

**YAKIMA RIVER BASIN**

**WATER RIGHTS ADJUDICATION**

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

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**SUPPLEMENTAL  
REPORT OF REFEREE**

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

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

APR 17 1998  
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YAKIMA COUNTY CLERK

REPORT OF REFEREE - VOLUME 17A

12971

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

3 IN THE MATTER OF THE DETERMINATION )  
4 OF THE RIGHTS TO THE USE OF THE )  
5 SURFACE WATERS OF THE YAKIMA RIVER )  
6 DRAINAGE BASIN, IN ACCORDANCE WITH ) No. 77-2-01484-5  
7 THE PROVISIONS OF CHAPTER 90.03, )  
8 ) REPORT OF REFEREE  
9 ) PURSUANT TO ORDER ON  
10 ) EXCEPTIONS OF  
11 ) MARCH 9, 1995  
Plaintiff, ) SUBBASIN NO. 11  
v. ) (MANASTASH CREEK)  
James J. Acquavella, et al., )  
Defendants. )  
\_\_\_\_\_  
)

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

14 The order issued by the Court on March 9, 1995, remanded certain exceptions  
15 to the Referee with instructions directing a supplemental hearing to be held  
16 followed by further evaluation and subsequent recommendations to the Court.

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

- 18 1. Lawrence and Arlein Anderson/Anderville Farms, Inc., Court Claim No. 01946.  
19 2. Anderville Farms, Inc., Court Claim No. 01950.  
20 3. Anderville Farms, Inc., Lawrence and Arlein Anderson, Alfred Anderson and  
Clay McMechan Jr., Court Claim No. 02253.  
21 4. Wilhelm and Joan Bakke, Court Claim No. 01420/(A)04459 and Wayne and  
Margaret Smith, Court Claim No. 00258.  
22 5. Larry and Harriett L. Bland and Bart G. Bland, Court Claim  
No. 01723/(A)04410.  
23 6. Boise Cascade Corporation, Court Claim No. 02206  
24 7. Thomas C. and Kathleen Brunson, Court Claim No. 01055.

- 1  
2       8. Edmund T. and Margery Christian, Steve and Linda Hall and Roger C. and  
Rita M. Sparks, Court Claim No. 00987.  
3  
4       9. Richard T. and Lynn Cole, Court Claim No. 01969.  
5  
6      10. Terryl and Vonda Draney. The Draneys were succeeded by William J. and  
N. Denise Chapman and Kenneth G. Dimeo. Kenneth G. Dimeo was succeeded by  
James A. and Linda C. Smith. Peter and Nora Evans, Howard and Mary Page  
and Roger C. and Rita M. Sparks are also named in this exception to Court  
Claim No. 01478.  
7  
8      11. Dave Duncan & Sons, Duncan Family Trust and Dale Dyk, Court Claim  
No. 00931/(A)01750.  
9  
10     12. May Moffat Mitchell Gage, Court Claim No. 04522.  
11  
12     13. Robert and Avadene Gardinier and Robert Y. and Wanda Gardinier, Court Claim  
No. 02260.  
13  
14     14. Clarence and Hazel J. Harrell, Court Claim Nos. 00477 and 00657.  
15  
16     15. Garry and Dawn Mathews, Court Claim No. 00516.  
17  
18     16. Brian and Carol Mellergaard, Court Claim No. 00826/(A)03983.  
19  
20     17. Laurin C. and Marjorie Mellergaard, Court Claim No. 00982.  
21  
22     18. Menastash Water Ditch Association, Court Claim No. 00950/(A)03025.  
23  
24     19. Yvonne Hunt on behalf of The Estate of Ramon C. Nielsen, The Estate of  
Marion Nielsen, Court Claim No. 01449.  
25  
26     20. Harold Orr, Court Claim No. 01953.  
27  
28     21. Packwood Canal Company, Court Claim No. 00785.  
29  
30     22. Judith C. Pierce, Court Claim No. 06625.  
31  
32     23. James L. and Maxine Podkranic, Court Claim No. 02272.  
33  
34     24. Robert M. and Irma Smith, Court Claim No. 00380.  
35  
36     25. Lawrence E. and Sula F. Spannagel, Court Claim No. 01770 and Vernon  
Burghart, Court Claim No. 04569.  
37  
38     26. Charles and Margaret Steward, Court Claim No. 01968.  
39  
40     27. Three Bar G Ranch, Inc., Court Claim No. 02068.

REPORT OF REFEREE  
Re: Subbasin No. 11

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Yakima, WA 98902-3401

1  
28. H. H. and Marjorie A. Weeber, Court Claim No. 00373

2  
3 29. William L. and Carol J. Wood, Court Claim No. 01077; H. John and  
Bette J. Spence, Court Claim No. 01078 and William R. and Dorothy C.  
4 Cole, Court Claim No. 01079.

5 A late exception was filed by Edward L. Sullivan and Anna G. Sullivan, Court  
6 Claim No. 03204, and subsequently remanded by the Court for the supplemental  
7 hearing.

8 The following exceptions asserting substantial compliance with Ch. 90.14 RCW,  
9 (WATER RIGHTS--REGISTRATION--WAIVER AND RELINQUISHMENT, ETC.) under the rulings in  
10 Ecology v Adsit, 103 Wn.2d 698, 694 P.2d 1065 (1985) were denied by the Court:

- 11 1. Court Claim No. 01951, Charles and Karin McElevy  
12 2. Court Claim No. 01948 and 01812, Melissa Montana  
13 3. Court Claim No. 02270, Melvin and Jodee Shenyer<sup>1</sup>  
14 4. Court Claim No. 00821, Lynn and Corky Weissenfels

15 The exceptions of the following claimants were denied by the Court since the  
16 points of diversion and claimed water sources are located in Subbasin No. 8  
17 (Thorp) and were addressed in the Supplemental Report of Referee for Subbasin  
18 No. 8.:

- 19 1. Court Claim No. 01722, Dale and Jewel Black  
20 2. Court Claim No. 01466, Robert and Linda Lapan

21  
22  
23  
24  
25       <sup>1</sup>\*\*Although the Court did not remand this claim to the Referee for further  
consideration, errors were noted in the Report of Referee which warrant correction  
and are addressed in this Supplemental Report of Referee.

1                   I. SPECIAL ISSUES: CALIFORNIA LEGAL INCH

2         During consideration of the evidence entered at the initial Subbasin No. 11  
3 evidentiary hearing and in preparation of the Report of Referee for Subbasin  
4 No. 11, dated May 9, 1994, the Referee read Gray and Geddis v. Johnson, No. 99  
5 and 100, Kittitas County Superior Court (April 18, 1891) as awarding a miner's  
6 inch of water under 6-inch pressure, which would result in 1.00 cubic feet per  
7 second (cfs) for each 40 acres of irrigation (or 0.025 cfs per acre). The Referee  
8 subsequently realized that the use of the miner's inch under 6 inches of head  
9 pressure was inappropriate, as the Decree awarded water based on 4 inches of head  
10 pressure, which should have resulted in rights being recommended with a maximum  
11 rate of diversion of 1.00 cfs for each 50 acres of irrigation (or 0.02 cfs per  
12 acre). Therefore, the Referee advised the Court and the claimants of the error,  
13 proposed changing the instantaneous quantities recommended to reflect 0.02 cfs per  
14 acre irrigated, and invited review of the change during the exception hearing, see  
15 "Clarification of Error and Recalculation of Certain Recommended Quantifications,  
16 Report of Referee RE: Subbasin No. 11, Manastash" dated August 16, 1994.

17         After hearing from all interested parties, the Court ruled that although the  
18 numeric value for the "California legal inch" as set forth by the court in Gray,  
19 supra is not the standard for Washington State, it shall be the basis for  
20 quantification in the Manastash basin. The narrative description of the measure  
21 is typical of the miner's inch wherein a 1-inch square orifice is cut through a  
22 1-inch plank which said orifice is uniformly submerged a total of 4 inches above  
23 the top of the orifice. If this measurement device is rigorously constructed to  
24 specifications and operated with the uniform head of water, the discharge will be  
25 0.02 cfs. Gray, supra went a step beyond the standard measurement description,

stating: "It is sometimes called the California legal inch and amounts to 1.394 cubic feet per minute." Calculations based up the Court's numeric value of 1.394 cubic feet per minute yield the following:

0.0233 cfs per acre  
42.965 acres per 1.0 cfs

The Referee has utilized these conversion quantities throughout the Supplemental Report of Referee and the Schedule of Rights contained in this report reflects the conversion for each of the previously recommended water rights. The Court and the claimants are reminded that Gray, supra awarded generally 1 inch of water per acre irrigated from April 1 through June 30 and one-half that quantity for the rest of the year.

## II. SPECIAL ISSUES: RELATION BACK THEORY

Several claimants included in their exceptions argument regarding priority date which rely upon the relation back theory. The Referee will be guided by the Court's Memorandum Opinion RE: Priority Date - Date of Patent or Date of Entry dated January 19, 1995, while considering these various exceptions. The Court ruled there must be some scintilla of evidence, regardless of how scant, to support a finding of actual appropriation or diversion of water. It is not anticipated that exhaustive narrative discussions will be required in individual claim analyses since the Court has addressed this issue.

REPORT OF REFEREE  
Re: Subbasin No. 11

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1  
2                   III. CLAIMANT LIST  
3

4       Following is a list of the claimants addressed in this report and the page(s)  
5       on which their right(s) are considered. Besides the claimants for whom exceptions  
6       were filed, also listed are all claimants confirmed rights in the May 9, 1994,  
7       Report of Referee for Subbasin No. 11 (Manastash Creek). The rights recommended  
8       for confirmation are in the Findings of Fact beginning on Page 138 of this  
9       Supplemental Report of Referee for Subbasin No. 11 (Manastash Creek):  
10

11      Court  
12      Claim  
13      No.      Name

14      Attorney

15      Page(s)

11	02253	Alfred Anderson 2208 Judge Ronald Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	15
13	01946	Lawrence Anderson & Arlein Anderson 1601 Brown Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	15, 137 197
16	01950	Anderville Farms, Inc.	Jeff Slothower	15, 137
17	02253	Lawrence Anderson & Arlein Anderson 1601 Brown Road Ellensburg, WA 98926	Lathrop Firm PO Box 1088 Ellensburg, WA 98926	148
19	00258	Wilhelm Bakke & Joan Bakke 6150 Cove Road Ellensburg, WA 98926		101, 137
21	01593	Haldon J. Baumann & Ulma J. Baumann 10390 Manastash Road Ellensburg, WA 98926		137, 199
24	00931	Bart G. Bland	Jeff Slothower	27, 47
25	(A)01750	3830 Manastash Road	Lathrop Firm	156, 189
26	01723	Ellensburg, WA 98926	PO Box 1088	195
27	(A)04410		Ellensburg, WA 98926	

28      REPORT OF REFEREE  
          Re: Subbasin No. 11

Referee's Office  
15 W. Yakima Ave Ste. 200  
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1	01723	Larry Bland	Jeff Slothower	27, 156
2	(A)04410	& Harriett L. Bland	Lathrop Firm	189, 195
3		3440 Manastash Road	PO Box 1088	
		Ellensburg, WA 98926	Ellensburg, WA 98926	
4	02206	Boise Cascade Corporation	Dennis J. Dunphy	37, 137
5	(A)03119	Legal Department	1420 5th Avenue #3400	188
6	(A)05238	PO Box 50	Seattle, WA 98101-2339	
		Boise, ID 83707		
7	02287	George B. Brain	Kenneth D. Beckley	38, 137
8		2271 Brown Road	701 North Pine Street	193
9		Ellensburg, WA 98926	Ellensburg, WA	
10			98926-2939	
11	01011	James E. Brooks		137
12		& Lillian J. Brooks		
13		4291 Brown Road		
14		Ellensburg, WA 98926		
15	01055	Thomas C. Brunson	John P. Gilreath	39, 137
16		& Kathleen Brunson	PO Box 499	192
17		1871 Thorp Highway South	Ellensburg, WA 98926	
18	04569	Vernon Burghart		103
19		1671 Hanson Road		
20		Ellensburg, WA 98926		
21	01478	William J. Chapman	Hugh M. Spall	106, 165
22		& N. Denise Chapman	PO Box 831	166
23		3520 Hanson Road	Ellensburg, WA 98926	
24		Ellensburg, WA 98926		
25	00987	Edmund T. Christian		43, 137
26		& Margery Christian		139, 157
27		4951 Hanson Road		194
28		Ellensburg, WA 98926		
29	01969	Richard T. Cole	Richard T. Cole	45, 196
30		& Lynn Cole	PO Box 499	
31		PO Box 638	Ellensburg, WA 98926	
32		Ellensburg, WA 98926-0638		
33	01079	William R. Cole	Richard T. Cole	131
34		& Dorothy C. Cole	PO Box 499	
35		261 Brown Road	Ellensburg, WA 98926	
36		Ellensburg, WA 98926		

REPORT OF REFEREE  
Re: Subbasin No. 11

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1	01846	Brian H. Cooke & Tamara M. Cooke 3080 Hanson Road Ellensburg, WA 98926	158
2	00931 (A)01750	Dave Duncan & Sons 4630 Weaver Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926
3			47
4	02270	Robert Dean PO Box 377 Elma, WA 98541-0377	100, 137 198
5	00931 (A)01750	Douglas A. Dicken 200 - 116th Avenue NE Bellevue, WA 98004	Hugh M. Spall PO Box 831 Ellensburg, WA 98926
6	00931 (A)01750	Duncan Family Trust 4630 Weaver Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926
7	00657	Dale Dyk Don Dyk & Alice Dyk 3291 Weaver Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926
8	00931 (A)01750	Dale Dyk 3291 Weaver Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926
9	00950 (A)03025		47
10	01478	Peter Evans & Nora Evans 1067 Highland Road Santa Ynez, CA 93460-9694	106, 137 167
11	04522	May Moffat Mitchell Gage 911 East Washington Street Ellensburg, WA 98926	54, 137 200
12	02260	Robert Gardinier & Avadene Gardinier Robert Y. Gardinier & Wanda Gardinier 2851 Brown Road Ellensburg, WA 98926	Kenneth D. Beckley 701 North Pine Street Ellensburg, WA 98926-2939
13			55, 137 149

REPORT OF REFEREE  
Re: Subbasin No. 11

Referee's Office  
15 W. Yakima Ave Ste. 200  
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1	00987	Steve Hall & Linda Hall 4030 Look Road Ellensburg, WA 98926	43, 137 139, 157 194
2	02272	Tom Hamberg 103 East 3rd Ellensburg, WA 98926	99
3	00477	Clarence Harrell & Hazel J. Harrell 3121 Hanson Road Ellensburg, WA 98926	Lawrence E. Martin Halverson & Applegate, P.S. PO Box 22730 Yakima, WA 98907-2715
4	00657	Clarence Harrell & Hazel J. Harrell Carl Harrell Kathy Harrell Troy Harrell 3121 Hanson Road Ellensburg, WA 98926	Lawrence E. Martin Halverson & Applegate, P.S. PO Box 22730 Yakima, WA 98907-2715
5	01949	George Helleson & Barbara Helleson 6540 Manastash Road Ellensburg, WA 98926	66, 137 141, 144 159
6	00826	Walter H. Kembel	Richard T. Cole
7	(A)03983	& Margaret E. Nelson 602 South Palouse Street Ritzville, WA 99169-1652	PO Box 499 Ellensburg, WA 98926
8	01446	Robert F. Lapan & Linda L. Lapan 1025 Thorp Highway South Ellensburg, WA 98926	Richard T. Cole
9	01772	Harold L. Lindstrom & Gloria P. Lindstrom 1831 Hanson Road Ellensburg, WA 98926-9726	137
10	00931	Michael James Mahoney	177
11	(A)01750	& Wendy Lee Mahoney 2350 Cove Road Ellensburg, WA 98926-7903	47

REPORT OF REFEREE  
Re: Subbasin No. 11

Referee's Office  
15 W. Yakima Ave Ste. 200  
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1	00516	Garry Mathews & Dawn Mathews 11840 Manastash Road Ellensburg, WA 98926	John P. Gilreath PO Box 499 Ellensburg, WA 98926	74, 137
2	02283	John Richard Matthews 6251 Cove Road Ellensburg, WA 98926	Kenneth D. Beckley 701 North Pine Street Ellensburg, WA 98926-2939	137, 142
3	02253	Clay McMechan, Jr. 700 East 5th #106 Brookside Manor Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	15, 137 148
4	00826 (A)03983	Brian Mellergaard & Carol Mellergaard 3470 Strande Road Ellensburg, WA 98926-9682	John P. Gilreath PO Box 499 Ellensburg, WA 98926	69, 137 152, 186
5	00982	Laurin C. Mellergaard & Marjorie Mellergaard 751 Mellergaard Road Ellensburg, WA 98926	John P. Gilreath PO Box 499 Ellensburg, WA 98926	76, 137 160, 164 169, 178 186
6	00950 (A)03025	Menastash Water Ditch Association 3830 Manastash Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	83, 153
7	00931 (A)01750	Matthew P. Miller & Jeanne L. Miller 403 NE 138th Avenue Vancouver, WA 98684		47
8	00770	Woody Moore & Deloris Moore 6450 Manastash Ellensburg, WA 98926		160
9	04536	Majorie J. Muzzall 23409 52nd Place South Kent, WA 98032-3756		179
10	00931 (A)01750 00950 (A)03025	Murray Pacific Corporation 1202 Pacific Avenue, Suite 1750 Tacoma, WA 98402		47, 83

REPORT OF REFEREE  
Re: Subbasin No. 11

Referee's Office  
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1	01671	Ron Nickels & Judy Nickels 320 Cedar Cover Road Ellensburg, WA 98926	137, 143
2	01449	The Estate of Ramon C. Nielsen & The Estate of Marion Nielsen c/o Yvonne M. Hunt 1111 Brown Road Ellensburg, WA 98926-8985	John P. Gilreath PO Box 499 Ellensburg, WA 98926 85, 137
3	01953	Harold Orr 13208 NE 20th Street Bellevue, WA 98005-2043	Sharon M. Brown Cowan, Walker, Jonson & Moore PO Box 927 Richland, WA 99352-0927 89, 137 183
4	00785	Packwood Canal Company, Inc.	Hugh M. Spall 91, 143
5	(A)04801	1871 Thorp Highway South Ellensburg, WA 98926	PO Box 831 188 Ellensburg, WA 98926
6	01478	Howard Page & Mary Page 3640 Hanson Road Ellensburg, WA 98926	Hugh M. Spall 106, 170 PO Box 831 171 Ellensburg, WA 98926
7	02253	Dale E. Payne PO Box 174 Orderville, UT 84758	15
8	06625	Judith C. Pierce 4601 Manastash Road Ellensburg, WA 98926	John P. Gilreath 95 PO Box 499 Ellensburg, WA 98926
9	02272	James L. Podkranic & Maxine Podkranic 3201 Manastash Road Ellensburg, WA 98926	99
10	00657	Estate of Eugene J. Prater & Yvonne Prater c/o Eric Prater 3740 Cove Road Ellensburg, WA 98926	66
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REPORT OF REFEREE  
Re: Subbasin No. 11

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1	04816	Brent D. Renfrow & Karen A. Raymond 7500 Manastash Road Ellensburg, WA 98926	145	
2	00931	Scott Repp	47	
3	(A) 01750	& Mary Jo Repp 1750 Robinson Canyon Road Ellensburg, WA 98926		
4	00328	Carroll Richards	83, 185	
5	00950	& Beverly J. Richards 5461 Hanson Road Ellensburg, WA 98926	187	
6	01153	Bob A. Rock & Gwen C. Rock PO Box 1017 Ellensburg, WA 98926	137, 161	
7	04584	Lee W. Roe & Kathryn E. Hitch 11810 Manastash Road Ellensburg, WA 98926	198	
8	00923	Dean A. Ross & Dorothy I. Ross 1891 Hanson Road Ellensburg, WA 98926	180	
9	01771	Joseph L. Schwab & Doris M. Schwab 2130 Hanson Road Ellensburg, WA 98926	155	
10	02270	Mel Shenyer & Jodee Shenyer	Richard T. Cole PO Box 499 Ellensburg, WA 98926	100, 137
11	01896	K. Bruce Skibeness & Jean G. Skibeness 250 NE Birch Street Issaquah, WA 98027-3310	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	162, 184
12	01478	James A. Smith & Linda C. Smith	Hugh M. Spall PO Box 831 Ellensburg, WA 98926	106, 172 173

REPORT OF REFEREE  
Re: Subbasin No. 11

Referee's Office  
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1	00380	Robert M. Smith & Irma Smith 490 Packwood Lane Ellensburg, WA 98926-9801	Hugh M. Spall PO Box 831 Ellensburg, WA 98926	100
2	00258	Wayne Smith & Margaret Smith 5750 Cove Road Ellensburg, WA 98926		101, 137 146, 174
3	01770	Lawrence E. Spannagel & Sula F. Spannagel 205 Valleyview Avenue #B Selah, WA 98942-1356		103, 181
4	00931 (A)01750	Roger C. Sparks & Rita M. Sparks 4311 Hanson Road Ellensburg, WA 98926		43, 47 106, 137
5	00987			139, 157
6	01478			175, 194
7	01078	H. John Spence & Bette J. Spence 350 Hanson Road Ellensburg, WA 98926	Richard T. Cole PO Box 499 Ellensburg, WA 98926	131
8	01968	Charles Steward & Margaret Steward 4031 Manastash Road Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	117, 137 163
9	01967	Ewing Stringfellow PO Box 393 North Bend, WA 98045		182
10	03204	Edward L. Sullivan & Anna G. Sullivan 5133 Manastash Road Ellensburg, WA 98926-9733		122, 190
11	00950 (A)03025	Three Bar G Ranch, Inc. 4510 Thorp Highway South Ellensburg, WA 98926	Jeff Slothower Lathrop Firm PO Box 1088 Ellensburg, WA 98926	83, 123 195
12	02068			
13	00373	H. H. Weeber & Marjorie A. Weeber 3406 Englewood Avenue Yakima, WA 98902	Douglas A. Wilson Wilson & Bundy 501 West Lincoln Avenue, Suite C Yakima, WA 98902-2658	129, 137 175
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27	REPORT OF REFEREE Re: Subbasin No. 11		Referee's Office 15 W. Yakima Ave Ste. 200 Yakima, WA 98902-3401	

1	00578	Wayne W. Wells, et al. c/o Theodore Sonstegaard 5321 Manastash Road Ellensburg, WA 98926	191
2	02192	Charley Wheeler & Linda Wheeler 11670 Manastash Road Ellensburg, WA 98926	201
3	02192	Jean Wheeler	201
4	00907	Burton J. Williams & Carol M. Williams 23057 SE Lake Wilderness Drive Maple Valley, WA 98038	138,200
5	01553	Mitchell F. Williams & Julie A. Williams 1880 Quail Run Road Ellensburg, WA 98926	138,147
6	01077	William L. Wood & Carol J. Wood 251 Brown Road Ellensburg, WA 98926	Richard T. Cole PO Box 499 Ellensburg, WA 98926 131
7	00589 (A)00590	WA State Dept. of Natural Resources Agricultural Resources P.O. Box 47061 Olympia, WA 98504-7061	Ms. Maryanne McGovern, 138,201 Assistant Attorney General Attorney General's Office of Washington PO Box 40100 Olympia, WA 98504-0100
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1 COURT CLAIM NO. 01946 -- Lawrence Anderson  
2 & Arlein Anderson

3 COURT CLAIM NO. 01950 -- Anderville Farms, Inc.

4 COURT CLAIM NO. 02253 -- Anderville Farms, Inc.  
5 Lawrence Anderson  
6 & Arlein Anderson  
Alfred Anderson  
Clay McMechan, Jr.

7 Anderville Farms, Inc. and Lawrence and Arlein Anderson (hereinafter  
8 Anderville), through their attorney, Jeff Slothower, filed exceptions to the  
9 Subbasin No. 11 Report of Referee. Anderville's exceptions encompass Court Claim  
10 Nos. 01946, 01950 and 02253. In addition, Anderville Farms, Inc., Lawrence and  
11 Arlein Anderson and Alfred J. Anderson joined Clay McMechan, Jr. in filing  
12 exceptions to the Report of Referee regarding Court Claim No. 02253. McMechan and  
13 Anderville urged the Court to either amend the Report of Referee in recognition of  
14 the documents submitted with their exceptions or allow them to augment the record  
15 at the remand hearing. The Court remanded Court Claim Nos. 01946, 01950 and 02253  
16 to the Referee to allow presentation of additional evidence and testimony.  
17 Testimony was provided by Lawrence and Alfred J. Anderson.

18 The Andersons and Anderville Farms, Inc. own and operate two irrigated  
19 farms adjacent to lower Manastash Creek located in Sections 4, 5, 8 and 9 of  
20 T. 17 N., R. 18 E.W.M. Manastash Creek water is delivered to the farms via  
21 gravity flow ditches. Anderson Ditch No. 1 serves the westerly ranch (Payne  
22 Place) and the McMechan property, both of which lie within Sections 5, 8 and 9.  
23 Anderson Ditch No. 2 serves the easterly ranch (Brown Road Place) which lies  
24 within Sections 4 and 9. Anderville has leased the 80-acre McMechan farm, which  
25 is located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, for over

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1       20 years and has, in the last several years, purchased that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$   
2       of Section 8 lying westerly of the West Side Canal comprising about 29 acres.  
3

4       Identification of the appropriate claimant for Court Claim No. 02253 has been  
5       complicated by the substitution of Anderville for all of the McMechan interest in  
6       the claim. Clarification of the land ownership was provided via the affidavit of  
7       Clay McMechan, Jr., which was attached to the joint McMechan, Anderville exception  
8       to the Report of Referee. Clay McMechan, Jr. owns the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 and  
9       that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 lying easterly of the West Side Canal, all  
10      within T. 17 N., R. 18 E.W.M. Anderville owns that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
11      Section 8, T. 17 N., R. 18 E.W.M. lying westerly of the West Side Canal. The  
12      record is now clear that Court Claim No. 02253 is jointly defended by Anderville  
13      and McMechan.

14       Gray, supra confirmed a 120 miner's inch Class 2 (1872) water right to  
15      A. Barnes. Both Gray, supra and the Schedule of Rights show that Barnes owned the  
16      NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 all  
17      within T. 17 N., R. 18 E.W.M. McMechan and Anderville are asserting rights  
18      associated with the Barnes, Class 2 right for the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the  
19      NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T. 17 N., R. 18 E.W.M. Also confirmed in Gray, supra was a  
20      120-inch, Class 2 right to Edward Russell who owned the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and  
21      the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, all within T. 17 N., R. 18 E.W.M. Anderville  
22      is claiming all of the Russell water right except the 2 $\frac{1}{2}$  inches recommended for  
23      confirmation to claimants Joseph L. and Doris M. Schwab, Court Claim No. 01771,  
24      whose property lies north of Manastash Creek in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5.

25       The Referee recommended confirmation under Court Claim No. 01950 a right  
26      for 80 inches of the Russell Class 2 right for the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of

Section 8. Anderville agrees with that recommendation excepting only to the failure of the Referee to include in the recommendation a right of the same class for that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 lying southerly of Manastash Creek, which is 20 to 21 acres. Anderville asserts a right to 37 $\frac{1}{2}$  inches, which is that remaining portion of the Russell right associated with the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 not recommended for confirmation to Joseph L. and Doris M. Schwab (see also Page 59 of the Supplemental Report of Referee, for Court Claim Nos. 00477 and 04637, Clarence and Hazel J. Harrell who are asserting an interest in the Edward Russell right for the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5).

Water Right Claim (WRC) No. 118627 was filed with Ecology pursuant to Ch. 90.14 RCW by the owners of the land served by the Barnes Ditch (Anderson Ditch No. 1). The signatories on the claim were Lawrence Anderson, Clay McMechan and Robert Gardinier. The claim asserts a right to 240 inches of Manastash Creek water to irrigate 140 acres within an area encompassing 160 acres. The place of use described is the  $N\frac{1}{2}NE\frac{1}{4}$  and  $NE\frac{1}{4}NW\frac{1}{4}$  of Section 8 and the  $SE\frac{1}{4}SE\frac{1}{4}$  of Section 5 all within T. 17 N., R. 18 E.W.M. The  $SE\frac{1}{4}SE\frac{1}{4}$  of Section 5 (part of the Barnes right) is not at issue in this analysis beyond recognition that WRC No. 118627 describes that 40 acres. It is, however, noteworthy that neither the  $SW\frac{1}{4}SE\frac{1}{4}$  of Section 5 (part of the Russell ownership) or the  $NW\frac{1}{4}NW\frac{1}{4}$  of Section 8 (part of the Barnes ownership) are included in the place of use description on WRC No. 118627. The final parcel of the Barnes land, the  $SW\frac{1}{4}SW\frac{1}{4}$  of Section 4, was not included in the place of use description for WRC No. 118627, but is not at issue in this analysis.

The significance of the lands included and excluded in WRC No. 118627 relates to the intent of the joint signatories of that claim. Lawrence Anderson testified that he, Clay McMechan and Robert Gardinier intended to preserve the

1 entire 240 inches of Class 2, Barnes and Russell water rights by filing  
2 WRC No. 118627. The Barnes ditch claimants clearly described a total land area of  
3 only 160 acres of which 40 acres are not within the lands owned by either Barnes  
4 or Russell. They also claimed only 140 acres of irrigation within the 160 acres  
5 described. Anderville and McMechan contend that the Court should find that the  
6 place of use included in WRC No. 118627 is accurate with reasonable certainty.  
7 Anderville further contends that the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 should be allowed in the  
8 place of use because the field adjoins and is part of the fields in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
9 the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8 for which a right was confirmed and is served water via a  
10 common ditch and delivery system. The land irrigated within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 5 is a continuation of the field that begins in Section 8 and the Referee  
12 finds it very plausible that since most of the irrigated land in that field is  
13 within the claimed legal description in Section 8 that claimants may not have  
14 consciously recognized the need to include the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5. The Referee  
15 accepts the claimants argument that the place of use for the field was described  
16 with "reasonable certainty" as required in Ch. 90.14 RCW (see also Memorandum  
17 Opinion RE: 90.14 and Substantial Compliance, February 10, 1995. The Court will  
18 continue to evaluate Ch. 90.14 RCW claims and give them an appropriate  
19 interpretation in conjunction with other evidence submitted to support a claimed  
20 water right, Page 9). Anderville irrigates 21 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5,  
21 lying south of Manastash Creek. They are asserting a right to 37 $\frac{1}{2}$  inches of  
22 water, or 0.87 cfs, which is the quantity of water that would be remaining for the  
23 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 after the award of 2 $\frac{1}{2}$  inches to Joseph L. and Doris M. Schwab  
24 (see Page 147 of the original Report of Referee). However, Gray, supra clearly  
25 awarded only one inch of water for each acre irrigated and Anderville would not be  
26  
27

1 entitled to the remaining  $37\frac{1}{2}$  inches. Their entitlement would only be 21 inches  
2 or 0.49 cfs from April 1 through June 30 and 0.245 cfs from July 1 through  
3 October 31; 149.5 acre-feet per year.

4 Clay McMechan filed WRC No. 112754, which is a short form, for use of ground  
5 water for domestic, stock watering and irrigation (lawn and garden) within the  
6  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 9. Testimony provided by Alfred J. Anderson suggests that WRC  
7 No. 112754 might have been a filing for irrigation use of Manastash Creek water on  
8 the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 9 with the ground water box accidentally marked. However,  
9 he also testified that there is a domestic well on the land and ground water  
10 drains. If the claim was intended as a surface water filing, the limit of the  
11 right would be use of no more than 5000 gallons per day (gpd) for no more than  
12 one-half acre of noncommercial irrigation (see RCW 90.14.051). However, with the  
13 testimony that there are ground water sources on the property, the Referee cannot  
14 conclude that an error was made and the intent was to file for use of Manastash  
15 Creek. The Referee consequently recommends that no surface water right be  
16 confirmed based upon WRC No. 112754 for the  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 9.  
17

18 WRCs No. 112751 and 112752 were filed by Clay McMechan on springs and/or  
19 drains which apparently contribute water to the southerly ditch of the Anderson  
20 Ditch No. 1 system. The place of use on both claims is the  $NE\frac{1}{4}NE\frac{1}{4}$  of Section 8.

21 Anderville offered proof of irrigation of the  $NE\frac{1}{4}NE\frac{1}{4}$  of Section 8 with  
22 Manastash Creek water. The  $NE\frac{1}{4}NE\frac{1}{4}$  of Section 8 was not confirmed a water right by  
23 Gray, supra; however, 30 inches of Class 2 water was transferred in a sale of the  
24  $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 9 and the  $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$  of Section 8. That deed is from Homer  
25 Barnes to Karl J. Hanson dated December 13, 1923. Subsequent property  
26 transactions from Hanson to Ernest Smith and ultimately to Clay McMechan in 1953  
27

1 included the 30-inch water right. The deed from Clay McMechan to Anderville  
2 Farms, Inc. dated February 28, 1983, does not mention the 30-inch, Class 2 water  
3 right.

4 WRC No. 118627 does include within the place of use the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
5 Section 8, thereby preserving any right which is determined to be appurtenant to  
6 the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ . The record is silent as to the year when Homer Barnes transferred a  
7 portion of the 120-inch Barnes, Class 2 water right to the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8  
8 other than via the deed to Karl Hanson in 1923. The record shows that Homer  
9 Barnes owned only the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9; therefore, he would have had only  
10 20 acres of the Barnes, Class 2 water right. The Referee is presuming that he  
11 had clear title to the full 30-inch right he sold to Karl Hanson, although the  
12 source of the extra 10-inch water right is a mystery. There were a series of  
13 deeds exchanged between heirs to the Barnes estate prior to 1920 to settle the  
14 estate. It is likely that Homer Barnes acquired the extra 10-inch water right  
15 during that process. The Referee concludes that 20 inches of Class 2 water was  
16 appurtenant to the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 until June 30, 1974, at which time the  
17 water right was waived and relinquished due to failure to comply with  
18 Ch. 90.14 RCW, as previously discussed.

19 The 10-inch Barnes right which was transferred to the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8  
20 by Homer Barnes was protected by filing WRC No. 118627. The record is silent as  
21 to which 10 acres the right is appurtenant to within the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ . The Referee  
22 has concluded that the most likely scenario is that the 10 inches of Manastash  
23 Creek water was used on that portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 lying westerly  
24 of the West Side Canal. There was no other water right appurtenant to that  
25 property and the land lying easterly of the West Side Canal had access to West

Side water. Based upon the preceding analysis, the Referee recommends confirmation of a 10-inch 1872 water right to that portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. lying westerly of the West Side Canal. The owner of the land is Anderville Farms, Inc. The quantities awarded should be 0.233 cfs; 71.1 acre-feet per year for irrigation of 10 acres. The instantaneous quantity shall be reduced by 50% July 1 to 0.117 cfs. The annual quantity was calculated at those rates every day of the April 1 through October 31 irrigation season.

Turning to the Brown Road Farm, Anderville contends that the Referee erred in not recommending confirmation of 75 inches of Class 3, water with an 1874 priority date for the Brown Road Farm. The water right referenced by Anderville is a portion of the 125-inch J. P. Sharp right confirmed via Gray, supra. Gray, supra did not describe the land owned by Sharp, simply referencing the lands described in his pleadings. Documents submitted into the record by Anderville show that John P. Sharp acquired the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4 and the S $\frac{1}{2}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 all within T. 17 N., R. 18 E.W.M. in 1881.

The Referee determined that Sharp had sold the entire 125 inches of Class 3 right by 1922. Anderville took exception to that determination in particular due to the Referees reliance on the Schedule of Rights and to the lack of compliance with the procedures set forth in RCW 90.03.380 (Ch. 90.03 RCW being the STATE WATER CODE) for the Sharp to Mary Gray sale of 25 inches. Anderville also asserts that there is insufficient evidence in the record to conclude that 50 inches of the Sharp, Class 3 right had been sold to Elizabeth Meek.

Anderville contends that the Schedule of Rights is of minimal value as a foundation document due to the unknown author and date of origin. The Referee has

concluded that the author of the Schedule of Rights is more likely than not the Water Commissioner of Kittitas County. Exhibit DE-120 introduced into the record by Anderville is a copy of the Findings of Fact and Conclusions of Law for the Superior Court case A. Barnes and James C. Norris vs. M. Gerberg and Mary Gerberg which is dated January 11, 1901. It is clear from the Court's discussion that the Water Commissioner had regulatory responsibility for water diversions in the Manastash drainage basin. Although there is no direct statement connecting the Water Commissioner to the Schedule of Rights, he would have needed current knowledge regarding ownership of the various water rights in order to properly administer the diversion and use of Manastash Creek water. Presuming that we have the proper author, the next question is: During what time period was the Schedule of Rights prepared? We know for fact that the Water Commissioner was actively working in the Manastash during the irrigation season of 1900 based on Barnes, supra. We also know that the State Water Code was adopted in mid-1917. Arguably, the county had no legal authority to appoint a Water Commissioner after adoption of Ch. 90.03 RCW. The Referee believes that the Schedule of Rights was prepared prior to 1917 and has elected to rely on the schedule, unless there is evidence to the contrary. It is also noteworthy that many of the claimants in this proceeding offered the schedule as an exhibit, relying on it to support their claim.

The Schedule of Rights reflects sale of 50 inches of the J. P. Sharp, Class 3 water right to J. N. Weaver and 50 inches to Thomas Meek. The remaining 25 inches is shown to have remained appurtenant to the Sharp property (probably being used on that portion lying west of the West Side Canal).

The Sharp transfer of the 25-inch right to Mary Gray is not reflected in the Schedule of Rights. That transaction took place in 1922, after the Water Code's

adoption in 1917 and presumably after the Water Commissioner position was eliminated. Anderville argues that this post-1917 water right transfer should be held to be invalid due to Mary Gray's failure to seek authorization for the change of place of use and point of diversion via RCW 90.03.380. Anderville also presented testimony suggesting that no change in the place of use and point of diversion was ever accomplished. However, Anderville did not take exception to the Referee's recommendation to confirm that 25-inch, Class 3 water right under Court Claim No. 00657, Eugene J. and Yvonne Prater, successor to Mary Gray. Anderville's arguments and testimony provided at the remand hearing would appear to represent an exception to confirmation of the 25-inch, Class 3 right to the Praters. If Anderville is arguing against the referenced confirmation, the Praters' successor was not provided notice and was therefore deprived of an opportunity to offer rebuttal arguments. In summation, the Referee finds that the Sharp to Mary Gray water right transaction was properly recognized, the change of diversion point and place of use did physically occur and the recommended confirmation to Eugene J. and Yvonne Prater should be granted by the Court.

During review of the proposed Schedule of Rights on Page 187 of the Report of Referee for Subbasin No. 11 (Manastash Creek), the priority date on the recommended water right for Eugene J. and Yvonne Prater was found to be in error. The typographical error resulted in entry of the date of June 30, 1871, whereas the correct date is June 30, 1874. Page 187, Line 7 of the Report of Referee, Volume 17, is hereby amended and the Schedule of Rights as presented in this Supplemental Report of Referee, Page 159, Clarence and Hazel J. Harrell, reflects the correction.

