

FILED  
MAY 9 1994

YAKIMA RIVER BASIN  
WATER RIGHTS ADJUDICATION

KIM M. EATON, YAKIMA COUNTY CLERK

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

**REPORT OF REFEREE**

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

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

REPORT OF REFEREE - VOLUME 19

9224

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

3                   IN THE MATTER OF THE DETERMINATION )  
4                   OF THE RIGHTS TO THE USE OF THE      )  
5                   SURFACE WATERS OF THE YAKIMA RIVER )  
6                   DRAINAGE BASIN, IN ACCORDANCE WITH )  
7                   THE PROVISIONS OF CHAPTER 90.03,     )                   No. 77-2-01484-5  
8    )  
9    )                   REPORT OF REFEREE  
10    )                   Re: Subbasin No. 8  
11    )                   (Thorp)  
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12                   To the Honorable Judge of the above-entitled Court, the following report is  
13                   respectfully submitted:

14  
15                   I. BACKGROUND

16                   This report concerns the determination of a portion of the surface water  
17                   rights of the Yakima River Drainage Basin, specifically those rights located  
18                   within Subbasin No. 8 (Thorp). The criteria used by the Referee in the  
19                   evaluation of claims in this subbasin, consisting of applicable law and bases for  
20                   water right determinations, can be found in the Report of the Referee to the  
21                   Court, Preface to Subbasin and Major Category Reports, Volume 2, dated May 18,  
22                   1988.

23                   Evidentiary hearings were conducted by the Referee on December 6, 7, 8 and  
24                   9, 1989.

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1                   II. FIELD INVESTIGATIONS

2                   Field surveys were conducted by the Department of Ecology staff during 1987  
3                   and 1988 to obtain information on existing water use patterns in Subbasin No. 8  
4                   for use in the adjudication proceedings. Ditches, pipelines, pumps and wells  
5                   were located and mapped. Map exhibits were prepared to show all pertinent  
6                   features. Aerial photographs and topographic maps of the area in addition to  
7                   county assessor's plats were utilized in conjunction with on-site field  
8                   investigation.

9                   III. WATER DUTY

10                  The Plaintiff did not provide expert testimony on water duty for this  
11                  subbasin, but did identify Washington State University's circular entitled  
12                  "Irrigation Requirements for Washington--Estimates and Methodology", as being  
13                  previously submitted into evidence. Individual claimants and their witnesses  
14                  provided testimony on water use. As much as possible, the Referee proposes to  
15                  rely on the testimony of the witnesses appearing on behalf of the individual  
16                  claimants.

17                  The maximum duty of water for the various uses in Subbasin No. 8 will be  
18                  calculated by the Referee, in the absence of definitive testimony or other  
19                  evidence, according to the following formulae:

- 20                  A.     Domestic supply and  
21                      lawn and garden up to  
22                      ½ acre.....0.02 cfs; 2 acre-feet per  
23                      year  
24                      Stock water.....1 acre-foot per year  
25                      (diversion)

26                  B.     Irrigation Water -- The Referee reviewed testimony and evidence  
27                  submitted in an adjoining subbasin, Subbasin No. 6 (Taneum), which is located

north of the Thorp subbasin. Subbasin No. 6 had a water purveyor, the Taneum Ditch Company, that set forth through expert testimony, the general water duty of 6.6 acre-feet per year per acre irrigated needed from their primary sources of water. Although the source of water for the Taneum Ditch Company is Taneum Creek located in Subbasin No. 6, the service area (or place of use) lies predominately within Subbasin No. 8. The Referee will utilize the water duty of 6.6 acre-feet per year per acre irrigated when testimony is not provided for historic use.

The maximum rate of diversion or withdrawal will be calculated on the basis of 1.0 cubic foot per second (449 gallons per minute) for each 50 acres of irrigation, irrespective of the type of crop. Therefore, for each irrigated acre, the Referee calculates the maximum instantaneous rate of diversion to be 0.02 cubic foot per second (9 gallons per minute). It is the opinion of the Referee that the aforementioned duty of water is a reasonable maximum application rate for the soil and topographic conditions in Subbasin No. 8. These volumes and rates of water application will be employed by the Referee when quantitative evidence of the rate and volume of a right was neither submitted nor made clear during testimony.

#### IV. STIPULATIONS

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

It is hereby stipulated by all claimants in the above-entitled cause that all exhibits entered and all testimony taken at the hearing on claims held beginning December 6, 1989, may be utilized by any party in the proof of a claim or the contesting of a claim whenever relevant and material.

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1       The second is a stipulation by the parties in relation to the description  
2       of properties identified in the claims of the defendants to this action, and  
3       reads as follows:

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

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

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

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

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

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

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

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

4

5 V. LAND DESCRIPTIONS

6 The Referee has chosen, in the interest of minimizing future controversy  
7 and confusion, to reduce legal descriptions of properties relating to confirmed  
8 rights to the smallest reasonable legal subdivision in which are contained the  
9 actual places of use. It is believed that the basic integrity of the right will  
10 not only be preserved, but strengthened by this measure.

11

12 VII. SPECIAL ISSUES

13 Return Flows

14 Many of the defendants in this subbasin are asserting rights to the use of  
15 return flow waters. The Court has used the definition of "return flows"  
16 contained in 2 Hutchins, Water Right Laws in the Nineteen Western States (1974),  
17 page 568 as follows: "'Return flow' is water diverted for irrigation or other  
use that returns to the stream from which it is diverted, or to some other  
stream, or that would do so if not intercepted by some obstacle."

18 The Court considers return flow waters to include waste water and seepage  
19 water. The defendants who are claiming return flow waters lie below the Kittitas  
20 Reclamation District canal. The contract between the United States and the  
21 Kittitas Reclamation District specifically addresses return flow waters within  
22 the reclamation district boundaries as follows:

23 34. (a) The United States does not abandon or relinquish any of the  
waste, 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 intended to be retained for the use and benefit of the United  
States as a source of supply for the project.

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(b) If suitable drainage or return-flow water from any part of the 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 a part of the supply to which the lands in the District are entitled.

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

Additionally, in a recent Washington State Supreme Court case, State of Washington, D.O.E. v. U.S. Bureau of Reclamation, et al., 118 Wn.2d 761, 827 P.2d 275 (1992), the Supreme Court held that the appropriator of the water retains its rights to use the water so long as the water remains within the boundaries of the appropriator's property and that only Federal agencies and those entities with whom they contract have authority to make decision regarding the distribution of water within a Federal irrigation project. The Supreme Court found that the Federal government, through the Bureau of Reclamation, was the appropriator of water in a Federal project and had control of the water until it left the project boundaries.

Additionally, the return flow water derived from irrigation practices using water from the Kittitas Reclamation District, the West Side Irrigating Company, Taneum Canal Company and the Menastash Water Ditch Company canals or seepage from the canals would be foreign return flows as the water in these canals is diverted from the Yakima River outside Subbasin No. 8, Taneum Creek or Manastash Creek, also outside of Subbasin No. 8. The Washington State Court of Appeals has held in the case of Dodge v. Ellensburg Water Co., 46 Wn App. 77, 82, 729 P.2d 631 (1986), that ". . . no water rights, prescriptive or otherwise, exist in these waters." In a much earlier case, Elgin v. Weatherstone, 123 Wash. 429, 212 P.

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562 (1923), the Washington Supreme Court ruled that foreign waters are of a vagrant or fugitive nature and may be used by the first person who can take them from the stream where they are found. The ruling also found that the fact that a riparian owner was first to appropriate vagrant surplus waters in a creek did not give him the exclusive right to take it the next year.

The above cited cases lead the Referee to conclude that rights cannot be confirmed for the use of return flow waters that originate from the application of water from either the Kittitas Reclamation District, the West Side Irrigating Company, the Taneum Canal Company or the Menastash Water Ditch Association canals, or seepage from those canals. Therefore, the only possible rights to return flow waters that could be confirmed in the Thorp Subbasin would be return flows resulting solely from the use of surface waters originating within the subbasin, such as Fogey Creek. In order for the Referee to recommend that rights be confirmed for use of return flow waters, the defendants would need to present evidence to show that the return flows originated from use of creek(s) water, not Yakima Project water or foreign return flows; evidence of the quantity of return flow water used; historic use of the water; and the legal foundation for the water use. Without that specific testimony, the Referee cannot recommend confirmation of rights for use of return flow water.

## **VI. WATER RIGHT PRIORITIES**

When the testimony and evidence leading to a confirmed right is no more specific with respect to the priority date than the year, the Referee has elected to use the 30th of June as representing a midpoint of that particular year. In those cases when the priority to be confirmed is not more specific than the

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1 month, the last day of that month will be used. This has been done in the  
2 interest of consistency and compatibility with other rights.

3

4 VIII. TESTIMONY AND REFEREE'S ANALYSES

5 Plaintiff Testimony

6 The Plaintiff State of Washington, Department of Ecology, was represented  
7 by Mr. Charles B. Roe and Ms. Ceil Buddeke, Assistant Attorneys General.

8 The State introduced into evidence the following generic exhibits:

<u>NUMBER</u>	<u>DESCRIPTION</u>
SE-1	Map -- Subbasin No. 8--Inset A.
SE-2	Map -- Subbasin No. 8.
SE-3	Water Right Certificates, Permits, Surface Water Claims RE: Subbasin No. 8.
SE-4	Investigation Reports for the Claimants in Subbasin No. 8

14 Additionally, oral testimony was given by Mr. Clay Keown, Field  
15 Investigator, Ecology Adjudication Section.

16 Claimant Testimony

17 Seventy-three defendants filed statements of claim or notices of appearance.  
18 All claimants and their legal counsel, if so represented, are as follows:

<u>Court</u>	<u>Claim</u>	<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page(s)</u>
		2266	William Bews, Jr. Rt. 1 Box 375 Ellensburg, WA 98926	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926	19, 149
		1722	Dale K. & Jewel E. Black Rt. 1 Box 415 Ellensburg, WA 98926	Hugh M. Spall P. O. Box 831 Ellensburg, WA 98926	24, 149

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1	0931, 1750	Bart Bland Rt 1, Box 1154 Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Ellensburg, WA 98837	112, 149
2				
3	1055	Thomas C. & Kathleen Brunson Rt. 1 Box 320 Ellensburg, WA 98926		27, 148, 159
4				
5	1086	Jennie Callahan Rt. 1 Box 525 Ellensburg, WA 98926		53, 161
6				
7	0715	Kenneth R. & Ruth I. Carpenter Rt. 1 Box 366 Ellensburg, WA 98926		19, 149
8				
9	1074	William G. & Julia Charles 910 E. Washington Ellensburg, WA 98926		55, 167
10				
11	2176	Paul W. & Marcia A. Cloutier Rt. 1 Box 355 Ellensburg, WA 98926	Hugh M. Spall P. O. box 831 Ellensburg, WA 98926	57, 149
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14	1894	Glenn & Robin Collins Rt. 1 Box 538 Ellensburg, WA 98926		58, 149
15				
16	0931	Dave Duncan, et al. Rt. 1 Box 740 Ellensburg, WA 98926	Harrison K. Dano P. O. Box 1159 Moses Lake, WA 98837	112, 149
17				
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19	1029	Bob & Connie Dunnington Rt. 1 Box 755 Ellensburg, WA 98926		134, 148, 149
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22	0570	Andrew & Evelyn Dyk Rt. 1 Box 515 Ellensburg, WA 98926		58, 148, 149
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1	0931	Dale Dyk Rt. 1 box 760 Ellensburg, WA 98926	112, 149
2	1009	Martin & Frances Dyk Rt. 1 Box 495 Ellensburg, WA 98926	61, 148, 149
3	2074	Audrey Irene Evans Box 560 DD Rt. 1 Ellensburg, WA 98926	James E. Hurson P. O. box 499 Ellensburg, WA 98926 65, 148, 164
4	2372	William R., Jr. & Joy Lourena Fields Box 117 Thorp, WA 98946	18, 153
5	2373	William R. Fields, Sr. Box 35 Thorp, WA 98946	18, 154
6	1562	Estate of Eva Frances Fischer c/o Paul Fischer, Executor P.O. Box 103 Thorp, WA 98946	70, 149
7	1799	John P. & Barbara W. Foster 809 East Third Ave. Ellensburg, WA 98926	72, 148, 149
8	4817	David W. & Lyla M. Fudacz P.O. Box 24 Thorp, WA 98946	James E. Hurson P. O. Box 499 Ellensburg, WA 98926 74, 166
9	4818	Larry T. Fudacz 211 Garden Street Cle Elum, WA 98922	James E. Hurson P. O. Box 499 Ellensburg, WA 98926 74, 150
10	1810	Ben F. & Nina M. George Rt. 1 Box 120 Thorp, WA 98946	77, 148, 150, 160

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1	0796	Steve E. & Ann E. George 31 High Valley View St. Yakima, WA 98901	79, 150
2			
3	2046	Elwin & Patricia Gibson Rt. 1 Box 305 Thorp, WA 98946	81, 151, 160
4			
5	2046	Claude & Lillian Gibson P. O. Box 73 Thorp, WA 98946	81, 151, 160
6			
7	2046	Wesley Gibson, et al. P.O. Box 73 Thorp, WA 98946	James E. Hurson P. O. Box 499 Ellensburg, WA 98926
8			81
9			
10	2068	Robert Gregerich, Secretary Agent for 3 Bar G Ranch Rt. 1 Box 435 Thorp, WA 98946	30, 149, 150
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13	0311	Gordon Groven P.O. Box 172 Thorp, WA 98946	18, 163
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16	1560	Charles & Darleen Gust Rt. 1 Box 338 Ellensburg, WA 98926	James E. Hurson P. O. Box 499 Ellensburg, WA 98926
17			90, 150
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19	0520	Paul & Marjorie J. Harrel Rt. 1 Box 550 Ellensburg, WA 98926	Susan Slothower 120 N. Naches Yakima, WA 98902
20			93, 148, 150
21	0796	Estates of Lloyd A. & Maxine R. Hatfield P.O. Box 77 Thorp, WA 98946	79, 150
22			
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24	1204	Larry O. Hillis 620 SE Everett Mall Way Suite 250 Everett, WA 98204	97, 165, 167
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1	1705 0894	Larry O. & Veralene Hillis 620 SE Everett Mall Way Suite 250 Everett, WA 98204	John P. Gilreath P. O. Box 499 Ellensburg, WA 98926	97, 156
2				
3				
4	0502	Ernest C. & Eleanor Hinckle Rt. 1 Box 380 Ellensburg, WA 98926		19, 150
5				
6	2265	Paul Hoff c/o Mr. Beckley	Kenneth D. Beckley P. O. box 858 Ellensburg, WA 98926	102, 150
7				
8	1335	Horseshoe F Ranch, Inc. Joyce & Ronnie Bloxham P.O. Box 845 Ellensburg, WA 98926	Halverson & Applegate P. O. Box 526 Yakima, WA 98907-0526	33, 149, 150
9				
10				
11	1086	Lloyd K. Howry 8341 Thorp Highway South Thorp, WA 98946		53, 161
12				
13	0876	Ivan & Mildred Hutchinson P.O. Box 101 Thorp, WA 98946	John P. Gilreath P. O. Box 499 Ellensburg, WA 98926	102, 148, 150
14				
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16	0877	Richard O. & Rita Hutchinson P.O. Box 147 Thorp, WA 98946	James E. Hurson P. O. Box 499 Ellensburg, WA 98926	103, 149, 152, 162, 165
17				
18	0551	Joe & Sharon Juinta Rt. 1 Box 368 Ellensburg, WA 98926		19, 150
19				
20				
21	1961	Katie Previs Land Co., Inc. c/o James Ogden Rt. 1 Box 175 Thorp, WA 98946		119, 149
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23				
24	2252	Thomas J. & Helen A. Kirby P.O. Box 151 Thorp, WA 98946		109, 149, 150
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1	1446	Robert F. & Linda L. Lapen Rt. 1 Box 290 Ellensburg, WA 98926	James E. Hurson P. O. Box 499 Ellensburg, WA 98926	40, 157
2	1750	James V. Leishman Rt. 1 Box 180 Thorp, WA 98946		112, 149, 150
3	1189	Clifford M. & Mrs. Clifford Lindsay P.O. Box 115 Thorp, WA 98946		18, 155
4	2046	Irwin & Dorothy Louckes Rt. 1 Box 255 Thorp, WA 98946	James E. Hurson P. O. Box 499 Ellensburg, WA 98926	81, 150
5	0843	Stanley & Eileen Mainwaring 4 Laurie Ln, #4 Missoula, MT 59802		109, 150
6	1987	Marshall & Doris Mason Rt. 1 Box 335 Ellensburg, WA 98926		19, 150
7	2286	John D. McCullough P.O. Box 606 Ellensburg, WA 98926	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926	111, 150
8	1875	Vernon G. & Ellen F. Meyer 11717 - 128th St. East Puyallup, WA 98373	John P. Gilreath P. O. Box 1499 Ellensburg, WA 98926	111, 150
9	0738	Ronald R. McMillian	J. Jay Carroll 405 E. Lincoln Yakima, WA 98901	125, 150
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1	0829	Ronald & Margaret McMillan Rt. 1 Box 580 Ellensburg, WA 98926	132, 158
2	0555	John B. & Marian Moser Rt. 1 Box 385 Ellensburg, WA 98926	19, 150
3	0931	Murray Pacific Corporation	112, 149,
4	1750	c/o James M. Murray Suite 1750 1st Interstate Plaza Tacoma, WA 98402	150
5	2177	Newman Island's Ranch	115, 116,
6	2316	c/o Tyee International 1800 112th Ave. N.E. Suite 220E Bellevue, WA 98004	149, 150, 164
7	2288	Lucille Alby Nicholson 7514 Cole Avenue Highland, CA 92346	Kenneth D. Beckley P. O. Box 858 Ellensburg, WA 98926
8	1961	James & Betsy Ogden Rt. 1 Box 175 Thorp, WA 98946	119, 149, 156, 157
9	0785	Packwood Canal Company, Inc. c/o Thomas C. Brunson, Pres. Rt. 1 Box 320 Ellensburg, WA 98926	Hugh Spall P. O. Box 831 Ellensburg, WA 98926
10	1208	Gene & Sally Panattoni Rt. 1 Box 265 Ellensburg, WA 98926	44, 150
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1	0738	Peoples National Bank of Washington For Claim of Pennovich/ Sunrise Ranch 1414 Fourth Ave. P.O. Box 720 Seattle, WA 98111	James P. Hutton 405 E. Lincoln Yakima, WA 98901	125, 150
2	2150	Wendell W. & Joann S. Prater Rt. 1 Box 430 Ellensburg, WA 98926	Hugh M. Spall P. O. Box 831 Ellensburg, WA 98926	129, 158
3	0633	Wilhelm J. & Bertie Pross P.O. Box 533 Ellensburg, WA 98926		19, 150
4	1335	Theiline P. Scheumann P.O. Box 293 Medina, WA 98039	Halverson & Applegate 311 N. Fourth Street Yakima, WA 98901	33, 149, 150
5	1809	Randell or Tresa Shannon Box 106 Thorp, WA 98946		133, 149, 150
6	0380	Robert M. & Irma Smith Rt 1 Box 369 Ellensburg, WA 98926	Hugh M. Spall P. O. Box 831 Ellensburg, WA 98926	19, 150
7	0931	Roger & Rita Sparks		112, 134,
8	1029	Rt. 1 Box 950 Ellensburg, WA 98926		149, 162
9	0843	Ole D. Spaulding P.O. Box 26 Thorp, WA 98946		109, 150
10	0500	Margaret A. Thayer Rt. 1 Box 370 Ellensburg, WA 98926		19, 150

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1	0725	Thorp Town Ditch Association c/o Gordon E. Blossom, President P.O. Box 135 Thorp, WA 98946	Hugh Spall P. O. Box 831 Ellensburg, WA 98926	18, 163
4	1705	Don M. & M. Louise Ulmer c/o Debbie Basuha Rt. 5 Box 5597 Orland, CA 95963		97, 150
7	2276	United States of America	Charles E. O'Connell U.S. Dept. of Justice P. O. Box 44378 Washington, DC 20026-4378	
11	2049	Upper Columbia Mission Society Seventh Day Adventist South 3715 Grove Road Spokane, WA 99204	Darrel Ellis P. O. Box 337 Cle Elum, WA 98922	139, 150
15	0596	Wynn Vickerman Rt. 1 Box 340 Ellensburg, WA 98926		139, 150
17	0589	WA State Department of Natural Resources Attn: Miriam Louckers Lands & Metals Div. MS LB-13 Olympia, WA 98504		142, 149, 150
21	0589	WA State Department of Natural Resources Attn: Pat Hennessy #2 Airstustrial LB-13 Olympia, WA 98504	Paul Silver Asst. Attorney General DNR PO Box 40100 Olympia, WA 98504-0100	142, 149, 150

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REFEREE'S OFFICE  
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Yakima, WA 98902-5713  
(509) 454-7221

1	2109	WA State Department of Wildlife 600 North Capitol Way Olympia, WA 98504	William Frymire Asst. Attorney General PO Box 40100 Olympia, WA 98504-0100	142, 149, 150
4	0632	Larry E. & Berna M. Walton 415 S. May Ave. #84 Yuma, AZ 85364		139, 150
6	1204	Hubert W. & Mary Ellen Watson Rt. 1 Box 675 Ellensburg, WA 98926	William F. Almon 1104 South 48th Avenue P. O. Box 9365 Yakima, WA 98909-0365	97, 150
9	4398	Dale & Lois Wells P.O. Box 77 Thorp, WA 98946		88, 149, 151
11	1629	West Side Irrigating Co. <sup>1</sup> Glenn Gregory, President P.O. Box 396 - 416 Spragus Ellensburg, WA 98926		
14	1971	Norma Jean Wilcox Rt. 1 Box 280 Thorp, WA 98946		142, 163, 168
17	0718	Kenneth L. & Lillian G. Wilson Rt. 1 Box 40 Thorp, WA 98946		18, 155
19	0980	Carl D. Wray Rt. 1 Box 747 Ellensburg, WA 98926		146, 149, 150
21	1. Major Claimants whose claims will be presented through the Major Claimant pathway identified in Pre-Trial Order No. 8			

27 REPORT OF REFEREE  
28 Re: Subbasin No. 8

1           2068       3 Bar G Ranch, Inc.  
2                   Frank Gregerich, Sr.,  
3                   President  
4                   Rt. 1 box 440  
5                   Ellensburg, WA 98926

30, 149,  
150

6                   The following listed claimant either in whole or in part, were recommended  
7                   for confirmation in the Plaintiff's Report to the Referee (at Page 10 - 14), and  
8                   from which no exceptions were taken.

<u>Name</u>	<u>Court Claim No.</u>
William R. Fields, Jr. & Joy Lourena Fields	2372
William R. Fields, Sr.	2373
Mr. and Mrs. Clifford Lindsey	1189
Thorp Town Ditch Association (Gordon Groven, Claim No. 0311)	0725
Kenneth L. & Lillian G. Wilson	0718

16                   The specific elements of each claimants proposed rights are identified in the  
17                   Findings of Fact commencing on page 149.

18                   The remaining claims, which consist of those claims for which no  
19                   recommendation for confirmation was made by the Plaintiff Department of Ecology, or  
20                   claims to which exception was taken, were scheduled to be heard during the  
21                   evidentiary trial which commenced on December 6, 1989. Based upon the testimony  
22                   and evidence provided to the Referee, the analysis of all remaining claims follows.  
23                   Those claimants associated with the Packwood Canal, along with the claim of the  
24                   Packwood Canal Company, will be addressed first. The remaining claimants shall be  
25                   in alphabetical order.

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29                   REFEREE'S OFFICE  
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1           COURT CLAIM NO. 2266 - William Bews, Jr.  
2           COURT CLAIM NO. 0715 - Kenneth R. and Ruth I. Carpenter  
3           COURT CLAIM NO. 0502 - Ernest C. and Eleanor Hinckle  
4           COURT CLAIM NO. 0551 - Joe and Sharon Juinta  
5           COURT CLAIM NO. 1978 - Marshall and Doris Mason  
6           COURT CLAIM NO. 0555 - John B. Moser  
7           COURT CLAIM NO. 2288 - Lucille Alby Nicholson  
8           COURT CLAIM NO. 0633 - Wilhelm J. and Bertie Pross  
9           COURT CLAIM NO. 0500 - Margaret A. Thayer  
10          COURT CLAIM NO. 0380 - Robert M. and Irma Smith

11         All of the above claimants submitted Statements of Claim to the Court for  
12         Hatfield Canyon Creek via the Packwood Canal Company. Those claimants that made an  
13         appearance at the evidentiary hearing for Subbasin No. 8 did not assert a right to  
14         Hatfield Canyon beyond what right may be confirmed to the Packwood Canal Company  
15         unless the canal company was unsuccessful in asserting their right. In some  
16         instances claimants did not appear at the evidentiary hearing to offer testimony  
17         and in some cases the mandatory RCW 90.14 water right claims were not filed. All  
18         of the claimants, either in testimony or on the face of their claim, stated they  
19         preferred to rely on the claim being asserted by Packwood Canal Company, rather  
20         than their individual claims.

21         A Statement of Claim to the Court was filed by William Bews, Jr. claiming a  
22         use of water originating from Hatfield Canyon and transported through the Packwood  
23         Canal. The claimant utilizes Hatfield Canyon water delivered by the Packwood Canal  
24         Company and filed Water Right Claim No. 109068. The claimant did not make an  
25         appearance at the evidentiary hearing to testify on behalf of his claim. Based on  
26         the above, the Referee does not recommend confirming a right to Mr. Bews under the  
27         individual claim he filed.

28         A Statement of Claim to the Court was filed by Kenneth R. and Ruth I.  
29         Carpenter asserting a right to the use of water for irrigation and stock water from  
   Re: Subbasin No. 8

1 previous owner, provided testimony in support of this claim during the evidentiary  
2 hearing.

3 Mr. Carpenter testified that he owns 4.14 acres, with about one-quarter acre  
4 of land with his home on it. He pumps water from the Packwood Canal Company into a  
5 sprinkler system for irrigation of 3.89 acres, and in the recent past for stock  
6 water supply as well. Mr. Carpenter submitted a chain of title for his property  
7 which showed a patent being issued to John Rego on June 11, 1891, for the S $\frac{1}{2}$ SW $\frac{1}{4}$  of  
8 Section 29, T. 18 N., R. 18 E.W.M., of which he owns a portion. Mr. Mason, who  
9 previously owned the Carpenter property and who's grandfather was John Rego,  
10 indicated that as far as he knew this land had always been farmed. Mr. Carpenter  
11 may also be entitled to water from the West Side Irrigating Company whose claim  
12 will be presented at the Major Claimant hearing. Mr. Carpenter made no assertion  
13 of a right that extends beyond the Packwood Canal Company, therefore, the Referee  
14 recommends that his individual claim be denied.

15 A Statement of Claim to the Court was filed by Ernest C. and Eleanor Hinckle  
16 claiming a right to use of water for irrigation and stock water from Hatfield  
17 Canyon via the Packwood Canal. Mr. Hinckle provided testimony during the  
18 evidentiary hearing.

19 Mr. Hinckle testified that he receives water from the Packwood Canal Company  
20 for irrigation of 6.5 acres and stock water supply for up to 12 animals within a  
21 portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.. He is the owner of a  
22 portion of the old W.A. Stevens property and the record shows a patent issued to  
23 John Rego on June 11, 1891, for the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 30, T. 18 N.,  
24 R. 18 E.W.M.. The Hinckles filed a Chapter 90.14 Water Right Claim No. 137049  
25 claiming uses that mirror those identified in Court Claim No. 0502. Mr. Hinckle

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1 made no assertion of a right that extends beyond the Packwood Canal Company,  
2 therefore, the Referee recommends that his individual claim be denied.

3 A Statement of Claim to the Court was filed by Elmer D. and Thersia Riggs  
4 claiming a use of water to unnamed creeks and springs originating out of Robinson  
5 and Hatfield canyons. Joe and Sharon Junta were substituted for the Riggs on May  
6 2, 1989. No RCW 90.14 water right claim was found for the Junta's property. The  
7 Junta's did not make an appearance at the evidentiary hearing to testify on behalf  
8 of their claim. The claimants utilize water delivered by the Packwood Canal  
9 Company. Based on the above, the Referee cannot recommend a right be confirmed to  
10 the Joe and Sharon Junta.

11 Marshall and Doris Mason submitted a Statement of Claim to the Court  
12 asserting a right to use water from Hatfield Canyon via the Packwood Canal for  
13 irrigation and stock water supply. Mr. Mason testified at the evidentiary hearing.

14 The Mason's have two wells on their property which they utilize for domestic  
15 supply and for the irrigation of 2 acres which are located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$   
16 of Section 29 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N.,  
17 R. 18 E.W.M.. A patent issued on June 11, 1891, to John Rego for the S $\frac{1}{4}$ S $\frac{1}{4}$  of  
18 Section 29, T. 18 N., R. 18 E.W.M., which includes a portion of the Mason property.  
19 Mr. Mason constructed two wells and began using his deep well for irrigation in  
20 1964 or 1965. The Yakima River Basin Adjudication is to determine the validity of  
21 rights to surface water only and ground water is not part of these proceedings.  
22 The claimants may wish to contact the Department of Ecology's Central Regional  
23 office to determine whether water rights were obtained for the wells. The Masons'  
24 filed a Chapter 90.14 Water Right Claim No. 116781 for the use of water from  
25 Hatfield Canyon. The water right claim appears to mirror their court claim  
26 asserting a right to the Packwood Canal Company.

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1           The Masons are entitled to two shares from the Packwood Canal Company for  
2 irrigation and stock water supply. Mr. Mason has maintained his shares to Packwood  
3 Canal Company so he can use this water if needed. A ditch which crosses his  
4 property was used prior to construction of the wells and can be utilized if needed.

5           Mr. Mason made no assertion of a right to surface water that extends beyond the  
6 Packwood Canal Company; therefore, the Referee recommends that his individual claim  
7 be denied.

8           A Statement of Claim to the Court was filed by John B. Moser claiming a use  
9 of water originating from Hatfield Canyon and transported through the Packwood  
10 Canal. The claimant filed Water Right Claim No. 112911 to protect that use. Mr.  
11 Moser did not make an appearance at the evidentiary hearing to testify on behalf of  
12 his claim. Therefore, the Referee cannot recommend that the individual claim by  
13 Mr. Moser be confirmed a right.

14           A Statement of Claim to the Court was filed by Lucille Alby Nicholson  
15 claiming a use of water originating from Hatfield Canyon and transported through  
16 the Packwood Canal. Water Right Claim No. 098308 was filed by Ms. Nicholson for  
17 her property. Ms. Nicholson did not make an appearance at the evidentiary hearing  
18 to testify on behalf of her claim. Therefore, the Referee cannot confirm a  
19 separate right under Ms. Nicholson's claim.

20           A Statement of Claim to the Court was filed by Wilhelm J. and Bertie Pross  
21 claiming a use of water originating from Hatfield Canyon and transported through  
22 the Packwood Canal. They filed Water Right Claim No. 116781 for this use. The  
23 claimants did not make an appearance at the evidentiary hearing to testify on  
24 behalf of their claim. Therefore, the Referee cannot confirm a right under the  
25 individual claim filed by the Prosses.

1           A Statement of Claim to the Court was filed by Arthur G. Thayer and John J.  
2       Thayer claiming a use of water originating from Hatfield Canyon and transported  
3       through the Packwood Canal. On February 10, 1994, Margaret A. Thayer was  
4       substituted on the claim. They filed Water Right Claim No. 115766 for that use.  
5       The Thayers did not make an appearance at the evidentiary hearing to testify on  
6       behalf of their claim. Therefore, the Referee recommends that the individual claim  
7       filed by the Thayers be denied. They should refer to the discussion of the  
8       Packwood Canal Company.

9           A Statement of Claim was submitted to the Court by Robert M. and Irma Smith  
10      for the use of waters from Hatfield Canyon through the Packwood Canal Company  
11      system for irrigation and stock water. Mr. and Mrs. Smith were represented by  
12      Attorney Hugh M. Spall. Mr. Smith testified at the evidentiary hearing. The  
13      Smiths also appeared and testified at the evidentiary hearing for Subbasin 11.  
14      That testimony was incorporated by reference without objection.

15           According to Mr. Smith, the water used on the property described in the claim  
16      is delivered through the Packwood canal. If a right is confirmed to the canal  
17      company, they intend to rely on that claim rather than pursuing one of their own.  
18      Based on this, the Referee recommends that a right not be confirmed to the Smiths  
19      under their court claim.

20           The proper place to address the claim by the Packwood Canal Company for  
21      Hatfield Canyon is in Subbasin No. 11 since it originates and flows predominately  
22      within that subbasin. Since each of the claimants receive their water through the  
23      Packwood Canal Company system and are not being confirmed individual water rights,  
24      they each will receive a copy of the Report of Referee for Subbasin No. 11 and  
25      should refer to that report for the determination of the canal company's claim.

1           Claimants Dale and Jewel Black are also asserting a right to use Hatfield  
2           Canyon via the Packwood Canal. Given the distance of their property from where the  
3           creek intersects the canal, they will be addressed separately from the above  
4           claimants.

5

6           COURT CLAIM NO. 1722 -- Dale K. and Jewel E. Black

7           The Blacks filed a Statement of Claim to the Court claiming a right to use  
8           water from Hatfield Canyon and the Packwood Canal for irrigation and stock water.  
9           Mr. Black testified on behalf of their claim at the evidentiary hearing and  
10          requested that testimony and evidence introduced by the Packwood Canal Company in  
11          Subbasin No. 11, Manastash, be incorporated for their claim.

12          The Blacks have owned the E $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M. since  
13          March, 1977. According to the patent records, Wm. A. Stevens obtained a patent for  
14          the S $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30 on May 27, 1882, and the N $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 30 on June 26,  
15          1883. Prior owners irrigated row crops, timothy hay and grains, and have pastured  
16          stock. At present, Mr. Black irrigates a total of 77 acres of pasture. Nine acres  
17          receive water from the West Side Irrigating Company and 68 acres receive water from  
18          the Packwood Canal Company. Fifteen acres, of the 77 total, also receive water  
19          from two springs on property. These 15 acres are located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
20          Section 30, T. 18 N., R. 18 E.W.M.. The Black property also benefits from water  
21          draining off the properties of Mrs. Wendell Prater and 3 Bar G Ranch, Inc.

22          The "big spring" is located 1,300 feet north and 1,300 feet west from the  
23          east quarter corner of Section 30. It has an estimated flow of 3 to 4 cfs during  
24          the winter, and at least three times that much during the summer. The spring is  
25          used to irrigate the 15 acres of pasture and for stock water supply for the animals  
26          he pastures. Although the spring flows continuously during the season, indicating

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1 a natural source of water, the substantial increase in flow during the irrigation  
2 season indicates significant contribution from updrainage irrigation return flows.  
3 Mr. Black could not state for certain if the spring was historically used for  
4 irrigation purposes, although he assumed so. He did not present any historic water  
5 use testimony or evidence for the property.

6 As explained in the Special Issues Section beginning on page 5 a right to  
7 return flow waters or foreign return flows water cannot be confirmed by the Referee  
8 unless evidence and testimony are presented that establishes the return flow water  
9 originates from naturally occurring sources within the subbasin.

