

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

SUPPLEMENTAL REPORT OF THE COURT  
CONCERNING THE WATER RIGHTS FOR

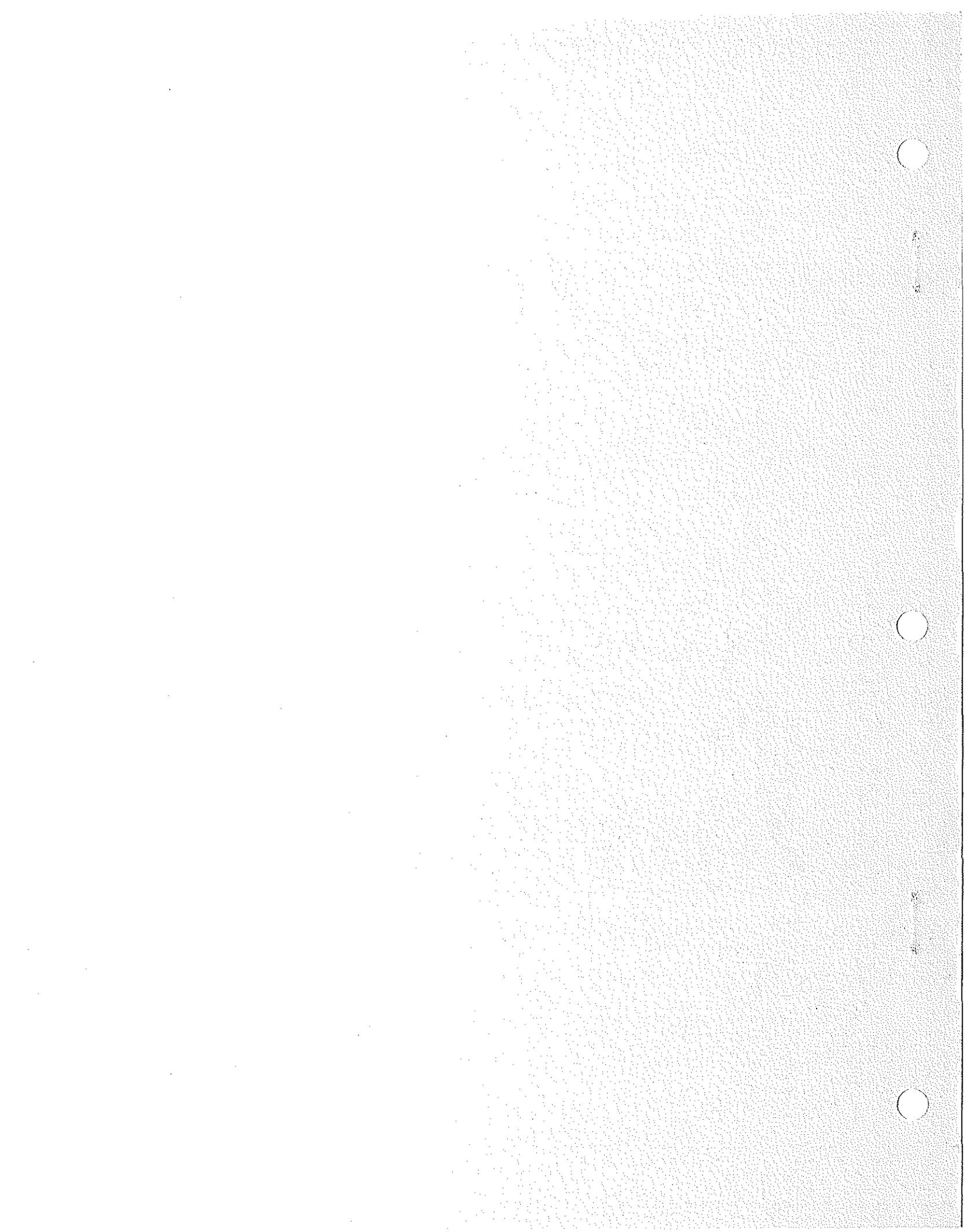
SUBBASIN NO. 23  
(AHTANUM CREEK)

AHTANUM IRRIGATION DISTRICT

JOHNCOX DITCH COMPANY

UNITED STATES/YAKAMA NATION

VOLUME 48A - PART I



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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 ) No. 77-2-01484-5  
5 SURFACE WATERS OF THE YAKIMA RIVER) SUPPLEMENTAL REPORT OF THE  
6 DRAINAGE BASIN, IN ACCORDANCE WITH) COURT  
7 THE PROVISIONS OF CHAPTER 90.03, )  
8 REVISED CODE OF WASHINGTON, ) RE: SUBBASIN NO. 23 (AHTANUM)  
9 STATE OF WASHINGTON, )  
10 DEPARTMENT OF ECOLOGY, ) AHTANUM IRRIGATION DISTRICT  
11 Plaintiff, ) (CLAIM NOS. 2398, (A)3080, (A)3097  
12 vs. )  
13 JAMES J. ACQUAVELLA, ET AL., ) JOHNCOX DITCH COMPANY  
14 Defendants ) (CLAIM NOS. 1693, (A)5448)  
15 ) UNITED STATES/YAKAMA NATION  
16 ) (CLAIM NOS. 2276, (A)7253  
17 )

18 I. INTRODUCTION

19 This Court entered its Report of the Court RE: Subbasin No. 23 (Ahtanum) on January 31,  
20 2002. After several requests for extensions, exceptions to the Report were filed in March, 2003. At  
21 the request of certain parties, the Court then bifurcated the trial so that legal issues could be decided  
22 prior to hearing evidence on the exceptions. The Court entered its *Memorandum Opinion Re:*  
23 *Ahtanum Creek Threshold Legal Issues* on October 8, 2003, and therein decided nine issues that  
24 were briefed extensively by the parties. That opinion ruled on many of the general exceptions that  
25 were not specific to a particular claimant, and resolved exceptions 20, 21, 45, 46, 48, 52, by the  
Yakama Nation. It also ruled on exceptions by the Nation concerning whether it was appropriate to  
issue adjudicated certificates to claimants in *Acquavella* whose predecessors had not paid the  
required fee and obtained certificates at the conclusion of the earlier adjudication of Ahtanum  
Creek, *State of Washington v. Achepohl*. The Court's ruling that issuance of those certificates was  
appropriate resolved exceptions number 25, 26, 27, 31, 36, 37 and 40 taken by the Nation to  
claimants and landowners served by Ahtanum Irrigation District (AID). Additionally, the Nation  
withdrew exceptions 13, 14, 17 and 18 in its Rebuttal to Exceptions filed on June 3, 2003. The  
Court's Legal Issue Memorandum also resolved Ecology's first exception concerning proof of due  
diligence in putting water to beneficial use.

1 **II. LIST OF CLAIMANTS AND WATER USERS IN THE AHTANUM SUBBASIN**

2 The following is an alphabetical listing of claimants that have either filed their own court  
3 claim, or are AID water users that are on AID-8A or an amendment thereto, and is current as of  
4 2004. The Court requested AID to provide a current list of all water users and their mailing  
5 addresses. AID provided this list to the Adjudication Office in Yakima. A copy of the  
6 Supplemental Report will be mailed to the water users on that list.

<u>Claim No.</u>	<u>Ans. No.</u>	<u>Name</u>	<u>Page</u>
02398	12	Jerry & Sherry Adams	32, 53
02398	66	Donald M. & Mary L. Adkins	33, 121
01120		Allan Brothers 31 Allan Road Naches, WA 98937	211
02398	4	Leona & Eudelio Alvarez	46, 285
02398 <sup>1</sup>		Ahtanum Irrigation District P.O. Box 563 Yakima, WA 98907-0563	
02398	50	James & Elizabeth Amer	110, 316
02398	50	Leanne & George R. Amer	110, 317
02398	16 47	Robert S. Anderson	58, 108, 275, 387
00040		Robert & Phyllis Anderson	34, 54, 79, 370
02398	14 26	303 Lower Ahtanum Road Yakima, WA 98903-1533	
02398	221	Gary & Laurene Aranas	34, 176, 247
02398	38	Inocencio and Cynthia Arreola	94, 247, 379
02398	178	Dan & Teresa Baggarley	159, 248

25 <sup>1</sup> See individual water user analysis under Claim No. 02398.

1	01160		Paul & Violet Bak 791 Lynch Lane Yakima, WA 98903	212
2				
3	02398	38	Bruce Ball	94, 380
4	01239		Robert Ball 1908 S. 64 <sup>th</sup> Avenue Yakima, WA 98903	213
5				
6	02398	77	Bar 56 LLC	130, 276
7				
8	02398	73	Clayton Stewart & Linda Marie Barnes	127
9	02398	221	Leslie Barr	34, 176, 249, 354
10	02398	1	Kenneth Bates	30
11	02398	1, 41	Kenneth P. Bates, Jr.	30, 34, 44, 98, 238, 355
12	02398	1	Thomas H. and Celine Bates Trust	30, 44, 238
13	02398	26	Stanley G. & Elizabeth G. Benefiel	34, 79, 370
14	02398	130	Robert W. & Carolyn A. Benner	143
15	02398	66	Roger L. & Renee L. Biles	31, 121, 249
16	02398	77	Marvin L. Birkby	130, 277
17	02398	78	Bob E. Bohannon	132, 250
18	02398	98	John & Pamela Bohannon	32, 137, 286
19	02398	98	Robert E. Bohannon	32, 137, 287
20				
21	02398	98	Russell Bohannon	32
22	02398	98 135	Russel & Darlene Bohannon	31, 32, 137, 148, 251, 287
23	02206		Boise Cascade	206
24				
25				

1	01880	20	Patricia Bombard	75, 77
2	02398	22	295 South Fork Ahtanum Road Yakima, WA 98903	
3	01642		Borton and Sons, Inc. 2550 Borton Road Yakima, WA 98903	37, 213
4				
5	01488		Rudy Bossart 506 Hillside Drive Yakima, WA 98903	214
6				
7	02398	72	Jesse A. & Tina Marie Bowden	33, 126, 318
8				
9	02398	216	Vicki Bowman	170
10	01488		Todd & Helga Braman 3505 Meadowcrest Lane Yakima, WA 98903	214
11				
12	02398	74	Elizabeth W. Bray 7004 Willow Place Apt. 1 Yakima, WA 98908-5502	128, 335
13	02198			
14	02398	51 132	Carl Brown	31, 32
15				
16	02398	31	Douglas & Barbara Brown	86, 367
17	02398	41	Shelby L. & Tracy Brown	34, 98, 355
18	00040		Donald & Sylvia Brule 216 S. 70 <sup>th</sup> Avenue Yakima, WA 98908-1681	33, 188
19				
20	01164		Jake & Sue Bryan 2827 Wiley Road Yakima, WA 98903	32
21				
22	01759		Roberta & Jim Buchanan 100 Carson Road Yakima, WA 98903-9706	35, 205
23				
24				
25				

1	02398	19	Edmund L. & Margaret Burke	72, 251
2	02398	75	Nellie C. Burks, et al.	33, 129, 336
3	02398	26	Timothy A. & Joanne S. Burlingame	35, 79, 371
4	02398	74	Brenda L. Burnam	128, 336
5	02398	73	Ronald E. & Mary Lou Calahan	127
6	02398	68	Jeffrey M. & Diane K. Caldwell	123, 318
7	01002		James M. & Janet Campbell	204, 215
8			P.O. Box 2761	
9			Yakima, WA 98907	
10	01002		Craig & Sharon Campbell	204
11			c/o Lori Frymier	
12			P.O. Box 681, PMB #126	
13			Yakima, WA 98907-0681	
14	02398	216	William Terry & Denise F. Campbell	31, 170, 277
15	02398	106	Eugene E. Carlson	139
16	02398	69	Russell & Gladys Carlson	31, 124, 125, 252, 319
17		70		
18	02398	6	Steve Carlson	48, 252
19	02398	76	James R. & Deborah Carmack	32, 129, 288
20	00369		9306 Meadowbrook Road	
21			Yakima, WA 98903-9671	
22	02398	133	Eugene Carpenter	31, 148
23	00370	45	Vernon & Jo Marie Carson	32, 105, 290
24	02398		131 Carson Road	
25			Yakima, WA 98903-9706	
26	02398	45	David Carson	32, 105, 289
27	02398	78	Curtis L. & Peggy Carter	132
28	02398	3	Gaylord Case	46

1	02398	10	Catholic Bishop of Yakima County	35, 51, 205, 208, 386
2	02398	46	Chancery	35, 106, 208, 381
3	02398	60	Janet Clark	117, 290
4	02398	4	Johnny L. & Patricia Clark	46, 291
5	00440		3611 S. Wiley Road Yakima, WA 98903	
6	02398	60	Douglas & Barbara Clausing	117, 292
7	02398	60	Gemella Clausing	117, 293
8	02398	73	Harlond B. & Millie J. Clift	127, 130, 278, 309
9		77		
10	02398	179	Harlond Clift, Jr.	31, 161
11	02398	179	Harlong Clift, Jr.	31
12	02398	66	John & Cathy Cockrum	33, 121, 293
13	01924		Morgan Collins	188
14			1407 S. 35 <sup>th</sup> Place Yakima, WA 98902-4809	
15	02398	151	Congdon Orchards, Inc.	153
16	02398	73	Tammy M. Conrad	127
17	02398	66	Norman Cornelius	31, 121, 253
18	02398	39	R.E. Cornelius	32, 34, 97, 100, 294,
19		42		295, 372
20		132		
21	02398	132	R.E. Cornelius, Jr. et al.	32, 143
22	01121		Douglas & Linda Couette	37, 215
23	02398	122	Craig Schultz Properties LLC	33, 141, 142, 254, 337
24		126		338,
25		127		

1	02398	41	Melvin & Donna Crawford	34, 98, 356
2	02371		Sylvia J. Crockett	35
3			1350 E. Marion Way	
			Palm Springs, CA 92264-9259	
4	02398	26	Brad Cunningham	34
5	02398	14	Kerry Crook	54, 350
6	02398	160	Dennis & Krystal Dale	155
7		187		
8	02398	221	Michael D. & Nancy Dale	34, 176, 254, 357
9	02398	32	Russell & Joann Daniels	34
10	00925	65	Jerry Davis	31
11	02398	43	Donald Day	101, 320
12	02398	136	James R. & Darlene Decoto	31, 149, 255
13	02398	112	Raymond A. Decoto	140, 296
14	02398	136	Willis Decoto	31
15	02398	96	Richard Donaldson	136, 296
16	02398	16	Dale & Lynn Dougherty	58
18	02398	41	Clifford H. & Debra Dovel	34, 98, 357
19	01903		120 Lynch Lane	
			Yakima, WA 98903	
20	02398	41	Lloyd E. Dovel	34, 98, 358
21	01903		1880 SW 27 Road	
			Mattawa, WA 99344	
22	02398	43	Michael R. & Sherry Drury	101, 320
23	01154		Leroy & Hazel Duckworth	206
24	01924		Jerome & Janice Durnil	188
25			906 Pioneer Lane	
			Union Gap, WA 98903-1346	

1	02398	46	Dwinell's Central Neon Company	35, 106
2	02308		1112 E. Nob Hill Blvd Yakima, WA 98901	
3	02398	80	William Eaton	135, 256
4	05064		3004 S. 99 <sup>th</sup> Avenue Yakima, WA 98903	
5	02398	68	Eric S. & Judy L. Edwards	123, 321
6	02398	38	Ernest & Julie Edwards	94, 256
7	02398	11	Odetta A. Eglin (Sutton)	53, 329
8	00915		704 S. 56 <sup>th</sup> Avenue Yakima, WA 98908-4220	
9				
10	02398	188	Adolph A. & Pauline L. Elhard	162, 243
11	00371		5910 Ahtanum road Yakima, WA 98903-1049	
12	02398	43	Stanley W. & Linda M. Emerick	101, 321
13	00678		Frances E. Eno	155, 242
14	02398	164	c/o Thomas Carpenter, Jr. Trustee 400 Carpenter Road Granger, WA 98932-9426	
15				
16	01121		Erickson Orchards, Inc./ Erickson Water System 4011 McCullough Road Yakima, WA 98903-9543	37
17				
18	01911	50	William G. Evans	110
19	02398		P.O. Box 70 Cowiche, WA 98923-0070	
20				
21	01645		Evergreen State Refuse System No address available	33
22	02398	79	Bobbette Ewing	134, 257
23				
24	02398	78	William B. & Susan D. Farris	132, 257
25	02398	78	Federal National Mortgage Association	132

1	02398	191	Scott E. & Tracy A. Feist	164, 353
2	02398	41	Chadwick & Nancy Fife	34, 98, 359
3	02195		Merritt Fines	206
4			5500 Mount Aix Way	
			Yakima, WA 98901-4320	
5	02398	41	Mark Flake	34, 98, 360
6	01903		Robert J. & Veronica E. Flake	34
7			170 Lynch Lane	
8			Yakima, WA 98903	
9	02398	64	Randy & Dee Fleming	33
10	02398	78	Federal National Mortgage	
11	02398	127	James D. Forsythe	33
12	02398	221	Dennis Frank	34, 176, 360
13	02398	216	Clint & Cheri Friday	170, 278
14	02081	43	Smiley S. & Melissa Garver	101, 322
15	02398		P.O. Box 10243	
			Yakima, WA 98909-1243	
16	02398	221	Flumencio Garza	34, 176, 361
17	02398	14	Carl George	34, 54, 351
18	02398	34	Carl F. George	90, 351
19	02398	12	Loren Gerdes	32
20	02398	12	Steven M. & Charlotte Gerdes	32, 53
21	02398	96	Robert Gimlin	136, 297
22	02398	216	Glaspey Ahtanum LLC	31, 170, 279, 372
23	02398	216	Glaspey & Sons	31
24	02398	216	Frank Glaspey, Jr	31, 170
25	02398	216		

1	02398	216	Robert & Loraine Glaspey	31
2	01615		Sharon Glenn	34, 206
3			1250 Ahtanum Road North Fork Yakima, WA 98903	
4	02398	51	Stanley R. & Illa Glenn	31, 113, 239
5	02398	191	Gregory Gohl	164, 297
6	02398	108	Wayne Gohl	140
7	02398	37	Wayne & Frances Gohl	33, 205
8	01488		Steven Gottlieb	216
9			3500 Meadowcrest Lane Yakima, WA 98903	
10				
11	02398	4	Clara Gray	46, 298
12	02398	36	Allen W. Grissom	31, 92, 299
13	02398	36	George H. & Judy L. Grissom	31, 92, 240
14	02398	31	David M. & Ida Guillard	86, 367
15	02398	26	Michael A. & Mary A. Guillozet	34, 79, 373
16	02398	12	Jimmy Haedrick	32
17	02398	19	Clifford & Doris Hagemeyer	72, 258
18	02398	28	Michael J. Hager	33, 84, 205, 346
19	02398	96	Bernard F. & Linda J. Hammermeister	136, 299
20				
21	02398	96	George R. & Bernice Hammermeister	136, 300
22	02398	191	Andrew W. & Cheryl A. Hanks	164, 300
23	02398	38	Michale A. and Debbie L. Hanks	94, 259
24	02398	8	Gary & Ruth Hansen	34, 35, 50, 87, 207, 352
	01082	32	21611 Ahtanum Road	373, 385
25	00133		Yakima, WA 98903-9112	

1	02398	8	Laurel Hansen	35
2	02398		Hansen Fruit & Cold Storage/ Park Avenue Storage Co.	33, 35, 206
3			P.O. Box 9755	
4			Yakima, WA 98909	
5	02398	26	Curtis & Kellie Harris	35, 79, 374
6	02398	107	Harris Farms	32
7	2310		Alice Hart	33, 206
8			1130 Barton Square	
			East Wenatchee, WA 98802	
9	01205		Paul & Linda Hart	33, 202, 206, 216
10			1130 Barton Square	
			East Wenatchee, WA 98802	
11	02398	51	Douglas R. & Nancy D. Hartshorn	31, 113
12	02398	145	John & Judy Hartshorn	151, 301, 323
13	02398	74	Frederic L. Hatfield	128, 339
14	02398	31	Barry Heid	86, 349, 368
15	02398	17	John P. Herke	33, 70
16		18		
17		21		
18	01694		John P. & JoAnn Herke	38, 217
19			19190 Ahtanum Road	
			Yakima, WA 98903	
20	02398	221	Gail Hernandez	34, 176, 362
21	01121		Mike & Evelyn Herndon	37, 217
22			P.O. Box 352	
			Long Beach, WA 98631-0352	
23	02398	41	Dennis E. & Carloy Herron	34
24	02398	66	Daryl G. & Margo J. Hill	33, 121, 302
25	00489		P.O. Box 367	
			Hansville, WA 98340-0367	

1	02398	38	Bryan Hille	94, 381
2	01627		Kathleen Hille	35, 206
3			1250 Ahtanum Road South Fork Yakima, WA 98903-9065	
4	02398	16	Paul Hinson & Laurie Orr Hinson	58, 339
5	02398	80	William Hipner	135, 259
6	02398	13	Holtzinger Ranch	31, 54, 260
7	02398	96	Denise & Lisa Hopkins	136, 302
8	02398	19	Jeareld & Janice Hoppis	72, 260
9	02398	19	Julie Hoppis	72, 261
10	02065		Laurence E. & Marian H. Hovenkotter	34
11			7602 Occidental Yakima, WA 98903	
12	02065		Michael T. & Kathleen A. Hovenkotter	34
13			7509 Occidental Road Yakima, WA 98903-9652	
14	02398	72	Hull Ranches, Inc.	33, 126, 323
15	02398	179	John Hull	31
16		215		
17	02398	179	Samuel Hull, et al.	31, 161, 169
18		215		
19	02398	172	James C. Ives	32, 157, 303
20	02398	33	Charles E. & Nancy Jacobs	90
21	02378	78	Dale E. & Pamela Jackman	132, 262
22	01693		Johncox Ditch Company	35, 179
23			500 W. Slavin Road Yakima, WA 98903	
24	02398	22	John-Ken, Inc.	77
25				

