Spring Creek is also used to irrigate the S $\frac{1}{4}$ S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, but there has been  
7 no testimony to establish the existence of a water right to irrigate those lands  
8 from Spring Creek.

9 Water Right Claim No. 119727 was filed for the use of Manastash Creek on the  
10 SE $\frac{1}{4}$ SE $\frac{1}{4}$  and part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 17 N., R.  
11 18 E.W.M. Water Right Claim No. 119728 was filed for use of Spring Creek in the  
12 NE $\frac{1}{4}$ NW $\frac{1}{4}$  and S $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10 and the SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18 E.W.M.

13 Based on the lack of evidence concerning the extent of the historic use of  
14 Spring Creek, the extent of current use, and the source of return flow waters that  
15 contribute to Spring Creek flows, the Referee cannot recommend that a right be  
16 confirmed for use of Spring Creek.

17 It is further recommended that a right be confirmed to Walter H. Kembel with  
18 an April 19, 1891, date of priority for the use of waters from Manastash Creek for  
19 the use of 0.06 cubic foot per second, 12 acre-feet per year for the irrigation of  
20 1.5 acres.

21 It is recommended that a right be confirmed to Brian and Carol Mellergaard  
22 with a April 19, 1891, date of priority for the use of waters from Manastash Creek  
23 for the use of 0.75 cubic foot per second, 163.68 acre-feet per year for the  
24 irrigation of 22 acres in that portion of the SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18  
25 E.W.M. lying north of Spring Creek and west of the Yakima River.

1       The Plaintiff's Report to the Referee recommended that a non-diversionary  
2 stock water right be confirmed for the Mellergaards.

3       COURT CLAIM NO. 0982 -- Laurin C. and Marjorie Mellergaard

4       A Statement of Claim to the Court was submitted by the Mellergaards for the  
5 use of Manastash Creek and an unnamed spring. They were represented by Attorney  
6 John Gilreath. Laurin Mellergaard and Richard C. Bain, Jr., a consultant hired by  
7 the defendants, testified at the evidentiary hearing.

8       The lands described in Court Claim No. 0982 are referred to as the "Home  
9 Place". The ranch consists of 960 total acres, with 350 acres irrigated primarily  
10 by surface methods, within the NE $\frac{1}{4}$  of Section 17, the NW $\frac{1}{4}$  and that portion of the  
11 SW $\frac{1}{4}$  north of the KRD Skyhook Canal in Section 16, T. 17 N., R. 18 E.W.M. The  
12 predominant crop is timothy hay with a grain crop rotation. The southerly part of  
13 the ranch is rangeland, on which up to 1200 head of cattle graze during the summer  
14 months, with the cattle being moved down to the irrigated fields during the winter.  
15 The hay fields are irrigated primarily from three sources, Manastash Creek via Keach  
16 Ditch and the KRD lateral, and waters from KRD and West Side Irrigating Company.  
17 KRD assesses the Mellergaards for 258 acres. The extent of service from the West  
18 Side Irrigating Company was not entered.

19       The ranch is served by 19 takeouts from the various ditches and canals that  
20 serve the land. An analysis of the irrigation system by the SCS showed an  
21 efficiency of between 15 and 20 percent. Mr. Bain testified that the annual water  
22 requirement for the hay fields is 25.2 acre-feet per year per acre that is  
23 irrigated. Manastash Creek water is used from early spring until usually early to  
24 mid-June, although it occasionally is available as late as July 1. After that KRD  
25 and West Side water is relied on, along with drains that capture irrigation return  
26 flows.

1       The Mellergaards' claim to Manastash Creek waters is based on Gray, supra,  
2 signed in 1891. The Schedule of Rights entered into evidence shows that the NE $\frac{1}{4}$  of  
3 Section 17, T. 17 N., R. 18 E.W.M. was owned by Z. T. Butler. Class 4, 5, 6, and 11  
4 rights, each for 50 inches of water, were awarded for that land. Under Gray, supra,  
5 one inch of water was sufficient for the irrigation of one acre of land, except  
6 where specifically identified otherwise. The Butler property was identified as  
7 lands that required more than the normal quantity of water, resulting in the award  
8 of 200 inches (5.0 cubic feet per second) for the irrigation of 160 acres or 0.03  
9 cubic foot per second per acre irrigated. By the time the schedule of rights had  
10 been prepared a Class 3 water right that was awarded to J. D. Damman had been sold  
11 to several individuals, including Frank Hartman, who purchased 40 inches (1.0 cubic  
12 foot per second) of the right for use in the NW $\frac{1}{4}$  of Section 16, T. 17 N., R. 18  
13 E.W.M.

14       Mr. Mellergaard testified concerning the use of water from numerous drains  
15 located within the irrigated fields on the ranch. These drains are used to capture  
16 irrigation return flow water and make it available for reuse prior to it flowing off  
17 the ranch. They are located between the KRD laterals that serve as the northerly  
18 and southerly boundaries of the irrigated fields and undoubtedly capture seepage  
19 water from the laterals, along with return flows from fields irrigated with creek  
20 water and KRD water. There was no testimony about the quantity of water used from  
21 these drains or whether it could be determined if any of the return flow was the  
22 result of application of creek water. Rights can only be confirmed for the use of  
23 return flow water that originates from the application of surface water that  
24 originates within the Manastash Subbasin. See Page 10 of this report for the  
25 criteria that must be met in order to confirm a right for use of return flows.  
26  
27

1 Fourteen water right claims were registered pursuant to the requirements of RCW  
2 90.14 for use of these drains.

3 The State's Investigation Report, Exhibit No. SE-1, and Mr. Mellergaard's  
4 testimony identified the use of numerous unnamed springs for stock watering, mostly  
5 within the non-irrigated rangeland in Sections 20 and 21. According to the State's  
6 Investigation Report, man-made ponds were constructed at six of the spring  
7 locations. The springs flow naturally into the ponds, from which the stock drink  
8 with no diversion into stock tanks. At a seventh location, water from the spring  
9 was diverted to a man-made pond located approximately 500 feet from the spring. Mr.  
10 Mellergaard testified concerning the use of an additional spring for stock water at  
11 a feedlot located in the SW $\frac{1}{4}$  of Section 16. He did not provide a specific location  
12 for this spring, nor did the State's Investigation Report address this use. The  
13 Investigation Report identified a spring in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16 that was  
14 being used to irrigate two acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, however, there  
15 was no testimony by Mr. Mellergaard concerning this water use. Five water right  
16 claims were registered pursuant to the requirements of RCW 90.14 for springs being  
17 used for stock watering; however, all of the spring locations identified on the  
18 90.14 claims are a considerable distance from the spring locations mapped on Exhibit  
19 No. SE-1.

20 A right to use the springs for stock watering that do not involve a diversion  
21 is covered by the non-diversionary stock water stipulation. Insufficient testimony  
22 concerning diversionary uses from the springs, combined with lack of 90.14 claims  
23 for those springs prevent an affirmative recommendation by the Referee to confirm a  
24 right.

25 Pursuant to RCW 90.14, Laurence Mellergaard and others filed Water Right Claim  
26 Registry No. 122037 asserting a right to use 200 cubic feet per second, 1300 acre-

1 feet per year from Manastash Creek for the irrigation of 1300 acres and livestock.  
2 The date of first use identified on the claim is spring of 1932 and a map was to be  
3 attached identifying the lands on which water was used. The map was not attached to  
4 the exhibit entered into evidence, but attached to the claim is a list of six  
5 landowners and the descriptions of their lands, along with a statement from the  
6 landowners that since the KRD was built they have carried flood waters in the KRD  
7 lateral No. SB-14.3 and hoped to be able to continue the practice. The Mellergaards  
8 were not included on the list nor was the NE $\frac{1}{4}$  of Section 17 and the NW $\frac{1}{4}$  of Section  
9 16 included in the described land. It appears that the claim is intended to assert  
10 a right for flood water, not appropriations established prior to the 1891 decree.  
11 There was no evidence that an RCW 90.14 claim was submitted for the Mellergaard  
12 property. Failure to file an RCW 90.14 claim waives or relinquishes any right that  
13 may have existed.

14 Based on the foregoing, the Referee cannot recommend that rights be confirmed  
15 to Laurin C. and Marjorie Mellergaard. The rights of the Kittitas Reclamation  
16 District and the West Side Irrigating Company will be considered through the major  
17 claimant pathway.

18

19 COURT CLAIM 0950 & 3025(A) - Menastash Water Ditch Association

20 A Statement of Claim was submitted to the Court by the Menastash Water Ditch  
21 Association for the use of Manastash Creek for irrigation and stock water. Harrison  
22 K. Dano represented the claimant. Richard Bain, a consultant hired by the  
23 defendant, and Eugene Prater, president of the association, testified at the  
24 evidentiary hearing about the association's claim in general, including historical  
25 development of the ditch association. Each of the shareholders testified about  
26 their specific water use.

1 According to the testimony and evidence, the water right claimed by the  
2 association is based on an appropriation of water begun in 1872 by S. R. Geddis,  
3 George Robinson, H. T. Goodwin, Benton Goodwin, W. H. Beck, and R. W. Frisbie. In  
4 1884, those individuals or their successors, incorporated into the Menastash  
5 Water Ditch Company in order to provide a convenient and economical mechanism for  
6 distributing the water through the ditch they had constructed and keeping the ditch  
7 in repair. Gray, supra, awarded a Class 2 right to the company for the diversion of  
8 1200 inches of water from Manastash Creek during the months of April, May and June,  
9 with half of that quantity to be used the remainder of the year. According to the  
10 decree, 1200 inches of water is equivalent to 30 cubic feet per second and 30 shares  
11 were issued to the association members. The decree provided that one inch of water  
12 was sufficient for the irrigation of one acre; therefore, the 1200 inches could be  
13 used for irrigation of 1200 acres.

14 Currently nine shareholders own a total of 30.625 shares, slightly more than  
15 the original 30 shares, as follows: Eugene Prater - 2 shares; Carroll Richards - 4  
16 shares; Dale Dyk - 2 shares; David Duncan - 2 shares; 3 Bar G Ranch - 6 shares;  
17 Roger Sparks - 2.5 shares; Bart Bland - 1.5 shares; High Valley Ranch - 7.875  
18 shares; Second Century Farms - 2.75 shares. The testimony indicated that each share  
19 is equivalent to one cubic foot per second. It is apparent to the Referee that  
20 additional shares have been added since the association was formed and if one cubic  
21 foot per second is being diverted for each share owned, the diversion has exceeded  
22 the 30 cubic feet per second to which the defendant ditch company has a right.  
23 Witnesses for the defendant also identified that 2191 acres were being irrigated  
24 with an annual water requirement of 7.7 acre-feet per acre irrigated.

25 Neither the Decree nor the Decision of the Court, contained a legal  
26 description of the lands to which the rights were appurtenant; however the Decision

1 stated that the pleading submitted by each of the parties contained the legal  
2 description of the lands to which each party had title or possessory right. The  
3 ditch association submitted as an exhibit the Schedule of Rights attached to the  
4 Order Pendente Lite for Manastash Creek, compiled from the pleading submitted to  
5 Kittitas Superior Court in 1891. The schedule contained the following description  
6 of the lands served by the Menastash Ditch: Section 1, the NE $\frac{1}{4}$ , N $\frac{1}{4}$ NW $\frac{1}{4}$ , and S $\frac{1}{4}$ SE $\frac{1}{4}$  of  
7 Section 2, the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, the NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, ALL IN T.  
8 17 N., R. 17 E.W.M.; N $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.; the E $\frac{1}{4}$ SE $\frac{1}{4}$   
9 of Section 25; N $\frac{1}{2}$  Section 26; the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 35, ALL IN T. 18 N.,  
10 R. 17 E.W.M.; Section 31, T. 18 N., R. 18 E.W.M., EXCEPT the N $\frac{1}{4}$ NE $\frac{1}{4}$  thereof.

11 The defendant provided a legal description for the current service area of the  
12 Menastash Water Ditch Association and provided testimony that there had not been any  
13 change in the lands served by the ditch. Not notwithstanding the testimony, the  
14 description provided excludes lands that were described as being served in the  
15 Schedule of Rights and includes lands that were not described in that schedule. The  
16 Schedule of Rights lists George Champie owning 2.5 shares for the N $\frac{1}{2}$  of Section 26,  
17 T. 18 N., R. 17 E.W.M., and E. B. Pease owning 1 share for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ [sic],  
18  $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ [sic], SE $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 35, T. 18 N., R. 17 E.W.M., and neither of  
19 these ownerships are within the description for the boundary of the ditch  
20 association service area provided at the evidentiary hearing. Due to these shares  
21 not being appurtenant to lands owned by current shares holders, 3.5 of the original  
22 shares cannot be traced to current shareholders. Through a comparison of the  
23 Schedule of Rights with the list of current shareholders and a map provided by the  
24 ditch association it is possible to trace all the shares held by Eugene Prater,  
25 Carroll Richards, Dale Dyk, Roger Sparks, Bart Bland and Second Century Farms to  
26 landowners shown on the Schedule of Rights. However, 3.5 shares owned by the

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1 following association members: David Duncan and Sons, 0.25 share; High Valley Land  
2 Company, 1.25 shares; and 3 Bar G Ranch, 2 shares; are, according to the Schedule of  
3 Rights, appurtenant to lands in Section 26 and 35. There is no evidence that the  
4 owners of those lands knowingly transferred the shares. Additionally, the lands  
5 owned by High Valley Land, Inc. and David Duncan and Sons, Inc. in Section 36, T. 18  
6 N., R. 17 E.W.M. and the lands owned by 3 Bar G in the NE $\frac{1}{4}$  of Section 25, T. 18 N.,  
7 R. 17 E.W.M. and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 T. 18 N., R. 18 E.W.M. are not shown in the  
8 schedule as having shares through the ditch association. Lacking any other  
9 explanation by the defendant, it would appear that there have been changes in the  
10 place of use of the water over the past 100 years, with no record of when these  
11 changes occurred, how they occurred and if they were with the consent of the  
12 original right holder, or that the procedures established in the Surface Water Code  
13 for making such changes had been complied with, if the changes occurred after 1917.  
14 High Valley Land Company is also shown as having an additional 0.625 shares, which  
15 would bring the total number of shares in the association to 30.625.

16 The association diverts and carries water for stock watering to its

17 shareholders. According to the record, approximately 2000 head of cattle and 150  
18 sheep are pastured within the service area at varying times of the year. An average  
19 of 13 gallons of water per day is needed for each head of cattle during the summer  
20 months and 7.5 gallons of water per day is needed for head during the winter months,  
21 plus one gallons per day for each sheep, for an annual of need of 23 acre-feet per  
22 year for stock watering (14.5 acre-feet during irrigation season and 8.5 acre-feet  
23 outside the irrigation season). During the irrigation season, the stock water needs  
24 are incorporated in the irrigation diversion. Through the non-irrigation season  
25 sufficient water must be diverted into the canal to carry the water in the canal  
26 under ice bridges that form during the colder months. The expert witness for the

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1 defendant did not provide specific testimony concerning how much water is diverted  
2 into the canal outside the irrigation season for stock watering. However, he did  
3 testify that the ditch loses approximately 2.9 cubic feet per second per mile or  
4 10.15 cubic feet per second over its entire length. The continued diversion of 15  
5 cubic feet per second outside the normal irrigation season should provide sufficient  
6 water to meet the stock watering demands during the winter months.

7 Most of the shareholders in the Menastash Water Ditch Association are  
8 asserting individual rights to the use of water from Manastash Creek and have filed  
9 Court Claims, which are discussed separately in this report, or receive water from  
10 the Kittitas Reclamation District, whose rights will be determined through the Major  
11 Claimant pathway.

12 Based on the foregoing testimony and evidence, it is apparent that a right was  
13 established in 1872 for the irrigation of 1200 acres from Manastash Creek. Although  
14 Mr. Bain testified that the crop requirement for irrigation on these lands is 7.7  
15 acre-feet per year per acre irrigated, which would be a total of 9,240 acre-feet for  
16 the irrigation of 1200 acres, the maximum amount of water that can be diverted from  
17 Manastash Creek during irrigation season at the rate of 30 cubic feet per second  
18 from April 1 to June 30 and 15 cubic feet per second from July 1 to October 31 is  
19 9,168 acre-feet per year. It is, therefore, the Referee's recommendation that a  
20 right be confirmed to the Menastash Water Ditch Association with a June 30, 1872,  
21 date of priority for the diversion of 30 cubic feet per second from April 1 to June  
22 30 and 15 cubic feet per second from July 1 to March 31, 9176.7 acre-feet per year  
23 for the irrigation of 1200 acres and stock water. It is recommended that the place  
24 of use for the Menastash Ditch Water Association be as set forth in the Schedule of  
25 Rights, unless the association during the exception phase of this proceeding is able  
26

1 to provide documentation of the transfer of 3.5 shares to the lands now owned by  
2 Dave Duncan and Sons, High Valley Land, Inc. and 3 Bar G Ranch.  
3

4 COURT CLAIM NO. 0522 -- George E. Mills

5 A Statement of Claim was submitted to the Court by George E. Mills for the use  
6 of waters from two springs for domestic supply and irrigation. Mr. Mills appeared  
7 at the evidentiary hearing and testified in support of the claim.

8 From testimony and evidence, Mr. Mills has owned the property described in the  
9 claim since 1952. The parcel is 5.5 acres in size, with approximately 3.5 acres  
10 currently being irrigated. Prior to Mr. Mills acquisition, the land contained an  
11 orchard that has since been removed. Water is withdrawn from Manastash Creek for  
12 irrigation using a 2 BHP pump. A spring on the property provides water for domestic  
13 supply and stock water. Water from the spring flows into Manastash Creek above the  
14 pump location and according to Mr. Mills, provides some of the water that is pumped  
15 from the creek.

16 Although Mr. Mills testified that the land was being irrigated when he  
17 acquired it in 1952, no evidence was submitted to establish when that water use  
18 began or whether there was a legal basis for the use of water. This land was not  
19 confirmed a right in Gray, supra. Water Right Claim No. 032634 was filed by Mr.  
20 Mills pursuant to the requirements of RCW 90.14, asserting a right to use Manastash  
21 Creek for irrigation with an April, 1880, date of first water use. However, there  
22 was no testimony that water was actually first used or a right established on that  
23 date.

24 The Plaintiff's Report to the Referee recommended that a non-diversionary  
25 stock water right be confirmed to Mr. Mills for stock drinking directly from a  
26 naturally occurring spring or pond. Due to the lack of evidence concerning  
27

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1 historical water use on the land, the Referee recommends that a right not be  
2 confirmed to George E. Mills under Court Claim No. 0522, except for the non-  
3 diversionary stock water right.

4

5 COURT CLAIM NO. 0770 -- Woody and Deloris Moore

6 The above Statement of Claim was filed for the use of waters from Manastash  
7 Creek for the irrigation of ten acres and stock watering. Mr. Moore appeared at the  
8 evidentiary hearing and testified in behalf of the claim. Wayne Wells, a  
9 neighboring defendant testified about his knowledge of water use in the N½ of  
10 Section 13, T. 17 N., R. 17 E.W.M., which is where the Moore property is located.  
11 Although the Claim submitted to the Court asserted a right to use Manastash Creek  
12 for irrigation, Mr. Moore testified that he uses water from the creek via Jensen  
13 Ditch only for stock watering of three horses and two steers. The ditch flows  
14 through his property and the stock drink directly from the ditch with no diversion  
15 to stock tanks. The Moores irrigate a portion of their property with water  
16 delivered by the Kittitas Reclamation District. Although the Moores are not  
17 asserting a right to use Manastash Creek water for irrigation, according to the  
18 State's Investigation Report, a small lateral diverts water from Jensen Ditch into a  
19 pond from which water is pumped to their irrigation system.

20 Mr. Moore filed three Water Right Claims, No. 098857, 098858, and 098859  
21 pursuant to the requirements of RCW 90.14 for the use of waters from Manastash Creek  
22 for irrigation and stock water.

23 Wayne Wells testified that when he moved into the area in 1934, the N½ of  
24 Section 13 was not being irrigated but was being used to pasture livestock. His  
25 presumption was that the stock drank from the ditches that flow through the area.  
26 Other defendants have testified about the general area being used to raise stock on

1 either irrigated pasture or rangeland. According to the evidence, Jensen Ditch was  
2 constructed in 1874 and it is not unreasonable to expect that as it was constructed  
3 through the Moore property that stock had access to it for drinking water.

4 Based on the foregoing, it is recommended that a right be confirmed under the  
5 Prior Appropriation Doctrine to Woodly and Deloris Moore with a June 30, 1874, date  
6 of priority for the use of 0.01 cfs, one acre-foot per year from Manastash Creek for  
7 continuous stock watering.

8

9 COURT CLAIM NO. 0555 -- John B. and Marian Moser

10 A Statement of Claim was submitted to the Court for the use of waters from  
11 Hatfield Canyon via Packwood Canal. Mr. and Mrs. Moser were scheduled to appear at  
12 the evidentiary hearing for Subbasin No. 8, Thorp. Their claim will be addressed in  
13 the Report of Referee for Subbasin No. 8; therefore, the Referee makes no  
14 recommendation concerning their claim at this time.

15

16 COURT CLAIM NO. 0931 -- Murray Pacific Corporation; Bart G. Bland  
17 Dave Duncan and Sons and Duncan Family Trust;  
18 Dale Dyk; and Roger and Rita Sparks/Douglas A. Dicken/  
Scott F. Repp & Mary Jo Repp/Michael James &  
Wendy Lee Mahoney

19 Murray Pacific Corporation submitted a Statement of Claim to the Court for the  
20 use of waters from Manastash Creek for irrigation and stock water. Subsequent to  
21 filing the claim, the property described in the claim was sold and Bart G. Bland,  
22 Dave Duncan and Sons and Duncan Family Trust, Dale Dyk, and Roger and Rita Sparks  
23 were joined to the claim. On October 14, 1993, Roger and Rita Sparks joined Douglas  
24 A. Dicken, Scott F. Repp and Mary Jo Repp and Michael James and Wendy Lee Mahoney to  
25 their portion of the claim. Attorney Harrison K. Dano represented those joined to  
26 the claim. Richard C. Bain, Jr., consulting engineer, Bart Bland, Dave Duncan, Dale

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1 Dyk, and Roger Sparks testified concerning the claim. Murray Pacific was not  
2 represented at the hearing and it appears that they no longer have ownership  
3 interest in any of the land described in the claim.

4 According to the testimony, the Murray Pacific Corporation holdings were part  
5 of an extensive cattle ranch settled by Ben Snipes beginning in 1859. By the early  
6 1900's, the property was used for subsistence farming. In 1935, Allan Rogers began  
7 assembling High Valley Ranch, which by 1940 contained over 26,000 acres. Tom Murray  
8 purchased the ranch in 1943 and he expanded it to 106,000 acres of open rangeland  
9 and 1,800 acres of irrigated ground. In 1968, Tom Murray transferred most of the  
10 range and timber land to the Washington State Department of Game for creation of the  
11 L. T. Murray Game Range. At the time Claim No. 0931 was filed with the Court,  
12 Murray Pacific owned Section 36, T. 18 N., R. 17 E.W.M., the N $\frac{1}{2}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
13 Section 1, T. 17 N., R. 17 E.W.M., and that portion of Section 31, T. 18 N., R. 18  
14 E.W.M. lying south and west of the West Side Canal.