10 The second spring is located approximately 1,200 feet north and 1,150 feet  
11 west from the east quarter corner of Section 30 and is piped into the Black home  
12 for domestic supply and also to the barn for stock water. Blacks have 50 horses  
13 and 25 cattle, and in the past have had as many as 125 head of stock. No testimony  
14 was provided concerning the length of time these uses and practices have been  
15 occurring. Remains of a pond are on this property and may have had some fish or a  
16 pump installed. Stock could have used it for drinking. Given its location, the  
17 springs may have flowed into the pond.

18 No 90.14 water right claims could be found for the two unnamed springs.  
19 Under the Water Right Claims Registration Act, Chapter 90.14 RCW, failure to file a  
20 claim results in forfeiture of any right which may have existed.

21 The claimant's land lies within the Packwood Canal Company's service area and  
22 does receive water from them. Contracts were submitted into evidence by the  
23 Packwood Canal Company which describe right-of-way easements for the canal as it  
24 crossed lands through the Thorp valley. These contracts describe where the canal  
25 was to be constructed, if flumes were to be constructed over the canal and the  
26 amount of water in inches to be delivered through those flumes. Only one contract

(J.N. and Anna Burch) had a place of use described. A contract was signed between  
the City of Ellensburg and Joseph and Hattie Hanlon on January 4, 1904, for  
construction of the canal in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, and for construction of  
"three (3) flumes of sufficient size and make to convey water now used by said  
parties in three (3) irrigating ditches crossing said right-of-way, and at the  
points where such ditches now cross, . . ." Also, 100 inches of water from the  
West Side Irrigating Company was to be delivered through the canal in replacement  
of the water that was originally carried through the Rego ditch which was replaced  
by the canal. Packwood has filed Court Claim No. 0785 asserting a right to use  
water from seven sources, Hatfield Canyon being one of them. If Packwood is not  
successful in asserting their claim, Mr. Black wants his claim asserted separately  
however, no individual RCW 90.14 water right claim for Hatfield Canyon Creek was  
found for the Black property. Water Right Claim No. 124584 was filed by the  
Packwood Canal Company for Hatfield Canyon and the place of use included Mr.  
Black's property. In order to treat those Packwood Canal Company patrons  
consistently, the Referee has chosen to recommend confirmation of any right that  
exists to those waters to the canal company rather than the individuals if the  
water is delivered through the canal company system. The Referee questions the  
Blacks asserting a right to use Hatfield Canyon via the Packwood Canal given the  
location of their property in relation to Hatfield Canyon. They are located over  
one-half mile north, or upgradient, of the confluence of Hatfield Canyon with the  
canal. No testimony indicated how Hatfield Canyon water would have been delivered  
to the property prior to construction of the canal, or from the canal. The Referee  
is of the opinion that the Black property may have utilized water from Robinson and  
Fogey creeks and return flows, not Hatfield Canyon. Lacking the RCW 90.14 claim,

1 the question is moot and the claimants should refer to Page 44 for the discussion  
2 of Packwood's claim.

3 The West Side Irrigating Company claims will be heard during the evidentiary  
4 hearing for Major Claimants.

5 The Referee is unable to confirm a water right for the use of either of the  
6 springs for domestic supply, stock water (diversionary purposes) and irrigation  
7 lacking the mandatory filing of a 90.14 water right claim. Non-diversionary stock  
8 water uses from the springs are covered by the stock water stipulation.

9

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

11 The Brunsons filed a Statement of Claim to the Court asserting a right to use  
12 water from Bull Pen Creek, Hatfield Canyon, the Packwood Canal Company, and Sheep  
13 Pasture Creek. The Brunson property is bisected by the boundary separating  
14 Subbasin No. 8 (Thorp) from Subbasin No. 11 (Manastash). Testimony and evidence  
15 for both Subbasins was taken during the Manastash Subbasin evidentiary Hearing and,  
16 without objection, was incorporated by reference into the Thorp record. The  
17 determination of rights to the use of water from Hatfield Canyon and Bull Pen Creek  
18 will be contained in the Report of Referee for Subbasin No. 11. Only the claims to  
19 the use of water from Sheep Pasture Creek and the Packwood Canal Company are  
20 addressed in this report for Subbasin No. 8.

21 Based on the incorporated record, the Brunsons were represented by Attorney  
22 John Gilreath. Thomas Brunson, his father Dan Brunson, and Richard Bain, a  
23 consultant, testified in behalf of the claim.

24 The Brunson property consists of 168 acres located within Sections 29 and  
25 32, T. 18 N., R. 18 E.W.M., lying between the Yakima River and the Packwood Canal.

1 It was purchased by Dan Brunson's father in 1912, and has remained in the Brunson  
2 family since that time.

3 The claimants testified that they are entitled to water from the Packwood  
4 Canal Company in the amounts of 500 inches or 12.5 cubic feet per second (cfs).  
5 On August 8, 1903, J. N. and Anna B. Burch conveyed to the City of Ellensburg two  
6 parcels of land, each totalling less than one acre for construction of a ditch  
7 across their land. That ditch is now called the Packwood Canal. In return, the  
8 Burches received from the city 500 inches of water to be conveyed through the ditch  
9 for use on the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , 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  
10 Section 32, all in T. 18 N., R. 18 E.W.M. All are now owned by the Brunsons. The  
11 source of water for the 500 inches is believed to be the Yakima River and several  
12 creeks now intercepted by the canal. The city also agreed to construct two flumes,  
13 each to carry 100 inches of water across the ditch to be constructed. According to  
14 Dan Brunson, these flumes were to carry water diverted from Hatfield Canyon and  
15 Bull Pen Creek. Ice buildup in the ditch often damaged the flumes, so they were  
16 removed in the 1920's. Following their removal and presently, the Hatfield Canyon  
17 water has been dumped into the Packwood Canal and withdrawn from the canal on the  
18 downhill side. An 18 inch pipeline was constructed to carry Bull Pen Creek water  
19 under the canal.

20 Testimony indicated that one cubic foot per second, 100 acre-feet per year  
21 are diverted from Sheep Pasture Creek for irrigation of 14 acres (fields 13 and 14)  
22 and stock water supply within the W $\frac{1}{4}$ SE $\frac{1}{4}$  and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 29. The  
23 point of diversion from the creek is approximately 2,240 feet north and 150 feet  
24 east from the south quarter corner of Section 29, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
25 Section 29, T. 18 N., R. 18 E.W.M. (see takeout 9 DE 157.)

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1           According to the engineering report prepared by Mr. Bain, Sheep Pasture Creek  
2 includes return flows. Exhibits show Sheep Pasture Creek originating off the  
3 Brunson property, with flow being contributed from the irrigation of the Black and  
4 3 Bar G lands. These flows may be either foreign return flows or flows generated  
5 by the application of waters originating from within the basin itself. As  
6 indicated in the Special Issues Section of this report beginning on page 5 of this  
7 report, a right cannot be confirmed for foreign return flows. No evidence in the  
8 record would allow the Referee to conclude that any of the return flows were  
9 generated by the application of naturally occurring waters within the Thorp  
10 subbasin.

11           The Brunsons' claim to use water via the Packwood Canal Company is considered  
12 a part of the canal company's claim. The company's claim for waters originating in  
13 Subbasin No. 8 are addressed on Page 44 of this report. Its claim for waters from  
14 Hatfield Canyon is addressed in the Report of Referee for Subbasin No. 11.

15           Under the Prior Appropriation Doctrine a right can be established if the use  
16 of water began prior to the enactment of the State's Surface Water Code on June 6,  
17 1917. Under the Riparian Doctrine a right to use water can be established if the  
18 land separated from Federal ownership prior to the enactment of the Surface Water  
19 Code and the use of water began prior to December 31, 1932.

20           Thomas Brunson testified that the patent for the land was issued in 1887,  
21 which would establish their priority date of their creek rights under the Riparian  
22 Doctrine. An exhibit shows that on June 9, 1887, the Northern Pacific Railroad  
23 contracted with John N. Burch to sell him the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , where a portion of land  
24 irrigated via Sheep Pasture Creek is located. It's reasonable to conclude that the  
25 patents could have issued prior to 1887. Lacking specific testimony to the

1 contrary it is also reasonable to conclude that the lands were developed in a  
2 similar time period.

3 Mr. Brunson filed Claim No. 115649 for Sheep Pasture Creek for irrigation and  
4 stock water supply thereby preserving any historic right that may be appurtenant to  
5 the property.

6 Based on the testimony and evidence, the Referee recommends that a right be  
7 confirmed under the Riparian Doctrine for one cubic foot per second, 100 acre-feet  
8 per year from Sheep Pasture Creek for irrigation of 14 acres with a priority date  
9 of June 9, 1887.

10 The Plaintiff's Report recommended a non-diversionary right to stock water  
11 from streams be confirmed to the claimants as well.

12

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

14 Statements of Claim were submitted by 3 Bar G Ranch, Inc. for the use of  
15 numerous drains and Robinson Canyon located within Subbasins No. 8 (Thorp), and  
16 Hatfield Canyon, located in both Subbasin No. 8 (Thorp) and Hatfield Canyon,  
17 located in both Subbasin Nos. 8 and 11 (Manastash Creek), and an unnamed spring  
18 located in Subbasin No. 11. The claimant was represented by H. K. Dano, attorney  
19 at law. Dan Brunson, a neighboring landowner, Richard Bain; a consultant hired  
20 by the defendant; and Mr. Gregerich, Vice-President of 3 Bar G Ranch, Inc.,  
21 testified in behalf of the claim during the evidentiary hearing for Subbasin No.  
22 11. Mr. Dano requested that the testimony and evidence provided in Subbasin No.  
23 11 be incorporated by reference into Subbasin No. 8, if there were no objections.  
24 There were no objections noted during the evidentiary hearing for Subbasin No. 8.  
25 The following information was obtained from a review of those documents and  
26 previous testimony.

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1           3 Bar G Ranch, Inc., consists of 958 total acres lying within both the  
2 Thorp and Manastash Subbasins (8 and 11), with approximately 880 acres being  
3 irrigated. The primary crop is timothy hay. Surface application is the  
4 predominate method of irrigation used on the ranch, with a small amount of  
5 sprinkler irrigation. Mr. Bain testified that the average water duty for the  
6 ranch is 19.4 acre-feet per acre irrigated, or 16,920 acre-feet per year from all  
7 the various sources. A minimum of 220 cow/calf pairs are kept on the property.

8           Testimony indicated that waters from Taneum Canal Company, West Side  
9 Irrigating Company, Kittitas Reclamation District, Packwood Canal Company,  
10 Menastash Water Ditch Association, Hatfield Canyon and Back Ditch are used to  
11 irrigate the land. The Taneum Canal Company is a claimant in Subbasin No. 6 and  
12 their claim will be discussed in the Report of Referee for that subbasin.  
13 Menastash Water Ditch Association submitted a claim in Subbasin No. 11 and their  
14 claim will be addressed in that report, as ill the claims for Back Ditch and the  
15 unnamed spring located within Subbasin No. 11. West Side Irrigating Company and  
16 Kittitas Reclamation District are Major Claimants whose rights will be considered  
17 in the Major Claimant pathway. The Packwood Canal Company claim is discussed on  
18 Page 44 and in the Report of Referee for Subbasin No. 11. Only 3 Bar G's  
19 separate use of water from Hatfield Canyon will be addressed in this report.

20           A patent issued to Benjamin Frisbee on November 4, 1886, for the N $\frac{1}{4}$ NE $\frac{1}{4}$  of  
21 Section 31, NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18  
22 E.W.M.. Waters from Hatfield Canyon are used by 3 Bar G to irrigate  
23 approximately 54.8 acres 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  
24 Section 32, T. 18 N., R. 18 E.W.M. According to the testimony, 6.59 cubic feet  
25 per second is diverted from Hatfield Canyon, which primarily carries return flow  
26 water from High Valley Ranch in Section 31. High Valley Ranch lies predominately

1       in Subbasin No. 11 and the water used for irrigation is from sources outside of  
2       Subbasin No. 8. As discussed in the Special Issues Section of this report  
3       beginning on page 5, rights can only be established for the use of return flow  
4       waters that originate within the basin and not through the transportation and  
5       application of foreign waters from the Kittitas Reclamation District, the West  
6       Side Canal Company or Taneum Ditch Company.

7              Contracts were submitted into evidence by the Packwood Canal Company which  
8       describe right-of-way easements for the canal as it crossed lands through the  
9       Thorp valley. These contracts described where the canal was to be constructed,  
10       identified the terms of water delivery to the properties from the canal,  
11       indicated flumes to be constructed over the canal and the amount of water to be  
12       delivered through those flumes. Only one contract (J.N. and Anna Burch) had a  
13       place of use described. The following contracts describe canal location on lands  
14       that are now owned, in part, by 3 Bar G: 1) the J.E. and Emma Rego contract  
15       dated October 25, 1903, which describes land now owned by both 3 Bar G and  
16       Horseshoe F Ranch, and the construction of three flumes capable of carrying 150  
17       inches each, plus the specific quantities of water to be diverted from the canal;  
18       2) the W.A. and Emma Stevens contract dated August 25, 1903, which describes, in  
19       part, the canal traversing the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, and that two bridges and one  
20       drain pipe were to be constructed; and 3) the J.N. and Anna Burch contract dated  
21       August 5, 1903, which specifically describes the property where the water is to  
22       be put to beneficial use. A majority of the land is now owned by Thomas and  
23       Kathleen Brunson, however, approximately 15 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32  
24       falls within 3 Bar G ownership. The contract called for construction of two  
25       flumes capable of carrying 100 inches. The contracts do not identify the source  
26       of water to be conveyed through the flumes or the location of the flumes.

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28       Re: Subbasin No. 8

1 There is no evidence that a water right claim was filed by the defendants  
2 pursuant to RCW 90.14, for the use of waters from Hatfield Canyon. Failure to  
3 file a RCW 90.14 water right claim results in forfeiture of any right that may  
4 have existed. Several Chapter 90.14 Water Right Claims were filed by the  
5 claimants for use of drain waters in the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of Section 30, T. 18 N.,  
6 R. 18 E.W.M. However, the claimant did not provide testimony or information on  
7 the use of drains.

8 Due to the failure to file a claim pursuant to RCW 90.14 the Referee cannot  
9 recommend that a right be confirmed for the use of waters from Hatfield Canyon.  
10 Since no testimony was provided concerning the use of drain water, the Referee  
11 cannot recommend that a right be confirmed for this use of water. The claimant's  
12 non-diversionary stock water use is covered by the stock water stipulation.

13

14 COURT CLAIM NO. 1335 & 2619 - Theiline P. Scheumann

15 A Statement of Claim to the Court was filed by Horseshoe F. Ranch  
16 Inc./Joyce and Ronnie Bloxham. On June 2, 1983, Theiline P. Scheumann was named  
17 successor-in-interest to Horseshoe F Ranch, Inc./Joyce and Ronnie Bloxham.  
18 Horseshoe F Ranch, Inc. claimed a use of water from Robinson Creek, Fogey Creek,  
19 and an unnamed spring for irrigation and stock water supply. Greg McElroy,  
20 attorney, represented the claimants. Robert Mundy, manager; Don Dyk, lessee; and  
21 Richard Bain, consulting engineer, testified in behalf of the claim.

22 The testimony showed that Horseshoe F Ranch, Inc. is now called Grousemont  
23 Farm. Approximately 360 acres are irrigated by surface application, with timothy  
24 hay and pasture being the predominant crops, and some acreage in rotation crops.  
25 Water from Fogey Creek, Robinson Creek, an unnamed spring, return flows, drains,  
26 Packwood Canal Company and West Side Irrigating Company are used to irrigate this

27 REPORT OF REFEREE

28 Re: Subbasin No. 8

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1 farm. There are 200 cow/calf pairs and some thoroughbred horses on the property.

2 The engineering report submitted by the claimants included a table with the  
3 fields and number of acres identified on it:

4 Field 1 is 12.4 acres of pasture;  
5 Field 2 is 43.2 acres of timothy hay;  
6 Field 3 is 34.5 acres of timothy hay;  
7 Field 4 is 36 acres of pasture;  
8 Field 5 is 64.6 acres of timothy/field corn;  
9 Field 6 is 77 acres of pasture;  
Field 7 is 10.5 acres of pasture;  
Field 8 is 27.1 acres of pasture;  
Field 9 is 14.6 acres of pasture;  
Field 10 is 13 acres of pasture;  
Field 11 is 24.4 acres of pasture, and  
Field 12 is 7 acres of timothy hay/wheat.

10 Color coded maps were also submitted by the claimants show entire fields  
11 served from a single source of water, though most received water from two or more  
12 sources.

13 Fogey Creek is diverted at T0<sup>1</sup>-1, at a point located approximately 1,320  
14 feet north and 660 feet west from the southeast corner of Section 13, being  
15 within the SE $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M.. Water is piped over the  
16 Packwood Canal and is discharged to a distribution box which delivers the water  
17 to the fields. Approximately 68.4 acres within field 1, the northern portion of  
18 field 2, and field 4 receive water from both Fogey Creek and return flows. Field  
19 1, the northern portion of field 2 and field 4 are located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$   
20 of Section 13, Government Lot 4 of Section 18 and the NW $\frac{1}{4}$  of Section 19, all in  
21 T. 18 N., R. 18 E.W.M..

22 An unnamed spring is diverted from the neighbor's property at a point  
23 located approximately 2,200 feet north and 1,920 feet west from the southeast  
24 corner of Section 24, and is piped into an 8 acre pond. Fogey Creek water is

---

25  
26 <sup>1</sup>T0 stands for "takeout".

1 also piped into the pond from the north. Water is then diverted from the pond  
2 and distributed over the southern portion of field 4 and the northerly portion of  
3 field 6. This raises the ground water table and assists in getting water to the  
4 end of some of the fields closest to the Yakima River. Approximately 30 acres  
5 are irrigated from the pond. The southern portion of field 4 and the northern  
6 portion of field 6 are located within the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 19, T. 18  
7 N., R. 18 E.W.M..

8 Mr. Mundy testified that Grousemont Farms uses the natural flow of Robinson  
9 Creek for irrigating 160 acres from spring to June. By July, Robinson Creek  
10 carries primarily return flows and at that time Grousemont begins using their  
11 West Side Irrigating Company water. Three diversion points from Robinson Creek  
12 are used. T0-5 is located approximately 500 feet north and 1,200 feet west from  
13 the southeast corner of Section 24, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , T. 18 N., R. 17  
14 E.W.M. It delivers water directly to fields 7 and 8 and indirectly to fields 3  
15 and 5. T0-6 takes water from Robinson Creek and the West Side canal releases,  
16 and irrigates 52 acres in fields 9, 10 and 11. T0-6 is located 1500 feet west of  
17 the southeast corner of Section 24. The third diversion point on Robinson Creek  
18 is not numbered on the claimant's exhibit and is located approximately 750 feet  
19 north and 200 feet east from the southwest corner of Section 19, being within  
20 Government Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), T. 18 N., R. 18 E.W.M. Water is piped to a point near  
21 the Packwood Canal and is then used to irrigate fields 5 and 6. This property  
22 lies within the N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 19 and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24. T. 18  
23 N., R. 18 E.W.M..

24 According to Mr. Bain's testimony, on July 1 and August 8, stream  
25 measurements were taken from Robinson Creek, at a point just before the creek  
26 goes under the West Side Irrigating Company canal. Flows of 7.8 cubic feet per

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1 second (cfs) and 5.74 cfs, respectively, were recorded. On July 30 and August  
2 10, measurements from Fogey Creek were obtained, at a point located just below  
3 Grousemont's diversion and just ahead of the creek entering the Packwood Canal.  
4 Flows of 10.9 cfs and 8.5 cfs, respectively, were obtained. Mr. Bain testified  
5 that Grousemont's diversion on Fogey Creek is consistent through the season at  
6 4.71 cfs, however, only mid to late season measurements were taken and offered  
7 into evidence. Mr. Bain also testified that the majority of the flow in Fogey  
8 Creek was return flow from neighboring lands. In support of this he took a  
9 measurement of Fogey Creek at the Taneum Canal at a point where little  
10 contribution is expected from return flows. The flow was less than 1 cfs. All  
11 flow measurements were taken at a time of year when creeks predominately carry  
12 return flows, not natural flows. The testimony was very consistent among the  
13 claimants in Subbasin No. 8 that by the end of June both Fogey and Robinson  
14 Canyon Creeks are dry, except for return flow water. As indicated in the Special  
15 Issues Section beginning on page 5 of this report, the Referee is not able to  
16 confirm a water right for foreign return flows. A right to use of return flows  
17 that are the result of the application of naturally occurring waters in the basin  
18 can be confirmed if they are quantified and identified. Historic use of the  
19 waters must also be substantiated and the requirements of RCW 90.14 satisfied.

20 The claimants are entitled to 110 shares from Packwood Canal Company and 75  
21 shares of West Side Irrigating Company. According to information provided by the  
22 Packwood Canal Company, a total of 130 acres are served water from the Packwood  
23 Canal. The Packwood Canal Company filed Court Claim No. 0785 claiming the use of  
24 waters in both Subbasin No. 8, Thorp, and Subbasin No. 11, Manastash. A  
25 discussion of the Packwood Canal Company's claim begins on Page 44 of this  
26 report. The canal company's claim to use waters from Middle Creek and Hatfield

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1 Canyon, which predominately flow in Subbasin No. 11, (Manastash), will be  
2 addressed in the Report of Referee for that subbasin.

3 The West Side Irrigating Company claim will be presented at the Major  
4 Claimant evidentiary hearing.

5 Horseshoe F Ranch filed three water right claims in response to the Claims  
6 Registration Act, Chapter 90.14 RCW. Water Right Claim No. 144932 was for use of  
7 Fogey Creek; Claim No. 144934 was for Robinson Creek; and Claim No. 144933 was  
8 for an unnamed spring. Mr. McElroy stated that an error on Claim No. 144933  
9 indicates that the place of use is within Section 25, when the actual place of  
10 use is within Section 24.

11 Prior to constructing the Packwood Canal in 1903 and 1904, the City of  
12 Ellensburg entered into contracts with the property owners whose lands the canal  
13 would traverse. Several of these contracts identify lands now owned by  
14 Grousemont Farms. The contracts with Jacob E. Rego were for canal easements  
15 within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, identified the water to be diverted from the  
16 canal, and provided for construction of three flumes across the canal capable of  
17 carrying 150 inches each. A contract with Mr. Pease for construction of two  
18 flumes across the canal capable of carrying 200 inches each, was modified to  
19 reflect R.E. Wallace purchasing an interest in the Pease property. The R.E.  
20 Wallace contract for easements within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 19 allows Wallace to  
21 divert the same quantity of water from the canal as was put into the canal. No  
22 testimony or evidence indicated where these flumes were located or what water  
23 sources may have been conveyed through these flumes. None of these contracts  
24 specified lands the water was to be used on. The majority of the land within  
25 Section 19, T. 18 N., R. 18 E.W.M. is owned by Grousemont, with only the S $\frac{1}{4}$ SE $\frac{1}{4}$  of  
26 Section 19 owned by 3 Bar G.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 Grousemont Farms is claiming both Prior Appropriation and Riparian rights  
2 to Fogey and Robinson creeks and a right to the unnamed spring (pond). Under the  
3 Prior Appropriation doctrine a right could have been established if the water use  
4 began prior to the June 6, 1917, when the State's Surface Water Code, RCW 90.03  
5 was adopted. Under the Riparian Doctrine a right could have been established  
6 based on the riparian nature of the land if steps were first taken to separate  
7 the lands from Federal ownership prior to June 6, 1917, and the actual use of  
8 water began prior to December 31, 1932. A priority date of 1882 is being claimed  
9 by Grousemont Farms, but nothing in the record supports that date being used for  
10 all of the irrigated acres.

11 Five patents that cover portions of Grousemont Farms were entered into  
12 evidence at the evidentiary hearing:

- 13 1) A patent issued on August 19, 1890, to James E. Bates for the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
14 Section 13, T. 18 N., R. 17 E.W.M. The northwestern most portion of field  
15 1, which is served by Fogey Creek, falls within this patented area.
- 16 2) A patent issued to Gordon Crandell dated March 17, 1882, for 118.04  
17 acres within Lot 4, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 18, T. 18 N., R.  
18 18 E.W.M.. The remainder of field 1 and a portion of field 2, both served  
19 by Fogey Creek, fall within the patented area.
- 20 3) A patent issued to Samuel T. Packwood dated March 13, 1882, for the SE $\frac{1}{4}$   
21 of Section 24, T. 18 N., R. 18 E.W.M.. Field 9, which receives water from  
22 both Robinson Creek and West Side, falls within this patented area.  
23 Field 12, also in this area, receives water solely from West Side.
- 24 4) A patent dated November 1, 1881, issued to Thomas Hammel for the S $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
25 the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 19, T. 18 N., R. 18 E.W.M.. A small  
26 portion of field 11, lying southwest of the Packwood Canal is served water

1                   from both Robinson Creek and West Side under this patent. The remainder of  
2                   the land is in the Packwood Canal service area.

3                   5) A patent issued to George Robinson on February 1, 1882, for the W<sup>1</sup>NW<sup>4</sup>  
4                   of Section 30, T. 18 N., R. 18 E.W.M., and the E<sup>1</sup>NE<sup>4</sup> of Section 25, T. 18  
5                   N., R. 17 E.W.M., encompassing 151.04 acres. The southern portion of field  
6                   10, which receives water from both Robinson Creek and West Side, fall  
7                   within the patented area.

8                   No patent information was submitted for the remainder of the Grousemont  
9                   Farms property, although testimony indicated that the property was first  
10                  irrigated in the 1880's, possibly as early 1882.

11                  Testimony supports the historic beneficial use of water on Grousemont  
12                  Farms. However, the complexity of patent information with the potential for many  
13                  differing priority dates for rights asserted under the Riparian Doctrine, and  
14                  lack of testimony or documentation to correlate the information submitted into a  
15                  cohesive water right prevent the Referee from confirming water rights to this  
16                  property. In order for the Referee to confirm a right under the Riparian  
17                  Doctrine with the appropriate priority dates, additional information must be  
18                  submitted into the record on number of acres irrigated within the land described  
19                  in each patent, documentation or testimony of the instantaneous rate of diversion  
20                  and annual duty of naturally occurring waters, without foreign return flows, plus  
21                  a history on those lands for which a patent was not submitted.

22                  The Plaintiff's Report recommended the claimant be confirmed a right to  
23                  non-diversionary stock water supply from streams, springs and ponds. Mr. Bain  
24                  offered 10 acre-feet per year for stock water needs on the farm, however, he did  
25                  not specify the sources being used or the instantaneous quantity of water being  
26                  diverted, if any, from the sources. It is not clear whether water is diverted

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1 for stock watering or if the stock merely drink directly from the naturally  
2 occurring water sources. If the stock on Grousemount Farms drink directly from  
3 the natural sources, the non-diversionary stock water stipulation covers that  
4 use. If there are diversions for stock watering, there was insufficient evidence  
5 submitted to allow the Referee to confirm a right for that use.

6 Due to the above described inadequacies in the evidence submitted, the  
7 Referee does not recommend confirmation of any rights under Court Claim No. 1335.

8

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

10 Robert and Linda Lapan submitted a Statement of Claim to the Court for the  
11 use of waters from an unnamed spring, also known as Ainsley or Center Creek, and  
12 the Packwood Canal. Attorney Richard Cole represented the defendants and  
13 requested the exhibits and testimony provided in Subbasin No. 11, Manastash, be  
14 incorporated into Subbasin No. 8, Thorp. Mr. Lapan testified in behalf of their  
15 claim during the evidentiary hearing in Subbasin No. 11.

16 The Lapens own one and a half acres of land within the E½SE½NE½ of Section  
17 32, T. 18 N., R. 18 E.W.M. and near the point where the Packwood Canal spills  
18 into the Yakima River. They divert water from the canal at the spillway into a  
19 ditch that runs along their property. They then pump from the ditch using a 2  
20 BHP pump and irrigate with eight to ten sprinklers. Mr. Lapan stated that they  
21 irrigate the entire one and a half acres, however, a home and outbuildings are  
22 located on the property, so no more than one and a quarter acres could actually  
23 be irrigated. The Lapens also withdraw water from what is identified on SE-1 as  
24 Back Creek, which appears to be the northerly fork of Center Creek. Back Creek  
25 is within Subbasin No. 11 (Manastash) and will be addressed in the Report of  
26 Referee for that subbasin.

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1           According to Mr. Lapan's testimony, Dan and Tom Brunson, neighboring  
2 landowners, told him his land had been irrigated since at least the early 1900's,  
3 when it was purchased by Dan Brunson's father. Mr. Lapan believed that the  
4 property was being irrigated at the time the Packwood Canal was constructed in  
5 1903. Mr. Lapan was not able to provide any specific testimony about the  
6 existence of stock on his property prior to his purchase or the use of the creek  
7 for stock watering; however, the testimony of other defendants has clearly shown  
8 that the Thorp and Manastash areas have historically been used for raising  
9 livestock. If the defendant's land was irrigated pasture in the early 1900's, it  
10 is reasonable to conclude that there were livestock grazing on the land at that  
11 time.

12           Water Right Claim No. 125777 was filed by the defendants pursuant to the  
13 requirements of RCW 90.14 claiming a right to use a spring for stock watering.  
14 The Lapens used the "short form", so there was no point of diversion given. No  
15 testimony was provided to identify where this spring might be.

16           Water Right Claim No. 125778 was also filed for use of waters from the  
17 Ellensburg Power Canal (Packwood Canal), Ainsley and Robinson Creeks for  
18 irrigation, with a date of first use of 1885. The point of diversion given on  
19 this claim is near the diversion point of the Packwood Canal. Testimony by Mr.  
20 Lapan indicates that the water he diverts from the Packwood Canal is Yakima River  
21 water. No testimony was provided regarding the use of an unnamed spring or  
22 Ainsley Creek.

23           The evidence shows that the Lapens' property is part of a larger parcel for  
24 which Abigail Lillibridge received a patent on May 23, 1889. The larger parcel  
25 (120 acres) was described on the patent as the E $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
26 32, T. 18 N., R. 18 E.W.M. which is currently owned in part by both the Lapens

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1 and the Brunsons. As described, these 120 acres as a whole are riparian to the  
2 Yakima River. It was common for land to be occupied, farmed and irrigated prior  
3 to issuance of the patent from the Federal government. A contract dated  
4 September 29, 1903, between Burt and Emma Pease and the City of Ellensburg was  
5 submitted into evidence (DE 142) by the Packwood Canal Company in Subbasin No.  
6 11. This contract describes a right of way easement for the canal as it crossed  
7 the Pease's property within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, part of the above described  
8 Lillibridge patented property. The contract states that in return for the  
9 easement, the City of Ellensburg shall furnish 25 inches of water from the  
10 proposed ditch and shall construct two 12 inch flumes across its ditch. The  
11 Limiting Agreement signed by the City of Ellensburg and the United States in 1913  
12 as part of the Yakima Project identifies the property to be served by the  
13 Ellensburg Canal and owned by Burt Pease as being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
14 32. Although this Limiting Agreement and contract does not make a water right,  
15 it does provide documentation that there was some use of water being made in the  
16 early 1900's. With the patent documenting separation of the land from Federal  
17 ownership in 1889 on what appears to be riparian lands, there does appear to be a  
18 right established for the Lapen property.

19 There are two doctrines in the State of Washington under which you can  
20 assert a water right. Under the Prior Appropriation Doctrine water must have  
21 been put to beneficial use prior to the enactment of the State's Surface Water  
22 Code, Chapter 90.03 RCW, on June 6, 1917. Under the Riparian Doctrine, the land  
23 must have separated from Federal ownership prior to the enactment of the State's  
24 Surface Water Code, and water must be put to beneficial use no later than  
25 December 31, 1932.

26  
27 REPORT OF REFEREE  
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1           Mr. Lapan did not provide specific testimony on the quantity of water he  
2       diverts from the Packwood Canal. However, the Manastash Decree, as supported by  
3       Richard Bain, consultant, described 40 miners inches equalling 1 cubic feet per  
4       second and 0.025 cfs equalling 1 inch. One inch of water was sufficient for  
5       irrigation of 1 acre of land. Based on these statements, the contract for 25" of  
6       water would indicate that there were at least 25 acres of land being irrigated  
7       within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32. The Lapens' prorata share of this would be  
8       0.0313 cubic feet per second. Mr. Lapan did testify that he uses 11 acre-feet  
9       per year.

10          The Packwood Canal is four to five miles long, with the Lapens being at the  
11       very end of the canal. Mr. Lapan did not provide information on water conveyance  
12       or transportation losses in the canal. However, according to Mr. Bain, who  
13       prepared an engineering report for the Packwood Canal Company, there is  
14       essentially no loss or gain in the canal. The Packwood Canal Company's initial  
15       diversion from the Yakima River is 2.3 cfs and the discharge to the river of over  
16       26 cfs. Flow of water in this canal is greatly influenced by return flows,  
17       irrigation practices and natural creek flows.

18          Although water is diverted from the Packwood Canal, the Packwood Canal  
19       Company did not file a 90.14 Water Right Claim for use of Yakima River waters.  
20       Also, based on the exhibits and testimony by the Packwood Canal, the area served  
21       by the Packwood Canal Company does not include or describe the Lapens' property.  
22       Therefore, it is appropriate for the Lapens to be asserting a claim independent  
23       of that being asserted by the canal company.

24          Based on the above, the Referee concludes that there has been a prior  
25       appropriation right established for the Lapan property from the Yakima River via  
26       the Packwood Canal Company distribution system for 0.0313 cfs, and 11.0 acre-feet

1 per year for irrigation of 1.25 acres with a priority date of June 30, 1885. The  
2 point of diversion is located approximately 950 feet north and 1,100 feet west  
3 from the east quarter corner of Section 13, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
4 13, T. 18 N., R. 18 E.W.M. (Packwood Canal intake).

5 The place of use is within a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 18 N.,  
6 R. 18 E.W.M. described as follows: Commencing at the southeast corner of said  
7 quarter section; thence west 480 feet, more or less; thence north 460 feet, more  
8 or less to the center of Back Creek, the true point of beginning.

9 There was no direct testimony about use of water from either Ainsley Creek  
10 or Robinson Creek, therefore, the Referee cannot recommend a right be confirmed  
11 for use of those water sources.

12

13 COURT CLAIMS NO. 0785 AND NO. 4801 - Packwood Canal Company

14 Statements of Claim were submitted to the Court by the Packwood Canal  
15 Company for the use of waters from the Yakima River, Fogey Creek, Robinson Creek,  
16 Middle Creek, Hatfield Canyon, an unnamed water course and underground drains.  
17 Hugh M. Spall, attorney, represented the Packwood Canal Company. Testimony was  
18 provided by Tom Brunson, current President of Packwood Canal, Dan Brunson, Roger  
19 Sparks, and Richard C. Bain, Jr., a consulting engineer hired by the defendants.