1	02398	128	Clark R. & Janet Johnson	31, 143, 262
2	02398	12 26	Lester Johnson	32, 34
3				
4	01759		Randall (Randy) M. & Cheri J. Johnson 3755 W. Eaglerock Drive Wenatchee, WA 98801-9046	34, 35, 205
5				
6	01245		Marguerite Jorgensen 566 E. Channel Road Santa Monica, CA 90402-1344	205, 218
7				
8	02398	142	Riley James Kelly	32, 151
9	00026	127	Kimco Group LLC c/o Charles R. Johnson 11 E. First Avenue, Suite 3 Selah, WA 98942	142
10				
11				
12	01488 01917		Gary E. & Margaret A. King 3404 S. 8 <sup>th</sup> Avenue Yakima, WA 98903	214, 219
13				
14	02398	216 219	KLC Holdings Ltd. (Kwik Lok)	32, 170, 174, 280, 303
15				
16	02320 (A)2434		Karen L. Klingele 251 Valley Vista Lane Yakima, WA 98901	191
17				
18	02398	66	Clarence Knoblick	33
19	01488		John & Karen Krantz 1008 Meadowbrook Road Yakima, WA 98903	220
20				
21	02181		Lawrence Kunkel 2201 McCullough Road Yakima, WA 98903	221
22				
23	02398	191	Garrison R. Lamarche	164, 304
24	01018		Lewis W. & Joyce L. Langell 310 Meadowbrook Yakima, WA 98903	204, 206, 221
25				

1	02060		Albert & Florence Lantrip 808 Pioneer Lane Yakima, WA 98903	32, 188, 205
2				
3	02398	77	Marcella Laramore, et al. P.O. Box 150 Tacoma, WA 98401	130, 263
4	01157			
5	01019		La Salle High School 3000 Lightning Way Union Gap, WA 98903	192
6	(A)4253, (A)5469			
7				
8	02398	26	Marc A. Lee	35, 79, 375
9	02398	12	Arlene Lien	32, 53
10	01121		Thomas Leonard	37, 222
11	01645		Ardis Lewis & Estate of Earl Lewis P.O. Box 1064 Winston, OR 97496-1064	33, 206
12				
13	02398	4	Marlin J. & Joan Lindgren	46, 305
14	02398	66	Shirley Linton	33, 121, 305
15	02398	66	Rulon Linton	33
16	02398	4	Robert F. Lockbeam, Jr.	46, 306
17	02398	41	Lynch Lane LLC	34, 98, 362
18	02398	217	David J. & Christine Lynde	173
19	02398	75	Peggy Madson	33
20				
21	02398	16	Sharon Mangan	58, 340
22	02398 00417	106	Kenneth A. & Gina Marquis 1350 Gilbert Road Zillah, WA 98953-9789	139
23				
24	00898 02398	16	Marc & Sue Downs Martin 580 Ahtanum Road – South Fork Yakima, WA 98903	58, 207, 340
25				

1	02398	26	Mark Martin	34, 79, 375
2	02398	216	Elvin J. & Judith Martinsen	31, 170, 280
3	01121		James D. & Jean Mauk	222
4			4207 McCullough Road Yakima, WA 98903-9542	
5	02398	145	McAllister Field Ind. LLC	151, 324
6	01829		Nancy McDougall	39, 223
7	(A)02401		2205 McCullough Road Yakima, WA 98903	
8				
9	02398	20	Richard W. McGahan	75, 77
10	01880	22	293 South Fork Ahtanum Road Yakima, WA 98903	
11	01229		Brad McGuire	235
12			13171 S. Ahtanum Road Yakima, WA 98901	
13	02398	15	Gary R. McInnis	55, 235
14	02398	15	Robert M. & Donna L. McInnis	55, 236
15	02398	36	Charles H. & Colleen Meginn	31, 92, 306
16	02398	77	Dave Melero	130
17	02398	77	Felix David & Dari Melero	130, 263
18				
19	00542 through 00545		Theodore Mellotte, Jr. & Wanda Mellotte 213 Santa Roza Drive Yakima, WA 98901-5606	193, 207
20				
21	00203	191	Lisa Meusborn	164, 307
22			2714 S. 79 <sup>th</sup> Avenue Yakima, WA 98903	
23	02398	43	Roger R. Meusborn	101
24	02398	37	Roger R. & Edna A. Meusborn	33, 93, 205, 325
25				

1	02398	20	Robert Meyers	75,
2	02398	35	Robert M. Meyers	91, 376
3	02398	99	Gary A. Miller	138
4	01905		Gary & Diane Miner	223
5			2401 McCullough Road	
6			Yakima, WA 98903-9535	
6	02398	23	Bruce Mondor	34, 78, 347
7	01240		Vernon & Dorothy Mondor	40, 224
8			3606 S. 79 <sup>th</sup>	
9			Yakima, WA 98903	
10	02398	23	Willis Mondor	34
11	02398	221	Neil D. Monoian	34, 176, 363
12	00863	90	Anna Marie & Paul Morton	31, 135, 175, 205, 224
13	02398	220	3114 S. 62 <sup>nd</sup> Avenue	369, 376
			Yakima, WA 98903-9571	
14	02398	191	Phillip Moyer	164, 307
15	02398	15	Jon R. & Linda S. Mulvenon	55, 237
16	01121		James Murphy	37
17			No current address available	
18	01121		Marie (Erickson) Murphy	37, 225
			Yakima, WA 98903-9999	
19	02398	12	Matthew & Lisa Murray	32, 53
20	02398	77	David F. & Susan G. Myra	130, 281
21	02398	178	Douglas & Audrey Nash	159, 264
22	02398	191	Richard Nathlich	164, 308
23	02058		2914 S. 79 <sup>th</sup> Avenue	
24			Yakima, WA 98903	
25				

1	08439		Olen Nichols, Jr. & Elenore Nichols 3303 S. 11 <sup>th</sup> Avenue Yakima, WA 98903	40, 205, 206, 225
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3				
4	01044		Rodney A. & Sally A. Niemi 2507 McCullough Road Yakima, WA 98903	226
5				
6	02086	220	Bernard & Marylyn Novobielski 5703 Ahtanum Road Yakima, WA 98903-1049	175, 341
7	02398			
8	01743		Hanna Nurss 2290 Ahtanum Road South Fork Yakima, WA 98903	35
9				
10	02398	41	Nina Nyvonen	34, 98, 364
11	02398	41	Oakshire Estate LLC	34, 98, 364
12				
13	01615		Martha Ohms, Estate of 1250 Ahtanum Road North Fork Yakima, WA 98903	34, 206
14				
15	01488		Rodney & Rhonda Ostriem 3503 Meadowcrest Lane Yakima, WA 98903-9319	226
16				
17	02398	19	Ted R. Overman & Dale L. Belsher	72, 265
18	02398	216	Joanne Pace	170, 365
19	02398	216	Pacific Ca Systems	31, 170, 281
20				
21	02398	29	Patricia Patterson	84, 347
22	02398	3	Shirley May Pettis	46
23	02398	216	James & Holly Phillips	170, 282
24	02398	65	Dale R. & Janelle Y. Pottenger	31, 119, 265
25	02398	12	Helen Pulito	32, 53

1	00040		Robert & Phyllis Pulse	33
2	02398	65	Jerry Wade Purdom	31, 119, 266
3	00999		3404 Stanton Road Yakima, WA 98903	
4	02398	23	Jeffery J. & Deborah R. Puskas	34, 78, 349
5			P.O. Box 478 Wildomar, CA 92995	
6	01020	29	Deborah R. Puskas-Huck	84, 348
7	02398		P.O. Box 478 Wildomar, CA 92995	
8				
9	01488		Daniel Putnam	227
10			1014 Meadowbrook Road Yakima, WA 98903	
11	02398	216	R & R Anderson Construction	170
12	01121		Simon & Bonnie Ramirez	37, 228
13			4161 McCullough Road Yakima, WA 98903	
14	02398	51	John & Judy Record	31
15	02398	51	John L. & Suzanne Record	31, 113, 240
16	02398	78	Todd P. & Lavina Record	132, 266
17	02398	65	Jody Reese	31, 119, 268
18	02398	65	John O. & Patricia Reese, Jr.	31, 119, 267
19	02398	26	Shaun M. & Sharon Rehfield	34
20				
21	01488		Gary & Alana Reich	228
22			3406 Meadowcrest Lane Yakima, WA 98903-9522	
23	02398	221	J. S. & Sally Reid	34
24	00450		3955 Russell Road Grants Pass, OR 97526-9781	
25	02398	78	Donald & Lorena Rennie	132, 269

1	02398	178	John M. & B. Brown Rennie	159, 268, 342
2	02398	78	Tania & Troy Reynolds	132, 270
3	02398	130	Elmer L. Rhodes	143
4	02398	12	Mike Ribail	32, 53
5	02398	16	Mark & Tammi Ribail	58
6	02398	73	Jerry L. Ribail	127, 309
7	02398	217	Claudia Richardson	173
8	02094		9409 Coolidge Road Yakima, WA 98903	
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10	02398 02094	50	Leo Richardson 9409 Coolidge Road Yakima, WA 98903	110, 326, 327
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12	02398	36	Thomas D. Richardson	31, 92, 309
13	02398	51	James E. & Darlene Riddle	31, 113, 241
14	01121		Gary & Ena Riddle 4211 McCullough Road Yakima, WA 98903	37, 229
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16	01121		Adam W. & Leona M. Riedlinger 4215 McCullough Road Yakima, WA 98903	37, 229
17				
18	02398	128	Lawrence & Shirley Riegel	31
19	02398	8	Robert S. Anderson Company, Inc.	35, 50, 369
20				
21	02398	160 187	R. S. Roberts, et ux.	155, 243
22	02398	160 187	R. Scott & Debra Roberts	155
23				
24	01759		Mark & Nancy Roehr 2150 Ahtanum Road North Fork Yakima, WA 98903-9019	35, 205
25				

1	02398	66	Jill W. Rogers, et vir	31, 121, 270
2	01759	23	Lester W. Roy	34
3		29	2150 Ahtanum Road North Fork Yakima, WA 98903	
4	01121		Robert & Michelle Runciman	37, 230
5			No current address available	
6	02398	216	Thomas R. & Delores A. Rupel	31, 170, 283
7	02398	12	John T. Russell Jr.	32, 53
8	02398	26	Myron E. Russell	35, 79, 377
9	02398	12	S & C Rentals	32, 53
10	02398	191	Ladie Saucedo	164, 354
11	02243		Gerald F. & Helen M. Sauer	193, 203, 379
12			733 Roza Drive Zillah, WA 98953	
13	07460		Michael E. Schreiner	230
14			7405 Sali Road Yakima, WA 98903-9247	
15	06332		Michael J. & Ella Kay Schreiner	231
16			2326 McCullough Road Yakima, WA 98903-9534	
17				
18	02398	52	Royal Schlepp	32, 115, 140, 241, 310
19		53		327
20		107		
21	02398	34	Robert N. Schuller	34, 90, 352
22	02398	26	Gary Senter	35
23	02398	44	Orville M. & Gweneth Seward	104, 383
24	02398	77	L. Jean Shockley	130, 283
25	02398	176	Richard A. & Helen F. Skagen	158, 159, 343, 344
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1	02398 00694	2	Billy R. & Sheryl Smith 2806 S. 42 <sup>nd</sup> Avenue Yakima, WA 98903	31, 45, 244
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3	02398	12	Vickie Smith	32, 53
4	02398	43	Harry A. Sodeman	101, 328
5	02398	217	Benn V. & Carol A. Splawn	173
6	02398	68	Karen B. & C. Hardison Stiles P.O. Box 10177 Yakima, WA 98909-1177	123, 328
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9	02398	64	William & Idel Stradler	33
10	02398 00205	6	Pat & Dora Stump 13602 Ahtanum Road Yakima, WA 98903-9784	48, 271
11	00206			
12	05679 02398	64	Erma Swalley 13310 Swalley Lane Yakima, WA 98903-9141	33
13				
14	01132		Rod & Betty Swanson 12964 Road A NW Ephrata, WA 98823	35, 41, 196, 231
15				
16	02398	191	Talbert William Taylor	164
17	02398	6	Talbert W. & Darcy J. Taylor	48, 329
18	02398	191	Talbert & Shirley Taylor	164
19	02398	96	Jeffrey M. & Erin J. Thomas	136, 310
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21	02398	37	Lewis Thomason	33, 93, 205, 330
22	00830		Clarence A. & Marian Thompson 1331 Ahtanum Road North Fork Yakima, WA 98903	207
23				
24	02398	133	Lynn Tobin	148
25	02398	64	Leland & Marie Torzon	33, 119, 331

1	02398	64	Robert L. Torzon	33
2				
3	01071		Trail's End Lodge c/o Chuck Tissell, President 13505 Church Road Yakima, WA 98903-9119	196, 387
4				
5	02398	170	Donald & Carol Trammell	32, 157
6				
7	02398	76	Fred Trupp	32
8	01704		Eugene R. & Helen E. Tyler P.O. Box 8190 Yakima, WA 98908-0190	232
9				
10	02276		United States of America Indian Resources Section P.O. Box 44378 Washington, DC 20026-4378	209
11				
12				
13	02398	26	Debra Valahu	34, 79, 378
14	02398	26	Martin Valla	34
15	02398	176	Randall & Catherine Vanloock	158, 344
16	02398	221	Jeff Van Wechel & Della Fikken	34, 176, 366
17	02398	44	Bradley & Kelli Vetsch	104, 384
18				
19	02398	44	Charles E. Vetsch, Sr. & Sharon Vetsch 3208 S. 62 <sup>nd</sup> Avenue Yakima, WA 98908-9572	104, 233, 385
20	07621			
21				
22	02398	77	Charles E. Vetsch, Jr. & Cherie Vetsch	130, 284
23	02398	132	Donna Vetsch	32, 143
24	02398	45	Laddy L. Vibbert	32, 105, 311
25				

1	02398	78	Charles L. & Marjory Walton	132, 271
2	02109		WA State Department of Fish & Wildlife	203
3			600 Capitol Way	
			Olympia, WA 98501-1091	
4	00589		WA State Department of Natural Resources	197, 207
5			PO Box 47016	
			Olympia, WA 98504-7016	
6	02398	5	Andrew Weed	47, 237
7	02398	5	Jonathan Weed	47, 237
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9	02398	5	Ruth Weed	47, 237
10	02398	6	Thomas & Janette Weed	48, 272
11	02398	7	William Weed	32, 50
12	02398	7	William D. & Peggy Weed	32, 50, 273
13	02398	7	William J. & Ruby Weed	32, 50, 273
14	02398	2	Joseph P. & Lorraine Weibler	31, 45, 245
15	01121		David & Ruth Welch	37
16	02398	50	Richard & Terry C. Welch	110, 332
17	02398	2	R. Lee West, Trustee	31, 45, 246
18	02398	2	Ray L. & Jean West	31
19	02398	145	Westwood West Corporation	151, 332
20	02398	64	Donald & Deborah Wetzel	33
21	02398	16	Darryl & Deanna Pemberton White	58, 345
22	02398	37	Lawrence R. & Teresa White	33, 93, 333
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1	08454 02398	27	Hiram H. & Sharon P. White Dorothy R. White 20580 Ahtanum Road Yakima, WA 98903	32, 35, 81, 284, 285
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3				
4	02398	26	Jerry Whitmire	34, 79, 378
5	02398	45	Joe Wiley	32,
6	02398	45	Loren F. Wiley	32, 105, 312
7	02398	38	Robert & Sean Wiley	94, 274, 382
8	01459		James T. & Belinda L. Wilkinson 2910 McCullough Road Yakima, WA 98903-9540	233
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10	02398	41 46	Russell & Catherine Wilkinson	34, 98, 106, 366, 383
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12	01459		Stanley & Mary J. Wilkinson 2908 McCullough Road Yakima, WA 98903	233
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14	02181		Rocky D. & Louise M. Willette 2207 McCullough Road Yakima, WA 98903	234
15				
16	02398	43	Charles T. Williams	101, 334
17	02398	16	James F. & Elaine J. Williams	58
18	01226		James and Patsy Wilson	234
19	01229		Ken Withers	235
20				
21	02398	137	Delmar F. Woerner, Estate of	32, 150, 275
22	02398	220	Larry E. & Kori Wolf	175, 345
23	02398 00737	96	Clara Wolff 2812 S. 90 <sup>th</sup> Avenue Yakima, WA 98903-9688	136, 312
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1	02398	3	Eugene Woodcock	46
2	02398	3	Kim Woodcock	46
3	02398	191	William M. & Billie J. Woodcock	164, 313, 314, 315,
4	02398	66	Gail Woodhouse	33, 121, 316
5	02398	122	Thomas Worrell	33, 205
6	02276		Yakama Nation	198, 209
7			Attn: Dave Ward	
8			P.O. Box 151	
			Toppenish, WA 98948-0151	
9	02398	136	Yakima Air Terminal	31, 149
10	02398	40	Timothy J. Yearout	97, 334
11	01645		Ervin & Jureta Yoerger	33, 207
12			2801 1 <sup>st</sup> Avenue	
13			Union Gap, WA 98903	

16 **III. SPECIAL ISSUES SECTION**

17 ***1. Junior Rights***

18 Beginning on page 109 of the Report, the Court analyzed the issue of whether any rights  
19 could be confirmed to water users with lands north of Ahtanum Creek that were not derivative from  
20 the 1908 Code Agreement. The Court determined that it could quantify rights to off-reservation  
21 water users who succeeded a person adjudicated a water right under the Achepohl Decree when  
22 surplus water is available. Surplus water would exist during the rare occasion when Ahtanum  
23 Creek flows are adequate to satisfy reservation water users and north side users who have Pope  
24 Decree rights beneficially used after that decree was entered. The Court also noted that the  
25 availability of "surplus water" could be impacted by the prior order requiring that adequate flows be  
retained in Ahtanum Creek to maintain fish life and future storage facilities might be constructed to  
retain "surplus waters" to more adequately supply senior rights. At the exceptions hearing and

1 during post-trial briefing that issue has received additional analysis by the parties and the Court has  
2 been asked to re-examine the matter. See Reports of Proceeding dated February 10, 2004, (pages  
3 96-159) and February 11, 2004, (pages 84-95).

4 Although it is asserted by certain entities that the decision by the federal court is clear on  
5 this issue, this Court strongly disagrees. To determine if there are any water rights whatsoever  
6 beyond that established in the Pope Decree, this Court must again analyze what was decided by that  
7 court as well as the context in which it was decided. This Court continues to examine both the 1956  
8 decision (Pope I) and the 1964 decision (Pope Decree) to find direction as to what that court  
9 actually found. After carefully scrutinizing Pope I and the Pope Decree, it is this Court's decision  
10 that the Ninth Circuit intended to adjudicate every possible right to water for landowners on the  
11 north side of Ahtanum Creek. Water rights not used on the north side would transfer to the corpus  
12 of water available to the south side users. When excess water is available, north side users are  
13 barred by res judicata from asserting rights to any such water except to those lands which were  
14 confirmed rights in the Pope Decree.

15 So what was decided in the Pope Decree? It can be and was stated in a number of ways by  
16 Judge Pope. For example, on page 904 of the Pope Decree, the special master and trial judge were  
17 admonished for failing "to make any determination as to the extent and limitations upon the water  
18 rights of the defendants in the waters of Ahtanum Creek under Washington law as of the year  
19 1908." After recounting applicable Washington law to accomplish this objective, Judge Pope  
20 proceeded to quote from the petition for certiorari filed by the defendants in response to *Pope I*.

21 "The effect is to require the Ahtanum water users to adjudicate again their right to the  
22 use of waters from the stream. They are not only required to establish their needs as  
23 of 1908, which was one of the purposes of the 1908 agreement, but are again required  
24 to prove their water rights with the same particularity which was required of them in  
25 the state court proceeding in 1925."

To this statement, Judge Pope responded affirmatively ("Plainly with this correct understanding of  
the meaning of our mandate. . ."). Judge Pope then summarized the use of water in 1908 and  
ultimately limited north side users to a season of use that concluded on July 10.

The Ninth Circuit then proceeded to analyze the contention of the United States that the trial  
court "refused to adjudicate the 1908 claims of some 456 defendants who failed to establish  
beneficial use of water or the existence of water rights belonging to them or to their predecessors in

1 interest, as of that date.” *Pope Decree* at 912. Judge Pope answered that findings were made as to  
2 the lands which were in fact irrigated in 1908:

3 “Obviously this finding purports to be and is a determination as to the entire use of  
4 waters in 1908. By excluding therefrom other tracts, the finding, it seems to us,  
5 adequately disposes of any claims that might have been made by other persons in  
6 respect to lands not listed in the findings.” *Id.* (Emphasis added).

7 The relevant next step of the Ninth Circuit was to determine if the uses of water in 1908 had  
8 diminished subsequently thereto, or in the court’s parlance “when the needs of those parties were  
9 such as to require less . . . then their rights to the use of the water was correspondingly reduced, and  
10 those of the Indians, in like measure, greater.” *Id.* at 913. That statement is consistent with other  
11 finding that the rights of north side users could not be enlarged. See *Pope Decree* at 911. The court  
12 determined it would base the water award for the Answer Numbers on the lesser of the amount of  
13 land irrigated in 1908 or 1957.

14 Lastly, Judge Pope included a very telling paragraph on page 914 that signals the intent of  
15 the Ninth Circuit in issuing the *Pope Decree*.

16 “The parties should be informed now as to where they stand, and the unanimity of the  
17 evidence, to which we have previously alluded, makes our conclusion as to the extent  
18 of the 1908 water rights possible on this record. Thus the Indian Tribe may now  
19 ascertain, by actual experience under the decree, just how badly they have suffered  
20 through the Code taking of their property. Plainly the waters they are here awarded  
21 will be insufficient for the irrigable lands of the Reservation [footnote omitted]. Just  
22 how insufficient they can soon tell.”

23 Clearly, that court believes there is no real surplus or excess water to distribute because it was of the  
24 opinion the Nation was provided for so badly in the original 75%-25% split established by the Code  
25 agreement. The key concept underlying the decision is that although north side water users may  
have some rights derivative of the Code agreement, any water that goes unused will be available to  
reservation water users and any rights that relinquish will do so for the benefit of reservation users.

On page 915 of the *Pope Decree*, the Ninth Circuit actually makes its own findings and  
orders as follows:

a. To defendants, for use of their lands north of Ahtanum Creek, seventy-five per  
cent of the natural flow of Ahtanum Creek, as measured at the north and south gauging  
stations, provided that total diversion for this purpose shall not exceed 46.96 cubic feet  
per second, and provided that when the said measured flow exceeds 62.59 cubic feet

1 per second defendants shall have no right to the excess, except in subordination to the  
2 higher rights of the plaintiff.

3 b. To plaintiff, for use on Indian Reservation lands south of Ahtanum Creek,  
4 twenty-five per cent of the natural flow of Ahtanum Creek, as measured at the north  
5 and south gauging stations; provided that when that natural flow as so measured  
exceeds 62.59 cubic feet per second, all the excess over that figure is awarded to  
plaintiff, to the extent that the said water can be put to a beneficial use.