15 Roger and Rita Sparks purchased a portion of the Murray Pacific Corp. holdings  
16 in the N $\frac{1}{2}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 31, T. 18 N., R. 18 E.W.M., described as Parcel 2 of  
17 Survey recorded in Book 16, Page 23 Book of Surveys, records of Kittitas County.  
18 According to Mr. Sparks, they irrigate 106 acres of timothy hay, pasture, corn and  
19 small grains from the Menastash Water Ditch Association and the Kittitas Reclamation  
20 District (KRD). KRD assesses for 54 acres and the Sparks own 2.5 shares from the  
21 ditch association for this property. Two and a half shares provide 2.50 cubic feet  
22 per second and according to Gray, supra, can be used to irrigate up to 100 acres.

23 Bart Bland now owns 163 acres in the N $\frac{1}{2}$  of Section 1, T. 17 N., R. 17 E.W.M.  
24 and rill irrigates 147.4 acres of Timothy hay with grain rotation. Irrigation water  
25 is provided from KRD which assesses Mr. Bland for 147 acres and from 1.5 shares to  
26 the Menastash. One and a half shares provides 1.50 cubic feet per second that can

1 be used to irrigate 60 acres. Neither Bart Bland nor Roger Sparks are claiming  
2 additional water rights beyond what they have from KRD and Menastash. See Page 113  
3 for the Menastash Ditch Association Claim.

4 Dale Dyk owns 331 acres in Section 31, T. 18 N., R. 18 E.W.M. lying east of  
5 Hatfield Canyon and flood irrigates 325 acres of Timothy hay. Water is supplied  
6 from KRD for 204 acres and from two shares of Menastash. He also claims 80 inches  
7 of Class 3 Manastash Creek water stemming from Decree No. 99 and 100. Two shares of  
8 association water provides 2.0 cubic feet per second for the irrigation of 80 acres.  
9 Mr. Dyk is claiming 50 inches of the Class 3 right confirmed to J. D. Dammon and 30  
10 inches of the Class 3 right confirmed to S. Dammon. In support of this assertion,  
11 exhibits were submitted showing that between 1909 and 1920 Class 3 water rights  
12 originating with S. Dammon and J. D. Dammon were sold, ultimately coming into the  
13 ownership of Clarence W. Pease. The Schedule of Rights in evidence shows E. P.  
14 Pease as having 50 inches of Class 3 rights acquired from J. D. Dammon, and, along  
15 with other exhibits submitted by Mr. Dyk, that Ernest Pease and Clarence Pease owned  
16 land in Section 35, T. 18 N., R. 17 E.W.M. The last exhibit submitted to support  
17 the claim to the Third Class water rights is a warranty deed by which Roy and Ethel  
18 Willard sold to West Fork Timber Company (apparently owned by L. T. Murray of Murray  
19 Pacific) 80 inches of Class 3 Manastash Creek water, being 50 inches from J. D.  
20 Dammon and 30 inches from S. Dammon, having previously been conveyed to E. P. Pease  
21 and used for more than 40 years on land in Section 35, T. 18 N., R. 17 E.W.M. There  
22 is nothing in the record to show what interest, if any, Roy and Ethel Willard had in  
23 the water right or the lands in Section 35 to which the right was appurtenant. If  
24 the Willards did have the authority to sell the water right to West Fork Timber  
25 Company in 1954, there is no evidence to show that they complied with the  
26 requirements of RCW 90.03.380, which provides that a right remains appurtenant to

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1 the land upon which it is used, provided that it may be transferred to others upon  
2 written application to the Department of Ecology and a determination that the  
3 transfer will not be detrimental to existing rights. Failure to comply with the  
4 provisions of RCW 90.03.380 is not fatal to confirmation of a right; however, there  
5 has not been sufficient documentation provided to enable the Referee to determine  
6 that the Class 3 water rights are appurtenant to the lands now owned by Dale Dyk.  
7 Therefore, it is recommended that a right not be confirmed to Dale Dyk under Claim  
8 No. 0931.

9       Dave Duncan and Sons and Dave Duncan Family Trust were joined to the remainder  
10 of the Murray Pacific Corporation claim, however, ownership of the land is divided  
11 between Dave Duncan and Sons and High Valley Land, Inc. Dave Duncan is the  
12 principal for both enterprises and jointly farms the entire operation, known as High  
13 Valley Ranch.

14       High Valley Ranch consists of 919 total acres, 876 of which are flood  
15 irrigated pasture. This is a cattle ranch with approximately 1800 head of cattle  
16 and 150 head of sheep requiring water during the entire year. Of the 876 irrigated  
17 acres, 218 acres are owned by Dave Duncan and Sons and are irrigated with two shares  
18 of water from the Menastash Water Ditch Association. KRD provides supplemental  
19 water to 175 acres. Two shares of water provide 2.0 cubic feet per second and  
20 according to the decree can be used to irrigate 80 acres.

21       High Valley Land, Inc. owns the remaining 658 irrigated acres. Irrigation is  
22 proved from 7.875 shares of Menastash Water Ditch Association, 25 inches, (0.625  
23 cubic foot per second) of Class 1 water from Manastash Creek, and supplemental water  
24 from KRD for 486 acres. This property was not initially confirmed a right through  
25 Decree No. 99 and 100 and no evidence was submitted to show that a water right was  
26 transferred to lands within Section 36, T. 18 N., R. 17 E.W.M. However, High

1 Valley, Inc. is claiming 25 inches of the E. S. Coleman Class 1 right sold to L.  
2 Gardinier, who owned the NW $\frac{1}{4}$ , the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, T. 17 N., R.  
3 17 E.W.M. The NW $\frac{1}{4}$ NE $\frac{1}{4}$ , the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , and a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1 are now  
4 owned by Dave Duncan and Sons. The rest of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1 is owned by Bart  
5 Bland, who has not claimed any of this right. The NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 1 is owned by a  
6 Mr. Hamilton who is not a party to these proceedings.

7 No documentation or evidence was submitted to allow the Referee to determine  
8 that this 25 inch Class 1 right has been transferred to High Valley Land, Inc.  
9 property in Section 36. Therefore, the Referee cannot recommend that a right be  
10 confirmed to High Valley Land, Inc., or Dave Duncan under Court Claim No. 0931.

11 All of the successors to Murray Pacific use both Kittitas Reclamation District  
12 and Menastash Water Ditch Association water and the claims submitted by those  
13 entities are being dealt with separately through the Major Claimant Pathway or on  
14 Page 113 of this report, respectively.

15 The successors to Murray Pacific, except Roger Sparks, specifically claim  
16 rights to the use of return flow waters either through testimony or reports prepared  
17 and submitted by Richard C. Bain. However, no evidence was presented concerning the  
18 amount of return flow water used or the source of the return flows water. As  
19 discussed on Page 10 of this report, rights can only be established for the use of  
20 return flow waters that originate within the basin and not through the  
21 transportation and application of waters from the Kittitas Reclamation District or  
22 the West Side Canal Company. Based on the above, the Referee cannot recommend the  
23 confirmation of any rights for use of return flow waters to the claimants under  
24 Court claim No. 0931.

1      COURT CLAIM NO. 1449 -- Ramon and Marion Nielson

2      A Statement of Claim was submitted to the Court for the use of Manastash Creek  
3      for irrigation and stock water. The Nielsons did not make an appearance as  
4      scheduled during the evidentiary hearing to provide testimony regarding their claim.  
5      Consequently, the Referee cannot recommend confirmation of a water right to these  
6      defendants. However, the Plaintiff's Report to the Referee recommended that a right  
7      be confirmed for non-diversionary stock water.

8      COURT CLAIM NO. 1953 -- Harold Orr

9      A Statement of Claim was submitted by Ward Wells for the use of Manastash  
10     Creek, unnamed pond and springs and waste and runoff water for irrigation and stock  
11     watering and on March 14, 1988, Harold Orr was substituted for Mr. Wells as a party.  
12     Mr. Orr is represented by Thomas Cowan, attorney at law, and Chuck Glaze, ranch  
13     manager, testified in support of the claim.

14     The Orr property lies within the NW $\frac{1}{4}$  of Section 18, T. 17 N., R. 18 E.W.M. and  
15     approximately 95 acres are irrigated within the portion of that subdivision lying  
16     north of KRD South Branch Lateral. The land is irrigated with waters from Manastash  
17     Creek through the Keach Ditch and from the KRD lateral. Approximately 60 acres are  
18     sprinkler irrigated with hand or wheel lines having sprinklers with 5/32 inch or  
19     3/16 inch nozzles and the remaining 35 acres are flood irrigated. A spring-fed pond  
20     located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18 is used for stock water and this use was  
21     confirmed a right in the stock water stipulation contained in the Plaintiff's Report  
22     to the Referee as a non-diversionary right.

23     Water Right Claims No. 117165, 117166, and 117167 were filed by Ward Wells  
24     pursuant to the requirements of RCW 90.14 for the use of three unnamed springs  
25     located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18 for stock water. These apparently are the  
26     springs that feed the pond discussed in the preceding paragraph. Claim No. 117168

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1 was filed by Ward Wells for use of a pond located in the NE $\frac{1}{4}$  of Section 13 for the  
2 irrigation of 40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18; however, there was no testimony  
3 concerning use of this pond on the Orr property. There is nothing in the record to  
4 show that a claim was registered pursuant to RCW 90.14 for the use of waters from  
5 Manastash Creek on the Orr property.

6 According to the testimony and evidence, Mr. Orr's claim to a water right is  
7 based on an Affidavit of Water right by A. Anderson asserting a right to use 60  
8 inches from Manastash Creek, via Keach Ditch. Kittitas County Superior Court Decree  
9 No. 99 and 100, awarded 50 inches, or 1.25 cubic feet per second, of Class 8 water  
10 from Manastash Creek to A. Anderson for the lands now owned by Mr. Orr. According  
11 to the decree, 50 inches of water was sufficient for the irrigation of 50 acres.  
12 The evidence also shows that an undated Notice of Appropriation was filed by several  
13 individuals claiming a right to appropriate all the unappropriated flood and surplus  
14 water flowing into Lost Lake near or at the headwaters of Manastash Creek to the  
15 extent of 25 cubic feet per second for 90 consecutive days of use for irrigating  
16 lands in Sections 7, 8, 9 and 18 T. 17 N., R. 18 E.W.M. and the water was to be  
17 stored in the lake by a dam to be constructed.

18 There was no testimony or evidence submitted to show that water is stored in  
19 Lost Lake and released by either Mr. Orr or the manager of his farm or that Mr. Orr  
20 is a successor to one of the signatories to the Notice of Appropriation. Another  
21 defendant, Wayne Wells, did testify to the existence of a dam on Lost Lake, but  
22 again there was no testimony about operation of controlling structure to store and  
23 release the water. Additionally, the Notice of Appropriation is not dated, so it is  
24 not possible to ascertain whether it was filed prior to adoption of the State  
25 Surface Code on June 6, 1917, nor was a claim filed pursuant to RCW 90.14. Due to  
26

1 these factors, the Referee cannot recommend that a storage right be confirmed to the  
2 defendant.

3 It is apparent that a right was established for the defendant's land prior to  
4 issuance of Decree No. 99 and 100 with a June 30, 1880, date of priority for the use  
5 of 1.25 cubic feet per second from Manastash Creek for the irrigation of 50 acres.  
6 However, due to the lack of a claim filed pursuant to RCW 90.14, the Referee cannot  
7 recommend that a right be confirmed to Harold Orr for the use of Manastash Creek.  
8

9 COURT CLAIM NO. 0659 -- Pacific Northwest Conference of the  
United Methodist Church

10 A Notice of Appearance, filed by Charles A. Kimbrough representing the Pacific  
11 Northwest Conference of the United Methodist Church, was assigned Court Claim N  
12 0659. Within seven months of filing the Notice of Appearance, Mr. Kimbrough filed a  
13 Notice of Intent to Withdraw. The conference never did file with the Court a  
14 Statement of Claim for the camp it owns and operates in the Manastash subbasin, nor  
15 did a representative appear for the evidentiary hearing. consequently, the Referee  
16 cannot recommend that a right be confirmed.  
17

18 COURT CLAIM NO. 0785 & 4801 -- Packwood Canal Company

19 Statements of Claim were submitted to the Court by Packwood Canal Company for  
20 the use of waters from the Yakima River, Fogey Creek, Robinson Creek, Middle Creek,  
21 Hatfield Canyon, an unnamed water course, and underground drains. Hugh M. Spall,  
22 attorney, represented Packwood Canal Company. Testimony by Tom Brunson, Dan  
23 Brunson, Roger Sparks, and Richard C. Bain, Jr., a consulting engineer hired by the  
24 defendants, was offered at the evidentiary hearing in support of the claim.  
25

26 The record shows that in 1903 the City of Ellensburg filed a Notice of  
Appropriation for 150 cubic feet per second from the Yakima River for general city  
27

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1 purposes. Subsequent to filing the notice, the city acquired land in Section 13, T.  
2 18 N., R. 17 E.W.M., and Sections 18, 19, 29, 30, and 32, T. 18 N., R. 18 E.W.M. for  
3 construction of the canal, often referred to as the "power or light canal". The  
4 land through which the canal was to be constructed was being utilized for  
5 agricultural purposes. Many of the deeds that transferred land to the city for  
6 construction of the canal contained provisions that the city would provide  
7 irrigation water to the grantors of the land since the canal as proposed would  
8 intercept natural water courses used to irrigate lands owned by the grantors. The  
9 deeds generally required the city to construct flumes to transport the irrigation  
10 water over the canal and also provided for the grantors to withdraw additional water  
11 from the canal.

12 In 1906, the City of Ellensburg filed a second Notice of Appropriation for an  
13 additional 600 cubic feet per second from the Yakima River for generating power.  
14 This appropriation was contested by the United States due to the 1905 withdrawal of  
15 all the unappropriated waters in the Yakima River Basin. The United States and the  
16 city reached an agreement whereby the United States recognized that the 1903  
17 appropriation was superior to the 1905 withdrawal and allowed for the additional  
18 appropriation of 600 cubic feet per second for power generation, provided that water  
19 was returned to the river along with any seepage water that drained into the canal.  
20 This agreement was memorialized in writing on July 9, 1913. The requirement that  
21 the diverted water be returned to the river was subject to the city's obligation to  
22 provide irrigation water to six landowners who owned land in Sections 18, 19, 29,  
23 30, and 32, T. 18 N., R. 18 E.W.M.

24 Eventually, the city found the operation of the power generation plant to be  
25 uneconomical and ceased its operation. However, the city still had an obligation to  
26 deliver irrigation water and operate and maintain the canal and any flumes used to

1 transport water over the canal. When the flumes deteriorated or were damaged and  
2 not repaired, the creek water was dumped into the canal and the landowners allowed  
3 to divert that quantity directly from the canal.

4 In 1956, the city sued the various landowners in an attempt to be relieved of  
5 its obligation. Ultimately the suit was settled with the organization of the  
6 Packwood Canal Company and its acquisition of the canal and the land through which  
7 the canal flowed.

8 The canal currently serves eight landowners who irrigate 10 or more acres of  
9 land and nine landowners who irrigate smaller parcels totaling 32 acres. Waters  
10 from the canal are used to irrigate 670 acres that are primarily rill irrigated  
11 timothy hay.

12 Besides the Yakima River, the named water courses that contribute flow to the  
13 Packwood Canal and were used by the individual landowners prior to construction of  
14 the canal, are Fogey Creek, Robinson Canyon and Hatfield Canyon. The diversion  
15 points for waters from the Yakima River, Fogey Creek and Robinson Canyon are located  
16 in Subbasin No. 8 and the canal company's right to use those sources will be  
17 considered in the Report of Referee for Subbasin No. 8.

18 Hatfield Canyon predominantly flows through Subbasin No. 11, and even though  
19 it enters Packwood Canal approximately 550 feet west of the NW corner of Section 32,  
20 which is in Subbasin No. 8, this use of water was investigated as part of Subbasin  
21 11.

22 Eleven shareholders in the Packwood Canal Company service area owning land in  
23 the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, T. 18 N., R. 18 E.W.M. also filed 90.14 claims and Court  
24 Claims for Hatfield Canyon. These eleven are as follows: William Bews, Jr.,  
25 Kenneth R. and Ruth I. Carpenter, Ernest C. and Eleanor Hinckle, Joe and Sharon  
26 Juinta, Marshall and Doris Mason, John B. Moser, Lucille Alby Nicholson, Gerald E.

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 Platt and Joseph Sorenson, Wilhelm J. and Bertie Pross, Robert M. and Irma Smith,  
2 and Arthur G. and John J. Thayer. The eleven 90.14 claims and the Court Claims  
3 identify that Hatfield Canyon via Packwood Canal is used with a point of diversion  
4 identified in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31. The lands described in the claims lie in  
5 the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29 and in most cases water is diverted from the Packwood Canal  
6 above the point where waters from Hatfield Canyon flow into the canal. However, the  
7 Court claims filed by most of the eleven claimants identify that in the past, water  
8 from Hatfield Canyon was conveyed over Packwood Canal by flumes for use on their  
9 property. As the flumes deteriorated water from the creek was allowed to flow into  
10 the canal. When this happened they or their predecessors began withdrawing water  
11 directly from the canal. The Referee is of the opinion that the water withdrawn  
12 from Packwood Canal by the claimants in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29 is replaced with  
13 water from Hatfield Canyon immediately downstream from their properties.

14 It is reasonable for the claimants to either assert an individual right to  
15 Hatfield Canyon based on past use of flumes to transport the water over Packwood  
16 Canal or to rely on the canal company to assert a right on their behalf due to the  
17 current practice of withdrawing water from the canal and allowing all of the flow in  
18 Hatfield Canyon to flow into the canal below their withdrawals. All of these  
19 defendants except Platt/Sorenson and Smith were scheduled to appear at the  
20 Evidentiary Hearing for Subbasin No. 8, therefore, their individual claims will be  
21 addressed in the Referee's Report for that subbasin. Platt/Sorenson and Smith were  
22 scheduled to appear in Subbasin No. 11, so their individual claims are addressed on  
23 Pages 136 and 152 of this report.

24 Many of the claimants did not appear at the evidentiary hearings for either  
25 Subbasin. Some appeared and stated their intention to rely on the canal company's  
26 claim rather than pursuing their own. Because the Referee cannot recommend

1 confirmation of a right to claimants who did not appear at the Evidentiary Hearings,  
2 and desiring consistent treatment for the canal company patrons, individual rights  
3 will not be recommended for those eleven defendants who now divert out of the canal.  
4 Instead, their use of water from Hatfield Canyon will be incorporated into the  
5 recommendation for Packwood Canal Company.

6 The 11 defendants irrigate 92 acres from the Packwood Canal in the W $\frac{1}{4}$ SW $\frac{1}{4}$  of  
7 Section 29. In addition, there are three Packwood Canal Company shareholders who  
8 divert from Packwood Canal below the point where Hatfield Canyon flows into the  
9 canal. These takeouts from the canal serve approximately 62 irrigated acres owned  
10 by 3 Bar G, Tom Brunson, and E. Altice in the N $\frac{1}{4}$ N $\frac{1}{4}$  of Section 32 north and east of  
11 the Packwood Canal. Tom Brunson and 3 Bar G also filed individual claims for  
12 Hatfield Canyon and the Referee will treat those two claims consistent with the 11  
13 in Section 29, with their right to water from Hatfield Canyon incorporated in the  
14 recommendation for Packwood Canal Company rather than the individual claims.

15 Testimony was inconclusive concerning the quantity of water that has been  
16 historically diverted from Hatfield Canyon. Contracts signed in the early 1900's  
17 indicate that flumes had been constructed across Packwood Canal to carry  
18 approximately 650 inches, or 16.5 cubic feet per second, for lands that conceivably  
19 could have been served from Hatfield Canyon. The evidence did not identify the  
20 source of the water to be carried in the flumes and other water courses could have  
21 required flumes at the general locations identified. One of the contracts describes  
22 lands now owned by Thomas Brunson and 3 Bar G Ranch. Dan Brunson testified that one  
23 of the flumes described in that contract, capable of carrying 2.5 cubic feet per  
24 second, carried water from Hatfield Canyon. The only testimony in the record  
25 concerning the measured flow in Hatfield Canyon was that of Richard Bain, who  
26 measured flows of 2.93 cubic feet per second on July 27 and 4.73 cubic feet per

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 second on August 10, 1989. Mr. Bain testified that the creek flow was lowest in the  
2 spring, before return flow and seepage from updrainage canals contributed to the  
3 creek and that the flow increased until early fall, when it then began to decline.  
4 Except during the spring, the flow in Hatfield Canyon is primarily return flow.  
5 There would have been very little natural flow in Hatfield Canyon at the time of Mr.  
6 Bain's measurements in July and August of 1989, consequently those measurements are  
7 not reflective of the quantity of water Hatfield Canyon naturally contributes to the  
8 canal. Additionally, according to Mr. Bain's testimony, the 2.93 cubic feet per  
9 second measurement on July 27 would reflect a higher flow than would be naturally be  
10 there without return flow contributions.

11 Several water right claims were filed by the Packwood Canal pursuant to the  
12 requirements of RCW 90.14. Water Right Claim No. 124584 was filed for Hatfield  
13 Canyon, No. 124574 for Middle Creek, and No. 124585 for the unnamed water course in  
14 Section 32. Packwood Canal Company also filed 90.14 claims for the other water  
15 sources they are claiming located in Subbasin No. 8, with the notable exception of  
16 the Yakima River. There is nothing in the record to show that a 90.14 claim was  
17 filed for the diversion from the Yakima River. The 90.14 claim filed by Packwood  
18 Canal Company for Hatfield Canyon claims an 1885 date of first water use. Dan  
19 Brunson testified that he felt that creeks had been used for irrigation since  
20 sometime prior to 1890, so it is reasonable to believe that the 1885 date has merit.

21 The Claim to the Court identifies two other water sources that lie within  
22 Subbasin No. 11, the first being Middle Creek, with the point of diversion in the  
23 NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. State's Exhibit 1 does not show a water course flowing  
24 through the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and there was no testimony concerning its use. An  
25 unnamed water course with a diversion near the north line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
26 32 is also claimed. A stream that has been marked Bullpen Creek on State's Exhibit

1 No. 1 flows through Section 32 at the approximate point described in the Court  
2 Claim; however, testimony related to Thomas Brunson's claim was that the flow in  
3 Bullpen Creek is piped under the Packwood Canal onto the Brunson's property where it  
4 is used to irrigate approximately 48 acres.

5 The record does reflect that water rights were established for the use of  
6 waters from Hatfield Canyon prior to 1903. Although testimony was inconclusive  
7 concerning the quantity of water that originally was diverted from Hatfield Canyon,  
8 evidence was sufficient to allow the Referee to conclude that at least 2.5 cubic  
9 feet per second was diverted. Although Mr. Bain has testified to measuring the  
10 flow in Hatfield Creek at 4.73 cubic feet per second, the measurement was taken when  
11 water from return flows would have primarily been in the creek. Rights can only be  
12 confirmed for the use of return flow when the evidence is sufficient to show that it  
13 is not foreign return flow or return flow resulting from the application of Yakima  
14 Project water delivered through the Kittitas Reclamation District system. See Page  
15 10 of this report for the criteria for establishing a water right for return flow.