20 The record shows that in 1903 the City of Ellensburg filed a Notice of  
21 Appropriation for 150 cubic feet per second from the Yakima River for general  
22 city purposes. Subsequent to filing the notice, the city acquired land in  
23 Section 13, T. 18 N., R. 17 E.W.M. and Sections 18, 19, 29, 30 and 32, T. 18 N.,  
24 R. 18 E.W.M. for construction of a canal, often referred to as the "power or  
25 light canal". The land through which the canal was to be constructed was being  
26 utilized for agricultural purposes. Many of the deeds that transferred land to

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1           the city for construction of the canal contained provisions that the city would  
2           provide water to the grantors of the land since the canal, as proposed, would  
3           intercept natural watercourses used to irrigate lands owned by the grantors. The  
4           deeds generally required the city to transport the irrigation water over the  
5           canal and also provided for the grantors to withdraw additional water from the  
6           canal.

7           In 1906, the City of Ellensburg filed a second Notice of Appropriation for  
8           an additional 600 cubic feet per second from the Yakima River for generating  
9           power. This appropriation was contested by the United States due to its 1905  
10          withdrawal of all the unappropriated waters in the Yakima River Basin. The  
11          United States and the city reached an agreement whereby the United States  
12          recognized that the 1903 appropriation was superior to the 1905 withdrawal and  
13          allowed for the additional appropriation of 650 cubic feet per second for power  
14          generation provided that water was returned to the river, along with any seepage  
15          water that, drained into the canal. This agreement was memorialized in writing  
16          on July 9, 1913. The requirement that the diverted water be returned to the  
17          river was subject to the city's obligation to provide irrigation water to six  
18          landowners in Sections 18, 19, 29, 30, and 32, T. 18 N., R. 18 E.W.M..

19           Eventually, the city found the operation of the power generation plant to  
20          be uneconomical and ceased its operation. However, the city still had an  
21          obligation to deliver irrigation water and operate and maintain the canal and any  
22          flumes used to transport water over the canal. When the flumes deteriorated or  
23          they were damaged and not repaired, the water was dumped into the canal and the  
24          landowners allowed to divert that quantity directly from the canal.

25           In 1956, the city sued the various landowners in an attempt to be relieved  
26          of its obligation. Ultimately, the suit was settled with the organization of the

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1 Packwood Canal Company and its acquisition of the canal and the land through  
2 which the canal flowed.

3 The canal currently serves eight landowners who irrigate 10 or more acres  
4 of land and nine landowners who irrigate smaller parcels that total 32 acres.  
5 Waters from the canal are used to irrigate a total of 670 acres, of which 574  
6 acres are primarily rill irrigated timothy hay and 96 acres are sprinkler  
7 irrigated. Rotation crops and turf/pasture are also grown.

8 Besides the Yakima River, the named water sources that contribute flow to  
9 the Packwood Canal and were used by the individual landowners prior to  
10 construction of the canal, are Fogey Creek, Robinson Canyon, and Hatfield Canyon.  
11 Fogey Creek flows into the Packwood Canal at a point approximately 1,320 feet  
12 north and 565 feet west of the southeast corner of Section 13, T. 18 N., R. 17  
13 E.W.M. Robinson Canyon flows into Packwood Canal approximately 1,500 feet north  
14 and 750 feet east from the southwest corner of Section 19, T. 18 N., R. 18  
15 E.W.M..

16 Hatfield Canyon flows predominantly through Subbasin No. 11 (Manastash),  
17 entering Packwood Canal approximately 550 feet west of the northwest corner of  
18 Section 32, T. 18 N., R. 18 E.W.M.. Claimants asserting rights to use Hatfield  
19 Canyon via the Packwood Canal are William Bews, Jr., Kenneth R. and Ruth I.  
20 Carpenter, Joe and Sharon Juinta, Ernest C. and Eleanor Hinckle, Marshall and  
21 Doris Mason, John B. Moser, Lucille Alby Nicholson, Wilhelm J. and Bertie Pross,  
22 Robert M. and Irma Smith, Arthur G. and John J. Thayer. Some of these claimants  
23 did not appear to testify at the evidentiary hearings in either subbasin 8 or 11,  
24 and those that did are asserting their right through Packwood Canal Company.  
25 Because the Referee cannot recommend confirmation of a right to claimants who did  
26 not appear at the evidentiary hearings, and desiring consistent treatment for the

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1 canal company patrons, individual rights will not be recommended for those  
2 defendants who now divert out of the canal. Instead, their use of water from  
3 Hatfield Canyon will be incorporated into the recommendation for Packwood Canal  
4 Company for Subbasin 11 (Manastash). Each of those claimants will be provided a  
5 copy of the Report of Referee for Subbasin 11.

6 Other water users in the Packwood service area that have shares in the  
7 canal company and use other sources of water for irrigation of their lands have  
8 filed individual court claims: 3 Bar G Ranch, Inc., Thomas Brunson, Dale Black,  
9 and Horseshoe F Ranch (hereafter, Grousemount Farms). It is reasonable for the  
10 claimants to assert an individual right to Fogey Creek and Robinson Canyon based  
11 on past use of flumes to transport the water over Packwood Canal or to rely on  
12 the canal company to assert a right on their behalf due to the current practice  
13 of diverting water from the canal and allowing all of the flow in these creeks to  
14 flow into the canal below their diversions. The claimants that are asserting a  
15 right to use of creek water in excess of what is delivered by the Packwood Canal  
16 are Thomas Brunson (Hatfield Canyon) and Grousemount Farms (Fogey Creek and  
17 Robinson Canyon). Again, in order to treat all claimants consistently, the  
18 Referee has chosen to apportion any right to use of water from Fogey Creek and  
19 Robinson Canyon transported in the Packwood Canal to the canal company rather  
20 than individuals. Only Grousemont Farms takes water from the creeks prior to  
21 them entering the canal. 3 Bar G lacks the required RCW 90.14 claim to assert a  
22 separate right to creek water.

23 The Packwood Canal Company filed several water right claims pursuant to the  
24 requirements of Chapter 90.14 RCW. Water Right Claim No. 124574 was filed for  
25 Middle or unnamed creek in Section 32, No. 124575 was for Robinson Canyon; No.  
26

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1 124576 was filed for Foggy Creek<sup>2</sup>; No. 124584 was filed for Hatfield Canyon and  
2 No. 124585 was filed for an unnamed water course, which may be Cabin Creek. All  
3 of these claims identify irrigation of 800 acres and stock water supply. The  
4 Claim to the Court also identifies Middle Creek as a source of water, with the  
5 point of diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. State's Exhibit No. 1 does not  
6 show a water source flowing through the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32 and there was no  
7 testimony concerning the use of Middle Creek. An unnamed water course, possibly  
8 also known as Cabin Creek, with a diversion near the north line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
9 Section 32 is also claimed. A stream that has been marked Bull Pen Creek on  
10 State's Exhibit No. 1 flows through Section 32 at the approximate point described  
11 in the Court Claim; however, testimony related to Thomas Brunson's claim was that  
12 the flow in Bull Pen Creek is piped under the Packwood Canal onto the Brunson's  
13 property where it is used to irrigate approximately 48 acres. Seven other RCW  
14 90.14 claims were filed for drains, however, no testimony was provided on the  
15 actual use of these drains. The dates of first use on the RCW 90.14 claims for  
16 the drains range from 1955 to 1977, which is well after the enactment of the  
17 Surface Water Code in 1917. The Packwood Canal Company failed to file a 90.14  
18 claim for their diversion of water from the Yakima River.

19 On November 20, 1989, Mr. Spall filed, in support of Packwood Canal  
20 Company's court claim, a written description of their claim to water. In it he  
21 identified the water sources for which RCW 90.14 water right claims had been  
22 filed, stating on page 5:

23  
24 <sup>2</sup>Foggy Creek is identified on claims within the Thorp Subbasin.  
25 Diversion points from Foggy Creek correspond to the location of Fogey  
Creek. It appears that Foggy Creek and Fogey Creek are the same source  
and shall be considered so unless testimony shows otherwise.

1           The company timely registered its claims with the Department of Ecology in  
2           1974. The claims consisted of water flowing through Foggy Creek, unnamed  
3           middle creek, Robinson Creek, Hatfield Canyon Creek, unnamed middle creek,  
4           unnamed water course, 7 drains, and, through a supplement attached to the  
5           various claim forms, to Yakima River water.

6           The supplement referenced by Mr. Spall was attached to at least three of  
7           the 90.14 claims filed by the Packwood Canal Company. The supplement generally  
8           describes the construction and location of the canal from its inception by the  
9           City of Ellensburg to its acquisition by the Packwood Canal Company. While it  
10          does indicate that the canal took water from the Yakima River, the Referee does  
11          not believe the supplement fulfills the requirements of the filing under RCW  
12          90.14. RCW 90.14.051 set forth the information which was required to be included  
13          on the water right claim such as source of water, the quantity of water being  
14          used, the extent of the water use, the claimed priority of the right, legal  
15          doctrine, the location of the point of diversion and place of use. This  
16          pertinent information is lacking from the supplement.

17          The 90.14 claims filed by Packwood Canal for Fogey Creek, Robinson Canyon,  
18          and Hatfield Canyon claim an 1885 date of first water use. Dan Brunson felt that  
19          creeks had been used for irrigation since sometime prior to 1890, so it is  
20          reasonable to believe that the 1885 date has merit for an appropriative right.  
21          Lands were routinely occupied two to three years prior to receiving a patent from  
22          the U.S. Government.

23          Mr. Brunson testified that the canal company continuously diverts water  
24          from the Yakima River to operate the fish screen bypass required by the  
25          Department of Fisheries under RCW 75.20.040 which requires installation of fish  
26          screens on diversion headworks to prevent the fish from migrating into irrigation  
27          canals and ditches where they would be destroyed. When fish screens cannot be  
28          installed at the ditch headworks, they are often installed some distance down the

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ditch or canal further requiring that an amount of water be continuously released back to the river in a bypass. Water used for fish bypass flows appears to be a recent development, having taken place since World War II, long after the 1917 or 1932 cut-off dates. Nothing in the record shows that the claimant or the Department of Fisheries obtained a water right permit or certificate for this use. Therefore, the Referee does not believe any right exists to divert water for the fish bypass flow.

Testimony was inconclusive concerning the quantity of water that has been historically diverted from Fogey Creek and Robinson Canyon. Contracts signed in the early 1900's indicate that several flumes were to be constructed across Packwood Canal to carry approximately 1,500 inches (38 cubic feet per second) for lands that conceivably could have been served from those creeks. The exhibits did not identify the sources of the water to be carried in the flumes and there are other water courses that could have required flumes at the general location identified. The contracts also stated that 1,675 inches (42 cubic feet per second) of water were to be delivered through the canal to the individuals who had agreed to construction of the canal through their properties. Again, no specific sources were identified.

Only one contract referenced a specific place of use where the water was delivered from the canal. J.N. and Anna Burch signed a contract on August 5, 1903, to divert 500 inches of water from the canal for the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, all in T. 18 N., R. 18 E.W.M. Under terms of the contract, they could not barter or trade away these rights. They were also entitled to water via two flumes over the canal carrying 100 inches each. Thomas Brunson now owns all the described lands except the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32 portions of which both Mr. Brunson and

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3 Bar G own. All the remaining contracts identify where the easements for the canal would be, the number of flumes and, in some cases, the number of inches of water conveyed through the flumes and number of inches from the canal. However, there is no indication where the water was to be used or the number of acres irrigated.

Stream measurements were taken during the 1989 irrigation season. Flows in Robinson Canyon, measured at its confluence with the canal on July 1 and August 10, and were 7.8 cfs and 5.74 cfs, respectively. Fogey Creek was measured at two separate points, the first at a point where it crosses Taneum Canal and flows were less than 1 cfs. The second measurements, where it enters the canal, were taken on July 1, July 30 and August 10; flows were 26.5 cfs, 10.93 cfs and 8.51 cfs, respectively. Mr. Bain's testimony was that the creek flow was lowest in the spring before return flow and seepage from updrainage canals contribute to the creek and that the flow increased until early fall, when it began to decline. Except during the spring, the flows in Fogey Creek and Robinson Canyon are primarily return flow. There would have been very little natural flow in Fogey and Robinson Canyon at the time of Mr. Bain's measurements in July and August of 1989. Consequently, those measurement are not reflective of the quantity of water Fogey Creek and Robinson Canyon naturally contribute to the canal. In September, Mr. Bain measured the flow of the canal itself. At the point of diversion it was 2.3 cfs, and at a point above where it flows back into the Yakima River it was 25+ cfs.

The canal benefits from significant seepage and return flows from surrounding farms. Mr. Bain did not quantify the natural flow available from the drainages, the return flows resulting from the application of naturally occurring waters within the drainage, or foreign return flows. The Kittitas Reclamation

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1 District, Taneum Canal Company and West Side Irrigating Company all transport  
2 water into and through the subbasin for use by their patrons, resulting in return  
3 flows being generated. Foreign and natural return flows may drain from the  
4 properties into the creek channels and enter the Packwood Canal. The Court has  
5 determined that foreign return flows are not subject to appropriation. (See the  
6 Special Issues Section of this report beginning on Page 5.) If quantified  
7 through actual diversion measurements and not synthetic analysis, historic use of  
8 natural creek flows and natural return flows can be confirmed if that use meets  
9 the appropriate criteria. However, these data were not provided to the Referee.

10 The Plaintiff's Report recommended that a non-diversionary right be  
11 confirmed to the Packwood Canal Company for stock water supply. However, nothing  
12 in the record would allow the Referee to conclude that the canal company owns  
13 property riparian to any surface water source in Subbasin No. 8 on which stock  
14 could be grazing. Only individual landowners would enjoy riparian stock water  
15 rights from natural water sources on or adjoining their property. Therefore, the  
16 Referee will not incorporate that recommendation. Ten acre-feet per year was  
17 claimed for stock water.

18 The Referee believes that a Prior Appropriation right has been established  
19 for Fogey Creek and Robinson Canyon with a June 30, 1885, date of priority;  
20 however, lacking quantification of the natural flow waters a right cannot be  
21 confirmed. The claimants can file an exception to this report to allow  
22 additional testimony to be taken and provide the Referee this information.

23 Although the Referee believes that a 1903 right was established for the  
24 Yakima River, the Packwood Canal Company's failure to file a 90.14 water right  
25 claim precludes the Referee from confirming a right to the use of Yakima River  
26 water. No testimony was provided for use of the drains, and the 90.14 claims

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filed for these drains gave dates of first use well beyond the enactment of the Surface Water Code on June 6, 1917; therefore, a right cannot be confirmed for use of the drains. Testimony related to Cabin Creek was insufficient to result in an affirmative recommendation; therefore, the Referee cannot recommend that a right be confirmed for Cabin Creek.

COURT CLAIM NO. 1086 - Francis Callahan

Jennie Callahan  
Lloyd K. Howry

Mr. Francis Callahan filed a Statement of Claim to the Court asserting a right to use water from an unnamed spring for domestic supply, stock water and lawn and garden irrigation. Mr. Callahan has since passed away. Jennie Callahan, his widow, was represented by Brian Frederick, attorney, and testified at the evidentiary hearing. Mrs. Callahan requested that any right be confirmed in her name as current owner of the property. On January 6, 1994, Lloyd K. Howry was joined to the claim.

The property is located within the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M. and has been in the Callahan family since 1947. Mrs. Callahan submitted into evidence two articles on the Thorp area. One was the biographies of Simon P. and Frederick Whipple and the other was a more recent newspaper article about early Thorp history. She also referred to a talk with a Mrs. Hickey, who was 95 at the time of this hearing, and a long time resident of the area. The Federal Government issued a patent to the Northern Pacific Railroad (NPR) on January 16, 1896, for Section 13, T. 18 N., R. 17 E.W.M.. The spring source is across the road within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, which was not patented to the Railroad. John Goodwin purchased this property on March 9, 1889. In 1900, Frederick and Simon Whipple purchased the Cloverdale Creamery, owned by

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1 Mr. Goodwin. This appeared to be the second creamery on the property the first  
2 one having burned down. The article from the Daily Record, Ellensburg,  
3 Washington dated August 18, 1989, stated on page 13-D, "At an early date, John  
4 Goodwin owned a creamery which stood on the site of the Callahan home".

5 Although the original use of the spring was for the creamery, it is  
6 reasonable to conclude that potable water for the workers was also supplied by  
7 the spring. When the claimants built their home, the use was changed to domestic  
8 for the Callahan home and irrigation of the lawn and garden. The claimants did  
9 not go through the formal process under RCW 90.03 and seek a change in purpose  
10 from the Department of Ecology or a predecessor agency; however, this is not a  
11 fatal flaw in these proceedings given the length of time since the change  
12 occurred and domestic use for the home is comparable to domestic use at the  
13 creamery.

14 The spring is located across the road from the Callahan property at a point  
15 approximately 2200 feet south and 300 feet west from the northeast corner of  
16 Section 14, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 18 N., R. 17 E.W.M. The  
17 spring is piped under the road in an easterly direction to the claimants  
18 property. The primary use of the water is for domestic supply for the home.  
19 However, Melvin Dyk stated that Mrs. Callahan is also able to use the spring for  
20 irrigation of her yard. There was no testimony concerning stock water supply.

21 According to the State's Investigation Report, the claimant is entitled to  
22 water from the West Side Irrigating Company. A pond on the property is supplied  
23 water via the West Side Irrigating Company. West Side is a Major Claimant whose  
24 claims will be considered in the Major Claimant pathway.

25 In response to the Claims Registration Act, Chapter 90.14 RCW, Mr. Callahan  
26 filed a claim for use of a spring for domestic supply. A "short form" was used,

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1 so the source of water was not further described, nor was there any information  
2 concerning the location of the point of diversion, quantity of water or date of  
3 first use. It is reasonable to conclude that the spring on this claim is the  
4 same one used by Mrs. Callahan. Chapter 90.14 RCW allowed for the use of a  
5 "short form" if water was only being claimed for stock watering, watering a lawn  
6 or noncommercial garden not over 1/2 acre in size, or for domestic purposes not  
7 exceeding 5,000 gallons per day.

8 The Referee recommends that a right under the Prior Appropriation Doctrine  
9 be confirmed with a priority date of March 9, 1889, to Mrs. Jennie Callahan and  
10 Lloyd K. Howry in the amounts of 0.02 cfs, 2 acre-feet per year for domestic  
11 supply, and lawn and garden irrigation not to exceed one-half acre.

12 Since the claimant is entitled to water via the West Side Irrigating  
13 Company, the right herein confirmed for irrigation of her lawn and garden and  
14 that which may be confirmed to West Side for her use shall not exceed 2 acre-feet  
15 per year.

16

17 COURT CLAIM NO. 1074 - William G. and Julia Charles

18 William G. and Julia Charles filed a Statement of Claim to the Court  
19 asserting a right to Robinson Creek for irrigation of one-quarter acre.  
20 Mr. Charles testified on behalf of their claim at the evidentiary hearing.

21 The Charleses are claiming a right to 0.02 cubic feet per second from  
22 Robinson Creek at a point located approximately 1,250 feet west and 600 feet  
23 north from the southwest corner of Section 26, T. 18 N., R. 17 E.W.M. for  
24 irrigation of one-quarter acre around their home. Their son, Buck, presently  
25 resides on the property and has installed a 1 horsepower pump capable of running  
26 three sprinklers. There is one horse on the property.

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The property has been in the Charles family since 1929. A neighbor, Larry Hillis, owns property to the immediate south and east of their property. Mr. Hillis presented information concerning the chain of title to the property which was homesteaded as one parcel by C.W. Pease, who received a patent on September 22, 1906. Existing ditches were on the property and at one time this property had 3 shares to the Watt Ditch; however, they found it difficult to get water through the ditch to their property. Watt Ditch originates in Subbasin No. 11. Manastash.

In the past, the creek has always had a "trickle" of water in it, but it's gone dry in the last couple of years. Although the point of diversion utilized by the Charleses lies below the intersection of the Kittitas Reclamation District canal and the creek, Mr. Charles' testimony that the creek flows only a trickle and has gone dry indicates that seepage from the canal does not contribute significantly to the flow in the creek channel above his point of diversion. Attempts to irrigate all of their property have been unsuccessful since most of the land is unsuitable for irrigation, so they irrigate only one-quarter acre.

Water right claim No. 093355 was filed in response to the Claims Registration Act, Chapter 90.14 RCW, preserving any historic right that may be appurtenant to this property.

Based on the foregoing, the Referee recommends that a right be confirmed to William and Julia Charles under the Riparian Doctrine in the amounts of 0.02 cfs, 2 acre-feet per year for irrigation of one-quarter acre and stock water supply from Robinson Creek with a priority date of September 22, 1906.

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COURT CLAIM NO. 2176 -- Paul W. and Marcia A. Cloutier

A Statement of Claim to the Court was submitted by Paul W. and Marcia A. Cloutier asserting a riparian right to use water from subsurface drainage for stock water and irrigation. Mr. Cloutier testified at the evidentiary hearing in behalf of their claim.

Water is channeled through a subsurface drain, of unknown length, from Wendell Prater's property into a ditch on the Cloutier property. Based on a conversation he had with the previous owner of his property, Mr. Cloutier understood that the subsurface drain was installed in the 1940's. The water coming from the subsurface drain flows continuously. Mr. Cloutier estimated the flow to be about 0.25 cubic feet per second (cfs). Water that drains into the ditch is used for stockwater supply primarily from September through April. The remainder of the year Mr. Cloutier uses his well water. At present, the claimants have 15 cows and 2 horses and in the past they have had up to 26 head.

The claimants receive their irrigation water from the West Side Irrigating Company whose claim will be presented at the evidentiary hearing for the Major Claimants.

No Chapter 90.14 water right claim was filed for the property. Under the Claims Registration Act, failure to file a water right claim results in waiver and relinquishment of any right that may have existed.

Based on the foregoing, the Referee cannot confirm a water right to the claimants.

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1           COURT CLAIM NO. 1894 - Glenn and Robin Collins

2           A Statement of Claim to the Court was filed by Edward and Ruth MacKenzie  
3           for use of water from an unnamed stream for irrigation of 3 acres and stock  
4           water. On July 7, 1988, Glenn and Robin Collins were substituted for the  
5           MacKenzies. The Collins did not make an appearance at the evidentiary hearing to  
6           testify on behalf of this claim. Based on the above, the Referee cannot  
7           recommend that a right be confirmed under Court Claim No. 1894.

8

9           COURT CLAIM NO. 0570 -- Andrew and Evelyn Dyk

10          A Statement of Claim to the Court was filed by Andrew and Evelyn Dyk  
11          asserting a right to use of waters from unnamed springs and drains. Kenneth  
12          Beckley, attorney, represented the Dyks, and Mr. Dyk and Richard Bain, consulting  
13          engineer, testified in behalf of the claim. This property is also known as  
14          Centerview Farms.

15          Mr. Dyk testified to irrigating from Fogey Creek approximately 113 acres  
16          within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , lying south and west of the Packwood canal, portions of the  
17          E $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , lying south and west of the West Side canal, in  
18          Section 13; and parts of the N $\frac{1}{4}$ N $\frac{1}{4}$ NE $\frac{1}{4}$ , the N $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  lying west of  
19          the West Side canal in Section 24, ALL in T. 18 N., R. 17 E.W.M..

20          This property was originally homesteaded and four separate patents were  
21          obtained. On March 15, 1896, a patent was obtained by George Forgery for the  
22          N $\frac{1}{4}$ NW $\frac{1}{4}$ , the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24, T. 18 N., R. 17 E.W.M. On  
23          January 30, 1885, a patent was obtained by James Stevens for the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , the  
24          S $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M.. On May 11, 1888, a  
25          patent was obtained by James Dermott for the S $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, T.  
26          18 N., R. 17 E.W.M. On August 19, 1890, James Bates obtained a patent for the

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1 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24, T. 18 N., R. 17 E.W.M. Based on discussions with previous  
2 owner Lloyd Hatfield, whose father had farmed the property since at least 1902,  
3 Mr. Dyk believed that these properties have been irrigated fairly consistently  
4 since the patents were obtained.

5 Mr. Dyk utilizes five turnouts to divert water from Fogey Creek. Points of  
6 diversion are located as follows: 1. 500 feet north and 550 feet west from the  
7 southeast corner of Section 14, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14; 2. 660  
8 feet south 1,220 feet east from the northwest corner of Section 24, being within  
9 the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24; 3. 800 feet south and 2,600 feet east from the  
10 northwest corner of Section 24, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24; 4. More  
11 or less on the section line between Sections 13 and 24 approximately 1,980 feet  
12 west of the southeast corner of Section 13; 5. 1,000 feet north and 1,250 feet  
13 west of the southeast corner of Section 13, being within the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 13;  
14 all within T. 18 N., R. 17 E.W.M.

15 Centerview Farms leases lands within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 23 and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 24 and uses the takeout in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14 to supply water to  
17 the land. Although Mr. Dyk currently irrigates the lands, there was no testimony  
18 on historic irrigation.

19 Numerous drains are located on the Dyk property, the neighboring Harrel  
20 property and other neighboring properties that discharge return flows into Fogey  
21 Creek. Both Mr. Bain and Mr. Dyk testified that the water diverted from Fogey  
22 Creek to the Dyk property is return flow from neighboring lands. Mr. Bain  
23 testified that Paul Harrel diverts the entire flow in Fogey Creek before it  
24 reaches the Dyk property. The majority of this water appears to be imported into  
25 the subbasin through the canals for Taneum, KRD and West Side. Since these  
26 waters originate from outside the subbasin, they are considered foreign return

1 flows. The Special Issues Section of this report beginning on Page 5 addresses  
2 the Referees inability to confirm water rights for the use of these waters.  
3 Rights can only be confirmed for return flow waters that result from the  
4 application of naturally occurring water in the subbasin. No testimony was  
5 offered to allow the Referee to conclude that there are any such return flow  
6 waters originating from the application of subbasin water or to quantify those  
7 waters.

8 The Dyk property also receives water from the Taneum Ditch Company, the KRD  
9 and the West Side Irrigating Company. The Taneum Ditch Company diversion point  
10 is located within Subbasin 6 (Taneum), and will be addressed in the Report of  
11 Referee for that subbasin. The KRD and West Side are Major Claimants whose  
12 claims will be addressed in the Major Claimant pathway.

13 Mr. Bain testified concerning the quantity of water needed to irrigate the  
14 claimants' land based on measurements of a select number of fields that are  
15 irrigated with KRD water. No data were gathered concerning the actual quantity  
16 of water used on the fields irrigated with diversions from Fogey Creek.

17 The Plaintiff's Report recommended confirmation of non-diversionary stock  
18 water supply. An unnamed spring, located approximately 850 feet north and 500  
19 feet west from the center of Section 24, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24,  
20 T. 18 N., R. 17 E.W.M., is used for continuous stock water supply. Mr. Dyk has  
21 had up to 3,000 sheep, 200 cattle and 3 to 4 horses on his property. It was not  
22 clear from the testimony whether the stock drink directly from the spring or if  
23 it is channeled to stock troughs. However, the State's Investigation Report  
24 indicates that the spring discharges into an underground six inch PVC pipe, which  
25 discharges directly into Fogey Creek. The stock drink directly from the "creek".

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1 Stock drinking from either the spring or Fogey Creek would be covered by the  
2 stock water stipulation.

3 Mr. Dyk filed a Chapter 90.14 RCW water right claim for irrigation and  
4 stock water supply from spring, drain and Fogey Creek. The estimated date of  
5 first use claimed was April 1, 1902, which was based on his conversation with  
6 Mr. Hatfield. Mr. Dyk has amended the date claimed for establishment of his  
7 rights based on the patents filed in the late 1800's.

8 It appears that rights may have been established at the time the various  
9 patents were issued, and that those rights probably have continued to be  
10 exercised. However, testimony that the water diverted from Fogey Creek is return  
11 flow, coupled with a failure to quantify the amount of return flow that might be  
12 coming from subbasin water, force the Referee to recommend denial of a right  
13 under Court Claim No. 0570. In addition, the claimants did not provide  
14 sufficient evidence to separate the irrigated acres in relation to the patents.  
15

16 COURT CLAIM NO. 1009 - Martin and Frances Dyk

17 A Statement of Claim to the Court was filed by Martin and Frances Dyk  
18 claiming a use of subsurface drain water for irrigation and stock water supply.  
19 Martin Dyk and Richard Bain, consulting engineer, testified on behalf of this  
20 claim. Dale Dyk conducted the examination of the witnesses.

21 The subject property is owned by Martin Dyk and Don Dyk and is operated  
22 under the name of D and D Farms. The D and D Farms property is located within  
23 portions of the S3/4 of Section 24, T. 18 N., R. 17 E.W.M. An Abstract of Title  
24 submitted into evidence by the claimants showed a patent dated December 1, 1882,  
25 issuing to Granville H. Faunce for the SW $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 24, and a  
26

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1 patent dated March 15, 1876, issued to George W. Forgery for the SE<sup>1</sup>NE<sup>1</sup> of  
2 Section 24.

3 Two additional patents were discovered for the subject property. One dated  
4 November 13, 1889, which issued to James Dermott for the S<sup>1</sup>NE<sup>1</sup> and the NE<sup>1</sup>NE<sup>1</sup> of  
5 Section 24, and the other issued to S.J. Packwood on May 30, 1883, for the NW<sup>1</sup>SE<sup>1</sup>  
6 of Section 24.

7 Martin Dyk testified that when they were remodeling their home they came  
8 across a old magazine dated 1901 in the wall, showing that the home was  
9 constructed prior to 1901. When they were upgrading their irrigation delivery  
10 system the Dyk's came across wooden U or V shaped flumes, which still work. At  
11 present approximately 400 acres of timothy hay, sweet corn and spring wheat is  
12 grown on D and D Farms. The land is rill irrigated. Water is delivered through  
13 concrete ditches, underground pipe or gated pipe. Based on the testimony,  
14 approximately 48.8 acres irrigated are from underground drains and springs on  
15 this farm. The claimants also have had up to 150 head of cattle, up to 4 horses  
16 and, in the autumn, up to 3,000 head of sheep on the property. At one time, they  
17 operated a dairy with 40 head of cows.

18 Several Chapter 90.14 RCW water right claims were filed by Martin Dyk which  
19 preserved any historic right that may be associated with the property. Claims  
20 Nos. 071272, 071273, 071274, 071275, 071276 and 071279 identify "underground  
21 drains and waste water" as the source of water.

22 Each of the State's investigation reports were discussed in depth by the  
23 Dyk's. Corrections were made as appropriate utilizing a map of their farms and  
24 fields (DE-43). Report No. 1 (State's Exhibit 34) discussed irrigation of 1.3  
25 acres of pasture and continuous stock water supply from an underground drain  
26 located within the south 400 feet of the NE<sup>1</sup>NE<sup>1</sup>SW<sup>1</sup> of Section 24. The pasture is

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1 located within field No. 5 which is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 24, lying  
2 north and east of the West Side canal. Field No. 5 also has the house, barn and  
3 buildings within it. No other water is supplied to this 1.3 acres.

4 Report No. 2 (SE-35) described a use of water from return flows in  
5 subsurface drains for irrigation of 2 acres and continuous stock water supply  
6 within a portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , lying north and east of the West Side canal  
7 and west of the Thorp Highway, of Section 24. These 2 acres lie within a portion  
8 of field No. 4 on Defendant's Exhibit 43. Return flow is piped over the West  
9 Side canal into the 2 acre pasture. No water is delivered to this property from  
10 any other source.

11 Report No. 3 (SE-36) indicated a use of subsurface drain water for  
12 irrigation of 18 acres and continuous stock water supply within the north 650  
13 feet of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24. Testimony showed that although water was once  
14 piped to other nearby portions of the property, it is no longer used since the  
15 pipe has eroded. The field identified by the State on Report No. 3 is not  
16 correct. They believe that the area in question is approximately 10 acres in  
17 size, located within field No. 13 and lies east of the Thorp Highway more or less  
18 within the W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 24. These 10 acres are served water from the  
19 Taneum Canal Company and Kittitas Reclamation District (KRD). The subsurface  
20 drain identified in Report No. 3 is actually the delivery pipe for the KRD water.

21 Report No. 4 (SE-37) describes a use of subsurface drain water for  
22 irrigation of 15.5 acres and continuous stock water supply within the south 900  
23 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24. The 15.5 acres are within field No. 11 and the  
24 north portion of field No. 12. Mr. Dyk indicated that water source is from  
25 return flows and spring water that flows year around. The claimants did not  
26 quantify the spring flow. The point of diversion is located 350 feet south and

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1200 feet east from the center of Section 24. The portion of ground also receives water from the West Side Irrigating Company.

Report No. 5 (SE-38) stated a use of subsurface drain water for irrigation of 17.5 acres and continuous stock water supply within a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 24. Mr. Dyk testified that they irrigate approximately 30 acres from 4 separate takeouts along the roadside (Killmore) lateral. These 4 takeouts are located along the west section line of Section 24 as follows (from south to north): 1: 1,320 feet north; 2: 2,650 feet north; 3: 3,050 feet north; 4: 3,650 feet north, all beginning at the southwest corner of Section 24. The flow in these drains varies, and can be as much as 4 cfs. The claimants normally divert approximately 2.5 cfs. This land is also entitled to water from the Taneum Canal Company and KRD.

Mr. Dyk filed two additional water right claims, No. 071277 and No. 071278, which appear to be appurtenant to the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24, T. 18 N., R. 17 E.W.M. Based on the evidence and testimony for the Thorp Subbasin, the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 24 is owned by Andrew Dyk. No testimony was provided by Andrew Dyk or Martin Dyk concerning any sources in this general location.

The engineering report prepared by Mr. Bain indicates that D and D Farms are entitled to 342 shares from Taneum Ditch Company, 86 shares from the West Side Irrigating Company, and 25 acres assessed by the Kittitas Reclamation District. The Taneum Ditch Company's claim to a water right will be determined through Subbasin No. 6 (Taneum), and the claimants should refer to the Report of Referee for that subbasin. Both the West Side Irrigating Company and the Kittitas Reclamation District are Major Claimants whose claims will be addressed through the Major Claimant pathway.

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1           Numerous drains are located on the Dyk property as well as neighboring  
2 properties. The Dyk property uses water predominately from KRD, Taneum, West  
3 Side and return flows, with a minor amount of water from springs. Water rights  
4 can only be confirmed for use of waters that originate within the subbasin, be it  
5 natural waters or return flows. The three water purveyors convey water into the  
6 subbasin from sources that originate outside Subbasin No. 8 and application of  
7 these waters produce "foreign return flows". The Special Issues Section of this  
8 report, beginning on Page 5, address the Referee's inability to confirm water  
9 rights for the use of foreign return flows, including those that result from the  
10 application of Yakima Project water through KRD.

11           No testimony provided by the Dyks differentiated between the quantity of  
12 water from return flows and the naturally occurring spring waters that they use  
13 on fields Nos. 11 and 12 (north portion) as discussed under Report 4. Although  
14 it is reasonable to conclude that water from springs has been historically  
15 appropriated for use on the farm, testimony and quantification of that use must  
16 be provided. Therefore, the Referee cannot recommend confirmation of a water  
17 right for any naturally occurring spring water that may be used.

18           The Plaintiff's Report recommended that Martin Dyk be confirmed non-  
19 diversionary stock water supply from the sources on his property. The stock can  
20 drink directly from the ponds and springs located on this property; therefore,  
21 the Referee concurs with the recommendation.