REPORT OF REFEREE  
Re: Subbasin No. 11

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

1       The Referee has concluded that J. P. Sharp sold two 50-inch portions of his  
2 125-inch, Class 3 water right prior to February 27, 1900. Although the deeds for  
3 the original sales are not in the record, James McDowell conveyed to Carrie  
4 McDowell on December 31, 1898, all the rights of J. P. Sharp and E. S. Coleman  
5 which he had previously acquired. The deed from James McDowell to Carrie McDowell  
6 (see Exhibit No. DE-252 Renfrow, Court Claim No. 04816) included the  $N\frac{1}{2}NW\frac{1}{4}$  of  
7 Section 13, T. 17 N., R. 17 E.W.M. and made reference to use of the conveyed water  
8 rights on the  $N\frac{1}{2}NW\frac{1}{4}$  of Section 13 and other lands owned by Carrie McDowell.  
9 Carrie McDowell had previously homesteaded the  $S\frac{1}{2}SE\frac{1}{4}$  and  $SE\frac{1}{4}SW\frac{1}{4}$  of Section 12  
10 which is immediately north of the  $N\frac{1}{2}NW\frac{1}{4}$  of Section 13.

11       Carrie McDowell conveyed to J. N. Weaver on February 27, 1900, 50 inches of  
12 Class 3 water right, being a portion of the right confirm to J. P. Sharp via Gray,  
13 supra. On the same day, Carrie McDowell deeded to Thomas Meek 200 acres of land  
14 with appurtenant water rights, including the  $N\frac{1}{2}NW\frac{1}{4}$  of Section 13 and the  $E\frac{1}{2}SW\frac{1}{4}$  and  
15  $NW\frac{1}{4}SE\frac{1}{4}$  of Section 12. These lands were all formerly owned and settled by Carrie  
16 and/or James McDowell or J. N. Weaver, all of whom had acquired an interest in the  
17 100 inches of J. P. Sharp, Class 3 water right and the 45-inch, Class 1, E. S.  
18 Coleman right.

19       The Referee concludes that the Schedule of Water Rights as previously entered  
20 into evidence by several parties does have sufficient foundation to warrant its  
21 use. The Referee agrees with Anderville's argument that the entire record must be  
22 evaluated and that Gray, supra represents the foundation document.

23       In summation, the Referee concludes that the entire 125-inch Sharp, Class 3  
24 water right was deeded to owners of land lying westerly of the West Side Ditch.  
25 The transactions for 100 inches occurred prior to 1900 and the 25-inch Mary Gray  
26

1 deed is dated 1922. Since the entire Sharp right was separated from the land now  
2 owned by Anderville, there is no basis upon which a Class 3 right could be  
3 recommended for Anderville under Court Claim No. 01950. In addition, the only  
4 Ch. 90.14 RCW Claim in the record for the land that was the Sharp homestead is WRC  
5 No. 141080, filed by Anderville in 1974. The place of use description is that  
6 portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3, west of the Yakima River; the N $\frac{1}{2}$ SE $\frac{1}{4}$  of  
7 Section 4, which contains a place of use description which includes only  
8 8.58 acres of the original J. P. Sharp property. Apparently Anderville acquired  
9 additional acreage within the Sharp parcel after filing WRC No. 141080, although  
10 the deeds for such transfer are not in the record. Due to the lack of a  
11 Ch. 90.14 RCW claim for Manastash Creek water for the balance of the Sharp  
12 homestead, any rights which may have been appurtenant have been waived and  
13 relinquished.

14 Anderville's final exception relates to the portion of the Brown Road Farm  
15 lying within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4, T. 17 N., R. 18 E.W.M. The  
16 Referee could not recommend confirmation of a water right for this land because no  
17 evidence was presented as to the basis for the claimed right. Documents presented  
18 at the remand hearing establish that the N $\frac{1}{2}$ S $\frac{1}{2}$  of Section 4 was homesteaded by  
19 Susan Yocum. The Receiver's Receipt is dated February 29, 1892, and the homestead  
20 is riparian to Manastash Creek. Early sales of portions of the Yocum property  
21 include specific references to inclusion of water rights confirmed by Gray,  
22 supra. However, review of Gray, supra reflects that Susan Yocum was not a party  
23 to the Court action and no water rights appear to have been confirmed to the N $\frac{1}{2}$ S $\frac{1}{2}$   
24 of Section 4. Anderville has acknowledged the lack of a water right based upon  
25 Gray, supra and as an alternative asserts a riparian right with a priority date of

1       1892. The record clearly establishes that water was used from Manastash Creek  
2 through what is now called Anderson Ditch No. 2 for irrigation of that portion of  
3 the N $\frac{1}{2}$ S $\frac{1}{2}$  of Section 4 lying easterly of Manastash Creek. Although Anderville did  
4 not place in the record the number of irrigated acres lying within the described  
5 place of use (Susan Yocom Homestead), the Bain report (DE-121) depicts an area of  
6 approximately 105 acres. The testimony provided regarding instantaneous and  
7 annual quantities cannot be related directly to the N $\frac{1}{2}$ S $\frac{1}{2}$  of Section 4. The  
8 complicating factor is that this diversion also serves lands outside the N $\frac{1}{2}$ S $\frac{1}{2}$  of  
9 Section 4; therefore, the Referee will utilize the one miner's inch per acre and  
10 the conversion ratio used by the Court in Gray, supra. Thus, the instantaneous  
11 flow recommended is 105 inches (or 2.45 cfs) until July 1 and 52 $\frac{1}{2}$  inches (or 1.225  
12 cfs) from July 1 through October 31 and the annual quantity will be calculated as  
13 those flows multiplied by the number of days in the irrigation season. The  
14 Referee believes it is appropriate to reduce the authorized quantity on July 1  
15 consistent with Gray, supra as this right is junior to the Gray, supra rights that  
16 are also reduced on July 1. The priority date will be February 29, 1892, based  
17 upon the riparian doctrine. The point of diversion is located 1320 feet north and  
18 65 feet east of the southwest corner of Section 4, T. 17 N., R. 18 E.W.M. The  
19 place of use is as described below: The N $\frac{1}{2}$ SE $\frac{1}{4}$  and that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
20 Section 4, described as follows: A tract of land bounded by a line beginning at  
21 the northeast corner of said quarter of quarter section, and running thence south  
22 5°48' east, along the east boundary line thereof, 1262.3 feet to the north  
23 boundary line of the said right-of-way of the County Road; thence south 89°54'  
24 west along the north boundary line of said right-of-way, 1143.4 feet; thence north  
25 0°06' west 573.6 feet; thence north 75°41' east 71.0 feet; thence north 45°46'  
26

27       REPORT OF REFEREE  
28       Re: Subbasin No. 11

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

1           east 85.1 feet; thence north 66°58' east 340.2 feet; thence north 31°56' east  
2           204.8 feet; thence north 18°12' east 306.6 feet to the north boundary line of said  
3           quarter of quarter section; and thence north 88°36', along said north boundary  
4           line, 369.4 feet to the point of beginning: ALL in T. 17 N., R. 18 E.W.M.  
5

6           The record does not contain sufficient documentation and/or testimony to  
7           allow recommendation of a water right from Manastash Creek for the remaining  
8           portions of the Brown Road Farm.

9           COURT CLAIM NO. 01723       -- Larry Bland  
10                                     (A)04410                   & Harriett L. Bland  
11                                     Bart G. Bland

12           The Blands filed exceptions to the Report of Referee for Subbasin No. 11,  
13           Manastash Creek, for each of the four properties they own in the basin. The four  
14           ranches are identified as the Home Place, Strande Road Farm, Brown Road Farm and  
15           Cove Road Place. Discussion of the exceptions filed by the Blands will be  
16           presented in the sequence listed.

17           The Home Place lies within the W $\frac{1}{2}$  of Section 17, T. 17 N., R. 18 E.W.M. and  
18           includes approximately 310 acres with 119 acres within the NW $\frac{1}{4}$  of Section 17 being  
19           irrigated. The 119 acres lying north of the Kittitas Reclamation Ditch (KRD)  
20           South Branch Canal are all assessed by the KRD and receive water delivered from  
21           the reclamation district. Water is also delivered to the NW $\frac{1}{4}$  from Manastash Creek  
22           via Keach Ditch and/or the KRD laterals serving this property. Keach Ditch runs  
23           west to east through the middle of the NW $\frac{1}{4}$  of Section 17, with about 80 of the  
24           irrigated acres lying north of the ditch and the rest lying south.

25           The Blands' exception relates to the Referee's failure to recommend  
26           confirmation of Classes 14 and 17 water rights for the NW $\frac{1}{4}$  of Section 17. The  
27           rights asserted are derived from a one-seventh interest in the rights confirmed  
28

REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 through Gray, supra to the McDowell Ditch Corporation, namely the Charles Swanson  
2 share of those rights. Swanson owned the NW $\frac{1}{4}$  of Section 17 at the time of the  
3 decree.

4 McDowell Ditch Corporation's Class 14 right totals 200 inches and the  
5 Class 17 right was for 500 inches, both for Manastash Creek water, so Swanson's  
6 1/7 interest in the rights would be for 100 inches. The Blands urge confirmation  
7 of the 100 inches to the 119 acres they irrigate within the NW $\frac{1}{4}$  of Section 17.

8 The route of the McDowell Ditch, other than easterly from an unspecified  
9 point of diversion, is not set forth in the record. Gray, supra documents that  
10 the individuals who organized McDowell Ditch Company built a headgate and ditch in  
11 1886 and through use of the ditch, flume and natural water courses, delivered  
12 water to their lands. Charles Swanson was a successor to one of the individuals  
13 who formed the McDowell Ditch Corporation. Gray, supra states that McDowell Ditch  
14 Corporation used the Sharp-Jensen Ditch for conveyance of the water claimed by it  
15 from time to time; however, no other means of delivering the confirmed water is  
16 described. It seems clear from Gray, supra that McDowell Ditch was separate and  
17 distinct from Keach and Jensen Ditches. An affidavit by Wayne Smith was submitted  
18 with the Blands' exception. Mr. Smith was 79 at the time the affidavit was  
19 executed and had lived in the Manastash Creek area all of his life. He recalled  
20 that when the KRD siphon was constructed it caused the McDowell Ditch diversion  
21 works, which were just upstream of the siphon to be unusable. Larry Bland also  
22 testified that the point of diversion was destroyed during the KRD construction.  
23 The KRD invert lies downstream from the diversions of Menastash, Keach and Jensen  
24 Ditches. Mr. Smith's affidavit, along with that of Waldo Bradshaw, also a  
25 longtime farmer in the Manastash area, stated that after the McDowell Ditch

1 diversion facilities were destroyed the water formerly carried in the ditch was  
2 then carried in other, existing ditches.

3       The Blands have established that they are successors to Charles Swanson who  
4 owned the NW $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M. and held a one-seventh  
5 interest in the McDowell Ditch Company right confirmed in Gray, supra thereby  
6 having an interest in 28.6 inches of Class 14 and 71.4 inches of Class 17 water.  
7 It is apparent that the McDowell Ditch headgate was destroyed in the early 1930's  
8 as part of construction of the KRD undershot and use of the ditch subsequently  
9 ceased. The water previously carried in the McDowell Ditch is apparently now  
10 delivered through the KRD lateral and the Keach Ditch. The evidence would  
11 indicate that Manastash Creek water previously carried in McDowell Ditch is  
12 diverted into those two ditches very near the original McDowell Ditch diversion.  
13 The Referee will recommend confirmation of a water right with the point of  
14 diversion being at approximately the location of the KRD undershot.

15       At the time of the initial evidentiary hearings for Subbasin No. 11, Bart  
16 Bland did not own any land in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17. In 1993 he purchased 15  
17 acres of land in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ . The prior owner of the land is not a party to  
18 Acquavella and the Blands through testimony amended Court Claim No. 01723 to  
19 include this land. The recently acquired land, of course, was also part of the  
20 Charles Swanson property previously discussed and to the extent it had been  
21 historically irrigated would potentially share in the water rights awarded for the  
22 NW $\frac{1}{4}$  of Section 17. Larry Bland leased and farmed the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 from  
23 1960 through 1987. The exception filed states that a Ch. 90.14 RCW claim was  
24 filed for the property. Larry Bland testified that the Ch. 90.14 RCW claim he  
25 filed with Ecology in 1974 (WRC No. 115757) included within the place of use

1 description all of the NW $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M. However, the  
2 place of use on the claim is very specific - the E $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 and  
3 S $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 9, all in T. 17 N., R. 18 E.W. The NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 is  
4 clearly not described. If there had been an intent by Mr. Bland to include the  
5 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 in the place of use description on the water right claim, it  
6 seems logical that he would have simply described the land on which water was  
7 being used as "the NW $\frac{1}{4}$ ", rather than specifically describing the portions of the  
8 NW $\frac{1}{4}$ . In addition, the record seems to indicate that the Blands do not own the  
9 entire NW $\frac{1}{4}$  of Section 17. The Referee must conclude that WRC No. 115757 was  
10 completed with the intent of describing only the lands owned by the Blands at that  
11 time, i.e., the E $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17.

12 As part of review of the supplemental record, the Referee took notice of  
13 WRC No. 122037 filed by Lawrence Mellergaard, et al. and introduced into the  
14 record by Ecology and Mellergaard. The Blands have not asserted that this claim  
15 would provide protection for the right they are asserting for the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 17, however, Larry and Harriet Bland and Helen and Art Davis did sign  
17 within the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M. on a large map which is an  
18 attachment to the claim. The Referee does not know whether the Davises owned the  
19 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17. WRC No. 122037 asserts a 20 cfs right to "flood waters" of  
20 Manastash Creek, the use of which water began in the spring of 1932. Certainly  
21 Class 14 and 17 rights to Manastash Creek could realistically be considered "flood  
22 water", as that water is generally only available early in the irrigation season.  
23 The Referee provides a detailed discussion of the attributes of WRC No. 122037, on  
24 Page 77 of this Supplemental Report of Referee, as part of the analysis of the  
25 Laurin C. and Marjorie Mellergaard exceptions to Court Claim No. 00982. WRC  
26

No. 122037 may be determined to be applicable to the Bland Home Place, if the Blands ultimately assert reliance on WRC No. 122037 and show that a prior owner of the land is listed on the attachments. The Blands' exception seeking addition of the recently purchased portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M. to the place of use for the recommended right (see Page 214, Lines 10 $\frac{1}{2}$  - 11 $\frac{1}{2}$  of the Report of Referee) should be denied due to the continuing question of compliance with Ch. 90.14 RCW.

The Referee recommends that a right be confirmed under Court Claim No. 01723 with a June 30, 1886, date of priority for the diversion of 0.666 cfs from April 1 through June 30 and 0.333 cfs from July 1 through October 31, 206.77 acre-feet per year for the irrigation of 28.6 acres and with a June 30, 1890, date of priority, 1.66 cfs from April 1 through June 30 and 0.83 cfs from July 1 through October 31, 516 acre-feet per year for the irrigation of 71.4 acres all within that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17 lying north of the KRD Canal.

The exceptions of the Blands relating to the Strande Road Place include an assertion that their land east of the West Side Ditch should be confirmed Class 3 rights based upon their predecessor's, Evan Thorstenson, rights awarded in Gray, supra. This exception seeks confirmation of a right for the irrigation of an additional 15.9 acres located within the SW $\frac{1}{4}$  of Section 9, T. 17 N., R. 18 E.W.M. the Blands also seek confirmation of the portion of the McDowell Ditch rights held by Evan Thorstenson. Thorstenson did acquire from J. M. Norton on June 10, 1889, an 80-acre parcel of land and all of the one-seventh share of the McDowell Ditch Company held by Norton. However, the parcel acquired from Norton was the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. not the SW $\frac{1}{4}$  of Section 9 (same township and range). No documents have been identified which would have changed the place of

1 use of the Class 14 and 17 McDowell Ditch Company water rights from the S $\frac{1}{2}$ SE $\frac{1}{4}$  of  
2 Section 8 to the SW $\frac{1}{4}$  of Section 9. If there was a transfer and it occurred after  
3 June 6, 1917, compliance with RCW 90.03.380 would be necessary. Therefore, the  
4 Referee recommends that the Blands' exception regarding the Class 14 and 17  
5 McDowell Ditch Company water rights be denied for the Strande Road Place.  
6

7 Evidence presented at the supplemental hearing establishes that Manastash  
8 Creek water has historically been, and continues to be, used on that part of the  
9 SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 lying east of the West Side Ditch. The original delivery  
10 method was to flume water over the West Side in three places. After the Blands  
11 bought the property in the mid-1960s, the flumes were removed. Concurrently, the  
12 land east of the West Side was contoured so that gravity flow from West Side Ditch  
13 could serve the same 15.9 acres. The current mode of delivery is via Jensen Ditch  
14 into a KRD lateral and then into West Side Ditch from which an equal quantity is  
15 diverted. The Referee recommends confirmation of the balance of the Class 3, Evan  
16 Thorstenson right which is appurtenant to the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 17 N.,  
17 R. 18 E.W.M. A full 40 acres is not recommended as the West Side Ditch bisects  
18 the quarter quarter and county road rights of way reduce the parcel size, as does  
19 a substantial farmstead near the southwest corner of the property. The original  
20 recommendation was for 24.1 acres. The described reductions total about 3 acres,  
21 therefore, it is recommended that the original recommendation be amended to add an  
22 additional 12.9 acres, for a total of 37 acres. The instantaneous quantity  
23 recommended is based on 50 inches or 1.35 miner's inch per acre for a total of  
24 1.165 cfs from April 1 through June 30 and 0.58 cfs from July 1 through  
25 October 31 and the annual quantity based on continuous use is 355.3 acre-feet per  
26

1 year. The Schedule of Rights in this Supplemental Report of Referee will reflect  
2 this revised recommendation.

3 The Blands take exception to the Referee's conclusion that a water right  
4 claim filed pursuant to Ch. 90.14 RCW had not been identified for the Brown Road  
5 Place, which is located within the N $\frac{1}{2}$  of Section 15, T. 17 N., R. 18 E.W.M. The  
6 Blands assert that WRC No. 035770 filed by West Side Irrigating Company is a claim  
7 to Manastash Creek water via an interception of Keach Ditch. WRC No. 035770  
8 identifies an unnamed water course diverted at a point 710 feet east and 30 feet  
9 south of the northwest corner of Section 16, T. 17 N., R. 18 E.W.M. and asserts a  
10 right to 4.0 cfs for the irrigation of 6500 acres. The Blands' rationale is that  
11 the water must be from Manastash Creek and that the described point of diversion  
12 is in fact Keach Ditch where it intersects West Side Ditch. The Blands further  
13 assert that a general filing by West Side satisfies substantial compliance for any  
14 patron of the ditch company, including the Blands for the Brown Road Place and its  
15 Class 3 Manastash Creek water right. The Referee concludes that this line of  
16 reasoning has fatal flaws that individually or collectively defeat the substantial  
17 compliance argument put forward.

18 The point of diversion described by West Side in WRC No. 035770 lies  
19 approximately one-quarter mile northwest of the actual crossing point of Keach  
20 Ditch. In addition, the Blands established through testimony that Keach Ditch  
21 flows under the West Side Ditch and is not intercepted by West Side. The intent  
22 of Ch. 90.14 RCW was to provide adequate records for efficient administration of  
23 the state's waters. In order to accomplish that intent, it was necessary to file  
24 a claim to a water right for each individual source of public water. The Blands  
25 clearly argue that the source described in WRC No. 035770 is Manastash Creek which

1       is diverted into Keach Ditch 7 to 8 miles west of the point where Keach Ditch  
2 undershoots West Side Ditch. There is no possibility that a reading of  
3 WRC No. 035770 would lead to a conclusion that the claim was for 4.0 cfs of  
4 Manastash Creek water diverted at the head of Keach Ditch. Therefore, the intent  
5 of Ch. 90.14 RCW to create adequate records for water management purposes and  
6 certainty has not been satisfied. The Referee recommends that the Court deny  
7 Blands' exception regarding Ch. 90.14 RCW compliance and find that any Manastash  
8 Creek right that may have existed for the N $\frac{1}{2}$  of Section 15, T. 17 N., R. 18 E.W.M.  
9 was relinquished as a result of failure to comply with Ch. 90.14 RCW.

10      Looking beyond the Ch. 90.14 RCW deficiency, Blands' exception regarding the  
11 Brown Road Place asserts Manastash Creek rights as successors to J. D. and/or  
12 Sabrina Damman or E. S. Coleman, each of whom owned portions of Section 15,  
13 T. 17 N., R. 18 E.W.M. when Gray, supra was entered. Luther J. Keach, predecessor  
14 of E. S. Coleman, homesteaded (or otherwise acquired) 280 acres; namely, the SE $\frac{1}{4}$ ,  
15 SW $\frac{1}{4}$ SW $\frac{1}{4}$  and the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 15, T. 17 N., R. 18 E.W.M. E. S. Coleman  
16 succeeded to the E $\frac{1}{2}$ SW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and had seven-tenths undivided interest in  
17 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  and an undivided one-fifth interest in the E $\frac{1}{2}$ SE $\frac{1}{4}$  and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  all in  
18 Section 15, T. 17 N., R. 18 E.W.M. E. S. Coleman was confirmed 150 inches of  
19 Class 1, Manastash Creek water delivered via Keach Ditch. The 150-inch E. S.  
20 Coleman, Class 1 right was appurtenant to land within the 280 described acres  
21 lying in the S $\frac{1}{2}$  of Section 15. Although the Blands refer to the E. S. Coleman  
22 land and water rights, those lands are all outside the Brown Road farm area and  
23 there is no evidence that the water rights were transferred to his property.

24      J. D. Damman homesteaded the W $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 15,  
25 T. 17 N., R. 18 E.W.M. According to Gray, supra, by 1874 he had a possessory

right to land on which he beneficially used 360 inches of water conveyed through  
Keach Ditch. Prior to Gray, supra he transferred 160 acres, along with 160 inches  
of water to M. M. Damman and 40 acres with 40 inches of water to Sabrina Damman.  
Gray, supra awarded to J.D. Damman 160 inches of Class 3 water and to Sabrina  
Damman 40 inches of Class 3 water. The record shows that Sabrina Damman owned the  
NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15. It is clear that prior to Gray, supra, J. D. owned 360  
acres, on which he used 360 inches of water and that he sold 160 acres on which  
160 inches of water were used to an unnamed person. We do not know which 160  
acres he sold. We also know that he deeded the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15 to Sabrina  
Damman and 40 inches of Class 3 water was awarded to that land. J. D. Damman  
still retained 160 acres with 160 inches of water.

The Blands assert that the entire Brown Road farm; i.e., all of the N $\frac{1}{2}$  of  
Section 15 was owned by J. D. and Sabrina Damman at the time of Gray, supra. The  
record does not support that contention and, in fact, it appears that only the  
W $\frac{1}{2}$ NW $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of said section was in Damman ownership and lies within the  
Brown Road farm. The Blands argue that it was improper for the Referee to place  
as much weight as he did on the Schedule of Rights discussed on Pages 8 and 9 of  
the original Report of Referee, particularly in regards to determining the  
appropriate place of use for the water rights confirmed in Gray, supra. The  
Blands' position seems to be that lacking any supporting documentation, no  
reliance can be placed on the Schedule of Rights. The Referee disagrees with this  
position. Many claimants have relied upon the Schedule of Rights and offered it  
at the initial evidentiary hearing as the definitive statement of the Manastash  
Creek water rights. No objections to the schedule were raised at that time. In  
many instances the schedule reflects land descriptions contained in Gray, supra

1 or documents have been entered into the record that support the schedule. The  
2 Blands in fact have submitted some documents that are in agreement with the  
3 schedule. On the other hand, if deeds or other documents are introduced which  
4 raise questions as to the accuracy of the Schedule of Rights, those exhibits will  
5 be relied upon to the extent they are more definitive as to the facts. The  
6 Referee notes that it was very common for deeds transferring land in the Manastash  
7 area to specifically identify the class and number of inches of water appurtenant  
8 to the land being sold. The deeds in the record for the N $\frac{1}{2}$  of Section 15 do not  
9 reference any specific water right. While the Referee does not consider this  
10 omission to be overly significant, it is worth noting.

11 The Referee has provided a detailed analysis of the various deeds pertaining  
12 to the Damman water rights that were entered into the record in support of the  
13 Dale Dyk exceptions regarding Court Claim Nos. 00931 and (A)01750 (see Page 47 of  
14 this Supplemental Report of Referee). The record does not support the Blands'  
15 contention that 90 inches of Class 3, J. D. Damman water right remains appurtenant  
16 to the N $\frac{1}{2}$  of Section 15. In fact, the record created by the various claimants in  
17 Subbasin No. 11 supports the Schedule of Rights and its statement that the right  
18 had been totally sold off and moved to other lands. Therefore, in conjunction  
19 with the claimants' failure to file a Ch. 90.14 RCW claim for this property as was  
20 previously discussed, the Referee must recommend that no water rights for use of  
21 Manastash Creek water be confirmed for the Bland property in the N $\frac{1}{2}$  of  
22 Section 15. This recommendation has no effect on the use of water delivered by  
23 the West Side Irrigating Company whose rights are being determined through the  
24 Major Claimant pathway.

Finally, we take up the Blands' exception regarding the Cove Road Place and their assertion of partial interest in 25 inches of the Class 1, E. S. Coleman Manastash Creek water right. An analysis of this 25-inch right is presented in some detail in the exceptions of Duncan and Sons on Page 47 of this Supplemental Report of Referee. As was the case with the Duncan claim to this 25-inch, Class 1 right, no Ch. 90.14 RCW claim has been identified for the Bland property therefore any right which may have been appurtenant to the Blands' Cove Road Farm has been waived and relinquished (RCW 90.14.071). Again, the Referee must recommend that no additional right be confirmed.

COURT CLAIM NO. 02206 -- Boise Cascade Corporation  
(A)03119  
(A)05238

Ecology excepted to the April 30, 1880, priority date recommended for the water right for the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R. 16 E.W.M. The Referee concurs with Ecology based upon Boise Cascade Corporation's chain of title evidence presented at the supplemental hearing (DE-S93). Boise's predecessor, Horse and Cattle Ranch Association, acquired Section 15 from Northern Pacific Railroad Company (NPRC) to whom the United States Government had issued a patent dated January 16, 1896. Although testimony of a general nature was offered regarding the typical early development patterns, no testimony specific to this spring development predating 1896 was offered. Evidence has been introduced into

1 the record which establishes May 24, 1884 as the date when NPRC filed its map of  
2 definite location for this portion of Kittitas County. Consequently, the  
3 priority date of "April 30, 1880," as entered on Page 208, Line 20 shall read  
4 "May 24, 1884." The identical change in date is made on Page 54, Lines 3, 14 and  
5 17. Thus, the Referee recommends that the diversionary stock water right in  
6 question be confirmed based upon the Riparian Doctrine.  
7

8 COURT CLAIM NO. 02287 -- George B. Brain

9 Ecology took exception to the annual quantity recommended from Spring Creek  
10 based solely on the limit of 5,000 gpd multiplied by the length of the irrigation  
11 season. Although the Court remanded the Brain claim to the Referee to allow for  
12 reconsideration, the Referee failed to include the claim in the Notice of  
13 Supplemental Hearing dated March 9, 1995. The Referee agrees that an error in  
14 calculation occurred and that a correction is warranted. Although notice to  
15 George C. Brain did not occur as to the date for supplemental hearing, the Referee  
16 concludes that the nature of the required modification is ministerial in nature  
17 and represents a very small portion of the annual quantity recommended for  
18 approval. The Referee has recommended confirmation of a 214-day irrigation  
19 season. If 5,000 gallons are diverted each day of that season, the resulting  
20 water quantity for the season cannot exceed 3.28 acre-feet per year. With that  
21 mathematical correction, the confirmation recommended at Page 56, Line 24 of the  
22 Manastash Report of Referee is changed to substitute "3.28 acre-feet per year" for  
23 "3.75 acre-feet per year." In addition, the same acre-feet per year correction is  
24 made on Page 214, Line 19 and is reflected in the Schedule of Rights of this  
25 Supplemental Report of Referee.

26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1 COURT CLAIM NO. 01055 -- Thomas C. Brunson  
2 & Kathleen Brunson

3 The boundary between Subbasin No. 8 (Thorp) and No. 11 (Manastash) runs  
4 through the center of the Brunson property. Some of the water sources utilized by  
5 the Brunsons arise in Subbasin No. 8 and some in Subbasin No. 11. Therefore, the  
6 Reports of Referee for both subbasins deal with Court Claim No. 01055. John P.  
7 Gilreath, attorney for Thomas C. and Kathleen Brunson, filed exceptions with the  
8 Court to the Report of Referee for Subbasin No. 11 (Manastash). The exceptions  
9 not only address the Referee's recommendation to the Court relative to use of  
10 Hatfield Canyon Creek, which is in Subbasin No. 11, but also to the Referee's  
11 failure to recommend confirmation of a right to Packwood Canal Company (Packwood)  
12 for use of Yakima River water diverted in Subbasin No. 8. The Brunsons intended  
13 to rely upon Packwood's exceptions, which they have joined, concerning the Referee  
14 not recommending that a water right be confirmed for the Yakima River (see  
15 Pages 52 - 67 of the Supplemental Report of Referee for Subbasin No. 8 for a  
16 discussion of Packwood's exceptions).

17 As to the Referee's recommendation for Hatfield Canyon Creek, the Brunsons  
18 except to the priority date of June 30, 1885, the place of use, and to the  
19 Referee's recommendation to confirm the right in Packwood Canal Company's name.  
20 The Brunsons assert a priority date of 1877 and that the right which was  
21 recommended should be appurtenant exclusively to Brunson land therefore the right  
22 should be issued to the Brunsons, not to Packwood Canal Company. Packwood concurs  
23 with the Brunson exception, with the condition that rights to Hatfield Canyon  
24 Creek water in excess of 100 inches be confirmed in the name of Packwood Canal  
25 Company.

26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1       The right for Hatfield Canyon that was recommended for confirmation was in  
2 recognition of the water rights established for the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, the  
3 NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. all lying north and  
4 east of the Packwood Canal. Although the Brunsons do own much of the place of use  
5 for the right recommended for confirmation to Packwood Canal Company, they do not  
6 own the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29. Neither Packwood nor the Brunsons addressed the  
7 impact their proposed changes would have on the eleven claimants who own property  
8 within the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, and who rely on and irrigate their land with water  
9 delivered through the Packwood Canal. Those claimants were individually denied  
10 confirmation of water rights in deference to the confirmation to Packwood Canal  
11 Company (see Pages 129-131 of the Report of Referee for Subbasin No. 11  
12 (Manastash)). Like the Brunsons, the eleven claimants are shareholders of  
13 Packwood Canal Company and were determined by the Referee to be entitled to  
14 beneficially use proportionate shares of the 100 inches (or 2.33 cfs) confirmed to  
15 Packwood Canal Company from Hatfield Canyon Creek. As shareholders, the Brunsons  
16 are presumed to be on an equal basis with the other water users who have a legal  
17 right to Hatfield Canyon Creek. Other Packwood shareholders are Three Bar G Ranch  
18 and E. Altice who own and irrigate portions of the recommended place of use in  
19 Section 32.

20       Thomas Brunson offered testimony, and Exhibits DE-568 through DE-572 were  
21 admitted into the record. Testimony provided by Mr. Bain and Mr. Brunson at the  
22 original evidentiary hearing established that only 30 acres of Brunson land are  
23 irrigated with Hatfield water. Three Bar G Ranch irrigates 16 acres within that  
24 portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32 lying westerly of the Thorp Highway, E. Altice  
25 irrigates 10 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32 and approximately 50 acres are

1 irrigated by the eleven claimants who own small parcels within that portion of the  
2  $W\frac{1}{2}SW\frac{1}{4}$  of Section 29 lying northeasterly of the Packwood Canal. In the initial  
3 Subbasin No. 11 Report of Referee, on Page 131, Line 6, the Referee had  
4 erroneously stated that 92 acres were irrigated in the  $W\frac{1}{2}SW\frac{1}{4}$  of Section 29 lying  
5 northeasterly of the canal. That area is 60 acres in size and only 50 acres are  
6 actually being irrigated. Therefore, the total acres irrigated by Packwood  
7 shareholders within the previously recommended place of use is 106. It should be  
8 noted that the Ellensburg Golf and Country Club also irrigates a small portion of  
9 the  $W\frac{1}{2}SW\frac{1}{4}$  of Section 32. The Country Club appears to have some form of water use  
10 agreement with Packwood other than shares; however, the record is vague as to the  
11 basis for any right enjoyed by the Country Club. The remaining lands lying within  
12 the recommended place of use for Hatfield Canyon Creek water are in the  $NE\frac{1}{4}NW\frac{1}{4}$  and  
13 the  $N\frac{1}{2}NE\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. The Brunsons own that portion of  
14 the  $NE\frac{1}{4}NW\frac{1}{4}$  and the  $NW\frac{1}{4}NE\frac{1}{4}$  of Section 32 lying north and east of the Thorp Highway,  
15 containing about 60 irrigable acres. They also own a portion of the  $NE\frac{1}{4}NE\frac{1}{4}$  of  
16 Section 32 lying westerly of the Yakima River and excluding the Altice parcel of  
17 about 10 acres. The 154 acres recommended for confirmation by the Referee is in  
18 error. It appears from the preceding analysis that no more than 106 acres are  
19 irrigated within the described place of use, instead of the 154 acres previously  
20 recommended.

21 The Brunsons allege that the City of Ellensburg/Burch agreement of 1903 is  
22 proof that 100 inches of natural flow from Hatfield Canyon Creek was delivered to  
23 Burch's property. Mr. Brunson testified at the supplemental hearing that  
24 250 inches of Manastash Creek water was delivered via the Menastash Ditch and the  
25 Parrish-Rego Ditch to the head of Hatfield Canyon Creek for delivery to the Burch

1 property. Mr. Brunson acknowledged that Manastash Creek water is foreign water  
2 when it is commingled with natural flow Hatfield Canyon water. Finally  
3 Mr. Brunson agreed that the flumes to carry 100 inches each over the Packwood  
4 Canal were to carry the Manastash Creek water. The Brunsons are not asserting  
5 rights to Manastash Creek water as use of that water ceased many years before  
6 Brunson's ownership.

7 By 1903, the West Side Ditch had been in operation for many years, as had the  
8 Menastash Ditch system, each a factor in changing the flow characteristics of  
9 Hatfield Canyon Creek. Testimony provided by Dale Dyk at the supplemental  
10 hearing established that Menastash Ditch shareholders introduce Manastash Creek  
11 water into Hatfield Canyon Creek directly and indirectly year around. Mr. Dyk  
12 also testified that very little natural flow water is available in Hatfield Canyon  
13 Creek above the West Side Canal. He testified that the only source of natural  
14 flow is small springs or seasonal local runoff.

15 In addition to the deed from Burch to the City of Ellensburg, similar deeds  
16 were executed by W. A. Stevens for land in the  $W\frac{1}{2}SW\frac{1}{4}$  of Section 29 and the  $NW\frac{1}{4}NW\frac{1}{4}$   
17 of Section 32. The Brunsons suggest that the Court rely upon the wording of the  
18 thirty-sixth finding from the Manastash Creek decree, Gray and Geddis v. Johnson  
19 to establish an 1877 priority date. There are no legal descriptions included in  
20 the referenced findings leaving the names as the only means to evaluate the  
21 relevance of the Parrish-Rego Ditch development. In addition, the water being  
22 discussed is Manastash Creek water for which a right is not being asserted by the  
23 Brunsons. The record establishes that John Rego and Charles G. Stevens were  
24 owners of various parcels of land in the vicinity of Hatfield Canyon Creek and  
25 Packwood Canal, including land other than that now owned by the Brunsons.

Having considered all of the record, the Referee recommends that Brunsons' exceptions regarding Hatfield Canyon Creek be denied in total. The record does not support confirmation of a priority date earlier than June 30, 1885. In fact, the record seems to indicate that the various homesteads and purchased railroad land were developed piece meal over a period of years that could have resulted in a multitude of priority dates.

In the initial Subbasin No. 11 Report of Referee, the Referee elected to recommend a common date, based on the prior appropriation doctrine, in recognition of the multitude of water users served via Packwood Canal. Most of the claimants are claiming 1885 as their priority date, possibly because their properties shared a common delivery system from Hatfield Canyon Creek, although that is conjecture. The Referee believes the 1885 priority date remains the appropriate date. Confirmation of the Hatfield Canyon Creek right to Packwood Canal Company is also the most practical solution due to the many patrons of Packwood who share an interest in the Hatfield Canyon Creek water right.

COURT CLAIM NO. 00987      -- Edmund T. Christian  
                                  & Margery Christian  
                                  Roger C. Sparks  
                                  & Rita M. Sparks  
                                  Steve Hall  
                                  & Linda Hall

Ecology filed exceptions to the three water rights recommended for confirmation for the former Christian property under Court Claim No. 00987. The issue in each of the three exceptions is the failure of the Referee to precisely define a place of use for irrigation under the three rights confirmed within Government Lots 6 and 7 of Section 6, T. 17 N., R. 18 E.W.M. In essence, the Referee has allowed each of the rights for 25, 20 and 20 acres, with different

1 priority dates, to be used within Government Lots 6 and 7 of Section 6. The  
2 record indicates that four owners now have an interest in the land formerly owned  
3 by the Christians. At the time that the Report of Referee was written, the  
4 Christian property had been divided with Eugene E. and Rhodesa M. Walsh owning  
5 74.9 acres, Edmund T. and Margery Christian retaining 2.9 acres and a Mr. Plaster  
6 owning 2 acres in the southwest corner of Government Lot 7. The Walshes had been  
7 joined as a party to Court Claim No. 00987; however, Mr. Plaster had not. The  
8 Walshes have since sold their land to Roger C. and Rita M. Sparks and Steve and  
9 Linda Hall. The combined Christian and Plaster legal description is as follows:  
10

11 That portion of Lot 7 described as follows: Beginning at a fence corner  
12 post which is 27.5 feet east of a point 25.0 feet north of the southwest  
13 corner of Section 6, and running north along the west line of the county  
road 279.0 feet; thence north  $88^{\circ}54'$  east 766.0 feet; thence south  
279.0 feet, to the north line of the county road; thence south  $88^{\circ}54'$   
west along said line, 766.0 feet to the point of beginning.

14 At the supplemental hearing for Subbasin No. 11, Roger Sparks offered  
15 testimony in response to Ecology's exceptions to Court Claim No. 00987. Roger and  
16 Rita Sparks purchased 20 acres of the Walsh property and operate the remaining  
17 irrigated land within the former Walsh ownership as lessee. They have been joined  
18 to Court Claim No. 00987 and have previously filed Court Claim Nos. 01029, 01478,  
19 00931 and 00987. There is no individual legal description in the record for any  
20 of the four parcels that comprise Government Lots 6 and 7 of Section 6, T. 17 N.,  
21 R. 18 E.W.M.

22 Mr. Sparks testified that it is impossible to define where the various water  
23 rights are used because a common ditch system is used and the owners have an  
24 informal sharing arrangement. There is apparently no written agreement although  
25 Mr. Sparks farms most of the property as either the owner or lessee. The  
26 testimony indicates that the historic use pattern has been to combine the classes

1 of water and to rotate use over the various fields. When the Class 16 water is no  
2 longer available, the reduced flow continues to be rotated and ultimately just the  
3 Class 1, 25-inch right is available to rotate. Based on the history of how the  
4 rights were acquired, the Referee believes current water use is likely consistent  
5 with the historical use.