16 It is, therefore, recommended that a right be confirmed under the Prior  
17 Appropriation Doctrine for the Packwood Canal Company with a June 30, 1885, date of  
18 priority for the diversion of 2.5 cubic feet per second, 1032.55 acre-feet per year  
19 from Hatfield Canyon Creek for the irrigation of 154 acres within the W $\frac{1}{4}$ SW $\frac{1}{4}$  of  
20 Section 29, the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M., lying north  
21 and east of the Packwood Canal.

22 The Plaintiff's Report to the Referee recommended that a non-diversionary  
23 stock water right be confirmed for the Packwood Canal Company. However, there is  
24 nothing in the record to allow the Referee to conclude that the canal company owns  
25 property riparian to any surface water source in Subbasin No. 11 on which stock  
26 could be grazing. Therefore, the Referee will not incorporate that recommendation.

1 Defendants Robert F. Lapan and Linda L. Lapan, who own property in the SE<sup>1</sup>NE<sup>1</sup>  
2 of Section 32, T. 18 N., R. 18 E.W.M. stated in their Claim to the Court and in  
3 testimony at the evidentiary hearing that they receive water from the Packwood  
4 Canal. However, the service area provided by the canal company does not include the  
5 Lapan property. Therefore, they have been excluded from the legal description for  
6 the place of use for the right being recommended for Packwood Canal Company.

7 COURT CLAIM NO. 1208 -- Gene and Sally Panattoni

8 A Statement of Claim to the Court was submitted by the above named defendants  
9 for the use of Reed Creek and a private ditch within Subbasin 11. Their claim also  
10 identified surface water sources located in other subbasins, and rights to those  
11 sources will be considered during the appropriate subbasin hearings. Gene Panattoni  
12 testified at the evidentiary hearing in support of the claim.

13 According to the testimony and evidence, the Panattonis purchased their  
14 property in 1957 and irrigate approximately 1.5 acres from Reed Ditch and also  
15 provide water for sheep located on their property. Mr. Panattoni indicated that  
16 they have had up to 100 head of sheep on the land at one time, but at the time of  
17 hearing had ten. A three horsepower pump is used to withdraw water from the ditch  
18 and the land is irrigated using 14 sprinklers with 3/16 inch nozzles. Water Right  
19 Claim No. 070749 was filed by the defendants pursuant to the requirements of RCW  
20 90.14 and claims a right to use 100 gallons per minute, 10 acre-feet per year from  
21 Reed Creek for the irrigation of two acres. Mr. Panattoni testified that 100  
22 gallons per minute is approximately the quantity of water he currently uses. The  
23 date of first water use on Claim No. 070749 is 1900 and the date of initiation of  
24 the right testified to by Mr. Panattoni and shown on the Court Claim is 1895.

25 Mr. Panattoni was not able to provide the Court with any evidence of historic  
26 water use on the property prior to his purchase in 1957. The 1895 date came from

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 documents he had previously read, but did not provide to the court. The defendants  
2 pay for West Side Irrigating Company water but do not receive any of that water.  
3 Other claimants in this proceeding have testified to West Side spilling water for  
4 them into Reed Ditch and using that ditch to convey the water. That may be also the  
5 practice for the Panattonis. Since West Side Irrigating Company is a Major  
6 Claimant, as identified in Pre-Trial Order No. 8, its rights will be addressed  
7 through the Major Claimant pathway.

8 Due to the lack of evidence to show that a right was established prior to June  
9 6, 1917, the Referee cannot recommend that a right be confirmed to Gene and Sally  
10 Panattoni. It is possible that they may be utilizing Reed Ditch as a means of  
11 conveying their West Side water, however, that was not indicated through the  
12 testimony. Any rights they may have through the West Side Irrigating Company will  
13 be addressed during the Major Claimant Hearings.

14 The Plaintiff's Report to the Referee recommended that a non-diversionary  
15 stock water right be confirmed to these claimants. However, the testimony shows  
16 that water is diverted from Manastash Creek into Reed Ditch for stock water  
17 resulting in a diversionary stock water use. Therefore, it is not appropriate to  
18 confirm a right to Gene and Sally Panattoni for non-diversionary stock water. The  
19 Referee will not accept that recommendation.

20 COURT CLAIM NO. 1670 -- Martin Pederson, et al.

21 A Statement of Claim was submitted to the Court for the use of waters from  
22 Manastash Creek and several unnamed springs for irrigation and stock water. The  
23 Plaintiff's Report to the Referee recommended that a non-diversionary stock water  
24 right be confirmed to the defendants for stock drinking directly from a pond or  
25 spring. No one appeared at the evidentiary hearing in support of this claim.  
26 Consequently, the Referee cannot recommend confirmation of a water right to this  
27

REPORT OF REFEREE

28 Re: Subbasin No. 11

1 defendant beyond the non-diversionary stock water right. Surface Water Certificate  
2 No. 10236 is appurtenant to the land described in Claim No. 1670. It is recommended  
3 that the Director of the Department of Ecology cancel, rescind or otherwise make  
4 null and void Certificate of Surface Water Right No. 10236.

5 COURT CLAIM NO. 0538 -- Gerald E. JoAnn O. and Platt and  
6 Joseph and Billie Jo Sorenson  
7 COURT CLAIM NO. 2288 -- Lucille Alby Nicholson

8 The Statement of Claim filed by Mr. and Mrs. Platt and Mr. and Mrs. Sorenson  
9 asserts a right to use an unnamed stream for irrigation and Ms. Nicholson claims a  
10 right to use Hatfield Canyon via Packwood Canal. The Platts and Sorensons were  
11 scheduled to appear at the evidentiary hearing for Subbasin 11, but failed to appear  
12 to present testimony. Ms. Nicholson was scheduled to appear at the evidentiary  
13 hearing for Subbasin No. 8, therefore, the recommendation concerning her claim will  
14 be made in the Report of Referee for Subbasin No. 8. The State's Exhibit Map for  
15 Subbasin No. 8 shows Ms. Nicholson as the owner of the land that is described in the  
16 Platt/Sorenson claim.

17 Due to the failure of the Platts and Sorensons to appear at the hearing, the  
18 Referee cannot recommend that a right be confirmed under Court Claim No. 0538.  
19 However, the Packwood Canal Company filed a Statement of Claim on behalf of the  
20 canal company's patrons and the Referee's recommendation concerning that claim is on  
21 Page 127 of this report.

22 COURT CLAIM NO. 0657 -- Eugene J. and Yvonne Prater

23 A Statement of Claim to the Court was submitted by Eugene J. and Yvonne Prater  
24 for the use of waters from Manashtash Creek for irrigation and stock watering. The  
25 defendants were represented by Harrison K. Dano. Mr. Prater and Richard C. Bain  
26 appeared at the evidentiary hearing to testify concerning the claim.

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1       The record shows that the Praters' farm totals 395 acres, of which 364.7 acres  
2 are irrigated. Timothy Hay, in rotation with grain, is rill irrigated from earthen  
3 ditches. This farm was first settled and irrigation initiated in 1872, continuing  
4 to the present day. The sources of irrigation water are Manastash Creek through the  
5 Menastash Water Ditch Association system, Manastash Creek via Reed Ditch, the  
6 Kittitas Reclamation District, two springs located on the Prater property and  
7 irrigation return flow. The Praters own two shares in the Menastash Water Ditch  
8 Association (two shares equals 80 inches of water or 2 cubic feet per second), which  
9 according to the decree would be sufficient for the irrigation of 80 acres in  
10 Government Lots 2, 3, and 4 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M. See  
11 the recommendation for the Menastash Water Ditch Association on Page 113 for a full  
12 discussion of the association's claim.

13       A previous owner of a portion of the Prater property was Christopher Gray, one  
14 of the Plaintiffs in Gray, supra. Decree No. 99 and 100 confirmed a Class 1 Right,  
15 with an 1871 date of priority, to Christopher Gray for 120 inches of water (3 cubic  
16 feet per second) from Manastash Creek for irrigation of 120 acres in the SE $\frac{1}{4}$  of  
17 Section 6. Mary Gray, who was Christopher's widow, purchased from John Sharp 25  
18 inches of Class 3 water, which would have a priority of 1874. The deed documenting  
19 that sale is dated September 2, 1922, which is after adoption of the State Surface  
20 Water Code, Chapter 90.03 RCW, on June 7, 1917. RCW 90.03.380 provides that a water  
21 right shall remain appurtenant to the land or place upon which it is used. The right  
22 can be transferred, but a written application must be made with the Department of  
23 Ecology and the application cannot be granted until notice of the application is  
24 published and it is determined that the transfer can be made without injury to  
25 existing rights. Although no evidence was provided that the Praters' predecessors  
26 complied with the requirements of Section 90.03.380 or that the transfer was made

1 without detriment to existing rights, no one at the hearing contested the transfer  
2 or asserted they had been harmed. Therefore, failure to comply with the transfer  
3 procedures in RCW 90.03.380 is not a fatal defect.

4 Mr. Bain testified that the average water use for irrigation on this farm was  
5 8.6 acre-feet per year per acre irrigated. If creek water were available during the  
6 entire irrigation in the quantities awarded in the decree, the 145 acres with Class  
7 1 and 3 rights would receive 911.80 acre-feet per year or 7.6 acre-feet per acre  
8 irrigated. It shall be the Referee's recommendation that the rights confirmed carry  
9 a provision that the maximum quantity of water that may be used under all the rights  
10 held by the defendant not exceed 8.6 acre-feet per acre irrigated.

11 The defendants are claiming rights to use two springs located within the E $\frac{1}{4}$ SE $\frac{1}{4}$   
12 of Section 6. One spring, which is approximately 950 feet west and 150 feet north  
13 of the south quarter corner of Section 6, is used for domestic supply in a home  
14 located in the S $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6. The testimony indicates that the spring has  
15 been used for this purpose since the land was originally settled in 1871. The  
16 second spring is located approximately 1100 feet north and 500 feet west of the  
17 south quarter corner of Section 6. The area where the spring is located once was a  
18 swamp. After they acquired the property in 1942, the Prater family drained the  
19 swamp and piped the water to the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, where it is used to irrigate  
20 an unspecified number of acres, described as a "small area". It is apparent from  
21 the testimony that water was first used from this spring after the significant dates  
22 of June 6, 1917, and December 31, 1932, when rights could have been established  
23 under the Prior Appropriation Doctrine or the Riparian Doctrine.

24 The Praters have shares in the Kittitas Reclamation District for the  
25 irrigation of 225 acres. KRD's claim will be addressed through the Major Claimant  
26 pathway.

1 Water Right Claims No. 145021 and 152717 were filed pursuant to RCW 90.14 for  
2 use of waters from Manastash Creek on the Prater property. Water Right Claims No.  
3 152714, 152715, and 152716 were filed for use of water from springs on the Prater  
4 property.

5 Based on the foregoing evidence, it is recommended that rights be confirmed  
6 for Eugene and Yvonne Prater as follows:

7 1. With a June 30, 1871, date of priority, 3 cubic feet per second from April  
8 1 to June 30 and 1.5 cubic feet per second from July 1 to October 31; 911.80  
9 acre-feet per year from Manastash Creek for the irrigation of 120 acres. This  
10 right shall carry a provision that the maximum annual quantity of water that  
11 may be used under this right and any water delivered by the Kittitas  
12 Reclamation District shall not exceed 1032 acre-feet per year.

13 2. With a June 30, 1871, date of priority, 0.02 cubic foot per second, two  
14 acre-feet per year from an unnamed spring for single domestic supply.

15 3. With a June 30, 1874, date of priority, 0.625 cubic foot per second from  
16 April 1 to June 30 and 0.3125 cubic foot per second from July 1 to October 31,  
17 188.71 acre-feet per year from Manastash Creek for the irrigation of 25 acres.  
18 This right shall carry a provision that the maximum annual quantity of water  
19 that may be used under this right and any water delivered by the Kittitas  
20 Reclamation District shall not exceed 215 acre-feet per year.

21 Because the testimony was not specific regarding the quantity or origin of  
22 return flow water used, the Referee cannot recommend that rights be confirmed for  
23 their use. Rights can only be confirmed for the use of return flow waters that  
24 originate within the Manastash Creek Subbasin. See Page 10 of this report.  
25 Therefore, the Referee cannot recommend that rights be confirmed for use of return

1       The Plaintiff's Report to the Referee recommended that a non-diversionary  
2 stock water right be confirmed to the Praters. The Referee concurs.  
3

4 COURT CLAIM NO. 0633 -- Wilhelm J. and Bertie Pross

5       A Statement of Claim was submitted to the Court for the use of waters from  
6 Hatfield Canyon via Packwood Canal. Mr. and Mrs. Pross were scheduled to appear at  
7 the evidentiary hearing for Subbasin No. 8, Thorp. Their claim will be addressed in  
8 the Report of Referee for Subbasin No. 8; therefore, the Referee makes no  
9 recommendation concerning their claim at this time.

10      11 COURT CLAIM NO. 4816 -- Brent D. Renfrow and Karen Raymond

12      A Statement of Claim was submitted to the Court by the defendants for the use  
13 of waters from Manastash Creek for domestic, stock, and irrigation of six acres.  
14 They were represented by Attorney Richard T. Cole and Mr. Renfrow testified during  
15 the evidentiary hearing.

16      According to the record, the defendants own approximately six acres and  
17 irrigate pasture, lawn, garden, and trees from Manastash Creek via the Jensen Ditch.  
18 Although Mr. Renfrow testified that the entire six acres are being irrigated, review  
19 of an aerial photograph submitted by the defendants shows that a house and driveway  
20 have been constructed on the property and that Jensen Ditch flows through, reducing  
21 the maximum area that could be irrigated to no more than five and a half acres.  
22 Prior to 1988, when the defendants acquired the property, livestock on the property  
23 were also watered from Jensen Ditch. Although there currently is no stock watering  
24 use on the property, it is proposed to be used again in the future.

25      Irrigation water is pumped from Jensen Ditch. While the record does not  
26 reflect the size of the pump, Mr. Renfrow estimated that its capacity is 70 gallons  
27

1 per minute, a reasonable quantity for the irrigation of five and a half acres.  
2 Three abandoned ditches on the property indicate that prior to using the pump, water  
3 was delivered to the property from Jensen Ditch via a gravity flow system. Another  
4 claimant in this proceeding, Wayne Wells, who has lived in the area since 1933  
5 testified that none of the N $\frac{1}{2}$  of Section 13 was being irrigated in the 1930's.  
6 However, this recollection may not be accurate, since Mr. Renfrow testified that the  
7 land had historically been irrigated and abandoned ditches that likely were used to  
8 distribute the water are evident on the property.

9 No rights were confirmed to this property as a result of Gray, supra.

10 However, the defendants provided testimony and evidence to show the transfer of a  
11 water right to lands in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13. In 1899 45 inches of E. S.  
12 Coleman's Class 1 right was sold to J. N. Weaver and Carrie McDowell, with each  
13 getting 22.5 inches. The deed that conveyed the water rights did not describe the  
14 lands owned by either Weaver or McDowell on which the water was to be used.  
15 However, the record shows that on February 27, 1900, Carrie McDowell sold to Thomas  
16 Meek the E $\frac{1}{2}$ SW $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12 and the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 13. The schedule  
17 of rights that has been entered into evidence shows Thomas Meek as having 22.5  
18 inches of E. S. Coleman's Class 1 water right. A 1921 deed from Jessie Elizabeth  
19 Henry and Madeline Hill to Elizabeth Meek conveyed the same lands in Sections 12 and  
20 13, "together with 22 miners inches of Class 1 water decreed to E. S. Coleman and 50  
21 inches of Class 3 water decreed to John Sharp. A 1933 deed conveying the same land  
22 from Stonebraker to T. M. Jones contained the same language. In 1945 L. Mellergaard  
23 sold the land in Section 12 to Freda Patterson, together with 12.5 inches of Class 1  
24 and 25 inches of Class 2 water (this is believed to have been a typographical error  
25 and should have been Class 3, which would conform with the Schedule of Rights). The

1 remaining 10 inches of Class 1 and 25 inches of Class 3 would then have been  
2 appurtenant to the NW<sup>1</sup>/4NW<sup>1</sup>/4 of Section 13.

3 Five defendants are asserting rights in the NW<sup>1</sup>/4NW<sup>1</sup>/4 of Section 13: Deva  
4 Martensen for the irrigation of five acres; Brent Renfrow and Karen Raymond for the  
5 irrigation of six acres; Andrew J. Leinbach for the irrigation of 1.5 acres; Wallace  
6 L. and Geraldine J. Enger for the irrigation of eight acres; and George and Barbara  
7 Helleson for the irrigation of ten acres. Brent Renfrow and Karen Raymond are the  
8 only ones who have based their claim to a water right on the purchase and transfer  
9 of the E. S. Coleman water right. Additionally, there was no testimony by the other  
10 claimants to show that their land had historically been irrigated from Manastash  
11 Creek. The testimony does reflect that the land had been used for raising  
12 livestock, particularly horses, but not necessarily irrigated.

13 Water Right Claim No. 159363 was filed by a previous owner of the  
14 Renfrow/Raymond property pursuant to the requirements of RCW 90.14 asserting a right  
15 to use Manastash Creek for irrigation and stock water.

16 Based on the record, the Referee finds sufficient evidence to recommend that a  
17 right be confirmed for Brent D. Renfrow and Karen Raymond under Court Claim No. 4816  
18 with a priority date of June 30, 1871. Although the defendants have been using 70  
19 gallons per minute, or 0.156 cubic foot per second, Decree No. 99 and 100 awarded  
20 only 0.025 cubic foot per second for each acre irrigated, or 0.1375 cubic foot per  
21 second for irrigation of 5.5 acres. Therefore, the Referee recommends that a right  
22 be confirmed for the use of 0.1375 cubic foot per second, 38.5 acre-feet per year  
23 from Manastash Creek for the irrigation of 5.5 acres and 0.01 cubic foot per second,  
24 1 acre-foot per year from Manastash Creek for stock water.

1      COURT CLAIM NO. 0328 -- Carroll D. and Beverly J. Richards

2      A Statement of Claim was submitted to the Court by Mr. and Mrs. Richards for  
3      the use of the Hatfield-Amlin Ditch and Menastash Water Ditch Association. The  
4      Richards were represented by Attorney H. K. Dano. Mr. Richards, Richard C. Bain,  
5      Jr., a consultant hired by the defendants, and Roger Sparks, lessee of the Richards'  
6      property testified during the evidentiary hearing.

7      According to the testimony and evidence, the Richards land was homesteaded by  
8      C. I. Helms, who reportedly started appropriating water for the land in 1872. In  
9      1896 or 1897 it was sold to a member of the Richards family. C. I. Helms was a  
10     defendant in Gray, supra, and was awarded 60 inches of Class 10 and 60 inches of  
11     Class 11 water rights from Manastash Creek via the Hatfield-Amlin Ditch. According  
12     to the decision that preceded the decree, he also had an interest in the waters  
13     transported by the Menastash Ditch Water Association. The Richards now own four  
14     shares in the association, which would allow for the use of 4.0 cubic feet per  
15     second of water from Manastash Creek through the association's ditch. Based on the  
16     decree, four shares of water could be used to irrigate 160 acres. The association's  
17     claim is addressed on Page 113 of this report. Because the place of use on the  
18     association's claim excludes the irrigated land of the Richards in the NE $\frac{1}{4}$  of  
19     Section 12, it is not clear whether association water is used on this land.

20     The Richards' land consists of 340 acres within the E $\frac{1}{2}$ SW $\frac{1}{4}$  and the S3/4SE $\frac{1}{4}$  of  
21     Section 1 and the NE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M. Of that, 281 acres are  
22     planted primarily to Timothy hay and rill irrigated. The Richards have Kittitas  
23     Reclamation District water for 219 acres and receive delivery of four acre-feet per  
24     year per acre. Mr. Bain testified that the average water duty for this farm is 8.6  
25     acre-feet per year per acre irrigated. A small portion of the property is planted  
26     in pasture and between 20 and 30 head of stock are kept on the property at different

1 times of the year. Mr. Sparks testified that the Hatfield-Amlin Ditch, through  
2 which the Class 10 and 11 rights are transported is not used to a significant  
3 degree, therefore, it appears that there is not an attempt to deliver stock water  
4 through that ditch, but rather through the Manastash Water Ditch Association ditch.  
5 Stock water is a component of the Association claim with specific testimony  
6 concerning the quantity of water needed for the stock and carriage water during the  
7 winter months. Therefore, the Referee will not recommend that additional stock  
8 watering rights be confirmed to individual water users who are members of the  
9 association.

10 Class 10 and 11 water rights are low priority rights, and water generally is  
11 available only during the months of April and May. Therefore, Manastash Water Ditch  
12 Association and KRD water are primarily relied on to irrigate the land. Although  
13 the State's Investigation Report identified springs located in the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
14 1 being used to irrigate fields in the SE $\frac{1}{4}$  of Section 1, Mr. Sparks testified that  
15 any spring water on the property is of little consequence to their irrigation  
16 practice due to the extremely low and unreliable flow.

17 Water Right Claim No. 000292 was filed in 1974 pursuant to the requirements of  
18 RCW 90.14 and serves to protect the defendants' rights to Manastash Creek.

19 Based on the foregoing, the Referee recommends that rights be confirmed to  
20 Carroll D. and Beverly J. Richards as follows:

21 With a date of priority of June 30, 1882, a right to the use of 1.5 cubic feet  
22 per second from April 1 to June 30 and 0.75 cubic foot per second from July 1 to  
23 October 31, 452.93 acre-feet per year from Manastash Creek, for the irrigation of 60  
24 acres; with a date of priority of June 30, 1883, a right to the use of 1.5 cubic  
25 feet per second from April 1 to June 30 and 0.75 cubic foot per second from July 1

1 to October 31, 452.93 acre-feet per year from Manastash Creek, for the irrigation of  
2 an additional 60 acres.

3 Each water right will carry a provision that the maximum quantity of water  
4 that may be applied for the irrigation of the authorized 60 acres is 516 acre-feet  
5 per year under this right, Menastash Ditch Water Association, and the KRD rights.  
6 The Kittitas Reclamation District rights will be determined through the Major  
7 Claimant Pathway identified in Pre-Trial Order No. 8.

8

9 COURT CLAIM NO. 4584 -- Lee W. Roe and Kathlyn E. Hitch

10 A Statement of Claim was submitted to the Court by the above named defendants  
11 for the use of waters from Manastash Creek for irrigation. Lee W. Roe testified  
12 during the evidentiary hearing.

13 According to the record, the defendants' own 28 acres of land lying south of  
14 Manastash Creek, 15 acres being irrigated. The remaining 13 acres is steep,  
15 undeveloped land that has been used for cattle grazing. Mr. Roe traced the  
16 ownership of the land back to 1904 when it was owned by S. W. Maxey. At that time a  
17 mature orchard approximately 15 years in age existed on the property and was  
18 irrigated from Manastash Creek.