22

23 COURT CLAIM NO. 2074 - Audrey Irene Evans

24           Audrey Irene Evans filed a Statement of Claim to the Court asserting rights  
25 to use water from three springs, a pond, two wells, the Kittitas Reclamation  
26 District, and the Taneum Canal Company. Because the waters claimed extend to two

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1 subbasins, testimony and evidence in support of the claim were given during the  
2 evidentiary hearings for Subbasin No. 8 (Thorp) and Subbasin No. 6 (Taneum). At  
3 the Thorp hearing, Attorney James Hurson represented the claimant, and Del Evans,  
4 the claimant's sons, testified in behalf of the claim.

5 During the Taneum evidentiary hearing, Ms. Evans was represented by  
6 Attorney Richard Cole. Ms Evans and Leonard Evans, the previous owner since  
7 1948, offered testimony. Ms. Evans ha remarried, and was now known as Irene  
8 Evans Woodburn. However, she stated that the property remained in her name as  
9 Evans. Testimony and evidence from the Taneum hearing are incorporated by  
10 reference.

11 In both subbasin hearings, Ben George, Chairman of the Taneum Canal  
12 Company, challenged the claimant's testimony regarding use of the Taneum Canal.  
13 For the Thorp hearing, this amounted to a mistaken reference by Del Evans who  
14 referred to the Taneum Canal Company when he meant to say KRD. The challenge to  
15 statements in the Taneum subbasin will be discussed in that Referee's Report.

16 A patent issued to Northern Pacific Railroad (NPR) on November 4, 1895, for  
17 an area encompassing several thousand acres. NPR sold the S $\frac{1}{4}$ SW $\frac{1}{4}$ , the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and  
18 the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 18 N., R. 17 E.W.M. to John Waggoner on March 2, 1899.  
19 The claimants submitted a chain of title showing transfer of the land from John  
20 Waggoner through current ownership. The claim filed by Ms. Evans-Woodburn was  
21 for 40 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 18 N., R. 17 E.W.M.. Thirty-five  
22 acres have been sold to Aaron C. and Barbara L. Stansberry who are not claimants  
23 in these proceedings. Ms. Evans-Woodburn kept the remaining five acres located  
24 within the S $\frac{1}{4}$ S $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9. Although two acres are currently irrigated,  
25 four acres have been historically irrigated through the years and as recently as  
26 1981.

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1 Originally the claimants used six water producing springs for irrigation  
2 purposes. The neighbor to the west (Leishman) recontoured his land resulting in  
3 elimination of three springs and reduced flow from the remaining springs on the  
4 Evans property. Some ditches and flumes coming off the Leishman property also  
5 were eliminated during the recontouring. Ms. Evans-Woodburn now use two springs  
6 and a pond. Although testimony was not completely clear, it appears the springs  
7 naturally flow into a main channel that drains into the pond and from which  
8 waters are then distributed to the property. The main channel carries snow and  
9 spring runoff from Wagner Canyon. Ms. Evans-Woodburn is claiming 0.02 cubic feet  
10 per second from each source. Pumping continuously at 0.02 cfs will generate 8.4  
11 acre-feet per year per source. In the past both hay and pasture have been  
12 irrigated and are now converting to raspberries and strawberries. There is a  
13 one-half BHP pump installed in the pond.

14 With the recontouring of their neighbors property, the springs and pond go  
15 dry as early as July. At that time Ms. Evans-Woodburn uses her KRD water to  
16 irrigate the property. Water is diverted from the main channel and conveyed via  
17 gravity flow through laterals. KRD provides its patrons with 4.0 acre-feet per  
18 acre per year for irrigation. The Kittitas Reclamation District is a Major  
19 Claimant in these proceedings whose claim will be addressed through the Major  
20 Claimant pathway.

21 The claimant also utilize tailwaters from her neighbors property and may  
22 also be entitled to water from the Taneum Ditch Company. Approximately .25 cfs  
23 is pumped from the Taneum Ditch for flood irrigation purposes. Since the Taneum  
24 Ditch Company is a claimant in Subbasin No. 6, the claimants should refer to the  
25 Report of Referee for that subbasin for a determination of the canal company's

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1 right. See The Special Issues Section of this report beginning on Page 5 for a  
2 discussion on return flows.

3 Stock drink directly from the springs, ponds and the canal. The  
4 Plaintiff's Report recommended confirmation of a non-diversionary right for stock  
5 water purposes from the springs and ponds.

6 Four Chapter 90.14 Water Right Claims were filed by Ms. Evans. Two claims  
7 were for wells, which cannot be addressed here, since groundwater is not part of  
8 these adjudication proceedings. The remaining two claims were filed for surface  
9 waters and the points of diversion given on the claims corresponded with a map  
10 that was attached to the claims. No purpose of use was stated on the claims;  
11 however, Ms. Evans-Woodburn indicated on the forms that "4 acre-feet per acre per  
12 year" was used. The Referee believes the intent of the Evans' RCW 90.14 claims  
13 was to document a use for irrigation from the springs and substantially complied  
14 with RCW 90.14. Testimony showed that these two springs were used for irrigation  
15 and the quantities and spring locations on the claims support the testimony. A  
16 survey map submitted as an exhibit has the springs located on it. Using this map  
17 in conjunction with the map submitted with the RCW 90.14 water right claims, the  
18 spring locations can be linked. Claim No. 150645 claimed a use of an unnamed  
19 spring (No. 2 on the map attached with the claim). This spring location  
20 corresponds to the northern most spring that lies north of the main channel which  
21 has ceased to flow due to the recontouring efforts. Claim No. 150646 claimed a  
22 use of water from an unnamed spring (No. 1 on the map attached with the claim).  
23 This spring corresponds with the recently constructed pond where a spring  
24 emerges. The place of use and point of diversion locations on both claims are  
25 within a portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 18 N., R. 17 E.W.M. and the date  
26 of first use claimed was 1904. No other water right claims were filed for the

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1 remaining springs or the main channel that comes out of Wagner Canyon. Failure  
2 to file the mandatory water right claims results in forfeiture of any right that  
3 may have existed for those sources, RCW 90.14.071.

4 Under the Prior Appropriation Doctrine a right can be confirmed for use of  
5 water that began prior to the enactment of the State's Surface Water Code,  
6 Chapter 90.03 RCW, on June 6, 1917. Under the Riparian Doctrine, a right can be  
7 confirmed for use of water if the land separated from Federal ownership prior to  
8 the enactment of the Surface Water Code and the use began prior to December 31,  
9 1932.

10 After careful consideration of the testimony and evidence presented, the  
11 Referee is of the opinion that there has been a change in point of diversion  
12 under Claim No. 150645 without going through the procedures of RCW 90.03. There  
13 has been historic use of the springs and now the springs flow into the pond that  
14 was constructed in 1980. That is the collection point for distributing the water  
15 to the property. The Referee believes it is reasonable to conclude that the pond  
16 and not the springs is the appropriate point of diversion for the water right,  
17 since those two springs now funnel into a single point for distribution to the  
18 property.

19 The Referee recommends that a right be confirmed to Audrey Irene Evans-  
20 Woodburn under the Riparian Doctrine with a priority date of November 4, 1895,  
21 for 0.04 cubic feet per second, 16.8 acre-feet per year from a pond located  
22 approximately 1520 feet north and 375 feet west from the southeast corner of  
23 Section 9, being within the S½SNE¼SE¼ of Section 9, T. 18 N., R. 17 E.W.M. for  
24 irrigation of 4 acres. The stock water stipulation provides for the claimants  
25 non-diversionary stock water needs.

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1 Since the land may have rights through the Kittitas Reclamation District or  
2 the Taneum Ditch Company, the right shall carry the following provision: A  
3 maximum annual quantity of 25.6 acre-feet per year shall be confirmed from all  
4 sources for irrigation supply of four acres.

5

6 COURT CLAIM NO. 1562 - Eva Frances Fischer

7 Eva Frances Fischer submitted a Statement of Claim asserting a right to use  
8 waste water for irrigation. Charles Roger Fischer, grandson of Ms. Fischer,  
9 testified in behalf of this claim at the evidentiary hearing.

10 The Fischer property was once owned by the Northern Pacific Railroad and  
11 part of the exhibits submitted for adjacent property (the Gibsons) showed a  
12 patent dated June 9, 1884, issued to James McGinnis for the N $\frac{1}{2}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ NW $\frac{1}{4}$  of  
13 Section 12, T. 18 N., R. 17 E.W.M.. This includes the claimants property. In  
14 1911, the property transferred from Theodore Stone to F. Fischer, who was  
15 Charles' grandfather. The property has been in the Fischer family since that  
16 time. Mr. Fischer's grandfather told him that water had been used on the  
17 property since he owned it, and that he kept the flume in working order. Row  
18 crops (corn, vegetables, etc.) were grown on this property. Mr. Fischer believes  
19 the home was constructed as early as 1883 and the land has been farmed since the  
20 1890s.

21 The Fischer property is 7.35 acres, and two acres of pasture and one acre  
22 of lawn and garden are irrigated from springs that seep from the ground.  
23 According to the State's Investigation Report, the water source is a drainage  
24 ditch located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M., near the  
25 east embankment of the West Side Irrigating Company canal. In addition to the  
26 springs the ditch also receives waste and drainage water from adjacent

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1 properties. A two BHP pump installed on the ditch, a three inch mainline and  
2 five sprinklers serve the property. Mr. Fischer did not know how much water he  
3 uses to irrigate. A "spring/ditch" that originates from the Wilcox property  
4 located to the west of the Fischer property is used for stock water supply. The  
5 stock currently drink directly from the ditch, but at one time there were also  
6 stock troughs. There are about 12 cows, five horses and a few fowl  
7 (turkeys/geese) on the property.

8 It is apparent from the information in the record that a portion or all of  
9 the water used is return flow water. The Kittitas Reclamation District, Taneum  
10 Canal Company and the West Side Irrigating Company all have canals that deliver  
11 water to lands being irrigated to the west and updrainage from the Fischer  
12 property. The application of this water results in foreign return flows in the  
13 drains lying below the irrigated land, such as the drains used by the Fishers.  
14 The Special Issues Section of this report beginning on Page 5 addresses the  
15 Referee's inability to recommend confirmation of a right to the use of foreign  
16 return flows.

17 No Chapter 90.14 RCW water right claim was filed by the Fischers for the  
18 use of surface waters on the subject property. Under the Claims Registration  
19 Act, Chapter 90.14.071 RCW, failure to file a claim results in forfeiture of any  
20 right that may have existed. Water Right Claim No. 150649, filed by Paul Fischer  
21 claimed a use of ground water from a well for domestic supply.

22 Although it appears to the Referee that a historic right to spring water  
23 may have been established, failure to file the mandatory RCW 90.14 Water Right  
24 Claim forfeited any such right. Therefore, the Referee cannot recommend that a  
25 right be confirmed under this claim.

26  
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1           COURT CLAIM NO. 1799 - John P. and Barbara W. Foster

2           A Statement of Claim to the Court was filed by John P. and Barbara W.  
3           Foster claiming a right to use waste water for irrigation and stock water supply.  
4           Mr. Foster testified at the evidentiary hearing.

5           The Fosters own land located within the S $\frac{1}{2}$  of Section 23, T. 18 N., R. 17  
6           E.W.M., lying west of the Taneum ditch. They irrigate 11.6 acres using runoff or  
7           waste waters from a ditch that crosses the neighboring Larry Hillis property.  
8           The point of diversion for the ditch is on Robinson Canyon Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
9           Section 27, and is located about one mile southwest of the Foster's land. Water  
10          is conveyed from Robinson Creek via the ditch, under the KRD canal, through the  
11          Hillis property to the Foster property conveying not only Robinson Canyon Creek  
12          water, but also waste waters from the Hillis property. The wastewater includes  
13          seepage from the KRD canal and return flows generated from the application of KRD  
14          water. The Fosters divert water through double gated pipe and flood irrigate a  
15          hogback, a small pasture and their lawn. They currently have about 10 head of  
16          stock, although in the past they've had up to 30 head. The Fosters take delivery  
17          of water from the Kittitas Reclamation District (KRD), however, it is for lands  
18          other than those identified in this claim.

19          The Fosters have owned the property since 1979, but did not indicate from  
20          whom they purchased. The property was farmed, but not owned, by Andrew Dyk about  
21          30 to 40 years ago. A patent issued to the Northern Pacific Railroad Company on  
22          January 16, 1896, included the S $\frac{1}{2}$  of Section 23.

23          The waste waters or return flows that are used by the Fosters result from  
24          the application of irrigation water on neighboring properties. Some of the  
25          return flows result from the use of KRD water, which would make them foreign  
26          return flows. As explained in the Special Issues Section of this report

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beginning on page 5, a right to foreign return flows cannot be confirmed. If the  
1 return flow results from use of waters generated within the subbasin, then a  
2 right could have been established for its use. However, it would be necessary  
3 for the claimant to be able to establish the quantity of water being used that is  
4 generated within the subbasin. Additionally, there would have to be evidence of  
5 historic use sufficient to show that a right was established under either the  
6 Riparian or Prior Appropriation Doctrines and a water right claim filed under the  
7 Chapter 90.14 RCW. No Chapter 90.14 RCW claim can be located for the Fosters  
8 property and failure to file a claim results in forfeiture of any right that may  
9 have existed RCW 90.14.071. The only other mechanism for establishing a water  
10 right is through the permit procedures of RCW 90.03 and there is nothing in the  
11 record to show that has occurred.

12 The Plaintiff's Report recommended confirmation to the Fosters a non-  
13 diversionary stock water right from streams. However, the water delivered to the  
14 Foster property is through a waste water ditch, not a natural water course.  
15 There has been no testimony or evidence that there is a natural surface source on  
16 the Foster property. The Referee is unable to support the Plaintiff's Report  
17 recommendation.

18 Based on the above, the Referee cannot recommend that a right be confirmed  
19 to the Fosters for irrigation. The Referee also will not adopt the stock water  
20 recommendation in the Plaintiff's Report, since the use is clearly diversionary  
21 and lacks the mandatory Chapter 90.14 claim.

1           COURT CLAIM NO. 4817 & 4942 - David W. and Lyla M. Fudacz  
2           COURT CLAIM NO. 4818 - Larry T. Fudacz

3           Late Statements of Claim and supplemental claims were filed by the Fudaczs  
4           for use of water from three unnamed springs and return flows for irrigation and  
5           stock water supply. The claimants were represented by James Hurson, attorney.  
6           David Fudacz testified at the evidentiary hearing on behalf of both claims.

7           The properties in question utilize the same sources of water and  
8           distribution system, and operate as a unit. Spring and return flow waters  
9           originate at two points, identified as "A" and "B" on the Fudacz exhibit map (DE  
10          92). Based on the aerial photo, the springs emerge within a 100 foot area in the  
11          SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, although additional springs breakout all along the  
12          railroad tract area. The springs feed concrete underground lines conveying water  
13          to a point ("C") located at the southern most portion of the David and Lyla  
14          Fudacz property approximately 800 feet south and 1,320 feet west from the east  
15          quarter corner of Section 11, T. 18 N., R. 17 E.W.M.. The water is transported  
16          to their property to irrigate 7.71 acres of timothy hay. This same system also  
17          conveys water to Larry Fudacz's property for irrigation of 24.41 acres of timothy  
18          hay and row crops. They pasture up to 180 sheep and several horses and cattle.  
19          Surface methods are still the predominate method of application of water through  
20          both concrete and earthen ditches and plastic and concrete pipes. Both farms  
21          benefit from return flow when their neighbor, Andrew Dyk, irrigates his property.

22          David and Lyla Fudacz also have 4.12 acres which received water primarily  
23          from the West Side Irrigating Company and waste water from a ditch along Goodwin  
24          Road. Within the last few years, the claimants obtained an easement from their  
25          neighbors the Leavitts, and recently began taking delivery of water from the West  
26          Side Irrigating Company for the other 24.41 acre parcel. The West Side

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1 Irrigating Company is a Major Claimant in these proceedings. Their claim will be  
2 addressed through the Major Claimant pathway.

3 Three patents have issued each describing a portion of the property the  
4 Fudaczes own. The Northern Pacific Railroad received a patent dated May 31,  
5 1870, for several hundred acres, including the E $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
6 11. A patent issued to Rueben Pardee dated February 28, 1897, which in part  
7 described the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11. The David and Lyla Fudacz  
8 property lies within the above described patented land. A patent issued to  
9 Alanson J. Mason dated September 29, 1888, and included the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11  
10 wherein lies Larry Fudacz's property.

11 This general area was developed and irrigated beginning in the late 1800's,  
12 as testified to, not only by Mr. Fudacz, but by other claimants in these  
13 proceedings. In the early 1900's, the claimants' springs were the subject of  
14 litigation between Ruth Mason and John Yearwood/John Newman, et al. Mr. Yearwood  
15 had enlarged the spring channels on his property to convey the accumulating  
16 spring water off his property and to John Newman. The channelling work affected  
17 the flow of water onto the Mason property. The final opinion issued in June  
18 1919, resulting in Ms. Mason being entitled to use 10 miners inches under 4 inch  
19 pressure (0.2 cubic feet per second) from the springs for irrigation, domestic  
20 supply and stock water. The Yearwood and Newman uses were acknowledged, but  
21 there was no quantification of those uses. The Fudaczes own a portion of  
22 Yearwood and Newman properties.

23 The claimants make use of waste waters or tailwaters, which are defined as  
24 return flows. Although a right to use of natural return flows can be confirmed  
25 if historically used and quantified, and with the appropriate water right  
26 documentation, those flows imported into the subbasin are considered foreign

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1 return flows and are not subject to allocation. See the Special Issues Section  
2 of this report beginning on page 5.

3 Two 90.14 RCW water right claims were filed which appear to describe the  
4 Fudacz property. Claim No. 121941 was filed for use of water from a drain ditch  
5 on the south side of Goodwin Road for irrigation of lawn and garden and stock  
6 water supply. Since the "short form" was used, no specific point of diversion,  
7 quantities or date of first use was given. Use of the "short form" under RCW  
8 90.14 was for asserting a right to water for the purposes described in the Ground  
9 Water Code's exemption to the permit process (Section 90.44.050 RCW) which are  
10 domestic supply, stock watering, irrigation of up to one-half acre of lawn and  
11 non-commercial garden, and industrial supply as long as less than 5,000 gallons  
12 per day is being used. Use of the short form waived any right that may have  
13 existed in excess of those quantities and uses.

14 Under Claim No. 121943, 10 gallons per minute (gpm), 0.5 acre-foot per year  
15 was claimed from a spring for continuous stock water. No point of diversion was  
16 given. Claim No 121943 preserves a right to use of the spring for stock water  
17 only. The place of use described in these two claims was "All that portion of  
18 the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, lying north and east of the Chicago,  
19 Milwaukee, and St. Paul Railroad". Only a portion of the David and Linda Fudacz  
20 land falls within the described place of use--the 4.12 acre parcel on which only  
21 water from the West Side Irrigating Co. and a waste water ditch are used for  
22 irrigation. The spring is used for stock water supply.

23 The Referee recommends that a right be confirmed to David W. and Lyla M.  
24 Fudacz under Court Claim No. 04817, under the Riparian Doctrine, with a priority  
25 date of February 28, 1897, for 0.02 cfs and 2 acre-feet per year for continuous  
26 stock water supply from the spring area. The springs are located within the

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1 following points of diversion: "A" is located approximately 1,500 feet north and  
2 200 feet east from the south quarter corner of Section 11; and "B" is located  
3 approximately 1,400 feet north and 200 feet east from the south quarter corner of  
4 Section 11; both being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.

5 Due to the lack of a RCW 90.14 claim for irrigation and lack of testimony  
6 about the nature of the return flow waters being used, the Referee cannot  
7 recommend confirmation of an irrigation right under either Court Claim No. 4817  
8 or 4818.

9

10 COURT CLAIM NO. 1810 - Ben F. and Nina M. George

11 The Claimants filed a Statement of Claim asserting a right to use water  
12 from an unnamed spring for irrigation and stock water. Mr. George testified at  
13 the evidentiary hearing on behalf of their claim.

14 The subject property has been in the George family since 1928. The Georges  
15 own the SE $\frac{1}{4}$  of Section 3 and the NE $\frac{1}{4}$  of Section 10, T. 18 N., R. 17 E.W.M. and  
16 are entitled to water from both the Taneum Canal Company and the Kittitas  
17 Reclamation District (KRD). The portion of their property receiving water from  
18 the unnamed spring is located within the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3, lying east of the  
19 Thorp Mill Ditch. This property does not benefit from water delivered through  
20 either the Taneum ditch or KRD. The State's Investigation Report identified this  
21 property having West Side Irrigating Company water appurtenant to it; however,  
22 Mr. George testified that he does not convey West Side water to this acreage.

23 Approximately 12 acres are irrigated from the unnamed spring. Water is  
24 diverted from a point located approximately 800 feet south and 900 feet west from  
25 the east quarter corner of Section 3, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3.  
26 These springs originate east of the West Side canal and, although they flow

1 continuously, may to some extent be influenced by and benefit from water seeping  
2 from the canal. Continuous flow would indicate a natural source of water. Water  
3 is conveyed to the property via a 15 inch pipe at the source which reduces down  
4 to a 10 inch pipe. The number of head of stock fluctuates during the year but  
5 they have had up to 150 animals on the property. Stock drink directly from the  
6 spring or from the Thorp Mill Ditch, which flows through the property.

7 A patent issued to the Milwaukee Railroad in January 1896 for the S $\frac{1}{2}$  of  
8 Section 3. However, the SE $\frac{1}{4}$  of Section 3 was conveyed as early as June 22, 1887,  
9 to Wilken Briggs under Warranty Deed and Release of Mortgage. A 1907 Warranty  
10 Deed from Thomas and Meri Lachman to the Chicago, Milwaukee and St. Paul Railroad  
11 included statements that the railroad could not damage the existing spring, and  
12 needed to install tiling to collect and conduct water towards said spring as well  
13 as move existing structures--farm buildings and a dwelling located within the  
14 NE $\frac{1}{4}$ SE $\frac{1}{4}$ --to the Lachmans location of choice. A.M. Lachman filed a Notice of  
15 Appropriation dated October 17, 1912 for the SE $\frac{1}{4}$  of Section 3 for .25 cubic feet  
16 per second (cfs) from a spring or group of springs. The Referee believes that  
17 these springs are the same springs under the court claim.

18 Water Right Claim No. 116269 was filed by Mr. George for use of a spring  
19 for irrigation, stock water and domestic supply with a date of first use prior to  
20 1900. This claim appears to describe the unnamed spring under Court Claim No.  
21 1810 thereby preserving any historical right which may exist. No water right  
22 claim can be found for use of the Thorp Mill Ditch on Mr. George's land.  
23 Although he specifically requested that stock water supply be included in his  
24 claim from the Thorp Mill Ditch, without a RCW 90.14 water right claim, any right  
25 to use of water for this purpose has been forfeited.

26  
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1 Both the KRD and West Side Irrigating Company are Major Claimants in these  
2 proceedings whose claims will be addressed through the Major Claimant pathway.

3 The Taneum Ditch Company is a claimant in Subbasin No. 6, Taneum. The Report of  
4 Referee for that subbasin will address the rights attributed to the Taneum Ditch.

5 A right can be established under the Prior Appropriation Doctrine if the  
6 use began prior to enactment of the State's Surface Water Code, Chapter 90.03  
7 RCW, adopted on June 6, 1917, or under the Riparian Doctrine if the land  
8 separated from Federal ownership prior to June 6, 1917 and the use of water began  
9 prior to December 31, 1932.

10 The Plaintiff's Report recommended that a non-diversionary stock water  
11 right be confirmed to the claimants from springs and ponds.

12 The Referee recommends that a Riparian right with a date of priority of  
13 June 22, 1887, be confirmed from the spring in the amounts of .25 cubic feet per  
14 second, 79.2 acre-feet per year for irrigation of 12 acres from April 1 to  
15 October 31. A non-diversionary right to stock water supply from an unnamed  
16 spring is confirmed under the stipulation. Absent the filing of the mandatory  
17 RCW 90.14 claim, the Referee cannot recommend confirmation of a right to the  
18 Thorp Mill Ditch for stock water supply.

19  
20 COURT CLAIMS NO. 0796, 4090 & 4091 - Steven E. and Ann E. George  
Lloyd A. and Maxine R. Hatfield

21 A Statement of Claim to the Court was filed by Lloyd A. and Maxine R.  
22 Hatfield for use of waste water and an unnamed spring. On September 26, 1988,  
23 Steven E. and Ann E. George were joined to the original claim. The Georges  
24 submitted two Amended Statements of Claim, No. 4090 and 4091. Mr. George  
25 testified at the Evidentiary Hearing in behalf of the claims.

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1           The Georges are purchasing from the Hatfields that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
2           Section 11, T. 18 N., R. 17 E.W.M. lying southwest of the Chicago, Milwaukee, and  
3           St. Paul Railway Company right of way, which is approximately 16.5 acres in size.  
4           A patent issued to Alanson Mason dated September 29, 1888, for the S $\frac{1}{4}$ SE $\frac{1}{4}$  of  
5           Section 11, the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12; and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. At present,  
6           the claimants use an unnamed spring located south of their property approximately  
7           175 feet south and 850 feet east from the north quarter corner of Section 14,  
8           T. 18 N., R. 17 E.W.M. for continuous stock water supply of 20 head and  
9           irrigation of less than one acre. The claimants also utilize tailwater or  
10          wastewater to irrigate 13.5 acres of pasture and water stock. The wastewater  
11          drains off of the neighboring property to the west onto the Georges. No  
12          testimony was provided concerning the nature of these wastewaters. The drain is  
13          identified on State's Exhibit No. 1, Inset Map originating from lands in Section  
14          10 and 11. The neighboring lands are not under any specific claim in Subbasin  
15          No. 8, but do lie below the Kittitas Reclamation District and Taneum Canal  
16          Company canals and a portion of the land lies below the West Side Irrigating  
17          Company canal. Since the land is being irrigated and the landowners are not  
18          claimants in Subbasin No. 8, the Referee must conclude they are irrigating from  
19          sources that originate outside Subbasin No. 8, such as KRD, Taneum Canal Co. or  
20          West Side. As explained in the Special Issues Section on Page 5, return flows  
21          that are generated by importation of foreign waters are not subject to  
22          allocation.

23          Lloyd Hatfield as a previous owner of the property filed two water right  
24          claims in response to the Claims Registration Act, Chapter 90.14 RCW. Claim No.  
25          120130 was filed for 10 cfs for use of waste water for irrigation of 16 acres and  
26          general farming purposes. Claim No. 120131 was filed for an unnamed spring for

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1 irrigation of lawn and garden, stock water and domestic supply. Mr. Hatfield  
2 used the "short-form" for the unnamed spring. Chapter 90.14 RCW allowed for the  
3 use of a "short form" when water was only being claimed for uses described in the  
4 exemption to the permit process contained in the Ground Water Code, Section  
5 90.03.050 RCW. Therefore, filing of the "short form" only protected the right to  
6 the extent of the parameters of the Ground Water Code exemption (use of up to  
7 5,000 gallons per day for stock water, domestic supply, irrigation of up to one-  
8 half acre of lawn or non-commercial garden).

9 Although Mr. George could testify to the current and recent past practices  
10 at this farm, there was no information about indicators of historic use of the  
11 spring, such as old structures on the property dating to first settlement, or  
12 testimony from previous owners, nor did Mr. George indicate that he had discussed  
13 the history of the property with any "old timers" in the area. Lacking testimony  
14 of historic use of the spring and the apparent nature of the return flows being  
15 used, the Referee cannot recommend that a right be confirmed to the Georges under  
16 Court Claim No. 0796 as amended.

17 COURT CLAIM NO. 2046 - Wesley and Elizabeth Gibson  
18 Claude and Lillian Gibson  
19 Elwin Gibson  
Irwin and Dorothy Loucks

20 A Statement of Claim was filed by the Gibsons asserting a right to the use  
21 of the Yakima River via the West Side Ditch and Millrace Ditch. On August 31,  
22 1989, Irwin and Dorothy Loucks were joined to this claim. The claimants were  
23 represented by James Hurson, attorney. Elwin Gibson and Mr. Loucks testified on  
24 behalf of this claim.

25 Presently, the Gibson portion of this property is owned by Elwin and  
26 Patricia Gibson, C.C. (Claude) and Lillian Gibson. In 1985, Wesley and Elizabeth

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1 Gibson transferred their interest in the property to the other Gibsons.

2 Approximately 128 acres in the S $\frac{1}{2}$  of Section 12 lying southwest of the Burlington  
3 Northern Railroad right of way and the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 13 lying north of Depot  
4 Road in T. 18 N., R. 18 E.W.M. are planted in timothy hay, corn and trees.

5 Approximately 58 acres receive water solely from the West Side Irrigating Company  
6 with the remaining 70 acres being irrigated with waters diverted from the Yakima  
7 River, springs, waste water and runoff. West Side water is available to  
8 supplement these 70 acres, but is rarely used. Up to 80 horses and 10 cattle are  
9 kept on the property at any given time. Mr. Gibson believed that they needed at  
10 least 20 acre-feet per acre for irrigation purposes. They flood irrigate their  
11 property.

12 The Loucks purchased 56 acres under this claim from the Gibsons, of which  
13 42 are irrigated. Mr. Louck currently irrigates pasture, but the property was in  
14 timothy hay several years ago. They have 10 horses and 25 cow/calves on the  
15 property. The primary source of water for these 42 acres is the Yakima River  
16 conveyed through the Thorp Mill Ditch and the Thorp Town Ditch, however, he does  
17 have shares in the West Side Irrigating Company to supplement his ditch water.  
18 Mr. Louck does not know how much water he uses, however, he has estimated his  
19 annual water duty to be 20 acre-feet per acre irrigated.

20 Four patents issued for the property described in the Court Claim. Alanson  
21 (A.T.) Mason received a patent on September 29, 1888, for the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section  
22 11, the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13; a patent dated June 9,  
23 1884, issued to James McGinnis for the N $\frac{1}{2}$ SW $\frac{1}{4}$  and the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 12; a  
24 patent dated December 28, 1888, issued to Joe Cealapahan for the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , the  
25 W $\frac{1}{2}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12; and a patent dated January 16, 1896, issued  
26 to the Northern Pacific Railroad for several hundred acres, including the NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

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1 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13; all in T. 18 N., R. 17 E.W.M. Although the patent  
2 issued to Northern Pacific in 1896, the record shows them conveying the land in  
3 Section 13 to W. D. Killmore on March 1, 1890. The Referee has found that it is  
4 not unusual to see evidence of a railroad company selling land before they  
5 actually have title to it from the Federal Government.

6 The Thorp Town Ditch Association was recommended a right in the Plaintiff's  
7 Report from the Yakima River via the Thorp Town Ditch in the amounts of 0.31  
8 cubic feet per second, 80.6 acre-feet per year for irrigation of 15.5 acres and  
9 fire protection, and 0.02 cubic feet per second, 2 acre-feet per year for stock  
10 water supply. The place of use given was "The area served by the Thorp Town  
11 Ditch Association". Review of the ditch association's claim, which included a  
12 map outlining their service area, and the RCW 90.14 claim filed by the ditch  
13 association leads the Referee to conclude the claimants property is not within  
14 the ditch association place of use. The claimants have not asserted a right  
15 under the ditch association.

16 Although the record is not completely clear, it appears Yakima River water  
17 is diverted into the Thorp Mill Ditch and the Thorp Town Ditch diverts from the  
18 Mill Ditch near the north quarter corner of Section 11. The Gibsons filed Water  
19 Right Claim No. 118943 for a diversion of 5 cubic feet per second from the Yakima  
20 River for irrigation of 60 acres and stock water supply to be used within the  
21 S $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12 and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13 with a date of first use of 1900.  
22 The claimed point of diversion is close to the diversion point for what appears  
23 to be the Thorp Mill Ditch. The Gibsons irrigate with Yakima River water  
24 approximately 45 acres within the lands described on the water right claim form.  
25 The remaining 15 acres described are irrigated with water from the West Side  
26 Irrigating Company.

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1 Construction of the Thorp Mill Ditch began in 1879, but it is not apparent  
2 that the Gibson property was originally intended to be served by this ditch when  
3 construction began. Nothing in the record shows that the land was irrigated  
4 prior to patents being issued transferring the land out of Federal ownership:  
5 January 16, 1886, for the land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13; and December 28,  
6 1888, for the land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12. A deed dated January 28, 1909,  
7 conveying land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13 stated that a right existed to the  
8 Mills Mill Race Ditch, now known as the Thorp Mill Ditch.

9 Two RCW 90.14 ground water claims are on file and appear to have impact on  
10 this property. Claim No. 118944 claimed a right for the use of water from a  
11 drain for irrigation and stock water supply. The claimed diversion point appears  
12 to describe the approximate location where a series of springs in Section 11  
13 enter Section 12.

14 Springs originate west of the Gibsons in Section 11 and flow year around,  
15 although the flow increases when the West Side turns water into their canal.  
16 Mr. Gibson indicated that the springs currently flow at about 1 $\frac{1}{2}$  cubic feet per  
17 second (cfs) year around, and when the West Side canal has water in it they flow  
18 up to 3 $\frac{1}{2}$  cfs. In the 1900's there was litigation over these springs between Ruth  
19 Mason, who at that time owned the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
20 13, and John A. and Etta May Yearwood, et al., who owned the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11  
21 and Walter Haywood, who owned the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11.

22 The suit with Walter Haywood concluded with the Court determining that Ms.  
23 Mason had a right to use four ditches that conveyed water from a spring-fed  
24 swampy area near the northwest corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 to her  
25 property. The quantity of water to which she had a right was not identified.  
26 The final opinion in the Yearwood suit was issued in June 1919 following a

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1 Supreme Court appeal and resulted in Ms. Mason being entitled to use 10 miners  
2 inches under 4 inch pressure, or approximately 0.2 cubic feet per second, from  
3 the springs for irrigation, stock water and domestic purposes. The Court did not  
4 specify a quantity for John Yearwood. The description of the spring locations  
5 in the Haywood and Yearwood suits lead the Referee to believe that one spring  
6 area was the subject of both suits, with some of the water draining onto the  
7 Haywood property and some draining onto the adjoining Yearwood property.

8 The Courts in these suits identified that the spring water was being used  
9 in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. Mr. Gibson testified,  
10 and the State's Investigation report show the water being used in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
11 Section 12 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. This agrees with the land description  
12 on Water Right Claim No. 118944. There was no testimony by Mr. Gibson that the  
13 place of use of these waters has changed during their ownership. It may be that  
14 change occurred prior to their purchase of the land.

15 Dale and Lois Wells own a portion of the land at issue in the 1910  
16 litigation, being a part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and are entitled to a  
17 proportionate amount of the above quantities. The Referee has recommended that a  
18 right be confirmed to the Wellses in the amounts of 0.01 cfs, 3.3 acre-feet per  
19 year for irrigation of one-half acre and 2 acre-feet per year for stock water  
20 supply for these springs.

21 Under Water Right Claim No. 118942 the Gibsons claimed use of another drain  
22 for irrigation of 30 acres and stock water supply. The point of diversion  
23 location on the claim was 2,600 feet north of the southwest corner of Section 12,  
24 which is approximately where a drain enters the Gibson property from the  
25 neighboring Fudacz property. However, there was no testimony by Mr. Gibson about  
26 use of this source of water.