6 This is the only reference to use of excess water by the *defendants*, although Johncox does point to  
7 page 900, and the following quotation:

8 We went on to say: 'The rights of the white settlers to the use of the waters were  
9 subordinate to the rights of the Indians, but they were not non-existent. Until the  
10 Indians were able to make use of the waters, there was no legal obstacle to the use of  
11 the waters by the white settlers. After the Indian irrigation works were completed,  
there would still be the right of the non-Indian appropriators to make use of any  
surplus available within the stream.' *Quoting Ahtanum I* at 236 F.2d 335.

12 Of course, this statement must be read in the context supplied by Johncox of the amount of water  
13 that could be appurtenant to the reservation water users as of 1915. It also must be read in the  
14 context of the Pope Decree's finding as to the amount of water actually beneficially used by the  
1908 signatories or their successors as of 1957.

15 The remainder of the decree provides for distribution of return flow between south side and  
16 north side water users. It also provides that after the tenth day of July in each year, all waters are  
17 available for use on the reservation. Further, the north side defendants filed a motion for  
18 reconsideration on the issue of water availability and made no effort to extend the ruling to  
additional water or additional lands. *U.S. v. AID*, 338 F.2d 307 (9<sup>th</sup> Cir. 1964).

19 AID and the Yakama Nation each have their own take on what constitutes a defendant for  
20 purposes of that ruling. There are three possible groups who could constitute the class of  
21 "defendants" pursuant to the Pope Decree. 1.) Those parties to this case who are not successors to  
22 the Code Agreement and were not made "defendants" to the Pope Decree. 2.) Those parties to this  
23 case who were defendants in *U.S. v. Ahtanum Irrigation District*, but who had rights denied in that  
24 case; and 3.) Those defendants who were recognized in the Pope Decree as having a right, but who  
25 are irrigating more land than was awarded a water right in the Pope Decree or are using more water  
on the lands having a water right than recognized in the Pope Decree.

1 Section I a. of the actual Pope Order and Decree (page 915), set forth above, also impacts  
2 this decision. First, it defines, for purposes of the Pope Decree, the class of “defendants” as being  
3 those north side users who share the 46.96 cfs – that is the amount, based on water duty, shared by  
4 those who successfully defended their water rights as set forth in the answer numbers. The  
5 provision goes on to prohibit those same “defendants” from having any right to the excess, except in  
6 subordination to the higher rights of the plaintiff. That language would limit the universe of those  
7 who could use the surplus water to those who succeeded in having a water right confirmed under  
8 the answer numbers. This conclusion is buttressed by the fact the Ninth Circuit had also found that  
9 the findings of water use were conclusive as to the “entire use of water in 1908” by north side users.

10 What trends against that decision is the fact that a water duty was set at a meager .01 cfs per  
11 acre for north side uses and suggests that additional water uses would be prohibited. However, this  
12 must be placed in the unique context of Ahtanum Creek, where water was initially divided on a  
13 75%-25% basis. Therefore, it is this Court’s belief that the idea of “excess water” for the north side  
14 users as set forth on page 915 only exists in a percentage calculation so as to be consistent with the  
15 1908 Code Agreement. Thus, water users on the north side of Ahtanum Creek were determined to  
16 have a right to a certain percentage as further limited by a 0.01 cfs per acre water duty.

17 In addition, north side users argue that the decisions of this Court must be influenced by the  
18 evidence adduced at trial. For example, Johncox argues the Court should ignore the July 10 bar set  
19 by the Ninth Circuit for north side diversions in light of evidence that suggests there may be water  
20 available in Ahtanum Creek after July 10<sup>th</sup>. Again, it has long been the practice of this Court, and is  
21 in fact preferred (if not actually required) by Washington law in RCW 90.03, that when conducting  
22 an adjudication, effect be given to prior decrees that impact diversions of water. See RCW  
23 90.03.220; RCW 90.03.170; *Ecology v. Acquavella*, 112 Wn.App. 729, 51 P.3d 800 (2002). This  
24 application of res judicata can dictate results that appear out of step with contemporary practices but  
25 does not change the obligation of the Court to enforce those prior findings.

Therefore, the Court finds that north side users are now estopped from claiming any right to  
“excess” flows, except for use on specific lands included in or deriving from an Answer number  
recognized in the Pope Decree. “Excess water” is that water in excess of that needed to satisfy all  
confirmed water rights both on and off the reservation and any water needed to satisfy the Yakama

1 Nation's minimum instream flow right for fish. The United States shall be required, consistent with  
2 the requirements of Washington law, *U.S. v. AID* and the United States own mandate, to measure  
3 and report diversions into canals that serve land owners on the reservation. The Court will not  
4 otherwise require measuring on the reservation or tread into the area of management of water on the  
5 reservation as requested by Johncox and AID. Such decisions are beyond the scope of an  
6 adjudication court and are within the province of the federal government to determine.

7 The Yakama Nation and the United States argue that because there is no excess water, the  
8 Court cannot confirm rights thereto. There is an obvious appeal to the logic of that statement and  
9 the Court agrees the evidence and prior rulings on the issue are fairly consistent that excess water  
10 will be rare. Further, the reality is that many of the statements set forth above indicate the Ninth  
11 Circuit's observation that the supply would be inadequate for the Answer Number lands and the  
12 uses on the south side. However, it is an irony of stream adjudications that insufficient supply does  
13 not prevent a court from confirming rights, unless it can be demonstrated that such a limitation on  
14 supply has prevented beneficial use. That evidence is not before this Court.

15 While not intending to comment on the ultimate determinations of water rights, some  
16 aspects of the Pope Decree and the process utilized are troubling. The Court is concerned the  
17 process utilized in making those decisions divested this Court of its ability to perform its  
18 fundamental function. Some of the determinations are not consistent with Washington water law.  
19 However, in reaching its decision, the Ninth Circuit considered all the evidence before it, legal  
20 arguments of the various parties, its understanding of Washington water law and the fact water  
21 users had participated in an adjudication in 1925. Further, the decisions of the Ninth Circuit in the  
22 Pope Decree, involving interpretation of a contract between the United States and north side water  
23 users and the rights of the Yakama Nation established under federal law, are binding on this Court.  
24 That decision must be given full force and effect in this proceeding. The Court's ruling on junior  
25 rights resolves YN Exception 19.

The following is a list of junior water rights previously confirmed in the Court's report.  
They are identified by page from the report, the name in the report, the name in AID-8A and the  
Answer number. The Court withdraws the earlier confirmation and these rights are DENIED.

<u>RC Page #</u>	<u>Name/Original Report</u>	<u>Name in AID-8A</u>	<u>Ans. #</u>
371	Kenneth Bates Thomas H. Bates	Kenneth P. Bates, Jr.	1

1	373	Eugene Carpenter Carl Brown John and Judy Record	Douglas & Nancy Hartshorn James & Darlene Riddle John Record Stanley & Illa Glenn	51
2				
3				
4	374	George H. Grissom Allen W. Grissom	Charles H. & Colleen Meginn Allen W. Grissom Thomas D. Richardson	36
5				
6	375	John Hull	Samuel Hull, et al.	215
7	376	John Hull Harlong Clift, Jr.	Samuel Hull, et al. Harlond Clift, Jr.	179
8				
9	379	Ray L. and Jean West Joseph and Lorra Weibler Billy and Sheryl Smith	R. Lee West, Trustee Joseph & Lorraine Weibler	2
10				
11	381	Russell Bohannon	Same	135
12	382	Russell Carlson	Russell & Gladys Carlson	70
13	383	Norman Cornelius Jill Rogers	Norman Cornelius Jill W. Rogers, et vir. Roger & Renee Biles	66
14				
15	384	Jerry Davis Jerry Purdom John and Patricia Reese, Jr.	Dale & Janelle Pottenger Jerry Wade Purdom John Reese, Jr. & Patricia Reese Jody Reese	65
16				
17				
18	386	James Decoto Willis Decoto	James R. Decoto Yakima Air Terminal	136
19				
20	387	Robert and Loraine Glaspey Frank Glaspey Glaspey and Sons	William Terry & Denise F. Campbell Pacific Ca Systems Glaspey Ahtanum LLC Elvin J. & Judith Martinsen Thomas & Delores Rupel	216
21				
22				
23	388	Holtzinger Ranch	Same	13
24	391	Paul and Anna Marie Morton	Same	90
25	394	Lawrence and Shirley Riegel	Clark & Janet Johnson	128

1	395	Vickie Smith Steven M. Gerdes	S & C Rentals, LLC Vickie Smith	12
2		Loren Gerdes	John T. Russell, Jr.	
3		Jimmy Haedrick	Steven & Charlotte Gerdes	
4		Lester Johnson	Arlene Lien	
5		Mike Ribail	Jerry & Sherry Adams Matthew & Lisa Murray Helen Pulito Mike Ribail	
6	396	William Weed	William J. & Ruby Weed William D. & Peggy Weed	7
7				
8	398	Demor Woener	Estate of Delmar Woerner	137
9	400	Donald and Carol Trammell	Same	170
10	402	Hiram E. White	Same	27
11	404	Russell Bohannon	John & Pamela Bohannon	98
12		John Bohannon	Russel & Darlene Bohannon	
13		Robert Bohannon	Robert Bohannon	
13	406	Carl Brown	Donna Vetsch	132
14		R.E. Cornelius	R. E. Cornelius, Jr., et al.	
14	407	Jake and Sue Bryan		No Answer
15				
16	408	Vernon & Jo Marie Carson	Vernon Carson	45
17		Laddy Vibbert	Laddy Vibbert	
18		Loren Wiley	Loren Wiley	
19		Joe Wiley	David Carson	
20	411	R.E. Cornelius	Same	42
21	415	Harris Farms	Royal Schlepp	107
22	416	James Ives	Same	172
23	417	Riley J. Kelley	Same	142
24	418	KLC Holdings LTD	Same	219
25	419	Albert and Florence Lantrip		No Answer
25	421	Fred Trupp	James & Deborah Carmack	76

1	423	Gail Woodhouse Clarence Knoblick Daryl Hill Rulon Linton	Gail Woodhouse Daryl Hill Shirley Linton John & Cathy Cockrum Donald & Mary Adkins	66
4	426	John P. Herke	Same	21
5	427	Hull Ranches, Inc. Jess Bowden	Same	72
7	429	Roger & Edna Meusborn Wayne & Frances Gohl Lewis Thomason	Roger & Edna Meusborn Lawrence & Teresa White Lewis Thomason	37
9	431	Erma Swalley Leland and Marie Torzon Donald and Deborah Wetzel William and Idel Stradler Randy and Dee Fleming	Robert L. Torson	64
12	432	James D. Forsythe	Craig Schultz Properties LLC	127
14	433	Hansen Fruit and Cold Storage/ Park Avenue Storage Company		No Answer
15	433 <sup>3</sup>	Paul and Linda Hart Jr. Alice Hart	Same	No Answer
17	435	Earl and Ardis Lewis	Ardis Lewis & Estate of Earl Lewis	No Answer
18	436	Peggy Madson	Nellie C. Burks, et al.	75
19	439	Robert and Phyllis Pulse Donald and Sylvia Brule	Same	No Answer
21	440	Thomas Worrell	Craig Schultz Properties, LLC	122
22	441	Ervin and Jureta Yoerger Evergreen State Refuse System	Same	No Answer
23	442	Michael J. Hager	Same	28

<sup>3</sup> This water right did not have the provision identifying it as a junior right, however, that was the Court's intent

1	444	Lester W. Roy	Deborah Puskas-Huck	29
2	446	Lester Roy Willis Mondor	Bruce Mondor Jeffrey & Deborah Puskas	23
3				
4	448	Gary and Ruth Hansen	Gary & Ruth Hansen Russell & Joann Daniels	32
5	450	Robert Schuller Carl George	Same	34
6				
7	451	Laurence and Marian Hovenkotter Michael and Kathleen Hovenkotter	Same	No Answer
8				
9	453	J. S. and Sally Reid	Gail Hernandez Jeff Van Wechel & Della Fikkan Dennis Frank Leslie Barr Micheal & Nancy Dale Flumencio Garza Neil Monoian Gary & Laurene Aranas	221
10				
11				
12				
13	455	Russell & Cathy Wilkinson Kenneth P. Bates, Jr. Cliff Dovel Dennis E. & Carloy Herron Lloyd Dovel Robert and Veronica Flake	Russell & Catherine Wilkinson Kenneth P. Bates, Jr. Clifford & Debra Dovel Chadwick & Nancy Fife Lloyd Dovel Mark Flake Nina Nyvonen Melvin & Donna Crawford Shelby & Tracy Brown Lynch Lane LLC Oakshire Estate LLC	41
14				
15				
16				
17				
18				
19				
20	456	Sharon Glenn Estate of Martha Ohms	Same	No Answer
21				
22	458	R.E. Cornelius	Same	39
23	463	Shaun M. and Sharon Rehfield Lester Johnson Brad Cunningham Randall and Cheri Johnson Michael Guillozet Martin Valla	Robert & Phyllis Anderson Jerry Whitmire Stanley & Elizabeth Benefiel Mark Martin Michael & Mary Guillozet Debra Valahu	26
24				
25				

1	Gary Senter	Curtis & Kellie Harris	
2		Myron E. Russell	
3		Marc A. Lee	
4	465	Timothy & Joanne Burlingame	
5	465	Roberta and Jim Buchanan	No Answer
6		Randy and Cheri Johnson	
7		Mark and Nancy Roehr	
8	466	Sylvia Crockett	No Answer
9	467	Kathleen Hille	No Answer
10	470-471	Johncox Ditch Company	
11	472	Rod and Betty Swanson	No Answer
12	474	Dwinell's Central Neon Company	46
13		Chancery	
14	475	Hanna Nurss	No Answer
15	477	Hansen Fruit and Cold Storage	8
16		Laurel Hansen	Robert Anderson S CO, Inc.
17	478	Catholic Bishop of Yakima County	10
18	479	Hiram E. White	27

2. *Quantity of Water*

As discussed above, the Pope Decree limited the quantity of water that could be used on lands north of Ahtanum Creek to 0.01 cubic foot per second for each acre irrigated. This Court must adhere to that ruling and all water rights confirmed for irrigation on lands north of Ahtanum Creek will authorize the diversion of 0.01 cfs per acre irrigated. The annual quantity awarded for each acre irrigated will be based on a continuous diversion of 0.01 cfs from April 15 until July 10, unless there is evidence that allows the Court to confirm a season of use that begins prior to April 15. In any event, the annual quantity of water will be based on a continuous diversion of 0.01 cfs for the number of days in the season of use. Therefore, water rights with a season of use from April 15 through July 10 will be authorized an annual quantity of 1.72 acre-feet per acre irrigated. Because in many cases the acres irrigated include fractions of acres, in most cases, the Court has

1 rounded the numbers so that both the instantaneous quantity and annual quantities are expressed to  
2 two places right of the decimal point.

3 **3. Use of Bachelor Creek and Hatton Creek**

4 The Court ruled in the Memorandum Opinion at page 13, that it would allow 0.25 cfs to  
5 remain in naturally occurring water sources and that what constitutes a "naturally occurring water  
6 source" could be debated at the evidentiary hearing. At the February 3, 2004, hearing AID asked  
7 that it be allowed to open the gates into Bachelor and Hatton Creeks from Ahtanum Creek after July  
8 10 and whatever water would go into those channels is "naturally occurring." See transcript at page  
9 101, 164. The Yakama Nation disagrees and indicates that AID installed gates to control diversions  
10 of water into Bachelor and Hatton and that both have been used as irrigation channels.

11 The Court agrees with the Nation. The Pope Decree was quite clear in its order on page 915  
12 that "After the tenth day of July in each year, all the waters of Ahtanum Creek shall be available to,  
13 and subject to diversion by, the plaintiff for use on Indian Reservation lands south of Ahtanum  
14 Creek, to the extent that the said water can be put to beneficial use." That decision is clear and  
15 unequivocal that "all the waters of Ahtanum Creek" are available for use on the south side.

16 Allowing the practice suggested by AID will result in a substantial reduction in the water available  
17 for use on the south side as supported by the Wapato Irrigation Project Engineer Roger Henderson  
18 testimony. See February 3, 2004, transcript at 130.

19 Therefore, while water for stock water is authorized for north side uses in springs and naturally  
20 occurring stream channels, it is not available in places where any human effort is required to supply  
21 the water.

22 Other issues and concerns have been raised by the parties. The Court believes they are  
23 primarily water management questions or are other wise denied by the Court.

24 **IV. ANALYSIS OF EXCEPTIONS**

25 The Court held the supplemental hearing for Subbasin No. 23 from January 26 to  
February 27, 2004. Late exceptions were filed after the end of the supplemental hearing and those  
exceptions were heard on April 14, 2005, May 11, 2006 and August 10, 2006. Having been fully  
advised, the Court sets forth its decision regarding the various exceptions below. The Court will  
first consider the exceptions taken to those claims located south of Ahtanum Creek on the Yakama  
Reservation. The Court will then address those claims located north of the Creek or that derive

1 from an answer number. This includes exceptions filed by individual claimants, as well as the  
2 Ahtanum Irrigation District or one of its water users, as well as the Johncox Ditch Company.

3 The Court has addressed many of the Yakama Nation's and Ecology's legal exceptions  
4 above. The Nation and Ecology also took specific exceptions to claimant or answer number and  
5 those are addressed below. The United States exceptions are also addressed below.

6 ***1. Exceptions by South Side Claimants on the Yakama Reservation***

7 **Court Claim No. 1642 - *Borton and Sons, Inc.***

8 The Bortons and the Yakama Nation entered into a stipulation dated January 20, 2004,  
9 whereby the parties agreed the Bortons use, set forth on page 351, is for the irrigation of 148.8 acres  
10 rather than 155.7 recognized by the Court. Accordingly, the right at page 351 shall be changed at  
11 line 14 to show 148.8 acres and also at line 16 to show quantity as 1.86 cfs and 654.72 acre-feet per  
12 year. This resolves YN exception No. 12.

13 **Court Claim No. 1121 - *Erickson Orchards, Inc./ Erickson Water System***  
14 ***Douglas & Linda Couette***  
15 ***Marie (Erickson) Murphy***  
16 ***Gary Riddle & Ena Riddle***  
17 ***Leona M. Riedlinger & Adam W. Riedlinger***  
18 ***Robert & Michelle Runciman***  
19 ***Simon Ramirez & Bonnie Ramirez***  
20 ***Thomas Leonard***  
21 ***David Welch & Ruth Welch***  
22 ***Mike Herndon & Evelyn Herndon***  
23 ***James Murphy***

24 Yakama Nation exception #11 is to the water rights recommended by the Court in regard to  
25 Erickson Orchards, Inc./Erickson Water System, Douglas & Linda Couette and Marie (Erickson)  
Murphy.<sup>4</sup> No party representing those entities participated at the January 26-27, 2004, hearing  
when those exceptions were presented. The Yakama Nation relied on the testimony of Dr. Neil  
Allen (and his Declaration and Erratum – YIN 331-332) and the analysis set forth in YIN – 334 and  
YIN -- 348 to support its exception.

The Yakama Nation's first point in the exception concerns the fact the Court "double  
counted" in confirming a right to Erickson Orchards, which no longer exists and has been

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<sup>4</sup> Initially, the Yakama Nation also took exception to the right recommended for David Welch & Ruth Welch and Gary Riddle & Ena Riddle. However, the Nation withdrew its exceptions in regard to those claimants during the hearing on January 26, 2004.

1 subdivided between the above-named parties. The Court agrees and the right set forth at page 354  
2 of the Report is WITHDRAWN.

3 The Nation also took exception to the Court's recommendation to Douglas and Linda  
4 Couette for a water right to irrigate 16.4 acres in Parcel No. 181210-22408. As summarized on YIN  
5 334 and through the testimony of Dr. Allen, the Nation alleges that of the 16.4 acres, 0.3 is not a  
6 field area and areas on the southern and western portion of the property have not been irrigated  
7 during the 1996-2000 time frame. The most extensive irrigation of the Couette property took place  
8 in 1997. During that year, according to Dr. Allen, the Landsat mapping shows that a great portion  
9 of the Couette property was irrigated – however, there are sizeable areas that were not irrigated.  
10 Lacking an appearance by the claimant and testimony to the contrary, the Court GRANTS the  
11 Yakama Nation's exception and finds the water right of the Couettes on page 353 of the Report is  
12 reduced to the irrigation of 13.4 acres in the described place of use. The authorized quantity of  
13 water is also reduced to 0.17 cfs and 46.90 acre-feet per year.

14 Lastly, the Yakama Nation took exception to the right confirmed to Marie (Erickson)  
15 Murphy authorizing the irrigation of 9.75 acres. Neither Ms. Murphy nor any successor was present  
16 at the January 26-27, 2004, hearing. The evidence supplied by the Yakama Nation indicated the  
17 most extensive irrigation of Parcel No. 181210-22003 between 1996 and 2000 was 5.7 acres.  
18 Lacking an appearance by the claimant and testimony or evidence to the contrary, the Court  
19 GRANTS the Yakama Nation's exception and finds the water right for this parcel on page 362 of  
20 the Report is now limited to the irrigation of 5.7 acres in the described place of use. The quantity  
21 shall also be reduced to 0.07 cfs and 19.95 acre-feet per year.

22 **Court Claim No. 1694 - John P. and JoAnn Herke**

23 The Herke's own land located on the south side of Ahtanum Creek on the Yakama  
24 Reservation, as well as on the north side of the creek. This analysis pertains to the lands on the  
25 Yakama Reservation. The remaining Herke land is addressed as part of AID's presentation for  
Answer Nos. 17, 18 and 21. John P. Herke testified on February 25, 2007. Pat Andreotti  
represented the Herkes for the Yakama Reservation land.

The Court was unable to confirm a right for the Herke land within Section 15, T. 12 N., R.  
16 E.W.M. due to lack of information regarding ownership, historic beneficial use and place of use.  
Report @ 76-77. In response, the Herke's provided the following information.

1 The Herke's are making a claim to irrigate 23 acres within Allotment No. 965 only. Emma  
2 Tomaskan was the original allottee of No. 965. Genevieve Harry-Hooper, Ms. Tomaskan's  
3 granddaughter, inherited Allotment 965 and on November 14, 1956, sold the allotment to James P.  
4 Olson (DE 315). The Herkes purchased it from Mr. Olson on March 25, 1959, and received a  
warrant deed in February of 1961 (DE 316, DE 317).