19 The defendants' land was not confirmed water rights under Gray, supra.  
20 However, in a 1912 Kittitas County Superior Court decision, Barnes, et al v.  
21 Belsaas, et al, the Estate of S. W. Maxey was a named defendant along with numerous  
22 other parties. The language of the decision indicates that the defendants were at  
23 that time using water from Manastash Creek causing a detrimental effect on the  
24 plaintiffs. The Court determined that the defendants' rights were junior to those  
25 of the plaintiffs.

1       The land owned by Mr. Roe and Ms. Hitch is riparian to Manastash Creek, so a  
2 right could have been established under either the Riparian Doctrine, with a  
3 priority date of when steps were taken to remove the land from Federal ownership, or  
4 under the Prior Appropriation Doctrine, with a priority date of when the water was  
5 first used. There was no testimony or evidence to show when steps were taken to  
6 remove the land from Federal ownership or when water was first used. The only thing  
7 in the record concerning when water use might have started is the testimony that in  
8 1904 a mature orchard was on the property. Since the land was not discussed in  
9 either the decision or decree in 1891, it could be concluded that there was no water  
10 use or right established at that time. Therefore, an 1892 date of priority would be  
11 appropriate.

12       Mr. Roe testified that of the 15 acres that were once irrigated, he currently  
13 sprinkler irrigates four acres and has had up to 15 head of stock on the property.  
14 He uses approximately four acre-feet per acre irrigated, but did not know the  
15 instantaneous quantity of water used.

16       A previous owner of the property, Edwin S. Sheaffer, filed Water Right Claim  
17 No. 021618 pursuant to the requirements of RCW 90.14. At that time Mr. Sheaffer  
18 claimed he was irrigating 20 acres. The record is clear that a right was  
19 established for the irrigation of at least 15 acres. Even though the claim filed by  
20 Mr. Sheaffer states that 20 acres were being irrigated, Mr. Roe testified that 15  
21 acres is the maximum that has historically been irrigated.

22       Based on the foregoing, the Referee recommends that a right be confirmed to  
23 Lee W. Roe and Kathlyn E. Hitch with a June 30, 1892, date of priority for the use  
24 of 0.275 cubic foot per second, 44 acre-feet per year from Manastash Creek for stock  
25 watering and the irrigation of 15 acres.

1    COURT CLAIM NO. 1684 -- Virginia Ronne

2       A Statement of Claim was submitted to the Court for the use of waters from  
3 Manastash Creek for irrigation and stock water. Ms. Ronne did not make an  
4 appearance as scheduled during the evidentiary hearing to provide testimony  
5 regarding her claim to a water right. Consequently, the Referee cannot recommend  
6 confirmation of a water right to this defendant.

7

8    COURT CLAIM NO. 1771 & 4440(A) -- Joseph L. and Doris M. Schwab

9       Joseph L. and Doris M. Schwab submitted a Statement of Claim to the Court for  
10 the use of waters from Manastash Creek for irrigation and stock water. Mr. Schwab  
11 testified during the evidentiary hearing concerning the claim.

12      According to the testimony and evidence, the land owned by the Schwabs is part  
13 of 120 acres that were patented to Edward Russell on April 1, 1890. Gray, supra,  
14 awarded to Mr. Russell a Class 2 water right with an 1872 date of priority for 120  
15 inches. The schedule of rights in the record shows this 120 inches awarded for use  
16 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18  
17 E.W.M. The Schwabs property is a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5. Anderville  
18 Farms owns the rest of the subdivision.

19      According to Mr. Schwab's testimony, they irrigate approximately two and a  
20 half acres of lawn, garden, orchard, and pasture from Manastash Creek. Water is  
21 withdrawn using a 2 BHP pump and distributed through hand lines and a solid set  
22 sprinkler system. The pump is capable of withdrawing 71 gallons per minute from the  
23 creek. Livestock have historically been kept on the property and water diverted  
24 from the creek for stock watering. The Schwabs purchased the property in 1966 and  
25 have continuously irrigated the land since that time. Mr. Schwab did not have any

1 personal knowledge of water use prior to that time, although neighbors have told him  
2 that the land has been used to pasture livestock in the past.

3 The Schwabs' Statutory Warranty Deed for the property stated that two inches  
4 of water from Manastash Creek as decreed in Gray, supra, came with the land. This  
5 is approximately the proportionate share of water that the Schwabs would be entitled  
6 to based on the number of acres they irrigate. Two inches is the equivalent of 0.05  
7 cubic foot per second.

8 Water Right Claim No. 021850 was filed by Mr. Schwab pursuant to the  
9 provisions of RCW 90.14 for the use of Manastash Creek.

10 Although Mr. Schwab was not able to provide specific testimony concerning  
11 water use prior to 1966, it is apparent that a water right was established in 1872  
12 and confirmed in Decree No. 99 and 100 in 1891.

13 Based on the foregoing, the Referee recommends that a right be confirmed to  
14 Joseph L. and Doris Schwab with a June 30, 1872, date of priority for the use from  
15 Manastash Creek of 0.05 cubic foot per second from April 1 to June 30 and 0.025  
16 cubic foot per second from July 1 to October 31; 15 acre-feet per year, for the  
17 irrigation of 2.5 acres and stock watering.

18

19 COURT CLAIM NO. 1029 -- Second Century Farms, Inc. and  
20 Roger and Rita Sparks

21 The above referenced Court Claim was submitted by Richard J. and Janet Crowder  
22 for the use of several surface water sources within Subbasins 8 and 11. Roger and  
23 Rita Sparks were substituted as parties for the Crowdiers under this claim and Second  
24 Century Farms, Inc. was joined to the Sparks as an additional party defendant.  
25 Attorney Kenneth Beckley represented the defendants and Roger Sparks testified  
26 during the evidentiary hearing in support of the claim.

1       According to the testimony and evidence, Second Century Farms, Inc., which is  
2 owned by Roger and Rita Sparks, irrigates 242 acres lying within the SE $\frac{1}{4}$  of Section  
3 2, the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 1, the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12,  
4 all in T. 17 N., R. 17 E.W.M.. Of that, 87 acres are primarily irrigated from the  
5 Menastash Water Ditch Association system (2.75 shares) with supplemental water  
6 provided by the Kittitas Reclamation District. The 87 acres are located as follows:  
7 40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, 39 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 1, 5 acres  
8 in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, and 3 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11. Although the  
9 testimony was not specific concerning this, it appears from reviewing the maps, that  
10 the irrigated lands in Sections 2 and 11 lie east of the Menastash Ditch. The crops  
11 grown on the 87 acres are pasture, sweet corn, grain and timothy hay, all of which  
12 are rill irrigated.

13       The remaining 155 acres are irrigated solely from the Kittitas Reclamation  
14 District system and lie within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 and the SE $\frac{1}{4}$  of Section 2,  
15 west of the Menastash Ditch. Similar crops are planted as on the previously  
16 discussed 87 acres and a rill irrigation system employed.

17       The Menastash Water Ditch Company has submitted Claim No. 0950, which is  
18 discussed on Page 113 of this Report of Referee. Individual rights are not being  
19 recommended for the members of the association. The Kittitas Reclamation District  
20 is a Major Claimant, whose rights will be considered during the Major Claimant  
21 Pathway. Therefore, the Referee does not recommend that rights be confirmed to  
22 Second Century Farms, Inc. and Roger and Rita Sparks under Claim No. 1029, but will  
23 consider as part of the claim for the two purveyors. Any rights that the  
24 claimants may have to water sources within Subbasin No. 8 will be considered in the  
25 Report of Referee for that subbasin.

COURT CLAIM NO. 1896 -- K. Bruce and Jean G. Skibeness  
Floyd & Lorna Bangerter

Floyd and Lorna Bangerter submitted a Statement of Claim to the Court for the use of waters from Manastash Creek and waste/runoff waters. On October 11, 1989, K. Bruce and Jean G. Skibeness were substituted as defendants under this claim and are represented by Attorney John P. Winbauer. Richard Bain, a consultant hired by the defendants, testified at the evidentiary hearing concerning the claim.

According to the record, Mr. and Mrs. Skibeness own a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  and the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M., consisting of 54 acres. Of that, 51 acres are pasture or asparagus fields that are rill irrigated. Mr. Bain testified that he visited the farm in late September to assess water requirements and observed that 3.14 cubic feet per second was being used to irrigate the land. Based on the irrigation practice of the owner, an average of 7.14 acre-feet per acre was being applied to the land during irrigation season. The asparagus fields, which were not irrigated the entire summer, required between 5.1 and 5.8 acre-feet per acre and the hay field required 10.7 acre-feet per acre. Mr. Bain's report stated that if the defendants were growing the crop that had the highest water need for this area, they would need 20 acre-feet per year per acre irrigated. However, there was no testimony to show that crop has ever been grown on the Skibeness land. The purpose of this adjudication is to confirm rights based on the historic water use on the property, not the potential future use based on a hypothetical change in crop.

The defendants use Manastash Creek water and water from the KRD system to irrigate their fields. It is very likely that when Mr. Bain observed the operation of the farm, KRD water was being used exclusively, as previous testimony has indicated that Manastash Creek does not flow an adequate volume of water to satisfy all users after July 1.

1       The defendants are basing their claim to water rights on Gray, supra, which  
2 awarded rights to predecessor owners of their property. According to the Schedule  
3 of Rights in the record, the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 enjoys a Class 3 right, with an  
4 1874 date of priority, for 50 inches of water, or 1.25 cubic feet per second. The  
5 Skibenesses irrigate approximately 31 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8. A Class  
6 9 right, with an 1881 date of priority, was awarded to H. Nelson for 100 inches of  
7 water to be used in the S $\frac{1}{4}$ NE $\frac{1}{4}$ , and N $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8. A 1910 deed for the land  
8 stated that 25 inches, or 0.625 cubic foot per second, of that right was for the  
9 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8. The defendants own and irrigate the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8.  
10 The owner of the N $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 is not a claimant in this proceeding and,  
11 therefore, not asserting to have any portion of this right.

12       Water Right Claim No. 115941, filed by a previous owner of the property  
13 pursuant to the requirements of RCW 90.14, claims a right to use Manastash Creek for  
14 irrigation and stock watering on the defendants' property. Additionally, Water  
15 Right Claims No. 115939 and 115940 were filed for the use of springs for irrigation  
16 and stock watering. However, there was no testimony concerning the use of these  
17 sources.

18       Based on the record, the defendants' land enjoys rights awarded in Gray,  
19 supra, supra. Although, the witness for the defendants testified that at least 3.14  
20 cubic feet per second was being used in September to irrigate the lands, the  
21 evidence shows that the rights awarded in the 1891 decree are limited to 0.03 cubic  
22 foot per second for each acre irrigated in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, or 0.93 cubic  
23 foot per second for 31 acres, and 0.625 cubic foot per second for the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
24 Section 8. The Referee recommends that rights be confirmed to K. Bruce and Jean G.  
25 Skibeness under Court Claim No. 1896 for the use of Manastash Creek as follows:  
26  
27

1 A right with a June 30, 1874, date of priority for the use of 0.93 cubic foot  
2 per second, from April 1 to June 30 and 0.465 cubic foot per second from July 1 to  
3 October 31; 280 acre-feet per year for the irrigation of 31 acres and 1 acre-foot  
4 per year for stock watering within a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 17 N.,  
5 R. 18 E.W.M.

6 A right with a June 30, 1881, date of priority for the use of 0.625 cubic foot  
7 per second from April 1 to June 30 and 0.3125 cubic foot per second from July 1 to  
8 October 31; 188.71 acre-feet per year for the irrigation of 20 acres and one acre-  
9 foot per year for stock watering within that portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T.  
10 17 N., R. 18 E.W.M. lying south of Susan Road.

11 Any rights that this land enjoys through the KRD will be considered when the  
12 KRD claim is addressed through the Major Claimant Pathway.

13 The Referee notes that the Court Claim originally filed by the Bangerters also  
14 identified a use of water in Section 10, T. 17 N. R. 18 E.W.M.; however, the  
15 Skibenesses did not acquire this piece of property, and therefore, did not provide  
16 any testimony or evidence relating to that property. There was no appearance by the  
17 Bangerters in behalf of that portion of the claim; therefore, the Referee cannot  
18 recommend that any right be confirmed for the lands in Section 10, T. 17 N., R. 18  
19 E.W.M.

20 COURT CLAIM NO. 0380 -- Robert M. and Irma Smith

21 A Statement of Claim was submitted to the Court by the Smiths for the use of  
22 waters from Hatfield Canyon through Packwood Canal for stock water and irrigation.  
23 Mr. and Mrs. Smith were represented by Attorney Hugh M. Spall. Mr. Smith testified  
24 at the evidentiary hearing on behalf of the claim.

25 According to Mr. Smith's testimony, the water used on the property described  
26 in the claim is delivered through the Packwood Canal and they intend to rely on that

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 claim rather than pursuing one of their own. The Packwood Canal Company claim is  
2 addressed on Page 127 of this report and in the Report of Referee for Subbasin No.  
3 8. Consequently, the Referee recommends that a right not be confirmed to the Smiths  
4 under Court Claim No. 0380.

5

6 COURT CLAIM NO. 0258 -- Wayne and Margaret Smith

7 The above named defendants submitted a Statement of Claim to the Court for the  
8 use of waters from Manastash Creek for irrigation of 64 acres. Mr. Smith appeared  
9 at the evidentiary hearing in support of the claim and at that time also presented  
10 evidence concerning the use of two springs. Joan Bakke and Ronald Nickels also  
11 testified about use of one of the springs.

12 The Smiths own land within Government Lots 1 and 2 of Section 7, T. 17 N., R.  
13 18 E.W.M., although it is not clear how much land they actually do own. Their  
14 statement of claim describes the W $\frac{1}{2}$ NW $\frac{1}{4}$  (which is Government Lots 1 and 2) of Section  
15 7, while the State's Investigation Report indicates that they do not own the East  
16 1055 feet of the North half of Government Lot 1. No evidence was submitted by the  
17 claimant to clarify the situation.

18 According to Mr. Smith's testimony, he irrigates 64 acres of pasture from  
19 Manastash Creek via Reed Ditch and five to ten acres from two springs, one located  
20 on the Richards property in Section 12 and one located on the Bakke property in the  
21 SW $\frac{1}{4}$  of Section 7. He also receives supplemental water from the Kittitas Reclamation  
22 District for irrigating 45 of the 64 acres. The KRD water is carried through Reed  
23 Ditch.

24 According to the evidence, the Smith property was owned by Ole Johnson in the  
25 late 1800's. On May 31, 1890, Mr. Johnson filed an Affidavit of Water Right  
26 stating: that he was the owner of the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.;

1 that he had a valid right to the use of 40 inches of water from a branch of  
2 Menastash Creek known as Geddis Creek; that said water was appropriated by Mr.  
3 Tucker in the spring of 1887; and that he had an additional valid right to 20 inches  
4 of water from Manastash Creek, with the water appropriated and ditch completed in  
5 the spring of 1889.

6 Ole Johnson was a named party in Gray, supra, which resulted in Decree No. 99  
7 and 100, filed April 18, 1891. The Court decision preceding that Decree, identified  
8 Ole Johnson as a owner of lands riparian to Reed Creek, but that he claimed no  
9 interest in the water in any way. The Decree awarded to Ole Johnson 15 inches of  
10 Class 16 water from Manastash Creek.

11 Mr. Smith introduced a schedule of rights resulting from Gray, supra, that is  
12 very similar to the schedule attached to the Order Pendente Lite submitted by the  
13 Menastash Water Ditch Association. This schedule contains more information,  
14 including legal descriptions for some of the rights and additional names, than one  
15 attached to the Order Pendente Lite. Mr. Smith's schedule showed a Class 1 right  
16 for 150 inches awarded to E. S. Coleman had been sold to six parties, and a Class 5  
17 right for 125 inches awarded to Chas. Stevens was sold to three individuals. A. R.  
18 Smith, who owned the W<sup>1</sup> NW<sup>4</sup> of Section 7, purchased 30 inches of the Coleman right  
19 and 22.5 inches of the Stevens right. The schedule does not indicate when the  
20 rights were purchased and transferred to the individual purchasers.

21 The Decree established that one inch of water is equivalent to 0.025 cubic  
22 foot per second and is sufficient water to irrigate one acre of land. The Class 1  
23 and 5 rights acquired by A. R. Smith allow for the use of up to 1.31 cubic feet per  
24 second for the irrigation of 52.5 acres.

25 A spring located on the Bakke property, near Smith's south property line has  
26 been used to irrigate five acres. The flow in the spring fluctuates seasonally

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 according to the amount of water in Manastash Creek. Mrs. Bakke testified it has  
2 been dry much of the last five years, but Ron Nickels, a neighbor to the southwest,  
3 had observed a flow of one-quarter to one-half of a cubic foot per second from the  
4 spring. Mr. Smith testified that the spring has been used on his property for over  
5 one hundred years.

6 Wayne Smith filed four water right claims pursuant to Chapter 90.14 RCW.

7 Claim No. 065772 was for the use of the spring on the Bakke property for stock water  
8 and the irrigation of five acres, with the claim stating that water was first used  
9 in 1880. Water Right Claims No. 071858, 162340 and 162341 were filed for the use of  
10 waters from Manastash Creek for irrigation and stock watering with a combined claim  
11 of 90 inches of water, or 2.25 cubic feet per second for the irrigation of 104.62  
12 acres within the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 7, which encompasses only 80 acres.

13 Based on the foregoing evidence, it is recommended that rights be confirmed to  
14 Wayne and Margaret Smith as follows:

15 1. With a June 30, 1871, date of priority, 0.75 cubic foot per second from  
16 April 1 to June 30 and 0.375 cubic foot per second from July 1 to October 31; 226.46  
17 acre-feet per year from Manastash Creek for the irrigation of 30 acres and stock  
18 watering.

19 2. With a June 30, 1877, date of priority, 0.56 cubic foot per second from  
20 April 1 to June 30 and 0.28 cubic foot per second from July 1 to October 31; 170  
21 acre-feet per year from Manastash Creek for the irrigation of 22.5 acres; 0.01 cubic  
22 foot per second, 1 acre-foot per year for stock water.

23 3. With a June 30, 1880, date of priority, 0.125 cubic foot per second, 37.75  
24 acre-feet per year from an unnamed spring for the irrigation of five acres; 0.01  
25 cubic foot per second, one acre-foot per year for stock water.

26

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1       The rights of the Kittitas Reclamation District will be addressed during the  
2 Major Claimant Pathway.

3       The rights confirmed will carry the following provision: One acre-foot per  
4 year is the maximum quantity of water that may be used for stock watering under all  
5 of the rights confirmed to Wayne and Margaret Smith.

6       A maximum of 7.55 acre-feet per year may be used on each acre irrigated. This  
7 includes any water that might be provided by the Kittitas Reclamation District as a  
8 supplemental supply.

9

10      COURT CLAIM NO. 1478 -- Roger and Rita Sparks  
11                    Terryl and Vonda Draney  
12                    Peter and Nora Evans  
13                    Howard and Mary Page

14      A Statement of Claim was submitted by Roger and Rita Sparks for the use of  
15 Manastash Creek and unnamed springs. As portions of the property were sold, the  
16 Sparks joined Terryl and Vonda Draney, Peter and Nora Evans, and Howard and Mary  
17 Page as additional claimants. Attorney Kenneth Beckley represented the Sparkses.  
18 Roger Sparks, and his mother, Dorothy Sparks, testified at the evidentiary hearing  
19 concerning the claim and water use on the lands sold. Howard Page and Terryl  
20 Draney, represented by Attorney Hugh Spall, testified concerning their claims.  
21 Peter and Nora Evans were represented by Attorney Harrison K. Dano. Richard Bain,  
22 consulting engineer, testified concerning the Evans portion of the claim.

23      When Claim No. 1478 was filed, Roger and Rita Sparks owned Government Lot 5,  
24 the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 6; and the N $\frac{1}{2}$ NE $\frac{1}{4}$ , the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
25 Section 7, T. 17 N., R. 18 E.W.M. In the mid 1980's, they sold the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , the  
26 SE $\frac{1}{4}$ NW $\frac{1}{4}$ , the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , and a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 to Peter and Nora  
27 Evans. Other portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 were sold to Howard and Mary Page,  
28 and to Terryl and Vonda Draney.

REPORT OF REFEREE

Re: Subbasin No. 11

1 According to Mr. Sparks, the entire 160 acres he retained in Government Lot 5  
2 and in Section 6 are irrigated from three sources. Manastash Creek is used for 96  
3 acres; Center Drain (also known as Center Ditch) and its South Arm, which primarily  
4 capture return flows, serve about 75 acres; and 143 acres are assessed and served by  
5 the Kittitas Reclamation District. A report prepared and entered by Mr. Sparks  
6 leads the Referee to believe that the 75 acres irrigated from Center Drain and South  
7 Arm Center Drain are part of the 96 acres irrigated from Manastash Creek. Of the  
8 143 acres served by KRD, 21 acres also receive water only from Manastash Creek, and  
9 75 acres receive water from Manastash Creek and from Center Drain or its South Arm.

10 Testimony indicated that Center Drain and South Arm are used to transport  
11 water from Manastash Creek and from KRD for use on the Sparks property. In addition,  
12 they carry return flows which are diverted and used. However, the record is  
13 insufficient to determine the source of the return flow water. As discussed on Page  
14 10 of this report, rights can be confirmed for the use of return flow waters that  
15 are the result of updrainage use of creek water, but cannot be confirmed for use of  
16 water that is part of the Yakima Project, such as KRD water.

17 Mr. Sparks raises timothy hay, corn, small grains, pasture, and trees. Each  
18 field is irrigated six times between April and October, using eight acre-feet per  
19 acre irrigated. Mr. Sparks testified that one more irrigation per season to prevent  
20 wilt and produce a larger crop would require 9.23 acre-feet per acre irrigated.  
21 However, he did not testify that he was using 9.23 acre-feet per acre irrigated,  
22 just that it would be needed in order to grow a larger crop.

23 This land was not awarded water rights in the 1891 decree, although the owner  
24 of the land at that time was a party to the case. In 1910, Jacob Frederick, who was  
25 Roger Spark's grandfather, purchased from Charles Stevens half of the Stevens Class  
26 5 water right to Manastash Creek, amounting to 62.5 inches of water. Under that

1 decree, 62.5 inches of water would be sufficient for the irrigation of 62.5 acres.  
2 The testimony reflects that the land has continued to be irrigated since the early  
3 1900's.

4 Sixty-two and a half inches of water are equivalent to 1.5 cubic feet per  
5 second, which is the amount of water the Sparks can divert from Manastash Creek  
6 during the period April 1 to June 30. Half of that, or 0.75 cubic foot per second,  
7 is what they can divert, when it is available, from July 1 to November 1. Generally  
8 water is not available in Manastash Creek for Class 5 water rights past July so  
9 other sources of water are solely relied on after Manastash Creek is not available.  
10 If Manastash Creek was available the entire irrigation season, 452.31 acre-feet  
11 could be withdrawn during irrigation season. Mr. Sparks testified that he uses 70  
12 acre-feet per year from the South Arm of Center Drain and 292 acre-feet per year  
13 from all sources that contribute to Center Drain. It is not clear whether this  
14 quantity includes any KRD or Manastash Creek water that is transported through  
15 Center Drain. KRD delivers four acre-feet per acre irrigated.