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1           The claimants make use of waste waters or tailwaters commonly known as  
2       return flows. Although a right to use of return flows resulting from the  
3       application of naturally occurring waters of the subbasin can be confirmed if  
4       historically used and quantified, those flows imported into a basin are  
5       considered foreign return flows and are not subject to allocation. See the  
6       Special Issues Section of this report beginning on page 5 which addresses the  
7       Referees inability to recommend confirmation of a water right for foreign return  
8       flows. The only quantification of water use made by Mr. Gibson was for the  
9       springs in Section 11, and even in 1910 a portion of those waters were identified  
10      as return flows.

11           The West Side Irrigating Company is a Major Claimant whose claim will be  
12      addressed through the Major Claimant pathway.

13           Under the Prior Appropriation Doctrine a right can be established if the  
14      use began prior to the adoption of the State's Surface Water Code, Chapter 90.03  
15      RCW, on June 6, 1917. Under the Riparian Doctrine a right can be established if  
16      the land separated from Federal ownership prior to June 6, 1917, and the use of  
17      water began prior to December 31, 1932.

18           The Referee believes there may a right established under the Prior  
19      Appropriation doctrine to divert water from the Yakima River via the Thorp Mill  
20      ditch for some or all of the property described in the court claim. However the  
21      only RCW 90.14 claim filed for the property identifying the Yakima River as the  
22      water source was Claim No. 118943, which claimed a right to use water on the  
23      SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13. Any right that may have  
24      existed to irrigate the remainder of the Gibson property and the Louck property  
25      from the Yakima was forfeited due to failure to file a water right claim, RCW  
26      90.14.071. There was no testimony on how much water is diverted from the Yakima

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1 River for use on the land that can be confirmed a right. Without that  
2 information the Referee cannot judge whether the claimed 20 acre-feet per year  
3 per acre irrigated is being used. Therefore, the Referee shall use the standard  
4 duties of 0.02 cubic foot per second and 6.6 acre-feet per year per acre  
5 irrigated.

6 The evidence supports a conclusion that rights to use waters of the Yakima  
7 River through the Mill Ditch were established in the late 1800's; however, the  
8 exact date is not clear. Since construction of the ditch began a few years prior  
9 to patents being issued or the Gibson land occupied, it would be reasonable to  
10 assume that upon occupation the ditch was extended to serve the property.  
11 Therefore, it is recommended that a right be confirmed under the Prior  
12 Appropriation Doctrine with a December 28, 1888, date of priority for the  
13 diversion of 0.90 cubic foot per second, 297 acre-feet per year from the Yakima  
14 River for the irrigation of 45 acres in the S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$   
15 of Section 13 lying west of the lateral ditch that conveys water from the Thorp  
16 Mill Ditch, T. 18 N., R. 17 E.W.M. The point of diversion is located 1,150 feet  
17 north and 75 feet west of the east quarter corner of Section 3, being within the  
18 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3, T. 18 N., R. 17 E.W.M.

19 The decree that issued in 1910 established the quantity of water  
20 appurtenant to this property from the springs. The Referee recommends that the  
21 Gibson's proportionate share to the unnamed spring be confirmed in the amounts of  
22 0.19 cubic feet per second, 62.7 acre-feet per year for irrigation of 9.5 acres  
23 and 2 acre-feet per year for stock water supply within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12  
24 with a priority date of June 30, 1878. The point of diversion is 1,100 feet  
25 north and 550 feet east from the south quarter corner of Section 11, being within  
26 the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.

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Due to the lack of a RCW 90.14 claim for the property now owned by the Loucks, the Referee cannot recommend that a right be confirmed to them under Court Claim No. 2046.

COURT CLAIM NO. 4398 - Dale and Lois Wells

The Wells are asserting a right to use water from an unnamed spring and drain water for irrigation and stock water supply. Both Mr. and Mrs. Wells testified in behalf of the claim at the evidentiary hearing.

The claimants utilize water from the West Side Irrigating Company for irrigating most of their property, approximately six of the seven acres, using flood irrigation methods. The West Side Irrigating Company claim will be presented through the Major Claimant pathway.

There is a spring that the claimants use primarily for their seasonal stock watering needs. They have had up to 100 stock on the premises. A portable submersible pump diverts water from the spring-fed drain to a stock tank located at the Wells' barn. Mrs. Wells indicated that one acre located down by their barn is irrigated with water from this spring.

Dale Wells filed Water Right Claim No. 137056 pursuant to the requirements of Chapter 90.14 RCW claiming a right to use a drain ditch for stock watering, lawn and garden irrigation, and pasture irrigation. He used the "short form" which Chapter 90.14 RCW allowed to be used when asserting a right to use waters for the purposes described in the Ground Water Code's exemption to the permit process (Section 90.44.050 RCW) which are domestic supply, stock water, irrigation of up to  $\frac{1}{2}$  acre of lawn and non-commercial garden, and industrial supply as long as less than 5,000 gallons per day is being used. Use of the

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1 short form waived any right that may have existed beyond those uses. No date of  
2 first use was given on this claim.

3 Based on evidence submitted by Elwin Gibson, a neighbor of the Wellses,  
4 Alanson Mason homesteaded this property in 1878. A copy of the September 29,  
5 1888 patent describes a tract of land within the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
6 of Section 12, and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 18 N., R. 17 E.W.M. Springs on  
7 the property were litigated by Ruth Mason, who owned the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and  
8 the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13; John A. and Etta May Yearwood, who owned the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
9 Section 11; and Walter Haywood, who owned the S $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11. Under the  
10 decision rendered in June 1919, Ms. Mason was entitled to use 10 miners inches  
11 under 4 inch pressure (about 0.2 cubic feet per second) from the springs for  
12 irrigation, stock water and domestic purposes. As successors-in-interest, the  
13 Gibsons and the Wellses are claiming a portion of this right. Nothing in the  
14 record shows specifically where the right was being exercised in the early  
15 1900's, so the Referee will recommend confirmation of rights to each of the  
16 claimants.

17 In order to establish a right under the Riparian Doctrine, the land must  
18 have separated from Federal ownership prior to June 6, 1917, and water must have  
19 been put to beneficial use by December 31, 1932, and under the Prior  
20 Appropriation Doctrine water must have been put to beneficial use prior to June  
21 6, 1917.

22 Because of the limits imposed by the filing of a RCW 90.14 short form, the  
23 Referee can only recommend that a right be confirmed to the Wellses for stock  
24 water and the irrigation of up to one-half acre of irrigation. Therefore, it is  
25 recommended that a right under the Riparian Doctrine be confirmed to Dale and  
26 Lois Wells for 0.01 cfs, 3.3 acre-feet per year for irrigation of one-half acre

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1 and 2 acre-feet per year for stock water supply from an unnamed spring located  
2 1,100 feet north and 550 feet east from the south quarter corner of Section 11,  
3 being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M. with a priority  
4 date of June 30, 1878.

5 The Plaintiffs Report recommended confirmation of a right to the Wellses  
6 for non-diversionary stock water supply as well.  
7

8 COURT CLAIM NO. 1560 - Charles Gust

9 Charles and Darleen Gust submitted a Statement of Claim to the Court  
10 asserting a right to use of waters from springs, tile drains, a well and Robinson  
11 Canyon Road Ditch for irrigation and domestic supply. On April 5, 1988, Darleen  
12 Gust Quit Claimed her interest in the subject property to Mr. Gust. Mr. James  
13 Hurson, attorney, represented Mr. Gust at the Evidentiary Hearing and Mr. Gust  
14 testified on behalf of his claim.

15 Mr. Gust owns three acres in the south central portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
16 Section 30 and is claiming a right to irrigate the entire three acres. A patent  
17 dated June 30, 1882, issued to Robert Hatfield for the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T.  
18 N., R. 18 E.W.M..

19 A Notice of Water Right dated March 4, 1905, was filed by Robert Stanley  
20 claiming 2 cubic feet per second (cfs) for irrigation and stock watering from  
21 sources within the NE $\frac{1}{4}$  of Section 30. Water was to be conveyed to the SE $\frac{1}{4}$  of  
22 Section 30. The phrasing of the Notice of Water Right, implies no water had  
23 been conveyed from the NE $\frac{1}{4}$  to said SE $\frac{1}{4}$  of Section 30 prior to 1905. Mr. Gust did  
24 not testify to using any sources of water originating in the NE $\frac{1}{4}$  of Section 30.  
25 The chain of title for the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30 shows the existence of irrigation  
26 ditches and spring developments within the subdivision in the early 1900's.

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Waters from unnamed springs, drains and return flows enter a ditch located along the northern portion of the property. Water is diverted from the ditch at a point 50 feet east of the northwest corner of said property and conveyed through a 6 inch pipe for flood irrigation. There are 2.5 acres of irrigated pasture. About 5 head of stock use these waters. Mr. Gust diverts 250 gallons per minute (gpm) and 16.6 acre-feet per year for irrigation (6.64 acre-feet per acre) and 1 acre-foot per year for stock water.

Water is also diverted at point at the southwest corner of the property from a channel often referred to as Hatfield Canyon Creek, which runs along Robinson Canyon Road south of the claimants property. Hatfield Canyon water and return flows are carried in this channel. Mr. Gust irrigates the lawn and garden around his home using a 1.5 BHP pump and he diverts approximately 55 gpm, and 7.1 acre-feet per year for that purpose. He estimated that the lawn and garden area is approximately one-half acre in size. However, since he owns three acres and 2.5 acres are in pasture and his home and driveway are located on the property, only approximately one-quarter acre could remain in lawn and garden. The difference in water duty is attributed by Mr. Gust to the different soil characteristics found on his property. Mr. Gust stated that the property had historically been in pasture and hay, and he based this opinion on conversations with long time residents and homesteaders in the area.

The claimants in this general area have stated that the channel located along Robinson Canyon Road is a ditch, although it is called Hatfield Canyon Creek, and not a natural channel. This channel receives return flows or waste waters, water from natural springs in the area that has been routed through ditches to the channel, and Manastash Creek return flows. There has been testimony that it flows continuously, year around. The maps for Subbasins No. 8

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1 and No. 11 show the channel as being suspiciously straight from it's entrance  
2 into the 3 Bar G Ranch in the NE $\frac{1}{4}$  of Section 31, T. 18 N., R. 18 E.W.M. until its  
3 confluence with Packwood Canal. However, evidence shows that Hatfield Canyon  
4 Creek has historically flowed into Packwood Canal, and prior to the construction  
5 of the canal, into the Yakima River. It would seem likely that due to the  
6 location of Robinson Canyon Road, the lower portion of Hatfield Canyon Creek has  
7 been redirected into a more formal channel that runs parallel with Robinson  
8 Canyon Road to Packwood Canal. The Referee is of the opinion this is the  
9 "natural", although altered, channel of Hatfield Canyon Creek and not a ditch.

10 The Gusts filed three water right claims in response to the Claims  
11 Registration Act, Chapter 90.14 RCW. Claim No. 022733 is for his domestic well.  
12 Ground water is not a part of this adjudication, so this claim will not be  
13 addressed. Claim Nos. 022734 and 022735 generally reiterate the uses claimed in  
14 these proceedings. Claim No. 022735 is for the irrigation of 2.5 acres from  
15 springs and tile drains and Claim No. 022734 is for Robinson Canyon Road Ditch  
16 (aka Hatfield Canyon channel) for the irrigation of one-half acre. The intent of  
17 the Water Right Claims Registration Act was to document those uses of surface  
18 water in effect prior to the adoption of the State's Surface Water Code Chapter  
19 90.03. Filing of a claim preserved any right that may have historically existed.

20 The waste or return flow waters found in this area are predominately  
21 generated by neighbor's irrigation practices, using waters from Manastash Creek  
22 and West Side canal and consequently are "foreign" return flow water. The  
23 Special Issues Section of this report beginning on Page 5 addresses the inability  
24 of the Referee to confirm water rights for the use of these waters. Although  
25 there may be some natural return flow waters originating within Subbasin 8, such  
26 as those generated by natural springs or Hatfield Canyon, there was no testimony

1 that would allow the Referee to quantify those natural waters. The testimony and  
2 evidence in the record supports the conclusion that water rights were established  
3 for the Gust property in the early 1900's for use of this naturally occurring  
4 water. However, the Referee is unable to recommend confirmation of a right to  
5 the use of those waters because of the lack of evidence to quantify that use.  
6 Therefore, the Referee does not recommend that a right be confirmed to Charles  
7 Gust under Court Claim No. 1560.

8

9 COURT CLAIM NO. 0520 - Paul and Marjorie H. Harrel

10 A Statement of Claim to the Court was filed by the Harrels for the use of  
11 water from several sources for irrigation and stock water. The Harrel's were  
12 represented by Attorney Susan Harrel Slothower. Mr. Harrel, Mr. Jeff Slothower  
13 and Mr. Richard Bain, consultant, testified at the Evidentiary Hearing on behalf  
14 of the Harrels' claim.

15 The Harrels own Willowbrook Farm, which is 611 acres in size within  
16 Sections 14 and 23 of T. 18 N., R. 17 E.W.M. They irrigate 589 acres with water  
17 delivered from several different sources. The property is entitled to 708 shares  
18 from the Taneum Canal, 11 shares from West Side Irrigating Company and 567 acres  
19 are assessed by the Kittitas Reclamation District. Additionally water is  
20 provided from Fogey Creek and unnamed drains. Timothy hay with grain rotation is  
21 the primary crop. All but one acre located near a house is surface irrigated.  
22 The claimants raise 150 head of cattle and six horses on the farm. In the fall  
23 between 2,000 and 3,000 head of sheep are on the property for six weeks. Mr.  
24 Bain estimated that six acre-feet per year is needed for stock watering, but he  
25 did not identify the source of supply for the stock water. There was no  
26 testimony of a diversion of water to stock tanks. The Plaintiff's Report to the

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1 Referee recommended confirmation of a non-diversionary stock water right to the  
2 Harrels, which would cover any stock drinking directly from Fogey Creek.

3 The Taneum Canal Company diverts water from Taneum Creek located in  
4 Subbasin No. 6 (Taneum) and is a claimant in that subbasin. The canal company's  
5 claim will be addressed in the Report of Referee for Subbasin No. 6. Both the  
6 West Side Irrigating Company and the Kittitas Reclamation District claims will be  
7 addressed through the Major Claimant pathway. The Harrels remaining claim to the  
8 use of waters from Fogey Creek and unnamed drains will be addressed in this  
9 report.

10 Three different patents issued for the portion of the Harrels property that  
11 receives water from Fogey Creek and the unnamed drains. Jason R. Forgey received  
12 a patent on June 30, 1876, for the land in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
13 14 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 23, T. 18 N., R. 17 E.W.M. A patent  
14 issued to Herman Pate on June 6, 1890, which included the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14.  
15 A third patent issued to the Northern Pacific Railroad Company on November 4,  
16 1895, for lands that included the E $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23.

17 The Harrel family has occupied the property since April 22, 1911, and has  
18 had full ownership since March 3, 1917. Mr. Harrel was raised on the property  
19 and during testimony conveyed considerable information about the history of water  
20 use on the property based on his own experience and conversations with his father  
21 and grandmother. Based on his testimony, it is apparent water from Fogey Creek  
22 has been used to irrigate a portion of their land since the early 1900's. The  
23 Harrels land is riparian to Fogey Creek and they are basing their claim to a  
24 water right on the Riparian Doctrine. Under the Riparian Doctrine the land must  
25 have separated from Federal ownership prior to June 6, 1917, and water put to use  
26 prior to December 31, 1932. The priority date for the right would be the date

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1 the land separated from Federal ownership or the date steps were first taken to  
2 separate the land, if that information is available and in the record.

3 Richard Bain prepared an engineering report for Willowbrook Farm and  
4 testified concerning the contents of this report. The evidence shows that there  
5 are five diversions from Fogey Creek for this property. A portion of the Fogey  
6 Creek water is carried in the Taneum Canal and diverted from the canal. Mr.  
7 Harrel testified he believes he withdraws from the canal the same quantity of  
8 water as flows into the canal from the creek, but he could not quantify that  
9 amount. According to the testimony 150 acres within the E $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , the NE $\frac{1}{4}$ NW $\frac{1}{4}$   
10 lying south of Fogey Creek and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 23, the S $\frac{1}{4}$ SE $\frac{1}{4}$  and the  
11 SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , lying south of Fogey Creek, in Section 14, T. 18 N., R. 17 E.W.M. are  
12 irrigated with waters from Fogey Creek early in the irrigation season. Fogey  
13 Creek generally is dry after the month of June and water from the Taneum Canal  
14 Company and Kittitas Reclamation District are used to supplement the creek  
15 supply.

16 There have been no measurements made of the quantity of water diverted from  
17 Fogey Creek to irrigate the Harrels' property. Mr. Bain used a synthetic  
18 hydrology method to estimate the annual runoff in the Fogey Creek basin at 1270  
19 acre-feet per year. Based on this, he estimated that the creek would flow 1.3  
20 cubic feet per second in March, 3.2 cubic feet per second in April, 5.3 cubic  
21 feet per second in May and 3.7 cubic feet per second for June. After June the  
22 flow would diminish to less than 1 cubic foot per second. Based on the  
23 assumption that this water would physically be available, Mr. Bain estimated that  
24 8.46 acre-feet per year per irrigated acre could be used from Fogey Creek. Mr.  
25 Harrel estimated that he uses 12.4 acre-feet per year from all the water sources  
26 available to him.

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1           Mr. Bain's synthetic hydrology method is a means to estimate the quantity  
2       of water that potentially could be naturally available in the Fogey Creek basin.  
3       However, there was no testimony that this quantity has ever been diverted and  
4       used on the Harrel property. The purpose of this adjudication is to determine  
5       the extent and validity of water rights based on historic and current use and the  
6       appropriate legal foundation for that use. There is nothing in the record to  
7       allow the Referee to quantify the amount of water from Fogey Creek that has  
8       historically been used on the Harrel property.

9           The Harrels are also claiming rights to use return flow water through  
10      subsurface drains. The drains collect return flow water that results from the  
11      application of water from Taneum Ditch Company and Kittitas Reclamation District  
12      on the portion of the farm lying north of Fogey Creek. The drains convey the  
13      return flow water to Fogey Creek where it is diverted at points identified on  
14      Exhibit DE-27 with the letters c and d. As explained in the Special Issues  
15      Section beginning on Page 5, the Referee is unable to confirm a right for use of  
16      foreign return flows brought into the drainage by either the Taneum Canal Company  
17      or Kittitas Reclamation District.

18           In response to the Claims Registration Act, Chapter 90.14 RCW, Paul Harrel  
19      filed several claims. Claim No. 024277 was filed for use of waters from Fogey  
20      Creek for irrigation and stock water. Claims No. 024271 to 024276 and 024278 to  
21      024282 were filed by either Paul or A. V. Harrel, Paul's father, and identified  
22      ground water as the source of supply. Many of these were intended to cover the  
23      subsurface drains that carried the return flows to Fogey Creek.

24           Due to the lack of testimony about the quantity of naturally occurring  
25      water historically and currently diverted from Fogey Creek to irrigate the

1 claimant's land and the use of return flow waters, the Referee cannot recommend  
2 that a right be confirmed under Court Claim No. 0520.

3

4 COURT CLAIM NO. 0894

- Larry O. Hillis

5 COURT CLAIM NO. 1705

- Larry O. Hillis and  
Don M. and M. Louise Ulmer

6 COURT CLAIM NO. 1204

- Larry O. Hillis and  
Hubert W. and Mary Ellen Watson

7 Statements of Claim were filed by the Ulmers and Watsons for use of  
8 Robinson Canyon Creek for irrigation and stock water supply. Larry O. Hillis was  
9 joined to the Ulmer and Watson claims. Larry O. Hillis was substituted for  
10 Arnold and Diane Beckenhauer who filed Claim No. 0894. John Gilreath, attorney,  
11 represented Mr. Hillis. Mr. Hillis and Richard Bain, consulting engineer,  
12 testified on behalf of these claims. Larry Hillis owns the land described in the  
13 three court claims, which cover two non-contiguous farms.

14 Robinson Canyon Farm, is within a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ , lying south of  
15 Robinson Creek and north of Robinson Canyon Road, and the S $\frac{1}{2}$ SW $\frac{1}{4}$ , lying south of  
16 Robinson Canyon Road, in Section 26; and the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$  and the NW $\frac{1}{4}$ , lying east of  
17 the South Branch Canal, in Section 35; all in T. 18 N., R. 17 E.W.M.. Robinson  
18 Canyon Farm consists of 255 acres, of which 192.1 acres of timothy hay and  
19 pasture are flood and sprinkler irrigated with water from Robinson Creek and the  
20 Kittitas Reclamation District.

21 Water is diverted from Robinson Creek at a point located approximately 600  
22 feet north and 1,250 feet east from the southwest corner of Section 26, being  
23 within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26. This water is used primarily during April,  
24 May and early in June, and in a dry year may also be diverted in the latter part  
25 of March. The fields that currently receive water from Robinson Creek via  
26 takeout 2 (TO-2) are within Tract 4844, fields 10, 11 and 12, which lie north of

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1 Robinson Canyon Road within the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 26, the north portion of field  
2 3, and the north portion of fields 1 and 2 in Tract 785 within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
3 NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 35. Mr. Hillis did not identify the size of these fields or  
4 the number of acres irrigated with water from Robinson Creek. The State's  
5 Investigation Report estimated that 14.5 acres are irrigated from Robinson Creek  
6 and Mr. Hillis did not challenge the accuracy of the report. Although no  
7 evidence or testimony were offered about the instantaneous quantity diverted from  
8 Robinson Creek, Mr. Bain's report did estimate the instantaneous quantity being  
9 withdrawn from the KRD canal at one takeout.

10 This farm has three takeouts on the KRD canal and the claimant has 173  
11 assessed acres or 692 acre-feet per year (4 acre-feet per acre assessed). An  
12 additional 190 acre-feet per year have been purchased in the past. Mr. Bain  
13 estimated that in conjunction with KRD water, 1.45 acre-feet per acre is used  
14 from Robinson Canyon. Using a synthetic hydrology method, Mr. Bain estimated  
15 potential to receive from Robinson Canyon 2.5 acre-feet per acre irrigated.  
16 However, there was no testimony that this quantity has ever been diverted.  
17 Neither of these methods determined how much water actually is diverted and used  
18 from Robinson Canyon.

19 The Robinson Canyon Farm land is covered by two different patents.  
20 Northern Pacific Railroad Company received a patent from the Federal government  
21 for the land in Section 35 on January 7, 1896. By 1901, Edgar Pease owned the N $\frac{1}{4}$   
22 of Section 35. Clarence Pease received a patent for the SW $\frac{1}{4}$  of Section 26 on  
23 September 22, 1906. Mr. Hillis testified to his belief that the land was  
24 irrigated prior to issuance of the patents. This belief is based in part from  
25 information contained in the Decision that preceded Decree No. 99 and 100 in Gray  
26 and Geddis v. Ole Johnson, et al., Kittitas County (1891). In that decision,

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1 Edgar Pease, as a successor to the builders of the Watt Ditch, appropriated water  
2 from Manastash Creek in 1885 through the Watt Ditch to land requiring irrigation.  
3 Watt Ditch apparently flowed through the NW $\frac{1}{4}$  of Section 35, but was abandoned  
4 many years ago. Mr. Hillis contends this indicates that by 1885 Edgar Pease was  
5 using water from Manastash Creek to irrigate his land and certainly would also  
6 have been diverting water from the much nearer Robinson Canyon. Clarence Pease  
7 subsequently acquired the NW $\frac{1}{4}$  of Section 35 and on April 7, 1908, filed a Notice  
8 of Water Right stating his intent to divert water from Robinson Creek for stock  
9 water and to irrigate crops in the SW $\frac{1}{4}$  of Section 26 and the NW $\frac{1}{4}$  of Section 35.  
10 It also stated that open ditches were to be dug on the premises to be irrigated.  
11 This statement seems to show that use of Robinson Creek had not yet occurred.

12 Killmore Road Farm is located within the NW $\frac{1}{4}$  of Section 26, and consists of  
13 321 acres of which 273.2 acres are irrigated from Robinson Canyon Creek and KRD.  
14 The claimant irrigates timothy hay and pasture with sprinklers, a big "gun" and  
15 surface application methods. Water from Robinson Creek is diverted at a point  
16 located approximately 100 feet north and 500 feet east from the south quarter  
17 corner of Section 27, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 27. Water is piped  
18 under the KRD South Branch Canal into a ditch to takeout 4 (T0-4), with a portion  
19 conveyed to a pond. Water is distributed to fields 4, 10, 11, 12, 13, 14, 15,  
20 16, 17 and 18 within the NW $\frac{1}{4}$  of Section 26 and a portion of the E $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
21 27. Water is used primarily during April, May and early in June, and in a dry  
22 year water may also be diverted in the latter part of March.

23 Killmore Road Farm has a KRD allotment for 259 acres or 1,036 acre-feet per  
24 year which is delivered through T0-1, T0-2, and T0-3 and used on fields 1, 2, 3,  
25 5, 6, 7, 8, and 9. Fields 4 and 10 also received KRD water in addition to  
26 Robinson Creek. Mr. Bain testified that approximately 5.45 acre-feet per acre

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1 has been used to irrigate this farm, with 4 acre-feet per acre coming from KRD.  
2 He also used the synthetic hydrology method to estimate that approximately 8.5  
3 acre-feet per year could be used on the farm. However, there was no testimony  
4 that this quantity has ever been diverted. Neither of these methods involved a  
5 determination of how much water actually is diverted and used from Robinson  
6 Creek. Mr. Hillis did not testify to the number of acres in Killmore Farm  
7 irrigated with waters from Robinson Creek, nor was there any evidence of the  
8 instantaneous quantity of water diverted from Robinson Canyon. The only  
9 diversion records presented were for the diversion of water from the KRD canal.  
10 The State's Investigation Report estimated that 40.5 acres in portions of the NW $\frac{1}{4}$   
11 of Section 26 are irrigated from Robinson Creek. Mr. Hillis did not challenge  
12 the accuracy of the report.

13 A Homestead Certificate issued to Thomas A. Clark for this property on  
14 March 25, 1891. However, John Kitsmiller filed a Notice of Water Location on May  
15 4, 1880, stating that he had located and claimed a water right and ditch from  
16 Robinson Creek to the NW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M. Mr. Kitsmiller  
17 apparently occupied and farmed the land prior to Thomas Clark legally obtaining  
18 title to the property. Thomas Clark was also a successor to the builders of Watt  
19 Ditch and was mentioned in the Decision that preceded Decree No. 99 and 100. Mr.  
20 Hillis is not claiming a right to waters from Manastash Creek, which is in  
21 Subbasin No. 11.

22 The claimant has about 140 head of cattle and up to 30 horses which graze  
23 on both farms. The stock water needs for these properties would be 4 acre-feet  
24 per year per farm. There was no testimony of the rate of diversion from Robinson  
25 Creek for stock watering.

26  
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1           The KRD is a Major Claimant whose claim will be addressed through the Major  
2           Claimant pathway.

3           Three Chapter 90.14 RCW water right claims are appurtenant to the Hillis  
4           property. Water Right Claim No. 028943 was filed by Edward Tucker for Robinson  
5           Creek for irrigation and stock water supply; Claim No. 073893 was filed by the  
6           Ulmers for Robinson Creek for irrigation; and Claim No. 119168 was filed by the  
7           Watsons for Robinson Creek for irrigation and stock water supply. Filing of  
8           these claims assists in preserving any historic right that may exist on the  
9           Hillis property.

10          Although the analysis of water supply presented by Mr. Bain for both farms  
11         gives the Referee a good idea of what Mr. Hillis could theoretically use, it does  
12         not necessarily reflect the actual water use on the properties. No testimony  
13         would allow the Referee to determine the instantaneous quantity currently or  
14         historically diverted or number of acres irrigated from Robinson Creek.  
15          Therefore, the Referee must rely on the State's estimate of the number of acres  
16         irrigated and use the standard water duty of 0.02 cubic foot per second and 6.6  
17         acre-feet per year per acre irrigated.

18          The evidence indicates that there has been a right established from  
19         Robinson Creek for both the Robinson Canyon Farm and the Killmore Road Farm and  
20         the Referee recommends that the following rights be confirmed to Larry Hillis:

21          Under the Prior Appropriation Doctrine, with a May 4, 1880, date of  
22         priority, 0.81 cubic foot per second, 267.3 acre-feet per year from Robinson  
23         Canyon Creek for the irrigation of 40.5 acres in a portion of the NW $\frac{1}{4}$  of  
24         Section 26; under the Riparian Doctrine with a January 7, 1896, date of priority,  
25         0.22 cubic foot per second, 72.6 acre-feet per year for the irrigation of 11  
26         acres in a portion of the NW $\frac{1}{4}$  of Section 35; and with a September 22, 1906, date

1 of priority, 0.07 cubic foot per second, 23.1 acre-feet per year for the  
2 irrigation of 3.5 acres in a portion of the SW $\frac{1}{4}$  of Section 26.

3

4 COURT CLAIM NO. 2265 - Paul Hoff

5 Kenneth Beckley submitted a Statement of Claim to the Court on behalf of  
6 Paul Hoff for use of water from the Yakima River for irrigation and stock water  
7 supply. No one appeared at the evidentiary hearing to testify on behalf of this  
8 claim. Based on the foregoing, the Referee does not recommend that a right be  
9 confirmed to Mr. Hoff.

10

11 COURT CLAIM NO. 0876 - Ivan and Mildred Hutchinson

12 Ivan and Mildred Hutchinson submitted several Statements of Claim to the  
13 Court for use of the Yakima River via Reed Ditch and Dry Creek, Mill Ditch  
14 tributary to the Yakima River, unnamed springs and an intermittent stream, for  
15 irrigation and stock water supply. John Gilreath, attorney, represented the  
16 Hutchinsons. Mr. Hutchinson and Vernon Meyer, a neighbor, testified in behalf of  
17 the claim at the evidentiary hearing.

18 Testimony showed the claimants have 50 acres of land irrigated with waters  
19 from the Taneum Canal Company and the Kittitas Reclamation District (KRD). The  
20 State's Investigation Report identified waste water as the source for this claim;  
21 however, Mr. Meyer stated that the return flows are attributed to waters  
22 delivered from the Taneum and KRD. Water is diverted from the Taneum ditch  
23 through the Turner ditch and then discharged into a collection pond on the  
24 property. Seven acres are irrigated via gated pipe, 15 acres are irrigated from  
25 a concrete ditch and 28 acres are sprinkler irrigated. According to the  
26 Engineering Report submitted in the Taneum hearings for the Taneum Canal Company,

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1 the Hutchinsons also have approximately 70 head of stock on the property,  
2 although testimony indicated at present there were only 7 cattle and some horses.

3 The Taneum Canal Company is a claimant in Subbasin No. 6 (Taneum) and the  
4 recommendation concerning their claim to water rights will be addressed in the  
5 Report of Referee for that subbasin. KRD is a Major Claimant whose claim will be  
6 addressed through the Major Claimant pathway.

7 As explained in the Special Issues Section of this report beginning on Page  
8 5, return flows that are generated by importing foreign waters into the drainage  
9 are not subject to allocation under previous Court decision. This was also  
10 supported in this Court's Memorandum Opinion RE: Threshold Issues dated May 12,  
11 1992. The claimant's testimony leads the Referee to conclude that the waste  
12 water used is a direct result of the application of waters from the Taneum Ditch  
13 Company and KRD or in other words, foreign return flows.

14 Since the Hutchinsons are utilizing water from Taneum Ditch Company and  
15 KRD, and those purveyors are representing their water users in this adjudication,  
16 any right that may be confirmed will be to those purveyors. Therefore, the  
17 Referee cannot recommend that an individual right be confirmed to the  
18 Hutchinson's under Claim No. 0876.

19 The Plaintiff's Report recommended that the Hutchinson's be confirmed a  
20 right to non-diversionary stock water from streams under the stock water  
21 stipulation.

22  
23 COURT CLAIM NO. 0877 - Richard O. and Rita Hutchinson

24 Richard O. and Rita Hutchinson submitted Statements of Claim to the Court  
25 for the use of water from the Yakima River via Mill Ditch, an unnamed spring and  
26 an unnamed water course for irrigation and stock water. Mr. James Hurson,

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1 attorney, represented the Hutchinsons. Mr. Hutchinson testified on behalf of the  
2 claim at the Evidentiary Hearing.

3 Based on the Quit Claim Deed submitted into evidence by Mr. Hutchinson,  
4 they have one-half interest in the subject property along with Ivan and Mildred  
5 Hutchinson, Richard's parents, who are also claimants in these proceedings under  
6 Claim No. 0876 for different lands. The Hutchinsons own land generally within  
7 the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 2 and the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 11, lying north and east of the  
8 West Side Canal, all in T. 18 N., R. 17 E.W.M.. The record shows that the  
9 claimants property has been in Hutchinson family since the late 1800's. Mr.  
10 Hutchinson testified that water use occurred as far back as 1883, and that his  
11 grandfather prepared a letter in 1912 concerning his use of the property, which  
12 was for irrigation and stock water supply. Based on the legal description  
13 provided, two patents describe the Richard Hutchinson property. A patent dated  
14 November 4, 1895, was issued to the Northern Pacific Railroad Company for the  
15 W $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.. Although the  
16 patent issued in 1895 to Northern Pacific Railroad Co., there is a warranty deed  
17 in evidence which indicates that the property was sold to Oscar Hutchinson on  
18 July 7, 1887. The second patent issued to Albert O. Hutchinson on July 15, 1889,  
19 for the S $\frac{1}{2}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2.

20 The claimants divert water from four separate sources for use on their  
21 property as identified on their exhibit DE-71. The first is from the Yakima  
22 River via Thorp Mill Ditch (No. 1) from a point on the Yakima River at  
23 approximately 1150 feet north and 75 feet west from the east quarter corner of  
24 Section 3, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , T. 18 N., R.17 E.W.M.. This water is used  
25 for irrigation of 14 acres of pasture and stock water for 100 head of cattle in  
the winter and 200 sheep the remainder of the year. The stock drink directly

1 from Thorp Mill Ditch. In the past this property has been in orchards and short  
2 crops such as corn. Mr. Hutchinson testified they divert and use approximately 2  
3 cubic feet per second (cfs), 240 acre-feet per year for irrigation from April  
4 through October. A Notice of Water Right was filed by James Mills indicating his  
5 intent to commence construction of a ditch (Thorp Mill ditch) commencing December  
6 18, 1879.

7 The claimants also divert from a drainage ditch that carries West Side  
8 Irrigating Company water, waste water and water from an unnamed spring at a point  
9 located approximately 1,315 feet south and 1,315 feet west from the north quarter  
10 corner of Section 11, being within the NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 11, T. 18 N., R. 17  
11 E.W.M. for irrigation of 23.5 acres of hay, grain and pasture and stock water  
12 supply for 150 ewes. The unnamed spring originates on the claimants property and  
13 flows year around. They divert a total of approximately 320 acre-feet from the  
14 ditch. The testimony was that the flow from the discharge pipe was measured and  
15 used to compute the annual quantity of water used. However, Mr. Hutchinson did  
16 not testify as to whether the measurements taken were after the spring water,  
17 waste water and West Side water are commingled. In order to confirm a right for  
18 use of the natural spring water, evidence of the quantity of spring water flowing  
19 into the ditch is needed.