6 Based upon the preceding facts, the Referee denies Ecology's exception, but  
7 proposes to modify the recommendation in the Manastash Report of Referee to  
8 reflect prorated rights. The formulae will reflect the 54.9 acres owned by  
9 Steve and Linda Hall, 20 acres for Roger C. and Rita M. Sparks, 2.9 acres for  
10 Edmund T. and Margery Christian and 2.0 acres for Mr. Plaster. These acreages are  
11 the gross ownership, whereas the three recommended water rights total 65 acres of  
12 irrigation. The four owners have a total of 79.8 acres as described above. The  
13 Halls will be entitled to 68.8% of each right; the Sparks to 25%, the Christians  
14 to 3.6% and Mr. Plaster to 2.5% of each right. The Report of Referee at  
15 Pages 190, 199 and 215 are hereby modified to include the percent of interest of  
16 the four owners in the three rights as set forth above. In addition, each of the  
17 rights has added to it the following provision:  
18

19 "This land may have a supplemental water right through the Kittitas  
20 Reclamation District (KRD), which is exercised when sufficient creek  
water is not available."

21 COURT CLAIM NO. 01969 -- Richard T. Cole  
22 & Lynn Cole

23 Claimants Cole filed with the Court an exception to the Report of Referee for  
24 Subbasin No. 11 (Manastash). With the exception of the priority date of April 19,  
25 1891, the claimants concur with the Referee's recommendation.  
26

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1       Mr. Cole argues that lacking a specific denial of the water right for the  
2 S $\frac{1}{2}$ N $\frac{1}{2}$  of Section 13, T. 17 N., R. 17 E.W.M. in the Gray and Geddis v. Johnson  
3 Superior Court Decision dated March 17, 1891, those lands were not bound by the  
4 decision. The Gray Decision/Findings of Fact contain many statements regarding  
5 historic uses of water where rights are not confirmed. Olof Hanson, former owner  
6 of the Cole property, was a party to the consolidated Manastash Court cases and  
7 had ample opportunity to vigorously represent all of his interests in the use of  
8 Manastash Creek water. The only water rights of participants in that case and  
9 their successors are those specifically confirmed by the Court in the Conclusions  
10 of Law. Olof Hanson was not confirmed a right for the S $\frac{1}{2}$ N $\frac{1}{2}$  of Section 13;  
11 therefore, the only right that could be appurtenant to that land would be  
12 subsequent to Gray, supra, hence the April 19, 1891, priority date. Therefore,  
13 the Referee recommends that the Coles' exception regarding Court Claim No. 01969  
14 be denied.

15       During review of the Report of Referee, it was observed that Richard T. Cole  
16 and Lynn Cole are listed on Page 180, Line 5 as claimants recommended for  
17 non-diversionary stock water and wildlife rights. The Coles' property is not  
18 riparian to Manastash Creek therefore the Coles were mistakenly included in the  
19 list. The revised list on Page 137 of this Supplemental Report of Referee does  
20 not contain the names of Richard T. and Lynn Cole.

1 COURT CLAIM NO. 00931 -- Dale Dyk  
2 (A)01750 Dave Duncan & Sons  
3 Duncan Family Trust

4 Murray Pacific Corporation filed Court Claim No. 00931 and subsequently  
5 joined additional parties as they sold large segments of the ranch. The Report of  
6 Referee for the Manastash Subbasin contains a consolidated analysis of the water  
7 rights asserted by the various successors to Murray Pacific. The Duncans and Dale  
8 Dyk filed exceptions to the Report of Referee.

9 Dale Dyk, represented by Attorney Jeff Slothower, testified at the  
10 supplemental hearing. He purchased 331 acres from Murray Pacific with 325 of the  
11 total acres being irrigated. Dyk asserts a right for 80 inches of water diverted  
12 from Manastash Creek at the head of the Manastash Ditch. This 80 inches is said  
13 to be a portion of the Class 3 water confirmed by Gray, supra to J. D. Dammon and  
14 to Sabrina Dammon; 50 inches derived from J. D. Dammon and 30 inches from Sabrina  
15 Dammon. The Referee did not recommend confirmation of any of the claimed  
16 80 inches of Class 3 rights.

17 Dyk contends that the Referee erred by relying upon the ownerships as  
18 depicted in the Schedule of Rights as opposed to using the deeds of property  
19 transactions introduced into the record. Finally, Dyk argues that although the  
20 change of place of use of the 80 inches of Class 3 water from Roy Willard to West  
21 Fork Timber Company took place May 21, 1954, the requirements of RCW 90.03.380 did  
22 not need to be satisfied before the change took place. Dyk has submitted copies of  
23 deeds beginning in 1909 which describe transactions in land and/or water rights.

24 Sabrina Dammon, the wife of J. D. Dammon, was confirmed 40 inches of Class 3,  
25 Manastash Creek water by Gray, supra. It appears that Sabrina owned the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
26 Section 15, T. 17 N., R. 18 E.W.M. in the Lower Manastash Basin to which the

1       40-inch, Class 3 right was appurtenant. Sabrina Dammon deeded 30 inches of that  
2 water right to Ernest B. Pease on October 2, 1909. About one year later, Sabrina  
3 deeded the remaining 10 inches of the 40-inch total to Marcus A. Brown with  
4 39 acres of land located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15. The record seems to be  
5 clear as to where the 30-inch, Class 3 water was used by E. B. Pease during the  
6 period 1910 through 1954. A series of deeds which transferred a 200-acre parcel  
7 owned by E. B. Pease in the E $\frac{3}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 35, T. 18 N., R. 17 E.W.M.  
8 specifically include this 30-inch Sabrina Dammon water right. Use of this  
9 30 inches of Class 3 water, along with an additional 50 inches, which will be  
10 discussed further below, on the E. B. Pease land in Section 35 is said to have  
11 been a fact for at least 40 years when Roy Willard, successor to E. B. Pease,  
12 deeded the water right to West Fork Timber Company on May 21, 1954. Up until Roy  
13 Willard sold the water rights, they were used on the former E. B. Pease property.  
14 West Fork seems to have been a portion of the W. T. Murray holdings which all  
15 became Murray Pacific Corporation, who in turn sold land to Dale Dyk. The Dyk  
16 land lies within Sections 31 and 32 of T. 18 N., R. 18 E.W.M.  
17

18       Dale Dyk contends there is evidence that the 30 inches of Sabrina Dammon,  
19 Class 3 water right has been used on his lands in Sections 31 and 32 since at  
20 least 1912. The foundation for his testimony is an entry on the minutes of the  
21 Menastash Water Ditch Company dated August 29, 1912, which shows E. B. Pease being  
22 billed for one share of Menastash Ditch, Class 2 water and two shares of Class 3  
23 water. The water rights confirmed the Menastash Water Ditch and its shareholders  
24 by Gray, supra were all Class 2. Dyk's assertion is that the Class 3 water has  
25 either since the 1909 sale to E. B. Pease or at least prior to 1917 been diverted  
26 through the Menastash Ditch. Dyk suggests that E. B. Pease may have simply

1 delivered water to his Section 35 land via the Menastash Ditch and that the  
2 original change in point of diversion in 1909 from Sabrina Dammon's point of  
3 diversion was to the head of the Menastash Ditch. The Referee believes such a  
4 scenario may be possible although Section 35 lies about one mile west and may be  
5 above the elevation of the Menastash Ditch. Supporting this possibility is the  
6 reference in a deed (Exhibit DE-S46 Dave Duncan), indicating E. B. Pease had a  
7 ditch right-of-way across Section 1, which was owned by Leslie Gardinier. The  
8 referenced deed is dated April 10, 1911, recorded in Book 29 of Deeds at Page 62.  
9 Another deed (DE-S63), Louisa Pease, et al. to Aksel Pedersen, contains a  
10 right-of-way provision for a Menastash Ditch Company ditch. This parcel lies  
11 adjacent to the E. B. Pease 200 acres on the west (upslope).

12 Another possibility is a reference to shares in the Watt Ditch in the series  
13 of deeds pertaining to the E. B. Pease Section 35 land. Watt Ditch did cross  
14 immediately west of and higher in elevation than the west boundary of the Pease  
15 property. In addition, the Schedule of Rights and minutes of the Menastash Ditch  
16 Company do list E. B. Pease as holding one share in the Menastash Water Ditch  
17 Company and describes his land as lying in Section 35. The Menastash Ditch  
18 Company records also indicate that they conveyed 80 inches of Class 3 water to the  
19 E. B. Pease property.

20 The Referee believes there has been sufficient evidence submitted to  
21 conclude that E. B. Pease acquired 30 inches of Class 3 water from Sabrina Dammon  
22 at the time that he owned 200 acres in Section 35, T. 18 N., R. 17 E.W.M. and that  
23 water appears to have been appurtenant to and used on that land after the  
24 transfer. In 1954 the 30 inches were deeded to West Fork Timber Company.

1        Although lack of compliance with RCW 90.03.380 remains a problem, a bigger  
2 problem is no evidence that a Ch. 90.14 RCW water right claim was filed for the  
3 Dyk property to preserve the 30-inch, Class 3 water right transferred from Sabrina  
4 Dammon to E. B. Pease. Failure to file such a claim waives and relinquishes any  
5 right (RCW 90.14.071). Due to the noted deficiencies, the Referee cannot  
6 recommend confirmation of the 30-inch S. Dammon water right to Dale Dyk under  
7 Court Claim No. 00931, primarily due to relinquishment of the right.  
8

9        Dyk also asserts a water right for 50 inches of Class 3, Manastash Creek  
10 water being a portion of the 200-inch, Class 3 right confirmed in J. D. Dammon by  
11 Gray, supra. The chain of title is similar to the previously discussed 30-inch,  
12 Sabrina Dammon, Class 3 right, but lacks definitive documentation as to property  
13 ownership for the period 1889 through 1910. Dyk refers to property owned by E. S.  
14 Coleman DE-S57 (Defendant Coleman's answer to the Christopher Gray complaint) to  
15 establish which lands Gray, supra rights were appurtenant. It is important to  
16 note that E. S. Coleman was confirmed 150 inches of Class 1, Manastash Creek water  
17 rights whereas J. D. Dammon was confirmed 160 inches of Class 3 rights to the  
18 creek water. Dyk asserts a right to 80 inches of Class 3 right derived only from  
19 Sabrina and J. D. Dammon, therefore, rights for the E. S. Coleman property should  
20 not be of concern in these deliberations. Dyk properly points out that the Court  
21 in Gray, supra relied upon the "Answers" of the various parties for statements of  
22 property ownership. The E. S. Coleman "Answer" is dated late in 1889, whereas the  
23 Gray Decree was entered in 1891. The deeds which transfer portions of the J. D.  
24 Dammon, Class 3 water right describe portions of the Coleman parcel as the place  
25 of use for the J. D. Dammon right; i.e., the  $S\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$ ,  $N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$  and the  $N\frac{1}{2}S\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$   
26 of said Section 15. This property is listed as within the Coleman ownership in  
27

1       1889. It is possible that J. D. Dammon acquired this property from E. S. Coleman  
2 before Gray, supra was entered thus resulting in the Class 3, Dammon water right  
3 being appurtenant to what was formerly Coleman property.

4       The record does not contain copies of transfers directly from J. D. Dammon  
5 and the first deeds in the record are dated 1909 and 1910. On May 25, 1909,  
6 Marcus Brown and K. A. France deeded to W. T. Conant 20 inches of a Gray, supra  
7 water right which is described only as being appurtenant to the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
8 Section 15, T. 17 N., R. 18 E.W.M. (former J. D. Dammon land). The land to which  
9 Conant moved this water right is not specified. W. T. Conant acquired a 30-inch,  
10 Class 3 water right by deed from J. H. Prater on October 30, 1909. The 30-inch  
11 water right is described as being derived from the N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  and N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$  of  
12 Section 15 without defining the property ownership or the party to whom the Gray,  
13 supra right was confirmed, however, a portion is former J. D. Dammon land. On  
14 March 19, 1910, W. T. Conant sold both the 20-inch water right and 30 inches of  
15 water described as a portion of the Class 3 water confirmed by Gray, supra to E.  
16 B. Pease. On April 20, 1920, E. B. Pease deeded to Clarence W. Pease the 20-inch  
17 unspecified right, the 30-inch right he acquired from J. H. Prater and the 30-inch  
18 Sabrina Dammon, Class 3 right. E. B. Pease describes the 30-inch right he  
19 acquired from Prater as a portion of the Class 3, J. D. Dammon right. The Prater  
20 to E. B. Pease deed did not specify the original owner of the Class 3 water right  
21 conveyed.

22       If we disregard this early gray area of the chain of title, the 50 inches  
23 of water right runs exactly as the 30-inch Sabrina Dammon right did through E. B.  
24 Pease and Roy Willard to West Fork and ultimately Dale Dyk. Dyk is asserting that  
25 the 50-inch water right is all in Class 3 and is all derived from the J. D. Dammon

1       200-inch Gray, supra Class 3 right. As conjectured previously, that may be true;  
2 however, the record does not establish a conclusive answer as to the original  
3 ownership of the 20-inch and 30-inch blocks of water right.

4       In addition to the chain of title problems, the 20-inch and 30-inch J. D.  
5 Dammon water rights have the same deficiencies as the Sabrina Dammon right; i.e.,  
6 no Ch. 90.14 RCW water right claims have been identified for these rights and the  
7 requirements of RCW 90.03.380 were not satisfied for changing the place of use.  
8 The Referee concludes that insufficient record has been provided to allow  
9 determination of the appropriate priority date for the 20-inch and 30-inch water  
10 rights, irrespective of the issue of relinquishment. Finally, the appropriate  
11 place of use cannot be determined due to the failure to obtain authorizations for  
12 change under the procedures prescribed by RCW 90.03.380.

13      Dave Duncan and Sons and Duncan Family Trust also filed an exception to the  
14 Report of Referee. The Referee did not recommend confirmation of any of the water  
15 rights asserted by the Duncans. The Duncans were represented by Jeff Slothower,  
16 attorney, and testimony was provided by Dave Duncan.

17      Duncans' exceptions include an unnamed spring which arises within the SE $\frac{1}{4}$ SW $\frac{1}{4}$   
18 of Section 36, T. 18 N., R. 17 E.W.M. That spring is located in Subbasin 8  
19 (Thorp); therefore, the exception has been addressed in the Subbasin No. 8  
20 Supplemental Report of Referee (Pages 47 through 51) and will not be addressed  
21 further in this report. The Duncans also joined in the exceptions filed by the  
22 Menastash Water Ditch Association. Those exceptions were resolved through a  
23 stipulation between the Menastash Water Ditch Association and Ecology. The  
24 Referee has incorporated the terms of the stipulation into this Supplemental  
25 Report of Referee on Page 83, which presumably resolves the concerns of Duncan.

1       The Duncans took exception to the subbasin boundary as set by Ecology between  
2 Subbasin No. 8 and No. 11. The basis for the boundary exception revolves around  
3 the designation of foreign return flow. The Duncans did not pursue the issues of  
4 the boundary or foreign return flow at the supplemental hearing; therefore, the  
5 Referee will not deal with those exceptions further in this analysis.  
6

7       The remaining exception filed by the Duncans concerns 25 inches of Class 1  
8 water right which is a portion of the 150 inches confirmed by Gray, supra to E. S.  
9 Coleman. The Duncans asserted during the original evidentiary hearing that the  
10 25-inch, Class 1 water right was appurtenant to land in Section 36 owned by High  
11 Valley Land, Inc. They now argue that this 25-inch right is appurtenant to the  
12 NW $\frac{1}{4}$  of Section 1, T. 17 N., R. 17 E.W.M. The Report of Referee did not recommend  
13 confirmation of the right to the Duncans due to failure to provide evidence that  
14 the change in place of use authorization required by RCW 90.03.380 had been  
15 obtained.

16       Chain of title documents were entered into the record both for transfer of  
17 the real estate owned by the Duncans and to trace the transfers of the 25-inch  
18 E. S. Coleman water right. The SE $\frac{1}{4}$ NW $\frac{1}{4}$  and Government Lots 2, 3 and 4 of  
19 Section 1, T. 17 N, R. 18 E.W.M. were purchased by Andrew Cullinan (Cullen) from  
20 the Northern Pacific Railroad in June of 1887. Annie Cullinan, Andrew's wife,  
21 sold that 160-acre parcel to Leslie J. Gardinier together with one-sixth of E. S.  
22 Coleman's, Class 1 water right and one-twelfth interest in Keach Ditch. No other  
23 documents, except the Schedule of Rights, were introduced which substantiate that  
24 E. S. Coleman was the original owner of the claimed water right. There is,  
25 however, a reference in the deed from Annie Cullinan to Gardinier to a preceding  
26 deed from J. B. Fogarty to Andrew Cullinan. The Referee has determined that the  
27

1 Schedule of Rights associated with the water rights confirmed via Gray, supra  
2 shows L. S. Gardinier as a successor to 25 inches of Class 1 water right under the  
3 E. S. Coleman 150-inch, Class 1 water right. Copies of the annual assessments  
4 levied by the Menastash Water Ditch Association during 1912, 1930 and 1931 show  
5 that Gardinier was charged for delivery of 25 inches of Class 1 water in addition  
6 to his assessment for shares of Menastash Water Ditch, Class 2 water.

7 The Referee concludes that Cullinan did acquire interest in 25 inches of  
8 Class 1 water right and in 1905 transferred to Gardinier 160 acres located in the  
9  $W\frac{3}{4}N\frac{1}{2}N\frac{1}{2}$  and  $SE\frac{1}{4}NW\frac{1}{4}$  of Section 1 together with the 25-inch water right. Because the  
10 change of place of use and point of diversion took place before the adoption of  
11 the Washington State Water code in 1917 and no subsequent change has occurred,  
12 compliance with RCW 90.03.380 is not applicable.

13 The one requirement which was not satisfied is compliance with  
14 Ch. 90.14 RCW. Failure to file a claim results in waiver and relinquishment of  
15 the water right RCW 90.14.071. The State's Exhibit, SE-3 does not contain any  
16 water right claims that the Referee can determine are appurtenant to the Duncan  
17 land, nor have the Duncans provided a copy of a Ch. 90.14 RCW claim; therefore,  
18 the Referee cannot recommend confirmation of a water right associated with the 25  
19 inches of Class 2 water to the Duncans under Court Claim No. 00931.  
20

21 COURT CLAIM NO. 04522 -- May Moffat Mitchell Gage

22 Ecology excepted to the Gage recommendation due to the perceived absence of  
23 quantification detail for the three purposes of use. Counsel for Ecology  
24 clarified their concern at the supplemental hearing via a statement regarding  
25 potential future regulatory difficulties. No appearance was made by Ms. Gage or a  
26 representative at the supplemental hearing.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

Having studied the record, the Referee finds no basis for revising the original Report of Referee. The three purposes of use are clearly quantified from a common source with a common point of diversion and conveyance pipeline. The priority date for all the uses is identical; therefore, any theoretical regulation would be against all the recommended purposes of use. The Referee recommends that the Court affirm the Report of Referee as written with the exception that an oversight be corrected. Although the text establishes use of riparian stock water on the property, claimant's name does not appear on the riparian stock list on Page 180 of the Report of Referee. The Referee recommends that Ms. Gage be included in this listing.

COURT CLAIM NO. 02260 -- Robert Gardinier  
                                  & Avadene Gardinier  
                                  Robert Y. Gardinier  
                                  & Wanda Gardinier

Ecology took exception to the point of diversion recommended by the Referee for the June 30, 1872, water right under Court Claim No. 02260 (see original Report of Referee, Page 191, Lines 8½ through 9½). Ecology correctly states that the current pumping plant is of recent vintage and is at a substantially different point of diversion than the historic gravity flow ditch headworks (Barnes Ditch). Testimony provided by Robert Gardinier at the supplemental hearing on June 16, 1995, establishes that the gravity ditch system could still be used, however, it is not. Water is pumped from a stilling well fed by a field drain. The drain supplies a steady flow of water throughout the irrigation season whereas Manastash Creek and the Barnes Ditch system have been prone to low flow periods since about 1977. Clearly, the change of point of diversion occurred in 1977 necessitating compliance with RCW 90.03.380.

1       Based on the facts and the lack of compliance with the statutory procedures  
2       in RCW 90.03.380, the Referee recommends amendment of the Manastash Report of  
3       Referee as follows: Page 191, Lines 8½ through 9½ be deleted and replaced with  
4       the following point of diversion description: 1200 feet north and 1200 feet east  
5       of the center of Section 7, being within the SW<sup>1</sup>NE<sup>1</sup> of Section 7, T. 17 N.,  
6       R. 18. E.W.M.

7  
8       COURT CLAIM NO. 00477     -- Clarence Harrell  
9                                  04637                                  & Hazel J. Harrell

10      The Harrells filed exceptions to the Referee's recommendations to the Court  
11     regarding Court Claim Nos. 00477 and 04637. Ecology also filed exceptions on both  
12     of the Harrell claims.

13      The first exception involves an error which resulted in the Harrell fields  
14     being described as 95% pasture, whereas they are in fact 95% timothy hay.  
15     Therefore, on Page 85, Line 2, "timothy hay" is substituted for the word "pasture."

16      The Harrells' exception as to March being included in the irrigation season  
17     is granted and each reference in the Report of Referee to the Harrells' irrigation  
18     season shall be changed accordingly. As provided in the Gray Decree, the  
19     instantaneous quantity confirmed for use during March is the same rate confirmed  
20     for use from July 1 through October 31, which is one-half the quantity confirmed  
21     for the period April 1 through June 30.

22      The Harrells filed with the Court a series of exceptions relating to place of  
23     use descriptions, number of irrigated acres confirmed and quantities of water.  
24     The first exception is to the omission of a 25-inch portion of the Class 1 right  
25     awarded to E. S. Coleman in Gray, supra. The Referee discussed acquisition of  
26     this right beginning on Page 85, Line 25 and continuing on Page 86. There seems

1 to be some confusion in the discussion beginning on Page 86, Line 9, wherein  
2 purchase from John Burch is associated with Certificate of Change No. 1-279. The  
3 25-inch, Class 1 right associated with this change certificate was, in fact, the  
4 E.S. Coleman right. With the sequence of ownership clarified, it is clear that  
5 the Referee included this 25 inches of Class 1 right in the proposed confirmation  
6 on Pages 87 and 88 of the Report of Referee.

7 The Harrells identified an error on Page 183 of the Report of Referee. On  
8 that page the right described with a June 30, 1871, date of priority was for  
9 irrigation of 80 acres. However, on Page 87 and 88, the Referee recommended  
10 confirmation of a water right with that date of priority for the irrigation of 145  
11 acres. The referee acknowledges that error should be corrected. The Harrells  
12 seek confirmation of a right to irrigate 165 acres, rather than the 145 acres  
13 recommended on Pages 87 and 88. The Referee believes the argument is that Gray,  
14 supra uniformly confirmed one miner's inch per acre. However, the Gray Decision  
15 and Decree recognized that some parcels of irrigated land required more than one  
16 inch of water per irrigated acre and in some cases awarded more than one inch of  
17 water per acre. Olaf Hanson's land to which the subject Class 1 right is  
18 appurtenant is one of those parcels which was awarded a higher water duty. Gray,  
19 supra awarded 140 miner's inches to the W $\frac{1}{2}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, T. 17 N.,  
20 R. 18 E.W.M., or 140 inches for a 120 acre parcel and the logical extension of  
21 that is the right was used to irrigate those 120 acres. There is no evidence in  
22 the record that a change in place of use has been approved through RCW 90.03.380  
23 to modify the lands to which the right is appurtenant. The Referee stands by the  
24 original recommendation that 145 acres are authorized for irrigation under the two  
25 Class 1 rights. The 165 inches for which a right is recommended is a combination

1 of the 140-inch Olaf Hanson right and the 25-inch E. S. Coleman Class 1 right  
2 acquired by Hanson from John Catlin, who previously had purchased it from E. S.  
3 Coleman. As noted in the Report of Referee, a certificate of change authorized  
4 use of this 25 inches of Class 1 water within a 200 acre portion of the Harrell  
5 Ranch in the  $S\frac{3}{4}W\frac{1}{2}W\frac{1}{2}$ , the  $SE\frac{1}{4}NW\frac{1}{4}$  and the  $NE\frac{1}{4}SW\frac{1}{4}$  of Section 5, T. 17 N.,  
6 R. 18 E.W.M. On Page 183 of the Report of Referee, the Referee inadvertently  
7 combined these two Class 1 water rights into a single recommendation and  
8 introduced the acreage error identified by the Harrells. The Referee's revised  
9 recommendation, therefore, keeps the 140-inch and 25-inch rights separate due to  
10 the place of use differences and corrects the irrigated acres to match Gray, supra  
11 resulting in recommendations for 140 inches of water for irrigation of 120 acres  
12 and 25 inches of water for the irrigation of 25 acres as originally awarded to  
13 Olaf Hanson and E. S. Coleman.

14 The next exception deals with the Class 2, 1872 rights which total 165 inches  
15 or 3.84 cfs from April 1 through June 30 and one-half that quantity the balance of  
16 the irrigation season. This right was confirmed to S. R. Geddis in Gray and  
17 Geddis v. Johnson for the Schlif homestead and preemption claim (see Findings 18  
18 and 23 of Gray, supra). The Harrells, based on Exhibit DE-S132, urge inclusion of  
19 the following portions of their ranch within the place of use for the Class 2  
20 water right:  $S\frac{1}{2}SE\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M.,  $N\frac{1}{2}NE\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$  and that  
21 portion of the  $SW\frac{1}{4}SE\frac{1}{4}$  lying north of Hanson Road, all in Section 5, T. 17 N.,  
22 R. 18 E.W.M. Clearly, S. R. Geddis owned the described lands at the time Gray,  
23 supra was entered by the Court in 1891. Geddis also owned the  $SE\frac{1}{4}NW\frac{1}{4}$  of Section 5  
24 which could potentially be included in the place of use (see Finding 23). The  
25 Referee recommended only the  $W\frac{1}{2}NE\frac{1}{4}$  of Section 5 as the place of use for the

1 Class 2 right based on the description contained in the Schedule of Rights, which  
2 indicates that Packwood sold to Olaf Hanson the portion of the described lands  
3 which lie westerly of the West Side Ditch together with the 165-inch, Class 2  
4 water right. The Harrells provided no explanation for the difference between the  
5 Schedule of Rights and the decree. The Referee's recommendation seems flawed, as  
6 only 25 acres of the  $\frac{1}{2}NE\frac{1}{4}$  lies west of the West Side Ditch. In this  
7 circumstance, the ownership record provided in the Gray Decision is the compelling  
8 evidence. Therefore, the Referee will modify his recommendation to include the  
9 entire S. R. Geddis ownership as follows: The  $S\frac{1}{2}SE\frac{1}{4}$  of Section 32, T. 18 N.,  
10 R. 18 E.W.M.; the  $N\frac{1}{2}NE\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$ ,  $NE\frac{1}{4}SW\frac{1}{4}$  all within Section 5, T. 17 N.,  
11 R. 18 E.W.M. Page 191, Line 14 $\frac{1}{2}$  is amended to read "irrigation of 165 acres" and  
12 Line 21 $\frac{1}{2}$  is replaced by the place of use description set forth in detail above or  
13 approximately a 240-acre tract within the Harrell Ranch. The  $SW\frac{1}{4}SE\frac{1}{4}$  of Section 5  
14 is omitted because the Harrells are asserting that a different right is  
15 appurtenant to that parcel.

16 The part of the  $SW\frac{1}{4}SE\frac{1}{4}$  and  $SE\frac{1}{4}SE\frac{1}{4}$  of Section 5 lying north of Hanson Road is  
17 represented by the Harrells to be a part of the place of use for the original  
18 Moorehead and Barnes, Class 2 rights. Gray, supra indicates that Schlif acquired  
19 the  $SW\frac{1}{4}SE\frac{1}{4}$  from the Northern Pacific Railroad in 1889, seventeen years after  
20 Schlif is said to have initiated use of water for his lands located in Sections 5  
21 and 32. Edward Russell (Charles Moorehead), apparently a successor to Schlif for  
22 this land, was confirmed a 120 inch Class 2 right which includes the  $SW\frac{1}{4}SE\frac{1}{4}$  of  
23 Section 5 in the place of use (Finding 22) and A. Barnes was confirmed 120 inches  
24 for land including the  $SE\frac{1}{4}SE\frac{1}{4}$  of Section 5. Each of these rights were for 120  
25 inches within a 120 acre place of use. Anderville Farms and Joseph L. and

1 Doris M. Schwab are asserting rights for their lands within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
2 Section 5 based on the Russell (Moorehead) confirmation in Gray, supra. The  
3 Referee believes that the place of use must be based upon the original  
4 confirmation in Gray, supra but also as changed through property transfers and/or  
5 RCW 90.03.380 changes. Clarence Harrell testified that approximately 20 acres are  
6 irrigated within that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5 lying north of Hanson  
7 Road. However, it appears from the maps in the record, including SE-1 and  
8 DE-S132, that there is only about 10 acres irrigated lying completely within the  
9 SW $\frac{1}{4}$ SE $\frac{1}{4}$  north of Hanson Road. Flynn Orchard Tracts seems to lie in the E $\frac{1}{2}$ SE $\frac{1}{4}$  of  
10 Section 5 north of Hanson Road. Therefore, the Referee believes that 10 acres is  
11 the portion of the Schlif right that is appurtenant to the Harrell land. Water  
12 for this portion of the former Schlif Ranch has been conveyed through Reed Ditch,  
13 as it is for the Harrells. The Referee recommends confirmation of a right for the  
14 portion of the Moorehead Class 2 right that is within the Harrell land as  
15 follows: With a June 30, 1872, date of priority, 0.233 cfs from April 1 through  
16 June 30, 0.117 cfs March 1 through March 31 and July 1 through October 31, 78.4  
17 acre-feet per year for the irrigation of 10 acres within that portion of the  
18 SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. lying north of Hanson Road. The point  
19 of diversion will be at the Reed Ditch diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12.  
20

21 The Harrells except to the place of use descriptions recommended by the  
22 Referee for the Class 5 and 6 water from Gray, supra. The Class 6 rights will be  
23 addressed first. The Schedule of Rights indicates that 100 inches of the Class 6  
24 right awarded to S. R. Geddis was divided into three portions; 30 inches to Ben  
25 George for land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  and N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, 20 inches for use in the  
26 S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 (Flynn Orchard Tracts) and 50 inches to Flynn and Hale for  
27

1 an undefined portion of Section 5 and to Charles Moorehead for the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
2 Section 5. Harrell owns all of that land except the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  (now Flynn Orchard  
3 Tracts) and has 80 inches of the original 100-inch S. R. Geddis, Class 6 right.  
4 The Referee originally recommended that two Class 6 rights be confirmed only for  
5 the irrigation of 70 acres. The Referee recognizes this was in error. Instead,  
6 the Class 6 right should have been confirmed for the irrigation of 80 acres in the  
7 SE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5. It appears that the claimant in the  
8 exception is asking that these lands be confirmed a Class 5 right and some of the  
9 lands that were confirmed a Class 5 right be switched to Class 6. However, the  
10 evidence does not support that position. The Referee does recommend that the  
11 right described on Page 205, Lines 12 to 21 $\frac{1}{2}$  be revised to reflect a right to 1.84  
12 cfs for the irrigation of 80 acres within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
13 Section 5 and Lines 1 through 10 $\frac{1}{2}$  on Page 206 are deleted. The Referee notes that  
14 the Exhibit DE-S132 submitted by the claimants includes the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5  
15 as lands for which a portion of the Class 6 right is being asserted. However, the  
16 record clearly shows that this is part of the Flynn Orchard Tracts and several  
17 claimants in this proceeding have submitted evidence to show they own land within  
18 the tracts. The Referee will not further consider any claim by the Harrells for  
19 this land.

20 There was nothing in the historical record to show where the 125-inch,  
21 Class 5 John Burch right purchased by Olaf Hanson was used. The Referee concluded  
22 that it was likely used on the Hanson land for which there was no other water  
23 rights and recommended that the 125 acre right be confirmed for the S $\frac{1}{2}$ SE $\frac{1}{4}$  of  
24 Section 32 and Government Lots 1, 3 and 4 of Section 5. Through considering the  
25 Harrells' exceptions, a Class 2 right has been recommended for the S $\frac{1}{2}$ SE $\frac{1}{4}$  of

1      Section 32 and Government Lot 1 of Section 5, so it would be appropriate to remove  
2      that portion of the Harrell property from the place of use for the Class 5 right.  
3      Government Lots 3 and 4 of Section 5 are still without any other identifiable  
4      water right, so the Referee continues to recommend that the Class 5 right be  
5      confirmed for this tract. Additionally, both the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5 north of  
6      Hanson Road and the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 have inadequate water right coverage for  
7      the number of acres irrigated. Therefore, it is recommended that the Class 5  
8      confirmation be amended to remove the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 32 and Government Lot 1 of  
9      Section 5 from the place of use and add the SE $\frac{1}{4}$ SW $\frac{1}{4}$  north of Hanson Road and the  
10     NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5.

11     The small parcel in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. is  
12     identified as Class 6, whereas, it is a portion of the Olaf Hanson, Class 5  
13     right. The Report of Referee erroneously recommended the priority date of  
14     June 30, 1878, whereas, the proper date is June 30, 1877. Therefore, Page 88,  
15     Line 11 is amended to reflect the year 1877 as is Page 205, Line 7. The Harrells  
16     urge correction of the acres irrigated from the 4.5 acres recommended to the  
17     4.8 acres to which the Richard Bain report refers. The Report of Referee is  
18     accordingly amended on Page 88, Line 13 where "4.5" is replaced by "4.8." The  
19     instantaneous quantity depicted on Page 88, Line 11 is changed to "0.112 cfs" and  
20     the acre-feet per year is changed to "37.5." Page 205, Lines 3 to 7 are amended  
21     to reflect the changes detailed above including the irrigation season March 1  
22     through October 31.

23     The Harrells presented evidence in support of a claim to use of water from a  
24     spring located approximately 600 feet north and 200 feet east of the southwest  
25     corner of Section 5. Water is, and historically has been, used from this source

for domestic supply, stock water and irrigation. The priority date claimed is 1871, which is consistent with the date when irrigation water was first appropriated for this land. Although Gray, supra confirmed rights to this land, springs do not appear to have been included in that Court case. WRC No. 144801 was filed with Ecology in June of 1974 in compliance with Ch. 90.14 RCW. WRC No. 144801 was filed on a short form thereby limiting the claimed surface water right to 5000 gallons per day and irrigation of no more than half an acre of lawn and garden (RCW 90.14.051). A well is used for the domestic water supply. The place of use provided on WRC No. 144801 is the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. which is the location of the Harrell home according to testimony provided at the supplemental hearing. Due to the limitations arising from use of the short claim form, the Referee proposes confirmation of 0.03 cfs; 3 acre-feet per year for  $\frac{1}{2}$  acre of lawn and garden irrigation and stock water for up to 20 head of horses, to be used throughout the year for stock water and March 1 through October 31 for lawn and garden irrigation. The place of use is reduced to the E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  and the W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. The point of diversion is described above.

The final exception filed by the Harrells seeks an opportunity to present evidence in support of a claim to use water from an unnamed spring located 950 feet north and 130 feet east of the west quarter corner of Section 5, T. 17 N., R. 18 E.W.M., located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of said section. Water is claimed for stock water and irrigation. WRC No. 144800 was filed with Ecology by Clarence Harrell in June of 1974 in compliance with Ch. 90.14 RCW on a long form claim. The place of use is described as the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. and the only use claimed is stock water at an instantaneous rate of

27 gallons per minute (gpm) and 40 acre-feet per year. The priority date claimed is 1871 which is consistent with first use of irrigation water on this property as confirmed by Gray, *supra*.

Testimony provided by Clarence Harrell indicates that water from the spring has for some 50 to 60 years been used for stock water and irrigation in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, and also at the feedlot and farmstead located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. There are significant inconsistencies between the use testified to by the claimant and described on WRC No. 144800. The claim does not assert a right for irrigation and the place of use described does not include the feedlot and farmstead in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. The Court has ruled that the Referee has latitude to consider the contents of the claim, along with testimony and historic use and is not necessarily limited by the claim (see Memorandum Opinion RE: Ch. 90.14 RCW and Substantial Compliance, February 10, 1995). However, Mr. Harrell did not address the differences between the right being asserted and the Ch. 90.14 RCW claim. The Court has also provided guidance that the place of use on the Ch. 90.14 RCW claim should be reasonably close to where the water is being used. The Referee does not believe that being off by almost half a mile is reasonably close. The Court has also confirmed rights for uses not on a claim only when the omitted use is incidental to, or commonly used in conjunction with the claimed right. That criteria is not met in this circumstance.

Due to the significant differences between WRC No. 144800 and the use for which a right is asserted, and the lack of an explanation for the differences, the Referee recommends confirmation of 0.06 cfs; 6 acre-feet per year for continuous diversionary stock water within the  $W\frac{1}{2}NW\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. The annual quantity does not reflect use of stock water for the Harrells' feed lot.

1 as that facility is located within the SW $\frac{1}{4}$  of Section 5, for which there is no  
2 Ch. 90.14 RCW coverage.

3 Testimony provided by Richard C. Bain and Clarence Harrell establishes that  
4 the only water in Reed Ditch at the south line of the Harrell Ranch is from  
5 Manastash Creek or KRD deliveries to the ranch. It therefore seems appropriate to  
6 concentrate on return flow water in the Center and Back Ditches which are  
7 acknowledged to intercept return flow from KRD or Manastash Creek deliveries.  
8 Although Harrells' exceptions requested an opportunity to provide the Court with  
9 additional proof as to return flow sources and quantities, that record was not  
10 created. Testimony has been provided that the return flow attributable to  
11 Manastash Creek has been in use on the Harrell properties since the earliest  
12 irrigation development; i.e., early 1870's. The owners of the entire Harrell  
13 Ranch were collectively parties to Gray, supra. The water rights of record as of  
14 1891 were confirmed by Gray, supra as has been discussed in the preceding  
15 discussion of the several classes of water rights appurtenant to the Harrell  
16 land. The Referee concludes that Gray, supra quieted title to the water rights of  
17 the parties in 1891. The Harrells have not provided proof of the quantities of  
18 return flow water from Manastash Creek or the historic development which resulted  
19 in capture and beneficial use of such return flow in order to establish a separate  
20 water right. It is certain that water was in short supply for lands not confirmed  
21 rights in Gray, supra as is evident from the purchase of rights from properties  
22 which came under the West Side Ditch. The Referee concludes that water rights  
23

1 cannot be confirmed for use of return flow on the Harrell property and that the  
2 findings as presented in the original Report of Referee on that subject should be  
3 affirmed by the Court. This does not prevent the reuse of return flows generated  
4 by the Harrells' irrigation practice (see Memorandum Opinion Re: Return Flow  
5 Exceptions of Harry Masterson and Mary Lou Masterson, July 16, 1996).

6  
7 COURT CLAIM NO. 00657 -- Clarence Harrell  
8 & Hazel J. Harrell  
9 Carl Harrell  
Kathy Harrell  
Troy Harrell  
Dale Dyk  
Don Dyk  
10 & Alice Dyk  
11

12 Subsequent to issuance of the Report of Referee for Subbasin No. 11  
13 (Manastash), the Praters sold the property associated with Court Claim No. 00657.  
14 On June 6, 1994, Clarence and Hazel Harrell, Dale Dyk and Don and Alice Dyk were  
15 substituted as the parties of record. Exceptions to the Report of Referee  
16 regarding Court Claim No. 00657 were filed by Clarence and Hazel Harrell. Their  
17 exceptions relate only to the Referee's recommendations applicable to the SE<sup>1</sup> of  
18 Section 6, T. 17 N., R. 18 E.W.M.