16 Three Water Right Claims were filed by Roger Sparks for the E $\frac{1}{4}$ SW $\frac{1}{4}$  and the  
17 SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6 pursuant to the requirements of RCW 90.14. Claim No. 009665  
18 asserts a right to use 1.25 cubic feet per second from Manastash Creek for the  
19 irrigation of 45 acres. Water Right Claim No. 009666 asserts a right to use two  
20 springs located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6 for the irrigation of 45 acres in the  
21 E $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6. Water Right Claim No. 009668 asserts a right to  
22 use two more springs for the irrigation of 25 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6.  
23 According to Mr. Sparks the last two identified claims were filed for diversions of  
24 natural and return flows from the South Arm of Center Drain and Center Drain, both  
25 of which are fed from springs.

1       Based on the record, the Referee recommends that a right be confirmed to Roger  
2 and Rita Sparks with a June 30, 1877, date of priority for waters of Manastash Creek  
3 in the amount of 1.5 cubic feet per second from April 1 to June 30; 0.75 cubic foot  
4 per second from July 1 to October 30, 452.31 acre-feet per year for the irrigation  
5 of 62.5 acres. Because the record is inconclusive about the source of return flow  
6 water being used, it is recommended that rights not be confirmed for the use of  
7 waters from Center Drain and its South Arm.

8       This land may enjoy a supplemental right from the Kittitas Reclamation  
9 District, whose rights will be addressed in the Major Claimant pathway.

10      Peter and Nora Evans own approximately 138 acres consisting of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
11 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and portions of the N $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 with 86.2 acres irrigated from  
12 Manashtash Creek and unnamed springs. Of the 86.2 acres, 73 are entitled to  
13 supplemental water from the Kittitas Reclamation District. Timothy hay is grown on  
14 64.2 acres which are rill irrigated. The remaining 22 acres are in pasture  
15 irrigated by a sprinkler system. The remainder of the ranch is non-irrigated  
16 pasture. Approximately 30 head of stock are kept on the property each year drinking  
17 water from either the creek or the springs.

18      The Evanses base their right to use water on Gray, supra, in which Olof  
19 Hanson, a prior owner of their property was awarded 200 inches of Class 5 water.  
20 They claim 160 inches of this right, or 4 cubic feet per second. One version of the  
21 Schedule of Rights for Decree 99 and 100 in evidence shows that the Hanson Class 5  
22 water right was appurtenant proportionately to the E $\frac{1}{4}$ NW $\frac{1}{4}$ , the N $\frac{1}{4}$ NE $\frac{1}{4}$ , and the SW $\frac{1}{4}$ NE $\frac{1}{4}$   
23 of Section 7. H. H. and Marjorie Weeber, who own the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, assert a  
24 right to 40 inches of this Class 5 water right. The analysis of their claim can be  
25 found on Page 177 of this report. Clarence Harrell owns five acres of irrigated  
26 land in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 and also appears to enjoy a portion of the Class

27      REPORT OF REFEREE

28      Re: Subbasin No. 11

1       5 right. (See Page 84 for a discussion of the Harrell claims.) Roger Sparks also  
2 joined Terryl and Vonda Draney and Howard Page to Claim No. 1478 when they purchased  
3 portions of the irrigated land in the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7. Page and the Draneys are  
4 asserting rights for the irrigation of their property, as will be further discussed  
5 in detail.

6       Roger Sparks entered an updated version of the Schedule of Rights from Decree  
7 No. 99 and 100 to show that Olof Hanson's Class 5 water right is appurtenant to the  
8 E $\frac{1}{2}$ NW $\frac{1}{4}$ , the SW $\frac{1}{2}$ NE $\frac{1}{4}$  and the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7 (rather than the N $\frac{1}{2}$ NE $\frac{1}{4}$  as shown in the  
9 Schedule of Rights attached to the Manastash Creek Order Pendente Lite). Robert  
10 Dean, the owner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, asserts a right to irrigate 36 acres  
11 within that subdivision from Manastash Creek. No testimony or evidence was  
12 submitted to indicate why the two schedules show different land descriptions;  
13 however, water rights in the Manastash Creek area were routinely sold and  
14 transferred in the early 1900's with little documentation to support the transfer.  
15 Lacking any other explanation, the Referee assumes that to be the case in this  
16 instance. Also, for the 200 acres he owned in 1891, Olof Hanson was awarded 200  
17 inches, indicating that the entire parcel was being irrigated. However, Mr. Bain  
18 testified that of the 135 acres owned by the Evanses, only 86.2 acres were  
19 irrigated, describing the rest as "scab" land. If it is not irrigable now, it may  
20 not have been irrigable in the late 1800's, perhaps explaining why 40 inches of the  
21 right may have been transferred to the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7.

22       The Pages own five acres and irrigate 4.25 acres of pasture and orchard within  
23 the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7. The land is flood and rill irrigated using water from a  
24 spring located near their west property line and from the KRD. Although the  
25 Sparkses had joined the Pages to the portion of Court Claim No. 1478 for use of a  
26 spring, this property does enjoy a portion of the Class 5 water right awarded to

1 Olof Hanson in Decree No. 99 and 100. The record does not establish when Manastash  
2 Creek was last used to irrigate this land, nor does it indicate the right was  
3 transferred off the Pages' property. When the Pages were joined to the Sparks's  
4 claim, the motion merely identified them as owning 5.5 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
5 Section 7 and a legal description was not provided. To confirm a right for a piece  
6 of property a specific legal description is necessary.

7 The Draneys own 23.75 acres and irrigate 14 acres from two springs and the KRD  
8 system. Dorothy Sparks could recall all the land being irrigated in the early  
9 1900's when she was a child. Since Olof Hanson was awarded a right to use Manastash  
10 Creek, which flowed through his property, it is reasonable to assume that the land  
11 was being irrigated from the creek. No testimony indicated when Manastash Creek was  
12 last used to irrigate the land. The deed that transferred title from the Sparkses  
13 to the Draneys stated that the 5th Class Manastash Creek rights were not transferred  
14 with the property. However, nothing in the record shows that the creek rights  
15 appurtenant to the property were legally transferred from the property. The deed  
16 was executed in 1986 and compliance with RCW 90.03.380 would have been necessary to  
17 transfer the right to another piece of property. Lacking evidence of this transfer,  
18 the Referee must reach the conclusion that the right is still appurtenant to the  
19 Draneys' property.

20 The Draneys and the Pages may be using springs as alternate points of  
21 diversion for creek rights. If that is the case, they should comply with the  
22 procedures of RCW 90.03.380 and seek authorization from the Department of Ecology to  
23 change their points of diversion from the creek to the springs. Testimony was not  
24 sufficient to determine that separate rights have been established for the Evanses,  
25 Pages, or Draneys for the use of the springs. No testimony about historic use of  
26 the springs or the legal basis for a right to use the springs was offered.

1 Pursuant to the requirements of RCW 90.14, Roger Sparks and Charles Maxwell,  
2 apparently a previous owner of the lands now owned by Evanses, Draneys, and Page,  
3 filed numerous water right claims for use of the various springs and Manastash  
4 Creek. Those claims are: 115769, 115770, 115771, 014140, 014141, 014142, 014143,  
5 014144, and 014145.

6 Based on the foregoing, the Referee believes that Peter and Nora Evans have a  
7 right with the priority of June 30, 1877, to 86.2 inches of water from Manastash  
8 Creek, or 2.155 cubic feet per second from April 1 to June 30 and 1.07 cubic feet  
9 per second from July 1 to October 31, 648.720 acre-feet per year for the irrigation  
10 of 86.2 acres and 0.02 cubic foot per second, 1 acre-foot per year for stock  
11 watering. The Evanses may have a supplemental right through the Kittitas  
12 Reclamation District for this land. The rights of the district will be addressed  
13 through the Major Claimant Pathway established in Pre-trial Order No. 8.

14 It is recommended that a right be confirmed to the Draneys also with a  
15 June 30, 1877, date of priority for the use of .350 cubic feet per second from April  
16 1 to June 30 and 0.175 cubic foot per second from July 1 to October 31, 105.621  
17 acre-feet per year for the irrigation of 14 acres.

18 The Referee finds that the Page property enjoys a right with a June 30, 1877  
19 date of priority for the use of 0.112 cubic foot per second from April 1 to June 30  
20 and 0.056 cubic foot per second from July 1 to October 31; 33.64 acre-feet per year  
21 for the irrigation of 4.5 acres. However, the lack of an adequate legal description  
22 for the property precludes a recommendation to confirm a right. A timely filed  
23 exception to the Report of Referee, with a legal description for the property might  
24 be sufficient to allow the court to confirm a right.

25 Based on the lack of evidence and testimony it is recommended that no rights  
26 be confirmed to the Evanses, Draneys or Pages for use of springs. The use of water

1 from the Kittitas Reclamation District will be addressed in the Major Claimant  
2 Pathway.

3 The Plaintiff's Report to the Referee recommended that a non-diversionary  
4 stock water right be confirmed to Roger and Rita Sparks for Claim No. 1478. Peter  
5 Evans now owns some of the land that is riparian to Manastash Creek on which stock  
6 graze and drink from the creek. His name will be added to the list of claimants who  
7 have a non-diversionary stock water right.

8

9 COURT CLAIM NO. 1462 -- Jay and Bette Sprouse

10 A Statement of Claim was submitted to the Court for the use of waters of  
11 Manastash Creek, a well, and the Kittitas Reclamation District for stock water,  
12 domestic and irrigation. The Spouses did not make an appearance as scheduled  
13 during the evidentiary hearing to provide testimony regarding their claim to a water  
14 right. Consequently, the Referee cannot recommend confirmation of a water right to  
15 these defendants. The Plaintiff's Report to the Referee recommended that a non-  
16 diversionary stock water right be confirmed for Jay and Bette Spouse. The  
17 determination of water rights for ground water sources, such as a well, are not part  
18 of this case. The Kittitas Reclamation District is a Major Claimant and the  
19 district's water rights will be determined through the Major Claimant pathway  
20 identified in Pre-trial Order No. 8.

21

22 COURT CLAIM NO. 1968 -- Charles and Margaret Steward

23 A Statement of Claim was submitted by Jerry and Patricia Merrick for the use  
24 of Manastash Creek, Manastash Lake, eight unnamed springs, and two fish ponds. The  
25 Merricks, who were represented by Attorney John Winbauer, substituted to Charles and

1 Margaret Steward on January 24, 1990. Richard Bain, a consultant hired by the  
2 Merricks, testified in behalf of the claim.

3 According to the testimony and evidence, the lands described in the Claim, the  
4 SW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. were homesteaded by Jacob Jensen, who  
5 received Homestead Certificates No. 21 and 38 in 1885. Under Gray, supra, Jacob  
6 Jensen and Evan Thorstenson together received a Class 3 right, which would have an  
7 1874 date of priority, for the use of 375 inches of water from Manastash Creek. The  
8 Schedule of Rights in evidence indicates that 225 of those 375 inches were for use  
9 in the SW $\frac{1}{4}$  of Section 8, the property now owned by Charles and Margaret Steward.

10 According to Mr. Bain's testimony, approximately 140 acres are irrigated  
11 pasture or hay fields, with the northern field, consisting of 38 acres, being  
12 irrigated and farmed less consistently than the other two fields. Water is diverted  
13 from Manastash Creek into Jensen Ditch and then discharged from Jensen Ditch into  
14 the KRD lateral that parallels Manastash Road. Water is diverted from the KRD  
15 lateral onto the Steward property near its southwest corner. Besides creek water,  
16 KRD water is also used to irrigate the land. KRD records show that approximately  
17 2.5 cubic feet per second of KRD water is diverted to the Steward property in  
18 August. Mr. Bain's inspection of the weir indicated that a maximum of 4.76 cubic  
19 feet per second has been diverted through the weir, probably early in the irrigation  
20 season. To determine annual water usage on the property, Mr. Bain used an average  
21 of 3.6 cubic feet per second and based on the farming practices determined that 12  
22 acre-feet per year per acre irrigated was used. He testified that if the land was  
23 planted to Timothy Hay, which is a common crop in the area, it would need between 15  
24 and 25 acre-feet per year per acre irrigated, but the grass and hay currently  
25 planted only requires the 12 acre-feet per year.

1       Gray, supra, awarded 0.0325 cubic foot per second per acre irrigated in the  
2 SW $\frac{1}{4}$  of Section 8, or 4.90 cubic feet per second from April 1 to June 30 and half of  
3 that for the remainder of the irrigation season for the 140 acres being irrigated.  
4 Based on the testimony of Mr. Bain, a maximum 4.76 cubic feet per second is  
5 diverted. At that rate of diversion from April 1 to June 30 and 2.45 cubic feet per  
6 second from July 1 to October 31, a maximum of 1454.32 acre-feet would be used for  
7 irrigation during the year.

8       Between 100 and 150 head of cattle are pastured on the property and would need  
9 approximately five acre-feet per year for stock watering. According to Mr. Bain's  
10 report there are trout rearing facilities on the southeastern corner of the farm,  
11 known as Shoshone Trout Farms. The facilities have been operated within the past  
12 five years. A flow of approximately 1.5 cubic feet per second is needed for these  
13 facilities. There was no testimony concerning when this water use was established  
14 and no evidence to suggest that water rights were obtained when the hatchery was  
15 constructed. Water for trout rearing was not a use identified in Gray, supra, The  
16 Referee believes water use for that purpose is a fairly modern day endeavor and  
17 beyond the scope of water rights established in the late 1800's.

18       Water Right Claims No. 111290, 111292, and 111293 were filed by a previous  
19 owner of the property pursuant to the requirements of RCW 90.14. Claim Registry No.  
20 111290 was filed for use of Manastash Creek for irrigation and stock watering and  
21 the other two were filed for use of two unnamed springs. Attachments to the claim  
22 forms were intended to explain the use being made of waters from the springs,  
23 however, the attachments were not entered into evidence as part of State's Exhibit  
24 No. 3, therefore, that information is not available to the Referee.

25       Besides Manastash Creek, the Court Claim also identified Manastash Lake, eight  
26 springs and two ponds as sources of water being used. However, no testimony was  
27

1 offered concerning use of these other sources, nor was this use identified in the  
2 State's Investigation Report. The Plaintiff's Report to the Referee recommended  
3 that a non-diversionary stock water right be confirmed to the defendants for stock  
4 drinking from naturally occurring ponds or springs. Due to the lack of testimony,  
5 the Referee cannot recommend that rights be confirmed for the springs and ponds  
6 beyond the non-diversionary stock water right.

7 The Referee recommends that a right be confirmed to Charles and Margaret  
8 Steward with a June 30, 1874, date of priority for the use of up to 4.76 cubic feet  
9 per second from April 1 to June 30 and 2.38 cubic feet per second from July 1 to  
10 October 31; 1437.27 acre-feet per year from Manastash Creek for the irrigation of  
11 140 acres and stock watering. There was insufficient testimony to establish that  
12 rights exist for the use of creek water for the trout rearing facilities, so the  
13 Referee cannot recommend that rights be confirmed for that use. The claimants use  
14 of KRD water will be addressed through their claim in the Major Claimant Pathway.

15 This right shall carry a provision that the maximum annual quantity of water  
16 that can be used on this property from all water sources, including KRD is 1680  
17 acre-feet per year.

18

19 COURT CLAIM NO. 3204 -- Edward L. and Anna G. Sullivan  
20 COURT CLAIM NO. 0578 -- Wayne W. and Juanita Wells and  
Theodore and Colleen Sonstegaard

21 These Statements of Claim were submitted to the Court for the use of waters  
22 from Manastash Creek for irrigation and stock water. Attorney Richard Cole  
23 represented the Wellses and Sonstegaards. Testimony was provided by Wayne Wells,  
24 Theodore Sonstegaard and Edward Sullivan in support of their respective claims.

25 These two claims are being addressed together as they both have their  
26 foundation in the Peter J. Norling Class 11 right confirmed in Decree No. 99 and

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 100, Gray, supra. According to the record, the Sullivans own a ten acre parcel,  
2 being the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 17 E.W.M. They irrigate  
3 approximately 3.5 acres of pasture with waters from Manastash Creek via Jensen  
4 Ditch. An additional 3.5 acres are irrigated solely with waters delivered from the  
5 Kittitas Reclamation District. Creek water is delivered to the property via gravity  
6 flow with no pumping system being utilized. Two small ponds have been constructed  
7 and water is diverted from Jensen Ditch into the ponds, which are utilized for stock  
8 watering and general aesthetic enjoyment of the wildlife that use the ponds. Mr.  
9 Sullivan's grandparents, Mr. and Mrs. Haga, reportedly purchased 96 acres within the  
10 SW $\frac{1}{4}$  of Section 7 from Peter Norling in 1889, although they are not named in the 1891  
11 decree.

12 Water Right Claim No. 151858 was filed by the Sullivans pursuant to the  
13 requirements of RCW 90.14 for their use of Manastash Creek waters.

14 The Wellses and Sonstegaards own 33 acres, the South 1038 feet of Government  
15 Lot 4 (in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 7 and the west 79 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section  
16 7. Mr. and Mrs. Wells acquired this property in 1975 from Walter Gerwels and  
17 shortly thereafter began selling portions of it to their daughter and son-in-law,  
18 Mr. and Mrs. Sonstegaard. They testified that all of the property is irrigated,  
19 except the portions on which buildings have been constructed. At times up to 150  
20 head of livestock are on the property and watered from Manastash Creek via Jensen  
21 Ditch. When the Wellses purchased the property in 1975, it was being flood  
22 irrigated. They have since changed to a sprinkler system using up to 36 sprinklers  
23 with 5/32 inch nozzles on three inch handlines and a 10 BHP pump withdrawing 215  
24 gallons per minute from the ditch.

25 Two water right claims filed pursuant to RCW 90.14 include the  
26 Wells/Sonstegaard property. Claim No. 003540 was filed for the use of waters from

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 Manastash Creek for the irrigation of 32 acres and stock watering and described just  
2 these defendants' property. Claim No. 122037 filed on behalf of several landowners,  
3 including Walter Gerwels, from whom the Wells purchased, assert a right to use flood  
4 waters from Manastash Creek through the KRD system for the irrigation of 1300 acres.  
5 During the presentation by other defendants in this proceeding, testimony and  
6 exhibits were entered to show that in the early 1930's the KRD drafted a resolution  
7 to divert from Manastash Creek flood waters for the benefit of their patrons who had  
8 rights to the creek and deliver the water through the KRD system. It was implied  
9 that it was the individual patron's responsibility to obtain water rights for this  
10 water, rather than the KRD's. No evidence was presented to show that additional  
11 rights were obtained and the Wellses and Sonstegaards are not asserting any rights  
12 beyond those confirmed in Decree No. 99 and 100 to Peter Norling.

13 Gray, supra, shows that Peter J. Norling began appropriating water from  
14 Manastash Creek in 1886 and had applied 30 inches of water, or 0.75 cubic foot per  
15 second, to beneficial uses on his land, which according to the Decree would be  
16 adequate for the irrigation of 30 acres. The Schedule of Rights for this decree in  
17 evidence shows a Class 11 right for 30 inches for use in the SW $\frac{1}{4}$  of Section 7, T. 17  
18 R. 18 E.W.M., with the E $\frac{1}{2}$  showing the name Roy and M. Gerber and the W $\frac{1}{2}$  showing Anna  
19 Haga, who was Edward Sullivan's grandmother.

20 Defendants Larry and Harriet L. Bland and Bart Bland have represented during  
21 testimony in support of their Claim No. 1723 and 4410(A), that the Class 11 right  
22 for Peter Norling was transferred to the W $\frac{1}{2}$  of Section 17 and the SW $\frac{1}{4}$  of Section 9,  
23 T. 17 N., R. 18 E.W.M., however they presented no evidence to support their  
24 contention that the transfer occurred. Lacking such evidence, the Referee must find  
25 that the right continues to be appurtenant to the SW $\frac{1}{4}$  of Section 7.

1 From the record, it is clear that a right exists with a June 30, 1886, date of  
2 priority for the diversion of 0.75 cubic foot per second from Manastash Creek for  
3 the irrigation of 30 acres within the SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
4 Defendants Sullivan and Wells/Sonstegaard are the only landowners in the SW $\frac{1}{4}$  of  
5 Section 7 that have asserted a claim to the Norling Class 11. Since between  
6 defendants Sullivan and Wells/Sonstegaard rights are being claimed for the  
7 irrigation of 35.5 acres, the right must be divided proportionately between the two  
8 properties. The Wells/Sonstegaard property would enjoy 90 percent of the right and  
9 the Sullivan property 10 percent.

10 It is recommended that a right be confirmed to Wayne W. and Juanita Wells and  
11 Theodore and Colleen Sonstegaard with a June 30, 1883, date of priority for 0.675  
12 cubic foot per second from April 1 to June 30 and 0.34 cubic foot per second from  
13 July 1 to October 31; 204 acre-feet per year for the irrigation of 27 acres and  
14 stock watering.

15 It is recommended that a right be confirmed to Edward L. and Anna G. Sullivan  
16 for the use of 0.075 cubic foot per second from April 1 to June 30 and 0.0375 cubic  
17 foot per second from July 1 to October 31; 22.6 acre-feet per year for the  
18 irrigation of 3 acres.

19

20 COURT CLAIM NO. 0500 -- Margaret A. Thayer

21 A Statement of Claim was submitted to the Court by Arthur G. Thayer and John  
22 J. Thayer for the use of waters from Hatfield Canyon via Packwood Canal. The  
23 Thayers were scheduled to appear at the evidentiary hearing for Subbasin No. 8,  
24 Thorp. Their claim will be addressed in the Report of Referee for Subbasin No. 8;  
25 therefore, the Referee makes no recommendation concerning their claim at this time.

26

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 On February 14, 1994, Margaret A. Thayer was substituted for Arthur G. Thayer and  
2 John J. Thayer.

3

4 COURT CLAIM NO. 0340 -- Thomas H. and Celestina A. Thelen

5 A Statement of Claim was submitted to the Court for the use of waters from a  
6 well for irrigation. The Thelens did not make an appearance as scheduled during the  
7 evidentiary hearing to provide testimony regarding their claim to a water right.  
8 Consequently, the Referee cannot recommend confirmation of a water right to these  
9 defendants. Rights to the use of ground water, such as from a well, are not being  
10 determined in this case.

11

12 COURT CLAIM NO. 2068 -- 3 Bar G Ranch, Inc.

13 Statements of Claim were submitted by 3 Bar G Ranch, Inc. for the use of  
14 numerous drains and Robinson Canyon located within Subbasin No. 8, Thorp, and  
15 Hatfield Canyon and an unnamed spring located in Subbasin No. 11. The defendant was  
16 represented by H. K. Dano, attorney at law. Dan Brunson, a neighboring landowner;  
17 Richard Bain, consultant hired by the defendant; and Mr. Gregerich, Vice-President  
18 of 3 Bar G Ranch, Inc., testified in behalf of the claim.