20 The West Side Irrigating Company is a Major Claimant whose claim will  
21 presented at the Evidentiary Hearing for the Major Claimants. Therefore, rights  
22 to use West Side Irrigating Company water will not be addressed.

23 As explained on page 5, the Referee is unable to confirm a right for use of  
24 foreign return flows (waste water) brought into the drainage by the West Side  
25 canals. A right to return flows can only be confirmed by the Referee if there is  
26 evidence, testimony and quantification of the flow presented establish that the

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1 return flow water originates from the application of naturally occurring sources  
2 within the subbasin. This testimony was not provided.

3 The claimants also use water from a second unnamed spring for the  
4 irrigation of one-quarter acre of lawn and garden and stock water supply. The  
5 diversion point for this spring is located 450 feet north and 25 feet east from  
6 the southwest corner of Section 2, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 18  
7 N., R. 17 E.W.M. Two six-inch pipes lead into a concrete cistern, with the  
8 overflow going back into the ground. Water is piped from the cistern to a 250  
9 gallon stock tank and to the yard. Although the flow does fluctuate, the  
10 claimants calculated the flow to be about 600 gallons per minute (gpm) from the  
11 spring into the cistern. Approximately 200 head of cattle use this spring for  
12 drinking. In the past, this spring was also used for domestic supply, but now  
13 the claimants get their domestic water from the water district in Thorp and it  
14 does not appear they are asserting a right for domestic supply. There was no  
15 testimony of the quantity of water piped to the lawn area and stock tanks.  
16 Although at times up to 600 gallons per minute is piped from the spring to the  
17 cistern, a portion of this overflows and is not put to beneficial use. The  
18 Referee believes 600 gallons per minute to be excessive for the uses being made  
19 of the water. A right can only be confirmed for the amount of water being put to  
20 beneficial use. A more reasonable diversion rate would be 0.02 cubic foot per  
21 second for irrigation of the lawn and 0.10 cubic foot per second for stock water.  
22 Since the claimant did not provide testimony of the quantity of water being put  
23 to beneficial use, the Referee will use these quantities.

24 The State's Investigation Report No. 3 identified the Newman ditch as a  
25 source for this property. Mr. Hutchinson requested that this report be withdrawn  
26 from consideration and is not asserting a right to use this source.

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1           A third spring is used for stock water supply at the claimants' feedlot  
2 with a current capacity of 700 animals. The feedlot has been in business for 25  
3 years or so, but prior to that, this spring was continuously used for  
4 conventional stock watering needs. The spring may have earlier been used for  
5 domestic supply also, but a right is not being asserted for this purpose. The  
6 diversion point from this spring is located approximately 650 feet south and 750  
7 feet east from the northwest corner of Section 11, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
8 Section 11, T. 18 N., R. 17 E.W.M. Water from the spring feeds two of the six  
9 900-gallon troughs at the feedlot. The spring flow is continuous and is about  
10 100 gpm. Each trough is equipped with an overflow pipe which discharges water  
11 back into the ground.

12           In 1974, Ivan Hutchinson filed several claims in response to the Claims  
13 Registration Act, Chapter 90.14 RCW which appear to describe the property in  
14 question. Claim No. 103951 was for the Yakima River via Mill Ditch, No. 103948  
15 and No. 103949 were also for the Yakima River, No. 103947 for an unnamed spring,  
16 No. 103946 for an unnamed spring, No. 103945 for an unnamed water course and No.  
17 103950 for two diversion points from an unnamed water course. By filing these  
18 claims, Mr. Hutchinson preserved any historically and beneficially used right  
19 that may exist for this property. The intent of the Claims Registration Act was  
20 to document those uses of surface water in existence prior to the adoption of the  
21 State's Surface Water Code, Chapter 90.03 RCW. Failure to file a claim results  
22 in forfeiture of any right that may have existed.

23           Under the Prior Appropriation Doctrine a right to use water can be  
24 established if the use began prior to the adoption of the State's Surface Water  
25 Code, Chapter 90.03 RCW, which was on June 6, 1917. Under the Riparian Doctrine  
26 a right can be established if the land separated from Federal ownership prior to

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1 the adoption of the State's Surface Water Code and the use of water began prior  
2 to December 31, 1932.

3 The use of water from the Yakima River via the Thorp Mill Ditch is the only  
4 source to which there was sufficient testimony to show that a water right was  
5 established under the Prior Appropriation Doctrine prior to the Federal  
6 government issuing a patent for the land. Consequently, rights to be recommended  
7 for the other sources will be based on the Riparian Doctrine with the date of  
8 priority being the date the patent issued.

9 The Referee recommends that a right under the Prior Appropriation Doctrine  
10 with a priority date of December 3, 1879, be confirmed for the Yakima River via  
11 Thorp Mill Ditch located approximately 1150 feet north and 75 feet west from the  
12 east quarter corner of Section 3, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , T. 18 N., R.17 E.W.M.  
13 in the amounts of 2 cubic feet per second (cfs), 240 acre-feet per year for  
14 irrigation of 14 acres from April 1 through October 31, and 10 acre-feet per year  
15 for stock water supply.

16 The Referee also recommends that a right under the Riparian Doctrine with a  
17 priority date of November 4, 1895, be confirmed from an unnamed spring for  
18 continuous stock water supply in the amounts of 100 gpm, 28 acre-feet per year  
19 from a diversion point located approximately 650 feet south and 750 feet east  
20 from the northwest corner of Section 11, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11,  
21 T. 18 N., R. 17 E.W.M..

22 The Referee recommends that a right under the Riparian Doctrine with a  
23 priority date of July 15, 1889, be confirmed from an unnamed spring (their  
24 westerly most source) for 0.02 cubic foot per second, 1 acre-foot per year for  
25 irrigation of one-quarter acre of lawn and garden, and 0.10 cubic foot per  
26 second, 10 acre-feet per year for stock water. The diversion point for this

spring is located 450 feet north and 25 feet east from the southwest corner of Section 2, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 18 N., R. 17 E.W.M.

The Plaintiff's Report recommended that the Hutchinson's be confirmed a non-diversionary stock water right to streams.

COURT CLAIM NO. 2252 - Thomas J. and Helen A. Kirby

A Statement of Claim to the Court was filed by Thomas J. and Helen A. Kirby for use of springs, flumes, wells and waste water for irrigation. No one appeared to present testimony or evidence at the evidentiary hearing. The Plaintiff's Report recommended confirming the Claimants a non-diversionary stock water supply from naturally occurring springs and ponds.

The Referee does not recommend that a right be confirmed to the Kirby's beyond the stock water stipulation.

COURT CLAIM NO. 0843 - Stanley and Eileen Mainwaring  
Ole D. Spaulding

A Statement of Claim to the Court was submitted by Stanley and Eileen Mainwaring for use of an unnamed creek for irrigation and stock water supply. On September 20, 1988, Ole D. Spaulding was joined to the Mainwaring claim. Mr. Spaulding testified in behalf of the claim at the evidentiary hearing.

Mr. Spaulding diverts water from a man-made drainage ditch known as Newman Ditch for continuous stock water supply and irrigation of approximately four acres of pasture and vegetables. The property was once part of the "old Thorp" homestead and there are remnants of an old concrete pumping station. The testimony was that the home on the property is at least 80 years old. Mr.

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1 Spaulding based this on his conversations with Ms. Bertha Morrison, who is now in  
2 her 70's, and at one time lived on the property with her mother.

3 Richard Hutchinson, a neighboring claimant, submitted patents in support  
4 for his claim to a water right. A patent dated November 4, 1895, was issued to  
5 the Northern Pacific Railroad Company for the W $\frac{1}{4}$ NW $\frac{1}{4}$ , the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
6 Section 11, T. 18 N., R. 17 E.W.M.. Mr. Spaulding's property lies within  
7 portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11.

8 The State's investigation report indicates that water in the Newman ditch  
9 may be a result of seepage from the West Side Irrigating Company's canal.  
10 Seepage or drainage waters attributed to sources outside the Thorp subbasin are  
11 considered foreign return flows and a right to use them cannot be granted. See  
12 the Special Issues Section of this report beginning on page 5 for the basis for  
13 the Referee not being able to confirm rights for the use of foreign return flows.

14  
15 Additionally, no Chapter 90.14 RCW claims could be found for this property.  
16 Under the Claims Registration Act, failure to file a RCW 90.14 claim resulted in  
17 forfeiture of any right that may have existed. The Referee's review of RCW 90.14  
18 claims included those filed by Fern Newman and Ivan Hutchinson.

19 The Plaintiffs Report recommended that a non-diversionary stock water right  
20 be confirmed to this claimant. No testimony was provided on other sources by Mr.  
21 Spaulding, so the Referee is unable to conclude that this recommendation applies  
22 to any source but the drainage ditch. However, the Newman Ditch is not a natural  
23 occurring source within the Spaulding property. It is man-made and artificially  
24 conveys water to the claimants property. The Referee cannot support this  
25 recommendation by the Plaintiff.

1           Based on the above, the Referee cannot recommend that a right be confirmed  
2           to Mr. Spaulding.

3

4           COURT CLAIM NO. 2286 - John D. McCullough

5           A Statement of Claim to the Court was filed by John D. McCullough for an  
6           unnamed water source for stock water and irrigation. The claimant did not make  
7           an appearance during the evidentiary hearing. The Plaintiff's Report recommended  
8           confirming the Claimants non-diversionary stock water supply from naturally  
9           occurring streams. The Referee, therefore, does not recommend that a right be  
10          confirmed to Mr. McCullough beyond the stock water stipulation.

11

12          COURT CLAIM NO. 1875 - Vernon G. and Ellen F. Meyer

13          Vernon G. and Ellen F. Meyer submitted a Statement of Claim to the Court  
14          for use of an intermittent stream for irrigation and stock water supply. John  
15          Gilreath, attorney, represented the Meyers. Mr. Meyer testified in behalf of  
16          their claim at the evidentiary hearing.

17          Testimony showed the claimants have 104 acres of irrigated land within the  
18          N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 10, lying north of I-90 and a portion of the SW $\frac{1}{4}$  of Section 11,  
19          lying west of the West Side canal and north of I-90, all in T. 18 N., R. 17  
20          E.W.M.. They are entitled to 75 shares from the Taneum Canal Company as well as  
21          water through the Kittitas Reclamation District (KRD). The State's Investigation  
22          Report identified waste water as the source for this claim; however, Mr. Meyer  
23          stated that although waste water does come off of his neighbors property onto  
24          his, this water is the result of the application of Taneum and KRD water. The  
25          court has ruled that foreign return flows, such as these, are not subject to  
26          appropriation. See the Special Issues Section of this report beginning on page 5

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1 for the basis for the Referees inability to confirm a right for the use of  
2 foreign return flows.

3 The wastewater is diverted from the Taneum ditch through the Meyer lateral  
4 and then discharged into a collection pond on the property for irrigation of 20  
5 acres. The Taneum Ditch Company is a claimant in Subbasin No. 6 and their claim  
6 to a water right(s) will be addressed in the Report of Referee for that subbasin.  
7 The KRD is a Major Claimant whose claim will be presented through the Major  
8 Claimant pathway.

9 No 90.14 Water Right Claim was filed by the claimant for this property in  
10 response to the Claims Registration Act.

11 No assertions were made that the water used by the Meyer's originates from  
12 any natural sources within Subbasin No. 8. Based on the foregoing, the Referee  
13 cannot recommend that an individual right be confirmed under this claim.

14 COURT CLAIM NO. 0931, & 1750 - Murray Pacific Corporation; Bart G. Bland  
15 Dave Duncan and Sons and Duncan Family Trust;  
16 Dale Dyk; and Roger and Rita Sparks  
James V. Leishman

17 Murray Pacific Corporation submitted two Statements of Claim to the Court  
18 for the use of waters from Manastash Creek and a unnamed spring for irrigation  
19 and stock water. Subsequent to filing the claims, the property described was  
20 sold and Bart G. Bland, Dave Duncan and Sons and Duncan Family Trust, Dale Dyk,  
21 James V. Leishman and Roger and Rita Sparks were joined to the claims. Attorney  
22 Harrison K. Dano represented those joined to the claims, except Mr. Leishman.

23 Richard C. Bain, Jr., consulting engineer, Bart Bland, Dave Duncan, Dale Dyk, and  
24 Roger Sparks testified during the hearing in Subbasin No. 11 on behalf of the  
25 claim. James V. Leishman testified during the hearing for Subbasin No. 8,  
26 concerning the claim. Murray Pacific was not represented at the hearing and it

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1 appears that they no longer have ownership interest in any of the land described  
2 in the claim.

3 According to the testimony, the Murray Pacific Corporation holdings were  
4 part of an extensive cattle ranch settled by Ben Snipes beginning in 1859. By  
5 the early 1900's the property was used for subsistence farming. In 1935, Allan  
6 Rogers began assembling High Valley Ranch, which by 1940 was over 26,000 acres in  
7 size. Purchased by Tom Murray in 1943, he expanded the ranch to 106,000 acres of  
8 open rangeland and 1,800 acres of irrigated ground. In 1968, Tom Murray  
9 transferred most of the range and timber land to the Washington State Department  
10 of Game for creation of the L. T. Murray Game Range. The remainder of the land  
11 is being farmed or ranched by the claimants identified above. All the sources  
12 claimed and testified to, except for an unnamed spring, are within Subbasin No.  
13 11, Manastash. The sources that fall within Subbasin No. 11 will be addressed in  
14 the Report of Referee for that subbasin. This report will address the unnamed  
15 spring which is located on the Duncan property within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36,  
16 T. 18 N., R. 17 E.W.M. and Mr. Leishman's portion of the claim.

17 Dave Duncan and Sons, and Dave Duncan Family Trust were joined to a portion  
18 of the Murray Pacific Corporation claim, however, ownership of the land is  
19 divided between Dave Duncan and Sons and High Valley Land, Inc. Dave Duncan is  
20 the principal for both of the enterprises and jointly farms the entire ranch,  
21 which is known as High Valley Ranch.

22 There is some confusion concerning the nature of the water source claimed  
23 by the Duncans in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36. Testimony about "capped springs" and  
24 "capped artesian wells" make it difficult to distinguish if the source is ground  
25 water or surface water. The Yakima River Basin Adjudication is not a  
26 determination of ground water rights, so the Referee cannot address the possible

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1 water rights to artesian wells. If the source is indeed springs, or surface  
2 water, then it is appropriate to determine whether a right exists for its use.  
3 However, no testimony or evidence was provided concerning the quantity of water  
4 used, distribution system description, purpose of use or how this spring may be  
5 integrated with the other water sources in the farm operation.

6 There does not appear to be a Chapter 90.14 RCW water right claim filed for  
7 diversionary purposes for a water source in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 36, T. 18 N.,  
8 R. 17 E.W.M.. Under the Claims Registration Act, failure to file a water right  
9 claim results in relinquishment of any right that may have existed (RCW  
10 90.14.071).

11 The State's Investigation Report indicated that a stream, a spring and a  
12 creek are used for non-diversionary stock water supply. A RCW 90.14 claim is not  
13 needed for a non-diversionary use. The Plaintiff's Report recommended  
14 confirmation of a right under the non-diversionary stock water stipulation.

15 James V. Leishman owns 400 acres of land of which 240 acres are irrigated  
16 with Kittitas Reclamation District water. The KRD is a Major Claimant whose  
17 rights will be addressed through the Major Claimant Pathway. Mr. Leishman is  
18 claiming use of water from a stream in Section 9, T. 18 N., R. 17 E.W.M. for  
19 stock water supply. He has had up to 300 head of cattle on his property. His  
20 own knowledge of the property goes back to the late 1960's, and he has talked  
21 with others in the area who say that his land has been used for grazing purposes  
22 since before KRD's South Branch Canal went in, sometime in the late 1920's or  
23 early 1930's. Use of water for stock purposes could go back as early as 1890.  
24 Given the history of development of the area, this would be a reasonable  
25 conclusion. Mr. Leishman did not indicate if the stock drink directly from the  
26 stream or if he diverts water to stock troughs.

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1           No 90.14 water right claim was filed for diversionary use of water for the  
2 property that Mr. Leishman owns. Again, under the Claims Registration Act,  
3 Chapter 90.14 RCW, this would result in forfeiture of any water right that may  
4 have existed. Since a water right claim cannot be located, use of the spring for  
5 any purpose other than non-diversionary stock water supply cannot be confirmed by  
6 the Referee.

7           The Plaintiff's Report recommended confirmation of a right to Murray  
8 Pacific Corporation for use of water for non-diversionary stock water supply  
9 under the stock water stipulation. The Claimants should refer to the Report of  
10 Referee for Subbasin No. 11 for a description of the rights confirmed in that  
11 subbasin under Court Claim No. 0931.

12          Based on the foregoing, the Referee does not recommend confirmation of any  
13 rights under Court Claim Nos. 0931 and 1750 beyond those contained in the stock  
14 water stipulation.

15  
16          COURT CLAIM NO. 2177 - Newman's Island Ranch

17          Harley B. Burns and Darla M. Carver filed a Statement of Claim to the Court  
18 asserting a right to use of water from the Yakima River via the Mill Race and  
19 Newman Ditch for irrigation and stock water. The Claimants did not appear at the  
20 Evidentiary Hearing and present testimony on behalf of their claim. On April 3,  
21 1992, Newman's Island Ranch was substituted for Mr. Burns and Ms. Carver.

22          The Plaintiff's Report recommended that a non-diversionary stock water  
23 right be confirmed to the claimants from streams.

24          This claim appears to describe some of the property and distribution system  
25 that is also under Claim No. 2316 filed by J.R. and Fern Newman. According to  
26 the Burns' claim, they were leasing this property from a Fran Newman. Testimony

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1 for the Newman claim identified ongoing litigation and the Burns may be the  
2 parties to that litigation. The Referee cannot confirm a right to the claimants  
3 beyond that identified in the stock water stipulation.

4

5 COURT CLAIM NO. 2316 - J. R. and Fern Newman  
Newman's Island Ranch

6 A Statement of Claim to the Court was submitted by Burt Wilcox and Calvin  
7 Shull, trustees for Newman's Estate, asserting a right to use of water from the  
8 Yakima River via the Mill Ditch. At the hearing, Ralph Charlton, who was an  
9 acquaintance of the Newmans for 20 years, and Leonard Bakeman, who works for one  
10 of the heirs, testified in behalf of the claimants. On March 20, 1992, Newman's  
11 Island Ranch was substituted as claimants.

12 The Newmans have been deceased for some unspecified time. When the  
13 original claim was filed by Mr. Shull he was the trustee of the estate.  
14 Mr. Shull is now also deceased and there are over 30 heirs of which four  
15 apparently deal with matters under court litigation. Although this was not made  
16 clear during testimony, apparently it was someone in this group of four who sent  
17 Mr. Charlton to testify. Mr. Charlton talked with one of the grandsons of the  
18 Newmans, who was 83 year old at the time of the hearing, to learn the history of  
19 the property. The subject property was homesteaded by the Newmans around 1897.  
20 The existing home on the property appears to have been built around the turn of  
21 the century. Mr. Charlton indicated that there are old ditches on the property  
22 which were used for flood irrigation of about 100 acres of hay and pasture from  
23 Mill Ditch. The irrigated property lies between the Thorp Mill Ditch and the  
24 Yakima River.

1           Mr. Bakeman has been researching the history of the property for about a  
2       year. He did this at the request of his employer, Norma Jean Wilcox, who is also  
3       a claimant in the proceedings and one of the heirs to the Newman's estate. Mr.  
4       Bakeman requested that the testimony and evidence presented for Ms. Wilcox's  
5       claim be incorporated in the Newman claim. According to his research, a patent  
6       issued on November 4, 1895, to the Northern Pacific Railroad. Mr. Bakeman  
7       testified that the date of the patent was in 1870 and that the patent was somehow  
8       in error, however, he did not provide testimony as to why he was asserting the  
9       1870 date. In reading the patent, the Referee can only assume that the date Mr.  
10      Bakeman referred to is derived from Page 1, in the first paragraph. This  
11      paragraph is a statement of the basis for the U.S. Government allowing Northern  
12      Pacific to go out and conduct investigations and construction of the railroad.  
13      This work was authorized through ". . . joint Resolution of May 31, 1870, . . .".  
14      However, this "joint Resolution" date cannot be construed or interpreted as the  
15      patent date.

16           The patent that issued to NPR was for lands which included the E<sup>1</sup>NE<sup>1</sup> of  
17       Section 11, which is only a portion of the lands the Newman's owned. No patent  
18       information was submitted for the remainder of the Newman property. The property  
19       is riparian to the Yakima River. Water is diverted from the Yakima River into  
20       the Mill Ditch at a point located approximately 1,150 feet north and 75 feet west  
21       from the east quarter corner of Section 3, T. 18 N., R. 17 E.W.M. Construction  
22       of the Thorp Mill Ditch began December 3, 1879, establishing a date of priority  
23       for those lands that receive water from the ditch.

24           A majority of the evidence submitted did pertain specifically to the Wilcox  
25       property and also concerned a lawsuit over some springs. There was evidence that  
26       John Newman had put the overflow from these springs to beneficial use on his

property, but no indication as to where that beneficial use was. No testimony was provided to the Referee to tie these springs into the subject property. The evidence did support Mr. Newman's long time presence and effort in settling the Thorp valley and the Town of Thorp.

John M. Newman purchased the property from NPR in 1892. He built the original home in 1896 and when it burned down a few years later, he rebuilt it in 1904. Mr. Newman passed away in 1922 and the property was taken over by his son, J.R. Newman in 1923. Approximately 100 acres have been historically irrigated. The now abandoned ditches were upgraded by a 50 horsepower pump installed on the ditch delivering two cubic feet per second, 600 acre-feet per year for irrigation of the 100 acres. There are approximately 3,000 feet of 8 inch mainline with 50 risers. Richard Hutchinson, a neighbor, put in the piping in 1968 and irrigated via a portable pump on a truck, with 4 inch above ground mainline. This system was removed in the 1980's. The only period of non-use that Mr. Charlton witnessed was around 1988-1989. Mr. Bakeman was hired in 1987 to start the system, ensure it's working order and did irrigate that year. Mr. Bakeman also testified that the Newmans had a couple of hundred sheep, 25 to 30 beef cattle, and 28 dairy cattle which drank from both the ditch and stock tanks. At one time there was a dairy operation on the property as well.

Fern Newman filed two water right claims in response to the Claims Registration Act, Chapter 90.14 RCW. Claim No. 56253, for springs, was not supported by testimony. Claim No. 56256 was for the Yakima River via Mill Ditch. The date of first use claimed on both claims was prior to 1917.

There are two doctrines under which a water right can be established. Under the Prior Appropriation Doctrine a right can be established if the water was put to beneficial use prior to the adoption of the State's Surface Water

Code, Chapter 90.03 RCW on June 6, 1917, and under the Riparian Doctrine, the land must have separated from Federal ownership prior to June 6, 1917, and water must have been used no later than December 31, 1932.

This land is riparian to the Yakima River and the claimants appropriate water from a diversion point approximately one mile northwest of the property. No evidence was presented to document that the Thorp Mill Ditch provided water to the property prior to Mr. Newman taking possession of it; therefore, the Referee is unable to confirm a right with a priority date commensurate with construction of the canal. The Referee does recommends that a Prior Appropriation right be confirmed to Newman's Island Ranch with a priority date of June 30, 1892, in the amounts of 2 cfs, 600 acre-feet for irrigation 100 acres, and one acre-foot per year for stock water from the Thorp Mill Ditch.

COURT CLAIM NO. 1961 & 4735 - James and Betsy Ogden  
Katie Previs Land Company

A statement of Claim was filed by Katie Previs Land Company for use of waters from an unnamed spring, seasonal runoff from Joe Watt Canyon and waste and runoff waters for irrigation and stock water. On October 11, 1989, James and Betsy Ogden were joined to this claim. Mr. Ogden testified in behalf of this claim at the evidentiary hearing.

The claimants own that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 lying northeast of the KRD canal and a portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9, T. 18 N., R. 17 E.W.M. On October 12, 1888, the United States granted Elvin A. Thorp a patent to the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 18 N., R. 17 E.W.M. However, prior to the patent issuing, Emma C. Thorp filed Declaratory Statement No. 463 on November 14, 1883, for the lands in Section 8. On April 19, 1889, a deed transferred the N $\frac{1}{2}$ NW $\frac{1}{4}$  of

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1       Section 9, T. 18 N., R. 17 E.W.M. from the Northern Pacific Railroad to Elvin  
2       Thorp. The patent issued to NPR for Section 9 on January 16, 1896.

3           On May 16, 1900, a Complaint was filed with the Superior Court of Kittitas  
4       County by Milford A. Thorp, plaintiff vs. Mrs. Nancy M. Helves and her husband,  
5       and Mrs. Edith A. Taylor and her husband, defendants. The Complaint alleged that  
6       the defendants had illegally interfered with the diversion of waters from springs  
7       and stream which originated out of Joe Watt Canyon; that Emma Thorp first settled  
8       the lands on November 14, 1883; and that the Thorps had constructed a dam across  
9       the stream and dug ditches to divert and deliver the water to the property in  
10      Section 8 for domestic and stock water, and to both Sections 8 and 9 for  
11      irrigation. Crops raised were hay, grain, vegetables, fruits, ornamental and  
12      shade trees, and shrubbery. According to the Complaint, the stream flowed about  
13      20 miner's inches under 6 inch pressure (0.5 cubic feet per second [cfs]). The  
14      Decree and Judgement was entered on June 23, 1900 in favor of the Plaintiff,  
15      Milford A. Thorp, acknowledging his use and right to the water at that time.

16           The record shows that the Ogdens purchased this property in 1988 and had  
17      been operating the farm for one season at the time of the evidentiary hearing.  
18      The distribution system was in disrepair when purchased, and the land had been  
19      neglected for some time. At present, both Joe Watt Creek and KRD water are used  
20      to surface irrigate two 25 acres fields in pasture and 8 acres of landscaping  
21      around the home. The headgate and point of diversion on Joe Watt Creek are  
22      located approximately 200 feet south and 1000 feet west from the northeast  
23      quarter corner of Section 8, being within the NE<sup>1/4</sup>NE<sup>1/4</sup> of Section 8. From there  
24      the water is distributed to the property via gravity flow through ditches and is  
25      commingled with KRD water.

26  
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1 An unnamed spring is located 550 feet south and 1,300 feet east from the  
2 northwest corner of Section 9, being within the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9. Water from  
3 the spring flows continuously and is piped underground to the barn. There it  
4 collects in a 4 x 4 concrete cistern, which can be pumped to various outside  
5 faucets for stock water and light irrigation.

6 Remnants of a primitive house foundation as well as a antique orchard are  
7 on the property. Old fencing is also still in place. A neighbor told Mr. Ogden  
8 he used to harvest hay on this place with a scythe.

9 Two Water Right Claims were filed by a predecessor owner, Maurice C.  
10 Balcom, in response to the Claims Registration Act, Chapter 90.14 RCW. Mr. Ogden  
11 testified that each claim needed some clarification. Claim No. 013060 was filed  
12 for use of seasonal runoff from Joe Watt Canyon and is used for irrigation of 58  
13 acres and continuous stock water supply. In the past neighbors have wintered the  
14 stock on the property, Mr. Ogden estimating about 40 to 50 head.

15 Claim No. 013059 was filed for the use of a well for domestic supply, which  
16 can include irrigation of up to one-half acre of non-commercial lawn and garden.  
17 Mr. Ogden believed the well was in fact the unnamed spring, and use had begun as  
18 early as 1912, thus establishing a riparian right to this source. Presently, the  
19 spring is piped to the barn where they have 18 head of stock. Although stock  
20 water was not a claimed use in the Chapter 90.14 filing, the Referee feels the  
21 use may have been changed without going through the procedures of Chapter  
22 90.03.380. However, lacking evidence to this effect, the Referee cannot  
23 recommend confirmation of a stock water use.

24 Mr. Ogden could not specifically estimate the flow from either source. In  
25 the Complaint of 1900, the flow in the stream from Joe Watt Canyon was estimated  
26 at 20 inches or 0.5 cfs. Generally one inch is sufficient for irrigation of one

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1 acre. A map submitted by the claimant shows the fields irrigated from Watt  
2 Canyon lie in that portion of the land in the NW $\frac{1}{4}$  of Section 9 south of Joe Watt  
3 Canyon Road. There was some testimony regarding the state of neglect of this  
4 property; however, it is not clear to the Referee during what time period, or for  
5 how long, this neglect occurred. If a water right, or portion of a right, goes  
6 unused for five or more successive years, the unused portion relinquishes, RCW  
7 90.14.160. However, this adjudication is a legal proceeding which is a  
8 "sufficient cause" for non-use preventing relinquishment since the case was filed  
9 in 1977, RCW 90.14.140. No testimony identified the period of non-use, just that  
10 the land had been neglected prior to Mr. Ogden's purchase.

11 Mr. Ogden testified that they are entitled to, and currently use, 50 acres  
12 of water via the Kittitas Reclamation District (KRD). The KRD is a Major  
13 Claimant whose claim will be addressed through the Major Claimant pathway.

14 The Plaintiff's Report recommended that a right be confirmed to Katie  
15 Previs Land Company under the non-diversionary stock water stipulation for stock  
16 water supply from a stream.

17 The Referee recommends: That a November 14, 1883, Riparian right be  
18 confirmed for domestic supply and irrigation of one-half acre from the unnamed  
19 spring in the amounts of 0.25 cubic feet per second, 2 acre-feet per year within  
20 the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 18 N., R. 18 E.W.M.; that a Riparian right be  
21 confirmed with a priority date of November 14, 1883, from Joe Watt Creek in the  
22 amounts of 0.5 cubic foot per second, 132 acre-feet per year for irrigation of 20  
23 acres within that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 9, T. 18 N., R. 18 E.W.M.,  
24 lying south of Joe Watt Canyon Road.

25  
26  
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1           These lands may also be entitled to water from Kittitas Reclamation  
2           District. The combined total annual duty from all sources shall not exceed 132  
3           acre-feet per year.

4

5           COURT CLAIM NO. 1208 - Gene and Sally Panattoni

6           The Panattonis filed a Statement of Claim to the Court asserting a right to  
7           use water from two unnamed ditches, Reed Creek, a private ditch and Mill Ditch  
8           for irrigation and stock water supply. Gene Panattoni testified on behalf of  
9           their claim.

10          The Panattonis purchased 9.1 acres in 1957 from the McNeils, who are Mrs.  
11         Panattoni's parents. The McNeils purchased the property in 1945, and operated a  
12         dairy on the premises until 1954. Two unnamed ditches convey waste water, spring  
13         water, and water from the West Side Irrigating Company to the Panattoni property  
14         for irrigation of 8.1 acres. Mr. Panattoni was not able to provide the Court  
15         with evidence of historic irrigation water use prior to 1945, but personally  
16         believed that the property had been historically irrigated. There was no  
17         indication that he had discussed the history of the property with past owners or  
18         long-time residents of the area. They currently have about 30 head of cattle.

19          The waste water or return flows in the area are predominately generated by  
20         irrigation practices on neighboring land and from the West Side canal. As  
21         explained in the Special Issues Section on Page 5, return flows that are  
22         generated by importation of foreign waters are not subject to allocation under  
23         previous Court decisions. Dodge v. Ellensburg Water Company, 46 Wn. App. 77, 729  
24         P. 2d 631 (1986). Although there may be some natural spring waters commingled  
25         with the return flows, there was no specific testimony of the quantity from those

1 natural springs. Therefore, the Referee is unable to confirm a right to use of  
2 those waters.

3 The West Side Irrigating Company is a Major Claimant and will present  
4 evidence and testimony of its claim at the Evidentiary Hearing for the Major  
5 Claimants.

6 The Panattonis are also claiming rights to waters carried in Reed and Mill  
7 ditches and a private ditch, which divert from sources located in Subbasin No. 11  
8 (Manastash). These claims will be addressed in the Report of Referee for that  
9 subbasin.

10 A developed spring is located approximately 660 feet north and 500 feet  
11 east from the south quarter corner of Section 30, within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
12 30, T. 18 N., R. 18 E.W.M. and that is used for domestic supply, irrigation of  
13 about one-quarter acre of yard, and stock water supply for up to 40 head of  
14 cattle. Water is conveyed through a pipe to the property, which is irrigated  
15 with sprinklers. This spring has been used to serve up to six homes, but  
16 currently serves two. Evidence shows that a patent issued to Mr. Benjamin W.  
17 Frisbee on November 4, 1886, for lands which included the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30.  
18 The spring was first developed by a W.A. Stevens in 1904. The subsequent deeds  
19 mentioned having one-half interest in a spring located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
20 Section 30 for domestic supply. Those documents also reflect the use of the  
21 spring for other dwellings. Given that each time the property changed hands the  
22 deed reflected the transfer of the spring water for domestic supply, it is  
23 reasonable to conclude that this use has been on-going throughout the years.

24 There are two doctrines under which a right can be established. Under the  
25 Prior Appropriation Doctrine water had to be put to beneficial use on or before  
26 June 6, 1917. In order to confirm a water right under the Riparian Doctrine the

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1 land must have been severed from Federal ownership prior to June 6, 1917, and use  
2 of the water must have commenced prior to December 31, 1932.

3 Water Right Claim No. 073353 was filed by Mr. McNeil for a spring  
4 (underground) for irrigation of lawn and garden, and stock water supply. Water  
5 Right Claim No. 073354 was filed for an unnamed ditch for irrigation of 9 acres  
6 and stock water supply. These claims were filed in response to the Claims  
7 Registration Act, Chapter 90.14 RCW.

8 As previously noted, the Referee is precluded from confirming a right to  
9 foreign return waters. The Referee does recommends that a right be confirmed  
10 under the Riparian Doctrine with a priority date of November 4, 1886, for use of  
11 an unnamed spring located 660 feet north and 500 feet east from the south quarter  
12 corner of Section 30, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18  
13 E.W.M. in the amounts of 0.02 cubic feet per second (cfs), 1 acre-foot per year  
14 for domestic supply, including the irrigation of one-quarter acre of lawn and  
15 garden, and 1 acre-foot per year for stock water supply within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
16 Section 30, T. 18 N., R. 18 E.W.M., except the west 1,018.5 feet thereof and  
17 right of way of County Road located along the south boundary.

18  
19 COURT CLAIM NO. 0738 - Peoples National Bank of Washington  
Ronald R. McMillian

20 A Statement of Claim to the Court was filed by John M. Penovich/Sunrise  
21 Ranch for use of springs and seepage water for irrigation and stock water supply.  
22 On May 30, 1986, Peoples National Bank of Washington substituted for  
23 Penovich/Sunrise Ranch. In 1987, Ronald R. McMillian purchased the property,  
24 however, no substitution of parties was filed. Jay Carroll, attorney,  
25 represented Mr. McMillian. Mr. McMillian and Philip Kern, a former owner and  
26

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1 long-time resident, testified at the evidentiary hearing on behalf of this claim.

