

## **Supplemental Report of Referee Subbasin No. 22**

**COURT CLAIM NO. 00735 -- Thomas J. Worrell  
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Thomas J. and Zeldia J. Worrell took exception to the Report of Referee for the Wide Hollow subbasin due to the Referee not recommending approval of diversionary water rights for springs located on their property.

Wade Gano represented the Worrells at the supplemental hearing on August 19, 1997, and Thomas J. Worrell testified in support of Court Claim Nos. 00735 and 01581. The Worrell property is rangeland which has been used for livestock grazing since well before 1900. The Worrells bought portions of Sections 11 and 13, T. 13 N., R. 16 E.W.M. and Section 18, T. 13 N., R. 17 E.W.M. in 1944 and operated this grazing unit in partnership with Enis and Allen Shockley for many years. Sections 13 and 18 lie primarily in Subbasin No. 22 (Wide Hollow); however, Section 11 lies over the divide into the Cowiche subbasin (Subbasin No. 18). The earliest improvements to the stock water springs appear to have been undertaken after the Worrells acquired the property. The domestic pipeline was not installed until around 1990 and the Willow Spring stock tanks were installed in 1972. None of the diversion pipes and stock tanks were installed before 1932. The record does indicate that earthen check dams were built at several locations around 1933 or 1934 by a predecessor to the Worrells. The Worrells have also built or repaired four dams in the Subbasin No. 22 portion of their rangeland, but none of those dams currently store any water. Collectively, the dams were improved riparian stock water sources for grazing sheep or cattle.

The Referee concludes that the recommendation to deny confirmation of diversionary water rights for the springs located in Sections 13 and 18 of the Worrell rangeland should be affirmed since no diversionary use of any of the springs began before the end of 1932, and there is no evidence that a permit was issued under RCW 90.03. The patent to Adam Ross for Section 18, T. 13 N., R. 17 E.W.M. is dated October 18, 1923, well after the Washington State Surface Water Code Ch. 90.03 RCW was adopted on June 6, 1917.

Claimants Thomas J. and Zeldia J. Worrell were recommended for non-diversionary stock water and wildlife rights on Pages 111 through 112 of the Report of Referee (Wide Hollow), Volume 33.

Although counsel for the Worrells, Wade E. Gano, did not specifically cite to the Court's rulings in Opinion RE: Exception of Dwayne and Alvina Dormaier (Claim No. 4706 RE Subbasin No. 21 (Burbank) (also known as the Dormaier Decision), entered in Superior Court, State of Washington, Yakima County, September 16, 1993, a factual record was pointedly made regarding the non-tributary character of the various springs.

The several springs are located on the Worrell property on the south flank of Cowiche Mountain. These springs are all of minimal volume and by nature seep back into the soil very near their source if not developed and piped into a holding tank. The springs are several miles from the nearest stream channel. They do not, however, factually meet the criteria previously recognized by the Court in its Dormaier Decision. The Court specifically stated that its ruling "only applies to appropriations of springs prior to the 1917 amendments because the water code specifically provides for existing rights . . ." Therefore, the Referee concludes that the Dormaier decision is not applicable.