19 3 Bar G Ranch, Inc., consists of 958 total acres lying within both the  
20 Manastash Creek and Thorp Subbasins (Subbasins 11 and 8), with approximately 880  
21 acres, mostly in Timothy Hay, being irrigated. Surface application is the primary  
22 method of irrigation used on the ranch, with a small amount of sprinkler irrigation.

23 A minimum of 220 cow/calf pairs are kept on the property. The testimony showed  
24 that waters from Taneum Canal Company, West Side Irrigating Company, Kittitas  
25 Reclamation District, Packwood Canal Company, Menastash Water Ditch Association,  
26 Hatfield Canyon and Back Ditch are used to irrigate the land. West Side Irrigating  
27 Company and Kittitas Reclamation District are Major Claimants whose rights will be

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1 considered in the Major Claimant pathway. The source of water for Taneum Canal  
2 Company is in Subbasin No. 6 and will be discussed in the Report of Referee for that  
3 subbasin. Menastash Water Ditch Association and Packwood Canal Company each  
4 submitted claims in this subbasin and their claims are discussed on pages 112 and  
5 124 respectively.

6 Mr. Bain testified that the average water duty for the ranch is 19.4 acre-feet  
7 per acre irrigated, or 16,920 acre-feet per year from all the various sources.

8 Waters from Back Ditch are used to irrigate 84.7 acres lying in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
9 the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , the E $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M.  
10 According to the testimony, 5.98 cubic feet per second is diverted from the ditch,  
11 which primarily carries return flow water from the Prater and Harrell farms in  
12 Sections 6 and 5. Mr. Bain estimated that approximately 1,641 acre-feet per year  
13 would be used on these fields based on them representing 9.7 percent of the  
14 irrigated lands, therefore, requiring 9.7 percent of the total estimated water duty  
15 for the ranch.

16 Waters from Hatfield Canyon are used to irrigate approximately 54.8 acres  
17 lying in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18  
18 E.W.M. According to the testimony, 6.59 cubic feet per second is diverted from  
19 Hatfield Canyon, which primarily carries return flow water from High Valley Ranch in  
20 Section 31. Mr. Bain testified that approximately 1,066 acre-feet per year would be  
21 used on these fields based on them representing 6.3 percent of the irrigated lands,  
22 therefore, requiring 6.3 percent of the total estimated water duty for the ranch.

23 The Prater, Harrell, and High Valley Ranch land updrainage from the 3 Bar G  
24 Ranch all use water from Manastash Creek and Kittitas Reclamation District. There  
25 was no testimony that would show the source of the return flow water that ultimately  
26 ends up in Back Creek and Hatfield Canyon. Water rights for the use of return flow

1 can be confirmed only if the origins of the return flow waters are within the  
2 subbasin and not either foreign return flows or the result of use of water from the  
3 Yakima Project. (See Page 10 of this report.) There is no evidence that water  
4 right claims were filed pursuant to RCW 90.14, by the defendant for the use of  
5 waters from either Hatfield Canyon or Back Ditch.

6 An unnamed spring located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 is used for stock  
7 watering, with water from the spring piped several hundred feet into the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
8 Section 32. Mr. Bain testified that the spring flows 0.02 cubic foot per second and  
9 a maximum of 6 acre-feet per year would be needed for stock watering. Although  
10 there was no specific testimony concerning when the spring was developed and first  
11 used for stock watering, the witnesses testified that livestock had been raised on  
12 the ranch since it was originally developed. It was not uncommon for landowners  
13 around the turn of the century to develop springs and utilize gravity flow systems  
14 for stock watering. Water Right Claim No. 144529 was filed by the defendants  
15 pursuant to RCW 90.14 for the use of an unnamed spring for stock water. The claim  
16 identifies the date of first water use as being prior to 1890, however, no specific  
17 date was provided.

18 Based on the foregoing, it is recommended that a right be confirmed to the  
19 defendant with a January 1, 1890, date of priority for the use of an unnamed spring  
20 in the amount of 0.02 cubic foot per second, 6 acre-feet per year for continuous  
21 stock watering.

22 The claims for the use of West Side Irrigating Company and Kittitas  
23 Reclamation District will be addressed through the Major Claimant Pathway. Use of  
24 water from Taneum Ditch Company, Menastash Water Ditch Association and Packwood  
25 Canal Company will be considered as part of each entities claim. Due to the failure  
26 to file claims pursuant to RCW 90.14 and the lack of evidence to show the origins of

1 the return flow water used, the Referee cannot recommend that rights be confirmed  
2 for the use of waters from Hatfield Canyon and Back Creek.

3

4 COURT CLAIM NO. 1964 -- John G. and Carol J. Tucker

5 A Statement of Claim was submitted to the Court for the use of Manastash Creek  
6 and waste water for irrigation. The Tuckers did not make an appearance as scheduled  
7 during the evidentiary hearing to provide testimony regarding their claim to a water  
8 right. Consequently, the Referee cannot recommend confirmation of a water right to  
9 these defendants.

10

11 COURT CLAIM NO. 0658 -- Robert A. and Wauneta Tugwell

12 Robert and Wauneta Tugwell submitted a Statement of Claim to the Court for the  
13 use of drainage from an irrigated field for irrigation and stock water. Mr. Tugwell  
14 appeared at the evidentiary hearing to testify concerning the claim.

15 The defendants own approximately 21 acres of land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10,  
16 T. 17 N., R. 18 E.W.M.. They irrigate 12.5 acres and provide stock water for 19  
17 head of cattle. They have owned the property since 1954 and at the time of their  
18 purchase a small dairy was being operated. Mr. Tugwell did not have much  
19 information concerning historical water use on the property, but did state that a  
20 Damman once owned the property. J. D. Damman, as a party to Gray, supra, was  
21 awarded water rights for the land he owned at that time. However, the record shows  
22 the land awarded water rights was ultimately served by the West Side Canal and the  
23 creek rights sold.

24 Water Right Claim No. 052753 was filed by the Tugwells pursuant to the  
25 requirements of RCW 90.14 for the use of drainage water for stock watering. August

1 of 1965 was stated as the date of first water use on the 90.14 claim. This is also  
2 the date of first use shown on the Court Claim.

3 Mr. Tugwell testified that he owned 10 shares of West Side Irrigating Company  
4 water and that he receives that water from a ditch that parallels the Manastash Road  
5 and from one of the drainage ditches identified in his claim. It appears from the  
6 testimony that the Tugwells are claiming a right under their West Side Irrigating  
7 Company shares and a right to some drainage water that is separate from the West  
8 Side water. However, rights can only be established for use of return flow water if  
9 the evidence shows that the water resulted from the use of waters that originate  
10 within the subbasin, such as Manastash Creek. See Page 10 of this report for the  
11 discussion the return flow issue.

12 Based on the foregoing, the Referee cannot recommend that a right be confirmed  
13 under Court Claim No. 0658. Any rights that the defendants have through their  
14 shares from West Side Irrigating Company will be addressed during the Major Claimant  
15 pathway.

16

17 COURT CLAIM NO. 0589 -- Washington State Department of Natural Resources

18 A Statement of Claim was submitted to the Court for the use of waters from  
19 various surface water sources in the Yakima River Basin, including sources in the  
20 Manastash Subbasin. The Plaintiff's Report to the Referee recommended that a right  
21 be confirmed to the Department of Natural Resources for the use of an unnamed spring  
22 located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 17 E.W.M. for the irrigation of  
23 2 acres and for non-diversionary stock watering. The Department of Natural  
24 Resources did not make an appearance during the evidentiary hearing to provide  
25 testimony regarding use of other surface water sources within the Manastash  
26 Subbasin. Consequently, the Referee incorporates the recommendation of the

1 Plaintiff for the one source and non-diversionary stock watering, but cannot  
2 recommend that any additional water rights be confirmed to this defendant.  
3

4 COURT CLAIM NO. 2109 -- Washington State Department of Wildlife

5 A Statement of Claim was submitted to the Court for the use of several surface  
6 water sources in the Yakima River Basin, including sources in the Manastash Creek  
7 Subbasin. The Department of Wildlife did not make an appearance as scheduled during  
8 the evidentiary hearing to provide testimony regarding their claim to a water right.  
9 Consequently, the Referee cannot recommend confirmation of a water right to this  
10 defendant. The Plaintiff's Report to the Referee recommended that a non-  
11 diversionary stock water right be confirmed to the Department of Wildlife.

12  
13 COURT CLAIM NO. 1773 -- Larry C. and Senta K. Watson

14 Larry C. and Senta K. Watson submitted a Statement of Claim to the Court for  
15 the use of waters from Manastash Creek for the irrigation of 22 acres and Mr. Watson  
16 appeared at the evidentiary hearing to present testimony in support of the claim.

17 According to Mr. Watson, the Claim they filed was for their own 7.5 acre  
18 parcel and an adjacent 14.5 acre parcel owned by J. Porter and LaVerne Ellis. Both  
19 of these parcels are located in the NW $\frac{1}{4}$  of Section 33, T. 18 N., R. 18 E.W.M. and  
20 were owned by Sam and Shirley Ritchie in the early 1970's. Water Right Claim No.  
21 032601 was filed by the Ritchies in 1973 to comply with the requirements of RCW  
22 90.14. Manastash Creek water via Reed Ditch is used to irrigate approximately 14  
23 acres on the Ellis parcel and 6.5 acres on the Watson parcel and water stock. The  
24 Ellises rill irrigate their property and the Watsons sprinkler irrigate using a five  
25 horsepower pump placed on the ditch with handlines having 17 sprinklers with 5/32

1 inch nozzles to irrigate approximately six acres. A one horsepower pump and two  
2 additional sprinklers irrigate a one-half acre section.

3 The water rights claimed for both parcels are based on two historic filings.  
4 On May 6, 1893, Josephine Becker filed an affidavit stating she had appropriated 16  
5 cubic feet per second from the Yakima River via a slough and conveyed through the  
6 Becker Ditch. Attached to the affidavit is a map showing the location of the  
7 headgate for the ditch and the names of the owners of the land through which the  
8 ditch ran. The map shows the diversion in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 33 and the ditch  
9 running to the east, south and southeast through the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 33  
10 and the SW $\frac{1}{4}$  of Section 34. Review of the maps available to the Referee indicate  
11 that it is likely that a ditch running in the directions shown on the attachment to  
12 the affidavit would have to divert from across the river from the claimant's  
13 property.

14 The second document is a warranty deed dated May 16, 1921, in which Elizabeth  
15 Meek sold to John B. Meek the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33, and lands within Sections 12 and  
16 13, T. 17 N., R. 17 E.W.M. together with all water rights and irrigating ditches  
17 appurtenant thereto, including certain decreed rights in Manastash Creek. Review of  
18 Gray, supra, revealed that some of the land in Section 12 did enjoy rights under  
19 that decree, but there were no rights decreed to lands in the SW $\frac{1}{4}$  of Section 33.

20 No additional testimony indicated historic water use or establishment of a  
21 water right for the claimants' property. Therefore, the Referee cannot recommend  
22 that a right be confirmed under Court Claim No. 1773. The Plaintiff's Report to the  
23 Referee recommended that a non-diversionary stock water right be confirmed to the  
24 Watsons. However, the testimony was that water from Reed Ditch is used by the  
25 livestock, which would be diversionary stock water. Therefore, the recommendation  
26 will not be accepted by the Referee.

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1    COURT CLAIM NO. 0373 -- Marjorie & H. H. Weeber

2       A Statement of Claim was submitted to the Court by Mr. and Mrs. Weeber for the  
3       use of waters from Manastash Creek, three springs, and one well. Mr. Weeber is  
4       deceased and Mrs. Weeber was represented by Attorney H. K. Dano. Richard Bain,  
5       Marjorie Weeber and Bart Bland testified at the evidentiary hearing concerning this  
6       claim.

7       Mrs. Weeber owns 38 acres of land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18  
8       E.W.M. and irrigates 33.4 acres of pasture from Manastash Creek. She is assessed by  
9       the Kittitas Reclamation District and has supplemental water through the district  
10      for 21 acres. Mrs. Weeber is basing her claim to a water right on Gray, supra,  
11      which awarded a Class 5 right with an 1877 date of priority for 200 inches of water  
12      to Olof Hanson. The Schedule of Rights in evidence and testimony of Mrs. Weeber  
13      show that 40 inches of this water is appurtenant to the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, Mrs.  
14      Weeber's grandparents acquired the property from Mr. Hanson.

15      Water is diverted from Manastash Creek into Reed Ditch in the N $\frac{1}{2}$  of Section 11  
16      and is diverted from Reed Ditch near the southwest corner of the Weeber property.  
17      There was no specific testimony concerning the method of water application on the  
18      property. According to Mrs. Weeber's testimony the land has continuously been  
19      irrigated since her grandparents acquired the property in the early 1900's.

20      Two springs were also identified as water sources on the Weeber property. One  
21      spring is in the northeast corner of the property and is used for stock watering.  
22      The second spring is near the southeast corner of the property, but there was no  
23      testimony about its use. Additionally, no testimony was given about historical use  
24      or the legal basis for a right to use either of the springs.

25      The Statement of Claim submitted to the court cites three numbers, 166435,  
26      166436, and 166437, that would appear to represent water right claims filed pursuant

1 to RCW 90.14. However, review of the State's exhibit containing the 90.14 claims,  
2 shows that there were no claims filed that bear those numbers, nor were there any  
3 claims filed in the names of Mr. or Mrs. Weeber or Mrs. Weeber's grandparents. Mrs.  
4 Weeber did not during her testimony or in any of her exhibits indicate that a water  
5 right claim had been filed. RCW 90.14.071 provides that any person claiming a right  
6 to use water who fails to file a claim waives and relinquishes their rights.

7 Due to the apparent lack of 90.14 water right claims, the Referee cannot  
8 recommend that rights be confirmed to Marjorie Weeber. The Plaintiff's Report to  
9 the Referee recommended that non-diversionary stock water rights be confirmed to  
10 Mrs. Weeber for stock watering from naturally occurring streams and springs or  
11 ponds. The testimony reflects that stock can drink from naturally occurring springs  
12 on the Weeber property and from ditches that carry Manastash Creek water for  
13 irrigation. A non-diversionary stock water right would be appropriate for the  
14 springs, but not for the ditches which represent a diversionary use.

15

16 COURT CLAIM NO. 1085 -- Leroy A. and Elizabeth Werkhoven

17 A Statement of Claim was submitted to the Court for the use of waters from an  
18 unnamed spring for irrigation and stock water. The Werkhovens did not make an  
19 appearance as scheduled during the evidentiary hearing to provide testimony  
20 regarding their claim to a water right. Consequently, the Referee cannot recommend  
21 confirmation of a water right to these defendants.

22

23 COURT CLAIM NO. 1183 -- Doris E. and Fred H. Westberg

24 A Statement of Claim was submitted to the Court for the use of two unnamed  
25 springs for domestic supply. The Westbergs did not make an appearance as scheduled  
26 during the evidentiary hearing to provide testimony regarding their claim to a water

1 right. Consequently, the Referee cannot recommend confirmation of a water right to  
2 these defendants.

3

4 COURT CLAIM NO. 1819 -- Larry Whitlatch

5 A statement of claim was submitted to the court for the use of waters of  
6 Manastash Creek for irrigation and stock water. Mr. Whitlatch did not make an  
7 appearance as scheduled during the Evidentiary Hearing to provide testimony  
8 regarding his claim to a water right. Consequently, the Referee cannot recommend  
9 confirmation of a water right to this defendant.

10

11 COURT CLAIM NO. 0980 & 0950 -- Carl D. Wray

12 Statement of Claim No. 0980 was submitted to the Court for the use of waters  
13 from several surface water sources in Subbasin No. 8, Thorp. The claim filed by the  
14 Menastash Water Ditch Association, Claim No. 0950, listed Mr. Wray as one of the  
15 recipients of water through the association. Because of that he was scheduled to  
16 appear at the hearing for the Manastash Subbasin. Mr. Wray did not make an  
17 appearance as scheduled during the evidentiary hearing, consequently, the Referee  
18 cannot recommend confirmation of a water right to him. However, the claim of the  
19 ditch association is addressed on Page 113 of this report. Additionally, any rights  
20 that Mr. Wray may enjoy to sources of water in Subbasin No. 8 shall be addressed in  
21 the Report of Referee for that subbasin.

22

23 CLAIMANTS WITH RECOMMENDED NON-DIVERSIONARY STOCK WATER AND WILDLIFE RIGHTS

24 Lee R. Akker and Carolyn Akker  
Lawrence Anderson and Arlein Anderson  
25 Anderville Farms, Inc.  
Wilhelm and Joan Bakke  
26 Haldon J. and Eulan J. Baumann  
Ken Beckley

27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1      Boise Cascade Corporation  
2      George B. Brain  
2      James E. and Lillian J. Brooks  
3      Thomas C. and Kathleen Brunson  
3      Burlington Northern Railroad Co.  
4      Edmund T. Christian and Margery Christian  
4      Richard D. Chubb  
5      Donald J. Cocheba and Sharon A. Cocheba  
5      Richard T. Cole and Lynn Cole  
6      William R. Cole and Dorothy C. Cole  
6      Harold Crose and Judy Crose  
7      Robert and Avadene Gardinier and Robert Y. and Wanda Gardinier  
7      Clarence Harrell and Hazel J. Harrell  
8      George Helleson and Barbara Helleson  
8      Michael Hoffman and Sandra Hoffman  
9      Estate of John C. Hoffman and Hilda and W. O. Salter  
9      Lyle F. R. Knudson and Ruth M. Knudson  
10     Robert F. Lapen and Linda L. Lapen  
10     Deva Martensen  
11     John Richard Matthews  
11     Brian Mellergaard and Carol Mellergaard  
11     George E. Mills  
12     Ron Nickels and Judy Nickels  
12     Ramon Nielsen and Marion Nielsen  
13     Harold Orr  
13     Martin Pederson, et al.  
14     Eugene J. Prater and Yvonne Prater  
14     Bob A. Rock and Gwen C. Rock  
15     Roger Sparks and Rita Sparks  
15     H. John Spence and Bette J. Spence  
16     Jay Sprouse and Bette Sprouse  
16     Charles Steward and Margaret Steward  
17     Washington State Department of Natural Resources  
17     Washington State Department of Wildlife  
18     H. H. Weeber and Marjorie A. Weeber  
18     Burton J. Williams and Carol M. Williams  
19

20                    X. FINDINGS OF FACT

21       I, JOHN E. ACORD, as Referee in this proceeding, having carefully examined the  
22       testimony and evidence and having investigated Subbasin No. 11, do hereby make the  
23       following Findings of Fact:

24       1. That the waters of Subbasin No. 11 and lands irrigated or waters  
25       otherwise utilized therefrom are situated in Kittitas County.

1       2. That the claims to any diversionary or withdrawal rights within subbasin  
2 No. 11 of the following named claimants are denied in their entirety for reasons set  
3 forth in the body of this report:

4       Lee R. and Carolyn Akker  
5       Ernest W. and Margaret L. Allan  
6       Dolores Ayers  
7       Rick A. Baker  
8       Wilhelm and Joan Bakke  
9       Floyd and Lorna Bangerter  
10      David R. Bean  
11      Ken Beckley  
12      Melissa L. Belsaas  
13      Robert Belsaas  
14      Marco Bicchieri  
15      James E. and Lillian J. Brooks  
16      Vernon G. and Jeanette K. Burghart  
17      Burlington Northern, Inc.  
18      Richard D. Chubb  
19      Donald J. and Sharon A. Cocheba  
20      William R. and Dorothy C. Cole  
21      Harold and Judy Crose  
22      James M. and Pamela Jo Daly  
23      Douglas A. Dicken  
24      Dave Duncan and Sons and Duncan Family Trust  
25      Dale Dyk  
26      Wallace L. and Geraldine J. Enger  
27      Steve Gilbert and Krisha Frank  
28      Tom Hamberg  
29      Clarence Harrell and Hazel J. Harrell- Claim 4637  
30      Estate of John C. Hoffman, Hilda and W. O. Salter  
31      Michael and Sandra Hoffman  
32      David B. and Lucia S. Hubbard  
33      Kamiakin Water Association  
34      David L. Keithly  
35      Oenone J. Kinman  
36      Lyle F. R. and Ruth M. Knudson  
37      Ray and Linda Knudson  
38      Edwin L. and Roberta Kuehl  
39      Robert F. and Linda Lapen  
40      Andrew Jack Leinbach  
41      Michael James and Wendy Lee Mahoney  
42      Garry and Dawn Mathews  
43      James W. and Janine P. McDermott  
44      Charles and Karin McElevey  
45      Laurin C. and Marjorie Mellergaard  
46      George E. Mills  
47      Murray Pacific Corporation  
48      Ramon and Marion Nielson  
49      Harold Orr

50      REPORT OF REFEREE

51      Re: Subbasin No. 11

1 Pacific Northwest Conference of the United Methodist Church  
Howard and Mary Page  
2 Gene and Sally Panattoni  
Martin Pederson, et al.  
3 Gerald E. and JoAnn O. Platt  
James L. Podkranic  
4 Scott F. and Mary Jo Repp  
Virginia Ronne  
5 Mel and Jodee Shenyer  
Robert M. and Irma Smith  
6 Joseph and Billie Jo Sorenson  
Lawrence E. and Sula F. Spannagel  
7 H. John and Bette J. Spence  
Jay and Bette Sprouse  
8 Michael and Kristi Stougard  
Thomas H. and Celestina A. Thelen  
9 John G. and Carol J. Tucker  
Robert A. and Wauneta Tugwell  
10 Washington State Department of Wildlife  
Larry C. and Senta K. Watson  
11 Marjorie and H. H. Weeber  
Mr. and Mrs. Lynn Weissenfels  
12 Leroy A. and Elizabeth Werkhoven  
Doris E. and Fred H. Westberg  
13 Larry Whitlach  
Mitchell F. and Dorita S. Williams  
14 William L. and Carol J. Wood  
Carl D. Wray  
15

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

21  
22  
23  
24  
25  
26  
27

28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Clarence & Hazel J. Harrell COURT CLAIM NO. 0477  
2 Source: Manastash Creek  
3 Use: Irrigation of 80 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 4.12 cubic feet per second from April 1 to June 30, 2.06  
cubic feet per second from July 1 to October 31; 1244 acre-  
feet per year  
6 Priority Date: June 30, 1871  
7 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
8 Place of Use: The W $\frac{1}{4}$ SW $\frac{1}{4}$ ; the SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 5, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Deva Martensen COURT CLAIM NO. 1553  
2 Source: Manastash Creek  
3 Use: Irrigation of 35.5 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.8875 cubic foot per second from April 1 to June 30, 0.444  
6 cubic foot per second from July 1 to October 31; 268 acre-  
feet per year  
7 Priority Date: June 30, 1871  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
9 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
10 Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 lying north and  
11 west of the Manastash Road and east of the Kittitas  
12 Reclamation District Canal; that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
13 Section 11 lying south of Manastash Creek; the south 300  
feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12; and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13, ALL in T. 17 N., R. 17 E.W.M.  
14 Special Provision: This land may have a supplemental water right through the  
15 Kittitas Reclamation District, which is exercised when  
16 sufficient creek water is not available.  
17  
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27

1 CLAIMANT NAME: John Richard Matthews COURT CLAIM NO. 2283  
2 Source: Manastash Creek  
3 Use: Irrigation of 15 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.375 cubic foot per second from April 1 to June 30, 0.1875  
6 cubic foot per second from July 1 to October 31; 112.22  
7 acre-feet per year for irrigation; 0.01 cubic foot per  
second; 1 acre-foot per year for stock water  
8 Priority Date: June 30, 1871  
9 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
10 Place of Use: That portion of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17  
E.W.M. lying south of Manastash Creek  
11 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Ron and Judy Nickels COURT CLAIM NO. 1671  
2 Source: Manastash Creek  
3 Use: Irrigation of 3 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.067 cubic foot per second from April 1 to June 30, 0.0375  
6 cubic foot per second from July 1 to October 31; 21.02 acre-  
feet per year  
7 Priority Date: June 30, 1871  
8 Point of Diversion: 825 feet south and 1200 feet west from the east quarter  
9 corner of Section 12, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
10 Place of Use: That portion of the south 400 feet of the west 300 feet of  
11 the W $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M. lying  
north of Manastash Creek and south of Cedar Cove Road.  
12 Special Provision: This land may have a supplemental water right through the  
13 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
14 CLAIMANT NAME: Eugene J. and Yvonne Prater COURT CLAIM NO. 0657  
15 Source: Manastash Creek  
16 Use: Irrigation of 120 acres  
17 Period of Use: April 1 to October 31  
18 Quantity: 3 cubic feet per second from April 1 to June 30, 1.5 cubic  
19 feet per second from July 1 to October 31; 911.80 acre-feet  
per year  
20 Priority Date: June 30, 1871  
21 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
22 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
N., R. 17 E.W.M.  
23 Place of Use: The SE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.  
24 Limitation on Use: The maximum annual quantity of water that may be used under  
25 this right and any water delivered by the Kittitas  
Reclamation District shall not exceed 1032 acre-feet per  
year.  
26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

1 CLAIMANT NAME: Eugene J. and Yvonne Prater COURT CLAIM NO. 0657  
2 Source: Manastash Creek  
3 Use: Irrigation of 25 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.625 cubic foot per second from April 1 to June 30, 0.3125  
6 cubic foot per second from July 1 to October 31; 188.71  
7 acre-feet per year  
8 Priority Date: June 30, 1871  
9 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
10 Place of Use: The SE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.  
11 Limitation on Use: The maximum annual quantity of water that may be used under  
12 this right and any water delivered by the Kittitas  
13 Reclamation District shall not exceed 215 acre-feet per  
14 year.