2       The subject property is known as Page Canyon Ranch. Water is diverted from  
3 the following sources on the property: Page Canyon Creek, Fogey Creek, various  
4 springs, return flows and the Kittitas Reclamation District (KRD). Mr. McMillian  
5 could not testify to the instantaneous quantities he utilizes. The ranch  
6 consists of 885 acres total with about 300 irrigated acres. Mr. McMillian hoped  
7 to increase his acreage to between 500 and 600 acres through more efficient use  
8 of water. Approximately 200 acres are flood irrigated, and 100 acres are  
9 irrigated with wheel lines and handlines. Approximately 45 acres are irrigated  
10 from Fogey Creek and 25 acres from Page Canyon Creek. Both creeks carry spring  
11 runoff and snow melt during the spring and early summer, then the flows diminish  
12 greatly although both creeks do flow year around. About 150 cow/calf pairs, 7  
13 bulls and 7 horses drink directly from the various sources on the property. The  
14 return flows used on this farm originate on neighboring properties, the result of  
15 the application of waters from the KRD, natural waters within the subbasin and  
16 seepage from the KRD canal. There was no testimony about the quantity of return  
17 flow waters used on this land, nor was there any testimony to allow the Referee  
18 to determine how much of the return flows were the result of water imported into  
19 the basin by the KRD and how much as from the use of waters from this basin. As  
20 explained in the Special Issues Section beginning on Page 5, foreign return flow  
21 waters are not subject to allocation and the Referee cannot confirm rights for  
22 their use.

23       KRD assesses 4 acre-feet per acre to the ranch. When Page Canyon Ranch  
24 receives a full water duty, it needs 1232 acre-feet per year. KRD is a Major  
25 Claimant whose claim will be addressed through the Major Claimant pathway.

1           The State's Plaintiff Report recommended that Peoples National Bank be  
2 confirmed a right to non-diversionary stock water supply from springs and ponds.

3           Mr. McMillian submitted copies of homestead certificates and patents  
4 appurtenant to the property. A patent dated November 4, 1895, issued to the  
5 Northern Pacific Railroad Company for several hundred acres which included the  
6 NE $\frac{1}{4}$ NE $\frac{1}{4}$ , the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , the W $\frac{1}{2}$ , the W $\frac{1}{2}$ SE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, and the  
7 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23, T. 18 N., R. 17 E.W.M. Homestead Certificate dated July  
8 15, 1899, issued to Mathias Racine for the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , the W $\frac{1}{2}$ SE $\frac{1}{4}$ , and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
9 Section 22. Homestead Certificate dated November 25, 1902, issued to Edward F.  
10 Page for the E $\frac{1}{2}$ NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 22. Homestead Certificate dated  
11 August 5, 1905, issued to James Burget for the E $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 22;  
12 all in T. 18 N., R. 17 E.W.M. Thomas B. Goodwin filed a Notice of Water Right on  
13 January 18, 1886, in which he attested to using springs flowing in a gulch within  
14 the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 22, T. 18 N., R. 17 E.W.M. for domestic and irrigation.

15           A Quit Claim Deed in the exhibit packet mentions 80 shares of Taneum Ditch  
16 in Section 15. However, Mr. McMillian did not testify to use of Taneum Ditch  
17 water. The claimant should refer to the Report of Referee on Subbasin No. 6,  
18 Taneum, for the discussion of the Taneum Ditch Company's water rights.

19           Philip Kern, a long time resident who grew up on the property and  
20 subsequently owned it, provided historic water use information for this property.  
21 Mr. Kern's dad, Wilbur Ross and Arnold Kresse put together the Page Canyon Ranch  
22 sometime prior to World War I. When Philip Kern purchased the property it was  
23 being irrigated with water from Fogey Creek (originally known as Hunter Canyon)  
24 and Page Canyon. Mr. Kern worked the ranch along with his father prior to buying  
25 it, and they irrigated about 300 acres. Ditches were used to transport the water  
26 for flood irrigation. They also had stock and operated a dairy.

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28           Re: Subbasin No. 8

Under Chapter 90.14, Claim No. 160627 was filed by John Penovich for this property for use of a spring for domestic supply, stock water and lawn and garden irrigation using the "short form". The spring is located on the "old Page place" in Section 16, T. 18 N., R. 17 E.W.M. and the place of use description is the entire McMillian property. John Sell testified that overflow from the spring he uses is conveyed to the McMillian property for use. Mr. McMillian presented no testimony which would assist the Referee in determining the location of either the spring or the home and one-half acre of lawn and garden.

Chapter 90.14 RCW allowed use of the short form when claiming a right for the purposes described in the Ground Water Code's exemption to the permit process (Section 90.44.050 RCW). The uses identified in that section are domestic supply, stock watering, irrigation of up to one-half acre of lawn and non-commercial garden, and industrial supply as long as less than 5,000 gallons per day is being used. Use of the short form waived any right that may have existed in excess of those uses.

No other Chapter 90.14 claims for surface water, which would include Page Canyon Creek, Fogey Creek and return flows originating within the subbasin, are on file for this property. Section 90.14.071 of the Claims Registration Act provides that any person claiming a right to divert waters of the state who fails to file a statement of claim under 90.14 shall have waived and relinquished any right, title or interest.

The Referee believes that a right to irrigate 300 acres and stock water had been established for this property. However, failure to file the Chapter 90.14 claim to preserve this historic use resulted in forfeiture of the right. Lacking definitive testimony on the location of the spring and place of use under Claim No. 160627, the Referee cannot recommend confirmation of a right for those

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purposes therein described. The Referee cannot recommend that a right be confirmed beyond the non-diversionary stock water supply.

COURT CLAIM NO. 2150 -- Wendell W. and Joann S. Prater

A Statement of Claim to the Court was filed by (the late) Wendell W. and Joann S. Prater for use of water from subsurface drains and a spring for irrigation and domestic supply. Mrs. Prater was represented by Hugh Spall, attorney. Mrs. Prater and Tom Brunson, who farmed and leased the property in 1989, testified at the evidentiary hearing in support of this claim.

Sarah Prater moved on the property in 1889, resulting in this homestead being classified as a "Centennial Farm" during Washington State's centennial celebration in 1989. Joann Prater has lived on the property for over 50 years. She leases the property to Thomas Brunson, who irrigates about 130 acres of wheat, mixed hay and alfalfa using gated pipe and open ditches. Mrs. Prater said that they had milking cows and horses about 10 to 12 years ago, but currently have no stock on the property.

An unnamed spring is currently used for domestic supply. At one time this spring was also the source of water for the old home on the property and although the home is of unspecified age, Mrs. Prater indicated it was constructed with square nails, indicating very old construction. According to State's Exhibit No. 1, the spring originates approximately 1,250 feet south and 1,200 feet east from the west quarter corner of Section 30, T. 18 N., R. 18 E.W.M. and is conveyed to the home. No specific quantities of water used were offered in testimony.

Of the acreage irrigated, approximately 72 acres receives its' water primarily from subsurface drains and the spring on the property. These drains usually provide sufficient water for 72 acres. However, at times during the

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1 season, water from the West Side irrigating Company is used to supplement the  
2 drain water. The remainder of the land apparently receives water solely from the  
3 West Side Irrigating Company. The irrigated land lies predominately below the  
4 West Side Irrigating Company's canal. The West Side Irrigating Company claim  
5 will be addressed through the Major Claimant Pathway. In reviewing the  
6 exhibit maps and information submitted on this general area, it appears that a  
7 portion of the drain water on this property must result from return flows leaving  
8 adjoining irrigated lands. There is only one obvious natural surface water  
9 source in this vicinity, which is the unnamed spring and it does contribute to  
10 the flow in the drains. However, no testimony on the amount of natural flow in  
11 the spring, the drains or the quantities used on the farm has been presented.  
12 The Referee can only assume, given the above, that the water originating in the  
13 drains is composed of, in large part, return flows and seepage from the canal and  
14 from neighboring irrigated properties.

15 Mr. Brunson's farm is located about three-quarters to one mile east of Mrs.  
16 Prater's. It was Mr. Brunson's opinion, based on his own farm operations, the  
17 engineering report prepared by Richard Bain for the Brunson property, and  
18 experience irrigating the Prater property, that the water duty for the Prater  
19 property was similar to his own, which was an average of 15.1 acre-feet per acre.

20 Two water right claims were filed by Mr. Prater in response to the Claims  
21 Registration Act, Chapter 90.14. Claim No. 125719 was filed for continuous  
22 domestic supply and irrigation of one-quarter acre from an unnamed spring within  
23 the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M. Claim No. 125720 claims a  
24 right for the irrigation of 130 acres from underground drains within the SW $\frac{1}{4}$  of  
25 Section 30, T. 18 N., R. 18 E.W.M. Both of these claims identify the source as

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1 "groundwater". It would appear that the sources more accurately reflect surface  
2 water.

3 Under the Prior Appropriation Doctrine, a claimed water right can be  
4 confirmed to the extent that water use was established prior to implementation of  
5 the Surface Water Code which was adopted on June 6, 1917. Under the Riparian  
6 Doctrine the priority date is the date steps were taken to separate the land from  
7 federal ownership, and the use of water must have occurred prior to December 31,  
8 1932. Although the Praters took possession of the property in 1889, a patent  
9 issued to S.R. Geddis on August 11, 1885, for the SW $\frac{1}{4}$  of Section 30, T. 18 N.,  
10 R. 18 E.W.M..

11 The RCW 90.14 Water Right Claim that was filed for the unnamed spring did  
12 not claim a right to use the spring for irrigation of the 72 acres. Although it  
13 appears that this property has been historically irrigated, failure to file the  
14 90.14 Water Right Claim for that use would result in forfeiture of any right that  
15 may have existed. Additionally, there was no testimony presented concerning the  
16 quantities of natural flow versus return flows used on the property. The Court's  
17 ruling on foreign return flow (see Page 5) precludes the Referee from confirming  
18 a right to use of return flow water.

19 The Referee finds that a right under the Riparian Doctrine exists for the  
20 use of the unnamed spring for domestic supply, with a priority date of August 11,  
21 1885. Lacking specific testimony on the actual quantity of water, the Referee  
22 assigns the standard water allocation of 0.01 cfs, 1 acre-feet for in-house  
23 domestic supply. Although no stock are presently on the property, there have  
24 been in the recent past. Should stock again be kept on the property, the Referee  
25 recommends that the non-diversionary stock water stipulation apply to this  
26 property.

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1           COURT CLAIM NO. 0829 - Ronald and Margaret McMillan

2           A Statement of Claim to the Court was filed by John W. and Martha M. Sell  
3           asserting a right to use water from an unnamed spring for domestic supply and  
4           stock water. Mr. Sell testified in behalf of their claim at the evidentiary  
5           hearing. (On October 25, 1993, Ronald and Margaret McMillian were substituted  
6           for the Sells.)

7           The Sells use an unnamed spring for domestic supply and irrigation of one-  
8           quarter acre around the home within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, T. 18 N., R. 17  
9           E.W.M.. No stock are served water from the spring but in the past it has been  
10          used for that purpose. The spring is located approximately 750 feet south and  
11          650 feet east from the north quarter corner of Section 22, being within the  
12          NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 22, T. 18 N., R. 17 E.W.M. Water is diverted from the spring  
13          into a concrete spring box and a buried pipe conveys water from the spring in a  
14          northerly direction to the property via gravity flow. The overflow from the  
15          spring is channelled to another structure which apparently conveys water through  
16          the neighboring McMillian property.

17          The Sell property consists of approximately 88 to 90 acres irrigated with  
18          water from the Kittitas Reclamation District (KRD). KRD is a Major Claimant  
19          whose claim will be addressed through the Major Claimant pathway.

20          This property was part of the Thomas Goodwin property. On January 18,  
21          1886, Mr. Goodwin filed a Notice of Appropriation claiming a use of water from  
22          the unnamed spring for domestic supply and irrigation in Book A of Water Rights,  
23          page 101. Mr. Sell testified that his home is the original site of the Goodwin  
24          home.

25          A Water Right Claim was filed for this property under the Claims  
26          Registration Act, Chapter 90.14 RCW thereby protecting the historic use to this

27          REPORT OF REFEREE

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1 spring. Saloman W. Hauser, Jr. filed Claim No. 057783 for use of the unnamed  
2 spring for domestic supply and livestock. The date of first use claimed was  
3 spring 1886.

4 A right to use water can be confirmed under the Prior Appropriation  
5 Doctrine if the use began prior to the enactment of the State's Surface Water  
6 Code, Chapter 90.03 RCW, on June 6, 1917, or under the Riparian Doctrine if the  
7 property separated from Federal ownership prior to the enactment of the Surface  
8 Water Code and the use began prior to December 31, 1932.

9 The Referee recommends that a right under the Prior Appropriation Doctrine  
10 be confirmed to the Sells with a priority date of January 18, 1886, from the  
11 unnamed spring for 0.01 cubic feet per second, 1 acre-foot per year for  
12 continuous domestic supply and irrigation of one-quarter acre of lawn and garden;  
13 1 acre-foot per year for stock water supply.

14

15 COURT CLAIM NO. 1809 - Randell and Tresa Shannon

16 The Shannons filed a Statement of Claim asserting a right to waste water  
17 and unnamed springs for irrigation and stock water supply. Mr. Shannon testified  
18 on behalf of their claim.

19 The property was apparently homesteaded by the Morrisons in 1893. The  
20 original house was built some time prior to 1903, although Mr. Shannon could not  
21 specify the exact year.

22 According to the Plaintiff's Investigation Report, water is diverted from a  
23 ditch at a point located 875 feet north and 875 feet east from the center of  
24 Section 11, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.  
25 These waters may be a result of seepage from the West Side Irrigating Company's  
26 canal. The ditch serving the property appears to divert from the Newman Ditch,

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1 which has been identified by other claimants as a drainage ditch. Seepage and  
2 waste waters that are imported from outside the Thorp subbasin are not subject to  
3 allocation since they are considered foreign return flows. See the Special  
4 Issues Section of this report beginning on page 5.

5 A wooden dam diverts water from the drainage ditch into a 18 inch pipe  
6 which feeds a metal drum having two 12 inch pipes that deliver water into a  
7 series of earthen laterals for flood irrigation. The ditch does not flow year  
8 around. Mr. Shannon stated that he irrigates 10½ acres and has between 10 and 15  
9 head of stock.

10 The property is located within the E½SW¼NE¼ of Section 11, T. 18 N., R. 17  
11 E.W.M.. Mr. Shannon purchased this property in 1971, although he did not state  
12 from whom. No RCW 90.14 claim was filed for this property. Under the Claims  
13 Registration Act, Chapter 90.14.071 states that any person who fails to file a  
14 claim waives and relinquishes any right that may have existed.

15 The Plaintiff's Report recommended that a non-diversionary stock water  
16 right be confirmed to the Shannons from a pond on the property.

17 Since no RCW 90.14 claim was filed, the Referee cannot recommend  
18 confirmation of a right to use of these ditch waters for irrigation or stock  
19 water supply.

20  
21 COURT CLAIM NO. 1029 -- Roger C. and Rita M. Sparks  
Bob and Connie Dunnington

22 A Statement of Claim to the Court was submitted by Richard J. and Janet  
23 Crowder for use of water from underground drains, unnamed springs, unnamed water  
24 sources and Coleman Canyon for irrigation and stock water. On July 8, 1988,  
25 Roger C. and Rita M. Sparks were substituted as claimants for the Crowdiers. The

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27 REPORT OF REFEREE  
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1 Sparks own Second Century Farms and the documents submitted indicate some of the  
2 land may be in the name of Second Century Farm. On December 11, 1989, Bob and  
3 Connie Dunnington were joined as additional parties to this claim. Testimony was  
4 provided by Mr. Sparks and Ms. Dunnington during the Evidentiary Hearing. Mr.  
5 Sparks requested that the testimony and evidence from the Subbasin No. 11 hearing  
6 be incorporated and considered in support of the Subbasin No. 8 claim.

7 The property described in Court Claim No. 1029 lies in both Subbasin No. 11  
8 (Manastash) and Subbasin No. 8 (Thorp). The lands fall within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
9 Section 1; the SE $\frac{1}{4}$  of Section 2; the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11; and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
10 Section 12, all in T. 17 N., R. 17 E.W.M.. These lands are shown in the report  
11 prepared by Mr. Sparks as fields 10, 14, and 17. The Sparkses purchased this  
12 property from the Crowdiers in the spring of 1989. Mr. Sparks irrigates about 242  
13 acres primarily from the Kittitas Reclamation District (KRD) and Menastash Water  
14 Ditch Association. This property is entitled to 620 acre-feet per year from the  
15 KRD which they use to irrigate 155 acres. Water is delivered from the KRD into  
16 ditches on the property and rill irrigated. Mr. Sparks said they transferred  
17 additional KRD water to the property during the 1989 irrigation season using a  
18 total of 712 acre-feet. The KRD is a Major Claimant whose claim will be  
19 addressed through the Major Claimant Pathway.

20 Approximately 85 acres are irrigated with waters from the Menastash Water  
21 Ditch, which is a claimant in Subbasin No. 11 (Manastash). Testimony and  
22 evidence were provided by the association at the evidentiary hearing for that  
23 subbasin. The claimants should refer to the Report of Referee for Subbasin No.  
24 11 for an explanation of the rights confirmed for the Menastash Water Ditch  
25 Association.

1       The Sparkses are claiming 1872 as a date of first use, based on their  
2 belief that Benton Goodwin was involved with construction of the Menastash ditch  
3 beginning in 1872. While this may relate to the use of Manastash Creek, no  
4 individual rights are being recommended for water delivered by the Menastash  
5 Water Ditch Association. Nothing in the Record indicates that efforts were made  
6 to divert from Coleman Canyon before June 30, 1890, when Mr. Goodwin received a  
7 patent for lands including the NE<sup>1</sup>/4SE<sup>1</sup>/4 of Section 2, which is partially irrigated  
8 from Coleman Canyon. Lacking more definitive evidence, 1890 is the earliest date  
9 that could be recommended by the Referee.

10      The Sparkses and the Dunningtons claim the lands were entitled to water  
11 from Watt Ditch, which has been abandoned for some time. Watt Ditch diverted  
12 from Manastash Creek and any rights associated with that ditch should have been  
13 asserted in Subbasin No. 11.

14      Varying numbers of livestock are raised on the Sparks property. At the  
15 time of the hearing they had 51 head of cattle on the property and during the  
16 fall have up to 2,000 sheep. The livestock drink directly from the Menastash  
17 Ditch. Rights to this water should have been asserted during the Subbasin No. 11  
18 hearing as well.

19      There is a concrete headgate on Coleman Canyon. Water is diverted through  
20 a concrete ditch and earthen laterals to the fields. Mr. Sparks had farmed this  
21 land only one season and has not personally diverted any water from Coleman  
22 Canyon. Mr. Crowder told Mr. Sparks that he had diverted up to 4 cubic feet per  
23 second (cfs) from Coleman Canyon. Mr. Crowder filed Water Right Claim No. 120379  
24 pursuant to the requirements of RCW 90.14, asserting a right to divert 4 cfs from  
25 Coleman Canyon for the irrigation of 375 acres. Mr. Sparks has never seen that  
26 much water in the creek. The availability of water from Coleman Canyon varies

1 greatly each year depending on snow pack and spring runoff. Mr. Sparks testified  
2 that the creek flows only until the early spring months of March and April and is  
3 dry by the beginning of the normal irrigation season. Mr. Sparks agreed with  
4 the State's Investigation Report estimation that 30 acres were irrigated with  
5 waters from Coleman Creek when it's available. The proportionate share of Mr.  
6 Crowder's claim of 4 cfs to irrigate 375 acres would be 0.32 cfs for the  
7 irrigation of 30 acres. Since water is available only during the early spring  
8 months, no more than 1 acre-foot per acre irrigated could possibly be used from  
9 Coleman Canyon.

10 Two drains on the property pick up seepage from the KRD canal immediately  
11 above the Sparks land. The drains also capture irrigation water applied by the  
12 Sparks for reuse on the land. Based on Mr. Sparks testimony, it is apparent that  
13 the water use from the drain results from the importation and use of Yakima  
14 Project water through the KRD canal. This water would be considered foreign  
15 return flows. The Special Issues Section of this report, beginning on Page 5  
16 explains why the Referee cannot confirm a water right for the use of foreign  
17 return flow waters.

18 The Dunningtons purchased 20 acres of the land described on Court Claim No.  
19 1029, including a home. Although Mr. Sparks and Ms. Dunnington indicated on the  
20 State's Map Exhibit the approximate location of the Dunnington property, a legal  
21 description for the property was not provided. They use KRD water for stock  
22 water and irrigation of 14 acres--3 acres in hay and 11 acres in pasture. Part  
23 of their property is leased for grazing 20 to 25 head of cattle, and they have a  
24 couple of horses. Coleman Canyon is used in the spring for irrigation of 10 (of  
25 the 14) acres and for stock water as available. Stock drink directly from the  
26 ditch. During the winter they use their house well to fill the stock tanks. The

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1 Dunnington property is also covered by Water Right Claim No. 120379 and the  
2 proportionate share of that claim for the irrigation of 10 acres would be 0.11  
3 cubic foot per second.

4 The Plaintiff's Report to the Referee recommended that a non-diversionary  
5 stock water right be confirmed to Roger and Rita Sparks. Since the Dunningtons  
6 purchased a portion of this land, they, too, would be entitled to the use of  
7 water under the stock water stipulation.

8 Besides the previously discussed RCW 90.14 water right claim, several other  
9 claims were also filed by the Crowdiers: 120380, 120382, 120383, 120378, and  
10 120384. These claims were filed for the drains for which the Referee cannot  
11 confirm a right; or for water sources for which there was no testimony presented:  
12 an unnamed spring, an unnamed water course and Catlin Canyon.

13 Based on the foregoing, the Referee recommends that rights be confirmed for  
14 Court Claim No. 1029 under the Riparian Doctrine with a June 30, 1890, date of  
15 priority for the use of waters from Coleman Canyon to Roger C. and Rita M. Sparks  
16 for the use of 0.32 cubic foot per second, 30 acre-feet per year for the  
17 irrigation of 30 acres.

18 The evidence supports a recommendation that a water right also be confirmed  
19 under the Riparian Doctrine to the Dunningtons for the use of 0.11 cubic foot per  
20 second for the irrigation of 10 acres. However, since the Court has not been  
21 provided a legal description for the property to which the right would be  
22 appurtenant, the Referee cannot recommend confirmation of a right.

COURT CLAIM NO. 2049 - Upper Columbia Mission Society,  
Seventh Day Adventist

A Statement of Claim to the Court was filed by the Upper Columbia Mission Society, Seventh Day Adventist for use of water from an unnamed spring for irrigation of 10 acres. No one from the Upper Columbia Mission Society appeared to testify on behalf of this claim at the evidentiary hearing. Based on the above, the Referee cannot recommend that a right be confirmed under Court Claim No. 2049.

COURT CLAIM NO. 0632 -- Larry E. and Berna M. Walton

A Statement of Claim to the Court was filed by Larry E. and Berna M. Walton asserting a right to use water from unnamed springs and irrigation runoff for irrigation. The Walton's did not make an appearance at the evidentiary hearing.

Based on the above, the Referee is unable to confirm a water right to the Waltons. The Department of Ecology sent a letter on June 20, 1991, to the current owner of the property, James L. Kennedy, advising him to become a party to the adjudication. No response was received.

COURT CLAIM NO. 0596 - Wynn Vickerman

A Statement of Claim to the Court was submitted by Wynn Vickerman claiming use of water from an unnamed drain for irrigation and stock water supply. Mr. Vickerman testified at the evidentiary hearing on behalf of his claim.

Mr. Vickerman has owned 7.541 acres of land within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M. since 1957. A patent dated February 26, 1882, issued to Robert Hatfield for the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.. On March 4, 1905, Robert Stanley filed a Notice of Water Right for 2 cubic feet

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1 per second (cfs) of waste water to be diverted from the northeast quarter of  
2 Section 30 and conveyed to the southeast quarter of Section 30. No testimony was  
3 provided about sources within the northeast quarter of Section 30. Chain of  
4 title documents entered into the record by claimant Charles Gust show the  
5 existence of irrigation ditches and spring development in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
6 30, but not specifically on the land now owned by Mr. Vickerman.

7 Waters from Manastash Creek, Hatfield Canyon, return flows and springs  
8 discharge into a channel that runs beside Robinson Canyon Road. Although it's  
9 called Hatfield Canyon Creek, some claimants in the general area have described  
10 it as a ditch and not a natural channel. Testimony indicated that it flows  
11 continuously, year around. The State's map exhibits for Subbasins No. 8 and 11  
12 show the channel as being suspiciously straight from the point it exits the 3 Bar  
13 G Ranch in the NE $\frac{1}{4}$  of Section 31 and parallels the Robinson Canyon Road to its  
14 confluence with the Packwood Canal. However, the record indicates that Hatfield  
15 Canyon Creek has flowed into the Packwood Canal as long as the canal has existed,  
16 and into the Yakima River prior to that. Given the location of Robinson Canyon  
17 Road, it seems likely that the lower portion of Hatfield Canyon Creek was  
18 redirected into a more formal channel that runs alongside Robinson Canyon Road to  
19 the Packwood Canal. The Referee is of the opinion that this is the natural,  
20 albeit altered, channel of Hatfield Canyon Creek.

21 A concrete diversion box is located at the southwest corner of the property  
22 and is used to divert water from the channel to flood irrigate the hay and  
23 alfalfa ground. A 2 BHP is used to irrigate the lawn and garden around the home.  
24 Water also enters the property at the northwest corner through an unnamed ditch  
25 which conveys both waste water and spring flow from neighboring properties.  
26 Between 30 and 40 head of stock are watered from the ditches.

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1           Mr. Vickerman stated that the previous owner, Darold Chamness (1952 to  
2           1957), irrigated the property, but was not able to provide the Court with  
3           evidence of historic irrigation prior to Chamness, only his personal belief that  
4           the property had been historically irrigated. Mr. Vickerman did not indicate how  
5           much water he utilized on his property nor the specific number of acres  
6           irrigated. Two water right claims were filed by Mr. Vickerman. Claim Nos.  
7           050494 and 050495 were filed for wild water from springs, drains and waste water  
8           for irrigation and stock water. The points of diversion given on each claim  
9           correspond with his testimony, that being one in the northwest corner and one in  
10          the southeast corner.

11          The waste water or return flows in the area are predominately generated by  
12          neighboring irrigation practices using water from Manastash Creek and West Side  
13          canal and consequently are "foreign" return flow water. The Special Issues  
14          Section of this report, on Page 5, addresses the inability of the Referee to  
15          confirm water rights for the use of these waters. Foreign return flow waters  
16          are not subject to allocation under previous Court decisions, Dodge v. Ellensburg  
17          Water Company, 46 Wn. App. 77, 729 P.2d 631 (1986). Although there may be some  
18          natural return flow waters originating within Subbasin No. 8, such as those  
19          generated by natural springs or Hatfield Canyon, no testimony was given to allow  
20          the Referee to quantify those natural occurring waters. Additionally, there was  
21          no testimony of historic water use on this property prior to 1952. Therefore,  
22          the Referee cannot recommend confirmation of a water right to Wynn Vickerman.

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

2           The Washington State Department of Natural Resources submitted a Statement  
3           of Claim to the Court asserting a right to use of water from several springs,  
4           lakes, hydraulically connected wells and ponds within the Thorp subbasin. The  
5           Department of Natural Resources was represented by Jay Geck, Assistant Attorney  
6           General; however, no one testified in behalf of the claim at the evidentiary  
7           hearing.

8           The Referee concurs with the Plaintiff's Report recommendation that a right  
9           be confirmed to the Washington State Department of Natural Resources for non-  
10          diversionary stock and wildlife water supply from streams, springs, and ponds.

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

12           The Washington State Department of Wildlife submitted a Statement of Claim  
13           to the Court asserting a right to use of water from several springs, streams and  
14           ponds within the Thorp subbasin. The Department of Wildlife did not attend or  
15           provide testimony at the evidentiary hearing.

16           The Referee supports the Plaintiff's Report recommendation that a right be  
17           confirmed to the Washington State Department of Wildlife for non-diversionary  
18           stock and wildlife water uses from springs, ponds, and streams.

19           COURT CLAIM NO. 1971 -- Norma Jean Wilcox

20           A Statement of Claim to the Court was filed by John A. Wilcox for use of  
21           waters from an unnamed spring tributary to the Yakima River for irrigation of two  
22           acres. Mr. Wilcox has since passed away and his daughter, Norma Jean Wilcox, was  
23           substituted as a claimant. Hugh Spall, attorney, represented Ms. Wilcox at the  
24           hearing.

25           REPORT OF REFEREE

26           Re: Subbasin No. 8

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              (509) 454-7221

1 evidentiary hearing. Ms. Wilcox, Leonard Bakeman, lessee, Roger Fischer and Dale  
2 Wells, neighbors, testified in behalf of the Wilcox claim.

3 The subject property is within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N.,  
4 R. 17 E.W.M. and has been in the Wilcox family since 1892, when her great-  
5 grandfather, John Newman, purchased this and other property from the Northern  
6 Pacific Railroad Company. He irrigated 8 to 10 acres from springs in the area  
7 and also had cattle, sheep and horses. The house on the property was in  
8 existence at the time of Mr. Newman's purchase. Springs on the property were  
9 used to irrigate a domestic yard, garden, pasture and various crops. Some of the  
10 property has been sold; at present Ms. Wilcox irrigates approximately 2 acres,  
11 although up to 10 acres were irrigated in the past.

12 A spring located in the corner of the front yard that has been historically  
13 used for domestic supply, stock water and irrigation of land and garden, and more  
14 recently (1986-1987) a duck pond. Mr. Bakeman has measured flow from this spring  
15 at 7 gallons per minute (gpm). There is a pump from the spring that they use to  
16 fill the duck pond. This spring flows continuously year around.

17 The main irrigation springs are to the west of the claimants property  
18 within the W $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11. Several springs emerge from a bluff and form two  
19 distinct water sources (identified as S-1, and S-2 on State's Exhibit 1). Each  
20 source is piped underground to a central collection point or box (identified as  
21 W-1 on State's Exhibit 1). The system has been updated through the years. It  
22 has been wood, concrete and now metal. Hay and pasture, and in the past orchard,  
23 have been irrigated and stock have watered from these springs. No testimony was  
24 presented concerning the quantity of water that has been historically diverted  
25 from these springs. Mr. Bakeman stated that the springs flow continuously year  
26 around and these waters are not seepage from the West Side canal. Mr. Fischer

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1 and Mr. Wells agree with this assertion. These assertions are supported, in  
2 part, by the evidence submitted.

3 Between 1908 and 1910, these springs were the subject of litigation over  
4 right-of-way to and use of said springs. In response to this earlier lawsuit a  
5 Complaint, Answer and Opinion (Defendant's Exhibits 7, 8 and 9) were filed and  
6 issued in 1916. These documents indicate that immediately after the preceding  
7 litigation and during the irrigation season of 1910, John Yearwood had  
8 constructed covered drains to reclaim his property and conveyed the excess water  
9 from his property to the John Newman property. The Judge's Opinion No. 5696  
10 stated on page 2 that "I further find that in the spring of 1910 said water  
11 flowed from said springs into a depression or "swamp" on the lands of Yearwood  
12 and that said swamp was increasing in size as the flow of the springs was from  
13 year to year augmented by the increasing use of water on adjacent higher lands .  
14 . . ." and that Mr. Newman had ". . . applied this water to beneficial use" in  
15 1910. The Judge also noted in his opinion that the springs were increasing in  
16 flow due to percolation from irrigation practices on neighboring properties.

17 Ms. Wilcox's legal description for her property places it within the  
18 SE<sup>1</sup>NE<sup>1</sup>SE<sup>1</sup> of Section 11, T. 18 N., R. 17 E.W.M.. The patent that issued for this  
19 property was to the Northern Pacific Railroad Company and was dated November 4,  
20 1895. Mr. Bakeman testified that the date of the patent was in 1870 and that the  
21 patent was somehow in error; however, he did not provide testimony as to why he  
22 was asserting the 1870 date. The Referee assumes that the date Mr. Bakeman  
23 referred to is derived from the first paragraph on Page 1. This paragraph  
24 provides the basis for allowing Northern Pacific to go out and conduct  
25 investigations and construction of the railroad, as was authorized through ". . .

1 joint Resolution of May 31, 1870, . . . . However, this "joint Resolution" date  
2 cannot be construed or interpreted as the patent date.

3 Mr. Bakeman stated that the Wilcox property does not receive water from the  
4 West Side Irrigating Company as was indicated in the Plaintiff's Investigative  
5 Report.

6 Two claims were filed by Mr. Wilcox in response to the Water Right Claims  
7 Registration Act, Chapter 90.14. Claim No. 133397 claims use of water from a  
8 spring for lawn and garden irrigation. The short form was used so there is no  
9 information concerning quantities, acreage or date of first use. Claim No.  
10 133399 claims use of a spring for irrigation of 5 acres. The place of use on  
11 both claims is within Section 11, T. 18 N., R. 17 E.W.M. Under the Prior  
12 Appropriation Doctrine, a claimed water right can be confirmed to the extent that  
13 water was used prior to implementation of the Surface water Code on June 6, 1917.  
14 In order to confirm a water right under the Riparian Doctrine the land must have  
15 been severed from Federal ownership prior to June 6, 1917 and use of water must  
16 have commenced prior to December 31, 1932.

17 Based on the above testimony and exhibits, there appears to be sufficient  
18 documentation to recommend confirmation of two rights to Ms. Wilcox. A water  
19 right is recommended under the Riparian Doctrine for the spring located  
20 approximately 1,750 feet north and 1,550 feet west from the southeast corner of  
21 Section 11, being within the SE<sup>1/4</sup>NE<sup>1/4</sup>SE<sup>1/4</sup> of Section 11, T. 18 N., R. 17 E.W.M.,  
22 with a priority date of June 30, 1892, in the amounts of 0.016 cfs (7 gpm), and 1  
23 acre-foot per year for irrigation of one-half acre of lawn and garden and stock  
24 water supply. Since the use of water to fill a man made pond for wildlife supply  
25 commenced well after the enactment of the 1917 Surface Water Code that use is  
26 denied.

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1           It is recommended that a water right be confirmed under the Prior  
2           Appropriation Doctrine with a date of priority of June 30, 1910, for  
3           the irrigation of two acres with water from the series of springs that collect at  
4           two points located as follows: 1) 1,500 feet north and 2,250 feet west in  
5           Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; and 2) 950 feet north and 1,950 feet west  
6           from the southeast corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , all in T. 18  
7           N., R. 17 E.W.M.. Since there was no quantification of water utilized, the  
8           Referee recommends the standard quantities of 0.02 cfs and 6.6 acre-feet for each  
9           of the 2 acres irrigated.

10  
11           COURT CLAIM NO. 0980 -- Carl Wray

12           A Statement of Claim to the Court was filed by Agnes M. Catlin asserting a  
13           right to use water from an unnamed water source, Catlin Canyon, an underground  
14           drain and the Manastash Water Ditch Association for irrigation of 240 acres and  
15           stock water supply. Carl Wray was substituted for Agnes M. Catlin on July 8,  
16           1988. Mr. Wray provided testimony in behalf of the claim at the evidentiary  
17           hearing.