19 The exceptions filed by Clarence and Hazel Harrell relate to the annual  
20 quantity recommended for the 120-inch, Class 1 right and the 25-inch, Class 3  
21 right and to the "maximum annual quantity" provision included in those  
22 recommendations. In addition, the Harrells seek modification of the irrigation  
23 season to include the month of March. The final exception is related to the  
24 Referee's recommendation to deny water rights to return flow water. Ecology also  
25 filed exceptions to Court Claim No. 00657 which include lack of compliance with  
26 change procedures in RCW 90.03.380 for the Class 3 water right and places of use

1 which are excessively large for the three water rights recommended. Ecology  
2 subsequently withdrew all its exceptions to Court Claim No. 00657.

3 The record does support inclusion of March in the irrigation season to  
4 reflect historic practice during drier years. The instantaneous quantity  
5 established by Gray, supra for March water use is 1/2 inch per acre or 0.0117 cfs  
6 per acre.

7 Testimony provided at the supplemental hearing by Mr. Harrell clarifies the  
8 record as to the lands upon which KRD water are used. There is no KRD water  
9 applied to the SE $\frac{1}{4}$  of Section 6; therefore, the "maximum annual quantity"  
10 provision will be removed from the Class 1, 1871 right and the Class 3, 1874 right.

11 The Court has ruled that Gray, supra confirmed an instantaneous water duty of  
12 1 miner's inch per acre irrigated or 0.0233 cfs per acre. Gray, supra limits the  
13 diversions to 1/2 inch per acre except during the period of April through June;  
14 therefore, calculation of the maximum attainable quantity will be based on the  
15 number of days in the months of March, July, August, September and October  
16 multiplied by 0.0117 cfs and April, May and June multiplied by 0.0233 cfs.  
17 Although the Harrells seek confirmation of 1,032 acre feet under the Class 1, 1871  
18 water right for irrigation of 120 acres, the maximum quantity attainable is 942  
19 acre feet which will be the revised recommendation. Likewise, the 25 inches of  
20 Class 3, 1874 water is limited not by the 8.6 acre-feet per acre irrigation need  
21 (see testimony of Richard Bain), but by the authorized instantaneous diversion  
22 which results in 196 acre-feet per year. The following revisions are proposed in  
23 the Report of Referee to incorporate the inclusion of March in the irrigation  
24 season and recalculation of the annual quantities: Page 138: (1) Line 7 "911.80"  
25 acre-feet per year is replaced with "942" acre-feet per year and "7.6" acre-feet  
26

1 per acre is replaced with "7.85" acre-feet per acre and (2) the entire provision  
2 sentence beginning on Line 8 and ending on Line 10 is deleted. On Page 186:  
3 (1) Line 17 "April 1" is replaced by "March 1", (2) Lines 18 and 19 are replaced  
4 by the following: "2.80 cfs from April 1 to June 30, 1.40 cfs during the months  
5 of March and July through October; 942 acre-feet per year" and (3) Lines 24-25½  
6 are deleted. Page 139: Lines 7-12 are amended to reflect the changes described  
7 in detail above.

8 Revisions to the Class 3, 1874 water right are as follows: Page 187:  
9 (1) Line 4 "April 1" is replaced with March 1, (2) Lines 5 and 6 are replaced by  
10 the following: "0.583 cfs from April 1 through June 30; 0.29 cfs during the  
11 months of March and July through October; 196 acre-feet per year, (3) Line 7  
12 "1871" is replaced with the correct year "1874" (this is a typographical error  
13 discovered during review of the record) and (4) Lines 11-12½ are deleted.  
14 Page 139: (1) Lines 15-17 are revised to reflect the detailed changes described  
15 above and (2) Lines 18-20 are deleted.

16 The Harrells urge reconsideration of the record and provided some additional  
17 testimony in relation to the use of irrigation return flow. Although the Referee  
18 recognizes that use of return flow is a significant component of the total water  
19 use within the SE¼ of Section 6, T. 17 N., R. 18 E.W.M., there are two critical  
20 items lacking in the record. If a water right were to be recommended for return  
21 flow use above and beyond the two Gray, supra rights previously recommended, there  
22 would need to be compliance with Ch. 90.14 RCW claim registration requirements.  
23 No Ch. 90.14 RCW claim asserting a water right to return flow was filed by  
24 Eugene J. Prater for the SE¼ of Section 6; therefore, any right which may have  
25 existed has been waived and relinquished as set forth in RCW 90.14.071. The

1 Referee noted in the original Report of Referee for Subbasin 11 that the record  
2 for Court Claim No. 00657 lacked specific facts as to the source of the claimed  
3 return flow as well as the quantities used and the places of use. The record from  
4 the supplemental hearing does not add the necessary specifics. The Referee urges  
5 the Court to affirm the denial of water rights for return flow based on the lack  
6 of a Ch. 90.14 RCW claim and specific facts necessary to allow quantification of a  
7 water right.

8

9 COURT CLAIM NO. 00826 -- Walter H. Kembel  
10 (A)03983 & Margaret E. Nelson  
11 Brian Mellergaard  
12 & Carol Mellergaard

13 Claimants Mellergaard filed exceptions with the Court to the Report of  
14 Referee for Subbasin No. 11, Manastash Creek. John P. Gilreath, attorney,  
15 represents Brian and Carol Mellergaard. Brian Mellergaard testified at the  
16 supplemental hearing.

17 The claimants assert rights to irrigate with waters from Manastash Creek  
18 60 acres within that part of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 lying east of Brown Road and  
19 that part of the SW $\frac{1}{4}$  of Section 3 lying west of the river and north of Spring  
20 Creek, all in T. 17 N., R. 18 E.W.M. The asserted priority date is 1872, based  
21 upon the Affidavit of Water Right filed by J. L. Vaughn on May 31, 1890, claiming  
22 a right to 150 miner's inches of water.

23 The Referee originally recommended confirmation of a right to irrigate  
24 22 acres within the SW $\frac{1}{4}$  of Section 3 lying west of the Yakima River and north of  
25 Spring Creek from Manastash Creek delivered via Anderson Ditch No. 2 with a  
26 priority date of April 19, 1891. The Referee's recommendation for an 1891  
27 priority date was based upon Kittitas County Superior Court Decree, A. Barnes,

et al. vs. Ole Belsaas, et al., April 23, 1912. Upon review of A. Barnes, supra, the Referee agrees with the claimants' argument that the case is not applicable. Mellergaards' predecessor, J. L. Vaughn, was not a party to Gray, supra; therefore, the resulting decree is not binding on Vaughn or his successor, the Mellergaards.

The Referee will reevaluate the record to determine the appropriate priority date. The Mellergaards contend that the J. L. Vaughn affidavit of 1890 is the appropriate foundation for the priority date. Vaughn's affidavit attests to continuous use of Manastash Creek water beginning in 1872 within the portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 lying easterly of Brown Road and that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 lying westerly of the Yakima River, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, all in T. 17 N., R. 18 E.W.M. In 1897 Vaughn sold to Thomas E. Jones the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 and that portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 east of the county road. In the transaction, Jones acquired two-thirds of the 150 inches claimed by Vaughn from Manastash Creek, or 100 inches. Using the conversion factor determined by the Court to be appropriate for the rights awarded in Gray, supra, 100 inches equals 2.33 cfs. The Mellergaards state in their exception that Field No. 1, which is 60 acres in size, is the land transferred from Vaughn to Jones. The map in the Bain report seems to show Field No. 1 extending into the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, an area for which there has been no evidence that a water right to Manastash Creek has been established. However, review of the State's map seems to show 60 acres of irrigated land within the area transferred from Vaughn to Jones. Twenty-two of those acres are irrigated from Anderson Ditch 2, which carries water diverted from Manastash Creek. The remaining 38 acres is irrigated from a takeout on a ditch that captures return flow waters from adjoining land. The

1 Mellergaards' exception makes the assertion that this water is previously used  
2 Manastash Creek water, and not foreign return flow

3       Exhibit DE-119 (Kembel) is a copy of a 1939 agreement between C. A. Statton  
4 and Walter Kembel for a partnership ditch. Said ditch ran across Statton's land  
5 in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4, T. 17 N., R. 18 E.W.M. along the county road. Walter  
6 Kembel apparently extended the partnership ditch in 1938 to deliver water to his  
7 land in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4; the Referee believes that T0-2 is the point where  
8 that ditch enters the Mellergaard property. That ditch appears to be the northern  
9 branch of the Anderson Ditch that serves the Anderville property in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of  
10 Section 4. The southerly branch of the Anderson Ditch serves the 22 acres of the  
11 Mellergaard property irrigated from T0-1. Anderson Ditch diverts from Manastash  
12 Creek and then bifurcates just east of the diversion. Mr. Kembel testified that  
13 the surface irrigation system used by T. E. Jones was also used during subsequent  
14 years until the sale of the property to Brian Mellergaard. However, Kembel's  
15 agreement dated 1939 suggests that the system changed significantly in 1938,  
16 although the point of diversion of the water did not change. The landowner  
17 apparently chose to use the return flow water that is leaving what is now  
18 Anderville Farms' property, rather than using a direct diversion from the creek.

19       Therefore, the Referee recommends that the right as described on Page 217 of  
20 the original Report of Referee be amended to read as follows:

21       With a June 30, 1872, date of priority a right to divert 2.27 cfs;  
22 692.4 acre-feet per year for the irrigation of 60 acres in that portion of the  
23 S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 lying east of Brown Road and that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
24 Section 3 lying west of the Yakima River. The instantaneous quantity has been  
25 reduced to reflect the 0.06 cfs recommended for Walter Kembel.  
26

1       The 1.5 acre Manastash Creek right recommended for Walter H. Kembel is  
2 derived from the same factual basis as the Mellergaard right; therefore, the  
3 Referee proposes that the June 30, 1872, priority date be recommended. The  
4 priority date on Page 109, Line 18 and Page 217, Line 6 (Kembel) is changed to  
5 read June 30, 1872.

6       Claimants assert a right to 2.5 cfs diverted from Spring Creek with a  
7 priority date of 1879. Spring Creek includes local spring water, drain water from  
8 adjacent fields during the irrigation season and West Side Canal water delivered  
9 via Spring Creek. Testimony was not offered as to the proportions of the various  
10 component flow, however, Mr. Kembel and Mr. Mellergaard testified that 2.5 cfs is  
11 available year around. The lands within Mellergaards' Brown Road ownership are  
12 riparian to Spring Creek. The land irrigated with water from Spring Creek lies in  
13 the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10 and the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18 E.W.M. The  
14 record shows that Henry H. Davies obtained the receiver's receipt signed on  
15 June 5, 1883, for the NW $\frac{1}{4}$  of Section 10 and then received the patent on June 5,  
16 1884. The Referee is urged to apply the five-year relation back period from the  
17 patent date of June 5, 1884. The assertion relies upon the proof required to  
18 obtain the receiver's receipt. The Court has addressed this issue in its  
19 Memorandum Opinion Re: Priority Date - Date of Patent or Date of Entry, dated  
20 January 19, 1995, directing the Referee not to make an automatic calculation of  
21 the priority date based on the relation back theory. The Referee does find that  
22 the receiver's receipt is sufficient evidence to establish a priority date of  
23 June 5, 1883, for the lands in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10. That portion located in  
24 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18 E.W.M. and lying southerly of Spring

1 Creek would have a priority date of June 30, 1872, based upon the J. L. Vaughn  
2 Notice of Appropriation.

3 Mr. Bain's report establishes that two points of diversion from Spring Creek,  
4 T0-3 and T0-4, are used to irrigate Field No. 2. Typical diversion from the creek  
5 at T0-3 is 3.97 cfs, far in excess of the estimated natural flows in Spring  
6 Creek. It is not known if T0-4 is used concurrently with T0-3, however, if it is,  
7 the water diverted would appear to be West Side Canal water carried in the creek  
8 channel. Lacking definitive testimony as to the proportionate split in Field  
9 No. 2, the Referee will rely on estimates found in the Bain report (Figure 1,  
10 Brown Road Farm). T0-4 is located approximately 150 feet south of the northwest  
11 corner of Section 10 on Spring Creek. Although the record is not very clear, it  
12 appears that T0-3 and T0-4 jointly serve a system of concrete ditches and  
13 pipelines which deliver water to Field No. 2. The Referee estimates there are  
14 10 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 lying south of Spring Creek and 60 acres  
15 in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10 lying west of the Yakima River. That part of Field  
16 No. 2 lying in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 is outside the Vaughn and Davies homesteads  
17 and there has been no evidence presented to show that a water right was  
18 established for this land.

19 Lacking chain of title evidence for the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, the Referee has  
20 insufficient basis for determining an appropriate priority date and cannot  
21 recommend a water right for that portion of Field No. 2. Claimant did not provide  
22 data as to how T0-3 and T0-4 are operated to utilize the 2.5 cfs available in  
23 Spring Creek. Presuming diversion of 2.5 cfs at T0-3, at a point 150 feet south  
24 and 1275 feet west of the northeast corner of Section 9, there would be no Spring  
25 Creek water available at T0-4, which is about one-fourth mile downstream in the

1 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10. The Referee has therefore concluded that T0-3 and T0-4 are  
2 alternate points of diversion serving Field No. 2 through a consolidated  
3 distribution system, consequently, both diversions as described above are  
4 recommended for approval for irrigation of 60 acres within the N $\frac{1}{2}$ NW $\frac{1}{4}$  of  
5 Section 10, T. 17 N., R. 18 E.W.M. and 10 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3. The  
6 recommended instantaneous quantity of 2.5 cfs shall be divided proportionately  
7 between the two places of use since different priority dates must be assigned. A  
8 total of 1070 acre-feet per year can be diverted during the irrigation season if  
9 2.5 cfs is continuously diverted, which is 15.4 acre-feet per acre irrigated. The  
10 Referee recommends that a right be confirmed with a June 5, 1883, date of priority  
11 for the diversion of 2.14 cfs; 925 acre-feet per year for the irrigation of  
12 60 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10; and with a priority date of June 30, 1872,  
13 0.36 cfs; 155 acre-feet per year for the irrigation of 10 acres in that part of  
14 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3 lying south of Spring Creek. The season of use is April 1  
15 through October 31. The authorized points of diversion shall be in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
16 Section 9 and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T. 17 N., R. 18 E.W.M.. Water rights are not  
17 being recommended for the portion of Field No. 2 lying in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3  
18 due to the lack of evidence to show establishment of a right for this land.  
19

20 COURT CLAIM NO. 00516 -- Garry Mathews  
21 & Dawn Mathews

22 Garry and Dawn Mathews acquired the land to which Court Claim No. 00516 is  
23 appurtenant from Marvin J. and Carol A. Schroeder after the original evidentiary  
24 hearing. The Schroeders did not appear at that hearing, therefore, lacking a  
25 record, the Referee did not recommend confirmation of a water right. The Mathews  
26 filed a "Motion to Reopen" with the Court seeking an opportunity to offer

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1 testimony and exhibits in support of Court Claim No. 00516. The Court remanded  
2 the claim to the Referee to take the evidence at the supplemental hearing.  
3

4 The water right asserted is for one-half acre of lawn and garden irrigation  
5 from April 1 through October 1 and riparian stock water. Although the property  
6 did not separate from State ownership until March 7, 1918, the priority date  
7 claimed is November 11, 1889, based upon the Riparian Doctrine and the date the  
8 State School Land separated from federal ownership. WRC No. 37138 was filed with  
9 Ecology by Samuel R. Mohler, a predecessor to the Mathews. The claim is filed on  
10 a short form and identifies use of Manastash Creek for lawn and garden irrigation  
11 thus preserving any historic right established for the described use within the  
12 SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 16, T. 17 N., R. 17 E.W.M. Although the record is very limited  
13 as to the early use of water on the property, it appears that very old buildings  
14 are on the parcel where the lawn and garden are located.

15 The critical component of this claim is the applicability of the Riparian  
16 Doctrine to lands which were held by the State until after 1917 -- in this case,  
17 until March 7, 1918. The State Supreme Court, in the State of Washington v.  
18 David A. Allen, 134 Wn. 7, 235 PAC. 37, ruled that the State has, by  
19 constitutional provision, waived the riparian rights to school land as long as the  
20 title remains in the State, ". . . . until school lands pass into private  
21 ownership, riparian rights on a stream on such lands do not attach." P. 26.  
22 Since, in this factual setting, the transfer to E. C. Harris took place after  
23 1917, a riparian right could not have been established. The Water Code was  
24 adopted during 1917, thereby providing the only means by which new water rights  
25 could be established through the permit procedures set forth in RCW 90.03.250-340.  
26 No evidence has been presented which demonstrates that a permit was obtained.  
27

1 Alternatively, a pre-1917 water right could have been perfected by beneficial use  
2 of the water; however, the record does not suggest that such a right was perfected.  
3

4 The Referee must conclude that a water right cannot be recommended under  
5 Court Claim No. 00516, other than inclusion of the claimants' name in the  
6 non-diversionary stock water list on Page 137 of this Supplemental Report of  
7 Referee.

8 COURT CLAIM NO. 00982 -- Laurin C. Mellergaard  
9 & Marjorie Mellergaard

10 Laurin C. and Marjorie Mellergaard filed exceptions with the Court to the  
11 Manastash Creek Report of Referee. They are represented by Attorney John P.  
12 Gilreath.

13 The Claimants' primary exception relates to the Referee's failure to  
14 recommend that rights be confirmed for use of Manastash Creek. They are asserting  
15 substantial compliance with the requirements of Ch. 90.14 RCW for the use of  
16 Manastash Creek water for irrigation of crop land lying within the NE $\frac{1}{4}$  of  
17 Section 17 and the NW $\frac{1}{4}$  of Section 16, T. 17 N., R. 18 E.W.M. The Claimants'  
18 testimony and exhibits establish that rights were confirmed in the Gray Decree to  
19 Z. T. Butler, who owned the NE $\frac{1}{4}$  of Section 17 as follows: 50 inches of Class 4,  
20 50 inches of Class 5, 50 inches of Class 6 and 50 inches of Class 11 water.  
21 Subsequent to Gray, supra 40 inches of Class 3 water was purchased from J. D.  
22 Damman for use on the NW $\frac{1}{4}$  of Section 16, T. 17 N., R. 18 E.W.M. Each of the five  
23 water rights referenced above has a separate priority date. Four of the five have  
24 a common place of use (the NE $\frac{1}{4}$  of Section 17), while the Class 3, J. D. Damman  
25 water is now being used on the NW $\frac{1}{4}$  of Section 16. The record does not indicate  
when J. D. Damman sold the 40-inch right; however, it is clear that the procedures

1 of RCW 90.03.380 were not utilized for the change of place of use, although the  
2 change may have taken place before 1917. All of the referenced rights have  
3 historically been delivered through the Keach Ditch and/or KRD Canal, after the  
4 canal was built in the early 1930's.

5       Gray, supra confirmed water rights to individual property owners for the  
6 lands they were irrigating at that time, resulting in unique places of use and  
7 priority dates as well as quantity limitations. There are several rights  
8 delivered through the Keach Ditch which have nothing in common, except the point  
9 of diversion from Manastash Creek, confirmation by Gray, supra and the Keach Ditch  
10 delivery system.

11       WRC No. 122037 was filed by Lawrence Mellergaard (Laurin C. Mellergaard's  
12 father) and others. The Referee has studied the claim and the attachments  
13 (property ownership map and land owner statement) and finds that the claim sets  
14 forth a collective interest in 20 cfs of Manastash Creek "flood water." The  
15 combination of the map and owner statement attached to the claim reflect  
16 potentially interested property owners (claimants) with land located in a seven  
17 mile span from the point of diversion on Manastash Creek to near the Yakima  
18 River. There is no reference on the claim or the attachments to any water right  
19 confirmed via Gray, supra. In fact, the priority date asserted is 1932. A  
20 literal reading of WRC No. 122037 is that it seeks to preserve a right to flood  
21 waters diverted from Manastash Creek at the Keach/Jensen point of diversion in the  
22 quantity of 20 cfs; 6500 acre-feet per year. This "flood water" is ultimately  
23 delivered through laterals of the KRD.

24       The record currently before the Court contains many references to the lower  
25 class Manastash Creek water rights being "flood waters". This description is no  
26

1 doubt due to the runoff characteristics of the creek and the lack of water to  
2 satisfy even the highest three classes in drier years. If the signatories of WRC  
3 No. 122037 are assumed to be claiming water rights confirmed by Gray, supra the  
4 Referee must define proportionate interests in WRC No. 122037. In order to break  
5 the claimed 20 cfs down between the various claimants, the Gray Decree must be  
6 evaluated to allow comparison of the map attached to the water right claim and the  
7 lands owned by individuals confirmed rights in Gray, supra. That approach seems  
8 warranted for evaluation of Mellergaards' Court Claim No. 00982. Lawrence  
9 Mellergaard signed WRC No. 122037 and his signature appears on the attached map,  
10 as do the signatures of many others.

11 The question before the Referee is one of substantial compliance with  
12 Ch. 90.14 RCW filing requirements. The Referee concludes that WRC No. 122037 does  
13 constitute substantial compliance for the five Manastash Creek water rights  
14 associated with the Laurin Mellergaard property set forth below. The Referee's  
15 finding of waiver and relinquishment of the Manastash Creek water rights asserted  
16 under Court Claim No. 00982 is, therefore withdrawn.

17 The Referee recommends that the following rights to the use of Manastash  
18 Creek be confirmed: (1) With a June 30, 1876, priority date, 1.17 cfs from April  
19 1 through June 30, 0.583 cfs from July 1 through October 31, 356.4 acre-feet per  
20 year for irrigation of 40 acres; (2) with a June 30, 1877, priority date, 1.17 cfs  
21 from April 1 through June 30, 0.583 cfs from July 1 through October 31; 356.4  
22 acre-feet per year for the irrigation of 40 acres; (3) with a June 30, 1878, 1.17  
23 cfs from April 1 through June 30, 0.583 cfs from July 1 through October 31; 356.4  
24 acre-feet per year for the irrigation of 40 acres; (4) with a June 30, 1883, date  
25 of priority, 1.17 cfs from April 1 through June 30, 0.583 cfs from July 1 through

1       October 31; 356.4 acre-feet per year for irrigation of 40 acres. The place of use  
2       for all of these rights is the NE $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M. The  
3       point of diversion is into the Keach Ditch approximately 550 feet south and 650  
4       feet east from the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
5       Section 14, T. 17 N., R. 17 E.W.M. The Referee recognizes that the place of use  
6       for each of the rights is 40 acres within a 160 acre legal description. However,  
7       between the four rights a total of 160 acres is authorized to be irrigated within  
8       the 160 acre place of use and it is not possible to determine which portions of  
9       the NE $\frac{1}{4}$  of Section 17 would have the different priority dates. The land is farmed  
10      as a unit and reductions in acres and quantity of water diverted occurs as the  
11      creek flow declines commensurate with the priority of the rights. The Referee  
12      also recommends confirmation of a right with a June 30, 1874, date of priority for  
13      the diversion of 0.93 cfs from April 1 through June 30, 0.466 cfs from July 1  
14      through October 31, 283.9 acre-feet per year for the irrigation of 40 acres within  
15      that portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 16 lying west of the West Side Canal. The  
16      point of diversion is also into the Keach Ditch as described above.  
17

18       Since portions of the NE $\frac{1}{4}$  of Section 17 and the NW $\frac{1}{4}$  of Section 16 are  
19      assessed by the KRD and receive district water, a provision will be placed on each  
20      of the five rights reflecting that additional source of water.

21       The claimants except to the Referee's failure to recommend confirmation of  
22      diversionary water rights to springs located in the SW $\frac{1}{4}$  of Section 16, T. 17 N.,  
23      R. 18 E.W.M. The Mellergaards allege that Ecology's Investigation Reports SE-82  
24      through SE-86 have established an adequate record regarding the Mellergaards' use  
25      of spring water in the SW $\frac{1}{4}$  of Section 16. They further assert that Laurin

1 Mellergaard's testimony at the November 17, 1989, and June 15, 1995, hearings  
2 merely supplements and/or corrects the Ecology reports referenced above.  
3

4 Ecology Exhibits SE-83 and SE-84 are applicable to surface water ponds or  
5 springs in Section 16, T. 17 N., R. 18 E.W.M. All seven water sources described  
6 in SE-83 are small man-made ponds on the channel of Stone Quarry Canyon or receive  
7 water diverted from the intermittent stream channel. This report describes two  
8 acres of rill irrigation from a pond fed by Stone Quarry Canyon. SE-84 describes  
9 an unnamed spring that is used for diversionary stock water in the west 200 feet  
10 of the north 300 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16. The spring area observed by  
11 Ecology's field inspector is located 950 feet north and 750 feet east from the  
12 southwest corner of Section 16, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of said section. A  
13 three-inch pipeline is reported to supply water to a single concrete stock tank.

14 The claimants refer the Referee to four short form Ch. 90.14 RCW claims:  
15 No. 095640, 095639, 095628 and 095626. Respectively, these claims correlate with  
16 Exhibits DE-S117, S118, S119 and S120. The four WRCs No. 095640, 095639, 095628  
17 and 095626 are all filed on short forms, thereby limiting any right associated  
18 with the individual claims to no more than 5000 gpd of beneficial use and to no  
19 more than  $\frac{1}{2}$  acre of noncommercial lawn and garden use. It is possible that  
20 WRC No. 095640, which describes use of a well for stock water and irrigation of  
21 lawn and garden within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16, could have been filed with the  
22 intent of describing a spring source. As the claimant points out, it is sometimes  
23 difficult to discern whether a developed water source is a spring development or  
24 shallow ground water development. Marking ground water and describing the source  
25 as a well, if it actually is a spring, is not a fatal defect in complying with  
26 Ch. 90.14 RCW. However, Ecology's Report SE-84 describes a 3-inch pipeline

1 emanating from a known spring area. Mr. Mellergaard testified that the water  
2 sources associated with the four Ch. 90.14 RCW claims were all developed with  
3 large vertical cisterns ten feet or more in depth and that they all served a large  
4 feed lot complex which had stock water facilities for 1200 head of cattle.  
5 Ecology's report, SE-84, makes no reference to a feed lot but rather describes a  
6 single concrete stock tank and three adjacent stock tanks which were inoperable.  
7

8 Mr. Mellergaard's testimony establishes that lawn and garden irrigation from  
9 these surface water sources was discontinued in the 1940's and that the water  
10 collection facilities for each claimed water right includes a large diameter  
11 excavation ten or more feet deep. Water is intercepted below the land surface in  
12 each facility, although the claimant alleges that the sources are springs. The  
13 Referee does not reach the same conclusion. The developed sources as described  
14 appear to be shallow ground water and as such are not included within the scope of  
15 the current surface water general adjudication proceedings.

16 Ecology's SE-83 describes six ponds constructed in the channel of Stone  
17 Quarry Canyon for stock water use. Clearly development of ponds in the channel of  
18 a stream could not be construed as wells covered by the Ch. 90.14 RCW claims.  
19 However, this is a non-diversionary stock water use which is adequately covered by  
20 the stock water stipulation discussed on Pages 3 through 6 of the original Report  
21 of Referee. A diversionary use of surface waters from Stone Quarry Canyon is also  
22 described in SE-83. Again, the Referee cannot reach the conclusion that an  
23 individual would characterize a pipe diversion from a channel in the canyon as a  
24 well.

25 Mr. Mellergaard asserts that Ecology and the Referee are estopped from  
26 reaching determinations that claimants' Ch. 90.14 RCW filings are insufficient.

1 The claimants contend that some unidentified representative of a pre-Ecology,  
2 water resource agency provided flawed advice to Mr. Mellergaard in 1973. Ecology  
3 was formed during 1970; therefore, the only Washington State employees authorized  
4 to assist with questions regarding Ch. 90.14 RCW compliance would have been  
5 Ecology employees. It appears that any advice upon which Mr. Mellergaard may have  
6 relied was from some person unidentified who was not an Ecology employee.  
7 Therefore, estoppel does not appear to be applicable. The Referee cannot  
8 recommend confirmation of a diversionary right from any surface water source in  
9 the SE<sup>1</sup> of Section 16.

10 The final exception of the Mellergaards relates to the Referee's failure to  
11 recommend confirmation of water rights for use of water from on-farm drains or  
12 return flow. The Referee declined recommending confirmation due to lack of an  
13 adequate factual record upon which the source and quantification of the return  
14 flow could be identified and directed the claimants to the Court's prior rulings  
15 regarding limitation of confirmation of return flow rights. Mr. Mellergaard did  
16 not address return flow quantities or sources during his presentation at the  
17 supplemental hearing; therefore, the original findings of the Referee should be  
18 affirmed by the Court.

19 Use of water for the 1200 head of cattle, which are from time to time fed on  
20 the ranch, is characterized as being primarily from springs, Stone Quarry Canyon,  
21 ponds or wells, all located in the southerly portions of the ranch. Much of the  
22 surface water irrigation system is concrete lined head ditches or gated pipe. The  
23 crops grown are typically not pasture on most of the ranch; therefore, cattle are  
24 primarily in field areas during the non-irrigation season. For the reason  
25 discussed above, diversionary stock water rights cannot be recommended.

1 COURT CLAIM NO. 00950 -- Menastash Water Ditch Association  
2 (A)03025

3 Exceptions were filed with the Court by the Menastash Water Ditch Association  
4 and by Ecology in response to the Report of Referee for Subbasin No. 11  
5 (Manastash). The Court remanded Court Claim No. 00950 to the Referee on March 9,  
6 1995, for supplementation of the record. On June 7, 1995, Ecology and the  
7 Menastash Water Ditch Association filed with the Court a Stipulated Settlement  
8 which resolved the exceptions filed by both parties. The Stipulation includes the  
9 agreed quantification parameters for the Menastash Ditch water right. Based upon  
10 that Stipulation, Page 192, Lines 3½, 6 - 7½ and 11½ - 14½ are deleted and  
11 replaced with the following:

12 USE: Irrigation of 2191 acres and stock water

13 QUANTITY: 27.96 cfs from April 1 through June 30, 13.98 cfs from July 1  
14 through October 31 and 13.98 cfs from November 1 through March 31;  
15 8442.5 acre-feet per year for irrigation and 118.2 acre-feet per year  
for stock water

16 PLACE(S) OF USE: Beginning at the intersection of Richards County Road  
17 and the Menastash Ditch; thence proceeding in a generally northerly  
direction along the Menastash Ditch to the northwest corner of the SW¼  
18 of Section 1, T. 17 N., R. 17 E.W.M., in the County of Kittitas, State  
19 of Washington; thence north to the northwest corner of Section 36,  
20 T. 18 N., R. 17 E.W.M., said County and State; thence east along the  
21 Robinson Canyon County Road to the intersection with the Menastash  
22 Ditch; thence in a generally northerly direction along the alignment of  
23 said ditch to the intersection with the West Side Canal lying within the  
24 NE¼ of Section 25, T. 18 N., R. 17 E.W.M., said County and State; thence  
25 in a generally southeasterly direction along the alignment of said West  
26 Side Canal to the intersection with the Robinson Canyon County Road;  
thence easterly along said Robinson Canyon County Road to the northeast  
corner of the NW¼ of the NE¼ of Section 31, T. 18 N., R. 18 E.W.M., said  
County and State; thence south approximately 1320 feet; thence west to  
the intersection of the West Side Canal; thence following said canal in  
a generally southerly direction to a point where it intersects with  
Weaver County Road; thence west on Weaver County Road to the northwest  
corner of Section 5, T. 17 N., R. 18 E.W.M., said County and State;  
thence south along the section line approximately 1000 feet; thence  
proceeding along a line approximately south 70° west 1500 feet; thence

1 proceeding along a line in a northwesterly direction approximately 1300  
2 feet to the northeast corner of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 6,  
3 T. 17 N., R. 18 E.W.M., said County and State; thence running south  
4 approximately 4000 feet to the intersection with Hanson County Road;  
5 thence west 1320 feet to the southwest corner of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of  
6 Section 6, T. 17 N., R. 18 E.W.M., said County and State; thence north  
7 approximately 2640 feet to the northeast corner of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of  
8 said Section 6; thence proceeding on a line due west to the intersection  
9 of Cove County Road; thence south along Cove County Road to the  
10 intersection with Richards County Road; thence proceeding west on  
11 Richards County Road to Hatfield Canyon lateral; thence north along the  
12 lateral alignment to the northeast corner of the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of  
13 Section 12, T. 17 N., R. 17 E.W.M. of said County and State; thence west  
14 to the northwest corner of said Section 12; thence south to Richards  
15 County Road; thence west to the point of beginning

16 The various exceptions of Menastash Ditch Company and Ecology are agreed to  
17 be resolved in their entirety by incorporation of the stipulated agreement as set  
18 forth above. The parties may enter into stipulations which are binding between  
19 themselves. By entering into this stipulation with Menastash Water Ditch  
20 Association, Ecology has not only departed from the rulings in Gray, supra, but  
21 the position they have taken in this subbasin. More importantly, Ecology departed  
22 from its stated position in the Subbasin Pathway (and this case in general)  
23 regarding interpretation of Ch. 90.14 RCW water right claims (see exception by  
24 Ecology to Court Claim No. 01478, Roger and Rita Sparks, Page 106 of this  
25 Supplemental Report of Referee).

26 First, the acres authorized for irrigation in the stipulation are 2191,  
27 whereas the standard established by Gray, supra is one miner's inch per irrigated  
acre. Gray, supra confirmed 1200 inches of Class 2 water to the Menastash Water  
Ditch Association, which would be sufficient for 1200 acres. The record created  
during the evidentiary hearing and the supplemental hearing is replete with  
evidence that irrigated acres in the Manastash Basin require water deliveries for  
most fields from 7 to 20 acre feet per acre for on-farm use. Conveyance loss is

1 often recognized as an additional component of the water rights confirmed by the  
2 Court.

3 The instantaneous quantity awarded to the ditch association in Gray, supra  
4 would result in 7.0 acre-feet per acre being diverted from the creek for use on  
5 Association lands if 1200 acres were irrigated. However, if the 2191 acres  
6 specified in the stipulation are irrigated, only 3.85 acre-feet per acre is  
7 diverted from the creek. It is clear from the testimony that a significant  
8 quantity of the diverted water is not actually delivered to the land, but is lost  
9 in the 4-mile long ditch.

10 WRC No. 5074, filed pursuant to Ch. 90.14 RCW by Menastash Ditch Association,  
11 asserts a right to 24 cfs; 11,300 acre-feet per year for the irrigation of  
12 1500 acres. This is significantly different than the stipulation between Ecology  
13 and Menastash Ditch Association.

14 Due to the stipulation, the Referee recommends confirmation of the June 30,  
15 1872, water right described above.

17 COURT CLAIM NO. 01449 -- The Estate of Ramon C. Nielsen  
18 & The Estate of Marion Nielsen

19 Court Claim No. 01449 was filed with the Court on August 27, 1984, by Ramon  
20 and Marion Nielsen, father of Yvonne M. Hunt. Ramon Nielsen died prior to the  
21 original evidentiary hearing which was held during November of 1989, and  
22 Marion Nielsen was very ill at that time and ultimately died in 1994.  
23 Consequently, the claimants did not make an appearance at the evidentiary hearing  
24 to defend Court Claim No. 01449. Yvonne M. Hunt filed an exception with the  
25 Court, acting as personal representative of the Estate of Marion Nielsen, seeking

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1 an opportunity to present proof during the supplemental hearing. The Court  
2 remanded Court Claim No. 01449 to the Referee as requested by Yvonne M. Hunt.  
3

4 John Gilreath, Attorney at Law, represented Ms. Hunt at the supplemental  
5 hearing, at which time she provided testimony. The claim of Ramon C. and Marion  
6 Nielsen was modified during Ms. Hunt's testimony to the extent that a total of  
7 6.8 acres of irrigation is asserted with the source being Manastash Creek. The  
8 portion of the Hunt/Nielsen property upon which irrigation water is used is  
9 described as Parcel "A" for which no legal description was provided, although a  
10 county assessor's map including the parcel is attached to the Title Company  
Report, DE-S123.

11 The point of diversion from Manastash Creek is described as being located  
12 3,300 feet north and 2,640 feet east of the southwest corner of Section 4,  
13 T. 17 N., R. 18 E.W.M. Parcel "A" lies north of Manastash Creek adjacent to the  
14 diversion and is comprised of portions of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 4,  
15 T. 17 N., R. 18 E.W.M.

16 Water is pumped from Manastash Creek by a 10 horsepower (hp) pump and  
17 discharged into an earthen ditch system which supplies water to the hay field and  
18 to an extensive lawn and garden area, which was described as more than 1 acre in  
19 size. Although the record is not very clear, it suggests that the current ditch  
20 system is the same as was historically used to irrigate this land.

21 Ramon Nielsen filed WRC No. 137559 with Ecology in 1974 asserting a water  
22 right from Manastash Creek for the subject property. The claim is not specific as  
23 to the claimed quantities, relying instead on a statement regarding half interest  
24 in the Yocum-Swartz Ditch based on a 1907 deed (DE-S123) which transferred  
25 ownership of the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 4, T. 17 N., R. 18. E.W.M. from Yocum to Brown.

27  
28 REPORT OF REFEREE  
Re: Subbasin No. 11

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

1       Exhibit DE-S92 (Anderville Farms) contains a right-of-way agreement between  
2 Katharina Schwartz and A. W. Yocum dated 1901 regarding an existing ditch system  
3 which crossed the Schwartz property ( $N\frac{1}{2}SW\frac{1}{4}$  of Section 4, T. 17 N., R. 18. E.W.M.)  
4 and which supplied water to lands owned by Yocum ( $S\frac{1}{2}N\frac{1}{4}$  of said Section 4). The  
5 Hunt/Nielsen property is a portion of that Yocum homestead and is riparian to  
6 Manastash Creek. The Referee concludes that irrigation water has been delivered  
7 to the  $S\frac{1}{2}N\frac{1}{4}$  of Section 4 since before 1901; however, the record does not establish  
8 where the original points of diversion and ditches were located. It has been  
9 reasonably established, however, that the current ditch system is a portion of the  
10 historic delivery system and the current point of diversion appears to have been  
11 in use for a long period of time.

12       Testimony describes the maximum instantaneous diversion as 3.0 cfs, which is  
13 high for a 10 hp pump. The record does not contain sufficient information to  
14 calculate the actual pump capacity since the total head and pump efficiency are  
15 not described.

16       The claimant asserts a water duty for the creek bottom, timothy hay field of  
17 18.3 acre-feet per acre based upon testimony of Richard Bain, consulting engineer  
18 (see Anderville Farms, Court Claim No. 01950 of the original evidentiary  
19 hearing). The properties are both located in Section 4.

20       The Hunt/Nielsen property in Section 4, T. 17 N., R. 18. E.W.M. was not  
21 included in Gray, supra nor was the Yocum family, owners of record during the  
22 Superior Court action, a party to Gray, supra.

23       The Referee concludes that Gray, supra is not a factor in determination of  
24 the historic rights for this property and that the Riparian Doctrine is  
25 applicable. Therefore, the appropriate priority date is August 5, 1886, the date  
26

1 Eva J. Thorp submitted proof of development. Claimant's assertion of a priority  
2 date three years earlier based upon the "relation back" theory is not consistent  
3 with the prior ruling of the Court in its January 19, 1995, Memorandum Opinion  
4  
RE: Priority Date-Date of Patent or Date of Entry.