1 CLAIMANT NAME: Eugene J. and Yvonne Prater COURT CLAIM NO. 0657  
2 Source: An unnamed spring  
3 Use: Single domestic supply  
4 Period of Use: Continuous  
5 Quantity: 0.02 cubic foot per second, 1 acre-feet per year  
6 Priority Date: June 30, 1871  
7 Point of Diversion: 150 feet north and 950 feet west from the south quarter  
8 corner of Section 6, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6,  
T. 17 N., R. 17 E.W.M.  
9 Place of Use: The S $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.  
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1 CLAIMANT NAME: **Brent D. Renfrow and** COURT CLAIM NO. 4816  
2 **Karen Raymond**

3 Source: **Manastash Creek**

4 Use: **Irrigation of 5.5 acres and stock water**

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

6 Quantity: **0.1375 cubic foot per second from April 1 to June 30 and  
0.06875 cubic foot per second from July 1 to October 31;  
41.25 acre-feet per year for irrigation and 0.01 cubic foot  
per second, 1 acre-foot per year for stock water**

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8 Priority Date: **June 30, 1871**

9 Point of Diversion: **550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.**

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11 Place of Use: **The west 330 feet of the south 759 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13, T. 17 N., R. 17 E.W.M., EXCEPT that portion  
which lies south of a line described as follows: Beginning  
at the northwest corner of the NW $\frac{1}{4}$  of said section; thence S  
00°28'52" W along the westerly boundary line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$   
of said section 867.15 feet; thence S 89°31'08" E 330 feet  
and the end of this line description.**

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15 ALSO **The east 385 feet of the west 715 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13, T. 17 N., R. 17 E.W.M. EXCEPT the north 561 feet  
thereof, and that portion of said land, if any, that may lie  
within Parcel A of Survey recorded January 13, 1981, in Book  
8 of Kittitas County, and the south 305 feet thereof, and  
the north 147.85 feet of the south 452.85 feet of the west  
30 feet thereof.**

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1 CLAIMANT NAME: Eugene E. & Rhodesa M. Walsh COURT CLAIM NO. 0987  
2 and Edmund T. and Margery Christian  
3 Source: Manastash Creek  
4 Use: Irrigation of 25 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.625 cubic foot per second from April 1 to June 30, 0.3125  
7 cubic foot per second from July 1 to October 31; 178.40  
8 acre-feet per year  
9 Priority Date: June 30, 1871  
10 Point of Diversion: 600 feet north and 700 feet east of the southwest corner of  
11 Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N.,  
12 R. 17 E.W.M.  
13 Place of Use: Government Lots 6 and 7, Section 6, T. 17 N., R. 18 E.W.M.  
14 CLAIMANT NAME: Anderville Farms COURT CLAIM NO. 1950  
15 Source: Manastash Creek  
16 Use: Irrigation of 80 acres  
17 Period of Use: April 1 to October 31  
18 Quantity: 2 cubic feet per second from April 1 to June 30, 1 cubic  
19 foot per second from July 1 to October 31; 604 acre-feet per  
20 year  
21 Priority Date: June 30, 1872  
22 Point of Diversion: 1200 feet north and 1200 feet east of the center of Section  
23 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18  
24 E.W.M.  
25 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18  
26 E.W.M.  
27 Special Provision: This land may have a supplemental water right through the  
28 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Robert and Avadene Gardinier COURT CLAIM NO. 2260  
2 Robert Y. and Wanda Gardinier  
3 Source: Manastash Creek  
4 Use: Irrigation of 17 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.425 cubic foot per second from April 1 to June 30, 0.21  
cubic foot per second from July 1 to October 31; 127.5 acre-  
feet per year  
7 Priority Date: June 30, 1872  
8 Point of Diversion: 850 feet north and 850 feet west from the southeast corner  
of Section 5, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17  
N., R. 18 E.W.M.  
9 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18  
E.W.M. lying west of the West Side Canal  
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12 CLAIMANT NAME: Clarence & Hazel J. Harrell COURT CLAIM NO. 0477  
13 Source: Manastash Creek  
14 Use: Irrigation of 80 acres  
15 Period of Use: April 1 to October 31  
16 Quantity: 4.12 cubic feet per second from April 1 to June 30, 2.06  
cubic feet per second from July 1 to October 31; 1244 acre-  
feet per year  
17 Priority Date: June 30, 1872  
18 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
19 Place of Use: W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M.  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 11 191

1 CLAIMANT NAME: Menastash Water Ditch COURT CLAIM NO. 0950 & 3025(A)  
2 Association  
3 Source: Manastash Creek  
4 Use: Irrigation of 1200 acres and stock water  
5 Period of Use: April 1 to October 31 for irrigation; continuous for stock  
water  
6 Quantity: 30 cubic feet per second from April 1 to June 30, 15 cubic  
feet per second from July 1 to October 31; 9058.5 acre-feet  
7 per year for irrigation; 15 cubic feet per second, 118.2  
8 acre-feet per year for stock water  
9 Priority Date: June 30, 1872  
10 Point of Diversion: 500 feet south and 150 feet east of the north quarter corner  
of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17  
N., R. 17 E.W.M.  
11 Place of Use: Section 1; the NE $\frac{1}{4}$ , the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , and the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 2;  
the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11; the NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
12, ALL in T. 17 N., R. 17 E.W.M.; the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$   
of Section 6, T. 17 N., R. 18 E.W.M.; the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section  
25; the N $\frac{1}{4}$  of Section 26; the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{2}$ SE $\frac{1}{4}$  of  
Section 35, ALL in T. 18 N., R. 17 E.W.M.; Section 31, T. 18  
N., R. 18 E.W.M., except the N $\frac{1}{2}$ NE $\frac{1}{4}$  thereof.

1 CLAIMANT NAME: Joseph L. & Doris M. Schwab COURT CLAIM NO. 1771 & 4440(A)  
2 Source: Manastash Creek  
3 Use: Irrigation of 2.5 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.05 cubic foot per second from April 1 to June 30, 0.0235  
cubic foot per second from July 1 to October 31; 15.0 acre-  
feet per year for irrigation; 0.01 cubic foot per second, 1  
acre-foot per year for stock water  
6 Priority Date: June 30, 1872  
7 Point of Diversion: 650 feet north and 1150 feet east from the south quarter  
corner of Section 5, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5,  
T. 17 N., R. 18 E.W.M.  
8 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18  
E.W.M. described as follows: Beginning at a point on the  
east boundary of said quarter section 721 feet north of the  
southeast corner thereof; said point being in the center of  
Manastash Creek; thence along the center of said creek as  
follows: S 74°27' W 99.3 feet; thence S 42°56' W 139.6  
feet; thence N 37°18' W 132.7 feet; thence S 79°31' W 179.3  
feet; thence from point in the creek N 3° W 284.8 feet to  
the south boundary line of the right of way of the county  
road; thence N 70°11' E 455.2 feet on said boundary line to  
the east boundary line of said quarter section; thence S 3°  
394 feet to the point of beginning.  
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17 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
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1 CLAIMANT NAME: Larry and Harriet L. Bland COURT CLAIM NO. 1723  
2 and Bart Bland  
3 Source: Manastash Creek  
4 Use: Irrigation of 24.1 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.723 cubic foot per second from April 1 to June 30, 0.3615  
cubic foot per second from July 1 to October 31; 218.30  
acre-feet per year  
7 Priority Date: June 30, 1874  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
9 Place of Use: That portion of the SW $\frac{1}{4}$  of Section 9, T. 17 N., R. 18 E.W.M.  
10 lying west of the West Side Canal and southerly of the  
11 following described line: Beginning at a point on the west  
12 line of said subdivision, situate 1693.80 feet N 0°20' W of  
13 the southwest corner of said subdivision; thence N 88°40' E  
14 548.45 feet; thence S 78°00' E 2164.43 feet to a point on  
the east line of said subdivision situate 1351.00 feet N  
0°48'30" E of the southeast corner thereof.  
15 Special Provision: This land may have a supplemental water right through the  
16 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Brian H. & Tamara M. Cooke COURT CLAIM NO. 1846  
2 Source: Manastash Creek  
3 Use: Irrigation of 4.5 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.14 cubic foot per second from April 1 to June 30, 0.07  
cubic foot per second from July 1 to October 31; 33.75 acre-  
feet per year for irrigation; 0.01 cubic foot per second, 1  
acre-foot per year for stock water  
6 Priority Date: June 30, 1874  
7 Point of Diversion: 1200 feet north and 1200 feet east from the center of  
Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N.,  
R. 18 E.W.M.  
8 Place of Use: The south 550 feet of the east 430 feet of the west 745 feet  
of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. T. 17 N., R. 18 E.W.M.  
9 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
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12 CLAIMANT NAME: Bruce Johnson and COURT CLAIM NO. 2270  
13 Robert J. Dean  
14 Source: Manastash Creek  
15 Use: Irrigation of 36 acres  
16 Period of Use: April 1 to October 31  
17 Quantity: 0.90 cubic foot per second from April 1 to June 30, 0.45  
cubic foot per second from July 1 to October 31; 271.45  
acre-feet per year  
18 Priority Date: June 30, 1874  
19 Point of Diversion: 5 feet north and 700 feet west from the center of Section 7,  
being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
20 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
21 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: George and Barbara Helleson COURT CLAIM NO. 1949  
2 Source: Manastash Creek  
3 Use: Stock water  
4 Period of Use: Continuously  
5 Quantity: 0.01 cubic foot per second; 1 acre-foot per year  
6 Priority Date: June 30, 1874  
7 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
8 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
9 Place of Use: The north half of the north 400 feet of the east 330 feet of  
10 the NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M.  
11 Special Provision: This land may have a supplemental water right through the  
12 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
13 CLAIMANT NAME: Woodyly and Deloris Moore COURT CLAIM NO. 0770  
14 Source: Manastash Creek  
15 Use: Stock water  
16 Period of Use: Continuous  
17 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
18 Priority Date: June 30, 1874  
19 Point of Diversion: 550 feet south and 650 feet east of the north quarter corner  
20 of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17  
N., R. 17 E.W.M.  
21 Place of Use: The north 500 feet of the west 384 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
22 Section 13, T. 17 N., R. 17 E.W.M.  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

1 CLAIMANT NAME: Bob A. & Gwendolyn C. Rock COURT CLAIM NO. 1153  
2 Source: Manastash Creek  
3 Use: Irrigation of two acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.05 cubic foot per second from April 1 to June 30, 0.025  
6 cubic foot per second from July 1 to October 31; 15 acre-  
feet per year for irrigation; 0.01 cubic foot per second, 1  
7 acre-foot per year for stock water  
Priority Date: June 30, 1874  
Point of Diversion: 1200 feet north and 1200 feet east from the center of  
Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N.,  
R. 18 E.W.M.  
Place of Use: The west 315 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8. T. 17 N., R.  
18 E.W.M.  
Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: K. Bruce & Jean G. Skibeness COURT CLAIM NO. 1896  
2 Source: Manastash Creek  
3 Use: Irrigation of 31 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.93 cubic foot per second from April 1 to June 30, 0.465  
cubic foot per second from July 1 to October 31; 280 acre-  
feet per year for the irrigation of 31 acres; 0.01 cubic  
foot per second; 1 acre-foot per year for stock water  
6  
7 Priority Date: June 30, 1874  
8  
9 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M  
10  
11 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. LESS that  
portion described as follows: Beginning at the southeast  
corner of said section; thence west 359.97 feet; thence  
north 615.9 feet; thence east 348.01 feet to the right of  
way of Strande Road; thence south along Strande Road right  
of way 623.37 feet to the point of beginning.  
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14 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
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1 CLAIMANT NAME: Charles & Margaret Steward COURT CLAIM NO. 1968  
2 Source: Manastash Creek  
3 Use: Irrigation of 140 acres and stock water  
4 Period of Use: April 1 to October 31 for irrigation, continuous for stock  
water  
5  
6 Quantity: 4.76 cubic feet per second from April 1 to June 30, 2.38  
cubic feet per second from July 1 to October 31; 1437.27  
acre-feet per year for irrigation; 0.01 cubic foot per  
second, 1 acre-foot per year for stock water  
7  
8 Priority Date: June 30, 1874  
9 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
10  
11 Place of Use: The SW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M.  
12 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
13  
14 CLAIMANT NAME: Eugene E. & Rhodesa M. Walsh COURT CLAIM NO. 0987  
and Edmund T. and Margery Christian  
15  
16 Source: Manastash Creek  
17 Use: Irrigation of 20 acres  
18 Period of Use: April 1 to October 31  
19 Quantity: 0.50 cubic foot per second from April 1 to June 30, 0.25  
cubic foot per second from July 1 to October 31; 150.96  
acre-feet per year  
20  
21 Priority Date: June 30, 1874  
22 Point of Diversion: 600 feet north and 700 feet east of the southwest corner of  
Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N.,  
R. 17 E.W.M.  
23  
24 Place of Use: Government Lots 6 and 7, Section 6, T. 17 N., R. 18 E.W.M.  
25 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
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27  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Terryl & Vonda Draney COURT CLAIM NO. 1478  
2 Source: Manastash Creek  
3 Use: Irrigation of 14 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.350 cubic foot per second from April 1 to June 30, 0.175  
6 cubic foot per second from July 1 to October 31; 105.621  
acre-feet per year  
7 Priority Date: June 30, 1877  
8 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
9 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
N., R. 17 E.W.M.  
10 Place of Use: Parcel B of that certain survey recorded July 17, 1986, in  
11 Book 14 of Surveys at Page 78, under Auditor's File No.  
496987, records of Kittitas County, being a part of the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 17 E.W.M.  
12 Special Provision: This land may have a supplemental water right through the  
13 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Peter and Nora Evans COURT CLAIM NO. 1478  
2 Source: Manastash Creek  
3 Use: Irrigation of 86.2 acres and stock water  
4 Period of Use: April 1 to October 31 for irrigation; continuous for stock  
water  
5 Quantity: 2.155 cubic feet per second from April 1 to June 30, 1.07  
cubic feet per second from July 1 to October 31; 648.72  
acre-feet per year for irrigation; 0.01 cubic foot per  
second, 1 acre-foot per year for stock water  
6 Priority Date: June 30, 1877  
7 Point of Diversion: 1) 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
8 2) 250 feet north and 10 feet east from the center of  
Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N.,  
R. 18 E.W.M.  
9 Place of Use: The N $\frac{1}{2}$ NE $\frac{1}{4}$ , the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17  
N., R. 18 E.W.M., EXCEPT  
10 1) A tract of land bounded by a line beginning at the  
northeast corner of said NE $\frac{1}{4}$  and running thence south along  
the east boundary line of said subdivision, 464.6 feet;  
thence west parallel with the north boundary line of said  
subdivision, 464.6 feet; thence north parallel with the east  
boundary line thereof, 464.6 feet; thence east along the  
north boundary line of said subdivision, 464.6 feet to the  
point of beginning.  
11 2) That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18  
E.W.M. which is bounded by a line described as follows:  
Beginning at the northeast section corner of said Section 7;  
thence N 87°00'00" W along the north section line of said  
Section 7, 1086.08 feet; thence S 3°00'00" W 30.0 feet to  
the county road (Hanson Road) right of way, said point being  
the true point of beginning; thence S 5°29'02" E 443.18  
feet; thence N 77°33'06" W 371.25 feet; thence N 3°00'00" E  
377.39 feet to the southerly right of way line for said  
county road; thence S 87°00'00" E 300.83 feet to the true  
point of beginning.  
12 3) Parcels A and B of that certain Survey recorded July 17,  
1986, in Book 14 of Surveys, Page 78, under Kittitas County  
Auditor's File No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 7, T. 17 N., R. 18 E.W.M.

4) Right of way for Hanson County Road along the north boundary of the NE $\frac{1}{4}$ .

5) Parcel C of that certain Survey as recorded April 11, 1989, in Book 16 of Surveys, page 22, under Auditor's File No. 519760, records of Kittitas County, being a portion of the NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