5 Water use has been occurring since at least 1928. The Herke family leased the allotment  
6 from the BIA and also from Ms. Harry-Hooper, and farmed the land until the Olsons purchased it.  
7 Prior to the 1960s there were between 16-18 acres of hops and the remainder in pasture. Since that  
8 time, all land has been converted to pasture. Water was originally diverted from an unnamed  
9 spring-fed stream until a flood moved the stream, resulting in it drying up. The Herkes then  
10 enlarged the existing Herke-Elgin Ditch from 2'-2-½' wide to about 10' wide. There was a bit of  
11 confusion regarding what allotment the Herke's point of diversion from Ahtanum Creek is in.  
12 However, Mr. Herke testified the headworks of the ditch is within Government Lot 8 in Section 16,  
13 T. 12 N., R. 16 E.W.M. The Herke-Elgin ditch traverses Allotments Nos. 962 and No. 964, through  
14 No. 965 along the base of a bluff. Most years there are sufficient flows into July, but then it often  
15 tapers off. Under this scenario Mr. Herke uses at least 3 acre-feet per acre.

16 Based on the testimony of Mr. Herke and the evidence, the Court confirms a water right for  
17 Allotment No. 965. As with other south side water users, the priority date will be June 9, 1855.  
18 The water duty is 0.0125 cfs per acre and 4.4 acre-feet per year. Although the 4.4 acre-feet per acre  
19 is greater than what Mr. Herke testified to using, this figure is based on irrigation water being  
20 available the entire year.

21 The Court confirms a right to John P. and JoAnn Herke to divert water from Ahtanum Creek  
22 in the amounts of 0.29 cfs and 101.2 acre-feet per year for irrigation of 23 acres within Allotment  
23 No. 965 being within Government Lot 8 and Government Lot 9, in Section 15, T. 12 N., R. 16  
24 E.W.M. The point of diversion is located in Government Lot 8 of Section 16, T. 12 N., R. 16  
25 E.W.M. The priority date is June 9, 1855. The season of use is April 1 through October 1.

**Court Claim Nos. 01829, (A)02401** *Nancy McDougall*

26 On July 19, 2004, Nancy McDougall filed a late exception to the Court's Report and the  
27 Court allowed the late exception on August 12, 2004. Testimony and evidence in support of the  
28 exception was taken on April 14, 2005, at which time Nancy McDougall and Ron McDougall, IV  
29 testified and exhibits DE-327 to 342 were entered into evidence.

1 The history of settlement of this land and early efforts to irrigate were discussed on pages 85  
2 and 86 of the Report and will not be repeated. The Court concluded therein that a right had been  
3 established by the McDougall's predecessor with a June 9, 1855 date of priority and that beneficial  
4 use of the water had continued on neighboring parcels of land. The testimony at the April 14, 2005,  
5 hearing leads the Court to conclude that beneficial use of water continued as well on the portion of  
6 the land still owned by Mrs. McDougall. She owns 10 acres and is irrigating 8 acres of hay and  
7 pasture located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, T. 12 N., R. 18 E.W.M. She irrigates with  
8 water carried in the Lower Ahtanum Canal, which diverts from Ahtanum Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
9 Section 7, T. 12 N., R. 18 E.W.M. Although Mrs. McDougall is seeking a right to divert 0.19 cubic  
10 foot per second, the Court will use the water duty of 0.0125 cfs and 4.4 acre-feet per year for each  
11 acre, which is based on the rulings in *U. S. v. Ahtanum*, Civil Cause No. 312. This is the water duty  
12 used on neighboring lands that have the same ownership history.

13 Therefore, the Court confirms a right with a June 9, 1855, date of priority for the diversion  
14 from Ahtanum Creek of 0.10 cfs, 35.2 acre-feet per year from April 1 through October 1 for the  
15 irrigation of 8 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, T. 12 N., R. 18 E.W.M. (Parcel No.  
16 181211-22005). The point of diversion is located 750 feet south and 700 feet west of the east  
17 quarter corner of Section 7, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T. 12 N., R. 18 E.W.M.

18 **Court Claim No. 1240 - *Vernon and Dorothy Mondor***

19 The Mondors and the Yakama Nation entered into a stipulation whereby the parties agreed  
20 the Mondors water right described on page 361 of the Report should be for the irrigation of 35 acres  
21 rather than the 42 acres confirmed by the Court. Accordingly, the right set forth on page 361 is  
22 changed at line 3 to irrigation of 35 acres and stock water and at line 5 to 0.44 cfs; 154 acre-feet per  
23 year. The stipulation resolves YN Exception No. 16

24 **Court Claim No. 8439 - *Olen and Elenore Nichols, Jr.***

25 The Yakama Nation took exception (#15) to the right confirmed to the Nichols on the  
ground that much of the place of use for the right on page 362 is not owned by the Nichols. The  
Nichols did not make an appearance at the exception hearing. The Nation indicates that Olen &  
Eleanor Nichols only own three parcels (181212-23014, 181212-23019, and 181212-23020)  
consisting of about 4.3 acres, of which the Nation notes, 3.7 acres are irrigated. The Court has  
reviewed the record for the Nichols claim and finds that an error was made in describing the place

1 of use for the water right, an error that was brought forward by Ecology in its exceptions. Ecology  
2 also pointed out an error in the claim number – the Report identifies the claim as being 8349 when  
3 the correct number is 8439.

4 The Court confirmed a right for irrigating 23 acres in the N $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$   
5 of Section 12, T. 12 N., R. 18 E.W.M. However, reviewing Court Claim No. 08439 and the State's  
6 Investigation report for the claim, SE-167, the land that the Nichols asserted water rights for is all in  
7 the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12. Review of the county assessor's records shows the Nation is correct,  
8 the Nichols no longer own all of the land for which a right is asserted. It is common for land to be  
9 sold after a claim is filed in this proceeding or after the evidentiary hearing. Selling the land does  
10 not divest it of the water right that was claimed and defended by the Nichols and confirmed by this  
11 Court. The Court has established a process to join parties when land that is part of a claim is sold;  
12 unfortunately, that process is not always followed. Although water rights are appurtenant to the  
13 land, it is also important to have the proper parties joined to each claim. The Court directs Ecology  
14 to contact the owners of the parcels within the correct place of use for this water right and provide  
15 them information for becoming joined to the claim. If they elect to not join the claim, then the  
16 Court will entertain a request to reduce the water right to the lands owned by the parties that did join  
17 the claim. The right described on page 362, lines 12 through 22, is amended at line 21 so that the  
18 place of use is: The N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and the west 562 feet of the N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12,  
19 T. 12 N., R. 18 E.W.M.

20 **Court Claim No. 01132 - *Rod and Betty Swanson***

21 The Swansons took exception to the Court not confirming a water right for land they own  
22 south of Ahtanum Creek on the Yakama Reservation. Attorney Bryan Myre appeared at the  
23 supplemental hearing on behalf of the Swansons and entered Exhibit DE-307 in support of the  
24 exceptions. No additional testimony was offered.

25 The Court had concluded in the first Report that the evidence was not clear on whether the  
Swanson's land south of the creek was owned by a Yakama Indian prior to the United States  
conveying it to the Swanson's predecessor, E. A. Shannafelt, Report @ 98. Mr. Shannafelt had  
acquired ownership of the land through a patent from the federal government, with no mention of  
the land being conveyed to benefit an Indian allottee. The Court also needed evidence that the land  
was irrigated either by the Indian allottee or within a reasonable time after it passed from Indian  
ownership, Report @ 99.

1 The land in question is Lots 7 and 8 of Section 24, T. 12 N., R. 15 E.W.M., within which the  
2 Swansons are claiming a right to irrigate 30 acres. They point the Court to a document that was part  
3 of Exhibit DE-65 from the initial hearing and is also part of DE-307. The document is the first page  
4 of a Court Decree in *State of Washington v. Charles H. Anderson and Ethel Anderson, husband and*  
5 *wife, and Edw. A. Shannafelt*, Cause No. 24145. This page identifies Edw. A. Shannafelt as the  
6 owner and Charles H. Anderson and Ethel Anderson as purchasers under contract of Lots 7 and 8 of  
7 Section 24, T. 12 N., R. 15 E.W.M. The decree states that the land lies within the boundaries of the  
8 Yakima (sic) Indian Reservation and that Lots 7 and 8 were "prior to the transfer of title from the  
9 United States divesting the title of the Indian allottee thereof . . . irrigated by water from a ditch  
10 known as the Paul ditch with waters taken out of the south fork of the said Ahtanum creek." Other  
11 documents that are part of DE-307 provide evidence the land continued to be irrigated until the  
12 Swansons purchased it in 1979 and Mr. Swanson's earlier testimony shows continued beneficial use  
13 during their ownership.

14 Mr. Swanson's predecessor, A. L. Thompson participated in the 1925 adjudication and the  
15 Report of Referee recommended confirmation of a Class 20 water right with an 1884 date of  
16 priority. Included in DE-307 is an excerpt from what the Swansons assert is the *Achepohl* decree,  
17 including the introductory language, along with the water rights awarded to Thompson. However, it  
18 differs from the copy of the decree that was put in the record by Ecology, which is DOE-133.  
19 However, the only difference is that all of the Thompson water rights are listed consecutively, while  
20 in the actual decree there are other water rights listed between the first Thompson water right and  
21 the other two. The Nation in its reply to the Swanson exception suggests that the decree did not  
22 contain the water right awarded for the Thompson land on the reservation. The Nation indicates  
23 that the decree is DOE-130; however, that exhibit is a copy of the decree in *Benton v. Johncox*,  
24 which is an earlier case that was not a general adjudication. As mentioned above, DOE-133 is the  
25 *Achepohl* decree and the Court finds the Thompson water right for lands on the reservation is  
included. The record does not include a copy of the certificate that should have issued for this water  
right. It is not clear whether the certificate is not in the record because Mr. Thompson did not pay  
the necessary fees for issuance or if there is another reason that the certificate did not issue. This is  
the only instance the Court is aware of where the water right for land on the reservation was  
addressed in the *Achepohl* decree.

1 The Nation argued in its reply to the Swanson exception that the "vague reference in a  
2 Superior Court record" is not sufficient to prove that the Swanson's land was once held by or on  
3 behalf of an Indian allottee. The Court disagrees. The reference is in no manner vague and is not  
4 just a Superior Court record, but is the Court's Decree resolving a dispute. The Court finds the  
5 Swansons are successors to an Indian allottee. The Court in its Report had referred to the  
6 possibility the land was acquired under provisions of the General Allotment Act for sale of "excess"  
7 land. The Nation objects to any finding that land on the Yakama Reservation could have been sold  
8 under the General Allotment Act. There is no evidence that the land was sold under this act, so the  
9 Court withdraws that reference.

10 The Nation points out that although the Swansons are now claiming an 1855 priority date for  
11 their water right, the *Achepohl* decree awarded a water right for the land with an 1884 date of  
12 priority. The Nation argues that if the Court finds a water right can be confirmed, the priority date  
13 should be 1884.

14 The Swanson's claim presents a unique set of facts and circumstances not previously  
15 addressed in this case or, as far as the Court is aware, any other case. The *Achepohl* proceeding was  
16 held in the early 1920's and A. L. Thompson participated in the case, claiming water rights for all  
17 lands he owned that were being irrigated with water diverted from Ahtanum Creek, regardless of  
18 which side of the creek it was on. This case was decided before any of the Federal court cases  
19 defining the extent of Federal reserved water rights on Indian Reservations. See Report beginning  
20 on page 47. The Thompson land was the only land lying south of Ahtanum Creek on the Yakama  
21 Reservation that was addressed in the *Achepohl* proceeding, leading this Court to conclude the  
22 proceeding was intended to only address water rights on lands north of the creek, which may  
23 explain why a certificate never issued for the Swanson land. The water rights confirmed were  
24 undoubtedly based on state law not federal law. The recognition that a water right could exist under  
25 state law does not negate an underlying, older water right that is based on federal law.

The Court finds the Swansons have presented sufficient evidence to conclude that a Federal  
reserved right is appurtenant to their land with a June 9, 1855, date of priority for the diversion of  
0.38 cfs, 132 acre-feet per year from April 1 through October 1 for the irrigation of 30 acres in  
Government Lots 7 and 8 of Section 24, T. 12 N., R. 15 E.W.M. The point of diversion is located  
650 feet south and 350 feet east from the north quarter corner of Section 24, being within  
Government Lot 2 of Section 24, T. 12 N., R. 15 E.W.M.

1           2.     *North Side Exceptions by Individual Claimants or AID.*

2     Answer No. 1 -         *Kenneth P. Bates, Jr. and Thomas H. and Celine Bates Trust*

3           The Ahtanum Irrigation District, on behalf of Mr. Bates, filed an exception that appears to  
4 just clarify the parcel numbers for the lands for which the Court confirmed a water right. Based on  
5 the original AID-8 entered into the record, the Court identified Parcel Nos. 171218-11001-03 and  
6 171218-11005 for the land described in Answer No. 1 and as the place of use on Certificate No. 81.  
7 The exception and AID-8A show that in addition to those parcel numbers, Parcel Nos. 171218-  
8 41001 and 171217-23001 are also within Answer No. 1 and the place of use on Certificate No. 81.  
9 AID-8A identifies that the parcels that have portions of the water right are Parcels Nos. 171218-  
10 11002, 171218-41001, 171217-23001. The Court grants the exception. AID -8A has provided  
11 sufficient information to divide the water right being confirmed between the two property owners.  
12 Therefore, the water right confirmed on page 371, lines 1 through 11 of the Report is replaced with  
13 the following two water rights, both with a June 30, 1866 date of priority, a season of use of April  
14 15 through July 10 and points of diversion on Hatton Creek within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
15 Section 18, T. 12 N., R.17 E.W.M.

16           To Kenneth P. Bates, Jr. a right to divert 0.50 cfs, 86.29 acre-feet per year for the irrigation  
17 of 50.17 acres in Government Lots 1 and 2 of Section 17 and the northeast 4.20 acres in the  
18 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, both in T. 12 N., R. 17 E.W.M. (Parcel # 171217-23001 & portion of  
19 171218-41001).

20           To Thomas H. and Celine Bates Trust, a right to divert 0.30 cfs, 51.31 acre-feet per year for  
21 the irrigation of 29.83 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 18, T 12 N., R. 17 E.W.M., except the north  
22 300.02 feet and except the west 208.5 feet of the south 209.5 feet of the north 925 feet and except  
23 beginning S 1°16' W 2204.42 feet from the northeast corner; thence S 82°09'35" W to the west line;  
24 thence south to the southwest corner; thence east to the southeast corner; thence north to point of  
25 beginning (Parcel # 171218-11002).

          The Court had also confirmed a junior right under Answer No. 1. The junior right described  
on page 371, lines 12 through 24 is withdrawn consistent with the Court's ruling on junior rights  
above and any claim to a junior right is denied.

1 Answer No. 2 -        *R. Lee West, Trustee*  
2                                *Joseph P. & Lorraine Weibler*  
3                                *Billy R. & Sheryl Smith*

4                There were no exceptions filed to the water rights confirmed under Answer No. 2.  
5                However, AID-8A provides sufficient information to divide the water right confirmed on page 378  
6                between the three landowners. The Court notes that in the Report the Weibler's name was  
7                misspelled on pages 378 and 379. The water right confirmed on page 378 is withdrawn and  
8                replaced with the following three water rights, all with a June 30, 1867, date of priority, a season of  
9                use from April 15 through July 10 and points of diversion on Ahtanum Creek and Bachelor Creek  
10               as described on lines 8½ through 15:

11               To R. Lee West, Trustee, a right to divert 0.69 cfs, 119.40 acre-feet per year for the  
12               irrigation of 69.42 acres in the west 525.0 feet of the NE¼SW¼ of Section 4, lying northerly of  
13               Bachelor Creek, except the west 175 feet (Parcel # 181204-31003); that portion of the E½SW¼ of  
14               Section 4 described as follows: Beginning 934.2 feet east of the northwest corner of the E½SW¼;  
15               thence S 01°03' W to center line of Bachelor Creek; thence west along the creek to a point 906.86  
16               feet west of the east line of said subdivision; thence south to the south line of Government Lot 6;  
17               thence east to a point 321.42 feet west of the east line of said subdivision; thence north to north line;  
18               thence west to point of beginning; (Parcel # 181204-31004); the NE¼SW¼ and Government Lot 6  
19               of Section 4, except that portion lying north of the centerline of Bachelor Creek (Parcel # 181204-  
20               31007); and the east 2191.86 feet of that portion of the SE¼ lying north of Ahtanum Creek, except  
21               the east 527 feet; except the west 15 feet of the east 542 feet of the north 332 feet of the south  
22               2030.37 feet of the SE¼, except the west 30 feet of the east 557 feet of the SE¼ lying north of the  
23               centerline of Bachelor Creek, (Parcel # 181204-41007); ALL in T. 12 N., R. 18 E.W.M. except the  
24               county road right-of-way

25               To Joseph P. & Lorraine Weibler, a right to divert 0.18 cfs, 31.54 acre-feet per year for the  
26               irrigation of 18.34 acres in the N½SE¼, except the east 2191.86 feet, and except county road right-  
27               of-way; also Government Lots 7 and 8, except the east 2191.86 feet; also the NE¼SW¼, except the  
28               west 934.2 feet and except county road right-of-way; also Government Lot 6, except the west 934.2  
29               feet ALL in Section 4, T. 12 N., R. 18 E.W.M. (Parcel # 181204-42001).

30               To Billy R. & Sheryl Smith, a right to divert 0.02 cfs, 3.84 acre-feet per year for the  
31               irrigation of 2.23 acres in the southerly 412.5 feet of the easterly 527 feet of the SE¼ of Section 4,

1 T. 12 N., R. 18 E.W.M. lying northerly of Ahtanum Creek, except county road right-of-way  
2 (Parcel # 181204-44001).

3 The Court had also confirmed a junior right under Answer No. 2. The junior right described  
4 on page 379 is withdrawn consistent with the Court's ruling on junior rights in the Special Issues  
5 section and any claim to a junior right is denied.

6 **Answer No. 3 -** *Eugene Woodcock*  
7 *Kim Woodcock*  
8 *Shirley May Pettis*  
9 *Gaylord Case*

10 The Ahtanum Irrigation District, on behalf of the Answer No. 3 landowners, and the  
11 Yakama Nation informed the Court during the January 29, 2004, hearing that a stipulation had been  
12 reached resolving the exceptions. Pursuant thereto, the parties agreed that the lands included in  
13 Answer No. 3 are not being irrigated and any water right that may have been appurtenant has  
14 relinquished. Therefore, the claim is withdrawn, resolving Yakama Nation Exception No. 24. The  
15 Court modifies the Report at page 123 through 125 to show that no water right will be confirmed  
16 for Answer No. 3 lands.

17 **Answer No. 4 -** *Robert F. Lockbeam, Jr.*  
18 *Marlin J. & Joan Lindgren*  
19 *Leona & Eudelio Alvarez*  
20 *Johnny L. & Patricia Clark*  
21 *Clara Gray*

22 There were no exceptions filed to water rights confirmed for lands described in Answer No.  
23 4. However, the Yakama Nation appears to be challenging the extent of the water right confirmed  
24 for lands in Answer No. 4 in the Declaration of L. Niel Allen in Support of the Yakama Nation's  
25 Reply to Ahtanum Irrigation District Exceptions. Dr. Allen's declaration appears to suggest that  
only 16 acres are irrigated within Answer No. 4, rather than the 24.65 acres confirmed by the Court.  
There was discussion about whether it was appropriate for the Nation to challenge the water right in  
its reply to AID when there was no exception filed. There was considerable discussion, but  
ultimately, no evidence was put in the record to support Dr. Allen's Declaration. The Court has  
reviewed the declaration and evidence from the initial hearing and finds that the original  
confirmation will not be disturbed. However, AID-8A provides sufficient information to divide the  
confirmed water right amongst the current landowners. Therefore, the water right described in the  
Report at Page 420, lines 1 through 12 is withdrawn and is replaced with the following five rights,

1 all with a priority date of June 30, 1870, a season of use from April 15 through July 10 and a point  
2 of diversion located within the SE¼SE¼ of Section 11, T. 12 N., R. 17 E.W.M. The Certificate  
3 states this diversion is on Stanton Creek, which will be the source of water authorized.

4 To Robert F. Lockbeam, Jr., a right to divert 0.04 cfs, 6.36 acre-feet per year for the  
5 irrigation of 3.7 acres in Lot 1 of Short Plat O-40, being within Government Lot 1 of Section 12,  
6 T. 12 N., R. 17 E.W.M. (Parcel # 171212-33401).

7 To Marline J. & Joan Lindgren, a right to divert 0.04 cfs, 6.33 acre-feet per year for the  
8 irrigation of 3.68 acres in Lot 2 of Short Plat O-40, being within Government Lot 1 of Section 12,  
9 T. 12 N., R. 17 E.W.M. (Parcel # 171212-33402).

10 To Leona & Eudelio Alvarez, a right to divert 0.04 cfs, 6.2 acre-feet per year for the  
11 irrigation of 3.6 acres in Lot 4 of Short Plat O-40, being within Government Lot 1 of Section 12, T.  
12 12 N., R. 17 E.W.M. (Parcel # 171212-33404).

13 To Johnny L. & Patricia Clark, a right to divert 0.04 cfs, 6.31 acre-feet per year for the  
14 irrigation of 3.67 acres in Lot 1 of Short Plat O-39, being within Government Lot 1 of Section 12,  
15 T. 12 N., R. 17 E.W.M. (Parcel # 171212-33405).

16 To Clara Gray, a right to divert 0.10 cfs, 17.2 acre-feet per year for the irrigation of 10 acres  
17 in Lots 3 and 4 of Short Plat O-39, being within Government Lot 1 of Section 12, T. 12 N., R. 17  
18 E.W.M. (Parcels # 171212-33407 and 33408).

19 **Answer No. 5 -**      *Ruth Weed*  
20                                      *Andrew Weed & Jonathan Weed*

21 There were no exceptions filed to the water rights confirmed for lands described in Answer  
22 No. 5. However, AID-8A provided updated ownership information for the parcel of land. The  
23 name on the water right described on page 370 of the Report, lines 12 to 21 is changed to Ruth  
24 Weed, Andrew Weed and Jonathan Weed. The Court notes that the points of diversion describe  
25 locations that are either on or near the current location of Hatton Creek, so the source of water on  
line 13½ is changed to Hatton Creek.