5 Although quantities of 0.02 cfs; 2 acre-feet per acre were claimed during  
6 testimony for lawn and garden irrigation, it is clear that the lawn and garden  
7 area is in excess of 1 acre in size, and is irrigated via the gravity flow ditch  
8 system. Consequently, the Referee will recommend that 1.3 acres of the total  
9 6.8-acre Parcel "A" be described as lawn and garden and 5.5 acres a timothy hay  
10 field nearer the creek. No suggested water duty for the lawn and garden area  
11 other than the standard 2 acre-feet referenced above was discussed, however, it is  
12 apparent that some higher value is required. The Referee suggests utilizing  
13 1 inch per acre from April 1 through June 30 and 1/2 inch per acre from July 1  
14 through October 31 for the irrigation of 6.8 acres. This converts to 0.158 cfs  
15 from April 1 through June 30 and 0.079 cfs from July 1 through October 31 for a  
16 total of 48.3 acre-feet.  
17

18 The record regarding stock water states that all the stock have riparian  
19 access to the creek. Therefore, the Referee will not recommend confirmation of a  
20 diversionary stock water right and refers claimant to the stock water stipulation  
21 beginning on Page 4 of the original Report of Referee which will adequately  
22 satisfy the claimant's stock water needs.  
23

24 Although the Referee has determined that a water right has been perfected and  
25 historically exercised for Parcel "A," a recommendation cannot be made for  
26 confirmation until Ms. Hunt provides a legal description of Parcel "A."  
27  
28

1       Presentation of this information as part of an exception to the Supplemental  
2 Report of Referee should allow confirmation of a right.  
3

4       COURT CLAIM NO. 01953     -- Harold Orr

5       Harold Orr filed exceptions with the Court regarding the Report of Referee  
6 for Subbasin 11 (Manastash). Mr. Orr was represented at the supplemental hearing  
7 by his attorney, Sharon M. Brown, and testimony was taken from Harold Orr and Bob  
8 Emerson, a neighbor.

9       Exceptions were filed regarding Ch. 90.14 RCW water right claim substantial  
10 compliance for water diverted from Manastash Creek and failure of the Referee to  
11 recommend confirmation of a water right for an unnamed pond located within the  
12 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M. The Referee found that the water  
13 right which had been awarded to the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18, T. 17 N., R. 18 E.W.M.  
14 through Gray, supra had been waived and relinquished due to failure to file a  
15 Ch. 90.14 RCW claim. Lacking proof regarding historic use of the pond in  
16 Section 13 and facts which would allow for quantification of a water right, the  
17 Referee could not recommend confirmation of a water right.

18       Harold Orr and Bob Emerson presented testimony regarding the water which  
19 flows easterly from the unnamed pond located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13,  
20 T. 17 N., R. 17 E.W.M. The flow fluctuates significantly during the year with  
21 the lowest flow in the winter. Water enters the Orr property from the west  
22 through a culvert under Cove Road and runs north along Cove Road to a ditch  
23 located slightly south of Manastash Road and the north line of the Orr property.  
24 Water is reported to continue north under Manastash Road and to flow and/or  
25 migrate underground to the east across the Orr property. Mr. Orr testified that  
26 about 35 acres benefit from the high water table created by this flow of water

27  
28       REPORT OF REFEREE  
          Re: Subbasin No. 11

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

1 from the west without actual diversion of irrigation water. No estimate of the  
2 instantaneous flow was put in the record and the only discussion of diversion of  
3 the water was that water was sometimes pumped from a year around pond located near  
4 the Orr home at the east side of the property. This unnamed pond lies down  
5 gradient from Keach Ditch and the KRD Ditch such that return flow water would  
6 collect in the area of the pond and in the northerly portion of the Orr property.  
7 It is in this area where Mr. Orr describes shallow ponds which dry up seasonally;  
8 however, the eastern pond is reported to retain water all year. The irrigation  
9 system for the farm is a wheel line located south of the sub-irrigated area. The  
10 fields above (south of) the Keach Ditch are flood irrigated with KRD water.

11 The Referee concludes that the water in the unnamed pond located in the  
12 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13 is a combination of return flow and natural spring water. No  
13 evidence was presented as to the total quantity or date of first use and no  
14 testimony was presented as to the natural flow contribution. The primary benefit  
15 to the Orr fields appears to be attributable to sub-irrigation--not from diversion  
16 and perfection of an appropriative water right. Although there seems to have been  
17 a wet area in the Orr field for many years, evidence is not available to establish  
18 a priority date before 1917. In conclusion, the Referee cannot recommend  
19 confirmation of a water right from the unnamed pond located in Section 13 due to  
20 lack of facts regarding priority and quantification of a water right, as well as  
21 the lack of a water right claim and evidence that a diversionary right was  
22 perfected.

23 The Referee was directed to WRC No. 122037 and the documents attached to that  
24 claim when it was filed with Ecology in 1973. The claim was prepared and filed in  
25 behalf of numerous property owners apparently including Ward Wells, the previous

1 owner of the Harold Orr property located in the NW $\frac{1}{4}$  of Section 18. WRC No. 122037  
2 and its two attachments were introduced into the record in behalf of Court Claim  
3 No. 00982, Laurin C. Mellergaard. WRC No. 122037 is asserted to satisfy the  
4 substantial compliance criteria and to serve as the Ch. 90.14 RCW claim foundation  
5 for the 50 inches of Class 8, Manastash Creek water confirmed for A. Anderson in  
6 Gray, supra. Essentially the same argument was presented in behalf of the Gray,  
7 supra rights associated with the Laurin Mellergaard property further east on the  
8 Keach Ditch Channel. The Referee concluded in the factual circumstances related  
9 to Court Claim No. 00982, Laurin C. Mellergaard, that substantial compliance was  
10 achieved via WRC No. 122037. Although Harold Orr presents slightly different  
11 facts, there are no substantive differences as to substantial compliance and the  
12 Orr exception should be granted. A more detailed discussion of the facts and  
13 logic appear on Page 76 of this Supplemental Report of Referee, Court Claim  
14 No. 00982, Laurin C. Mellergaard. The following water right is recommended for  
15 approval for the NW $\frac{1}{4}$  of Section 18, T. 17 N., R. 17 E.W.M.

16 With a June 30, 1880, priority date: 1.165 cfs from April 1 through June 30  
17 and 0.583 cfs from July 1 through October 31; 355.4 acre-feet per year for  
18 irrigation of 50 acres. Due to the KRD assessment of a portion of this property,  
19 an advisory provision will be included as to the dual sources of water.  
20

21 COURT CLAIM NO. 00785 -- Packwood Canal Company, Inc.  
22 (A)04801

23 Exceptions to the Report of Referee for Subbasin No. 11 (Manastash) were  
24 filed in behalf of Packwood by their attorney, Hugh M. Spall. Packwood excepts to  
25 the lack of confirmation of rights for an unnamed creek, Middle Creek and several  
26  
27

REPORT OF REFEREE  
Re: Subbasin No. 11

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

1       drains. Packwood also filed exceptions to the Subbasin No. 8 (Thorp) Report of  
2 Referee which have been evaluated in the Subbasin No. 8 Supplemental Report of  
3 Referee dated March 4, 1997.

4       Packwood sought an opportunity to clarify the record regarding the locations  
5 of the unnamed creek and Middle Creek. They also wished to provide testimony  
6 and/or documentation regarding instantaneous and annual quantities historically  
7 used by Packwood.

8       Claimants, including Packwood patrons, during the presentation of their own  
9 claims testified about the history of irrigated agriculture within the service  
10 area of Packwood Canal. The record from both the initial hearing and the  
11 supplemental hearing for claimants whose lands lie in the vicinity of Packwood  
12 Canal contains numerous exhibits and extensive testimony establishing that local  
13 ranches had been fully developed many years prior to the Ellensburg Power Canal's  
14 construction. Water rights for use of the creeks currently intercepted by  
15 Packwood Canal were not established by the canal company or the City of  
16 Ellensburg, but by the individual landowners before agreements were executed prior  
17 to construction of the canal. Testimony and the various deeds explain that the  
18 Ellensburg Power Canal incidentally served as a collection system for natural flow  
19 and return flow. Construction of the canal allowed development of revised  
20 conveyance systems on the various farms which would efficiently distribute water  
21 to previously irrigated fields. As a point of interest, the record suggests that  
22 the canal in the vicinity of the J. E. Rego farm was not yet built in 1911. Any  
23 pre-1903 water rights which are ultimately confirmed for use on lands within the  
24 Packwood service area will be based upon rights perfected by the individual  
25 property owners prior to the City of Ellensburg agreements.

1       Packwood is asserting that Middle Creek and an unnamed creek in Section 32  
2 are two water sources which were originally flumed over the canal. The Referee  
3 did not initially recommend confirmation of a water right due to uncertainty over  
4 location of these water sources, lack of evidence of historic use and  
5 quantification. At the supplemental hearing, the testimony was that Middle Creek  
6 flows into Packwood Canal in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32. The Ch. 90.14 RCW claim  
7 filed for Middle Creek is purported by Packwood to contain a typographical error,  
8 thereby erroneously stating that the diversion is in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32. An  
9 aerial photo exhibit also purports to show the location of Middle Creek in the  
10 NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, emanating out of an irrigated field along Robinson Canyon  
11 Road, south of Hatfield Canyon Creek. The location of Middle Creek shown on the  
12 aerial photo, with no natural drainage above the creek, would lead the Referee to  
13 conclude that only return flow waters would be in the creek. There is a natural  
14 drainage above Packwood Canal which meets the canal in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32.  
15 This could actually be Middle Creek; however, due to the contradictory evidence,  
16 the Referee cannot reach that conclusion. The unnamed creek is also marked on the  
17 aerial photograph and is adjacent to the Thorp Highway in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
18 Section 32. This unnamed creek also begins in irrigated fields with no natural  
19 drainage that obviously feeds the creek. This again leads the Referee to believe  
20 it is fed from return flow waters. Based upon the preceding analysis, the  
21 Referee does not recommend that rights be confirmed for these two sources.

22       Packwood is asserting rights to use several underground drains that discharge  
23 into the canal. Evidence was presented to show that these drains discharge into  
24 the canal during the winter months when there arguably should not be return flows  
25 contributing to the flow. However, the flow of these drains diminishes in the

1 winter and they could be capturing shallow ground water in the area. Of course,  
2 ground water is not being adjudicated in this proceeding. The Referee is also  
3 aware of testimony that Taneum Canal and Menastash Ditch carry water into the area  
4 during the winter months, which could be contributing to the flow in the drains.  
5 There is nothing in the record except the claims to show when these drains might  
6 have first been used. The Ch. 90.14 RCW claims filed for the drains indicate  
7 dates of first use in the 1950's through 1970's. In order for there to be an  
8 existing right for uses initiated during that time period a permit or certificate  
9 should have been obtained through the procedures in Ch. 90.03 RCW or Ch. 90.44 RCW  
10 (REGULATION OF PUBLIC GROUND WATERS) and none have been included in the record.  
11 The Referee recommends that surface water rights not be confirmed for any of the  
12 drains located in Subbasin No. 11.

13 Evidence has been presented by Three Bar G Ranch, Inc., Court Claim  
14 No. 02068, which establishes perfection of a June 30, 1871, water right from  
15 Hatfield Canyon Creek by Benjamin W. Frisbie, a predecessor owner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 32, T. 18 N., R. 18 E.W.M. Three Bar G irrigates a 5-acre portion of that  
17 parcel with water delivered by Packwood. The turnout is down ditch from the  
18 confluence of Hatfield Canyon Creek and the canal; therefore, the water used by  
19 Three Bar G is reasonably certain to be of Hatfield Canyon Creek origin. Since  
20 Packwood is the water purveyor and they filed the Ch. 90.14 RCW claim for Hatfield  
21 Canyon Creek and have previously been confirmed 2.5 cfs of Hatfield Canyon Creek  
22 water, the Referee proposes confirmation of this 1871 water right in Packwood  
23 Canal Company's name. The priority date is June 30, 1871, for irrigation of  
24 5 acres from April 1 through October 31 with water of Hatfield Canyon Creek in the  
25 quantities of 0.932 cfs; 50.5 acre-feet per year. The point of diversion is

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1       550 feet east of the northwest corner of Section 32 being within either the SW $\frac{1}{4}$ SW $\frac{1}{4}$   
2       of Section 29 or the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. The place of  
3       use is that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. lying  
4       north and east of Packwood Canal.

5  
6       COURT CLAIM NO. 06625     -- Judith C. Pierce

7       On October 11, 1991, a late statement of claim was filed by Ms. Pierce. On  
8       November 14, 1991, the Court entered an order referring Court Claim No. 06625 to  
9       the Referee for further processing.

10      Judith Pierce, represented by Attorney John P. Gilreath, provided testimony  
11      and offered exhibits in support of Court Claim No. 06625 at the supplemental  
12      evidentiary hearing for Subbasin No. 11. She owns 125 acres, of which 65 acres  
13      are located in the W $\frac{1}{2}$ SE $\frac{1}{4}$  and the balance in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
14      Section 7, T. 17 N., R. 18 E.W.M. A right is being asserted for the irrigation of  
15      91.4 acres with water diverted from Manastash Creek at a point described as the  
16      headgate of Jensen Ditch. Water is conveyed to the Pierce property via Jensen  
17      Ditch to a spill into the KRD South Branch Canal near the Manastash Creek crossing  
18      and thence via a KRD lateral which runs easterly adjacent to Manastash Road and  
19      along the south boundary of the Pierce property. The farm is assessed by the KRD  
20      for 88 acres of water delivery, which Richard Bain, consultant hired by Judith  
21      Pierce, reports as being for approximately the same area of 91.4 acres asserted to  
22      have Manastash Creek water rights. The KRD water and creek water are delivered  
23      via an open ditch approximately one-half mile long, which empties into a farm pond  
24      located near the center of the farm. At this point a 15 bhp pump delivers the  
25      water into a sprinkler system which operates at approximately 50 pounds per square  
26      inch (psi) pressure. The 1.66 cfs observed by Mr. Bain on June 7, 1995, was being

27  
28      REPORT OF REFEREE  
          Re: Subbasin No. 11

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

1 delivered from the lateral into the ditch, which ultimately leads to the pond.  
2 The source of the water could have been KRD or Manastash Creek or a mixture of  
3 both. The record does not include a definitive answer to the quantity of creek  
4 water actually diverted.

5 The claimed Manastash Creek water rights rely upon several water rights (or  
6 parts thereof) confirmed in Gray, supra and two Notices of Appropriation dated  
7 September 13, 1898, filed by Ole Morn, Halver Nelson, M. Gerberg and Even  
8 Thorstenson.

9 The first matter which needs to be dealt with is the chain of title for the  
10 Pierce property. The SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. was owned by  
11 Peter J. Norling at the time of the Gray, supra litigation. Norling was confirmed  
12 30 inches of Class 11, Manastash water by Gray, supra. Pierce asserts that each  
13 acre of the original Norling 160-acre homestead enjoys an equal prorata share of  
14 the 30-inch water right or 30/160 or 0.1875 inch per acre. Ms. Pierce claims that  
15 her proportionate share of the Norling right would be 0.26 cfs for the 60 acres  
16 she owns in the SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. The Referee is not  
17 convinced that proration would be appropriate. The 30 acre right is appurtenant  
18 to the 30 acres on which it was beneficially used.

19 Claimant Edward Sullivan, through Court Claim No. 03204, has been recommended  
20 for confirmation of 3 inches of the Norling water right and claimant Wayne Wells,  
21 through Court Claim No. 00578, has been recommended for confirmation of the  
22 remaining 27 inches of the 30-inch Norling water right. At the time of the  
23 initial evidentiary hearing and preparation of the report, they were the only  
24 claims to the Norling water right. Judith Pierce took no exception to the  
25 referenced recommendations nor was any testimony offered to explain how an

1 additional 11.26 inches of Class 11 water can be recommended. The Referee can  
2 only surmise that Pierce asserts the confirmations referenced above are in error  
3 because prorata shares were not calculated. If the claimant is contending that  
4 the Sullivan and Wells recommendations are in error, notice should have been given  
5 to those parties and specific evidence provided to show those recommendations were  
6 in error.

7 The Referee was not able to locate in the record any Ch. 90.14 RCW claim for  
8 the portion of the SW $\frac{1}{4}$  of Section 7 owned by Ms. Pierce. The Referee did review  
9 WRC No. 110775 which was filed by Neil R. Pierce for the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7,  
10 T. 17 N., R. 18 E.W.M., a 20-acre parcel not owned by Judith Pierce. The claim  
11 asserts storage rights on Manastash Lake and Lost Lake with an instantaneous rate  
12 of diversion of 6.0 cfs for irrigation of 40 acres. The place of use described on  
13 the claim is the 20-acre parcel indicated above, therefore, the claim does not  
14 protect water rights for the Pierce property in the SW $\frac{1}{4}$  of Section 7.  
15 Additionally, the claimant presented no testimony regarding storage and use of  
16 water in either Manastash Lake or Lost Lake. Due to the lack of a Ch. 90.14 RCW  
17 claim, the lack of proof that the claimants land enjoyed a portion of the Norling  
18 right and the prior recommendation to Sullivan and Wells, the Referee cannot  
19 recommend confirmation of any right to Manastash Creek water for the N $\frac{3}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  of  
20 Section 7, T. 17 N., R. 18 E.W.M.

21 Claimant also owns 65 acres lying within the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7, T. 17 N.,  
22 R. 18 E.W.M. for which the following rights to Manastash Creek are asserted:

- 23  
24 --20 inches of Class 3, Gray, supra right;  
25 --20 inches of Class 12, Gray, supra right;  
26 --30 inches of Class 1, Gray, supra right.

1       The Referee will deal with the claim to Class 1 water right first. A right  
2 is asserted for 65/120 of the Christopher Gray, Class 1 right. Claimant relies  
3 upon the Decision in Gray, supra (see Section 23 thereof) to establish that  
4 Christopher Gray owned the SE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. at the time of  
5 the decree and that the 120-inch, Class 1 right confirmed to said Christopher Gray  
6 was appurtenant to the SE $\frac{1}{4}$  of said Section 7. The Referee acknowledges that the  
7 decision does describe, under the discussion of lands riparian to Reed Creek, the  
8 SE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. and states that it is owned by  
9 Christopher Gray. That reference is obviously in error as the SE $\frac{1}{4}$  of Section 7  
10 lies south of Manastash Creek, is not riparian to Reed Creek and the record shows  
11 that it was not owned by Christopher Gray. The Schedule of Water Rights for Gray,  
12 supra and documents submitted by Eugene Prater at the initial evidentiary hearing,  
13 show that Christopher Gray owned the E $\frac{1}{2}$  of Section 6, T. 17 N., R. 18 E.W.M., not  
14 Section 7. The Christopher Gray, Class 1 water right has been recommended for  
15 approval to claimants Eugene J. and Yvonne Prater, Court Claim No. 00657 (see  
16 Page 137, Lines 13-17 of the Report of Referee for Manastash Creek). Ms. Pierce  
17 did not take exception to the Prater recommendation.

18       The claimant did not submit chain of title documents to show who owned the  
19 SE $\frac{1}{4}$  of Section 7 at the time of Gray, supra; however, Class 3 rights were conveyed  
20 by Marcus A. Brown and H. G. McNeil to Mary Gregory and appear to be based upon  
21 rights acquired from J. D. and/or Sabrina Damman. Documents in the record reflect  
22 a transfer of two 10-inch rights to Walter J. Smith for use within the W $\frac{1}{2}$ SE $\frac{1}{4}$  of  
23 Section 7, T. 17 N., R. 18 E.W.M. The decree awarded a Class 12 right for 25  
24 inches and a Class 17 right for 15 inches to I. B. Taylor. The Schedule of Rights

1 show I. B. Taylor and W. Smith owning the W $\frac{1}{2}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7  
2 respectively and each having half of the rights.  
3

4 Although the Class 3 rights may have been transferred to the Pierce property  
5 and half of the Class 12 and 17 rights appear to have been appurtenant to the  
6 Pierce property, the Referee cannot find any evidence that a Ch. 90.14 RCW claim  
7 was filed for the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7.

8 Based upon the facts presented above, the Referee cannot recommend  
9 confirmation of any right to Manastash Creek water for Court Claimant No. 06625,  
10 Judith Pierce.

11 COURT CLAIM NO. 02272 -- James L. Podkranic  
12 & Maxine Podkranic

13 James L. and Maxine R. Podkranic, Court Claim No. 02272, filed an exception  
14 with the Court regarding the Referee's recommendation to deny confirmation of a  
15 Manastash Creek water right for their land.

16 On June 16, 1995, the designated day for the Podkranics to present testimony  
17 and evidence in support of their exception, no one appeared to represent Court  
18 Claim No. 02272. The Referee has read the Podkranics' exception and reviewed the  
19 attached water right claim for a domestic well. Although the Podkranics assert  
20 that Mr. Williams, the owner of record during the claims registration period, made  
21 an error, no evidence has been presented to support that contention.

22 Lacking new evidence, the Referee has no choice but to recommend that the  
23 original recommendation be affirmed and that no Manastash Creek water right be  
24 confirmed.

25  
26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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1 COURT CLAIM NO. 02270 -- Mel Shenyer  
2 & Jodee Shenyer  
3 Robert Dean

4 Due to lack of compliance with Ch. 90.14 RCW, the Referee did not recommend  
5 confirmation of a water right for claimants Mel and Jodee Shenyer in the original  
6 Report of Referee. Richard T. Cole, Shenyers' attorney, filed a six-part  
7 exception to the Report of Referee. The Claimants' exceptions as to substantial  
8 compliance and estoppel were denied by the Court on October 13, 1996; therefore,  
9 Court Claim No. 02270 was not remanded to the Referee for consideration of factual  
10 exceptions.

11 Notwithstanding the lack of a remand, the Referee agrees that an error in the  
12 legal description used in the Report of Referee exists. Page 71, Line 20, of the  
13 Report of Referee is therefore corrected to replace the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8 with  
14 the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 8, which reflects the Shenyer ownership. In addition, it was  
15 noted that claimants Mel Shenyer and Robert Dean were not included in the list of  
16 claimants recommended for inclusion in the non-diversionary stock water list on  
17 Pages 179 and 180 of the Report of Referee. It appears that stock grazing these  
18 properties have access to springs or Manastash Creek. The Referee will add  
19 claimants Shenyer and Dean to the "Non-diversionary Stock Water" list to correct  
20 this oversight.

21 COURT CLAIM NO. 00380 -- Robert M. Smith  
22 & Irma Smith

23 Ecology filed an exception with the Court in response to the Report of  
24 Referee for Subbasin No. 11, Manastash, regarding Court Claim No. 00380. The  
25 Court remanded the Robert M. and Irma Smith claim to the Referee for taking  
26 further evidence. However, the Smiths did not make an appearance. Their attorney

1 of record, Hugh Spall, was present at the supplemental hearing; however, he was  
2 not there to represent the Smiths.

3 The Smiths' Court Claim No. 00380 appears to have been listed by Ecology in  
4 their exceptions in error. Upon reviewing the record, the Referee notes that the  
5 text of the Ecology exception regarding Court Claim No. 00380 is actually citing  
6 to Page 153 of the Manastash Report of Referee where Court Claim No. 00258 was  
7 being addressed for claimants Wayne and Margaret Smith. Due to the Ecology error,  
8 Court Claim No. 00258 was not remanded to the Referee to resolve what appears to  
9 be a serious omission in the Finding of Fact section of the Report of Referee.  
10 The 1871, Class 1 right recommended by the Referee on Page 155, Lines 15-18 did  
11 not get carried into the Schedule of Rights. The Referee proposes to correct that  
12 omission by including that 1871 water right in the Schedule of Rights in the  
13 Supplemental Report of Referee. Due to the lack of a remand for the balance of  
14 the Ecology exception for Court Claim No. 00258, Wayne and Margaret Smith, and  
15 failure of Ecology to pursue those exceptions, the Referee will not delve into  
16 those issues.

17 Robert M. and Irma Smith's Court Claim No. 00380 was recommended in the  
18 Report of Referee for denial and no supplemental record having been made regarding  
19 that claim, the Referee recommends affirmation of the denial.

20 COURT CLAIM NO. 00258 -- Wayne Smith  
21 & Margaret Smith

22 The Referee recommended confirmation of three water rights under Court Claim  
23 No. 00258. An exception was timely filed by Wilhelm Bakke regarding the Referee's  
24 recommendation to confirm a right to the Smiths for use of the spring located on  
25 the Bakke property. Mr. Bakke urges that the Court deny confirmation of this

1 June 30, 1880, water right for use of 0.125 cfs; 37.75 acre-feet per year from an  
2 unnamed spring for irrigation of 5 acres and 0.01 cfs; 1 acre-foot per year for  
3 stock water. The Bakkes assert that the spring arises on Bakke property and that  
4 water has not historically been used for irrigation and stock water on the Wayne  
5 Smith property.

6 The record contains affidavits and/or other written statements by Edward L.  
7 Sullivan, Ron Nickels and Wayne Smith regarding use of this spring. It is  
8 undisputed that the spring arises on Bakke property and flows northerly onto the  
9 Wayne Smith property. It is apparent that over the years the KRD has modified the  
10 pipes and flumes which convey the water under a KRD access road and across the KRD  
11 lateral. In any case, open channels exist on both the Bakke and Wayne Smith  
12 properties in fields where cattle have riparian access to the limited spring  
13 water. Apparently, during previous decades, the spring flow was far larger, but  
14 has for many years been adequate only for stock water.

15 Bakke seeks not only denial of the recommended rights to Wayne Smith, but  
16 also recognition by the Court that stock utilize the spring channel on the Bakke  
17 property. On Page 179 of the original Report of Referee, the riparian rights for  
18 the Bakke claim are recognized.

19 During testimony at the supplemental hearing, Wayne Smith acknowledged that  
20 it has been many years since water has been available for irrigation or for  
21 diversionary stock water from the spring. Mr. Smith's testimony seems to withdraw  
22 his claim to any diversionary water right. His position seems clear in that there  
23 is no water to fight over and no use could be satisfied, except riparian stock  
24 water.

1       The Referee therefore recommends that the Subbasin No. 11 (Manastash) Report  
2 of Referee be revised consistent with the supplemental record. Wayne and Margaret  
3 Smith are to be added to the list of claimants confirmed in the riparian stock  
4 water category. Also, the recommendation for confirmation of the June 30, 1880,  
5 diversionary right is to be deleted as it appears on Page 155, Lines 23-25 and  
6 Page 209, Lines 1-13.

7  
8       COURT CLAIM NO. 01770     -- Lawrence E. Spannagel  
9                                  & Sula F. Spannagel

10      COURT CLAIM NO. 04569     -- Vernon Burghart

11      Claimants Spannagel and Burghart jointly filed an exception with the Court in  
12 response to the Referee's finding of waiver and relinquishment of Manastash Creek  
13 water in Subbasin No. 11. The claimants urge the Court to disregard the failure  
14 to file Ch. 90.14 RCW water right claims and rely upon the long history of water  
15 use and the water right confirmed by Gray, supra. The claimants advise the Court  
16 that they are relatively new owners of their respective properties and relied upon  
17 assurances made by the previous owners as to compliance with all water right  
18 filing requirements. Spannagel succeeds to W. G. Wight, who filed Court Claim  
19 No. 01770, and Burghart filed Court Claim No. 04569 on August 3, 1989. The  
20 claimants' exception makes reference to Court Claim Nos. 04678, 04637 and 02909.  
21 Those claims are in the names Dolores W. Ayers, Clarence & Hazel Harrell and  
22 Lawrence E. & Sula F. Spannagel, respectively. Document No. 02909 is the Court  
23 document via which the Court approved substitution of claimant Spannagel for W. G.  
24 Wight. The Referee concludes that errors were made in the claim number citations  
25 and will therefore be evaluating Court Claim Nos. 01770 and 04569, Spannagel and  
26 Burghart, respectively.

27  
28      REPORT OF REFEREE  
Re: Subbasin No. 11

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1       The Court directed the Referee to investigate only the question of compliance  
2 with Ch. 90.14 RCW claim registration at the supplemental hearing.

3       Claimant Burghart introduced into the record a copy of WRC No. 161052, which  
4 is a short form claim for ground water filed by Larry D. Neece, a prior owner of  
5 the Burghart property. The claim indicates ground water is used for domestic  
6 supply and irrigation of lawn and garden. Mr. Burghart surmises that Mr. Neece  
7 must have been filing on both surface and ground water on the same claim and  
8 merely made a mistake as to the proper form to use. Burghart also refers to  
9 Joseph Marchbanks who preceded Mr. Neece in ownership of the Burghart parcel.  
10 Marchbanks also filed a WRC No. 004034, a long form ground water claim for a well  
11 with a claimed priority date of 1969. Mr. Burghart concluded that the Marchbanks  
12 claim was indeed filed on the domestic well. A copy of Marchbanks WRC No. 004034  
13 was not included in Exhibit DE-S171, although the transcript indicates that  
14 Burghart had intended to include one. The Referee took the liberty of reading the  
15 claim on microfilm since it was specifically discussed by Burghart and was not  
16 included in Ecology's Exhibit SE-3 (claims). Neece appears to have filed a  
17 redundant claim on the domestic well. Being a new owner, he would most likely not  
18 have been aware that Marchbanks had previously filed WRC No. 004034.

19       If the Neece WRC No. 161052 were concluded to be a surface water claim for  
20 Manastash Creek water, the limitation imposed by RCW 90.14.051 would control.  
21 Therefore, no more than 5000 gpd and no more than one-half acre of noncommercial  
22 lawn and garden irrigation could be confirmed. The Referee has concluded that a  
23 Ch 90.14 RCW claim was not filed for the use of Manastash Creek water on the  
24 Burghart property, therefore, no surface water right can be recommended for  
25 approval.

27       REPORT OF REFEREE  
28 Re: Subbasin No. 11

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The Spannagels were preceded by W. George Wight who filed two Ch. 90.14 RCW short form claims (WRCs No. 059246 and 137638). Both claims were submitted to Ecology during the spring of 1974. WRC No. 059246 was filed for use of ground water for domestic supply, stock watering and lawn and garden irrigation. The second claim, WRC No. 137638, is also designated as a ground water source for irrigation of lawn and garden and, under "other use," for  $2\frac{1}{2}$  acres of pasture irrigation. The Referee concludes that W. George Wight filed on two separate water sources as the claims were filed about three months apart. Lacking any facts which would suggest a source of irrigation water other than Manastash Creek or KRD, the Referee believes W. George Wight substantially complied with Ch. 90.14 RCW for the Manastash Creek source, however, his choice of a short form filing resulted in waiver and relinquishment of all his interest in Manastash Creek water other than 5000 gpd, not to exceed one-half acre of noncommercial lawn and garden irrigation.

Therefore, the Referee recommends confirmation of  $\frac{1}{2}$  miner's inch, 0.0117 cfs; 3.3 acre-feet per year for stock water and irrigation of one-half acre of lawn and/or garden from April 1 through October 31 with a priority date of June 30, 1878. The point of diversion from Manastash Creek is at the Reed Creek diversion. The place of use for the water is described as follows:

That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. described as follows: Beginning 364.7 feet east from the northwest corner of said SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence east 196 feet; thence south 654 feet to the north right-of-way of County Road; thence south  $87^{\circ}30'$  west along said right-of-way 200 feet more or less to a point which is 678.5 feet south of the point of beginning; thence north to the point of beginning.

1 COURT CLAIM NO. 01478 -- Roger C. Sparks  
2 & Rita M. Sparks  
3 Peter Evans  
4 & Nora Evans  
5 Howard Page  
6 & Mary Page  
William J. Chapman  
& N. Denise Chapman  
James A. Smith  
& Linda C. Smith

Roger C. and Rita M. Sparks filed Court Claim No. 01478 with the Court and joined additional parties to the claim as they sold portions of the property. Peter and Nora Evans and Howard and Mary Page were joined for their respective parcels. The final parties joined before the Report of Referee was written were Terryl and Vonda Draney. Subsequently, the Draneys' short platted their 24-acre parcel and sold the two tracts to William J. and N. Denise Chapman and Kenneth G. Dimeo. Mr. Dimeo later sold his 19.1-acre portion of the Draney short plat to James A. and Linda C. Smith. Exceptions to the Report of Referee for Subbasin No. 11 (Manastash) were filed with the Court on behalf of Howard and Mary Page and Terryl and Vonda Draney by their attorney Hugh Spall. William J. and N. Denise Chapman and James A. and Linda A. Smith, successors to Draney and Dimeo, were represented at the remand hearing by Mr. Spall as were the Pages. Testimony was provided by Howard Page, William J. Chapman and James A. Smith.

The exceptions relate to failure of the Referee to recommend confirmation of irrigation and diversionary stock water rights from three springs. In addition, the Pages took exception regarding the Referee's decision to withhold a recommendation for use of Class 5 water from Manastash Creek on their property due to the absence of a legal description.

Ecology filed exceptions to the Referee's recommendations regarding Court Claim No. 01478. Ecology took exception because the Sparks' land in Section 6 was

1 confirmed more acres of the Charles Stevens, Class 5, Manastash Creek water right  
2 and more instantaneous quantity than the Ch. 90.14 RCW claim protected. In  
3 addition, the described place of use is much larger than it should be for the  
4 recommended acreage. Finally, Ecology inquired into the foundation for the  
5 revised Gray, supra Schedule of Rights submitted into evidence by Roger C.  
6 Sparks (DE-184).

7 The Referee finds that six claimants have offered copies of the Schedule of  
8 Rights into the record including the Sparks' Exhibit DE-184. The other claimants  
9 and their exhibit numbers are: DE-204, Christian and Walsh; DE-98, Podkranic and  
10 Hamberg; DE-65, Martensen; DE-31, Wayne Smith and DE-39, Lindstrom. Review of  
11 those exhibits indicates that five of the six copies are the equivalent of the  
12 document offered by Sparks. The Referee at Line 20, Page 8 of the original  
13 Manastash Creek Report of Referee begins a discussion regarding the possibility of  
14 reliance on the Schedule of Rights. The Referee has relied upon the DE-184  
15 version of the Schedule of Rights unless evidence was presented which provided  
16 foundation for a different determination. In this Supplemental Report of Referee,  
17 the Referee has addressed Court Claim No. 01950, Anderville Farms, which includes  
18 a discussion as to the likely origin of the Schedule of Rights (see Page 21 of  
19 this Supplemental Report of Referee). That discussion also deals with the time  
20 period when the Schedule of Rights was most likely developed. The Referee has  
21 observed deeds dated around 1910 which transferred water rights and which are  
22 reflected in the Schedule of Rights, whereas deeds from the early 1920's are not  
23 included.

24 Ecology urges the Court to limit confirmation of the Stevens, Class 5 water  
25 to 45 acres and to limit the place of use to that portion of the Sparks' land  
26

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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1 lying within the E $\frac{1}{2}$ SW $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M. The  
2 basis for Ecology's exception is the 45 acres and 1.25 cfs claimed on  
3 Ch. 90.14 RCW WRC No. 009665, filed by Roger C. Sparks in 1972. Ecology  
4 recognizes that some flexibility is necessary during interpretation of  
5 Ch. 90.14 RCW claims, but suggests to the Court that the Referee exceeded that  
6 discretionary limit by recommending confirmation of 62.5 acres of irrigation and  
7 1.50 cfs. Upon review of the record, the Referee confirmed that the 62.5 miner's  
8 inches of Class 5, Manastash Creek water right was transferred by deed from  
9 Charles Stevens to Jacob Frederick. Frederick is a predecessor of Sparks in  
10 ownership of the parcel of land described above. The Schedule of Rights reflects  
11 the transfer of the 62.5 inches. There is no explanation in the record as to the  
12 45-acre entry on the Sparks' WRC No. 009665. Lacking a response by Sparks to the  
13 Ecology exception and no explanation having been discovered in the existing  
14 record, the Referee finds that the recommended acres should be reduced to 45. In  
15 spite of the reduced acres, the Referee concludes that the recommended quantity  
16 should be 0.0233 cfs multiplied times 62.5 inches or a total of 1.46 cfs. The  
17 recommended quantity is higher than the typical 1 inch per acre; however,  
18 Mr. Sparks testified that these fields require a larger than normal head of  
19 water. The instantaneous quantity is reduced to 0.73 cfs on July 1 until the end  
20 of October. Ecology's exception regarding the instantaneous quantity has been  
21 evaluated and the Referee's recommendation is within reasonable limits, given the  
22 record for Court Claim No. 01478. Although Ecology had other concerns or  
23 exceptions, they were less than clearly expressed and were not pursued by Ecology  
24 at the exception hearing or the remand hearing. Therefore, the Referee will not  
25 deal with them individually.

The Referee had determined that Howard and Mary Page are entitled to 4.5 acres of the Class 5, Olof Hanson water right as confirmed by Gray, supra; however, lacking a legal description for the two Page parcels, no confirmation was recommended to the Court. The legal descriptions were provided by Page at the supplemental hearing. The Referee recommends confirmation of the following Manastash Creek water right: The priority date is June 30, 1877, being a portion of the 200-inch right confirmed by Gray, supra to Olof Hanson. The point of diversion is at the head of Reed Creek located 600 feet north and 700 feet east from the southwest corner of Section 12, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N., R. 18 E.W.M.. The purpose of use is irrigation of 4.5 acres from April 1 through October 31. The instantaneous quantity recommended is 1 miner's inch per acre for a total of 0.105 cfs from April 1 through June 30 and 0.053 cfs from July 1 through October 31. If the diversion was used continuously during the irrigation season, 32 acre-feet would be diverted. The place of use is described as follows: Parcel A of that certain survey recorded July 17, 1986, in Book 14 of Surveys at Page 78, under Auditor's File No. 496987, recorded in Kittitas County, Washington, being a part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M., and that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M., bounded by a line described as follows: Beginning at the northeast section corner of said Section 7; thence north 87°00'00" west along the north section line of said Section 7 a distance of 1086.08 feet; thence south 3°00'00" west a distance of 30.0 feet to the County Road right-of-way for the Hanson Road, said point being the true point of beginning; thence south 5°29'02" east a distance of 443.18 feet; thence north 77°33'06" west a distance of 371.25 feet; thence north 3°00'00" east a distance of 377.39 feet to the southerly right-of-way line of said Hanson Road;

1           thence south  $87^{\circ} 00' 00''$  east a distance of 300.83 feet to the true point of  
2           beginning.

3           The Pages excepted to the Referee's decision that insufficient record existed  
4           to recommend confirmation of a water right for use of a spring located in the  
5           NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7. The evidence and testimony presented at the supplemental  
6           hearing provided proof that the spring was developed under the Riparian Doctrine  
7           many years prior to 1900. The current uses include irrigation of 4.5 acres and  
8           diversionary stock water which is consistent with the uses made of the spring  
9           water throughout the years since the Hanson homestead was settled. The Referee  
10          recommends that the priority date of June 30, 1877, be confirmed based on the  
11          facts relied on for Olof Hanson in Gray, supra. A previous owner of the Page  
12          property, Charles Maxwell, filed WRC No. 014144 with Ecology, thereby protecting  
13          any perfected water right on the spring located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7,  
14          T. 17 N., R. 18 E.W.M. WRC No. 014144 asserts a right to 1.0 cfs; 48 acre-feet  
15          for irrigation of 12 acres lying within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7. The point of  
16          diversion on WRC No. 014144 describes a point on the west line of the Page  
17          property about 300 feet south of the northwest corner. Mr. Page testified that  
18          the spring actually arises about 1000 feet westerly of the described point. The  
19          spring is diverted through a pipe to the west boundary of the Page property where  
20          it enters an earthen ditch. The point of diversion and the spring location is  
21          50 feet south and 400 feet east from the north quarter corner of Section 7,  
22          T. 17 N., R. 18 E.W.M.