**Special Provision:** This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available.

CLAIMANT NAME: Clarence & Hazel J. Harrell COURT CLAIM NO. 0477  
Source: Manastash Creek  
Use: Irrigation of 125 acres  
Period of Use: April 1 to October 31  
Quantity: 3.12 cubic feet per second from April 1 to June 30 and 2.06  
cubic feet per second from July 1 to October 31, 942 acre-  
feet per year  
Priority Date: June 30, 1877  
Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
Place of Use: The S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 18 N., R. 17 E.W.M. Government  
Lots 1, 3 and 4 of Section 5, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Wayne and Margaret Smith COURT CLAIM NO. 0258  
2 Source: Manastash Creek  
3 Use: Irrigation of 22.5 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.56 cubic foot per second from April 1 to June 30 and 0.28  
cubic foot per second from July 1 to October 31; 170 acre-  
feet per year  
6  
7 Priority Date: June 30, 1877  
8 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
N., R. 17 E.W.M.  
9  
10 Place of Use: The S $\frac{1}{2}$  and the west 265 feet of the N $\frac{1}{2}$  of Government Lot 1  
and Government Lot 2, Section 7, T. 17 N., R. 18 E.W.M.  
11  
12 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
13  
14 CLAIMANT NAME: Roger C. and Rita M. Sparks COURT CLAIM NO. 1029  
15 Source: Manastash Creek  
16 Use: Irrigation of 62.5 acres  
17 Period of Use: April 1 to October 31  
18 Quantity: 1.5 cubic feet per second from April 1 to June 30, 0.75  
cubic foot per second from July 1 to October 31; 452.31  
acre-feet per year  
19  
20 Priority Date: June 30, 1877  
21 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
N., R. 17 E.W.M.  
22  
23 Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$  and part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6, T. 17 N., R.  
18 E.W.M.  
24  
25 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
26  
27  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Margorie J. Muzzall COURT CLAIM NO. 4536  
2 Source: Manastash Creek  
3 Use: Irrigation of 2.5 acres and stock water  
4 Period of Use: April 1 to October 31 for irrigation; continuously for stock  
water  
5 Quantity: 0.0625 cubic foot per second from April 1 to June 30,  
0.03125 cubic foot per second from July 1 to October 31;  
18.3 acre-feet per for irrigation; 0.02 cubic foot per  
second, one acre-foot per year for stock water  
6 Priority Date: June 30, 1878  
7 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
N., R. 17 E.W.M.  
8 Place of Use: That portion of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18  
E.W.M. described as follows: Beginning 350.5 feet south of  
a point on the north boundary line of said subdivision,  
which is 760.9 feet east of the northwest corner of said  
subdivision, and running thence east 200.0 feet; thence  
south 226.0 feet to the north boundary line of the right of  
way of the county road; thence southwesterly along the arc  
of a curve to the right a distance of 206.3 feet; thence  
north 276.4 feet to the point of beginning. AND The west  
400 feet of the following described property: That portion  
of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M.  
described as follows: A tract of land bounded by a line  
beginning at a point 172.0 feet south of a point 560.7 feet  
east of the northwest corner of said subdivision, and  
running thence east, parallel with the north line of said  
subdivision, 760.5 feet to a point on the west right of way  
line of the county road; thence S 16°16' W, along said right  
of way, 186.9 feet; thence west 705.5 feet; thence north  
178.5 feet to the point of beginning.  
9 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Clarence & Hazel J. Harrell COURT CLAIM NO. 0477  
2 Source: Manastash Creek  
3 Use: Irrigation of 4.5 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.125 cubic foot per second from April 1 to June 30 and  
6 0.062 cubic foot per second from July 1 to October 31;  
37.483 acre-feet per year  
7 Priority Date: June 30, 1878  
8 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
9 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
10 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
11  
12 CLAIMANT NAME: Clarence & Hazel J. Harrell COURT CLAIM NO. 0477  
13 Source: Manastash Creek  
14 Use: Irrigation of 40 acres  
15 Period of Use: April 1 to October 31  
16 Quantity: 1.250 cubic feet per second from April 1 to June 30 and 0.62  
17 cubic foot per second from July 1 to October 31  
Priority Date: June 30, 1878  
Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.  
Place of Use: The NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Clarence & Hazel J. Harrell COURT CLAIM NO. 0477  
2 Source: Manastash Creek  
3 Use: Irrigation of 30 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.750 cubic foot per second from April 1 to June 30 and 0.37  
6 cubic foot per second from July 1 to October 31; 224.47  
7 acre-feet per year  
8 Priority Date: June 30, 1878  
9 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
10 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 17 N.,  
11 R. 18 E.W.M.  
12 CLAIMANT NAME: Harold L. and Gloria P. Lindstrom COURT CLAIM NO. 1772  
13 Source: Manastash Creek  
14 Use: Irrigation of 1.25 acres  
15 Period of Use: April 1 to October 31  
16 Quantity: 0.03 cubic foot per second from April 1 to June 30, 0.015  
17 cubic foot per second from July 1 to October 31; 9.37 acre-  
feet per year  
18 Priority Date: June 30, 1878  
19 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
20 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
21 N., R. 17 E.W.M.  
22 Place of Use: That portion of the S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18  
23 E.W.M. described as follows: Beginning 350.5 feet south and  
24 560.9 feet east of the northwest corner of said subdivision,  
thence east 200.0 feet; thence south 276.4 feet to the north  
right of way of the county road; thence S 86°34' W along  
said road 200.4 feet; thence north 303.5 feet to the point  
of beginning.  
25 Special Provision: This land may have a supplemental water right through the  
26 Kittitas Reclamation District, which is exercised when  
27 sufficient creek water is not available.  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Dean A. and Dorothy I. Ross COURT CLAIM NO. 0923  
2 Source: Manastash Creek  
3 Use: Irrigation of 2.5 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.0625 cubic foot per second from April 1 to June 30,  
6 0.03125 cubic foot per second from July 1 to October 31;  
18.3 acre-feet per year  
7 Priority Date: June 30, 1878  
8 Point of Diversion: 600 feet north and 700 feet east from the southwest corner  
9 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17  
N., R. 17 E.W.M.  
10 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
11 5, T. 17 N., R. 18 E.W.M. described as follows: Beginning  
12 at a point 178 feet east of the northwest corner of the  
13 SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence east 186.7 feet; thence south 678.5 feet  
to Hanson Road; thence S 87°30' W 186.9 feet along said  
county road; thence north 704.5 feet to the place of  
beginning.  
14 Special Provision: This land may have a supplemental water right through the  
15 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Ewing Stringfellow COURT CLAIM NO. 1967  
2 Source: Manastash Creek  
3 Use: Irrigation of 32 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.64 cubic foot per second from April 1 to June 30, 0.32  
cubic foot per second from July 1 to October 31, 192.15  
acre-feet per year for irrigation; 0.01 cubic foot per  
second, 1 acre-foot per year for stock water  
6  
7 Priority Date: June 30, 1879  
8  
9 Point of Diversion: 550 feet south and 650 feet east of the north quarter corner  
of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17  
N., R. 17 E.W.M.  
10  
11 Place of Use: That portion of the west 2050 feet of the NE $\frac{1}{4}$  of Section 18,  
T. 17 N., R. 18 E.W.M. lying north of the Kittitas  
Reclamation District Canal  
12  
13 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
14  
15 CLAIMANT NAME: Boise Cascade Corporation COURT CLAIM NO. 2206  
16 Source: Unnamed spring (No. 179)  
17 Use: Stock water  
18 Period of Use: Continuous  
19 Quantity: 0.01 cubic foot per second, 0.25 acre-foot per year  
20 Priority Date: April 30, 1880  
21 Point of Diversion: 130 feet north and 540 feet east of the center of Section  
15, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R.  
16 E.W.M.  
22  
23 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R. 16 E.W.M.  
24  
25  
26  
27  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Wayne and Margaret Smith COURT CLAIM NO. 0258  
2 Source: An unnamed spring  
3 Use: Irrigation of 5 acres and stock water  
4 Period of Use: April 1 to October 31 for irrigation, continuous for stock  
water  
5 Quantity: 0.125 cubic foot per second, 37.75 acre-feet per year for  
irrigation; 0.01 cubic foot per second, 1 acre-foot per year  
for stock water  
6 Priority Date: June 30, 1880  
7 Point of Diversion: 20 feet south and 850 feet east from the west quarter corner  
of Section 7, being within Government Lot 3 of Section 7,  
T. 17 N., R. 17 E.W.M.  
8 Place of Use: The south 330 feet of the east 660 feet of Government Lot 2,  
Section 7, T. 17 N., R. 18 E.W.M.  
9 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
10  
11  
12 CLAIMANT NAME: K. Bruce & Jean G. Skibeness COURT CLAIM NO. 1896  
13 Source: Manastash Creek  
14 Use: Irrigation of 20 acres and stock water  
15 Period of Use: April 1 to October 31  
16 Quantity: 0.625 cubic foot per second from April 1 to June 30, 0.3125  
cubic foot per second from July 1 to October 31; 188.71  
acre-feet per year for the irrigation of 20 acres; 0.01  
cubic foot per second; 1 acre-foot per year for stock water  
17 Priority Date: June 30, 1881  
18 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
19 Place of Use: That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18  
E.W.M. lying south of Susan Road.  
20 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Carroll D. & Beverly J. Richards COURT CLAIM NO. 0328  
2 Source: Manastash Creek  
3 Use: Irrigation of 60 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 1.5 cubic feet per second from April 1 to June 30, 0.75  
6 cubic foot per second from July 1 to October 31; 452.93  
acres per year  
7 Priority Date: June 30, 1882  
8 Point of Diversion: 150 feet north and 1200 feet east from the south quarter  
9 corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11,  
T. 17 N., R. 17 E.W.M.  
10 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M. lying north  
11 of the Hatfield-Amlin Ditch and south of the Richards Road  
12 AND the W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M.  
13 described as follows: Beginning at the northeast corner of  
14 the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12; thence south 631.65 feet;  
15 thence S 43° W 180 feet more or less; thence S 19° W 592  
feet more or less; thence north to Richards Road; thence  
beginning.  
16 Special Provision: This land may have a supplemental water right through the  
17 Kittitas Reclamation District, which is exercised when  
18 sufficient creek water is not available.  
19  
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27

REPORT OF REFEREE

Re: Subbasin No. 11

1 CLAIMANT NAME: Carroll D. & Beverly J. Richards COURT CLAIM NO. 0328  
2 Source: Manastash Creek  
3 Use: Irrigation of 60 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 1.5 cubic feet per second from April 1 to June 30, 0.75  
6 cubic foot per second from July 1 to October 31; 452.93  
7 acre-feet per year  
8 Priority Date: June 30, 1883  
9 Point of Diversion: 150 feet north and 1200 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. 17 N., R. 17 E.W.M.  
10 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 1, T. 17 N., R. 17  
E.W.M. described as follows: Beginning at the southeast  
corner of said Section; thence west 1050 feet; thence north  
450 feet; thence N 23° E 500 feet more or less; thence north  
900 feet more or less; thence N 80° W 950 feet more or less;  
thence east to the east quarter corner of Section 1; thence  
south to the point of beginning.  
11 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
12  
13  
14 CLAIMANT NAME: Packwood Canal Company COURT CLAIM NO. 0785 & 4801  
15 Source: Hatfield Canyon Creek  
16 Use: Irrigation of 154 acres  
17 Period of Use: April 1 to October 31  
18 Quantity: 2.5 cubic feet per second, 1032.55 acre-feet per year  
19 Priority Date: June 30, 1885  
20 Point of Diversion: 600 feet east of the southwest corner of Section 29, being  
within either the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 or the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 32, T. 18 N., R. 18 E.W.M.  
21 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section  
32, T. 18 N., R. 18 E.W.M. all lying north and east of the  
Packwood Canal.

## 27 REPORT OF REFEREE

28 Re: Subbasin No. 11

1 CLAIMANT NAME: Edward L. & Anna G. Sullivan COURT CLAIM NO. 3204  
2 Source: Manastash Creek  
3 Use: Irrigation of 3 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.075 cubic foot per second from April 1 to June 30, 0.0375  
6 cubic foot per second from July 1 to October 31; 22.6 acre-  
feet per year  
7 Priority Date: June 30, 1886  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
9 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 18 E.W.M.  
10 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M., less the  
west 211 feet thereof  
11 Special Provision: This land may have a supplemental water right through the  
12 Kittitas Reclamation District, which is exercised when  
13 sufficient creek water is not available.  
  
14 CLAIMANT NAME: Wayne W. & Juanita Wells and COURT CLAIM NO. 0578  
15 Theodore & Colleen Sonstegaard  
16 Source: Manastash Creek  
17 Use: Irrigation of 27 acres and stock water  
18 Period of Use: April 1 to October 31 for irrigation, continuous for stock  
water  
19 Quantity: 0.675 cubic foot per second from April 1 to June 30, 0.34  
20 cubic foot per second from July 1 to October 31; 204 acre-  
feet per year  
21 Priority Date: June 30, 1886  
22 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
23 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
24 Place of Use: The south 1038 feet of Government Lot 4 and the west 79 feet  
25 of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
26 Special Provision: This land may have a supplemental water right through the  
27 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Thomas C. and Kathleen Brunson COURT CLAIM NO. 1055  
2 Source: Bull Pen Creek  
3 Use: Irrigation of 48 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 2.5 cubic feet per second, 738 acre-feet per year  
6 Priority Date: June 9, 1887  
7 Point of Diversion: 250 feet south and 200 feet west from the north quarter  
8 corner of Section 32, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32,  
T. 18 N., R. 18 E.W.M.  
9 Place of Use: That portion of the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 29, T. 18 N., R. 18  
10 E.W.M. described as follows: Commencing at the southeast  
corner of said section; thence west 1175 feet more or less  
11 to the west bank of the Yakima River and the point of  
beginning; thence N 18° W 875 feet more or less; thence west  
465 feet more or less; thence S 67° E 110 feet more or less;  
thence S 63° W 500 feet more or less; thence N 35° W 975  
feet more or less; thence west 450 feet more or less; thence  
S 4° W 300 feet more or less; thence southeast along a  
concrete line ditch 1100 feet more or less to the south  
boundary of Section 29; thence east 1500 feet more or less  
to the point of beginning. AND That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
15 Section 32, T. 18 N., R. 18 E.W.M. described as follows:  
Commencing at the northeast corner of said section; thence  
west 1050 feet more or less to the west bank of the Yakima  
16 River and the point of beginning; thence west 1500 feet more  
or less; thence S 29° E 500 feet more or less; thence E 1375  
feet more or less to the west bank of the Yakima River;  
thence northwest along said west bank 500 feet more or less  
18 to the point of beginning.  
19 Limitation on Use: The authorized quantity of water is the maximum that can be  
20 used to irrigate the 48 acres from this source and waters  
from the Packwood Canal.

1 CLAIMANT NAME: Larry & Harriet L. Bland COURT CLAIM NO. 1723 & 4410(A)  
2 and Bart Bland  
3 Source: Manastash Creek  
4 Use: Irrigation of 10 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.25 cubic foot per second from April 1 to June 30, 0.125  
cubic foot per second from July 1 to October 31; 75.69 acre-  
feet per year  
7 Priority Date: June 30, 1888  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
9 Place of Use: The NW $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M. lying north of  
the Kittitas Reclamation District Canal, EXCEPT the north  
691 feet of the west 990 feet thereof.  
10 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
11  
12  
13  
14  
15 CLAIMANT NAME: George B. Brain COURT CLAIM NO. 2287  
16 Source: Spring Creek  
17 Use: Irrigation of one-half acre  
18 Period of Use: April 1 to October 31  
19 Quantity: 0.0125 cubic foot per second, 3.75 acre-feet per year  
20 Priority Date: February 16, 1889  
21 Point of Diversion: 25 feet south and 1125 feet east from the north quarter  
corner of Section 9, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9,  
T. 17 N., R. 18 E.W.M.  
22  
23 Place of Use: The south 200 feet of the east 300 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 4, T. 17 N., R. 18 E.W.M. lying west of Brown Road.  
24  
25  
26  
27  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Eugene E. & Rhodesa M. Walsh COURT CLAIM NO. 0987  
2 and Edmund T. and Margery Christian  
3 Source: Manastash Creek  
4 Use: Irrigation of 20 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.50 cubic foot per second from April 1 to June 30, 0.25  
7 cubic foot per second from July 1 to October 31; 150.96  
8 acre-feet per year  
9 Priority Date: June 30, 1889  
10 Point of Diversion: 600 feet north and 700 feet east of the southwest corner of  
11 Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N.,  
12 R. 17 E.W.M.  
13 Place of Use: Government Lots 6 and 7, Section 6, T. 17 N., R. 18 E.W.M.  
14 Special Provision: This land may have a supplemental water right through the  
15 Kittitas Reclamation District, which is exercised when  
16 sufficient creek water is not available.  
17  
18 CLAIMANT NAME: 3 Bar G Ranch COURT CLAIM NO. 2068  
19 Source: Unnamed spring  
20 Use: Stock water  
21 Period of Use: Continuous  
22 Quantity: 0.02 cubic foot per second, 6 acre-feet per year  
23 Priority Date: January 1, 1890  
24 Point of Diversion: 950 feet north and 150 feet east of the south quarter corner  
25 of Section 32, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, T. 18  
26 N., R. 18 E.W.M.  
27 Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. lying  
28 south of the Thorp Highway

1 CLAIMANT NAME: Richard T. and Lynn Cole COURT CLAIM NO. 1969  
2 Source: Manastash Creek  
3 Use: Irrigation of 7 acres and stock water  
4 Period of Use: April 1 to October 31 for irrigation; continuously for stock  
water  
5 Quantity: 0.175 cubic foot per second, 52.5 acre-feet per year for  
irrigation; 0.01 cubic foot per second, 1 acre-foot per year  
for stock water  
6 Priority Date: April 19, 1891  
7 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
8 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17  
E.W.M. lying south of the Keach Ditch and north of the  
Kittitas Reclamation District Canal.  
9 Special Provision: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

REPORT OF REFEREE

Re: Subbasin No. 11

1 CLAIMANT NAME: **Walter H. Kembel** COURT CLAIM NO. 2982  
2 Source: **Manastash Creek**  
3 Use: **Irrigation of 1.5 acres**  
4 Period of Use: **April 1 to October 31**  
5 Quantity: **0.06 cubic foot per second; 12 acre-feet per year**  
6 Priority Date: **April 19, 1891**  
7 Point of Diversion: **1300 feet south and 225 feet east from the west quarter  
corner of Section 4, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4,  
T. 17 N., R. 18 E.W.M.**  
8  
9 Place of Use: **That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 17 N., R. 18  
E.W.M. described as follows: Beginning at the intersection  
of the south line of the SE $\frac{1}{4}$  of Section 4 and the easterly  
margin of Brown Road; thence northwesterly along said  
easterly margin 110 feet to the true point of beginning;  
thence continuing northwesterly along said easterly margin  
280 feet; thence east parallel with the south line of said  
SE $\frac{1}{4}$  280 feet; thence southeasterly parallel with the  
easterly margin of said Brown Road 280 feet; thence west  
parallel with the south line of said SE $\frac{1}{4}$  280 feet to the  
easterly margin of said Brown Road and the true point of  
beginning.**  
10  
11  
12  
13  
14  
15  
16 CLAIMANT NAME: **Brian & Carol Mellergaard** COURT CLAIM NO. 2982  
17 Source: **Manastash Creek**  
18 Use: **Irrigation of 22 acres**  
19 Period of Use: **April 1 to October 31**  
20 Quantity: **0.75 cubic foot per second, 163.68 acre-feet per year**  
21 Priority Date: **April 19, 1891**  
22 Point of Diversion: **1300 feet south and 225 feet east from the west quarter  
corner of Section 4, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4,  
T. 17 N., R. 18 E.W.M.**  
23 Place of Use: **That portion of the SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18 E.W.M.  
lying north of Spring Creek and west of the Yakima River.**  
24 Special Provision: **This land may also have a water right through the West Side  
Irrigating Company.**  
25  
26  
27  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

1 CLAIMANT NAME: Lee W. Roe and Kathlyn E. Hitch COURT CLAIM NO. 4584  
2 Source: Manastash Creek  
3 Use: Irrigation of 15 acres and stock water  
4 Period of Use: April 1 to October 31 for irrigation; continuous for stock  
water  
5 Quantity: 0.275 cubic foot per second; 60 acre-feet per year for the  
irrigation of 15 acres; 0.275 cubic foot per second; 1 acre-  
foot per year for continuous stock water  
6 Priority Date: June 30, 1892  
7 Point of Diversion: 1150 feet north and 300 feet east of the center of Section  
16, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 17  
E.W.M.  
8 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 17  
E.W.M. lying south of Manastash Creek  
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REPORT OF REFEREE

Re: Subbasin No. 11

1 CLAIMANT NAME: Haldon J. and Ulma J. Baumann COURT CLAIM NO. 1593  
2 Source: Manastash Creek  
3 Use: Irrigation of 6 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.150 cubic foot per second, 45.0 acre-feet per year  
6 Priority Date: January 16, 1896  
7 Point of Diversion: 1150 feet north and 625 feet west from the center of  
8 Section 15, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 17 N.,  
R. 17 E.W.M.  
9 Place of Use: That portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 17 N., R. 17  
10 E.W.M. bounded by a line described as follows: Beginning at  
11 the southwest corner of said Section 15; thence N 0°00'00" E  
12 along the west boundary, 1742.12 feet; thence N 86°29'17" E  
13 1638.39 feet to the true point of beginning; thence S  
14 3°43'46" E, 466.78 feet; thence N 82°34'40" E 641.68 feet;  
15 thence N 3°43'46" W 413.34 feet; thence N 99°04'54" W 102.04  
16 feet; thence S 86°28'26" W 538.81 feet to the true point of  
17 beginning, EXCEPT a tract of land which is described as  
18 follows: Beginning at a point which is 571 feet east of a  
19 point 1134.8 feet south of the west 1/16th section corner on  
20 the north boundary of said section; thence running N 79°21'  
21 E, along the south line of county road right of way, 190.4  
22 feet; thence S 4°46' E, 136.0 feet; thence S 81°37' W 193  
23 feet; thence N 3°20' W 129 feet to the true point of  
24 beginning.

1 CLAIMANT NAME: Burton J. and Carol M. Williams COURT CLAIM NO. 0907  
2 Source: Manastash Creek  
3 Use: Irrigation of 6 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.150 cubic foot per second, 45.0 acre-feet per year  
6 Priority Date: January 16, 1896  
7 Point of Diversion: 1150 feet south and 950 feet east from the north quarter  
corner of Section 15, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15,  
T. 17 N., R. 17 E.W.M.  
9 Place of Use: The north 300 feet of the west 460 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
the west 460 feet of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  lying south of Manastash  
Road, ALL in Section 15, T. 17 N., R. 17 E.W.M.  
11 CLAIMANT NAME: May Moffet Mitchell Gage COURT CLAIM NO. 4522  
12 Source: An unnamed spring  
13 Use: Irrigation of 4 acres, single domestic supply, stock water  
14 Period of Use: April 1 to October 31 for irrigation; continuously for  
domestic supply and stock water  
16 Quantity: 0.10 cubic foot per second; 20 acre-feet per year for  
irrigation; 0.02 cubic foot per second, 1 acre-foot per year  
for single domestic supply; 0.01 cubic foot per second, 1  
acre-foot per year for stock water  
19 Priority Date: June 30, 1902  
20 Point of Diversion: 1720 feet north and 200 feet east of the south quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 17 E.W.M.  
22 Place of Use: The NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.

1 CLAIMANT NAME: Washington State Department of COURT CLAIM NO. 0589  
2 Natural Resources  
3 Source: Unnamed spring  
4 Use: Irrigation of 2 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.02 cubic foot per second; 6 acre-feet per year  
7 Priority Date: March 12, 1962  
8 Point of Diversion: 400 feet south and 950 feet west from the northeast corner  
9 of Section 16, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17  
N., R. 17 E.W.M.  
10 Place of Use: The south 225 feet of the east 400 feet of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
11 Section 16, T. 17 N., R. 17 E.W.M.  
12 CLAIMANT NAME: Charley and Jean Wheeler COURT CLAIM NO. 2192  
13 Source: Unnamed spring  
14 Use: single domestic supply  
15 Period of Use: Continuous  
16 Quantity: 0.01 cubic foot per second; 2 acre-feet per year  
17 Priority Date: March 12, 1962  
18 Point of Diversion: 400 feet south and 950 feet west from the northeast corner  
19 of Section 16, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17  
N., R. 17 E.W.M.  
20 Place of Use: The north 225 feet of the south 360 feet of the west 330  
21 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 17 N., R. 17 E.W.M.

22       4. All prior claims to rights for surface water from Subbasin No. 11,  
23 including those claims filed under the provisions of Chapter 90.14 RCW, are denied,  
24 unless expressly provided for herein. The "Water Right Claims Registry" directed by  
25 RCW 90.14.111 should be supplemented with appropriate notations to the records of

1 those claims specifically identified in the "Water Right Claims" section of  
2 Plaintiff's Exhibit No. SE-3.

3 The following Certificates of Water Right, issued by the Department of Ecology  
4 or its predecessor agencies of the State of Washington, will be made null and void:  
5

6 Certificates of Surface Water Right

Certificates of Change

7 10236 and 08650

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8 X. CONCLUSIONS OF LAW

9 Confirmation of Rights

10 The priority date, source, point of diversion, location, maximum instantaneous  
11 diversion rate, annual quantity, period of use, nature of beneficial use, and place  
12 of use which are shown in the foregoing Findings of Fact for each claimant therein  
13 referred are recommended to be confirmed as water rights of those claimants.  
14

15 Duty of Water

16 Unless otherwise specified, the diversion of water from sources of water  
17 contained within Subbasin No. 11 for irrigation purposes shall be limited, at a  
18 maximum, to 1.0 cubic foot per second for each 40 acres irrigated, not to exceed 7.5  
19 acre-feet per year per acre.  
20

21 Irrigation Season

22 Unless otherwise identified within a specific water right, the irrigation  
23 season shall be defined as that period from April 1 to and including October 31 of  
24 each year. The Referee recognizes that extraordinary circumstances may dictate the  
25 application of water prior to or subsequent to the defined irrigation season, and,  
26

1 in that event, express approval from the Department of Ecology must be obtained  
2 annually prior to such deviation.

3

4 Certificates of Adjudicated Water Right

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

10

11 Administration of Water

12 The use of Subbasin No. 11 waters should be regulated by the Department of  
13 Ecology on the basis of Certificates of Adjudicated Water Rights issued as a result  
14 of this proceeding, and on the basis of any permits and certificates that may have  
15 issued outside of this proceeding under appropriation procedures of Chapter 90.03  
16 RCW. When available water in Subbasin No. 11 is insufficient to supply all rights,  
17 and upon a finding that regulation is required, the Department may regulate junior  
18 water rights in the interest of satisfying senior water rights.

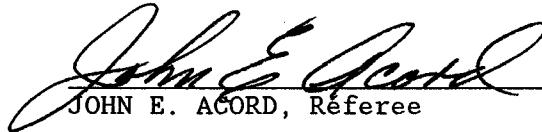
19 Whenever regulation of junior water rights is necessary, the Department may  
20 enter at reasonable times upon the lands of any and all parties having rights and  
21 shall regulate diversion facilities so as to apportion the waters as herein  
22 adjudicated.

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

1 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person  
2 authorized to use surface water from Subbasin No. 11 may be required to provide and  
3 maintain, at the water users expense, proper diversion works and/or measuring  
4 devices. Design, installation, maintenance, and operation of such works and  
5 measuring devices will be as prescribed by the Department.

6 SIGNED and DATED at Yakima, Washington, this 9th day of

7 May, 1994.

8   
9 JOHN E. ACORD, Referee