1 Answer No. 6 -        *Talbert W. and Darcy J. Taylor*  
2                                *Pat and Dora Stump*  
3                                *Thomas & Janette Weed*  
4                                *Steve Carlson*

4            In its Report, the Court confirmed water rights to irrigate a total of 8.34 acres, based on  
5 information presented in AID-8. AID has taken exception to that confirmation. George Marshall,  
6 Steve Carlson, and Pat Stump testified at the supplemental hearing.

6            The evidence presented at the initial hearing was that at the time of the 1908 Code  
7 Agreement, 37.6 acres were being irrigated within what is now designated as Answer No. 6. In  
8 1957, when Answer No. 6 was filed, 30 acres were being irrigated, leading to a conclusion that a  
9 senior water right existed for the irrigation of those 30 acres. However, AID-8 indicated that only  
10 8.34 acres were being irrigated at the time of the evidentiary hearing and a right was being asserted  
11 only for those 8.34 acres. Mr. Marshall testified there were errors made on AID-8 for Answer No. 6  
12 and it did not accurately reflect the number of acres irrigated. AID-8A corrects those errors and,  
13 according to Mr. Marshall, accurately shows that 34.42 acres are being irrigated; 30 acres with a  
14 senior right and 4.42 acres with a junior right. However, the Court has reconsidered its position on  
15 junior rights, see Special Issues section above, and withdraws all junior rights previously confirmed.  
16 The Court will confirm rights consistent with the evidence presented only for what have previously  
17 been called senior rights.

16            AID-8A indicates that the parcel owned by the Taylors' is 5.76 acres, with 5 acres irrigated.  
17 This parcel lies within the area authorized for irrigation under Certificate No. 196 from the  
18 *Achepohl* adjudication and no other right is being asserted based on this certificate. It is a Class 8  
19 right, with an 1871 priority date, authorizing the irrigation of 7.5 acres within the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
20 Section 9, T, 12 N., R. 17 E.W.M.

20            The rest of the Answer No. 6 land lies within the place of use described on Certificate No.  
21 94 from the *Achepohl* adjudication, which is a Class 5 right, with an 1868 date of priority. It  
22 authorizes the irrigation of 40 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T, 12 N., R. 17 E.W.M. Pat  
23 and Dora Stump own 4.9 acres and AID-8A indicates that only 1 acre is irrigated. However,  
24 Mr. Stump testified that he estimates 3.5 acres are irrigated – the entire parcel, except where there  
25 are buildings. Mr. Marshall testified the information on AID-8A is from surveys the landowners  
were suppose to complete and return and review of aerial photographs. He could not remember  
whether the Stumps returned a survey. Thomas A. and Janette Weed own one parcel that is 9 acres

1 in size and AID-8A shows the entire parcel is irrigated. Steve Carlson owns four parcels; one is  
2 4.79 acres in size with AID-8A showing 4.39 acres irrigated. However, Mr. Carlson testified that  
3 the entire 4.79 acre parcel is irrigated. The second parcel has Mr. Carlson's home on it and he  
4 agreed that of the 2.0 acres, 1.65 acres is irrigated. The third parcel is 5.21 acres and the entire  
5 parcel is irrigated. The fourth parcel is 8.17 acres in size and all of it is also irrigated.

6 Presently all of the land irrigated within Answer No. 6 is in either pasture or hay. Each  
7 landowner has his own diversion from Bachelor Creek. Mr. Marshall testified the Weeds use a  
8 point of diversion location that is authorized by the certificate and that he is working with the other  
9 owners to file applications to legally change their point of diversion.

10 The Court is faced with the evidence submitted by AID, who is representing its patrons in  
11 this proceeding, showing less acres being irrigated than the testimony of two of the individual  
12 landowners would indicate. However, the difference for the parcel owned by Steve Carlson is only  
13 four-tenths of an acre, which is a fairly insignificant difference. The difference for the Stump  
14 property is more significant, with AID-8A showing only one acre irrigated, while Mr. Stump  
15 believes that 3.5 acres are being irrigated. However, since the Court is not confirming any junior  
16 rights and AID has divided up the water right that can be awarded, the Court will adopt those  
17 quantities.

18 Based on the foregoing, the confirmations on pages 128, 382, lines 14 to 24, and 425, lines 1  
19 through 11 of the Report are withdrawn and the following rights are confirmed:

20 With a June 30, 1871, date of priority to Talbert W. and Darcy J. Taylor, a water right to  
21 divert 0.05 cfs, 8.6 acre-feet per year from Bachelor Creek for the irrigation of 5 acres in that  
22 portion of the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. lying south of the county road,  
23 except the east 25 feet for county road right-of-way (Parcel #171209-14002). The point(s) of  
24 diversion are located 600 feet north and 1250 feet west of the east quarter corner of Section 9 within  
25 the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9 and within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, both in T. 12 N., R. 17 E.W.M.  
The season is April 15 through July 10.

With a June 30, 1868, date of priority, the following rights are confirmed with points of  
diversion on Bachelor Creek within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8 and the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and  
N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, all in T. 12 N., R. 17 E.W.M. The  
season of use is April 15 through July 10:

1 To Pat and Dora Stump, a right to divert 0.01 cfs, 1.46 acre-feet per year for the irrigation  
2 of 0.85 acre in Lot 1 of Short Plat 0-29, within that part of the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10,  
3 T. 12 N., R. 17 E.W.M. lying south of the county road (Parcel #171210-23401).

4 To Thomas A. and Janette Weed, a senior right to divert 0.08 cfs, 13.16 acre-feet per year  
5 for the irrigation of 7.65 acres in Lot 2 of Short Plat 0-29, within that part of the W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
6 Section 10, T. 12 N., R. 17 E.W.M. lying south of the county road (Parcel #171210-23402).

7 To Steve A. Carlson, a right to divert 0.10 cfs, 16.44 acre-feet per year for the irrigation of  
8 9.56 acres in Lots 1, 2, 3 and 4 of Short Plat 86-26, within a portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
9 Section 10, T. 12 N., R. 17 E.W.M. lying south of the county road (Parcels #171210-23411,  
10 23412, 23413, and 23414).

11 **Answer No. 7 -** *William J. & Ruby Weed*  
12 *William D. & Peggy Weed*

13 Although there were no exceptions filed for the lands within this answer number, AID-8A  
14 provided sufficient information to allow the water right described in the Report at page 396, lines 1  
15 through 9 to be divided between the two landowners. Each will be confirmed a right with a  
16 June 30, 1868, date of priority, an irrigation season of April 15 through July 10, and a point of  
17 diversion within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. Hatton Creek passes through  
18 the northwest corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, so the source of water for these rights will be  
19 Hatton Creek.

20 To William J. & Ruby Weed, a right to divert 0.01 cfs, 0.98 acre-foot per year for the  
21 irrigation of 0.57 acre in Lot 1 of Short Plat AF-7185634, being within the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
22 Section 9, T. 12 N., R. 17 E.W.M. (Parcel #171209-14406).

23 To William D. & Peggy Weed, a right to divert 0.11 cfs, 19.66 acre-feet per year for the  
24 irrigation of 11.43 acres in Lot 2 of Short Plat AF-7185634, being within the S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
25 Section 9, T. 12 N., R. 17 E.W.M. (Parcel #171209-14407).

Consistent with the Court's ruling above on junior rights, the junior right described in the  
Report at page 396, lines 11 through 21 is withdrawn and any claim to a junior right is denied.

26 **Answer No. 8 -** *Gary and Ruth Hansen*  
27 *Robert S. Anderson Co. Inc.*

28 The Court awarded both senior and junior rights under Answer No. 8 (see Report @130-131  
29 for Court's analysis). The senior rights are found in the Report @ 460 and 476; the junior right is

1 found @ 477. The Yakama Nation took exception. On February 18, 2004, the Yakama Nation  
2 withdrew its specific exception regarding Answer No. 8. AID 8-A provides updated information  
3 regarding rights deriving from Answer No. 8 which is incorporated herein.

4 The Court confirms a right to Robert S. Anderson Co. Inc. in the amounts of 0.20 cfs , 34.23  
5 acre-feet per year for irrigation of 19.9 acres within Parcel No. 161217-14002 within the E½NE¼ of  
6 Section 17, T. 12 N., R. 16 E.W.M. except the north 12 acres (AID 8-A). The priority date is June  
7 30, 1882. The season of use is April 15 through July 10. The point of diversion from the North  
8 Fork Ahtanum Creek is via the Shaw-Knox Ditch located approximately 1250 feet north and 700  
9 feet east of the southwest corner of Section 7, being within the SW¼SW¼ of Section 7, T. 12 N., R.  
10 16 E.W.M.

11 The Court discovered an error in the quantity awarded for the right described on page 476.  
12 The quantity confirmed is 0.042 cfs for irrigation of 25.1 acres or 0.0017 cfs/acre. It should be 0.01  
13 cfs per acre or 0.25 cfs (Report @130, line 22½). This error is herein corrected. The Court confirms  
14 a right to Gary and Ruth Hansen in the amounts of 0.25 cfs, 43.17 acre-feet per year for irrigation  
15 of 25.1 acres within the SW¼NW¼ of Section 16, T. 12 N., R. 16 E.W.M. (Parcel No. 161216-  
16 23001). The priority date is June 30, 1893. The season of use is April 15 through July 10. The  
17 point of diversion from the North Fork Ahtanum Creek is via the Shaw-Knox Ditch located 1250  
18 feet north and 700 feet east of the southwest corner of Section 7, being within the SW¼SW¼ of  
19 Section 7, T. 12 N., R. 16 E.W.M.

20 The Court also awarded a junior water right for 8.39 acres within Parcel No. 161216-23001  
21 (Hansen). The Court has reconsidered its prior ruling on the existence of junior rights and  
22 consistent with its ruling above in the special issues section, the junior right on page 477, lines 1-  
23 13½, of the Report is herein denied.

24 **Answer No. 9 - No Claim**

25 **Answer No. 10 - Catholic Bishop of Yakima County**

Although AID did not take exception to the Court's determination for Answer No. 10,  
additional evidence was put into the record at the supplemental hearing and there were no  
objections lodged to the Court considering this evidence. George Marshall, Theodore Hague,  
Michael Drury, and Edmund Campbell testified at the supplemental hearing in support of the claim.

1 All of the land included in Answer No. 10 is owned by the Catholic Bishop of Yakima  
2 County and is the site of St. Joseph's Ahtanum Mission. The portion of the land in the immediate  
3 vicinity of the mission is a park and a larger portion is irrigated hay and pasture land. The hay and  
4 pasture land at one time was privately owned. It is not clear when the Catholic Church acquired it.  
5 Over the years the pasture and hay land has been leased to several parties and consistently irrigated  
6 with water diverted from Ahtanum Creek. The Court believes the main issue needing clarification  
7 is the number of acres that have continued to be irrigated. However, Ecology also asked that the  
8 place of use description be modified to specifically describe the 20 foot strip of land that is excluded  
9 from the irrigated land.

10 After evidence was presented at the supplemental hearing for Answer No. 10, AID informed  
11 the Court that it had entered into a stipulation with the Yakama Nation and the Catholic Bishop of  
12 Yakima, Corporation, to settle this claim. The written stipulation was filed with the Court on  
13 April 14, 2005. It states the number of acres irrigated is 29.17 within two of the four parcels owned  
14 by the Catholic Bishop of Yakima. Based on that stipulation and information in Exhibit A-10  
15 attached to the stipulation, the Court will confirm two water rights for lands described in Answer  
16 No. 10, each with a season of use of April 15 through July 10. The points of diversion on Ahtanum  
17 Creek are in Government Lots 3 and 4 of Section 13, T. 12 N., R. 16 E.W.M. The Court grants  
18 Ecology's request for clarification and the place of use will include a description of the 20 foot strip  
19 of land that is excluded.

20 With a June 30, 1852, date of priority, a right to divert 0.18 cfs, 30.22 acre-feet per year for  
21 the irrigation of 17.57 acres in that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, T. 12 N., R. 16 E.W.M.  
22 lying south of Ahtanum Road (Parcel #161213-13003). This replaces the water right described on  
23 page 345 of the Report and the right described on page 346 is withdrawn. With a June 30, 1896,  
24 date of a priority, a right to divert 0.12 cfs, 19.95 acre-feet per year for the irrigation of 11.6 acres in  
25 the East 1243.87 feet of Government Lot 1 of Section 13, T. 12 N., R. 16 E.W.M., except beginning  
761.6 feet south and 385.1 feet east of the northwest corner of Government Lot 1; thence north 250  
feet; thence east 125 feet; thence N 5° W 385 feet; thence east 30 feet; thence S 5° E 385 feet;  
thence east 195 feet; thence south 250 feet; thence west 350 feet to point of beginning; and except  
20 foot strip of land beginning 186 feet south of the northwest corner of Lot 1; thence N 84°49' E  
734 feet; thence N 38°50' E 189 feet to the north line of Lot 1 (Parcel #161213-14001). This

1 replaces the right described in the Report at page 477, lines 14 through 25 and the right described on  
2 page 478 is withdrawn.

3 **Answer No. 11 - *Odetta A. Eglin (Sutton)***

4 Ahtanum Irrigation District filed an exception to a right not being confirmed for all the land  
5 currently being irrigated within Answer No. 11. According to Amended AID-8A, Odetta A. Eglin  
6 owns Parcel No. 171208-14002, which is the land described within Answer No. 11. A total of 20.9  
7 acres are being irrigated within the parcel owned by Ms. Eglin. The Court confirmed a senior right  
8 to Ms. Eglin to irrigate 10 acres in that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, T. 12 N., R. 17  
9 E.W.M., lying south of the county road, see pages 135 and 424 of the Report. The Court was not  
10 able to confirm a junior right for the additional land being irrigated due to there being no evidence  
11 that a certificate from the Achepohl adjudication was appurtenant to the portion of the land in the  
12 W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8.

13 That problem has been resolved. The district has directed the Court's attention to Certificate  
14 No. 140, with an 1870 date of priority, authorizing the diversion of 0.4 cubic foot per second for the  
15 irrigation of 20 acres in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8. However, the Court has reconsidered its  
16 earlier ruling regarding junior rights and finds the Pope Decree precludes any such right. See  
17 Special Issues section above.

18 In response to Ecology's exception concerning sources, the Court amends the water right  
19 confirmed on page 424, line 2 replacing Ahtanum Creek with Bachelor Creek as the water source.

20 The district also brought to the Court's attention that two parcels had incorrectly been  
21 identified in the Report as being within Answer No. 11 when they are actually within the area  
22 described in Answer No. 43. Those parcels will be discussed later in the Answer No. 43 section.

23 **Answer No. 12 - *Vickie Smith***  
24 *Steven M. & Charlotte Gerdes*  
*S & C Rentals*  
*John T. Russell Jr.*  
*Arlene Lien*  
*Mike Ribail*  
*Jerry & Sherry Adams*  
*Matthew & Liza Murray*  
*Helen Pulito*

25 Yakama Nation exception No. 25 concerned the place of use for the water right confirmed  
under Answer No. 12. The Ahtanum Irrigation District, on behalf of answer No. 12 landowners,

1 and the Yakama Nation notified the Court during the January 28, 2004, hearing that a stipulation  
2 had been reached resolving the exception. Pursuant thereto, the parties agreed the junior right, set  
3 forth on page 395, line 17 is appurtenant to the following parcel numbers: 17121013007,  
4 171121012013, 17121013401-03, see exhibit A-12A. However, the Courts ruling above on junior  
5 rights results in no junior water right being confirmed, so the water right described on page 395 is  
6 withdrawn and no rights are confirmed for any of the land described in Answer No. 12.

7 **Answer No. 13 - *Holtzinger Ranch***

8 There were no specific exceptions to the water right confirmed for lands described in  
9 Answer No. 13. However, due to the Court reconsidering its decision on junior right, see Special  
10 Issues section above, the right described in the Report on page 388, lines 11 through 23 is  
11 withdrawn. In response to Ecology's request for clarification concerning source of water, the water  
12 right described on page 388, lines 1 through 10 is amended so that the source of water on line 2 is  
13 Hatton Creek and an unnamed spring.

14 **Answer No. 14 - *Kerry Crook*  
15 *Robert S. and Phyllis Anderson*  
16 *Carl George***

17 The Court awarded a water right to irrigate 14.07 acres for Parcels Nos. 161217-13401  
18 through 13404 pursuant to Answer No. 14 and Certificate No. 256 (Report @138-139; 449). The  
19 Yakama Nation took exception. On February 18, 2004, the Yakama Nation withdrew its specific  
20 exception regarding Answer No. 14. AID filed a late exception on behalf of Carl George for lands  
21 under Answer No. 14. This late exception modifies the place of use, number of acres and identity  
22 of the proper right holders for lands within this answer.

23 The lands within Answer No. 14 are in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 12 N., R. 16 E.W.M.  
24 and there is a right to irrigate 15.3 acres. According to AID, Parcels Nos. 161217-13402, 13403 and  
25 13404 are owned by Robert S. and Phyllis Anderson (see also AID-8A), but a right is being claimed  
only for land owned by Ms. Crook and Mr. George. Thus, according to AID, Robert S. and Phyllis  
Anderson no longer have an interest in this right. AID now claims a right on behalf of Ms. Crook to  
irrigate 8.47 acres and Carl George to irrigate 6.83 acres for a total of 15.3 acres.

Carl George testified regarding water use on his property. He is an enrolled member of the  
Yakama Nation and bought the property in 1983 from a Mr. Blondin. Mr. Melton, who was  
identified in the Court's Report, has irrigated but did not own the land. Water is diverted for the

1 George property into the Shaw-Knox ditch. A pipe that begins behind the Crook home goes under  
2 and across the road to the George property. Mr. George testified to irrigating over 6.83 acres and he  
3 currently leases his property. See also AID-101. Based on Mr. George's testimony, the Court will  
4 award a right for 6.83 acres.

5 The Court confirms a right to Carl George for the diversion from the North Fork of  
6 Ahtanum Creek of 0.07 cfs, 11.75 acre-feet per year for irrigation of 6.83 acres within that portion  
7 of Parcel No. 161217-42404 lying within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 12 N., R. 16 E.W.M.

8 AID-101 contains updated ownership, acres and parcel information for the Crook lands. It  
9 mirrors AID-8A, showing that Parcel No. 161217-13401, owned by Kerry Crook, is a total of 4.04  
10 acres with 4 irrigated acres. However, AID now asks for a right to irrigate 8.47 acres, but has  
11 provided no description of the additional lands. The record is not clear whether the additional  
12 Crook land is entitled to a larger portion of the right. There was no testimony regarding historic  
13 irrigation on the additional 4.47 acres. The Court originally confirmed a right for 10.7 acres to the  
14 Andersons, although AID now claims the Anderson's do not use water under this Answer number.  
15 However, that does not mean the rest of the right would necessarily be for the Crook land. AID  
16 must establish that the additional Crook lands lie within the area described in Answer 14 and are  
17 entitled to a portion of this right. Historic irrigation on the Crook land must be established,  
18 especially in light of the information in AID-101 and AID-8A showing the Crook ownership being  
19 only 4.04 acres and showing that as late as 2006 the Anderson's were entitled to a portion of the  
20 right. At this time, the Court will confirm a right to Ms. Crook for only 4 acres.

21 The Court confirms a right to Kerry Crook for the diversion of 0.04 cfs, 6.88 acre-feet per  
22 year for irrigation of 4 acres in Lot 1 of Short Plat 84-39 within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 12  
23 N., R. 16 E.W.M. (Parcel No. 161217-13401) (AID-101).

24 Both rights have a priority date of June 30, 1875. The season of use is April 15 through July  
25 10. The point of diversion from North Fork Ahtanum Creek is into the Shaw-Knox Ditch located  
approximately 1250 feet north and 700 feet east of the southwest corner of Section 7, being within  
the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 12 N., R. 16 E.W.M.

**Answer No. 15 - Gary R. McInnis; Robert M. and Donna L. McInnis;  
Jon R. & Linda S. Mulvenon**

The Court found in the Report @ 140 that a senior water right existed for the irrigation of 20  
acres and a junior right for the irrigation of 4.7 acres, all lying in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12

1 N., R. 17 E.W.M., except the south 330 feet of the east 330 feet. However, the Court did not  
2 confirm water rights due to the need for additional information that would assist in determining  
3 which potential certificate is appurtenant to the land being irrigated. The location of the point of  
4 diversion being used was needed as well. Since issuance of the Report, the Court has revisited the  
5 junior right issue and has determined that junior rights cannot be confirmed; see Special Issues  
6 Section above for a complete discussion of this issue. Therefore, the Court will only confirm rights  
7 for the irrigation of 20 acres that had previously been identified as having a "senior right".

8 As a result of approval of two applications for change made in 1931, there are two  
9 certificates from the prior *Achepohl* adjudication that are appurtenant to the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9;  
10 Certificate No. 78, as changed by Certificate of Change recorded in Volume 1, page 113, with a  
11 priority date of 1865 and Certificate No. 195, as changed by Certificate of Change recorded in  
12 Volume 1, page 114, with a priority date of 1871. Both certificates as changed authorize the  
13 irrigation of 35 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9, for a total of 70 acres.

14 The Court sought information that assists in determining the appropriate priority date in light  
15 of the certificates of change. A change in point of diversion was also authorized for a subsequent  
16 owner of the land. AID's response was to state there was no change in place of use made by the  
17 landowner who obtained the change in point of diversion (Mr. McInnis). The Court agrees with this  
18 statement; however, prior to Mr. McInnis acquiring the land, there were two changes in place of use  
19 approved when the land was owned by John Miller. Those changes resulted in two water rights  
20 being appurtenant to the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9, each for the irrigation of 35 acres, one with a priority  
21 date of 1871 and one with the priority date of 1865. The land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9 is  
22 described in Answer No. 59; however, AID is not claiming any water right for Answer No. 59.  
23 Therefore, lacking any evidence to the contrary, the Court finds that Certificate No. 78 is  
24 appurtenant to the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9 and will confirm rights with the 1865 priority date.

25 AID identified that a diversion located near the northeast corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  is  
being used to serve all the lands presently being irrigated within Answer No. 15. That diversion  
location is not authorized by any of the water right documents. The authorized point of diversion is  
located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 and is the location the Court will confirm.