23          The spring used by the Pages is utilized on a rotation basis with the  
24          Chapmans who own a 5-acre parcel adjoining the east boundary of the Page  
25          property. The agreement allows the Pages use of the entire flow of the spring

1       6 consecutive days out of every 14 days from April 15 through October 15, and the  
2       Chapmans use the entire flow the remaining 8 days out of every 14 days.  
3       Measurements were taken by Mr. Page during a portion of the 1994 irrigation season  
4       with flows ranging between about  $\frac{1}{4}$  and  $\frac{1}{2}$  cfs. Testimony established that 1994 was  
5       an unusually dry year. Mr. Page estimated that the measured flows were about  
6       one-half the normal spring discharge. Mr. Draney testified at the original  
7       evidentiary hearing that one-half the flow entering the Page property is lost as  
8       the water flows across the Page property in an earthen ditch.  
9

10      An additional factor to consider in evaluation of the instantaneous and  
11      annual water duties is the return flow contribution to the spring used by the  
12      Pages and the Chapmans. Mr. Page testified that the flow does vary substantially  
13      depending on both the weather and which fields are being irrigated above the  
14      spring. Water apparently can flow into the spring area from field runoff and/or  
15      infiltrate into the 1000 foot pipeline between the spring and the west line of the  
16      Page property. Lacking definitive testimony regarding the return flow sources and  
17      quantities, the Referee is faced with either declining to recommend rights or  
18      resorting to a judgement call as to the natural flow contribution. The latter  
19      option seems to be warranted with the other factual matters clearly established.

20      The flow measurement table introduced by the Pages (DE-S80) clearly shows a  
21      50% decline in spring flow when the fields near the spring are being cut for hay.  
22      The low flow in June of 1994 was 0.20 cfs. The 1994 flow was as much as 50% below  
23      normal due to the drought impact; therefore, an appropriate natural flow estimate  
24      is assumed to be 0.40 cfs. If the Pages were to irrigate 16 times for 6 days each  
25      at a rate of 0.40 cfs, the annual water duty would be 76.8 acre-feet or  
26      17 acre-feet per acre. That quantity of water for flood irrigation in the

1 Manastash basin is in the higher end of the typical demand. Although measurements  
2 of ditch loss were not entered into the record, it is clear that significant  
3 losses occur across the Page property. Mr. Draney estimates a 50% loss. The  
4 Referee finds that a water right was perfected with a priority date of June 30,  
5 1877, for this spring source and that a reasonable ditch loss factor is one-third  
6 of the 0.40 cfs diverted or 0.133 cfs. The result of that determination is that  
7 0.267 cfs is beneficially applied to the irrigated fields or a total annual water  
8 duty of 51.26 acre-feet. This quantity results in 11.4 acre-feet per acre.  
9

10 The irrigation season begins as early as March 1 in dry seasons and runs  
11 through October 31. The rotation agreement between the Pages and the Chapmans  
12 covers only the April 15 through October 15 period. Each property owner is able  
13 to use the spring water at his discretion before and after those dates. Mr. Page  
14 testified that he irrigates as many as 16 times in a dry season (combined Class 5  
15 Manastash and spring water), taking 6 days to get across his 4.5 acres. The  
16 Referee recommends confirmation of a water right to Howard and Mary Page as  
17 follows: A spring located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
18 with a priority date of June 30, 1877. The purposes of use are for irrigation of  
19 4.5 acres from March 1 through October 31 and diversionary stock water  
20 continuously. The point of diversion is located 50 feet south and 400 feet east  
21 from the north quarter corner of said Section 7. The instantaneous quantity for  
22 irrigation is 0.40 cfs (of which 0.133 cfs is for ditch loss and 0.267 cfs is  
23 applied to the land) and for stock water is 0.005 cfs. The annual quantity for  
24 irrigation is 51.26 acre-feet and for stock water is 0.50 acre-foot. The legal  
25 description for the place of use is the same as the description for the Page's  
26 Manastash Creek water right set forth above.  
27

28 REPORT OF REFEREE  
Re: Subbasin No. 11

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

1           Due to the reliance on water from two or three sources for irrigation of this  
2         4.5 acres, the following provisions will be included on both rights recommended:  
3  
4         (1) This land may have a supplemental water right through the KRD, which is  
5         exercised when sufficient creek and spring water is not available; (2) Delivery of  
6         irrigation water to this land from Manastash Creek and an unnamed spring located  
7         within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not exceed  
8         51.26 acre-feet per season.

9           Testimony provided by Chapman, Draney and Page established that the Chapmans  
10        irrigate a total of 4.66 acres via a sprinkler system which pumps from a pond fed  
11        by the spring located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7. As discussed previously,  
12        the Chapmans and Pages use the same spring on a rotation basis of 8 days for the  
13        Chapmans and 6 days for the Pages. The Chapmans' pump has a maximum capacity of  
14        50 gpm; therefore, the Referee recommends confirmation of a water right limited to  
15        0.11 cfs and 28 acre-feet per year for irrigation of 4.66 acres. The Chapmans can  
16        deliver 6 acre-feet per acre if a total of 16 irrigation cycles of 8 days each are  
17        completed. The point of diversion is identical to the spring location described  
18        for Page in the preceding paragraph. The place of use for the Chapmans is  
19        described as follows: Lot 1, as delineated on Draney Short Plat No. 94-57,  
20        recorded February 2, 1995, in Volume D of Short Plats, Pages 203 and 204 under  
21        Auditor's File No. 578928, being a portion of Parcel B of that certain survey  
22        recorded July 17, 1986, in Book 14 of Surveys, Page 78, under Auditor's File  
23        No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. In  
24        addition to the recommended irrigation right, a diversionary stock water right is  
25        recommended for approval in the quantities of 0.005 cfs and 0.50 acre-foot per

1 year. Stock water is to be available continuously and the point of diversion and  
2 place of use are the same as for the irrigation.  
3

4 Draney testified that he used water from a separate spring located within  
5 what is now Chapman property and took exception to the Referee's failure to  
6 recommend confirmation of a water right for irrigation and stock water. A right  
7 was not recommended due to the absence of evidence of historic use and testimony  
8 which would allow quantification of a water right. Testimony was not provided at  
9 the supplemental hearing to address those deficiencies; therefore, the Referee  
10 must reaffirm the original recommendation.

11 Since Draney divided his 24-acre parcel and both of the new owners are  
12 actively involved in defense of Court Claim No. 01478, the Referee is dividing the  
13 Draney, Manastash Creek recommendation proportionately. Chapman testified that  
14 4.66 acres are irrigated within his 5-acre parcel which is described above.

15 Due to the reliance on water from two or three sources for irrigation of this  
16 4.66 acres, the following provisions will be included on both rights recommended:  
17 (1) This land may have a supplemental water right through the KRD, which is  
18 exercised when sufficient creek and spring water is not available; (2) Delivery of  
19 irrigation water to this land from Manastash Creek and an unnamed spring located  
20 within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not exceed  
21 28 acre-feet per season.

22 James A. and Linda C. Smith own a 19.1-acre portion of the former Draney  
23 parcel of which about 10 acres lies north of Manastash Creek and is irrigated with  
24 Manastash Creek water, spring water and KRD deliveries. The recommended  
25 confirmation of a June 30, 1877, Manastash Creek water right for the Draney  
26 property was 14 acres minus the 4.66 acres used by the Chapmans, leaving

1       9.34 acres appurtenant to the Smiths' parcel which is described as follows: Lot 2  
2       as delineated on Draney Short Plat No. 94-57, recorded February 2, 1995, in Book D  
3       of Short Plats, Pages 302 and 204, under Auditor's File No. 578928; being a  
4       portion of Parcel B of that certain survey recorded July 17, 1986, in Book 14 of  
5       Surveys, Page 78, under Auditor's File No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$   
6       of Section 7, T. 17 N., R. 18 E.W.M.

7       The appropriate instantaneous quantity for the 9.34 acres irrigated by the  
8       Smiths is 0.22 cfs from April 1 through June 30 and 0.11 cfs from July 1 through  
9       October 31. The place of use for the Manastash Creek water is that portion of  
10      Lot 2 of Draney's Short Plat lying northerly of Manastash Creek.

11      The final exception filed by Draney is in regard to a spring which arises  
12      within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7 on the south side of Manastash Creek. The point of  
13      diversion is approximately 1100 feet east and 900 feet north of the center of said  
14      Section 7, T. 17 N., R. 18 E.W.M. Testimony was provided at the supplemental  
15      hearing regarding historic uses and quantities diverted. The spring flows year  
16      around and is subject to weather related variations in discharge with flows of  
17      0.50 cfs typically available during portions of the irrigation season. Loss of  
18      water in the earthen head ditch amounts to about 50% of the total spring  
19      production. Water is used continuously at the maximum rate available between  
20      April 1 through October 31. Testimony indicates that between 10 and 12 acres are  
21      irrigated north of Manastash Creek, although the actual acreage was unknown.  
22      During division of the Manastash Creek water right, it was determined that  
23      9.34 acres were irrigated on the Smith property; therefore, the Referee will rely  
24      on that number for the acres irrigated with spring water. Up to 30 head of  
25      livestock are grazed on the Smiths' property with stock present year around.

Roger C. and Rita M. Sparks, prior owners of this property, filed WRC No. 115771 with Ecology. The claim asserts a right to use of the subject spring in the quantity of 0.50 cfs for irrigation of 32 acres. The spring is riparian to the original Hanson homestead, of which the Smith property is a part. The Referee recommends that the priority date of June 30, 1877, be confirmed, which is the priority date confirmed by Gray, supra for this property's Manastash water right.

The Referee recommends confirmation of a water right to James A. and Linda C. Smith from a spring arising in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7. The point of diversion is to be described as: 1100 feet east and 900 feet north from the center of said Section 7. The instantaneous rate of diversion is 0.50 cfs for irrigation of 9.34 acres from April 1 through October 31. The annual water duty for flood irrigation was calculated based on 50% ditch loss (0.25 cfs) and continuous diversion of 0.25 cfs beneficially applied to the fields or a total of 107 acre-feet. Stock water for 30 head of cattle will require 1.0 acre-foot with a diversion of 0.02 cfs needed to deliver the water. The place of use is identical to that specified for the Manastash Creek water right, or that portion of Lot 2 of Draney's Short Plat No. 94-57, lying northerly of Manastash Creek.

Ecology filed one other exception regarding Court Claim No. 01478 which appears to be an error. Ecology refers to Page 162, Line 19 of the November 3, 1989, transcript for the Manastash evidentiary hearings. That exception was subsequently withdrawn by Ecology.

1 COURT CLAIM NO. 01968 -- Charles Steward  
2 & Margaret Steward

3 Claimants Charles and Margaret Steward filed exceptions with the Court in  
4 response to the Report of Referee for Subbasin No. 11. The claimants assert that  
5 the Referee should revise the irrigated acres recommended for the SW $\frac{1}{4}$  of  
6 Section 8, T. 17 N., R. 18 E.W.M. from 140 acres to 158 acres, that the  
7 instantaneous and annual quantities be increased and the proviso limiting the  
8 combined KRD and Manastash water quantity be deleted. The Stewards also request  
9 confirmation of diversionary stock water rights and use of the ponds on the  
10 property be recognized by the Court as a necessary component of the irrigation  
11 system. As a final request, the claimants desire an opportunity to present  
12 evidence regarding use of Manastash Creek water on the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7,  
13 T. 17 N., R. 18 E.W.M. The Stewards purchased 60 acres within the E $\frac{1}{2}$ SE $\frac{1}{4}$  of  
14 Section 7 after the original evidentiary hearing. The former owners, the Thayers,  
15 had not filed a court claim for the property; therefore, Stewards' exception is in  
16 essence a late claim regarding the Section 7 land. Although the Court has not  
17 been provided a legal description of the 60 acres purchased by the Stewards in the  
18 E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7, Mr. Steward describes the land as being the northerly 60  
19 acres.

20 The claimants are asserting a water right to 25 inches of Manastash Creek  
21 water diverted at the Jensen Ditch diversion and delivered via the KRD lateral,  
22 which runs easterly along Manastash Road. The Court is referred to a Class 12,  
23 1884 right confirmed to I. B. Taylor in Gray, supra. The only document in the  
24 record which describes I. B. Taylor's ownership is the Gray, supra Schedule of  
25 Rights, which is discussed more fully on Pages 8 and 9 of the original Report of  
26 Referee and on Pages 4 and 5 of this Supplemental Report of Referee. There were

1 no chain of title documents offered; the schedule is the sole document showing  
2 that I. B. Taylor owned the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. and  
3 W. Smith owned the E $\frac{1}{2}$ SE $\frac{1}{4}$  of said section. The schedule describes a 25-inch,  
4 Class 12 right and a Class 17 right for 15 inches, with 50% of each right on each  
5 80-acre parcel. Although Gray, supra does not provide a legal description for the  
6 Class 12 and 17 places of use, I. B. Taylor is confirmed rights in those  
7 quantities. Lacking chain of title records, the Referee cannot further research  
8 the ownership. One can only presume that Taylor sold one-half of his homestead  
9 together with one-half the water rights. As discussed above, the Stewards own 60  
10 acres within the 160 acres formerly owned by Smith and Taylor. The Stewards  
11 assert exclusive ownership of the entire Class 12 right. There is nothing in the  
12 record that leads to a conclusion that the 60 acres owned by the Stewards are  
13 entitled to all of the water right originally awarded to Taylor.

14       The Steward parcel in Section 7 is assessed for 56 acres of KRD water which  
15 is used in conjunction with Manastash water for sprinkler irrigation of a total of  
16 approximately 56 acres. Thayer, the previous owner of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7,  
17 filed WRC No. 077463 in response to Ch. 90.14 RCW. That claim is filed on a short  
18 form indicating use of water from a well for domestic supply, stock water and  
19 irrigation. Mr. Steward suggests through testimony that Mr. Thayer was confused  
20 about the claim registration process and believed he had adequately complied with  
21 Ch. 90.14 RCW for Manastash Creek water rights. Mr. Steward testified that the  
22 Thayers used a well for their home and farmstead on the southerly 20 acres of the  
23 E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 7. The Referee concludes that WRC No. 077463 is what the face of  
24 the claim represents: a claim for a domestic well. Therefore, the record

1 includes no water right claim for use of Manastash Creek water on the E $\frac{1}{2}$ SE $\frac{1}{4}$  of  
2 Section 7, T. 17 N., R. 18 E.W.M.

3 In conclusion, the Referee finds that water rights cannot be recommended for  
4 confirmation for the 60 acres in Section 7 for the following reasons: (1) Any  
5 rights that may have been perfected by beneficial use and prior confirmation by  
6 the Court via Gray, supra have been waived and relinquished for failure to file a  
7 water right claim (see Ch. 90.14.071 RCW); (2) If that deficiency were overcome,  
8 evidence would be necessary to explain the proportionate shares of the I. B.  
9 Taylor and W. Smith, Class 12 and 17 water rights, which are appurtenant to the  
10 Steward 60 acre parcel.

11 The Stewards' exception regarding the appropriate instantaneous quantity for  
12 the June 30, 1874, Jacob Jensen water right is best addressed by referring to the  
13 Decision filed March 17, 1891, in Gray, supra. Jensen was confirmed 225 inches of  
14 water of which 100 inches had been beneficially used on the NE $\frac{1}{4}$  of Section 16,  
15 T. 17 N., R. 18 E.W.M. (school land). Jensen thus was affirmed a water right from  
16 Manastash Creek in the quantity of 125 miner's inches for use on the SW $\frac{1}{4}$  of  
17 Section 8, T. 17 N., R. 18 E.W.M. However, as described in the Report of Referee  
18 on Page 164, Lines 7 - 9, the Schedule of Rights for Gray, supra shows the entire  
19 225 inches of Class 3 water (5.24 cfs) being appurtenant to the SW $\frac{1}{4}$  of Section 8,  
20 T. 17 N., R. 18 E.W.M. The record is silent as to when the 100 inches perfected  
21 on the NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 18 E.W.M. was transferred to the SW $\frac{1}{4}$  of  
22 Section 8. In any case, the Referee has relied on the Schedule of Rights lacking  
23 any record which contradicts the schedule. The record establishes the maximum  
24 diversion as 4.76 cfs per Mr. Bain's testimony. The claimants' exception  
25 regarding the Referee's use of a water duty of 12 acre-feet per acre involved

1 analysis of the Richard Bain and Charles Steward testimony regarding cropping  
2 patterns; however, the limit will, in fact, be set by the 4.76 cfs maximum  
3 beneficial use and the irrigation season. Diversion of 4.76 cfs from April 1  
4 through June 30 will yield 866 acre-feet and a diversion of 2.38 cfs from July 1  
5 through October 31 will yield 585.5 acre-feet for a total of 1451.5 acre-feet per  
6 year. The Referee recommends that these quantities be confirmed by the Court.  
7

8       Stewards' exception to the Referee's recommendation of 140 acres of  
9 irrigation includes a request for remand to allow introduction of additional  
10 facts. The claimants assert that the consulting engineer they relied upon for  
11 their factual presentation at the evidentiary hearing was in error. The Referee  
12 agrees that somewhat more than 140 acres are irrigated, but not 158 acres. The  
13 160-acre quarter section has a county road along the south boundary plus two KRD  
14 right-of-ways totaling 3.81 acres. In addition, there are roadways, a large  
15 farmstead, a trailer home, fish ponds, wooded habitat strips and several  
16 substantial ponds. Mr. Bain's report (DE-100) relies upon the Agricultural  
17 Stabilization and Conservation Service (ASCS) Tract 616 Field Designations to  
18 arrive at the total of 140 irrigated acres. Mr. Steward explained that much of  
19 the wooded area is irrigated via flooding or sprinklers in nearby fields. He also  
20 explained that the paddocks and lawn areas are irrigated. It is likely that ASCS  
21 discounted those areas as non-cropped. Lacking a definitive number of acres, the  
22 Referee has split the difference and recommends 150 acres for confirmation. Thus,  
23 the water duty per irrigated acre is 9.68 acre-feet per acre from Manastash  
24 Creek. The claimants' request for removal of the annual quantity provision  
25 regarding KRD water will be granted.  
26

1       Testimony and exhibits confirm that there is currently diversionary use of  
2 surface water on the farm via pumps and stock tanks; however, no record was  
3 created regarding historical diversionary stock water use. The current practice  
4 of fencing stock away from the ponds and water courses is no doubt a fairly recent  
5 management change which necessitates pumping water to the animals. Historically,  
6 stock water was probably available incidental to delivery of irrigation water  
7 through ditches. The record is silent as to delivery of Manastash Creek water to  
8 the property during the non-irrigation season. WRCs No. 111292 and 111293, filed  
9 on unnamed springs, are in the record; however, the attachments which contain  
10 details of the claim were not put in the record. Mr. Steward testified that two  
11 of the ponds on the property appear to be partially spring fed, although the vast  
12 majority of the water in the ponds is from the KRD and/or Manastash Creek. The  
13 series of ponds are integral parts of the irrigation system as they are on channel  
14 of the main ditch system and they also serve as pump locations being regulated by  
15 check structures to feed different pipelines and ditches. Up to 150 head of  
16 livestock are grazed on the ranch during peak use periods with several small  
17 paddocks and fields served via pumps and stock tanks. Exhibit DE-S137 (Summary of  
18 Steward Water Distribution System) describes not only irrigation components but  
19 sources of diversionary stock water.

20       Although the current methods of providing stock water differ from historical  
21 practices, water rights appear to have been perfected coincident with early  
22 irrigation water distribution and from springs. The Referee recommends  
23 confirmation of a total of 0.10 cfs from an unnamed, spring-fed stream and  
24 on-channel ponds; 5 acre feet per year for year around stock water supply with a  
25 priority date of June 30, 1874.

1 COURT CLAIM NO. 03204 -- Edward L. Sullivan  
2 & Anna G. Sullivan

3 Ecology filed an exception on the Sullivan claim which they withdrew prior to  
4 the Court's March 9, 1995, issuance of the Order on Exceptions for Subbasin No. 11  
5 (Manastash). Two days after the Order on Exceptions was signed, Mr. Sullivan  
6 filed with the Court a letter titled "Additional Exceptions Yakima River Basin  
7 Water Rights Adjudication, Court Document Number 10459." The thrust of the  
8 additional exceptions is failure of the Referee to include diversionary stock  
9 water as an authorized use under Court Claim No. 03204. No additional annual or  
10 instantaneous quantity is being requested as the stock have access to the ditch  
11 system as it passes through the Sullivan property. Mr. Sullivan does request that  
12 consideration be given to ditch loss in Jensen Ditch since numerous ownerships  
13 rely upon the ditch for stock water year around. The record clearly reflects  
14 historic and current beneficial use for stock water on this property year around.  
15 It is noted that Court Claim No. 00578 filed by Theodore and Colleen Sonstegaard  
16 was recommended for inclusion of diversionary stock water in their June 30, 1886,  
17 water right. The Sullivan right is in fact based on exactly the same chain of  
18 title and historic use pattern.

19 Although Mr. Sullivan indirectly refers to a previous exception, the Referee  
20 has located only an "Affidavit of Edward L. Sullivan" attached to the exception  
21 filed by Wilhelm and Joan Bakke against Court Claim No. 00258, Wayne and Margaret  
22 Smith. Mr. Sullivan did appear at the original evidentiary hearing and at the  
23 supplemental hearing and provided testimony regarding water diversions and  
24 beneficial uses in the W $\frac{1}{2}$  of Section 7, T. 17 N., R. 18 E.W.M.

25 The Referee has concluded that the Manastash Report of Referee on Page 212,  
26 Line 3 "Use" should be amended to add "and stock water" and that Line 4, "Period

1 of Use" be amended to add "for irrigation and continuously for stock water." In  
2 addition, Page 169, Line 18 should be amended to add "and continuous stock  
3 water." Although no instantaneous or annual quantity has been requested, water  
4 cannot be delivered outside the irrigation season without both. Due to the  
5 limited stock carrying capacity of this property, values of 0.035 cfs; 0.7  
6 acre-foot per year are recommended from November 1 through March 31. The  
7 instantaneous quantity is based on the need for water to provide ditch losses and  
8 flow to help alleviate ice buildup while remaining within the off-season limits of  
9 0.5 inch per acre.

10 The amendments set forth above will not prejudice any other party and will  
11 serve to accurately reflect the historic and continuing use of Manastash Creek  
12 water on the Sullivan property.

13 During review of the combined analysis of Edward Sullivan, Wayne Wells and  
14 Theodore Sonstegaard, the Referee noticed an error on Page 169, Line 11 of the  
15 Report of Referee. The date "June 30, 1883," is in error and will be changed to  
16 reflect the proper date of "June 30, 1886." The remaining references to priority  
17 date in the Report of Referee for this water right are correct.

19 COURT CLAIM NO. 02068 -- Three Bar G Ranch, Inc.

20 Exceptions were filed with the Court in behalf of Three Bar G Ranch, Inc. by  
21 their attorney Jeff Slothhower in response to the Report of Referee for Subbasin  
22 No. 11 (Manastash) and No. 8 (Thorp).

23 On October 13, 1994, the Court denied the claimant's exception regarding  
24 substantial compliance with the Claims Registration Act (see also Memorandum  
25 Opinion RE: Ch. 90.14 RCW and Substantial Compliance, dated February 10, 1995).  
26 Three Bar G Ranch's exceptions regarding Menastash Water Ditch Association's

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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1 rights have been resolved via stipulation between the ditch association and  
2 Ecology - Stipulation Regarding Ecology's Exception to Court Claim No. 00950 and  
3 (A)3025, Manastash, Subbasin No. 11 (Manastash).

4 Three Bar G Ranch's exception as to the designated boundary between Subbasin  
5 No. 8 and Subbasin No. 11 is dealt with later in this analysis. The issue  
6 involved is essentially a question as to possible implications regarding foreign  
7 return flow. The Referee also reexamined the record regarding Three Bar G Ranch's  
8 use of Hatfield Canyon Creek water via Packwood Canal deliveries and possible  
9 applicability to lands owned by Three Bar G Ranch of the numerous Ch. 90.14 RCW  
10 claims which are in the record.

11 Three Bar G Ranch's exception regarding "Back Ditch" includes issues of  
12 return flow water and substantial compliance with Ch. 90.14 RCW.

13 Testimony was presented by Robert Gregerich at the supplemental hearing on  
14 June 7, 1995, and exhibits were admitted to augment the record. Three Bar G Ranch  
15 includes a total area of 958 acres which are partially within Subbasin No. 8 and  
16 partially in Subbasin No. 11. Approximately 880 acres of the ranch are irrigated  
17 from one or more of the following sources:

Kittitas Reclamation District	144 acres
Packwood Canal Company	114 acres
West Side Irrigating Company	279 shares
Taneum Canal Company	120 shares
Menastash Water Ditch Assoc.	240 acres/6 shares
Hatfield Canyon Creek	54.8 acres
Back Ditch	85 acres
Unnamed Spring	stock water
Twelve (12) drains	return flow

24 Testimony was presented regarding the number of acres associated with each of  
25 the named sources, excluding the drains. There is a significant overlap between  
26 the various sources. Water captured and reused via the twelve, on-farm drain

systems is used within the gross farm boundaries. Typically, the drain water is reused on fields down slope from the lands upon which the water was originally applied. Drains numbered 1-8 inclusively are located in the NW $\frac{1}{4}$  of Section 30, T. 18 N., R. 18 E.W.M. and the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 25, T. 18 N., R. 17 E.W.M. These eight drains are located within areas irrigated with water delivered by the Taneum Canal Company and the West Side Irrigating Company. The E $\frac{1}{2}$ NW $\frac{1}{4}$  and the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 25, T. 18 N., R. 17 E.W.M. is within the Taneum Ditch service area and are upslope of Drains 1 through 8.

Drain System Number 12 is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25 and collects return flow resulting from use of water from Taneum Ditch, as well as KRD water, from adjoining lands to the south and west. Three Bar G Ranch Exhibit DE-159 does not reflect which lands are irrigated with KRD water, although testimony indicates that 144 acres of the ranch are assessed by KRD.

Drain System No. 10 is located within the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 25, one quarter mile northwest of Drain System No. 1.

Drain System Number 11 lies in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 25 on the westerly boundary and updrainage of lands upon which Menastash Ditch water is used. KRD serves the fields to the west of Drain System Number 11 and is the apparent source of the return flows captured in the drain.

The final drain system lies in Section 32, T. 18 N., R. 18 E.W.M. within lands upon which West Side Ditch water is the primary source.

Although Three Bar G Ranch makes no attempt to assign sources to the 12 drains, it is clear to the Referee that the water in each drain system is captured foreign return flow. KRD, West Side Ditch and Taneum Ditch divert water from outside the Manastash drainage. Three Bar G Ranch asserts that return flows

1 resulting from the application of Manastash Creek water is not foreign at any  
2 location within the service areas described in Exhibit "D" to the "Stipulation  
3 Regarding Ecology's Exception to Court Claim No. 00950 and (A)03025 Manastash,  
4 Subbasin No. 11."

5 The Referee believes that Manastash Creek water must be considered foreign  
6 water in the named and unnamed drainage basins that do not discharge into  
7 Manastash Creek. Natural drainage features and not the subbasin boundaries or  
8 ditch systems determine whether return flow is foreign. Testimony provided by  
9 Mr. Bain and many of the claimants establishes that the streams in this area flow  
10 northeasterly and would join the Yakima River if not intercepted by West Side  
11 Ditch or Packwood Canal. Mr. Bain postulates that because Manastash Creek water  
12 is delivered by gravity flow to all of the Menastash Water Ditch Association  
13 service areas, the return flow water is not foreign. The Referee finds little  
14 merit in that contention. All of the water purveyors that deliver water in this  
15 area, Taneum Canal Company, West Side Irrigating Company, and KRD, deliver water  
16 via gravity flow. Their ditches all cross several drains of various sizes.  
17 Return flow water resulting from the application of Manastash Creek water that is  
18 flowing in a direction where it would not naturally return to Manastash Creek if  
19 it was not captured is foreign return flow (see Report of Referee, Subbasin No.  
20 11, Special Issue Section, Pages 10 through 12).

21 The Referee also notes that the date of first water use shown on every Three  
22 Bar G Ranch Ch. 90.14 RCW claim filed on a drain is 1930 or much more recent. If  
23 those dates are accurate, water rights from any natural surface water sources (or  
24 non-foreign return flow) could only be obtained through compliance with the  
25 administrative procedures in Ch. 90.03 RCW, the State Surface Water Code. There

1       is no evidence those procedures were followed for any of the drains used by Three  
2       Bar G Ranch. The Three Bar G Ranch claims of water rights to 12 drains cannot be  
3       recommended for confirmation due to the source of water being foreign return flow  
4       and to the apparent initiation of first water use after 1917 without compliance  
5       with Ch. 90.03 RCW. It is also likely that much of the captured water is shallow  
6       ground water which is not within the scope of this surface water adjudication  
7       proceeding.

8       Three Bar G Ranch also urges reconsideration of their claim to Hatfield  
9       Canyon Creek water. There was no evidence presented to show that water right  
10      claims were filed pursuant to Ch 90.14 RCW for use of Hatfield Canyon Creek on the  
11      Three Bar G Ranch land. The Referee finds that any water rights from Hatfield  
12      Canyon Creek associated with the irrigated portion of the ranch in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
13      Section 31 and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32 lying south and west of the Packwood Canal has  
14      been waived and relinquished due to lack of compliance with Ch. 90.14 RCW filing  
15      requirements. Therefore, the Referee cannot recommend confirmation of a water  
16      right for those lands.

17      Three Bar G Ranch has not specified the source of the water they receive from  
18      Packwood Canal, however, Hatfield Canyon Creek is intercepted by the canal above  
19      the turn outs which serve the Three Bar G Ranch fields located in Section 32 and  
20      east of the canal. Packwood Canal Company filed WRC No. 124584 pursuant to  
21      Ch. 90.14 RCW, describing use of water from Hatfield Canyon Creek within their  
22      service area. In fact, the Referee recommended in the Subbasin 11 Report of  
23      Referee confirmation of a water right under Packwood Court Claim Nos. 00785 &  
24      04801 with a June 30, 1885, priority date for the diversion of 2.5 cfs;  
25      1032.55 acre-feet per year for the irrigation of 154 acres. The lands upon which

1 the water can be used are described as follows: W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, the NE $\frac{1}{4}$ NW $\frac{1}{4}$   
2 and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M., all lying north and east of  
3 the Packwood Canal. Three Bar G Ranch owns and irrigates, with Packwood Canal  
4 water, a 16 acre portion of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32; therefore, the ranch enjoys  
5 a portion of the recommended Hatfield Canyon Creek water right. Three Bar G Ranch  
6 did not file an exception regarding Packwood's confirmation.

7 Three Bar G Ranch also irrigates that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32  
8 lying north and east from the Packwood Canal (approximately 5 acres). The water  
9 used is delivered by the canal company and the water source is potentially  
10 Hatfield Canyon Creek. This field is a portion of the land homesteaded by  
11 Benjamin W. Frisbie in 1871 and a patent issued on June 30, 1876. In late 1910,  
12 Kittitas County Court Decree No. 4092 was signed resolving a dispute between  
13 J. Edward Stevens and Robert M. Shoemake, confirming onto Stevens (successor to  
14 Frisbie) the first right to Hatfield Canyon Creek for use on the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
15 Section 31 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. The Referee is  
16 recommending that Packwood Canal Company be confirmed a water right with a  
17 June 30, 1871, priority date for irrigation of 5 acres (see Page 94 of this  
18 Supplemental Report of Referee). The instantaneous quantity typically diverted to  
19 this field from Packwood Canal as discussed on Page 11 of Exhibit No. DE-160 (Bain  
20 Report) is 2.94 cfs. The recent practice of Three Bar G Ranch, with water carried  
21 by Packwood Canal from the Hatfield Creek interception point, is to irrigate the  
22 field six times per season. Each irrigation sequence lasts only thirty-six hours  
23 with the high instantaneous diversion. However, the water right that was  
24 originally perfected directly from Hatfield Canyon Creek was at a much lower  
25 diversion rate; as set forth in Stevens et al. vs. Shoemake, No. 4092, Superior  
26

Court Kittitas County, Washington (October 28, 1910) 40 inches had been perfected or 0.932 cfs. The number of irrigations and the water duty of 10.1 acre feet per acre as calculated by Mr. Bain would be representative of the crop demand. Thus, the quantities to be recommended to Packwood Canal Company are 0.932 cfs; 50.5 acre-feet for irrigation of 5 acres within that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. lying north and east of the Packwood Canal. The point of diversion is at the creek and canal intercept which is 550 feet east of the northwest corner of Section 32, T. 18. N., R. 18 E.W.M.

The Referee does not recommend confirmation of a water right to Three Bar G Ranch under Court Claim No. 02068 for Hatfield Canyon Creek, or any other source claimed within Subbasin No. 11.

COURT CLAIM NO. 00373 -- H. H. Weeber  
& Marjorie A. Weeber

H. H. and Marjorie Weeber, represented by Attorney Douglas Wilson, filed with the Court an exception to the Report of Referee for Manastash Creek. The Referee had recommended no water right confirmation due primarily to the lack of a Ch. 90.14 RCW water right claim and also due to lack of evidence regarding historical use of the two unnamed springs.

The Weebers' exceptions assert substantial compliance and describe what appeared to be WRCs No. 166435, 166436 and 166437. During research in preparation for the supplemental hearing, claimant and Ecology staff were able to locate claims filed in the name of Mac W. Smith, WRC No. 147871 for Manastash Creek and WRC No. 147870 for an unnamed spring. These claims describe a place of use including all of the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. within which the Weeber property lies. The Referee notes that the point of diversion described on

1 WRC No. 147871 (Manastash Creek) contains an error in the range. It reads  
2 "...R. 17 E.W.M." whereas it should read "...R. 18 E.W.M." That error no doubt  
3 contributed to the difficulty in locating the claim. The numbers originally  
4 provided to the Court are in fact Ecology receipt numbers as opposed to water  
5 right claim registration numbers.

6 Ecology and counsel for the Weebers agree that sufficient evidence would be  
7 provided to the Court for water right determinations by introduction of the  
8 misplaced claim forms and an affidavit of Marjorie A. Weeber (Court Document  
9 No. 10,717). Claimants Weeber and Mr. Wilson made an appearance at the  
10 supplemental hearing on the appointed day, but having reached agreement with  
11 counsel for Ecology, provided no testimony and offered no exhibits. The Referee  
12 has determined that WRCs No. 147871 and 147870 are included in Ecology's  
13 Exhibit SE-3. WRC No. 147870 is marked as ground water by the claimant Smith,  
14 although the source described is a spring used for stock water and irrigation.  
15 This water right claim is filed on a short form, therefore, uses in excess of  
16 5000 gpd have been relinquished (see RCW 90.14.051).

17 The Gray Decision and Decree confirmed to Olof Hansen 1 miner's inch per acre  
18 for a total of 200 inches of Class 5, Manastash Creek water with a June 30, 1877,  
19 priority date. Weebers have testified to irrigation of a total of 33.4 acres  
20 within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. less the north 522.72 feet  
21 of the west 250.05 feet thereof. This parcel lies within the former Olof Hansen  
22 place of use. At 1 miner's inch per acre, the instantaneous quantity to which the  
23 Weebers are entitled is 0.78 cfs from April 1 through June 30 and 0.388 cfs from  
24 July 1 through October 31. If those quantities were diverted every day of the  
25 irrigation season, a total of 238 acre-feet would be delivered to the property.

1       Although the claimants have established a need for up to 10 acre-feet per acre,  
2       the Referee can recommend only that which is physically and legally available  
3       based on the Gray Decree. The 238 acre-feet recommended for approval are diverted  
4       from Manastash Creek via Reed Ditch. Twenty-one acres are assessed by the KRD  
5       providing additional water, which is normally delivered to the property during the  
6       summer and fall.

7              The property has historically been used as pasture with the cattle (40 pair)  
8       having access to the two unnamed springs and the ditches for water. There is no  
9       record to establish diversionary use of the springs, therefore, the riparian  
10      rights and stock water stipulation as previously recommended adequately cover  
11      livestock drinking directly from the sources.

12             The Referee recommends confirmation of 0.02 cfs from April 1 through  
13       October 31, 2 acre-feet per year for diversionary stock water from Manastash  
14       Creek. This water is delivered in addition to delivery of the irrigation water,  
15       therefore, the total Manastash Creek right will be 0.80 cfs; 240 acre-feet per  
16       year from April 1 through October 31.

18           COURT CLAIM NO. 01077       -- William L. Wood  
19    & Carol J. Wood

20           COURT CLAIM NO. 01078       -- H. John Spence  
21    & Bette J. Spence

22           COURT CLAIM NO. 01079       -- William R. Cole  
23    & Dorothy C. Cole

24             Claimants W. R. & Dorothy Cole, Court Claim No. 01079; H. John & Bette J.  
25       Spence, Court Claim No. 01078; and William L. & Carol J. Wood, Court Claim  
26       No. 01077, filed with the Court a consolidated exception. The claimants except to

1 the Referee's failure to recommend confirmation of stock water and irrigation  
2 rights for the three properties. Rights are asserted to Manastash Creek water  
3 delivered through a distribution ditch off the Lower Reed Ditch System and from a  
4 local water source described as Hanson Spring by the claimants. Richard Cole,  
5 attorney for the claimants, urges the Court to rule that a short form claim,  
6 No. 054441, filed by Jack Spence in response to Ch. 90.14 RCW substantially  
7 complies with the statutory requirements for uses in excess of the limits as set  
8 forth in Ch. 90.14.051 RCW. Contrary to the record created at the Subbasin No. 11  
9 exception hearing on October 13, 1994, Mr. Spence did not obtain his short form  
10 claim from Ecology. Mr. Spence testified at the supplemental hearing that Judge  
11 William Cole brought the form to him partially filled out and urged him to sign it  
12 and submit it to Ecology.

13 Richard Cole brings to the Court's attention the nature of the Reed ditch  
14 diversion of Manastash Creek water through a long distribution system to the area  
15 of the claimants' ownership. The claimants apparently conclude that physical  
16 ability to convey water through the system ensures that the water being used by  
17 claimants is in fact Manastash Creek water.

18 The Clarence and Hazel J. Harrell property is located west (or above) the  
19 claimants' property. Testimony provided by Clarence Harrell as a rebuttal witness  
20 to Court Claim No. 01078 clearly establishes that Manastash Creek water is not  
21 allowed to pass through the Harrell property without being diverted onto his  
22 irrigated fields (see Page 84 of the transcript for June 6, 1995). Thus, water  
23 existing on the lower Harrell property during most of the irrigation season is  
24 drain water or West Side Canal water being delivered through Reed Ditch and  
25 associated distribution ditches.

1       The January 12, 1906, Quit Claim Deed of William Packwood to William Sheldon  
2 (see DE-45 and DE-S149), conveyed ditch rights of way and a right to convey drain  
3 water emanating on the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33. The deed indicates that the  
4 claimants' current diversion located on Reed ditch 200 feet north and 300 feet  
5 west from the SE corner of Section 32 was not yet constructed in 1906. Claimants  
6 refer to the subject ditch as the Moser Ditch (i.e., John B. Moser). Twenty-five  
7 shares of West Side Canal Company were transferred from William Sheldon to Vernon  
8 Parrington with 27.03 acres of the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33 on June 22, 1910  
9 (DE-S150). Sheldon retained all rights to water except the 25 shares of West  
10 Side. Vernon Parrington subsequently sold to Moser in 1924. Moser thus acquired  
11 the 27 plus acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 33 with only the 25 shares of West Side  
12 Canal water. Exhibit DE-42 (Affidavit of John B. Moser) discusses the 25 shares  
13 of West Side water.