18           According to the testimony, the property in question was originally settled  
19           in 1872 by Benton Goodwin. The property may have been irrigated as early as  
20           1872, however, Mr. Wray believed that the property was first irrigated when the  
21           Watt Ditch was constructed, which was about 1889. The Watt Ditch has since been  
22           abandoned. The 1891 Manastash Decree indicates that Benton Goodwin built  
23           Manastash Ditch in 1872 and diverted 1,200 inches of water from Manastash Creek.  
24           In 1879, Benton Goodwin and Joseph Watt, et al., built the Watt Ditch and  
25           diverted 400 inches from Manastash Creek, and in 1885 enlarged the ditch and  
26           diverted 300 inches more.

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1           The shareholder list filed as Exhibit DE #8 by the Menastash Water Ditch  
2           Association for their use of water from Manastash Creek (Subbasin No. 11) does  
3           not show either Agnes Catlin or Carl Wray being entitled to water through the  
4           association. Also, Mr. Wray's lands lie above (west of) the Manastash Ditch, and  
5           the service area map provided by the association shows all the irrigated land  
6           lying below (east of) the ditch. The claimant should refer to the Report of  
7           Referee for Subbasin No. 11 (Manastash) for an explanation of the Menastash Water  
8           Ditch Association water right.

9           Mr. Wray irrigates a total of 142 acres from the Kittitas Reclamation  
10          District (KRD), and another 20 acres using seepage from the KRD canal. The 20  
11          acres are located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T. 17 N., R. 17 E.W.M.  
12          Subsurface drain pipes collect the seepage water and convey it into an earthen  
13          ditch for distribution on the 20 acres. Twelve, 10 and 8 inch gated pipe are  
14          used to transport water through the place of use. When KRD shuts the canal down,  
15          the seepage stops and no water is available for stock water purposes on his  
16          property; therefore, he does not currently have stock. He estimated the last  
17          time there was stock on the property was 1979. Two homes and two barns are on  
18          the property. One home was built in 1915 and the other in 1950. No testimony  
19          was given concerning the source of water for the homes. There are old fences on  
20          the property that could be from the Benton Goodwin era. The land was originally  
21          in pasture then converted to hay.

22          Mr. Wray described two wet spots on his dryland as springs that don't flow,  
23          and apparently are not used. These appear to be above Catlin and Coleman  
24          Canyons. Snow melt and rain contribute about 0.5 cfs of flow down the canyons in  
25          the spring, usually during April and May. He indicated that he may have some

1 future need for stock water and supplemental irrigation from these waters;  
2 however, no testimony was given about current or historic uses.

3 Three water right claims were filed by Agnes M. Catlin in response to the  
4 Claims Registration Act, Chapter 90.14. Claim No. 120389 was for the underground  
5 drains that appear to convey the seepage waters from the KRD. Claim No. 120390  
6 was for irrigation and stock water from Catlin Canyon. Claim No. 120391 was for  
7 irrigation and stock water supply from an unnamed water course.

8 The KRD is a Major Claimant whose claim will be addressed through the Major  
9 Claimant pathway. The Referee cannot recommend confirmation of an individual  
10 right for the claimant's use of KRD water received by direct diversion from the  
11 KRD canal or from seepage. In addition, the record was insufficient to recommend  
12 confirmance of a right to the use of waters from Catlin and Coleman canyons.  
13 Lacking were testimony and evidence about historic use, date of first use, the  
14 quantity of water used, the purpose of use, and the system used in diverting and  
15 applying the water to the land.

16 The Plaintiff's Report recommended that Carl Wray be confirmed for a non-  
17 diversionary stock water supply from streams. To the extent that such waters are  
18 available, and notwithstanding Mr. Wray's testimony that stock water is not  
19 available after KRD shuts off, the Referee concurs with the recommendation.

20

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

22 Thomas C. and Kathleen Brunson  
23 Bob and Connie Dunnington  
24 Andrew and Evelyn Dyk  
25 Martin and Frances Dyk  
26 Audrey Irene Evans  
John B. and Barbara W. Foster  
Ben F. and Nina M. George  
Paul and Marjorie J. Harrel  
Ivan and Mildred Hutchinson

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1           Richard O. and Rita Hutchinson  
2           Thomas J. and Helen A. Kirby  
3           John D. McCullough  
4           Murray Pacific Corporation/Bart G. Bland/Dave Duncan and Sons  
5           and Duncan Family Trust/Dale Dyk/Roger and Rita Sparks/  
6           James V. Leishman  
7           Newman's Island Ranch  
8           James and Betty Ogden/Katie Previs Land Co., Inc.  
9           Peoples National Bank of Washington  
10          Theiline P. Scheumann  
11          Randell and Tresa Shannon  
12          Roger C. and Rita M. Sparks  
13          3 Bar G Ranch, Inc.  
14          Washington State Department of Natural Resources  
15          Washington State Department of Wildlife  
16          Dale and Lois Wells  
17          Carl D. Wray

18           IX. FINDINGS OF FACT

19           I, JOHN E. ACORD, as Referee in this proceeding, having carefully examined  
20          the testimony and evidence and having investigated Subbasin No. 8, do hereby make  
21          the following findings of fact:

22          1. That the waters of Subbasin No. 8 and lands irrigated or waters  
23          otherwise utilized therefrom are situated in Kittitas County.

24          2. That the claims to any diversionary or withdrawal rights within  
25          Subbasin No. 8 of the following named claimants are denied in their entirety for  
26          reason set forth in the body of this report:

27          William Bews, Jr.  
28          Dale K. and Jewel E. Black  
29          Bart G. Bland  
1          Kenneth R. and Ruth I. Carpenter  
2          Paul W. and Marcia A. Cloutier  
3          Glenn and Robin Collins  
4          Dave Duncan and Sons and Duncan Family Trust  
5          Bob and Connie Dunnington  
6          Andrew and Evelyn Dyk  
7          Dale Dyk  
8          Martin and Frances Dyk  
9          Eva Frances Fischer  
10         John P. and Barbara W. Foster

11          REPORT OF REFEREE  
12         Re: Subbasin No. 8

1 Larry T. Fudacz  
2 Ben and Nina George  
3 Steven E. and Ann E. George  
4 Charles Gust  
5 Paul and Marjorie H. Harrel  
6 Lloyd A. and Maxine R. Hatfield  
7 Ernest C. and Eleanor Hinckle  
8 Paul Hoff  
9 Ivan and Mildred Hutchinson  
10 Joe and Sharon Juinta  
11 Thomas J. and Helen A. Kirby  
12 James V. Leishman  
13 Irwin Loucks  
14 Stanley and Eileen Mainwaring  
15 Marshall and Doris Mason  
16 John D. McCullough  
17 Ronald R. McMillian  
18 Vernon G. and Ellen F. Meyer  
19 John B. Moser  
20 Murray Pacific, Inc.  
21 Newman's Island Ranch - Court Claim No. 2177  
22 Lucille Alby Nicholson  
23 Packwood Canal Company, Inc.  
24 Peoples National Bank of Washington  
25 Wilhelm J. and Bertie Pross  
26 Theiline P. Scheumann  
27 Randell and Tresa Shannon  
28 Robert M. and Irma Smith  
29 Ole D. Spaulding  
30 Margaret A. Thayer  
31 3 Bar G Ranch  
32 Don M. and M. Louise Ulmer  
33 Upper Columbia Mission Society, Seventh Day Adventist  
34 Wynn Vickerman  
35 Larry E. and Berna M. Walton  
36 Washington State Department of Natural Resources  
37 Washington State Department of Wildlife  
38 Hubert W. and Mary Ellen Watson  
39 Carl Wray

40  
41  
42 3. That the name of the claimant(s), court claim number(s), sources of  
43 water, uses for which rights have been established, time periods when water may  
44 be used, amounts of water designated in the right, priority of water right,  
45 location of points of diversion, and description of lands to which water rights  
46 are appurtenant are as follows:

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52 Yakima, WA 98902-5713  
53 (509) 454-7221

1 CLAIMANT NAME: Elwin and Patricia Gibson and COURT CLAIM NO. 2046  
2 Claude and Lillian Gibson  
3 Source: An unnamed spring  
4 Use: Irrigation of 9.5 acres and stock water  
5 Period of Use: April 1 to October 31  
6 Quantity: 0.19 cubic foot per second, 62.7 acre-feet per year for  
irrigation and 2 acre-feet per year for stock water  
7 Priority Date: June 30, 1878  
8 Point of Diversion: 1100 feet north and 550 feet east from the south quarter  
corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 18 N., R. 17 E.W.M.  
9 Place of Use: SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N., R. 17 E.W.M.  
10  
11 CLAIMANT NAME: Dale and Lois Wells COURT CLAIM NO. 4898  
12 Source: An unnamed spring  
13 Use: Irrigation of one-half acre and stock water  
14 Period of Use: April 1 to October 31  
15 Quantity: 0.01 cubic foot per second, 3.3 acre-feet per year for  
irrigation and 2 acre-feet per year for stock water  
16 Priority Date: June 30, 1878  
17 Point of Diversion: 1100 feet north and 550 feet east from the south quarter  
corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 18 N., R. 17 E.W.M.  
18 Place of Use: The north 100 feet of the east 200 feet of the west 500  
feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 18 N.,  
R. 17 E.W.M.

1 CLAIMANT NAME: Richard O. & Rita Hutchinson COURT CLAIM NO. 0877  
2 Source: Yakima River  
3 Use: Irrigation of 14 acres and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 2 cubic feet per second, 240 acre-feet per year for irrigation and 2 acre-feet per year for stock water  
6 Priority Date: December 3, 1879  
7 Point of Diversion: 1150 feet north and 75 feet west from the east quarter corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3, T. 18 N., R. 17 E.W.M.  
8 Place of Use: That portion of the S $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, lying east of the C.M. & St. P. & P. railroad right of way and southwest of Thorp Highway; and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2 described as follows: Commencing at the south quarter corner of said section, thence west 200 feet more or less to the point of beginning; thence west to the right of way of the Thorp Highway; thence northwest 380 feet more or less along said highway; thence N 37° W 200 feet more or less to the point of beginning; AND that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11 described as follows: Commencing at the north quarter corner of said section; thence W 250 feet more or less to the point of beginning; thence west to the right of way of Thorp Highway; thence southeast 450 feet more or less along said highway; thence N 36° E 350 feet more or less to the point of beginning, ALL in T. 18 N., R. 17 E.W.M.

1 CLAIMANT NAME: William R. Fields, Jr. and COURT CLAIM NO. 2372  
2 Joy Lourena Fields  
3 Source: Yakima River  
4 Use: Irrigation of 2.5 acres and stock water  
5 Period of Use: April 1 through October 31 for irrigation  
Continuous for stock water  
6 Quantity: 0.05 cubic foot per second, 9.25 acre-feet per year for  
irrigation; 0.01 cubic foot per second, 1 acre-foot per  
year for stock water  
7 Priority Date: December 3, 1879  
8 Point of Diversion: 1150 feet north and 75 feet west from the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
9 Place of Use: That portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. lying south of the Thorp Mill Ditch and  
northeast of the Burlington Northern Railroad right of  
way.  
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1 CLAIMANT NAME: William R. Fields, Sr. COURT CLAIM NO. 2373  
2 Source: Yakima River  
3 Use: Irrigation of 2.5 acres and stock water  
4 Period of Use: April 1 through October 31 for irrigation; continuous for  
stock water  
5 Quantity: 0.05 cubic foot per second, 9.25 acre-feet per year for  
irrigation; 0.01 cubic foot per second, 1 acre-foot per  
year for stock water  
6 Priority Date: December 3, 1879  
7 Point of Diversion: 1,150 feet north and 75 feet west from the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
8 Place of Use: That portion of the W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
southwest corner of said quarter quarter section, thence  
north 650 feet, more or less, to the north right of way  
of Burlington Northern railroad, the true point of  
beginning; thence southeasterly 163.8 feet, along said  
right of way; thence N 42° E 148 feet, more or less;  
thence N 9° E 350 feet, more or less to the Thorp Mill  
Ditch; thence westerly along said ditch 300 feet, more or  
less, to the west line of said quarter quarter section;  
thence south 400 feet, more or less, to the true point of  
beginning.

1 CLAIMANT NAME: Mr. and Mrs. Clifford Lindsey COURT CLAIM NO. 1189

2 Source: Yakima River

3 Use: Irrigation of 3 acres

4 Period of Use: April 1 to October 31

5 Quantity: 0.06 cubic foot per second, 11 acre-feet per year

6 Priority Date: December 3, 1879

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

9 Place of Use: The south 250 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2 lying  
10 east of the Thorp Highway and the north 175 feet of the  
NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, lying east of the Thorp Highway  
11 and west of the right of way of the Burlington Northern  
Railroad, all in T. 18 N., R. 17 E.W.M.

12 CLAIMANT NAME: Kenneth L. and Lillian G. Wilson COURT CLAIM NO. 0718

13 Source: Yakima River

14 Use: Irrigation of 3.5 acres and stock water

15 Period of Use: April 1 through October 31 for irrigation; continuous for  
16 stock water

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

19 Priority Date: December 3, 1879

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

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

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1 CLAIMANT NAME: **Larry Hillis** COURT CLAIM NO. 0894 & 1705  
2 Source: **Robinson Canyon Creek**  
3 Use: **Irrigation of 40.5 acres**  
4 Period of Use: **April 1 to June 30**  
5 Quantity: **0.81 cubic foot per second, 267.3 acre-feet per year**  
6 Priority Date: **May 4, 1880**  
7 Point of Diversion: **100 feet north and 500 feet east from the south quarter  
corner of Section 27, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 27, T. 18 N., R. 17 E.W.M.**  
8  
9 Place of Use: **The NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , the E $\frac{1}{4}$ E $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the east 1000 feet of  
the west 1900 feet of the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 26, T. 18 N.,  
R. 17 E.W.M.**  
10  
11 CLAIMANT NAME: **James and Betsy Ogden** COURT CLAIM NO. 1961  
12 Source: **Joe Watt Creek**  
13 Use: **Irrigation of 20 acres**  
14 Period of Use: **April 1 to October 31**  
15 Quantity: **0.5 cubic foot per second, 132 acre-feet per year**  
16 Priority Date: **November 14, 1883**  
17 Point of Diversion: **50 feet south and 1,150 feet west of the northeast corner  
of Section 8, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8,  
T. 18 N., R. 17 E.W.M.**  
18  
19 Place of Use: **That portion of the N $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 18 N.,  
R. 17 E.W.M. lying south of Joe Watt Canyon Road**  
20  
21 Limitation of Use: **This land may enjoy a right from the Kittitas Reclamation  
District. A maximum of 132 acre-feet per year can be  
used from all sources.**  
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28 Re: Subbasin No. 8  
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1 CLAIMANT NAME: James and Betsy Ogden COURT CLAIM NO. 1961  
2 Source: An unnamed spring  
3 Use: Single domestic supply, including the irrigation of one-half acre  
4 Period of Use: Continuous  
5 Quantity: 0.25 cubic foot per second, 2 acre-feet per year  
6 Priority Date: November 14, 1883  
7 Point of Diversion: 550 feet south and 1,300 feet east from the northwest corner of Section 9, being within either the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  or the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 18 N., R. 18 E.W.M.  
8 Place of Use: E $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 18 N., R. 18 E.W.M.  
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10 CLAIMANT NAME: Robert F. and Linda Lapan COURT CLAIM NO. 1446  
11 Source: Yakima River  
12 Use: Irrigation of 1.25 acres  
13 Period of Use: April 1 through October 31  
14 Quantity: 0.0313 cubic foot per second, 11.0 acre-feet per year  
15 Priority Date: June 30, 1885  
16 Point of Diversion: 950 feet north and 1,100 feet west from the east quarter corner of Section 13, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 18 N., R. 18 E.W.M.  
17 Place of Use: That portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 18 N., R. 18 E.W.M. described as follows: Commencing at the southeast corner of said quarter section; thence west 480 feet, more or less, thence north 460 feet, more or less, to the center of Back Creek and the true point of beginning; thence N 9°59' E 222.99 feet; thence N 69°33'40" E 20 feet, more or less, thence N 0°15'35" W 94.86 feet; thence E 85 feet, more or less, thence S 22°1'54" E 350 feet more or less to the north bank of Back Creek; thence southwest along said creek to the true point of beginning.  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 8  
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1 CLAIMANT NAME: **Joann S. Prater** COURT CLAIM NO. 2150  
2 Source: An unnamed spring  
3 Use: Single domestic supply  
4 Period of Use: Continuous  
5 Quantity: 0.01 cubic foot per second, 1 acre-foot per year  
6 Priority Date: **August 11, 1885**  
7 Point of Diversion: 1,250 feet south and 1,100 feet east from the west  
quarter corner of Section 30, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
8 Section 30, T. 18 N., R. 18 E.W.M.  
9 Place of Use: The SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.  
  
10 CLAIMANT NAME: **Ronald and Margaret McMillan** COURT CLAIM NO. 0829  
11 Source: An unnamed spring  
12 Use: Single domestic supply, including the irrigation of one-  
quarter acre of lawn and garden, and stock water  
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14 Period of Use: Continuous  
15 Quantity: 0.01 cubic foot per second, 1 acre-foot per year for  
domestic supply, 1 acre-foot per year for stock water  
16 Priority Date: **January 18, 1886**  
17 Point of Diversion: 750 feet south and 650 feet east from the north quarter  
corner of Section 22, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
18 Section 22, T. 18 N., R. 17 E.W.M.  
19 Place of Use: That portion of the south 300 feet of the east 250 feet  
20 of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15, T. 18 N., R. 17 E.W.M.  
lying east of the Taneum Ditch

1 CLAIMANT NAME: Gene and Sally Panattonni COURT CLAIM NO. 1208  
2 Source: Unnamed spring  
3 Use: Single domestic supply, including irrigation of one-quarter acre of lawn and garden and stock water  
4 Period of Use: Continuous  
5 Quantity: 0.02 cubic foot per second, 1 acre-foot per year for domestic supply; 1 acre-foot per year for stock water  
6 Priority Date: November 4, 1886  
7 Point of Diversion: 500 feet east and 660 feet north from the south quarter corner of Section 30, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M.  
8 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M., except the west 1018.5 feet thereof and right of way of county road located on the south boundary  
9  
10 CLAIMANT NAME: Thomas C. and Kathleen Brunson COURT CLAIM NO. 1055  
11 Source: Sheep Pasture Creek  
12 Use: Irrigation of 14 acres  
13 Period of Use: April 1 through October 31  
14 Quantity: 1 cubic foot per second, 100 acre-feet per year  
15 Priority Date: June 9, 1887  
16 Point of Diversion: 400 feet south and 150 feet east from the center of Section 29, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T. 18 N., R. 18 E.W.M.  
17 Place of Use: That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  lying south of Sheep Pasture Creek and west of the Yakima River, the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$  lying southwest of the Yakima River, all in Section 29, T. 18 N., R. 18 E.W.M.  
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27 REPORT OF REFEREE  
Re: Subbasin No. 8  
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1 CLAIMANT NAME: Ben F. and Nina M. George COURT CLAIM NO. 1810  
2 Source: An unnamed spring  
3 Use: Irrigation of 12 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.25 cubic foot per second, 79.2 acre-feet per year  
6 Priority Date: June 22, 1887  
7 Point of Diversion: 800 feet south and 900 feet west from the east quarter  
8 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
9 Place of Use: That portion of the E $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3, T. 18 N.,  
R. 17 E.W.M. lying east of the Thorp Mill Ditch  
10  
11 CLAIMANT NAME: Elwin and Patricia Gibson and Courtney CLAIM NO. 2046  
12 Claude and Lillian Gibson  
13 Source: Yakima River  
14 Use: Irrigation of 45 acres  
15 Period of Use: April 1 to October 31  
16 Quantity: 0.90 cubic foot per second, 297 acre-feet per year  
17 Priority Date: December 28, 1888  
18 Point of Diversion: 1,150 feet north and 75 feet west from the east quarter  
19 corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
20 Place of Use: S $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12 and that portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13 lying west of the lateral ditch that conveys  
water from the Thorp Mill Ditch, all in T. 18 N.,  
R. 17 E.W.M.

1 CLAIMANT NAME: **Jennie Callahan** COURT CLAIM NO. 1086  
2 **Lloyd K. Howry**

3 Source: An unnamed spring

4 Use: Single domestic supply, including lawn and garden  
irrigation of one-half acre

5 Period of Use: Continuous

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

7 Priority Date: **March 9, 1889**

8 Point of Diversion: 500 feet north and 150 feet east from the west quarter  
corner of Section 13, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 13, T. 18 N., R. 17 E.W.M.

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10 Place of Use: That portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
southwest corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ , thence N 0°09'11" W 240  
feet to the point of beginning; thence N 0°09'11" W  
436.64 feet; thence S 86°26'11" E 190.46 feet; thence S  
27°51'15" E 447.15 feet; thence S 89°54'00" W 411.87 feet  
to the point of beginning.

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12 Limitation on Use: A maximum of 1.5 acre-feet per year can be used for lawn  
and garden irrigation under this right and any right  
through the West Side Irrigating Company

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27 REPORT OF REFEREE

28 Re: Subbasin No. 8

29 161

REFEREE'S OFFICE  
1600 SW Perry St., Suite F.  
Yakima, WA 98902-5713  
(509) 454-7221

1 CLAIMANT NAME: Richard O. and Rita Hutchinson COURT CLAIM NO. 0877  
2 Source: An unnamed spring  
3 Use: Irrigation of one-quarter acre and stock water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.02 cubic foot per second, 1 acre-foot per year for  
irrigation; 0.10 cubic foot per second, 10 acre-feet per  
year for stock water  
6 Priority Date: July 15, 1889  
7 Point of Diversion: 450 feet north and 25 feet east from the southwest corner  
of Section 2, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2,  
T. 18 N., R. 17 E.W.M.  
8 Place of Use: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 2, T. 18 N.,  
R. 17 E.W.M. described as follows: Commencing at the  
south quarter corner of said section; thence west to the  
right of way of the Thorp Highway; thence northwest 115  
feet more or less along said right of way to the point of  
beginning; thence N 27° E 200 feet more or less; thence N  
66° W 305 feet more or less; thence S 37° W 200 feet more  
or less to the right of way of the Thorp Highway; thence  
southeast along said right of way to the point of  
beginning.  
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16 CLAIMANT NAME: Roger C. and Rita M. Sparks COURT CLAIM NO. 1029  
17 Source: Coleman Canyon Creek  
18 Use: Irrigation of 30 acres  
19 Period of Use: April 1 to October 31  
20 Quantity: 0.32 cubic foot per second, 30 acre-feet per year  
21 Priority Date: June 30, 1890  
22 Point of Diversion: 300 feet south and 200 feet east from the center of  
Section 2, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2,  
T. 17 N., R. 17 E.W.M.  
23 Place of Use: The NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, T. 17 N., R. 17 E.W.M.  
24 Limitation on Use: This land may also have a supplemental right from the  
Kittitas Reclamation District for an additional 120 acre-  
feet per year  
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27 REPORT OF REFEREE  
Re: Subbasin No. 8  
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1 CLAIMANT NAME: Norma Jean Wilcox COURT CLAIM NO. 1971  
2 Source: An unnamed spring  
3 Use: Irrigation of one-half acre of lawn and garden and stock  
water  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.016 cubic foot per second, 1 acre-foot per year  
6 Priority Date: June 30, 1892  
7 Point of Diversion: 1750 feet north and 1550 feet west from the southeast  
corner of Section 11, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 18 N., R. 17 E.W.M.  
8 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.  
9  
10 CLAIMANT NAME: Thorp Town Ditch Association COURT CLAIM NO. 0725  
11 Source: Yakima River  
12 Use: Irrigation of 15.5 acres, stock water and fire protection  
13 Period of Use: April 1 through October 31 for irrigation, continuous for  
stock water, as needed for fire protection  
14  
15 Quantity: 0.31 cubic foot per second, 80.6 acre-feet per year for  
irrigation and fire protection; 0.02 cubic foot per  
second, 2.0 acre-feet per year for stock water  
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17 Priority Date: June 30, 1893  
18 Point of Diversion: 1150 feet north and 75 feet west from the east quarter  
corner of Section 3, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
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20 Place of Use: The area served by the Thorp Town Ditch Association  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 8

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29 REFEREE'S OFFICE  
1600 SW Perry St., Suite F.  
Yakima, WA 98902-5713  
(509) 454-7221

1 CLAIMANT NAME: J. R. and Fern Newman  
2 Newman's Island Ranch COURT CLAIM NO. 2316  
3 Source: Yakima River  
4 Use: Irrigation of 100 acres  
5 Period of Use: April 1 to October 31  
6 Quantity: 2 cubic feet per second, 600 acre-feet per year  
7 Priority Date: November 4, 1895  
8 Point of Diversion: 1,150 feet north and 75 feet west from the east quarter  
corner of Section 3, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 3, T. 18 N., R. 17 E.W.M.  
9 Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 11 and that portion  
of Section 12 lying between the Yakima River and the  
Thorp Mill Ditch, in T. 18 N., R. 17 E.W.M.  
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11 CLAIMANT NAME: Audrey Irene Evans Woodburn COURT CLAIM NO. 2074  
12 Source: An unnamed pond  
13 Use: Irrigation of 4 acres  
14 Period of Use: April 1 to October 31  
15 Quantity: 0.04 cubic foot per second, 16.8 acre-feet per year  
16 Priority Date: November 4, 1895  
17 Point of Diversion: 1,520 feet north and 375 feet west from the southeast  
corner of Section 9, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 9, T. 18 N., R. 17 E.W.M.  
18 Place of Use: The S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 18 N., R. 17 E.W.M.  
19 Limitation on Use: This land may receive water from the Taneum Ditch Company  
or the KRD. A maximum of 25.6 acre-feet per year can be  
used from all sources.  
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27 REPORT OF REFEREE  
28 Re: Subbasin No. 8 164  
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1 CLAIMANT NAME: Richard O. and Rita Hutchinson COURT CLAIM NO. 0877  
2 Source: An unnamed spring  
3 Use: Stock water  
4 Period of Use: Continuous  
5 Quantity: 0.22 cubic foot per second, 28 acre-feet per year  
6 Priority Date: November 4, 1895  
7 Point of Diversion: 650 feet south and 750 feet east from the northwest  
corner of Section 11, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
8 Section 11, T. 18 N., R. 17 E.W.M.  
9 Place of Use: That portion of the E3/4S $\frac{1}{2}$ SW $\frac{1}{2}$  of Section 2, T. 18 N.,  
R. 17 E.W.M.  
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11 CLAIMANT NAME: Larry Hillis COURT CLAIM NO. 1204  
12 Source: Robinson Canyon Creek  
13 Use: Irrigation of 11 acres  
14 Period of Use: April 1 to June 30  
15 Quantity: 0.22 cubic foot per second, 72.6 acre-feet per year  
16 Priority Date: January 7, 1896  
17 Point of Diversion: 600 feet north and 1,250 feet east from the southwest  
corner of Section 26, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
18 Section 26, T. 17 N., R. 17 E.W.M.  
19 Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 35, T. 17 N., R. 17 E.W.M.  
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27 REPORT OF REFEREE  
Re: Subbasin No. 8  
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1 CLAIMANT NAME: David W. and Lyla M. Fudacz COURT CLAIM NO. 4817  
2 Source: Two unnamed springs  
3 Use: Stock water  
4 Period of Use: Continuous  
5 Quantity: 0.02 cubic foot per second, 2 acre-feet per year  
6 Priority Date: February 28, 1897  
7 Point of Diversion: 1. 1,500 feet north and 200 feet east from the south  
8 quarter corner of Section 11;  
9 2. 1,400 feet north and 200 feet east from the south  
quarter corner of Section 11; both being within the  
NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M.  
10 Place of Use: That portion of the E $\frac{1}{2}$  of Section 11, T. 18 N.,  
R. 17 E.W.M. described as follows: Beginning at the east  
quarter corner of Section 11; thence N 89°19'11" W  
1,329.81 feet to a point which is the approximate center  
of Goodwin Road; thence S 00°17'19" 20 feet to the south  
right of way boundary of said county road and the true  
point of beginning; thence S 00°17'19" W 187 feet; thence  
N 89°19'11" W parallel with the south right of way of  
said county road 820.19 feet; thence N 73°03'37" 164.29  
feet; thence N 00°27'51" 131.02 feet; thence continuing N  
00°27'51" W 10 feet to a point on the south right of way  
of said county road; thence S 89°19'11" E on said road  
right of way 979.45 feet to the true point of beginning.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 8

1 CLAIMANT NAME: William G. and Julia Charles COURT CLAIM NO. 1074  
2 Source: Robinson Creek  
3 Use: Irrigation of one-quarter acre and stock water  
4 Period of Use: April 1 through October 31  
5 Quantity: 0.02 cubic foot per second, 2 acre-feet per year  
6 Priority Date: September 22, 1906  
7 Point of Diversion: 600 feet north and 1250 feet east from the southwest  
corner of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 26, T. 18 N., R. 17 E.W.M.  
8 Place of Use: The W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26, T. 18 N., R. 17 E.W.M.  
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11 CLAIMANT NAME: Larry Hillis COURT CLAIM NO. 1204  
12 Source: Robinson Canyon Creek  
13 Use: Irrigation of 3.5 acres  
14 Period of Use: April 1 to June 30  
15 Quantity: 0.07 cubic foot per second, 23.1 acre-feet per year  
16 Priority Date: September 22, 1906  
17 Point of Diversion: 600 feet north and 1,250 feet east from the southwest  
corner of Section 26, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 26, T. 18 N., R. 17 E.W.M.  
18 Place of Use: The north 450 feet of the east 300 feet of the west 850  
feet of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 26,  
T. 18 N., R. 17 E.W.M.  
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1 CLAIMANT NAME: Norma Jean Wilcox COURT CLAIM NO. 1971  
2 Source: Two unnamed spring areas  
3 Use: Irrigation of 2 acres  
4 Period of Use: April 1 to October 31  
5 Quantity: 0.04 cubic foot per second, 13.2 acre-feet per year  
6 Priority Date: June 30, 1910  
7 Point of Diversion: 1. 1,500 feet north and 2,250 feet west of the southeast corner of Section 11, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11;  
8 2. 950 feet north and 1,950 feet west of the southeast corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11; both in T. 18 N., R. 17 E.W.M.  
9  
10 Place of Use: That portion of the SE $\frac{1}{4}$  of Section 11, T. 18 N., R. 17 E.W.M. described as follows: Commencing at the east quarter corner of said section, thence S 950 feet more or less to the point of beginning; thence S 79° W 117 feet more or less; thence S 55° W 117 feet more or less; thence W 130 feet more or less; thence S 260 feet more or less; thence east to the right of way of the Thorp Highway; thence north to the point of beginning.  
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16 4. All prior claims for rights to surface water from Subbasin No. 8,  
17 including those claims filed under the provisions of Chapter 90.14 RCW, are  
18 denied, unless expressly provided for herein. The "Water Rights Claims Registry"  
19 directed by RCW 90.14.111 should be supplemented with appropriate notations to  
20 the records of those claims specifically identified in the "Water Right Claims"  
21 section of Plaintiff's Exhibit No. SE-3.

22 5. The following Certificates of Water Right, issued by the Department  
23 of Ecology or its predecessor agencies of the State of Washington, will be made  
24 null and void:

25 Certificates of Surface Water Right

26 No Certificates of Surface Water Right issued within Subbasin No. 8.

27 REPORT OF REFEREE

28 Re: Subbasin No. 8

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In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right will be issued to those parties whom rights were confirmed through this proceeding.

## X. CONCLUSIONS OF LAW

Confirmation of Rights

The priority date, source, point of diversion, locations, maximum instantaneous diversion rate, annual quantity, period of use, nature of beneficial use, and place of use which are shown in the foregoing Findings of Fact for each claimant therein referred are recommended to be confirmed as water rights of those claimants.

## Duty of Water

The diversion of water from sources of water contained within Subbasin No. 8 for irrigation purposes shall, unless otherwise specified, be limited at a maximum to 1.0 cubic-foot per second for each 50 acres irrigated and not to exceed a total of 6.6 acre-feet per acre during each irrigation season.

### Irrigation Season

Unless otherwise identified within a specific water right, the irrigation season shall be defined as that duration from April 1 to and including October 31 of each year. The Referee recognizes that extraordinary circumstances may dictate the application of water prior to or subsequent to the defined irrigation season, and, in that event, express approval from the Department of Ecology must be obtained annually prior to such deviation.

## REPORT OF REFEREE

Re: Subbasin No. 8

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**REFEREE'S OFFICE**  
1600 SW Perry St., Suite F.  
Yakima, WA 98902-5713  
(509) 454-7221

1           Certificates of Adjudicated Water Right

2           Upon entry of the final decree in this action, and upon payment of the  
3           statutory fee prescribed in RCW 90.03.470(11), together with the appropriate  
4           county auditor recording fee, the Director of the Department of Ecology is  
5           required to issue Certificates of Adjudicated Water Right in accordance with the  
6           provisions of RCW 90.03.240.

7           Administration of Water

8           The use of Subbasin No. 8 waters should be regulated by the Department of  
9           Ecology on the basis of Certificates of Adjudicated Water Rights issued as a  
10          result of this proceeding, and on the basis of any permits and certificates that  
11          may have issued outside of this proceeding under appropriation procedures of  
12          Chapter 90.03 RCW. When available water in Subbasin No. 8 is insufficient to  
13          supply all rights, and upon a finding that regulation is required, the Department  
14          may regulate junior water rights in the interest of satisfying senior water  
15          rights. Whenever regulation of junior water rights is necessary, the Department  
16          may enter at reasonable times upon the lands of any and all parties having rights  
17          and shall regulate diversion facilities so as to apportion the waters as herein  
18          adjudicated. If it has been determined that regulation of subordinate priority  
19          rights is necessary, the Director of the Department of Ecology or the Director's  
20          authorized representative shall regulate diversion facilities including  
21          headgates, ditches, pumps and other works, so as to apportion the waters as  
22          herein provided, and for that purpose may enter at reasonable time upon the lands  
23          of any and all parties having rights adjudicated herein.

24           Confirmation of a water right in the proceeding does not guarantee or imply  
25          that a right-of-way or trespass right exists upon private or public lands for the

26          REPORT OF REFEREE

27          Re: Subbasin No. 8

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29          REFEREE'S OFFICE  
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Yakima, WA 98902-5713  
(509) 454-7221

1 diversion and/or distribution system of that water. As provided by Chapter  
2 90.03.360 RCW and Chapter 508-64 WAC, any person authorized to use surface water  
3 from Subbasin No. 8 may be required to provide and maintain, at the water user's  
4 expense, proper diversion works and/or measuring devices. Design, installation,  
5 maintenance, and operation of such works and measuring devices will be as  
6 prescribed by the Director.

7 SIGNED and DATED at Yakima,  
8 this 9th day of May, 1994.

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JOHN E. ACORD, Referee  
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27 REPORT OF REFEREE  
Re: Subbasin No. 8

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28  
29 REFEREE'S OFFICE  
1600 SW Perry St., Suite I  
Yakima, WA 98902-5713  
(509) 454-7221