The United States responded to AID-8A and specifically addressed the claim for Answer  
No. 15. The United States points out that two parcels shown on AID-8A as being within the land  
described in Answer No.15, Parcels No. 171209-41409 and 41410, owned by Robert and Donna

1 McInnis, are not actually in Answer No. 15. The Court has reviewed Answer No. 15 and agrees  
2 with the United States' position. The lands in Answer No. 15 are in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9,  
3 except the south 330 feet of the east 330 feet. These two parcels lie within the excluded area. The  
4 Court, therefore, cannot confirm a water right for these two parcels as part of Answer No. 15.

5 Based on the information in the record, the Court confirms the following water rights for  
6 lands covered by Answer No. 15, all with a priority date of June 30, 1865, a season of use from  
7 April 15 through July 10 and with a point of diversion on Hatton Creek located in the  
8 SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M.

9 To Robert M. and Donna L. McInnis a right for the diversion from Hatton Creek of 0.17cfs,  
10 29.52 acre-feet per year for the irrigation of 17.16 acres in Lot 4 of Short Plat 86-70 (Parcel #  
11 171209-41404; 2.48 ac.), Lot 2 of Short Plat 86-71, except the S 165.22 feet (Parcel #171209-  
12 41406; 1.29 ac.), Lot 3 of Short Plat 86-71 (Parcel #171209-41407; 2.41 ac.), Lot 4 of Short Plat  
13 96-104, except beginning at the northeast corner of Lot 3 of Short Plat 96-104; thence N 89°51'45"  
14 W 200 feet; thence N 23'40" W 88 feet; thence S 89°51'45" 200 feet; thence S 23'40" E 88 feet to  
15 the point of beginning (Parcel #171209-41412; 10.98 ac.); ALL being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
16 Section 9, T. 12 N., R. 17 E.W.M.

17 The Court confirms to Gary R. McInnis a right to divert from Hatton Creek 0.01 cfs, 2.03  
18 acre-feet per year for the irrigation of 1.18 acres in Lot 1 of Short Plat 86-71, except the S 165.22  
19 feet being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. (Parcel #171209-41405),

20 The Court confirms to Jon R. and Linda S. Mulvenon a right to divert from Hatton Creek  
21 0.004 cfs, 0.76 acre-foot per year for the irrigation of 0.44 acre in Lot 3 of Short Plat 96-104, ALSO  
22 Beginning at the northeast corner of said Lot 3; thence N 89°51'45" W 200 feet; thence N 0°23'40"  
23 W 88 feet; thence S 89°51'45" E 200 feet; thence S 0°23'40" E 88 feet to the point of beginning  
24 (Parcel #171209-41411), within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M.  
25

1 **Answer No. 16** - *James F. and Elaine J. Williams*  
 2 *Mark and Tammi Ribail*  
 3 *Robert S. Anderson*  
 4 *Darryl and Deanna Pemberton White*  
 5 *Laurie Orr Hinson*  
 6 *Sharon Mangan*  
 7 *Dale and Lynn Dougherty*  
 8 *Marc and Sue Downes Martin (Claim No. 0898)*

9 In the Report, the Court confirmed a water right for the irrigation of 62 acres on ten parcels  
 10 within the lands described in Answer No. 16 (Report @141-143; 437; Martin @pp. 313-314).  
 11 Since that time and according to the AID exceptions, those parcels have been further subdivided.  
 12 The Court withdraws the rights confirmed in the Report @313, 314 and 437.

13 There are 51.6 acres irrigated under this answer. There are differences between AID's  
 14 exceptions and AID-8A. Those differences will be addressed if appropriate. Those new owners  
 15 and parcels are (AID-8A):

<u>Parcel No.</u>	<u>Owners</u>	<u>Cert. No.</u>	<u>Acres Irrig.</u>
161217-32406	James & Elaine Williams	203 <sup>5</sup>	5.0 acres
161217-32407	Mark & Tammi Ribail	203	6.0 acres
161218-11412	Robert S. Anderson	295	5.0 acres
161218-14406	Darryl & Deanna White	203	11.6 acres
161218-14407	Laurie Orr Hinson	203	7.5 acres
161218-31403	Sharon Mangan	205	4.0 acres
-31404	Sharon Mangan	205	3.5 acres
161218-42009	Marc & Sue Martin	203	1.0 acres
-42010	Marc & Sue Martin	203	3.0 acres
161217-32405	Dale & Lynn Dougherty <sup>6</sup>	203	5.0 acres
Total			51.6 acres

18 Certificate No. 203 rights carry a June 30, 1872 priority date, Certificate No. 205 rights  
 19 carry a June 30, 1872 priority date and Certificate No. 295 water rights carry a June 30, 1882  
 20 priority date. AID-8A.

21 The claims were heard on February 17, 2004 except for the Dougherty's late exception  
 22 which was heard on May 11, 2006. AID's presentation focused on the 1996 through 2000 time  
 23 period. Testimony was provided by several landowners: Mark Ribail, Elaine Williams, Darryl  
 24 White, Lonnie Dillman (on behalf of Robert Anderson, his father-in-law) and Paul Hinson, and

25 <sup>5</sup> On AID 8A the priority date for Certificate No. 203 is given as 1871. It is 1872.

<sup>6</sup> The Dougherty's parcel is not on AID-8A. AID filed a late exception which was allowed by the Court.

1 George Marshall, manager of AID. Dr. Niel Allen testified on behalf of the Yakama Nation.  
2 Ralph Saunders testified on behalf of the United States.

3 *1. United States Exception—Parcels No. 161217—32407 and No. 161217-32406*

4 AID adequately addressed the exceptions of the United States on all but two parcels under  
5 Answer No. 16. The United States claims that there is a lack of continued beneficial use from 1991  
6 to 1998 on Parcel No. 161217-32407 owned by Mark and Tammi Ribail and Parcel No. 161217-  
7 32406 owned by James and Elaine Williams. If the Court elects to grant a right, the United States  
8 argues the priority date should be 1991 or later. Ecology responded to the issue of priority date  
9 only, arguing that there is no basis for the 1991 priority date and that the priority date should be  
10 determined based on the criteria established by the Court. The Court agrees with Ecology. Any  
11 valid water right would hold a priority date of June 30, 1871, the date on Surface Water Certificate  
12 No. 203 which is appurtenant to these parcels.

13 Ralph Saunders testified on behalf of the United States. AID offered the testimony of the  
14 current landowners of these two parcels, Mark Ribail and Elaine Williams.

15 *a. Testimony of Ralph Saunders*

16 The central issue for these two parcels is beneficial use from 1991 through 1997. The  
17 United States claims there has been no use of water during this time period and offer a series of  
18 aerial photos covering several years to support its position. Mr. Saunders testified regarding his  
19 stereoscopic interpretation of aerial photos which consists of using photos taken of the same area  
20 from two different locations. Mr. Saunders believes that the photos he used were taken about ½  
21 mile apart, providing sufficient exaggeration of the area to allow minute details on the ground to be  
22 visible in the photos. The 1991 photos were probably taken at 10,000 feet or about two miles above  
23 land. Photos at this distance allow a great deal of detail to come through (crop type, condition of a  
24 ditch, and presence of water). All the photos were taken after the July 10<sup>th</sup> cutoff date, except for  
25 the June 27, 1979, photo. Mr. Saunders did not conduct site investigations or talk with the land  
owners.

Four aerial photos were entered into the record. US-387B is an aerial photo taken June 27,  
1979. This photo speaks to the condition of the land and facilities in place during that drought year.  
Water was being diverted from the Shaw-Knox ditch through a ditch that crosses under the road.  
Water is conveyed to an irrigated field to the west of Parcels 32406 and 32407. This field is  
identified with a "B" on several of the maps. Field B is irrigated from two ditches that run along the

1 sides of the field, and the water runs down into a draw which drains into a low area that serves as a  
2 collection point. Mr. Saunders identified this collection point with a red "X". From this collection  
3 point, there is a ditch that then conveys water to the two parcels in question. In 1979, 10 or 11 acres  
4 were irrigated, but there was also some sagebrush beginning to grow. Sagebrush does not tolerate  
5 very much water.

6 US-387D is a July 14, 1991, photo. This photo was taken at a time when, although water  
7 would have been officially shut off, the land would still reflect the irrigation that would have taken  
8 place earlier in the season. Relying on his stereoscopic analysis of the 1991 photo, Mr. Saunders  
9 testified that the photo showed Field B to the west as irrigated. The collection area is still visible  
10 and appeared wet, but the ditch that extends from that area to Parcels 06 and 07 is not readily visible  
11 without stereoscopic equipment. Even with that equipment, it did not appear to have water in it or  
12 to be clean. It is Mr. Saunders' opinion that these two parcels had not been recently irrigated.  
13 Parcel No. 32407 had a lot of sagebrush on it, expanding in size from the 1979 photo. Parcel No.  
14 32406 appeared similar to 1979. The ditch appeared to have grass in it. Sufficient water in a ditch  
15 will kill the grass.

16 US-387G was taken September 2, 1991 and US-387F was taken August 8, 1998; both  
17 photos were made a part of the record for purposes of demonstrating the continued existence of  
18 sagebrush. On US-387G, Parcel No. 32407 appeared to be covered entirely in sagebrush.

19 *b. Mark Ribail Parcel No. 161217-32407*

20 Mark Ribail testified regarding his use of water on Parcel No. 161217-32407 (RP @73-84).  
21 The Ribails purchased this property in 1998 and it appeared to be irrigated at that time. This parcel,  
22 outlined in red and identified on US-387F (August 8, 1998, black/white aerial photo) and also  
23 identified on YIN-355(3), is not the portion of that parcel Mr. Ribail irrigates. Although in the past  
24 this land may have been flood irrigated, it is now sagebrush and it is not feasible to irrigate. At the  
25 time of the trial, it had been three or four years since he irrigated it (or 2000-01). The land Mr.  
26 Ribail irrigates lies south of the delineated parcel 32407. The area irrigated lies within the trees. In  
27 addition to the native vegetation, Mr. Ribail has planted Aspen and Pine trees. On AID 8-A, for  
28 Pope Answer No. 16, his parcel is listed at 11.5 acres with 6 acres being irrigated and entitled to a  
29 senior right. This information was derived from conversations between Mr. Ribail and George  
30 Marshall. The testimony provided by Mr. Ribail regarding the number of acres he irrigates was a  
31 bit confusing, but it appears to be as many as 20 acres.

1 George Marshall, manager of AID, testified on behalf of the district regarding Answer No.  
2 16, particularly to the difference in irrigated acres on the Ribail parcel. AID based its acreages on  
3 GIS parcel information obtained from the Yakima County Assessors Office and dated December  
4 2003. According to AID, Yakima County does not tax Yakama Reservation lands. The land south  
5 of the meander line would be on the Yakama Reservation, or is deeded land lying north or south of  
6 the creek, and said lands are not assessed by AID. On AID 8-A, the acres identified all lie within  
7 AID.

8 This increase in acres is apparently due to the movement of the creek. However, this  
9 movement would result in new acres being irrigated, not the historic six acres. Thus, the maximum  
10 acres the Court can consider would be limited to six acres, if supported by the testimony and  
11 evidence.

12 Stock watering also occurred between 1996 and 2000. It is not clear if these animals  
13 obtained water directly from the creek or if water was diverted through the ditch for that purpose.

14 Mr. Ribail irrigates using an electric generator and pump, a gas pump as well as flood  
15 irrigation. Mr. Ribail marked his point of diversion on US-387F with a blue "X" and water is  
16 conveyed through a ditch (also in blue). This "X" places the point of diversion on the North Fork  
17 of Ahtanum Creek approximately in Government Lot 7 of Section 18, T. 12 N., R. 16 E.W.M.

18 *c. James and Elaine Williams—Parcel No. 161217-32406*

19 Elaine Williams testified on behalf of Parcel No. 161217-32406 (RP 85-96). The Williams'  
20 parcel is marked in red on US-387F and also identified on YIN-355(3). The Williams purchased  
21 this property in 1998 and it appeared to be irrigated at that time. There is a large pond located north  
22 of Parcel 32406, and at the time of their purchase, there were fruit and maple trees lying south of the  
23 pond and south of the open area that appeared irrigated. The Williams parcel is about 15 acres in  
24 size and they irrigate five of those acres. AID claims these acres are entitled to a senior right (AID-  
25 8A). The Williams irrigate garden, trees and pasture. They generally use six or seven sprinklers  
with a hose line.

The Williams use a pump to divert from the same ditch as the Ribails. Mr. Ribail marked  
his point of diversion on US-387F with a blue "X" and water is conveyed through a ditch (also in  
blue). This "X" places the point of diversion on the North Fork of Ahtanum Creek approximately  
in Government Lot 7 of Section 18, T. 12 N., R. 16 E.W.M.

1 They also have stock. Ms. Williams did not testify as to how they supply water to the stock,  
2 whether they have some access to the creek and/or if they divert water through the ditch for this  
3 purpose. It is also possible they supply the stock with well water.

4 *d. Point of Diversion*

5 According to AID's response to the United States, a side channel of the North Fork of  
6 Ahtanum Creek supplies water to Diversion 31, used by the Ribails and the Williams. However,  
7 there was also testimony from both land owners regarding the use of the Shaw-Knox ditch. The  
8 point of diversion for the Shaw-Knox is 1250 feet north and 700 feet east of the southwest corner of  
9 Section 7, being within Government Lot 4, of Section 7, T. 12 N., R. 16 E.W.M. The claim of the  
10 Ribails and the Williams derives from Certificate No. 203. Four points of diversion in Section 18  
11 are authorized pursuant to this Certificate one of which is in Government Lot 7. The diversion for  
12 the Shaw-Knox ditch located in Section 7 is not authorized on Certificate No. 203.

13 *e. Conclusions*

14 The Court is unable to confirm any water rights to these properties for the following reasons.  
15 Although AID has provided evidence to support irrigation on both the Ribail and Williams  
16 properties from 1998 to the present, questions still remain regarding the irrigation practices from  
17 1991 through 1997. The United States has established little or no irrigation occurred in 1991 with  
18 even less occurring in 1998 with the increase in sagebrush on the properties. These rights, or some  
19 portion thereof, may have relinquished due to non-use during these six years. RCW 90.14.160.  
20 AID must address the six years of non-use. See *Okanogan Wilderness League v. Twisp*, 133 Wn.2d  
21 769 (1997), *Ecology v. Acquavella*, 131 Wn.2d 769 (1997) and *R.D. Merrill v. Pollution Control*  
22 *Hearings Board*, 137 Wn.2d 118 (1999). Five years of consecutive nonuse shifts the burden to the  
23 claimant to provide a sufficient cause (see RCW 90.14.140) for the non-use. See *R.D. Merrill*.

24 For the Williams property, the fruit trees below the pond and the open area would suggest  
25 continued irrigation practices to keep the trees alive. However, it is not known how many acres  
those trees would cover. If AID can provide testimony of irrigation of Parcels No. 161217-21407  
and No. 161217-32406 during this critical period, then rights could issue up to the acreages  
requested for each parcel. For the Ribail property, the maximum would be six acres and for the  
Williams property it would be five acres. The quantities would be limited to 0.01 cfs per acre and  
1.72 acre-feet per acre. Additional evidence on the use of water for stock is needed as well.

1 The Court also has questions regarding the point of diversion for these properties. If AID  
2 can overcome relinquishment and provide the Court with sufficient information to confirm a right, a  
3 change application would be necessary for any diversion of water from the Shaw-Knox ditch in  
4 Section 7, T. 12 N., R. 15 E.W.M.

5 **2. Remaining Parcels Under Answer No. 16**

6 There are other parcels under Answer No. 16 that require additional evidence and testimony.  
7 Those parcels are owned by Robert S. Anderson, Darryl & Deanna Pemberton White, Laurie Orr  
8 Hinson and Sharon Mangan. The Yakama Nation's evidence pertains to 1996 through 2000. The  
9 Nation claims that the issue is number of acres irrigated during this period for these four parcels.  
10 The Yakama Nation offered YIN-355, which is a packet of digital aerial photos and **LANDSAT**  
11 images to show the condition of the land during this five year period.

12 Niel Allen, Ph.D, testified regarding the use and interpretation of the **LANDSAT** photos in  
13 YIN-355. Since Answer No. 16 extends over one mile, the area was divided up into three different  
14 views. Each of the three sections has a 2002 Digital Ortho Quarter Quad (DOQQ; aerial photo)  
15 base photo with the parcels and numbers mapped on it. The scale of the DOQQ is 1 to 12,000'.  
16 These photos were taken on either July 31<sup>st</sup> or August 1<sup>st</sup> of 2002. The 2002 aerial photos were not  
17 used to determine irrigated ground, but to delineate the fields and see the features. Following the  
18 2002 aerial photo are **LANDSAT** images from 1996 through 2000 and July, 2002. **LANDSAT**  
19 images were all taken on July 13<sup>th</sup> except for 1997, which was in June. These images may not align  
20 exactly to the field for a number of reasons. Dr. Allen attempted to compensate for this in his  
21 analysis based on his knowledge of whether the area appeared irrigated. **LANDSAT** images were  
22 used to determine the number of irrigated acres; the images were not used to determine boundaries  
23 or acreages. It is Dr. Allen's opinion that if irrigation had occurred earlier in the season, depending  
24 on soil moisture content, the land could maintain evidence of a crop or irrigation until the time of  
25 the photos. If AID patrons were irrigating land in the riparian corridors or under the tree canopy,  
the photos would not show this. Dr. Allen did not consider lands in the riparian corridors to be  
irrigated in his analysis, as he believes it is not a common practice to irrigate these areas.

23 **a. Parcel No. 161218-11412—Robert S. Anderson**

24 This parcel is listed on AID 8-A and AID claims a senior right to 5 acres. According to  
25 AID's response, the Anderson property is located within and served by Johncox Ditch Company's  
service area. This land will be addressed below in the analysis for Johncox Ditch Company.

1                    *b.      Parcel No. 161218-31403 & 31404 —Sharon Mangan*

2                    Testimony by Dr. Allen on View 2 pertained to Parcel No. 31403. This parcel is owned by  
3 Sharon Mangan and AID claims a right to 4 acres. All photos and **LANDSAT** images cover the  
4 same time period as View 1. From the **LANDSAT** images, Dr. Allen concluded no irrigation  
5 occurred on this parcel. However, Dr. Allen did note some greenery and trees surrounding  
6 home/buildings as well as a riparian area. Dr. Allen did not do a site inspection during 1996-2000.

7                    Dr. Allen did drive by the parcel in August of 2002. There was some irrigation of lawn and  
8 trees around the house. Although there appears to be some irrigation occurring on the Mangan  
9 property, the Court does not know if it is from Ahtanum Creek or possibly a domestic well. Unlike  
10 other parcels under Answer No. 16, there was no testimony from AID or Sharon Mangan. The  
11 Court concludes that AID has not adequately addressed the exceptions of the Yakama Nation and  
12 the supporting **LANDSAT** imagery regarding this property. Parcel No. 161218-31404 is also  
13 owned by Sharon Mangan and was part of the original confirmation by this Court (Report @141-  
14 143; 437). This property lies between the road and the South Fork of Ahtanum Creek. The Court  
15 is not aware of an exception to this parcel, nor was there any evidence of nonuse offered. A senior  
16 right for the irrigation of 3½ acres within Lot 2 of Short Plat 90-09 located within Government Lot  
17 5 (Parcel No. 161218-31404) was confirmed. The right for this land derives from Certificate No.  
18 205 which authorizes diversions within the NE¼NE¼ of Section 24, T. 12 N., R. 15 E.W.M. and at  
19 the southwest corner of Lot 5 in Section 18, T. 12 N., R. 16 E.W.M. The South Fork of Ahtanum  
20 Creek flows through Government Lot 5 and this will be the point confirmed by the Court.

21                    The Court confirms a right to Sharon Mangan with a priority date of June 30, 1872, for  
22 diversion of 0.04 cfs and 6.02 acre-feet per year from the South Fork Ahtanum Creek for irrigation  
23 of 3.5 acres within Lot 2 of SP 90-09 in Government Lot 5 of Section 18, T. 12 N., R. 18 E.W.M.  
24 (Parcel No. 161218-31404). The season of use is April 1 through July 10. The point of diversion is  
25 located 550 feet north and 1200 feet east from the southwest corner of Section 18, being within  
Government Lot 5 of Section 18, T. 12 N., R. 16 E.W.M.

22                    *c.      Parcel No. 161218-14406 - Darryl and Deanna Pemberton White*

23                    View 3 pertains in part to Parcel No. 14406. Dr. Allen claims that **LANDSAT** imagery  
24 shows 2.57 acres irrigated. Included in his analysis of irrigated land was the cross hatch L-shaped  
25 field. Dr. Allen did not include the area east and adjacent to the L-shaped field, as it appeared to be

1 of a different color and texture in the photo, nor did he include any of the riparian area. Although  
2 Dr. Allen was in the general area in August of 2002, he did not visit this property in particular.

3 AID claims a right for 11.6 acres, or the entire parcel (AID-8A). This property is covered  
4 by Certificate No. 203. Darryl White testified regarding Parcel No. 161218-14406, land the Whites  
5 have owned since 1997 (pp. 125-138). The Whites both flood irrigate and use a pump connected to  
6 hoses and sprinklers. Mr. White identified his pump location on the Shaw-Knox ditch on YIN 355-  
7 (3) with a red "P". Shaw-Knox ditch has its headworks at a point located about 1250 feet north and  
8 700 feet east of the southwest corner of Section 7, being within Government Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of  
9 Section 7, T. 12 N., R. 16. E.W.M. The Shaw-Knox ditch is identified with a black line on YIN-  
10 355-(3), runs parallel to the North Fork of Ahtanum Creek and runs through the White's property.  
11 The previous owners pumped water into two ditches, but Mr. White uses only one. This ditch is  
12 marked in blue on View No. 3. Mr. White recently constructed a driveway, but claims this did not  
13 eliminate any ditches. Mr. White also testified to other ditches in the riparian area used to flood  
14 irrigate three to four acres of foliage between the ditch and the creek.

15 The portion of the White property with the parcel number on it and cross hatched is about  
16 five acres. The Whites irrigate grass/pasture, native vegetation, blackberries and raspberries, oak  
17 trees and several varieties of evergreen trees. Above the house and field is a portion of land that has  
18 oak trees which he irrigates. There is also an area in the northwest corner of the parcel that is about  
19 two acres of grass and pasture.

20 There is some disagreement between AID and the Yakama Nation regarding irrigated acres  
21 for this parcel. However, Dr. Allen's analysis did not take into account some of the area irrigated,  
22 including the riparian areas. Also, Mr. White was able to testify with specificity about the number  
23 of acres and types of crops he irrigates. However, pursuant to testimony, the entire parcel does not  
24 appear to be irrigated. Although the field near the pump is irrigated, there appears to be a road  
25 along with an area to the south and east of the road and above the blue line that the Court is not  
convinced is irrigated. There is also a home. It appears that Mr. White irrigates about 11 acres  
which comports with the specific testimony by Mr. White.