14       The record created during the original evidentiary hearing suggested that  
15 Hanson Spring originated at a point 1200 feet south of the northeast corner of  
16 Section 5, T. 17 N., R. 18 E.W.M. Testimony and exhibits provided during the  
17 supplemental hearing clarifies the record. A spring in the sense of a single  
18 point source does not exist. Shallow ground water is intercepted via extensive  
19 subsurface drain systems in the NE $\frac{1}{4}$  of Section 5 on the Clarence and Hazel J.  
20 Harrell Ranch, and discharges into a head ditch emanating at the West Side Canal  
21 600 feet north and 1200 feet east of the center of Section 5. This ditch is  
22 described by Mr. Harrell as a combination drain and delivery head ditch. West  
23 Side Canal deliveries are released into the ditch and return flow water  
24 intermingles. The Harrell field west of the West Side Canal is irrigated

1 exclusively with Manastash Creek water delivered via Reed Ditch, thus some  
2 Manastash return flow is likely intercepted by the drains and ditch.  
3

4 The collective properties of the claimants H. John and Bette J. Spence,  
5 William R. and Dorothy C. Cole and William L. and Carol J. Wood are not riparian  
6 to Manastash Creek or to a spring fed stream channel. The three properties  
7 receive water through man made ditches. Therefore, any water rights which the  
8 claimants assert would rely upon the prior appropriation doctrine. Water is not  
9 and apparently has not been delivered to the claimants' properties directly from  
10 Manastash Creek. That seems to be born out by the lack of confirmed Manastash  
11 Creek rights in Gray, supra.

12 A total of five water right claims were filed by the claimants or their  
13 predecessors in response to the requirements of Ch. 90.14 RCW, Court Claim  
14 No. 01078. The H. John and Bette J. Spence property is described in WRCs  
15 No. 033449, 033450 and 054441. The former two claims were filed on long forms  
16 identifying Reed Creek as the source of water. These claims were filed by John H.  
17 Snodgrass, the previous owner of the Spence property. The two Snodgrass water  
18 right claims indicate that a total of approximately 4 acres were irrigated within  
19 7.27 acres using 0.08 cfs from Reed Creek. WRC No. 054441 was filed on a short  
20 form by J. J. Spence and also identifies Reed Creek as the source for stock water  
21 and irrigation. Mr. Spence originally owned 7.22 acres of which he sold 2.22 to  
22 the Shuberts. WRC No. 033449 appears to be appurtenant to the 2.22 acres which  
23 were sold. Current irrigation practices on the Spence property includes  
24 irrigation of slightly less than 5 acres of pasture, lawn and garden via a 5 hp  
25 pump and sprinkler system. The 5 hp pump the Spences use will no doubt produce  
26 several times the instantaneous quantity of 0.05 cfs reflected on WRC No. 033450.  
27

28 REPORT OF REFEREE  
Re: Subbasin No. 11

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15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1        WRC No. 117821, filed by William R. and Dorothy C. Cole, indicates use of  
2        0.05 cfs for irrigation of 1.6 acres. The Coles have purchased additional land  
3        since WRC No. 117821 was filed with Ecology. The current practice is to irrigate  
4        2½ acres via both gravity flow and sprinkler irrigation using a 1.5 hp electric  
5        pump. Although an instantaneous quantity was not provided, it appears that  
6        substantially more than 0.05 cfs is diverted for irrigation between the pump and  
7        gravity systems.

8        The William L. and Carol J. Wood parcel includes irrigation of about 2½ acres  
9        via a 1.5 hp pump. WRC No. 065852, which was filed by John Breckon, included land  
10      in addition to the current Wood parcel of 3½ acres. The claim asserts 0.20 cfs  
11      for the 5 acres irrigated in 1974.

12      The Referee concludes that the short form claim, No. 054441, filed by Jack  
13      Spence is redundant and therefore is of no significance. WRCs No. 033449 and  
14      033450 are on long forms for the same source and property. Substantial compliance  
15      is not an issue unless claimants are alleging that Hanson Spring is somehow  
16      covered by the five water right claims on file.

17      The Referee finds that none of the claims covers Hanson Spring or any water  
18      source at the location of the West Side Canal and drain ditch interception. The  
19      claimants' contention that Gray, supra is not controlling on its face seems flawed  
20      as the owner of the S½SW¼ of Section 33, T. 18 N., R. 18 E.W.M. was a party to the  
21      case and did not assert water rights for Manastash Creek in that proceeding. The  
22      Referee believes that the successors of Hanson are bound (see original Report of  
23      Referee). Lacking direct delivery of Manastash Creek water to the claimants'  
24      property, the argument is moot.

1        Finally, consideration is given to the possibility that a water right was  
2 perfected to non-project, non-foreign return flow with a priority date later than  
3 Gray, *supra*. The Referee concludes that any rights which might have existed were  
4 extinguished for the claimants' property on June 22, 1910, (see DE-S150) when  
5 Sheldon retained all water rights except the West Side shares upon sale to  
6 Parrington. In addition, claimants have not created a record to support such a  
7 water right nor have they asserted a quantified right to return flow water.  
8

9        The Referee concludes from the record that the only water to which the  
10 claimants have a right is based on their shares of West Side Canal. West Side  
11 Irrigation Company is a Major Claimant whose rights are being determined through  
12 the Major Claimant proceedings. The Report of Referee erroneously includes  
13 H. John and Bette J. Spence and William R. and Dorothy Cole on the  
14 "Non-diversionary Stock Water" list on Page 180. The source of any water  
15 available to stock is a ditch; therefore, their names will be removed from the  
16 list.

17        In the Report of Referee, Page 68, Lines 2 - 5, use of stock water on the  
18 Spence property is presented. As the record now stands, it seems clear that  
19 Ecology erroneously recommended confirmation of non-diversionary stock water.

20        Also, on Page 68, Lines 19 - 22 is a discussion of use of water from a pond  
21 or spring on the Cole property for non-diversionary stock water. The record now  
22 shows that the small pond was constructed in fairly recent history and is supplied  
23 water through the previously discussed ditch system. The Referee believes that  
24 Ecology erroneously recommended confirmation of non-diversionary stock water to  
25 the Cole property and the Coles shall be removed from the list.  
26

1      Claimants With Recommended Non-Diversionary Stock Water And Wildlife Rights

2      Lee R. Akker and Carolyn Akker  
3      Lawrence Anderson and Arlein Anderson  
4      Anderville Farms, Inc.  
5      Wilhelm and Joan Bakke  
6      Haldon J. Baumann and Ulma J. Baumann  
7      Ken Beckley  
8      Boise Cascade Corporation  
9      George B. Brain  
10     James E. Brooks and Lillian J. Brooks  
11     Thomas C. Brunson and Kathleen Brunson  
12     Burlington Northern Railroad Co.  
13     Edmund T. Christian and Margery Christian  
14     Richard D. Chubb  
15     Donald J. Cocheba and Sharon A. Cocheba  
16     Harold Crose and Judy Crose  
17     Robert Dean  
18     Peter Evans and Nora Evans  
19     May Moffat Mitchell Gage  
20     Robert Gardinier and Avadene Gardinier  
21     Robert Y. Gardinier and Wanda Gardinier  
22     Steve Hall and Linda Hall  
23     Carl Harrell  
24     Clarence Harrell and Hazel J. Harrell  
25     Kathy Harrell  
26     Troy Harrell  
27     George Helleson and Barbara Helleson  
28     Michael Hoffman and Sandra Hoffman  
29     Estate of John C. Hoffman and Hilda and W. O. Salter  
30     Lyle F. R. Knudson and Ruth M. Knudson  
31     Robert F. Lapen and Linda L. Lapen  
32     Garry Mathews and Dawn Mathews  
33     John Richard Matthews  
34     Clay McMechan, Jr.  
35     Brian Mellergaard and Carol Mellergaard  
36     Laurin C. Mellergaard and Marjorie Mellergaard  
37     George E. Mills  
38     Ron Nickels and Judy Nickels  
39     The Estate of Ramon C. Nielsen  
40     & The Estate of Marion Nielsen  
41     Harold Orr  
42     Martin Pederson, et al.  
43     Bob A. Rock and Gwen C. Rock  
44     Mel Shenyer and Jodee Shenyer  
45     Wayne Smith and Margaret Smith  
46     Roger C. Sparks and Rita M. Sparks  
47     Jay Spouse and Bette Spouse  
48     Charles Steward and Margaret Steward  
49     H. H. Weeber and Marjorie A. Weeber

1 Washington State Department of Wildlife  
2 Burton J. Williams and Carol M. Williams  
3 Mitchell F. Williams and Julie A. Williams  
WA State Dept. of Natural Resources

4 IV. FINDINGS OF FACT

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

8 The various exceptions that were filed resulted in many of the confirmed  
9 rights being modified. In order to assist in future administration of the water  
10 rights in Subbasin No. 11, the Referee has chosen to list all of the rights  
11 recommended for confirmation, including those not modified. Based upon the  
12 additional testimony and evidence obtained at either the exception hearing or the  
13 supplemental hearing, the Report of Referee - Subbasin No. 11, dated May 9, 1994,  
14 should be modified and Pages 183 through 220 are replaced with the following:  
15

1 CLAIMANT NAME:

2 Edmund T. Christian  
3 & Margery Christian  
4 Roger C. Sparks  
5 & Rita M. Sparks  
6 Steve Hall  
7 & Linda Hall

COURT CLAIM NO. 00987

5 Source: Manastash Creek

6 Use: Irrigation of 25 acres

7 Period of Use: April 1 through October 31

8 Quantity: 0.583 cfs from April 1 through June 30, 0.292 cfs from  
9 July 1 through October 31; 177.7 acre-feet per year

10 Priority Date: June 30, 1871

11 Point of Diversion: 600 feet north and 700 feet east of the southwest corner  
12 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
13 T. 17 N., R. 17 E.W.M.

14 Place of Use: Government Lots 6 and 7 of Section 6, T. 17 N.,  
15 R. 18 E.W.M.

16 Limitations of Use: This land may have a supplemental water right through the  
17 Kittitas Reclamation District, which is exercised when  
18 sufficient creek water is not available.

19 The four owners of the place of use are confirmed  
20 proportionate shares of this water right as follows:

21 68.8%--Steve and Linda Hall  
22 25%---Roger C. and Rita M. Sparks  
23 3.6%---Edmund T. and Margery Christian  
24 2.5%---Mr. Plaster

1 CLAIMANT NAME: Clarence Harrell  
2 & Hazel J. Harrell COURT CLAIM NO. 00477

3 Source: An unnamed spring

4 Use: Stock water

5 Period of Use: Continuously

6 Quantity: 0.06 cfs; 6 acre-feet per year

7 Priority Date: June 30, 1871

8 Point of Diversion: 950 feet north and 130 feet east of the west quarter  
9 corner of Section 5, being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 5, T. 17 N., R. 18 E.W.M.

10 Place of Use: W $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M.

11 CLAIMANT NAME: Clarence Harrell COURT CLAIM NO. 00477  
12 & Hazel J. Harrell

13 Source: An unnamed spring

14 Use:  $\frac{1}{2}$  acre of lawn and garden irrigation and stock water

15 Period of Use: Continuously for stock water and March 1 through  
October 31 for lawn and garden irrigation

16 Quantity: 0.03 cfs; 3 acre-feet per year

17 Priority Date: June 30, 1871

18 Point of Diversion: 600 feet north and 200 feet east of the southwest corner  
19 of Section 5, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5,  
T. 17 N., R. 18 E.W.M.

20 Place of Use: E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 17 N.,  
21 R. 18 E.W.M.

22  
23  
24  
25  
26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1 CLAIMANT NAME: Clarence Harrell & Hazel J. Harrell  
2 Carl Harrell  
3 Kathy Harrell  
4 Troy Harrell

COURT CLAIM NO. 00657

5 Source: Manastash Creek

6 Use: Irrigation of 120 acres

7 Period of Use: March 1 through October 31

8 Quantity: 2.80 cfs from April 1 through June 30, 1.40 cfs from  
9 March 1 through March 31 and July 1 through October 31;  
10 942 acre-feet per year

11 Priority Date: June 30, 1871

12 Point of Diversion: 600 feet north and 700 feet east from the southwest  
13 corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
14 Section 12, T. 17 N., R. 17 E.W.M.

15 Place of Use: The SE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.

16 CLAIMANT NAME: Clarence Harrell & Hazel J. Harrell

COURT CLAIM NO. 00477

17 Source: Manastash Creek

18 Use: Irrigation of 120 acres

19 Period of Use: March 1 through October 31

20 Quantity: 3.26 cfs from April 1 through June 30, 1.63 cfs from  
21 March 1 through March 31 and from July 1 through  
22 October 31; 1098.6 acre-feet per year

23 Priority Date: June 30, 1871

24 Point of Diversion: 600 feet north and 700 feet east from the southwest  
25 corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
26 Section 12, T. 17 N., R. 17 E.W.M.

27 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 5, T. 17 N.,  
28 R. 18 E.W.M.

REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Clarence Harrell  
2 & Hazel J. Harrell COURT CLAIM NO. 00477

3 Source: Manastash Creek

4 Use: Irrigation of 25 acres

5 Period of Use: March 1 through October 31

6 Quantity: 0.583 cfs from April 1 through June 30; 0.292 cfs March 1  
7 through March 31 and July 1 through October 31,  
196 acre-feet per year

8 Priority Date: June 30, 1871

9 Point of Diversion: 600 feet north and 700 feet east of the southwest corner  
10 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 17 E.W.M.

11 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 17 N.,  
R. 18 E.W.M.

13 CLAIMANT NAME: John Richard Matthews COURT CLAIM NO. 02283

14 Source: Manastash Creek

15 Use: Irrigation of 15 acres and stock water

16 Period of Use: April 1 through October 31

17 Quantity: 0.35 cfs from April 1 through June 30, 0.175 cfs from  
18 July 1 through October 31; 117.1 acre-feet per year for  
irrigation, 0.01 cfs; 1 acre-foot per year for stock  
water

19 Priority Date: June 30, 1871

20 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
21 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.

22 Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 17 N.,  
R. 17 E.W.M. lying south of Manastash Creek

24 Limitations of Use: This land may have a supplemental water right through the  
25 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1 CLAIMANT NAME: Ron Nickels & Judy Nickels COURT CLAIM NO. 01671  
2  
3 Source: Manastash Creek  
4 Use: Irrigation of 3 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.07 cfs from April 1 through June 30, 0.035 cfs from July 1 through October 31; 21.4 acre-feet per year  
7 Priority Date: June 30, 1871  
8 Point of Diversion: 825 feet south and 1200 feet west from the east quarter corner of Section 12, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M.  
9  
10 Place of Use: That portion of the south 400 feet of the west 300 feet of the W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M. lying north of Manastash Creek and south of Cedar Cove Road  
11  
12 Limitations of Use: This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available  
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14  
15 CLAIMANT NAME: Packwood Canal Company, Inc. COURT CLAIM NO. 00785  
16 (A)04801  
17 Source: Hatfield Canyon Creek  
18 Use: Irrigation of 5 acres  
19 Period of Use: April 1 through October 31  
20 Quantity: 0.932 cfs; 50.5 acre-feet per year  
21 Priority Date: June 30, 1871  
22 Point of Diversion: 550 feet east of the northwest corner of Section 32 being within either the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 or the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M.  
23  
24 Place of Use: That portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. lying north and east of the Packwood Canal  
25  
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27  
28 REPORT OF REFEREE Referee's Office  
Re: Subbasin No. 11 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME:

Clarence Harrell  
& Hazel J. Harrell

COURT CLAIM NO. 00657

2 Source: An unnamed spring

3 Use: Single domestic supply

4 Period of Use: Continuous

5 Quantity: 0.02 cfs; 1 acre-foot per year

6 Priority Date: June 30, 1871

7 Point of Diversion: 150 feet north and 950 feet west from the south quarter  
corner of Section 6, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 6, T. 17 N., R. 17 E.W.M.

8 Place of Use: The S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME:

Brent D. Renfrow  
& Karen A. Raymond

COURT CLAIM NO. 04816

2 Source:

Manastash Creek

3 Use:

Irrigation of 5.5 acres and stock water

4 Period of Use:

April 1 through October 31

5 Quantity:

0.128 cfs from April 1 through June 30 and 0.064 cfs from July 1 through October 31; 39.2 acre-feet per year for irrigation and 0.01 cfs; 1 acre-foot per year for stock water

6 Priority Date:

June 30, 1871

7 Point of Diversion:

550 feet south and 650 feet east from the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.

8 Place of Use:

The west 330 feet of the south 759 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M., EXCEPT that portion which lies south of a line described as follows: Beginning at the northwest corner of the NW $\frac{1}{4}$  of said section; thence S 00°28'52" W along the westerly boundary line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of said section 867.15 feet; thence S 89°31'08" E 330 feet and the end of this line description.

10 ALSO The east 385 feet of the west 715 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M. EXCEPT the north 561 feet thereof, and that portion of said land, if any, that may lie within Parcel A of Survey recorded January 13, 1981, in Book 8 of Kittitas County, and the south 305 feet thereof, and the north 147.85 feet of the south 452.85 feet of the west 30 feet thereof.

1 CLAIMANT NAME:

2 Wayne Smith  
3 & Margaret Smith

4 COURT CLAIM NO. 00258

5 Source:

6 Manastash Creek

7 Use:

8 Irrigation of 30 acres and stock water

9 Period of Use:

10 April 1 through October 31 for irrigation and  
11 continuously for stock water

12 Quantity:

13 0.70 cfs from April 1 through June 30, 0.35 cfs July 1  
14 through October 31; 212.5 acre-feet per year for  
15 irrigation, 1 acre-foot per year for stock water

16 Priority Date:

17 June 30, 1871

18 Point of Diversion:

19 600 feet north and 700 feet east from the southwest  
20 corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
21 Section 12, T. 17 N., R. 17 E.W.M.

22 Place of Use:

23 Government Lot 2 and the S $\frac{1}{2}$  and the west 265 feet of the  
24 N $\frac{1}{2}$  of Government Lot 1 ALL in Section 7, T. 17 N.,  
25 R. 18 E.W.M.

1 CLAIMANT NAME: Mitchell F. Williams  
2 & Julie A. Williams COURT CLAIM NO. 01553  
3 Source: Manastash Creek  
4 Use: Irrigation of 35.5 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.827 cfs from April 1 through June 30 and 0.414 cfs from  
July 1 through October 31; 258.4 acre-feet per year  
7 Priority Date: June 30, 1871  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.  
9 Place of Use: That portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14 lying north and  
west of the Manastash Road and east of the Kittitas  
Reclamation District Canal; that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11 lying south of Manastash Creek; the south  
300 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12; and the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$   
of Section 13, ALL in T. 17 N., R. 17 E.W.M.  
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14 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Anderville Farms, Inc. COURT CLAIM NO. 02253  
2 Clay McMechan, Jr.

3 Source: Manastash Creek

4 Use: Irrigation of 10 acres

5 Period of Use: April 1 through October 31

6 Quantity: 0.233 cfs from April 1 through June 30 and 0.117 cfs from July 1 through October 31; 71.1 acre-feet per year

7 Priority Date: June 30, 1872

8 Point of Diversion: 1200 feet north and 1200 feet east of the center of Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

9 Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. lying westerly of the West Side Canal

10

11 CLAIMANT NAME: Anderville Farms, Inc. COURT CLAIM NO. 01950  
12

13 Source: Manastash Creek

14 Use: Irrigation of 101 acres

15 Period of Use: April 1 through October 31

16 Quantity: 2.353 cfs from April 1 through June 30 and 1.177 cfs from July 1 through October 31; 720.2 acre-feet per year

17 Priority Date: June 30, 1872

18 Point of Diversion: 1200 feet north and 1200 feet east of the center of Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

19 Place of Use: The NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and that part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, lying south of Manastash Creek all in T. 17 N., R. 18 E.W.M.

20

21 Limitations of Use: This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available

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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Robert Gardinier & Avadene Gardinier  
2 Robert Y. Gardinier & Wanda Gardinier

3 COURT CLAIM NO. 02260

4 Source: Manastash Creek

5 Use: Irrigation of 17 acres

6 Period of Use: April 1 through October 31

7 Quantity: 0.40 cfs from April 1 through June 30,  
8 0.20 cfs from July 1 through October 31,  
9 122.0 acre-feet per year

10 Priority Date: June 30, 1872

11 Point of Diversion: 1200 feet north and 1200 feet east of the center of  
Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7,  
T. 17 N., R. 18 E.W.M.

12 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N.,  
R. 18 E.W.M. lying west of the West Side Canal

13

14 CLAIMANT NAME: Clarence Harrell & Hazel J. Harrell

15 COURT CLAIM NO. 00477

16 Source: Manastash Creek

17 Use: Irrigation of 165 acres

18 Period of Use: March 1 through October 31

19 Quantity: 3.84 cfs from April 1 through June 30, 1.92 cfs from  
March 1 through March 31 and from July 1 through  
October 31; 1294.1 acre-feet per year

20 Priority Date: June 30, 1872

21 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.

22 Place of Use: S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M.; the N $\frac{1}{2}$ NE $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , all in Section 5, T. 17 N., R. 18 E.W.M.

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27 REPORT OF REFEREE

28 Re: Subbasin No. 11

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

1 CLAIMANT NAME:

Clarence Harrell  
& Hazel J. Harrell

COURT CLAIM NO. 00477

2 Source:

Manastash Creek

3 Use:

Irrigation of 10 acres

4 Period of Use:

March 1 through October 31

5 Quantity:

0.233 cfs; 78.4 acre-feet per year

6 Priority Date:

June 30, 1872

7 Point of Diversion:

600 feet north and 700 feet east from the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M.

8 Place of Use:

That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. lying north of Hanson Road.

1 CLAIMANT NAME:

2 Walter H. Kembel  
3 & Margaret E. Nelson

COURT CLAIM NO. 00826

4 (A)03983

5 Source: Manastash Creek

6 Use: Irrigation of 1.5 acres

7 Period of Use: April 1 through October 31

8 Quantity: 0.06 cfs; 12 acre-feet per year

9 Priority Date: June 30, 1872

10 Point of Diversion: 1300 feet south and 225 feet east from the west quarter  
11 corner of Section 4, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
12 Section 4, T. 17 N., R. 18 E.W.M.

13 Place of Use: That portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 4, T. 17 N.,  
14 R. 18 E.W.M. described as follows: Beginning at the  
15 intersection of the south line of the SE $\frac{1}{4}$  of Section 4  
16 and the easterly margin of Brown Road; thence  
17 northwesterly along said easterly margin 110 feet to the  
18 true point of beginning; thence continuing northwesterly  
19 along said easterly margin 280 feet; thence east parallel  
20 with the south line of said SE $\frac{1}{4}$  280 feet; thence  
21 southeasterly parallel with the easterly margin of said  
22 Brown Road 280 feet; thence west parallel with the south  
23 line of said SE $\frac{1}{4}$  280 feet to the easterly margin of said  
24 Brown Road and the true point of beginning.

1 CLAIMANT NAME: Brian Mellergaard COURT CLAIM NO. 00826  
2 & Carol Mellergaard (A)03983

3 Source: Manastash Creek

4 Use: Irrigation of 60 acres

5 Period of Use: April 1 through October 31

6 Quantity: 2.27 cfs; 692.4 acre-feet per year

7 Priority Date: June 30, 1872

8 Point of Diversion: 1300 feet south and 225 feet east from the west quarter corner of Section 4, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T. 17 N., R. 18 E.W.M.

9

10 Place of Use: That portion of the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 4 lying east of Brown Road and that portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, lying north of Spring Creek and west of the Yakima River all in T. 17 N., R. 18 E.W.M.

11

12

13 CLAIMANT NAME: Brian Mellergaard COURT CLAIM NO. 00826  
14 & Carol Mellergaard (A)03983

15 Source: Spring Creek

16 Use: Irrigation of 10 acres

17 Period of Use: April 1 through October 31

18 Quantity: 0.36 cfs, 155 acre-feet per year

19 Priority Date: June 30, 1872

20 Point of Diversion: (1) 150 feet south and 1275 feet west of the northeast corner of Section 9, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 17 N., R. 18 E.W.M.

21 (2) 20 feet south and 20 feet east of the northwest corner of Section 10, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T. 17 N., R. 18 E.W.M.

22

23 Place of Use: That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 17 N., R. 18 E.W.M. lying south of Spring Creek

24

25

26

27

1 CLAIMANT NAME: Menastash Water Ditch Association COURT CLAIM NO. 00950  
2 (A)03025

3 Source: Manastash Creek

4 Use: Irrigation of 2191 acres and stock water

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

6 Quantity: 27.96 cfs from April 1 through June 30, 13.98 cfs from  
July 1 through March; 8442.5 acre-feet per year for  
irrigation, 118.2 acre-feet per year for stock water

7 Priority Date: June 30, 1872

8 Point of Diversion: 500 feet south and 150 feet east of the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.

9 Place of Use: Beginning at the intersection of Richards County Road and  
the Menastash Ditch; thence proceeding in a generally  
northerly direction along the Menastash Ditch to the  
northwest corner of the SW $\frac{1}{4}$  of Section 1, T. 17 N.,  
R. 17 E.W.M., in the County of Kittitas, State of  
Washington; thence north to the northwest corner of  
Section 36, T. 18 N., R. 17 E.W.M., said County and  
State; thence east along the Robinson Canyon County Road  
to the intersection with the Menastash Ditch; thence in a  
generally northerly direction along the alignment of said  
ditch to the intersection with the West Side Canal lying  
within the NE $\frac{1}{4}$  of Section 25, T. 18 N., R. 17 E.W.M.;  
thence in a generally southeasterly direction along the  
alignment of said West Side Canal to the intersection  
with the Robinson Canyon County Road; thence easterly  
along said Robinson Canyon County Road to the northeast  
corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 18 N.,  
R. 18 E.W.M.; thence south approximately 1320 feet;  
thence west to the intersection of the West Side Canal;  
thence following said canal in a generally southerly  
direction to a point where it intersects with Weaver  
County Road; thence west on Weaver County Road to the  
northwest corner of Section 5, T. 17 N., R. 18 E.W.M.;  
thence south along the section line approximately  
1000 feet; thence proceeding along a line approximately  
south 70° west 1500 feet; thence proceeding along a line  
in a northwesterly direction approximately 1300 feet to  
the northeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6,  
T. 17 N., R. 18 E.W.M.; thence running south  
approximately 4000 feet to the intersection with Hanson

27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

Referee's Office  
15 W. Yakima Ave Ste. 200  
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1 County Road; thence west 1320 feet to the southwest  
2 corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 17 N.,  
3 R. 18 E.W.M.; thence north approximately 2640 feet to the  
4 northeast corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 6; thence  
5 proceeding on a line due west to the intersection of Cove  
6 County Road; thence south along Cove County Road to the  
7 intersection with Richards County Road; thence proceeding  
8 west on Richards County Road to Hatfield Canyon lateral;  
9 thence north along the lateral alignment to the northeast  
10 corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 17 N.,  
11 R. 17 E.W.M.; thence west to the northwest corner of said  
12 Section 12; thence south to Richards County Road; thence  
13 west to the point of beginning.  
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1 CLAIMANT NAME: Joseph L. Schwab COURT CLAIM NO. 01771  
2 & Doris M. Schwab

3 Source: Manastash Creek

4 Use: Irrigation of 2.5 acres and stock water.

5 Period of Use: April 1 through October 31

6 Quantity: 0.058 cfs from April 1 through June 30, 0.029 cfs from  
7 July 1 through October 31; 17.8 acre-feet per year for  
irrigation and 0.01 cfs; 1 acre-foot per year for stock  
water

8 Priority Date: June 30, 1872

9 Point of Diversion: 650 feet north and 1150 feet east from the south quarter  
10 corner of Section 5, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 5, T. 17 N., R. 18 E.W.M.

11 Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N.,  
12 R. 18 E.W.M. described as follows: Beginning at a point  
13 on the east boundary of said quarter section 721 feet  
14 north of the southeast corner thereof; said point being  
15 in the center of Manastash Creek; thence along the center  
16 of said creek as follows: S 74°27' W 99.3 feet; thence  
17 S 42°56' W 139.6 feet; thence N 37°18' W 132.7 feet;  
thence S 79°31' W 179.3 feet; thence from point in the  
creek N 3° W 284.8 feet to the south boundary line of the  
right-of-way of the county road; thence N 70°11' E 455.2  
feet on said boundary line to the east boundary line of  
said quarter section; thence S 3° 394 feet to the point  
of beginning.

18 Limitations of Use: This land may have a supplemental water right through the  
19 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Larry Bland COURT CLAIM NO. 01723  
2 & Harriett L. Bland (A)04410  
3 Bart G. Bland  
4 CLAIMANT NAME: Bart G. Bland COURT CLAIM NO. 00931  
5 (A)01750  
6 Source: Manastash Creek  
7 Use: Irrigation of 37 acres  
8 Period of Use: April 1 through October 31 for irrigation  
9 Quantity: 1.165 cfs from April 1 through June 30, 0.58 cfs from  
10 July 1 through October 31; 355.3 acre-feet per year  
11 Priority Date: June 30, 1874  
12 Point of Diversion: 550 feet south and 650 feet east of the north quarter  
13 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
14 Section 14, T. 17 N., R. 17 E.W.M.  
15 Place of Use: The SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME:

Edmund T. Christian  
& Margery Christian  
Roger C. Sparks  
& Rita M. Sparks  
Steve Hall  
& Linda Hall

COURT CLAIM NO. 00987

5 Source:

Manastash Creek

6 Use:

Irrigation of 20 acres

7 Period of Use:

April 1 through October 31

8 Quantity:

0.467 cfs from April 1 through June 30, 0.233 cfs from July 1 through October 31; 142.4 acre-feet per year

9 Priority Date:

June 30, 1874

10 Point of Diversion:

600 feet north and 700 feet east of the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M.

11 Place of Use:

Government Lots 6 and 7, Section 6, T. 17 N., R. 18 E.W.M.

12 Limitations of Use:

This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available.

13 The four owners of the place of use are confirmed proportionate shares of this water right as follows:

14 68.8%----Steve and Linda Hall

15 25%-----Roger C. and Rita M. Sparks

16 3.6%----Edmund T. and Margery Christian

17 2.5%----Mr. Plaster

1 CLAIMANT NAME:

Brian H. Cooke  
& Tamara M. Cooke

COURT CLAIM NO. 01846

2 Source:

Manastash Creek

3 Use:

Irrigation of 4.5 acres and stock water

4 Period of Use:

April 1 through October 31

5 Quantity:

0.105 cfs from April 1 through June 30, 0.0525 cfs from July 1 through October 31; 32 acre-feet per year for irrigation and 0.01 cfs; 1 acre-foot per year for stock water

6 Priority Date:

June 30, 1874

7 Point of Diversion:

1200 feet north and 1200 feet east from the center of Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

8 Place of Use:

The south 550 feet of the east 430 feet of the west 745 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T.17 N., R. 18 E.W.M.

9 Limitations of Use:

10 This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available.

1 CLAIMANT NAME: Clarence Harrell & Hazel J. Harrell  
2 Carl Harrell  
3 Kathy Harrell  
4 Troy Harrell

COURT CLAIM NO. 00657

5 Source: Manastash Creek

6 Use: Irrigation of 25 acres

7 Period of Use: March 1 through October 31

8 Quantity: 0.583 cfs from April 1 through June 30, 0.292 cfs from  
March 1 through March 31 and from July through October;  
196 acre-feet per year.

9 Priority Date: June 30, 1874

10 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.

11 Place of Use: The SE $\frac{1}{4}$  of Section 6, T. 17 N., R. 18 E.W.M.

12

13 CLAIMANT NAME: George Helleson & Barbara Helleson

COURT CLAIM NO. 01949

14 Source: Manastash Creek

15 Use: Stock water

16 Period of Use: Continuously

17 Quantity: 0.01 cfs; 1 acre-foot per year

18 Priority Date: June 30, 1874

19 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.

20 Place of Use: The north half of the north 400 feet of the east 330 feet  
of the NW $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M.

21 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Laurin C. Mellergaard & Marjorie Mellergaard COURT CLAIM NO. 00982  
2  
3 Source: Manastash Creek  
4 Use: Irrigation of 40 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.93 cfs from April 1 through June 30, 0.465 cfs from July 1 through October 31; 283.9 acre-feet per year  
7 Priority Date: June 30, 1874  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.  
9  
10 Place of Use: That portion of the NW $\frac{1}{4}$  of Section 16, T. 17 N., R. 17 E.W.M., lying west of the West Side Canal  
11  
12 Limitations of Use: This land may also have a water right through the Kittitas Reclamation District and West Side Irrigating Company, which is exercised when sufficient water is not available from the creek.  
13  
14  
15 CLAIMANT NAME: Woody Moore & Deloris Moore COURT CLAIM NO. 00770  
16  
17 Source: Manastash Creek  
18 Use: Stock water  
19 Period of Use: Continuous  
20 Quantity: 0.01 cfs; 1 acre-foot per year  
21 Priority Date: June 30, 1874  
22 Point of Diversion: 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.  
23 Place of Use: The north 500 feet of the west 384 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 17 N., R. 17 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Bob A. Rock  
2 & Gwen C. Rock COURT CLAIM NO. 01153  
3 Source: Manastash Creek  
4 Use: Irrigation of 2 acres and stock water  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.047 cfs from April 1 through June 30, 0.024 cfs from  
7 July 1 through October 31; 14.33 acre-feet per year for  
irrigation and 0.01 cfs; 1 acre-foot per year for stock  
water  
8 Priority Date: June 30, 1874  
9 Point of Diversion: 1200 feet north and 1200 feet east from the center of  
10 Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7,  
T. 17 N., R. 18 E.W.M.  
11 Place of Use: The west 315 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 17 N.,  
R. 18 E.W.M.  
12 Limitations of Use: This land may have a supplemental water right through the  
13 Kittitas Reclamation District, which is exercised when  
14 sufficient creek water is not available.

1 CLAIMANT NAME:

K. Bruce Skibeness  
& Jean G. Skibeness

COURT CLAIM NO. 01896

2 Source:

Manastash Creek

3 Use:

Irrigation of 31 acres and stock water

4 Period of Use:

April 1 through October 31

5 Quantity:

0.903 cfs from April 1 through June 30, 0.45 cfs from July 1 to October 31; 276.3 acre-feet per year for the irrigation of 31 acres and 0.01 cfs; 1 acre-foot per year for stock water

6 Priority Date:

June 30, 1874

7 Point of Diversion:

550 feet south and 650 feet east from the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.

8 Place of Use:

The SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M. LESS that portion described as follows: Beginning at the southeast corner of said section; thence west 359.97 feet; thence north 615.9 feet; thence east 348.01 feet to the right-of-way of Strande Road; thence south along Strande Road right-of-way 623.37 feet to the point of beginning.

9 Limitations of Use:

This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available.

1 CLAIMANT NAME: Charles Steward & Margaret Steward COURT CLAIM NO. 01968  
2  
3 Source: Manastash Creek  
4 Use: Irrigation of 150 acres and stock water  
5 Period of Use: April 1 through October 31 for irrigation and continuous  
for stock water  
6 Quantity: 4.76 cfs from April 1 through June 30, 2.38 cfs from  
July 1 through October 31; 1451.5 acre-feet per year for  
irrigation, 0.10 cfs, 5 acre-feet per year for stock water  
7 Priority Date: June 30, 1874  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.  
9 Place of Use: The SW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M.  
10  
11 CLAIMANT NAME: Charles Steward & Margaret Steward COURT CLAIM NO. 01968  
12  
13 Source: Unnamed spring-fed stream and on-channel ponds  
14 Use: Stock water  
15 Period of Use: Continuously  
16 Quantity: 0.10 cfs; 5 acre-feet per year  
17 Priority Date: June 30, 1874  
18 Point of Diversion: 900 feet north and 500 feet east of the southwest corner  
of Section 8, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8,  
T. 17 N., R. 18 E.W.M.  
19 Place of Use: The SW $\frac{1}{4}$  of Section 8, T. 17 N., R. 18 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Laurin C. Mellergaard COURT CLAIM NO. 00982  
2 & Marjorie Mellergaard

3 Source: Manastash Creek

4 Use: Irrigation of 40 acres

5 Period of Use: April 1 through October 31

6 Quantity: 1.17 cfs from April 1 through June 30, 0.585 cfs from  
July 1 through October 31; 356.4 acre-feet per year

7 Priority Date: June 30, 1876

8 Point of Diversion: 550 feet south and 650 feet east of the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.

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

10 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME:

William J. Chapman  
& N. Denise Chapman

COURT CLAIM NO. 01478

2 Source:

Unnamed spring

3 Use:

Irrigation of 4.66 acres and stock water

4 Period of Use:

March 15 through October 31 for irrigation and  
continuously for stock water

5 Quantity:

0.11 cfs; 28 acre-feet per year for irrigation and  
0.005 cfs; 0.50 acre-foot for stock water

6 Priority Date:

June 30, 1877

7 Point of Diversion:

50 feet south and 400 feet east from the north quarter  
corner of said Section 7, being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
of Section 7, T. 17 N., R. 18 E.W.M.

8 Place of Use:

Lot 1 as delineated on Draney Short Plat No. 94-57,  
recorded February 2, 1995, in Volume D of Short Plats,  
Pages 203 and 204 under Auditor's File No. 578928, being  
a portion of Parcel B of that certain survey recorded  
July 17, 1986, in Book 14 of Surveys, Page 78, under  
Auditor's File No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$   
of Section 7, T. 17 N., R. 18 E.W.M.

9 Limitations of Use:

(1) This land may have a supplemental water right through  
the Kittitas Reclamation District, which is exercised  
when sufficient creek and spring water is not available.

(2) Delivery of irrigation water to this land from  
Manastash Creek and an unnamed spring located within the  
NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not  
exceed 28 acre-feet per season.

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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: William J. Chapman  
2 & N. Denise Chapman COURT CLAIM NO. 01478

3 Source: Manastash Creek

4 Use: Irrigation of 4.66 acres

5 Period of Use: April 1 through October 31

6 Quantity: 0.11 cfs from April 1 through June 30, 0.055 cfs from  
July 1 through October 31; 28 acre-feet per year

7 Priority Date: June 30, 1877

8 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.

9 Place of Use: Lot 1 as delineated on Draney Short Plat No. 94-57,  
recorded February 2, 1995, in Volume D of Short Plats,  
Pages 203 and 204, under Auditor's File No. 578928, being  
a portion of Parcel B of that certain survey recorded  
July 17, 1986, in Book 14 of Surveys, Page 78, under  
Auditor's File No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$   
of Section 7, T. 17 N., R. 18 E.W.M.

10 Limitations of Use: (1) This land may have a supplemental water right through  
the Kittitas Reclamation District, which is exercised  
when sufficient creek and spring water is not available.  
  
(2) Delivery of irrigation water to this land from  
Manastash Creek and an unnamed spring located within the  
NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not  
exceed 28 acre-feet per season.

1 CLAIMANT NAME:

Peter Evans  
& Nora Evans

COURT CLAIM NO. 01478

2 Source:

Manastash Creek

3 Use:

Irrigation of 86.2 acres and stock water

4 Period of Use:

April 1 through October 31 for irrigation; continuous for stock water

5 Quantity:

2.0 cfs from April 1 through June 30, 1.0 cfs from July 1 through October 31; 612 acre-feet per year for irrigation and 0.01 cfs; 1 acre-foot per year for stock water

6 Priority Date:

June 30, 1877

7 Point of Diversion:

(1) 600 feet north and 700 feet east from the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N., R. 18 E.W.M.

(2) 250 feet north and 10 feet east from the center of Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

8 Place of Use:

The N $\frac{1}{2}$ NE $\frac{1}{4}$ , the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M., EXCEPT:

(1) A tract of land bounded by a line beginning at the northeast corner of said NE $\frac{1}{4}$  and running thence south along the east boundary line of said subdivision, 464.6 feet; thence west parallel with the north boundary line of said subdivision, 464.6 feet; thence north parallel with the east boundary line thereof, 464.6 feet; thence east along the north boundary line of said subdivision, 464.6 feet to the point of beginning;

(2) That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. which is bounded by a line described as follows: Beginning at the northeast section corner of said Section 7; thence N 87°00'00" W along the north section line of said Section 7, 1086.08 feet; thence S 3°00'00" W 30.0 feet to the county road (Hanson Road) right-of-way, said point being the true point of

beginning; thence S 5°29'02" E 443.18 feet; thence N 77°33'06" W 371.25 feet; thence N 3°00'00" E 377.39 feet to the southerly right-of-way line for said county road; thence S 87°00'00" E 300.83 feet to the true point of beginning.

(3) Parcels A and B of that certain Survey recorded July 17, 1986, in Book 14 of Surveys, Page 78, under Kittitas County Auditor's File No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

CLAIMANT NAME: Clarence Harrell & Hazel J. Harrell COURT CLAIM NO. 00477

Source: Manastash Creek

Use: Irrigation of 4.8 acres

Period of Use: March 1 through October 31

Quantity: 0.112 cfs from April 1 through June 30, 0.056 cfs from March 1 through March 31 and from July 1 through October 31; 37.5 acre-feet per year

Priority Date: June 30, 1877

Point of Diversion: 600 feet north and 700 feet east from the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M.

Place of Use: The NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Clarence Harrell & Hazel J. Harrell COURT CLAIM NO. 00477  
2

3 Source: Manastash Creek

4 Use: Irrigation of 125 acres

5 Period of Use: March 1 through October 31

6 Quantity: 2.91 cfs from April 1 through June 30, 1.45 cfs from  
7 March 1 through March 31 and from July 1 through  
October 31; 962 acre-feet per year

8 Priority Date: June 30, 1877

9 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
10 Section 12, T. 17 N., R. 17 E.W.M.

11 Place of Use: Government Lots 3 and 4, the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and that portion of  
the SE $\frac{1}{4}$ SW $\frac{1}{4}$  north of Hanson Road all in Section 5,  
12 T. 17 N., R. 18 E.W.M.

13 CLAIMANT NAME: Laurin C. Mellergaard & Marjorie Mellergaard COURT CLAIM NO. 00982  
14

15 Source: Manastash Creek

16 Use: Irrigation of 40 acres

17 Period of Use: April 1 through October 31

18 Quantity: 1.17 cfs from April 1 through June 30; 0.585 cfs from  
July 1 through October 31; 356.4 acre-feet per year

19 Priority Date: June 30, 1877

20 Point of Diversion: 550 feet south and 650 feet east of the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
21 Section 14, T. 17 N., R. 17 E.W.M.

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

23 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient water is not available from the creek.

1 CLAIMANT NAME:

Howard Page  
& Mary Page

COURT CLAIM NO. 01478

2 Source: Manastash Creek

3 Use: Irrigation of 4.5 acres

4 Period of Use: April 1 through October 31

5 Quantity: 0.105 cfs from April 1 through June 30, 0.053 cfs from  
July 1 through October 31; 32 acre-feet per year

6 Priority Date: June 30, 1877

7 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 18 E.W.M.

8 Place of Use: Parcel A of that certain survey recorded July 17, 1986,  
in Book 14 of Surveys at Page 78, under Auditor's File  
No. 496987, recorded in Kittitas County, Washington,  
being a part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N.,  
R. 18 E.W.M. and; that portion of the N $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{4}$ E $\frac{1}{4}$  of Section 7,  
T. 17 N., R. 18 E.W.M., bounded by a line described as  
follows: Beginning at the northeast section corner of  
said Section 7; thence north 87°00'00" west along the  
north section line of said Section 7 a distance of  
1086.08'; thence south 3°00'00" west a distance of 30.0'  
to the county road right-of-way for the Hanson Road, said  
point being the true point of beginning; thence south  
5°29'02" east a distance of 443.18 feet; thence north  
77°33'06" west a distance of 371.25 feet; thence north  
3°00'00" east a distance of 377.39 feet to the southerly  
right-of-way line of said Hanson Road; thence south  
87°00'00" east a distance of 300.83 feet to the true  
point of beginning.

9 Limitations of Use: (1) This land may have a supplemental water right through  
10 the Kittitas Reclamation District, which is exercised  
11 when sufficient creek and spring water is not available.

12 (2) Delivery of irrigation water to this land from  
13 Manastash Creek and an unnamed spring located within the  
14 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not  
15 exceed 51.26 acre-feet per season.

16 REPORT OF REFEREE  
17 Re: Subbasin No. 11

18 Referee's Office  
19 15 W. Yakima Ave Ste. 200  
20 Yakima, WA 98902-3401

1 CLAIMANT NAME:

Howard Page  
& Mary Page

COURT CLAIM NO. 01478

2 Source:

Unnamed spring

3 Use:

Irrigation of 4.5 acres and stock water

4 Period of Use:

March 1 through October 31 for irrigation and  
continuously for stock water

5 Quantity:

0.267 cfs for irrigation, 51.26 acre-feet; 0.133 cfs for  
ditch loss and 0.005 cfs, 0.5 acre-foot for stock water

6 Priority Date:

June 30, 1877

7 Point of Diversion:

50 feet south and 400 feet east from the north quarter  
corner of said Section 7, being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$   
of Section 7, T. 17 N., R. 18 E.W.M.

8 Place of Use:

Parcel A of that certain survey recorded July 17, 1986,  
in Book 14 of Surveys at Page 78, under Auditor's File  
No. 496987, recorded in Kittitas County, Washington,  
being a part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N.,  
R. 18 E.W.M. and; that portion of the N $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{4}$  of Section 7,  
T. 17 N., R. 18 E.W.M., bounded by a line described as  
follows: Beginning at the northeast section corner of  
said Section 7; thence north 87°00'00" west along the  
north section line of said Section 7 a distance of  
1086.08'; thence south 3°00'00" west a distance of 30.0'  
to the county road right-of-way for the Hanson Road, said  
point being the true point of beginning; thence south  
5°29'02" east a distance of 443.18 feet; thence north  
77°33'06" west a distance of 371.25 feet; thence north  
3°00'00" east a distance of 377.39 feet to the southerly  
right-of-way line of said Hanson Road; thence south  
87°00'00" east a distance of 300.83 feet to the true  
point of beginning

9 Limitations of Use:

(1) This land may have a supplemental water right through  
the Kittitas Reclamation District, which is exercised  
when sufficient creek and spring water is not available.

(2) Delivery of irrigation water to this land from  
Manastash Creek and an unnamed spring located within the  
NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not  
exceed 51.26 acre-feet per season.

CLAIMANT NAME: James A. Smith & Linda C. Smith COURT CLAIM NO. 01478

Source: Manastash Creek

Use: Irrigation of 9.34 acres

Period of Use: April 1 through October 31

Quantity: 0.22 cfs from April 1 through June 30, 0.11 cfs from July 1 through October 31; 67.2 acre-feet per year

Priority Date: June 30, 1877

Point of Diversion: 600 feet north and 700 feet east from the southwest corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M.

Place of Use: That portion of the following lot lying northerly of Manastash Creek: Lot 2 as delineated on Draney Short Plat No. 94-57, recorded February 2, 1995, in Book D of Short Plats, Pages 203 and 204, under Auditor's File No. 578928; being a portion of Parcel B of that certain survey recorded July 17, 1986, in Book 14 of Surveys, Page 78, under Auditor's File No. 496987, being a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

Limitations of Use:

- (1) This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek and spring water is not available
- (2) Delivery of irrigation water to this land from Manastash Creek and an unnamed spring located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not exceed 67.2 acre-feet per year

**REPORT OF REFEREE**  
**Re: Subbasin No. 11**

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

1 CLAIMANT NAME: James A. Smith COURT CLAIM NO. 01478  
2 & Linda C. Smith

3 Source: Unnamed spring

4 Use: Irrigation of 9.34 acres and stock water

5 Period of Use: April 1 through October 31

6 Quantity: 0.25 for ditch loss and 0.25 cfs; 107 acre-feet per year  
7 for irrigation and 0.02 cfs; 1.0 acre-foot per year for  
stock water

8 Priority Date: June 30, 1877

9 Point of Diversion: 1100 feet east and 900 feet north from the center of said  
10 Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7,  
T. 17 N., R. 18 E.W.M.

11 Place of Use: That portion of the following lot lying northerly of  
12 Manastash Creek: Lot 2 as delineated on Draney Short  
13 Plat No. 94-57, recorded February 2, 1995, in Book D of  
14 Short Plats, Pages 203 and 204, under Auditor's File  
15 No. 578928; being a portion of Parcel B of that certain  
survey recorded July 17, 1986, in Book 14 of Surveys,  
16 Page 78, under Auditor's File No. 496987, being a portion  
of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.

17 Limitations of Use: (1) This land may have supplemental water right through  
18 the Kittitas Reclamation District, which is exercised  
when sufficient creek and spring water is not available  
19 (2) Delivery of irrigation water to this land from  
Manastash Creek and an unnamed spring located within the  
NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. shall not  
exceed 107 acre-feet per year

1 CLAIMANT NAME: Wayne Smith  
2 & Margaret Smith COURT CLAIM NO. 00258

3 Source: Manastash Creek

4 Use: Irrigation of 22.5 acres

5 Period of Use: April 1 through October 31

6 Quantity: 0.52 cfs from April 1 through June 30 and 0.26 cfs from  
July 1 through October 31; 158.6 acre-feet per year

7 Priority Date: June 30, 1877

8 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.

9 Place of Use: The S $\frac{1}{2}$  and the west 265 feet of the N $\frac{1}{2}$  of Government  
Lot 1 and Government Lot 2 of Section 7, T. 17 N.,  
R. 18 E.W.M.

10 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Roger C. Sparks  
2 & Rita M. Sparks COURT CLAIM NO. 01478

3 Source: Manastash Creek

4 Use: Irrigation of 45 acres

5 Period of Use: April 1 through October 31

6 Quantity: 1.46 cfs from April 1 through June 30, 0.73 cfs from  
July 1 through October 31; 446.7 acre-feet per acre

7 Priority Date: June 30, 1877

8 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.

9 Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$  and part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 6, T. 17 N.,  
R. 17 E.W.M.

10 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available

11

12 CLAIMANT NAME: H.H. Weeber  
13 & Marjorie A. Weeber COURT CLAIM NO. 00373

14 Source: Manastash Creek

15 Use: Irrigation of 33.4 acres and stock water

16 Period of Use: April 1 through October 31

17 Quantity: 0.78 cfs from April 1 through June 30, 0.39 cfs from  
July 1 through October 31; 238 acre-feet per year for  
irrigation and 0.02 cfs; 2 acre-feet per year for stock  
water

18 Priority Date: June 30, 1877

19 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.

20 Place of Use: NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M. less the  
north 522.72 feet of the west 250.05 feet thereof

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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Clarence Harrell COURT CLAIM NO. 00477  
2 & Hazel J. Harrell  
3 Source: Manastash Creek  
4 Use: Irrigation of 80 acres  
5 Period of Use: March 1 through October 31  
6 Quantity: 1.86 cfs from April 1 through June 30, 0.93 cfs from  
7 March 1 through March 31 and from July 1 through  
October 31; 626.8 acre-feet per year  
8 Priority Date: June 30, 1878  
9 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.  
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11 Place of Use: The NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5,  
T. 17 N., R. 18 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Harold L. Lindstrom COURT CLAIM NO. 01772  
2 & Gloria P. Lindstrom  
3 Source: Manastash Creek  
4 Use: Irrigation of 1.25 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.029 cfs from April 1 to June 30, 0.015 cfs from July 1  
through October 31; 8.9 acre-feet per year  
7 Priority Date: June 30, 1878  
8 Point of Diversion: 600 feet north and 700 feet east from the southwest  
corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.  
9 Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N.,  
R. 18 E.W.M. described as follows: Beginning 350.5 feet  
south and 560.9 feet east of the northwest corner of said  
subdivision, thence east 200.0 feet; thence south  
276.4 feet to the north right-of-way of the county road;  
thence S 86°34' W along said road 200.4 feet; thence  
north 303.5 feet to the point of beginning.  
10 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Laurin C. Mellergaard & Marjorie Mellergaard COURT CLAIM NO. 00982  
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3 Source: Manastash Creek  
4 Use: Irrigation of 40 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 1.17 cfs from April 1 through June 30, 0.585 cfs from July 1 through October 31; 356.4 acre-feet per year  
7 Priority Date: June 30, 1878  
8 Point of Diversion: 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.  
9  
10 Place of Use: The NE $\frac{1}{4}$  of Section 17, T. 17 N., R. 18 E.W.M.  
11 Limitations of Use: This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when creek water is not available.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Majorie J. Muzzall COURT CLAIM NO. 04536  
2 Source: Manastash Creek  
3 Use: Irrigation of 2.5 acres and stock water  
4 Period of Use: April 1 through October 31 for irrigation; continuously  
5 for stock water  
6 Quantity: 0.058 cfs from April 1 through June 30, 0.029 cfs from  
7 July 1 through October 31; 17.8 acre-feet per year for  
irrigation and 0.02 cfs; 1 acre-foot per year for stock  
water  
8 Priority Date: June 30, 1878  
9 Point of Diversion: 600 feet north and 700 feet east from the southwest  
10 corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 12, T. 17 N., R. 17 E.W.M.  
11 Place of Use: That portion of the S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N.,  
12 R. 18 E.W.M. described as follows: Beginning 350.5 feet  
13 south of a point on the north boundary line of said  
14 subdivision, which is 760.9 feet east of the northwest  
15 corner of said subdivision, and running thence east  
16 200.0 feet; thence south 226.0 feet to the north boundary  
17 line of the right-of-way of the county road; thence  
18 southwesterly along the arc of a curve to the right a  
19 distance of 206.3 feet; thence north 276.4 feet to the  
20 point of beginning. AND the west 400 feet of the  
21 following described property: That portion of the  
22 S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 17 N., R. 18 E.W.M. described  
as follows: A tract of land bounded by a line beginning  
at a point 172.0 feet south of a point 560.7 feet east of  
the northwest corner of said subdivision, and running  
thence east, parallel with the north line of said  
subdivision, 760.5 feet to a point on the west  
right-of-way line of the county road; thence S 16°16' W,  
along said right-of-way, 186.9 feet; thence west  
705.5 feet; thence north 178.5 feet to the point of  
beginning.  
23 Limitations of Use: This land may have a supplemental water right through the  
24 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

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27 REPORT OF REFEREE  
28 Re: Subbasin No. 11

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

1 CLAIMANT NAME:

2                   Dean A. Ross  
3                   & Dorothy I. Ross

COURT CLAIM NO. 00923

4 Source:

5                   Manastash Creek

6 Use:

7                   Irrigation of 2.5 acres

8 Period of Use:

9                   April 1 through October 31

10 Quantity:

11                  0.058 cfs from April 1 through June 30, 0.029 cfs from  
12                  July 1 through October 31; 17.8 acre-feet per year

13 Priority Date:

14                  June 30, 1878

15 Point of Diversion:

16                  600 feet north and 700 feet east from the southwest  
17                  corner of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
18                  Section 12, T. 17 N., R. 17 E.W.M.

19 Place of Use:

20                  That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
21                  Section 5, T. 17 N., R. 18 E.W.M. described as follows:  
22                  Beginning at a point 178 feet east of the northwest  
23                  corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence east 186.7 feet; thence  
24                  south 678.5 feet to Hanson Road; thence S 87°30' W 186  
25                  feet along said county road; thence north 704.5 feet to  
26                  the place of beginning.

27 Limitations of Use:

28                  This land may have a supplemental water right through the  
29                  Kittitas Reclamation District, which is exercised when  
30                  sufficient creek water is not available.

1 CLAIMANT NAME: Lawrence E. Spannagel COURT CLAIM NO. 01770  
2 & Sula F. Spannagel  
3 Source: Manastash Creek  
4 Use: Lawn and garden irrigation of 0.5 acre and stock water  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.0117 cfs; 3.3 acre-feet per year  
7 Priority Date: June 30, 1878  
8 Point of Diversion: 600 feet north and 700 feet east of the southwest corner  
9 of Section 12, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12,  
T. 17 N., R. 18 E.W.M.  
10 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 5, T. 17 N., R. 18 E.W.M. described as follows:  
12 Beginning 364.7 feet east from the northwest corner of  
13 said SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence east 196 feet; thence south  
14 654 feet to the north right-of-way of County Road; thence  
15 south 87°30' west along said right-of-way 200 feet more  
16 or less to a point which is 678.5 feet south of the point  
17 of beginning; thence north to the point of beginning

1 CLAIMANT NAME: Ewing Stringfellow COURT CLAIM NO. 01967  
2 Source: Manastash Creek  
3 Use: Irrigation of 32 acres and stock water  
4 Period of Use: April 1 through October 31  
5 Quantity: 0.746 cfs from April 1 through June 30, 0.373 cfs from  
6 July 1 through October 31; 228.3 acre-feet per year for  
7 irrigation and 0.01 cfs; 1 acre-feet per year for stock  
water  
8 Priority Date: June 30, 1879  
9 Point of Diversion: 550 feet south and 650 feet east of the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
10 Section 14, T. 17 N., R. 17 E.W.M.  
11 Place of Use: That portion of the west 2050 feet of the NE $\frac{1}{4}$  of  
12 Section 18, T. 17 N., R. 18 E.W.M. lying north of the  
Kittitas Reclamation District Canal  
13 Limitations of Use: This land may have a supplemental water right through the  
14 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Harold Orr COURT CLAIM NO. 01953  
2 Source: Manastash Creek  
3 Use: Irrigation of 50 acres  
4 Period of Use: April 1 through October 31  
5 Quantity: 1.165 cfs from April 1 through June 30 and 0.583 cfs from  
6 July 1 through October 31; 355.4 acre-feet per year  
7 Priority Date: June 30, 1880  
8 Point of Diversion: 550 feet south and 650 feet east of the north quarter  
9 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.  
10 Place of Use: That portion of the NW $\frac{1}{4}$  of Section 18, T. 17 N.,  
R. 18 E.W.M. lying northerly of Keach Ditch  
11 Limitations of Use: A portion of this land may have a supplemental water  
right through the Kittitas Reclamation District, which is  
exercised when sufficient creek and spring water is not  
available.

1 CLAIMANT NAME: K. Bruce Skibeness COURT CLAIM NO. 01896  
2 & Jean G. Skibeness

3 Source: Manastash Creek

4 Use: Irrigation of 20 acres and stock water

5 Period of Use: April 1 through October 31

6 Quantity: 0.583 cfs from April 1 through June 30, 0.29 cfs from  
7 July 1 through October 31; 178 acre-feet per year for the  
irrigation of 20 acres and 0.01 cfs; 1 acre-foot per year  
for stock water

8 Priority Date: June 30, 1880

9 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
10 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.

11 Place of Use: That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 17 N.,  
12 R. 18 E.W.M. lying south of Susan Road

13 Limitations of Use: This land may have a supplemental water right through the  
14 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Carroll Richards  
2 & Beverly J. Richards COURT CLAIM NO. 00328

3 Source: Manastash Creek

4 Use: Irrigation of 60 acres

5 Period of Use: April 1 through October 31

6 Quantity: 1.4 cfs from April 1 through June 30, 0.70 cfs from  
7 July 1 through October 31; 428.4 acre-feet per year

8 Priority Date: June 30, 1882

9 Point of Diversion: 150 feet north and 1200 feet east from the south quarter  
corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 17 N., R. 17 E.W.M.

10 Place of Use: The W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 12, T. 17 N., R. 17 E.W.M. lying  
11 north of the Hatfield-Amlin Ditch and south of the  
Richards Road AND the W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 17 N.,  
R. 17 E.W.M. described as follows: Beginning at the  
northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12; thence  
south 631.65 feet; thence S 43° W 180 feet more or less;  
thence S 19° W 592 feet more or less; thence north to  
Richards Road; thence northeast along Richards Road  
right-of-way to the north boundary of Section 12; thence  
east to the point of beginning.

16 Limitations of Use: This land may have a supplemental water right through the  
17 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: Brian Mellergaard COURT CLAIM NO. 00826  
2 & Carol Mellergaard (A)03983

3 Source: Spring Creek

4 Use: Irrigation of 60 acres

5 Period of Use: April 1 through October 31

6 Quantity: 2.14 cfs; 925 acre-feet per year

7 Priority Date: June 5, 1883

8 Point of Diversion: (1) 150 feet south and 1275 feet west of the northeast corner of Section 9, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 17 N., R. 18 E.W.M.

9 (2) 20 feet south and 20 feet east of the northwest corner of Section 10, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T. 17 N., R. 18 E.W.M.

10 Place of Use: That portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10, T. 17 N., R. 18 E.W.M. lying west of the Yakima River

11

12 CLAIMANT NAME: Laurin C. Mellergaard COURT CLAIM NO. 00982  
13 & Marjorie Mellergaard

14 Source: Manastash Creek

15 Use: Irrigation of 40 acres

16 Period of Use: April 1 to October 31

17 Quantity: 1.17 cfs, April 1 through June 30, 0.585 cfs from July 1 through October 31; 356.4 acre-feet per year

18 Priority Date: June 30, 1883

19 Point of Diversion: 550 feet south and 650 feet east of the north quarter corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.

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

21 Limitations of Use: This land may have a supplemental water right through the Kittitas Reclamation District, which is exercised when sufficient creek water is not available.

1 CLAIMANT NAME: Carroll Richards  
2 & Beverly J. Richards COURT CLAIM NO. 00328

3 Source: Manastash Creek

4 Use: Irrigation of 60 acres

5 Period of Use: April 1 through October 31

6 Quantity: 1.4 cfs from April 1 through June 30, 0.70 cfs from  
7 July 1 through October 31; 428.4 acre-feet per year

8 Priority Date: June 30, 1883

9 Point of Diversion: 150 feet north and 1200 feet east from the south quarter  
10 corner of Section 11, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
Section 11, T. 17 N., R. 17 E.W.M.

11 Place of Use: That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 1, T. 17 N.,  
12 R. 17 E.W.M. described as follows: Beginning at the  
southeast corner of said section; thence west 1050 feet;  
thence north 450 feet; thence N 23° E 500 feet more or  
less; thence north 900 feet more or less; thence  
N 80° W 950 feet more or less; thence east to the east  
quarter corner of Section 1; thence south to the point of  
beginning.

13 Limitations of Use: This land may have a supplemental water right through the  
14 Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available.

1 CLAIMANT NAME: **Boise Cascade Corporation** COURT CLAIM NO. 02206  
2 (A)03119  
3 (A)05238  
4 Source: Unnamed spring (No. 179)  
5 Use: Stock water  
6 Period of Use: Continuous  
7 Quantity: 0.01 cfs; 0.25 acre-foot per year  
8 Priority Date: May 24, 1884  
9 Point of Diversion: 130 feet north and 540 feet east of the center of  
Section 15, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15,  
T. 17 N., R. 16 E.W.M.  
10 Place of Use: The SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R. 16 E.W.M.  
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12 CLAIMANT NAME: **Packwood Canal Company, Inc.** COURT CLAIM NO. 00785  
13 (A)04801  
14 Source: Hatfield Canyon Creek  
15 Use: Irrigation of 106 acres  
16 Period of Use: April 1 to October 31  
17 Quantity: 2.5 cfs, 1032.55 acre-feet per year  
18 Priority Date: June 30, 1885  
19 Point of Diversion: 600 feet east of the southwest corner of Section 29 being  
within either the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 29 or the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 32, T. 18 N., R. 18 E.W.M.  
20 Place of Use: The W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 29, the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
Section 32, T. 18 N., R. 18 E.W.M. all lying north and  
east of the Packwood Canal.  
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1 CLAIMANT NAME: Larry Bland  
2 & Harriett L. Bland  
3 Bart G. Bland COURT CLAIM NO. 01723  
4 (A)04410  
5 Source: Manastash Creek  
6 Use: Irrigation of 28.6 acres  
7 Period of Use: April 1 through October 31  
8 Quantity: 0.666 cfs from April 1 through June 30, 0.333 cfs from  
9 July 1 through October 31; 206.77 acre-feet per year  
10 Priority Date: June 30, 1886  
11 Point of Diversion: 1500 feet west and 200 feet south of the northeast corner  
12 of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
13 T. 17 N., R. 17 E.W.M.  
14 Place of Use: That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17,  
15 T. 17 N., R. 18 E.W.M. lying north of the KRD Canal  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Edward L. Sullivan  
2 & Anna G. Sullivan COURT CLAIM NO. 03204

3 Source: Manastash Creek

4 Use: Irrigation of 3 acres and stock water

5 Period of Use: April 1 through October 31 for irrigation and  
continuously for stock water

6 Quantity: 0.070 cfs from April 1 through June 30, 0.035 cfs from  
July 1 through October 31, 21.35 acre-feet per year for  
irrigation and stock water; 0.035 cfs, 0.7 acre-foot for  
stock water from November 1 through March 31

7 Priority Date: June 30, 1886

8 Point of Diversion: 550 feet south and 650 east from the north quarter corner  
of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
T. 17 N., R. 18 E.W.M.

9 Place of Use: The SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M., less  
the west 211 feet thereof

10 Limitations of Use: This land may have a supplemental water right through the  
Kittitas Reclamation District, which is exercised when  
sufficient creek water is not available

1 CLAIMANT NAME: Wayne W. Walls, et al. COURT CLAIM NO. 00578  
2 Source: Manastash Creek  
3 Use: Irrigation of 27 acres and stock water  
4 Period of Use: April 1 through October 31 for irrigation, continuous for  
5 stock water  
6 Quantity: 0.63 cfs from April 1 through June 30, 0.315 cfs from  
July 1 through October 31; 189.2 acre-feet per year for  
irrigation and stock water and 0.315 cfs; 5 acre-feet per  
year from November 1 through March 31 for stock water  
7 Priority Date: June 30, 1886  
8 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.  
9 Place of Use: The south 1038 feet of Government Lot 4 and the west  
79 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 17 N.,  
R. 18 E.W.M.

1 CLAIMANT NAME: Thomas C. Brunson  
2 & Kathleen Brunson COURT CLAIM NO. 01055

3 Source: Bull Pen Creek

4 Use: Irrigation of 40 acres

5 Period of Use: April 1 through October 31

6 Quantity: 2.5 cfs; 738 acre-feet per year

7 Priority Date: June 9, 1887

8 Point of Diversion: 250 feet south and 200 feet west from the north quarter  
9 corner of Section 32, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
32, T. 18 N., R. 18 E.W.M.

10 Place of Use: That portion of the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 29, T. 18 N.,  
11 R. 18 E.W.M. described as follows: Commencing at the  
12 southeast corner of said section; thence west 1175 feet  
13 more or less to the west bank of the Yakima River and the  
14 point of beginning; thence N 18° W 875 feet more or less;  
15 thence west 465 feet more or less; thence  
16 S 67° E 110 feet more or less; thence S 63° W 500 feet  
17 more or less; thence N 35° W 975 feet more or less;  
18 thence west 450 feet more or less; thence S 4° W 300 feet  
19 more or less; thence southeast along a concrete line  
20 ditch 1100 feet more or less to the south boundary of  
Section 29; thence east 1500 feet more or less to the  
point of beginning. AND that portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  of  
Section 32, T. 18 N., R. 18 E.W.M. described as follows:  
Commencing at the northeast corner of said section;  
thence west 1050 feet more or less to the west bank of  
the Yakima River and the point of beginning; thence west  
1500 feet more or less; thence S 29° E 500 feet more or  
less; thence E 1375 feet more or less to the west bank of  
the Yakima River; thence northwest along said bank  
500 feet more or less to the point of beginning.

21 Limitations of Use: The authorized quantity of water is the maximum that can  
22 be used to irrigate the 48 acres from this source and  
waters from the Packwood Canal.

1 CLAIMANT NAME: George B. Brain COURT CLAIM NO. 02287  
2 Source: Spring Creek  
3 Use: Irrigation of one-half acre  
4 Period of Use: April 1 through October 31  
5 Quantity: 0.012 cfs; 3.28 acre-feet  
6 Priority Date: February 16, 1889  
7 Point of Diversion: 25 feet south and 1125 feet east from the north quarter  
8 corner of Section 9, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
9 Section 9, T. 17 N., R. 18 E.W.M.  
10 Place of Use: The south 200 feet of the east 300 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 4, T. 17 N., R. 18 E.W.M. lying west of Brown  
12 Road  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Edmund T. Christian & Margery Christian  
2 Roger C. Sparks & Rita M. Sparks  
3 Steve Hall & Linda Hall

COURT CLAIM NO. 00987

5 Source: Manastash Creek

6 Use: Irrigation of 20 acres

7 Period of Use: April 1 through October 31

8 Quantity: 0.467 cfs from April 1 through June 30, 0.234 cfs from  
9 July 1 through October 31; 142.46 acre-feet per year

10 Priority Date: June 30, 1889

11 Point of Diversion: 600 feet north and 700 feet east of the southwest corner  
12 of Section 12, being within the SW<sup>1</sup>/4SW<sup>1</sup>/4 of Section 12,  
13 T. 17 N., R. 17 E.W.M.

14 Place of Use: Government Lots 6 and 7 of Section 6, T. 17 N.,  
15 R. 18 E.W.M.

16 Limitations of Use: This land may have a supplemental water right through the  
17 Kittitas Reclamation District, which is exercised when  
18 sufficient creek water is not available.  
19 The four owners of the place of use are confirmed  
proportionate shares of this water right as follows:  
20 68.8%---Steve and Linda Hall  
21 25%-----Roger C. and Rita M. Sparks  
22 3.6%----Edmund T. and Margery Christian  
23 2.5%----Mr. Plaster

1 CLAIMANT NAME: Three Bar G Ranch, Inc. COURT CLAIM NO. 02068  
2 Source: Unnamed spring  
3 Use: Stock water  
4 Period of Use: Continuous  
5 Quantity: 0.02 cfs; 6 acre-feet per year  
6 Priority Date: January 1, 1890  
7 Point of Diversion: 950 feet north and 150 feet east of the south quarter  
8 corner of Section 32, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
9 Section 32, T. 18 N., R. 18 E.W.M.  
10 Place of Use: The E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, T. 18 N., R. 18 E.W.M. lying  
11 south of the Thorp Highway  
12 CLAIMANT NAME: Larry Bland COURT CLAIM NO. 01723  
13 & Harriett L. Bland (A)04410  
14 Source: Bart G. Bland Manastash Creek  
15 Use: Irrigation of 71.4 acres  
16 Period of Use: April 1 through October 31  
17 Quantity: 1.66 cfs from April 1 through June 30, 0.83 cfs from  
18 July 1 through October 31; 516 acre-feet per  
19 Priority Date: June 30, 1890  
20 Point of Diversion: 1500 feet west and 200 feet south of the northeast corner  
21 of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14,  
22 T. 17 N., R. 18 E.W.M.  
23 Place of Use: That portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17,  
24 T. 17 N., R. 18 E.W.M. lying north of the KRD Canal

1 CLAIMANT NAME: Richard T. Cole  
2 & Lynn Cole COURT CLAIM NO. 01969

3 Source: Manastash Creek

4 Use: Irrigation of 7 acres and stock water

5 Period of Use: April 1 through October 31 for irrigation; continuously  
6 for stock water

7 Quantity: 0.163 cfs from April 1 through June 30, 0.0815 cfs from  
8 July 1 through October 31; 49.72 acre-feet per year for  
irrigation and 0.01 cfs; 1 acre-foot per year for stock  
water

9 Priority Date: April 19, 1891

10 Point of Diversion: 550 feet south and 650 feet east from the north quarter  
11 corner of Section 14, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
Section 14, T. 17 N., R. 17 E.W.M.

12 Place of Use: That portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, T. 17 N.,  
13 R. 17 E.W.M. lying south of the Keach Ditch and north of  
the Kittitas Reclamation District Canal

1 CLAIMANT NAME: Lawrence Anderson  
2 & Arlein Anderson COURT CLAIM NO. 01946

3 Source: Manastash Creek

4 Use: Irrigation of 105 acres

5 Period of Use: April 1 through October 31

6 Quantity: 2.45 cfs from April 1 to June 30 and 1.225 cfs from  
7 July 1 to October 31; 747.3 acre-feet per year

8 Priority Date: February 29, 1892

9 Point of Diversion: 1320 feet north and 65 feet east of the southwest corner  
10 of Section 4, being within the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 4,  
11 T. 17 N., R. 18 E.W.M.

12 Place of Use: The N $\frac{1}{2}$ SE $\frac{1}{4}$  and that portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4,  
13 which is described as follows: A tract of land bounded  
14 by a line beginning at the northeast corner of said  
15 quarter of quarter section, and running thence south  
16 5°48' east, along the east boundary line thereof,  
17 1262.3 feet to the north boundary line of the said  
18 right-of-way of the County Road; thence south 89°54' west  
along the north boundary line of said right-of-way,  
1143.4 feet; thence north 0°06' west 573.6 feet; thence  
north 75°41' east 71.0 feet; thence north 45°46' east  
85.1 feet; thence north 66°58' east 340.2 feet; thence  
north 31°56' east 204.8 feet; thence north 18°12' east  
306.6 feet to the north boundary line of said quarter of  
quarter section; and thence north 88°36', along said  
north boundary line, 369.4 feet to the point of  
beginning: ALL in T. 17 N., R. 18 E.W.M.

1 CLAIMANT NAME: Lee W. Roe & Kathlyn E. Hitch COURT CLAIM NO. 04584  
2  
3 Source: Manastash Creek  
4 Use: Irrigation of 15 acres and stock water  
5 Period of Use: April 1 through October 31 for irrigation; continuous for  
stock water  
6 Quantity: 0.275 cfs; 60 acre-feet per year for the irrigation of  
15 acres and 0.01 cfs; 1 acre-foot per year for  
continuous stock water  
7  
8 Priority Date: June 30, 1892  
9  
10 Point of Diversion: 1150 feet north and 300 feet east of the center of  
Section 16, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16,  
T. 17 N., R. 17 E.W.M.  
11  
12 Place of Use: That portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N.,  
R. 16 E.W.M. lying south of Manastash Creek  
13  
14 CLAIMANT NAME: Robert Dean COURT CLAIM NO. 02270  
15 Source: Manastash Creek  
16 Use: Irrigation of 36 acres  
17 Period of Use: April 1 through October 31  
18 Quantity: 0.84 cfs from April 1 through June 30 and 0.42 cfs from  
July 1 through October 31; 256.2 acre-feet per year  
19 Priority Date: June 30, 1894  
20 Point of Diversion: 5 feet north and 700 feet west from the center of  
Section 7, being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7,  
T. 17 N., R. 18 E.W.M.  
21  
22 Place of Use: The SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7, T. 17 N., R. 18 E.W.M.  
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27 REPORT OF REFEREE Referee's Office  
28 Re: Subbasin No. 11 15 W. Yakima Ave Ste. 200  
Yakima, WA 98902-3401

1 CLAIMANT NAME: Haldon J. Baumann & Ulma J. Baumann COURT CLAIM NO. 01593  
2  
3 Source: Manastash Creek  
4 Use: Irrigation of 6 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.14 cfs; 42.9 acre-feet per year  
7 Priority Date: January 16, 1896  
8 Point of Diversion: 1150 feet north and 625 feet west from the center of  
9 Section 15, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15,  
T. 17 N., R. 17 E.W.M.  
10 Place of Use: That portion of the E $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 17 N.,  
R. 17 E.W.M. bounded by a line described as follows:  
Beginning at the southwest corner of said Section 15;  
thence N 0°00'00" E along the west boundary,  
1742.12 feet; thence N 86°29'17" E 1638.39 feet to the  
true point of beginning; thence S 3°43'46" E,  
466.78 feet; thence N 82°34'40" E 641.68 feet; thence  
N 3°43'46" W 413.34 feet; thence N 99°04'54" W  
102.04 feet; thence S 86°28'26" W 538.81 feet to the true  
point of beginning, EXCEPT a tract of land which is  
described as follows: Beginning at a point which is  
571 feet east of a point 1134.8 feet south of the west  
1/16th section corner on the north boundary of said  
section; thence running N 79°21' E, along the south line  
of county road right-of-way, 190.4 feet; thence  
S 4°46' E, 136.0 feet; thence S 81°37' W 193 feet; thence  
N 3°20' W 129 feet to the true point of beginning.

1 CLAIMANT NAME: Burton J. Williams & Carol M. Williams COURT CLAIM NO. 00907  
2  
3 Source: Manastash Creek  
4 Use: Irrigation of 6 acres  
5 Period of Use: April 1 through October 31  
6 Quantity: 0.14 cfs; 42.9 acre-feet per year  
7 Priority Date: January 16, 1896  
8 Point of Diversion: 1150 feet south and 950 feet east from the north quarter corner of Section 15, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, T. 17 N., R. 17 E.W.M.  
9  
10 Place of Use: The north 300 feet of the west 460 feet of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  and the west 460 feet of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  lying south of Manastash Road, ALL in Section 15, T. 17 N., R. 17 E.W.M.  
11  
12 CLAIMANT NAME: May Moffat Mitchell Gage COURT CLAIM NO. 04522  
13  
14 Source: An unnamed spring  
15 Use: Irrigation of 4 acres, single domestic supply and stock water  
16 Period of Use: April 1 to October 31 for irrigation; continuously for domestic supply and stock water  
17  
18 Quantity: 0.093 cfs; 20 acre-feet per year for irrigation  
0.02 cfs; 1 acre-foot per year for single domestic supply  
0.01 cfs; 1 acre-foot per year for stock water  
19  
20 Priority Date: June 30, 1902  
21 Point of Diversion: 1720 feet north and 200 feet east of the south quarter corner of Section 14, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.  
22  
23 Place of Use: The NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 14, T. 17 N., R. 17 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

1 CLAIMANT NAME: Charley Wheeler & Linda Wheeler Jean Wheeler COURT CLAIM NO. 02192  
2  
3 Source: Unnamed spring  
4  
5 Use: Single domestic supply  
6  
7 Period of Use: Continuous  
8  
9 Quantity: 0.01 cfs; 2 acre-feet per year  
10 Priority Date: March 12, 1962  
11 Point of Diversion: 400 feet south and 950 feet west from the northeast corner of Section 16, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 17 E.W.M.  
12 Place of Use: The north 225 feet of the south 360 feet of the west 330 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 17 E.W.M.  
13  
14 CLAIMANT NAME: WA State Dept. of Natural Resources COURT CLAIM NO. 00589  
15 (A)00590  
16 Source: Unnamed spring  
17 Use: Irrigation of 2 acres  
18 Period of Use: April 1 through October 31  
19 Quantity: 0.02 cfs; 6 acre-feet per year  
20 Priority Date: March 12, 1962  
21 Point of Diversion: 400 feet south and 950 feet west from the northeast corner of Section 16, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 17 E.W.M.  
22 Place of Use: The south 225 feet of the east 400 feet of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, T. 17 N., R. 17 E.W.M.  
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REPORT OF REFEREE  
Re: Subbasin No. 11

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

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

3           SIGNED and DATED at Yakima, Washington, this 17<sup>TH</sup> day of April,  
4           1998.

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6           DOUGLAS CLAUSING, Referee  
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27           REPORT OF REFEREE  
28           Re: Subbasin No. 11