Thus, the Court confirms a right with a priority date of June 30, 1872, from the North Fork  
of Ahtanum Creek in the amounts of 0.11 cfs and 18.92 acre-feet per year for irrigation of 11 acres  
within the following: Beginning S 66°30'E 264.3 feet of the northwest corner of Lot 4 of Short Plat  
H-36, thence N 66°30' W 564.3 feet, thence S 02°54'37" W 917.64 feet; thence N 87°56'30" E 200

1 feet to the center line of the creek, thence southeasterly along creek to a point S 02°54'37" W of the  
2 point of beginning, thence N 02°54'37" E to the point of beginning (Parcel No. 161218-14406).

3 The season of use is April 1 through July 10. The Shaw-Knox ditch, which is used by Mr. White,  
4 diverts water in Section 7. Certificate No. 203 authorized two points of diversion that appear to be  
5 on the North Fork Ahtanum Creek and two on the South Fork Ahtanum Creek, all in Section 18.

6 No point of diversion in Section 7 is listed on Certificate No. 203. The point of diversion that will  
7 be authorized is within Government Lot 7 in Section 18, T. 12 N., R. 16 E.W.M. AID or Mr. White  
8 shall comply with RCW 90.03.380, the application for change process if that has not already been  
9 done.

10 *d. Parcel No. 161218-14407—Paul and Laurie Orr Hinson*

11 YIN 355, View 3 also pertains to Parcel No. 14407, which is owned by the Hinsons. Dr.  
12 Allen claims that **LANDSAT** shows irrigation of 2.3 acres. The fields are also shown by hatched  
13 areas on the 2002 DOQQ photo. The area in the northwest corner of Parcel No. 14406 was not  
14 included in the field designation as it appears distinct in color and texture (similar to Parcel No.  
15 14407). He did not include any of the riparian area. Although Dr. Allen was in the general area in  
16 August of 2002, he did not testify to visiting this property.

17 Paul Hinson testified regarding Parcel No. 161218-11407, which they purchased in spring of  
18 1998 (pp. 148-157). His property is 7.9 acres with 7.5 acres identified as being entitled to a senior  
19 right. The Hinsons use water from the Shaw-Knox ditch, which runs through their property, and a  
20 well. The point of diversion is located approximately 1250 feet north and 700 feet east of the  
21 southwest corner of Section 7, being within Government Lot 4 (SW¼SW¼) of Section 7, T. 12 N.,  
22 R. 16 E.W.M.. The Hinsons and the Whites share a ditch. There were ditches on the property when  
23 he purchased it 1998. There was also water in the ditches in 1997 when he first looked at the  
24 property. Mr. Hinson diverts from the ditch at six different locations using both flood irrigation and  
25 pumps and sprinklers.

This land is covered by Certificate No. 203, which authorizes four points of diversion, all in  
Section 18. The Shaw-Knox ditch diversion is within Section 7. AID or Mr. Hinson shall comply  
with RCW 90.03.380, the application for change process if they have not already done so.

The land appeared irrigated and was green in both 1997 and 1998. Mr. Hinson irrigates  
most of the land surrounding his home and to the south down to the creek. He also irrigates a track  
of land that looks dry on YIN-355 east of the L-shaped field. This portion of the pasture had been

1 eaten down by stock that rotate between the two fields. This land is part of the overall track, but is  
2 divided by east-west fences. Mr. Hinson planted approximately 200 Western larch trees on his  
3 property in the riparian zone near the North Fork Ahtanum Creek.

4 Horses are kept on the property and are rotated among the fenced pastures to keep growth  
5 down. Access to the creek is restricted. However, the horses are kept in a fenced area so it was not  
6 clear whether the source of water for the stock was the ditch or a well.

7 AID 8-A show the parcel is 7½ acres; however, Mr. Hinson testified it is 7.9 acres. There  
8 are several buildings on the property and a small lot (1/8 acres) that was irrigated only recently.  
9 This would support the 7½ acres claimed by AID and supported by Mr. Hinson's testimony.

10 The Court confirms a June 30, 1872, right to Paul and Laurie Orr Hinson from the North  
11 Fork Ahtanum Creek in the amounts of 0.08 cfs and 12.9 acre-feet per year for irrigation of 7½  
12 acres within the following parcel: Beginning S 66°30'E 264.3 feet of the northwest corner of Lot 4  
13 of Short Plat H-36, thence S 66°30' E 335 feet, thence S 01° E 526.29 feet; thence N 89°25'40" E  
14 200 feet, thence S 26°08' W 500 feet to the center line of the creek, thence northwesterly along the  
15 center line 500 feet to a point S 02°54'37" W of the beginning, thence N 02°54'37" E 900 feet to  
16 beginning (Parcel No. 161218-14407). The point of diversion is located within Government Lot 7  
17 in Section 18, T. 12 N., R. 16 E.W.M.

18 e. Parcel Nos. 161218-42009 and -42010—Marc and Sue Downes Martin

19 The Martins filed their own Court Claim No. 0898, but are members of AID. The issue left  
20 unresolved in the Report had to do with whether the Martin land benefited from having a Pope  
21 Answer. Report @313-314. AID tied this land to Answer No 16. Both parcels lie within  
22 Government Lot 6 (NW¼SE¼) of Section 18. According to Exhibit A of Answer of William and  
23 Doris May Mondor, which became Answer No. 16, this land is included in Parcel 1. Thus, AID has  
24 provided the evidence requested by the Court. However, there is a difference in acres between the  
25 exceptions filed and AID-8A. In the exceptions, AID provides the assessed acres of the parcels as  
0.92 acres in 42009 and 2.75 acres in 42010 for a total of 3.67 acres. AID-8A has 1 and 3 acres  
respectively. The Court will rely on the assessed acreage for quantifying the right.

26 In 1994, Ms. Martin testified to diverting from the South Fork Ahtanum Creek using a 2 h.p.  
27 pump into a 3-inch pipe which delivers water through ¾-inch risers. Certificate 203 authorized four  
28 points of diversion -- two are from the South Fork Ahtanum Creek within the NW¼SE¼ and  
29 Government Lot 4, both in Section 18, T. 12 N., R. 16 E.W.M. According to SE-3, there is a pump

1 located at the Martin property within Government Lot 6 which is commensurate with the NW¼SE¼  
2 of Section 18. The Court confirms a right to the Martins in the amount of 0.04 cfs, 6.31 acre-feet  
3 for irrigation of 3.67 acres in the following described tracks:

4 0.92 acres within Parcel No. 161218-42009: Beginning at south right-of-way of the county  
5 road and west line of the SE¼, thence easterly along south county road-right-of way 670 feet  
6 to the true point of beginning, thence westerly along the right of way 212 feet, thence S  
7 50°58' E to Ahtanum Creek, thence easterly along creek to a point S 50°58' E of the true  
8 point of beginning, thence N 50°58' W to the true point of beginning.

9 3.67 acres within Parcel No. 161218-42010: Beginning at south right-of-way for county  
10 road and west line of SE¼, thence easterly along south county road right of way 558 feet,  
11 thence S 50°58' E to Ahtanum Creek, thence westerly along Ahtanum Creek to westerly  
12 SE¼, thence north to beginning, except SP 90-9.

13 The point of diversion on the South Fork Ahtanum Creek is located within Government Lot  
14 6 (NW¼SE¼) in Section 18, T. 12 N., R. 16 E.W.M. The priority date is June 30, 1872.

15 Horses are kept on the property and get water from the creek (Report @314, DE-121). The  
16 Martins name will appear on the list of claimants entitled to a non-diversionary stock water right.

17 *f. Parcel No. 161217-32405, Dale and Lynn Dougherty*

18 AID filed a late exception for additional lands under Answer No. 16. Those lands are  
19 owned by Dale & Lynn Dougherty. Attached to AID's Motion and Sworn Statement (#19,167) is a  
20 written statement by Dale Dougherty. The Dougherty's own 10.19 acres and irrigate 5 acres on  
21 Parcel No. 161217-32405. The late exception identifies a Class 9 1871 senior right pursuant to  
22 Certificate No. 203.

23 The Yakama Nation objected to this late motion. The Court took this matter up on February  
24 9, 2006. After being fully advised, the Court granted the late exception and scheduled the hearing  
25 for May 11, 2006.

The Doughertys did not appear and testify at the May 11, 2006 hearing (p. 26, 104-105).  
However, AID offered AID-103 in support of the claim. Lacking testimony to authenticate it, the  
exhibit was not admitted. The Court agreed to look at the evidence offered in the first hearing to  
determine if a correlation could be drawn to support the claim.

The property in question falls within Certificate No. 203 issued to Marlow Lesh and Answer  
No. 16. The Court previously found that a portion of the right embodied in Certificate No.  
203/Answer No 16 was either abandoned or relinquished. Parcel No. 161217-32405 appears to be

1 one of three new parcels resulting from the subdivision of Parcels No. 161217-41402, -41403 and -  
2 41404. The total acreage in the original three parcels was 40.83 acres with 21.5 acres receiving  
3 water. The three new parcels total 35.8 acres, with 16 acres irrigated. It is not known why there is  
4 a difference between the 1994 and 2004 acreages.

5 Since their purchase of the property, the Dougherty's have irrigated the pasture and grass  
6 land using flood irrigation (Doc. #19,167). The date of purchase is not in the record. Ralph  
7 Saunders testified regarding two aerial photos, US-387B (1979) and US-387D (1991) that are of  
8 interest here. On those photos he identified a field as Field B and where water comes off of it into a  
9 draw which drains into a low area serving as a collection point. Mr. Saunders testified regarding the  
10 irrigation practices on Parcels 32406 and 32407, plus a parcel identified as "B" on the maps. The  
11 Dougherty's property appears to be located to the northwest and adjacent to the Williams property.  
12 The Dougherty property would lie between parcel "B" and parcel 32406 (Williams). Mr. Saunders  
13 also testified to how water was conveyed to the Williams/Ribail properties. He identified this  
14 collection point with a red "X" on US-387B and US-387D. This collection point is located on the  
15 Dougherty property. From this collection point, a ditch then conveys the water to the  
16 Ribail/Williams parcels. YIN-355(3) also appears to include the Dougherty's parcel. In that 2002  
17 photo, a portion of the land appears irrigated.

18 There is limited evidence that would indicate irrigation of the land. However, some  
19 testimony is needed to support the claim for the following reasons. Although the property was part  
20 of the original confirmed tract of land, there is some question whether the entire 5 acres is irrigated.  
21 It is not obvious that the area is deliberately irrigated or if the area is subirrigated as a result of the  
22 collection area. It is not known how long the Dougherty's have owned their parcel so continued  
23 beneficial use remains an issue. Point of diversion evidence would be needed as well.

24 g. Parcels identified in AID's Exceptions but not in AID-8A

25 No right was confirmed for the property belonging to Carl Euteneier due to the lack of a  
certificate (Report @142). This parcel is included in AID's exceptions and is identified as Parcel  
No. 161218-42005. There are 9.40 acres with a Class 9 right with an 1872 priority date under  
Certificate 203 (Marlow Lesh). However, this parcel is not listed in AID-8A, nor was there any  
testimony on use. No right will be confirmed. Further, Parcel No. 161218-41408, consisting of  
16.14 acres, is also found in AID's exceptions, but not on AID-8A. No right will be confirmed.

1 In AID's response to the United States on Answer 16, it identified Parcel Nos. 161207-  
2 43004 and -43404, owned by Jeffery and Deborah Puskas. Parcel No. 43004 receives Johncox  
3 water. See the Court's analysis below. The United States argues that Parcels -43403 and 43404 are  
4 not within Answer No. 16 (Exceptions, #17,015). However, no right is claimed by AID for lands in  
5 Section 7 under Answer No. 16 (AID 8A). No right will be confirmed.

6 **Answer Nos. 17, 18 and 21 - John P. Herke**

7 The Court provisionally confirmed water rights under Answers No. 17 and 18, provided  
8 AID or the Herkes paid the certificate fees and provide the certificates to the Court. Report @147-  
9 146. That has been done. AID-48. The Yakama Nation continues to object to issuance of the  
10 certificates for purposes of appeal. However, the Court has ruled in its *Memorandum Opinion RE:*  
11 *Threshold Legal Issues*, Issue No. 2, that it was proper for Ecology to issue said certificates.

12 **Answer No. 17:** Certificate No. 197 did not describe a point of diversion, but AID provided  
13 that the diversion is within Government Lot 4 (NW¼SE¼) of Section 16, T. 12 N., R. 14 E.W.M.  
14 The Court is not convinced that this is the correct location. It appears that the section and range  
15 have been transposed. A diversion in Section 16, T. 12 N., R. 14 E.W.M. would be located about  
16 12 miles west of the Herke property. The Court recognizes that in the Ahtanum basin there are  
17 lengthy ditches. However, according to SE-1 (map) Ahtanum Creek does not flow through Section  
18 16, T. 12 N., R. 14 E.W.M. nor is there a ditch shown. However, Ahtanum Creek does flow through  
19 Section 14, T. 12 N., R. 16 E.W.M.

20 The Court continues to provisionally confirm a right to John P. Herke to divert 0.19 cfs and  
21 32.39 acre-feet per year from Ahtanum Creek from April 15 through July 10 for irrigation of 18.8  
22 acres within the following:

23 That part of Lots 1 and 2 lying south of the County Road; except beginning at a point  
24 on the north line of North Creek and 100 feet east of the west line of Lot 2 to the true point  
25 of beginning; thence north to County Highway right-of-way; thence east along the south line  
of Highway right-of-way 300 feet; thence south to the north bank of North Creek; thence  
west to the point of beginning. All in Section 14, T. 12 N., R. 16 E.W.M. (Parcel No.  
161214-13004).

The priority date is June 30, 1871. Verification of the point of diversion is needed.

**Answer No. 18:** Relying on AID-8 to determine the parcel number, the Court confirmed a  
right under Answer No. 18 for Parcel 161213-23001, but not Parcel -23002. On AID-8A, the legal  
description is 161213-23002, not 23001. The Court is unable to determine which AID-8 contains

1 the error AID-8A or AID-8. AID-48, identifies the parcel numbers as 161213-243001-02, which do  
2 not appear to be valid parcel numbers. However, AID provided the following legal description:  
3 that part of Lots 2, 3 and 4 lying south of county road and north of Ahtanum Creek in Section 13, T.  
4 12 N., R. 16 E.W.M. Certificate No. 336 authorizes use of water on Lot 2 (fr. NW $\frac{1}{4}$ SE $\frac{1}{4}$ ), Lot 3  
5 (fr. SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) and Lot 4 (fr. SW $\frac{1}{4}$ NW $\frac{1}{4}$ ), all in Section 13, T. 13 N., R. 16 E.W.M. See also  
6 Answer No. 18. A right will be confirmed to Mr. Herke using the legal description and parcel  
7 number found in AID-8A. The Court requests that AID verify the correct parcel number.

8 Certificate No. 336 did not contain a point of diversion, but AID identified the same  
9 diversion location as it did for Answer No. 17: within Government Lot 4 (NW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section  
10 16, T. 12 N., R. 14 E.W.M. Again, this location appears to be in error, as a diversion in Section 16,  
11 T. 12 N., R. 14 E.W.M. would be located about 12 miles west of the Herke property, and according  
12 to SE-I there is no creek or ditch that flows through this part of the section.

13 The Court continues to provisionally confirm a right to John P. Herke to divert 0.24 cfs,  
14 41.34 acre-feet per year from Ahtanum Creek from April 15 through July 10 for irrigation of 23.5  
15 acres within Government Lots 2, 3 and 4 lying south of the county Road and North of Ahtanum  
16 Creek in Section 13, T. 12 N., R. 16 E.W.M. Parcel No. 161213-23002. The priority date is June  
17 30, 1900. The Court requests that AID verify the diversion location for the Herke right.

18 **Answer No. 21:** The Court confirmed a right under Answer No. 21 for Parcel No. 161214-  
19 31003. AID-8A indicates the original Parcel number is in error and should be 161214-13003, not  
20 31003. AID-8A also indicates there are two different legal descriptions for the property. The first  
21 is Government Lots 3 and 4, lying above the County road in Section 14. The second description on  
22 AID-8A is associated with Parcel 161214-13003 and is Government Lots 1 and 2 lying north of the  
23 County Road in Section 14 (Government Lots 1 and 2 lying generally within the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section  
24 14). However, neither Answer No. 21 nor Certificate No. 198 describes lands in Government Lots  
25 1 and 2. Both documents describe lands in Government Lots 3 and 4 of Section 14, T. 12 N., R 16  
E.W.M. The Court will not modify the right confirmed on page 425, but requests that AID verify  
and provide the correct parcel number associated with Lots 3 and 4.

26 Certificate No. 198 authorizes two points of diversion from Ahtanum Creek within  
27 Government Lot 1 of Section 15, T. 12 N., R. 16 E.W.M. Ahtanum Creek does not flow through  
28 Government Lot 1 of Section 15; however, the Lesh Ditch does convey water through here. SE-3  
29 (Inset B). It is reasonable to conclude Mr. Herke takes water from the Lesh Ditch. For purposes of

1 the water right, the point of diversion needs to be where the ditch takes water from Ahtanum Creek.  
2 The Court has some concern regarding the correct diversion location. As discussed above in  
3 Answer Nos. 17 and 18, AID identified a point of diversion within Government Lot 4 (NW¼SE¼)  
4 of Section 16, T. 12 N., R. 14 E.W.M. The Court requests that AID verify the point of diversion  
5 for Answer No. 21 (as well as Answers 17 and 18) and notify the Court of that location and if it is  
6 into the Lesh Ditch. If the point has historically been from the Lesh Ditch, and the certificate is in  
error, Mr. Herke will not be required to comply with RCW 90.03.380.

7 The Court provisionally confirms a right to John P. Herke to divert from Ahtanum Creek  
8 0.083 cfs, 14.30 acre-feet per year from April 15 through July 10 for irrigation of 8.3 acres within  
9 Government Lots 3 and 4 of Section 14, T. 12 N., R. 16 E.W.M. The priority date is June 30,  
1871.

10 The point of diversion for the rights provisionally confirmed under Answer No. 17, 18 and  
11 21 must be supplied to the Court no later than April 21, 2008.

12 **Junior Water Rights:** The Court confirmed a junior right under Answer No. 17 for 7.2  
13 acres and under Answer No. 21 for 11 acres. The Court has reconsidered its decision on the junior  
14 water right issue. See Special Issues section above. The junior rights previously confirmed in the  
Report are herein DENIED.

15 Under Answer No. 18, AID is claiming a junior right of 5.3 acres (AID-8A). The Court held  
16 that the right is limited to 23.5 acres irrigated in 1908 and 1957 and no junior right could be  
17 confirmed for the increased acreage (Report @146, lines 2½-4½). That ruling remains unchanged.

18 **Answer No. 19 - Julie Hoppis**  
19 **Jeareld & Janice Hoppis**  
20 **Ted R. Overman and Dale L. Belsher**  
**Edmund L. and Margaret Burke**  
**Clifford and Doris Hagemeyer**

21 Under Answer No. 19, the Court confirmed a right to Eugene Hoppis to irrigate 8.0 acres.  
22 AID filed an exception and George Marshall and Clifford Hagemeyer testified at the supplemental  
23 hearing. Exhibit AID-49 was presented in support of the exception. The Yakama Nation responded  
24 to the exception presenting evidence attempting to show that fewer acres had been irrigated between  
1996 and 2000 than claimed by AID.

25 According to the testimony, two parcels not owned by Mr. Hoppis also lie within Answer  
No. 19 and were erroneously omitted from AID-8. Those two parcels are owned by Clifford and

1 Doris Hagemeyer and are included in AID-8A. The two parcels are a total of 7.44 acres in size and  
2 approximately 5.5 acres of grass are irrigated. Mr. Hagemeyer testified that he purchased the  
3 property in 1986 with the intent of living on the land and irrigating it. However, the next year he  
4 was transferred out of the area and did not return until 1995. During his absence the land was not  
5 irrigated. RCW 90.14.160 provides that a right that is not exercised for five successive years,  
6 without a sufficient cause, relinquishes. RCW 90.14.140(2)(c) also provides that if the right is  
7 claimed for a determined future use to take place within 15 years of the most recent beneficial use,  
8 the right does not relinquish. Mr. Hagemeyer's testimony leads the Court to conclude that when he  
9 stopped irrigating, he intended to resume when he moved back to the land and he did just that in  
10 less than 10 years, preventing relinquishment of the water right.

11 The testimony provided that a right is no longer being asserted for two parcels previously  
12 included in the water right awarded to Mr. Hoppis. One parcel is owned by Ted R. Overman and  
13 Dale L. Belsher, Parcel No. 171210-14414 and the second is owned by Edmund L. and Margaret  
14 Burke, Parcel No. 171210-14425. AID-8A does not include either parcel. However, exhibit AID-  
15 49, which is several pages that appear to describe the land included in Answer No. 19, does include  
16 both parcels. The first page of the exhibit appears to describe the place of use for both the answer  
17 number and Certificate No. 105 from *Achepohl* and then lists the parcel numbers for the land. It  
18 includes the Overman/Belsher and Burke land. Maps were also attached, specifically a parcel map  
19 showing all of the parcels included in the area described from Answer No. 19, but have the  
20 Hagemeyer parcels highlighted.

21 There was nothing in either the testimony or evidence presented by AID on why these  
22 parcels should not be confirmed a water right. The evidence in 1994 was that the land had  
23 historically been irrigated and continued to be irrigated. The Yakama Nation response states that a  
24 portion of the Overman/Belsher parcel is irrigated, but not the Burke land. The Court has reviewed  
25 the Niel Allen Declaration filed in support of the Nation's response, along with the attachments to  
the declaration. It is clear from the attachments the Hagemeyer parcels were not being irrigated;  
however, the Court found there was a sufficient cause for the non-use, preventing relinquishment.  
The court cannot reach the same conclusion for the remaining parcels. The Landstat pages in the  
attachment are not very helpful in identifying lands and the aerial photographs appear to show the  
land green, which would suggest irrigation.

1 Both in 1908 and in 1957 when Answer No. 19 was filed, 18.5 acres were being irrigated. If  
2 all of the referenced parcels are included, the total number of acres being confirmed a right would  
3 be 13.5 acres, still well within the right that would be appurtenant to Answer No. 19 lands. The  
4 Court will not eliminate a right previously confirmed without an adequate explanation, including  
5 evidence that the landowner is aware of what is happening. Therefore, the Court will amend the  
6 water right confirmed in the Report to include the Hagemeyer parcels, but will not remove the other  
7 parcels.

8 The right described on page 389, lines 1 through 9 is replaced with the following:

9 All rights have a June 30, 1868, date of priority, a season of use of April 15 through July 10  
10 and authorize diversion from Bachelor Creek at a point located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T.  
11 12 N., R. 17 E.W.M.

12 To Julie Hoppis, a right to divert 0.03 cfs, 5.13 acre-feet per year for the irrigation of 2.98  
13 acres within Parcels 1 and 2 of Book 83-0208 and Parcel 1, Book 83-0207, all being within the  
14 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. (Parcel Nos. 171210-14412, 14413, 14416).

15 To Jaureld and Janice Hoppis, a right to divert 0.02 cfs, 2.65 acre-feet per year for the  
16 irrigation of 1.54 acres in Parcel 4 of Book 83-0208, and that portion of Lot 4 of AF #7025514 lying  
17 easterly of Bachelor Creek, being within the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M.  
18 (Parcel No 171210-14426).

19 To Clifford and Doris Hagemeyer, a right to divert 0.06 cfs, 9.46 acre-feet per year for the  
20 irrigation of 5.5 acres in Lots B, C and D of Short Plat 86-156, except the easterly 215 feet of Lot D,  
21 being within the N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. (Parcel Nos. 171210-14424,  
22 171210-14432).

23 To Ted R. Overman and Dale L. Belsher, a right to divert 0.02 cfs, 3.44 acre-feet per year  
24 for the irrigation of 2 acres in Parcel 3 of Book 83-0208, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
25 Section 10, T. 12 N., R. 17 E.W.M. (Parcel No. 171210-14414).

To Edmund L. and Margaret Burke, a right to divert 0.01 cfs, 2.55 acre-feet per year for the  
irrigation of 1.48 acres in the East 215 feet of Lot D of Short Plat 86-156, being within the  
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. (Parcel No. 171210-14425).

1 Answer No. 20 -

*Richard W. McGahan*  
*Patricia Bombard (Claim No. 01880)*  
*Robert Meyers*

2  
3 The Yakama Nation took exception to the Court awarding a right to irrigate 1.46 acres in  
4 Parcel No. 161218-3013. In its exception (#28) the Nation points to the State's Investigation Report  
5 (SE-160) that states there was no evidence of diversion works or water delivery system, and the  
6 land was undeveloped. Richard W. McGahan, represented by Attorney James Davis, appeared at  
7 the supplemental hearing in February 2004 to defend the claim.

8 Mr. Davis informed the Court that the evidence presented at the initial hearing and currently  
9 contained in AID-8A as revised on December 30, 2003, showed the incorrect parcel number for the  
10 lands irrigated within Answer No. 20. Richard W. McGahan's father, also Richard McGahan  
11 owned Parcel No. 161218-13013 and, as identified in SE-160, this land has never been irrigated  
12 with water diverted from Ahtanum Creek. However, the parcel owned by Richard W. McGahan,  
13 Parcel No. 161218-13404 has approximately 3.5 acres that are irrigated with water diverted from  
14 Ahtanum Creek. About one-third of the property lies within the area described in Answer No. 20  
15 and two-thirds lies within Answer No. 22. The portion within Answer No. 20 is where  
16 Mr. McGahan's house is located and 1.46 acres are irrigated with water diverted from Ahtanum  
17 Creek. It was AID's position at the supplemental hearing that this is the area within Answer No. 20  
18 being irrigated when the answer was filed and has continued to be irrigated to the present.

19 Court Claim No. 01880 which was originally filed by David M. Zueger, asserted rights for  
20 three parcels in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T. 12 N., R. 16 E.W.M., along with approximately 80  
21 acres in the SW $\frac{1}{4}$  of Section 18 (the land in the SW $\frac{1}{4}$  is not at issue in this exception). Mr. Zueger  
22 sold the three parcels, one to Patricia Bombard, one to Richard McGahan and the third to Robert C.  
23 Worthington. According to Mr. McGahan's testimony, Mr. Worthington's lot is the only one that  
24 has been irrigated with water from Ahtanum Creek and that water use is reflected in SE-162, the  
25 State's Investigation Report for the parcel Mr. Worthington purchased. Mr. Worthington then sold  
his lot to Richard W. McGahan. The Nation characterized AID as amending its claim to add a  
claim for parcel 13404; however, the record shows a right was asserted for parcel 13404 throughout  
the proceeding. AID simply made an error in describing the parcel number on AID-8.

After the evidence was presented during the supplemental hearing, two late exceptions were  
filed asserting rights to lands that lie at least partially within Answer No. 20. On April 6, 2006,  
Patricia Bombard filed a request asking the Court to allow a late exception and the next day Robert

1 Meyers filed a similar request. The Court granted both motions resulting in Mr. Meyers testifying  
2 on May 11, 2006 and Patricia Bombard testifying on August 10, 2006. At the time the late  
3 exceptions were filed and testimony taken, the Court did not realize that both parties were asserting  
4 rights for lands within the same answer and basing their claim on the same certificate from the prior  
5 adjudication. All of Mr. Meyers land and approximately two-thirds of Ms. Bombard's land lie  
6 within the place of use for Certificate No. 306 and Answer No. 20. The certificate authorized the  
7 irrigation of 8.8 acres, while Answer No. 20 stated that 2 acres were being irrigated in 1957. The  
8 Pope Decree found there was a right to irrigate 2 acres.

9 Following Mr. Meyers' late exception, two AID landowners each claimed to have the  
10 limited right that exists for Answer No. 20 lands, along with a third party that is not part of AID.  
11 AID acknowledged a conflict and left it to the Court to determine which lands should get the two-  
12 acre water right. When Mr. McGahan's claim was presented, no one testified that had personal  
13 knowledge of water use on the property prior to 1981 when owned by Mr. Worthington.

14 Mr. Meyers traced the ownership and put into evidence AID-104 containing title documents from  
15 the late 1950's to the present. Mr. Meyers testified he knew water had been used on the land for  
16 years because he went past the property when he drove to care for cattle he had in the  
17 neighborhood. However, he testified he was not familiar with water use when Paul Junkert owned  
18 the land in the early 1970's. Mr. Meyers' parcel is 5.55 acres and he estimates he irrigates about 5  
19 acres.

20 Ms. Bombard has lived on her property since 1979. When she acquired it, an irrigation  
21 system was already in place, but she has been repairing and upgrading the system over the years  
22 since she has owned the property. She estimates she irrigates between one and two acres of lawn  
23 and landscape. As with Mr. McGahan, a portion of her property is within the area described in  
24 Answer No. 22 and her claim for that land will be addressed below. Although the testimony at the  
25 supplemental hearing was that the McGahan property contains the area that was irrigated at the time  
Answer No. 20 was filed, there is no evidence to support that conclusion. None of the landowners  
claiming to have the water right recognized by the Court have knowledge of the condition of their  
properties in the 1950's or any time prior to the 1970's. The Court has reviewed exhibit SE-174,  
which is a copy of a map prepared in 1957 by Ecology's predecessor agency. The map is intended  
to show irrigated land in 1957, with yellow areas being irrigated land within AID, green areas  
irrigated within Johncox Ditch Company, and brown indicating other irrigation. There is an area

1 that would appear to be about two acres in size in yellow within the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18 –  
2 however, this area is not owned by anyone claiming a right in this proceeding. The land lies east of  
3 the South Fork Ahtanum Road, north of the North Fork Ahtanum Creek. This map suggests that  
4 none of the land owned by McGahan, Bombard and Meyers had been irrigated in 1957. Until about  
5 1970 all of the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18 was owned by one person. It may be that sometime  
6 prior to 1970 the landowner elected to move the two-acre water right from the area being irrigated  
7 in 1957 to another part of the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , however, that information is not in the record if that is  
8 the case. The Court will not confirm a right for any of the lands described in Answer No. 20 until  
9 additional information is presented to show which, if any, of the lands owned by McGahan,  
10 Bombard or Myers is entitled to the water right.

9 **ANSWER NO. 22 - *John-Ken, Inc.***  
10 ***Richard McGahan***  
11 ***Patricia Bombard***

11 The Ahtanum Irrigation District withdrew its claim for lands under Answer No. 22. Based  
12 on this, the United States withdrew its exceptions to Answer No. 22. The Yakama Nation had also  
13 filed an exception (No. 29) to this answer number and the withdrawal of the claim to a water right  
14 by AID rendered the exception moot.

15 However, at the supplemental hearing AID attempted to claim a right for a portion of the  
16 Answer No. 22 lands that are owned by Richard McGahan. The Nation objected to evidence being  
17 presented because AID had earlier withdrew its claim for Answer No. 22 and the United States was  
18 not present to respond to the evidence. The Court ruled that due to the lack of notice that a right  
19 was being claimed, AID would not be allowed to present evidence related to Answer No. 22 at the  
20 supplemental hearing. If it wishes to pursue a claim for lands in this answer, an exception to the  
21 supplemental report must be filed:

22 A late exception was filed by Patricia Bombard for lands she owns in Section 18, T. 12 N.,  
23 R. 16 E.W.M. As her claim was being considered by the Court, it became apparent that a portion of  
24 her land lies in Answer No. 22. Ms. Bombard owns Parcel No. 161218-24005, a seven acre parcel,  
25 of which about 3.5 acres is in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18. Certificate 305, with a priority  
date of 1885, authorized the use of 1.37 cfs for the irrigation of 68.4 acres in Lots 2 and 3, the  
SE $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  north of the county road, all in Section 18, T. 12 N.,  
R. 16 E.W.M. The Pope Decree determined there was a right to irrigate 48.1 acres. Ms. Bombard's

1 knowledge of the property began around 1978 and she purchased the land, along with an adjoining  
2 parcel between 1978 and the early 1980's. There was an irrigation system in place when she  
3 purchased, which she continued to use with improvements being made over the years.

4 The Court is not prepared to make a decision on Ms. Bombard's claim to a right under  
5 Answer No. 22 since Mr. McGahan is also claiming a right and was not allowed to put on evidence  
6 in support of his claim. If Ms. Bombard wishes to pursue a claim for the portion of her land that is  
7 within Answer No. 22, she must file an exception to this report. The Court directs both  
8 AID/McGahan and Bombard to serve copies of their exceptions on each other as well as the  
9 Yakama Nation.

10 **Answer No. 23 - Jeffrey J. & Deborah R. Puskas**  
11 **Bruce Mondor**

12 AID updated the ownership and parcel number information for the land described in Answer  
13 No. 23. The Court confirmed water rights to Lester Roy and Willis Mondor for lands they own  
14 within the area described in Answer No. 23, see page 150 of the Report. The land identified as  
15 being owned by Willis Mondor is now owned by Bruce Mondor and there has been no change in  
16 the parcel number for that land. Lester Roy sold his land to Jeffrey J. and Deborah R. Puskas and  
17 they subdivided what had previously been described as Parcel No. 161207-43003 into four parcels.  
18 As a result of the information provided in AID-8A, the Court will confirm separate rights to Mr.  
19 Mondor and the Puskas. Additionally, the Court has reconsidered its position on junior rights and  
20 determined that junior rights cannot be confirmed, see page ### above. Therefore, the water right  
21 described on page 446 of the Report is withdrawn.

22 The water right described on page 445 of the Report is replaced with the following rights, all  
23 with a June 30, 1873 date of priority, April 15 through July 10 season of use and with points of  
24 diversions from the North Fork of Ahtanum Creek as follows: at a point 1250 feet north and 700  
25 feet east from the southwest corner of Section 7, within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T. 12 N., R. 16  
E.W.M.

To Bruce Mondor a right to divert 0.06 cfs, 10.87 acre-feet per year for the irrigation of 6.32  
acres in the following described parcels within Section 7, T. 12 N., R. 16 E.W.M.: Beginning at the  
southeast corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence N 01°01'07" W 230.27 feet; thence N 49°03'20" W  
680.56 feet; thence S 18° W to the south line of the section; thence N 88°21'55" E to the point of  
beginning (Parcel #161207-43002, 5 ac.) and Beginning at the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ;

1 thence S 01'13" E 213.8 feet; thence S 88°20'50" W 367.75 feet; thence N 69°57'30" W 425.45  
2 feet; thence N 18° E to the north line of the section; thence N 88°21'55" E to the point of beginning  
3 (Parcel #161218-12001, 1.32 ac).

4 To Jeffrey J. and Deborah R. Puskas a right to divert 0.03 cfs, 4.61 acre-feet per year for the  
5 irrigation of 2.68 acres in Lots 1 (Parcel #161207-43401, 0.67 ac.), 2 (Parcel #161207-43402, 0.67  
6 ac), 3 (Parcel No. 161207-43403, 0.67 ac.), and 4 (Parcel #161207-43404, 0.67 ac.) of Short Plat  
7 AF 7152858, being within that portion of the SW¼SE¼ of Section 7, T. 12 N., R. 16 E.W.M. lying  
8 south of the county road.

9 **Answers No. 24 & 25 - No Claim**

10 **Answer No. 26 -** *Michael A. & Mary A. Guillozet*  
11 *Robert S. & Phyllis Anderson*  
12 *Jerry Whitmire*  
13 *Stanley G. & Elizabeth G. Benefiel*  
14 *Mark Martin*  
15 *Debra Valahu*  
16 *Curtis & Kellie Harris*  
17 *Myron E. Russell*  
18 *Marc A. Lee*  
19 *Timothy A. & Joanne S. Burlingame*

20 There were no exceptions filed to the Court's determination of the water right appurtenant to  
21 the lands described in Answer No. 26. However, at the supplemental hearing, AID presented  
22 evidence in the form of AID-8A showing that fewer acres were being irrigated than was confirmed  
23 by the Court and asked that the junior right be reduced from 19.4 acres to 10.55 acres. AID-8A  
24 provides sufficient information to divide the water right between the various property owners. As  
25 discussed on page ### of this report, the court had determined that junior rights cannot be  
confirmed, therefore, the water right described on page 463 is withdrawn. The water right  
confirmed on page 462 is replaced with the following water rights, all having a priority date of  
June 30, 1882, a season of use of April 15 through July 10, and points of diversion on the North  
Fork Ahtanum Creek in the NW¼NE¼ and SE¼NE¼ of Section 18, T. 12 N., R. 16 E.W.M.

To Robert and Phyllis Anderson, a right to divert 0.16 cfs, 27.31 acre-feet per year for the  
irrigation of 15.88 acres in Lots 1 and 3 of Short Plat 82-40, being within the W½NE¼NW¼  
(Parcel #161217-21401) and that portion of the E½NW¼ lying north of the county road (Parcel  
#161217-21403), Section 17, T. 12 N., R. 16 E.W.M.

1 To Stanley G. and Elizabeth G. Benefiel, a right to divert 0.01 cfs, 1.82 acre-feet per year for  
2 the irrigation of 1.06 acres in Lot 4 of Short Plat 89-76, being within that portion of the  
3 E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 12 N., R. 16 E.W.M. lying south of the county  
4 road (Parcel #161217-24404).

5 To Timothy A. and Joanne S. Burlingame, a right to divert 0.01 cfs, 2.22 acre-feet per year  
6 to irrigate 1.29 acres in Lot 11 of Short Plat 89-78, being within that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
7 Section 17, T. 12 N., R. 16 E.W.M. lying south of the county road (Parcel #161217-24411).

8 To Michael A. and Mary A. Guillozet, a right to divert 0.08 cfs, 14.52 acre-feet per year for  
9 the irrigation of 8.44 acres in Lot 3 of Short Plat 82-41, being within the E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
10 17 (Parcel #161217-22403) and that portion of the E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 17, T. 12 N., R. 16  
11 E.W.M. north of the county road described as follows: Beginning at the northwest corner of said  
12 section; thence south along the west line 1048.2 feet; thence S 65°31'40" E 1213.80 feet; thence S  
13 73°12'20" E 268 feet to the true point of beginning; thence N 0°42' E 520 feet; thence S 89°18' E  
14 398.73 feet; thence S 0°42' W 635.05 feet; thence N 73°12'20" W 415 feet to the true point of  
15 beginning; except road right-of-way (Parcel #161217-21003).

16 To Curtis and Kellie Harris, a right to divert 0.01 cfs, 2.43 acre-feet per year for the  
17 irrigation of 1.41 acres in Lot 8 of Short Plat 89-77, being within the S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17,  
18 T. 12 N., R. 16 E.W.M. (Parcel #161217-24408).

19 To Marc A. Lee, a right to divert 0.01 cfs, 1.82 acre-feet per year for the irrigation of 1.06  
20 acres in Lot 10 of Short Plat 89-78, being within that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 12  
21 N., R. 16 E.W.M. lying south of the county road (Parcel #161217-24410).

22 To Mark Martin, a right to divert 0.01 cfs, 1.82 acre-feet per year for the irrigation of 1.06  
23 acres in Lot 5 of Short Plat 89-77, being within that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T.  
24 12 N., R. 16 E.W.M. lying south of the county road (Parcel #161217-24405).

25 To Myron E. Russell, a right to divert 0.01 cfs, 1.82 acre-feet per year for the irrigation of  
1.06 acres in Lot 9 of Short Plat 89-78, being within that portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T.  
12 N., R. 16 E.W.M. lying south of the county road (Parcel #161217-24409).

To Debra Valahu, a right to divert 0.01 cfs, 1.82 acre-feet per year for the irrigation of 1.06  
acres in Lot 6 of Short Plat 89-77, being within that portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T.  
12 N., R. 16 E.W.M. lying south of the county road (Parcel #161217-24406).

1 To Jerry Whitmire, a right to divert 0.004 cfs, 0.65 acre-foot per year for the irrigation of  
2 0.38 acre in Lot 2 of Short Plat 82-41, being within the NW¼NW¼ of Section 17, T. 12 N., R. 16  
3 E.W.M. (Parcel #161217-22402).

4 **Answer No. 27 - *Hiriam H. White and Sharon P. White***  
5 ***Dorothy R. White (Claim No. 08454)***

6 The Whites filed Court Claim No. 08454 asserting rights to use Oak Springs 1 and 2 for  
7 domestic supply, including landscape irrigation, and stock watering. No right was confirmed to the  
8 Whites because their predecessors were not issued a certificate in *Achepohl* for use of the springs.  
9 The Court also asked that if the Whites filed an exception that they address the effect of *Pope* on  
10 this claim. The Whites did file an exception and contend the springs are not tributary to Ahtanum  
11 Creek in the normal course of events and are therefore not governed by *Pope*. According to the  
12 Whites, there is no "head of living water." The Yakama Nation also filed an exception, #54,  
13 asserting any right confirmed be a "junior" right with the season of use limited to April 15 through  
14 July 10.

15 The White's predecessor was a party to the 1908 Code Agreement and that agreement  
16 specifically provided for use of water for domestic supply. The question then is whether a  
17 certificate from *Achepohl* is needed for use of the springs. After the schedule of rights in the  
18 *Achepohl* decree, there is the following statement: "That all of the lands in the above schedules are  
19 entitled to water continuously throughout the year for stock and domestic water." Each of the  
20 certificates that issued also includes that language. The issue of how *Pope* impacts rights to use  
21 water for domestic supply is similar to the stock water matter discussed at length on pages 10 to 14  
22 of the Memorandum Op. on Legal Issues. There is nothing in *Pope* precluding confirmation of a  
23 right to use surface water for domestic supply if there is evidence to support a conclusion water was  
24 used prior to June 6, 1917 and a water right claim was filed pursuant to RCW 90.14.

25 Exhibit DE-220 is a statement by Mr. White's mother who lived on the property beginning  
in 1911 when she was five years old and attests to the use of the springs for domestic supply, stock  
water, and garden irrigation. The statement indicates the springs were developed and in use prior to  
when she and her mother moved onto the land in 1911. Water Right Claims No. 095604 and  
095603 were filed by Hiriam E. White (the claimant's father) in compliance with the requirements  
of RCW 90.14. The testimony shows Oak Spring No. 1 has been used and continues to be used for  
domestic supply (including associated lawn and garden irrigation) and stock watering since at least

1 the early 1900's. Oak Spring No. 2 had been used for similar purposes, however, diversionary use  
2 of this spring has not continued since the mid-1990's when a bull knocked over the pump that was  
3 on the spring. Since then the spring has continued to be used for stock watering, however,  
4 Mr. White's testimony leads the Court to conclude that the use has been non-diversionary in nature.

5 The Court will confirm a right with a June 30, 1869, date of priority for the diversion of 0.03  
6 cfs, 2 acre-feet per year from Oak Spring No. 1 for single domestic supply, including lawn and  
7 garden irrigation and stock watering in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15, T. 12 N., R. 16 E.W.M.  
8 The spring is located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15. Mr. White testified to using the spring for  
9 irrigation of pasture also. However, any irrigation use of this spring has to be considered part of the  
10 right authorized by the certificates that issued for the property subsequent to the *Achepohl*  
11 adjudication. The extent of those rights is addressed below.

12 The Court will next address the Nation's exception #30 to property owned by Hiriam White  
13 within AID. The White property is within Answer No. 27 from the *Pope* Decree and covered by  
14 Certificates 133 and 330 from the *Achepohl* adjudication. The Nation initially took exception to the  
15 Court confirming a right to irrigate 35 acres when *Pope* allowed a right to irrigate 24.92 acres. See  
16 Report at 154. The Nation contends the Court does not have jurisdiction to correct errors made by  
17 the Federal Court and that if Mr. White believes there is an error, he must take the matter to Federal  
18 District Court for resolution. In addition, the Nation brought forward evidence in an attempt to  
19 show that much of the right has relinquished due to non-use between 1996 and 2000. Mr. White  
20 testified that as a result of the flood in 1996, the diversion into Lesh Ditch, which serves his land  
21 from Ahtanum Creek, and portions of the ditch itself, were destroyed. He worked much of that  
22 irrigation season trying to reestablish the diversion, but the creek channel kept changing. The creek  
23 channel was still changing in 1997 as a result of the damage from the 1996 flood, so it was not  
24 possible to reestablish the diversion. According to Mr. White's testimony, it became obvious that it  
25 would be expensive to put in an adequate diversion facility. At that point he decided that it would  
be prudent for him to wait the outcome of the adjudication to see the extent of the water right prior  
to expending the money to repair the diversion and ditch. He did continue his attempts to irrigate  
the land and testified that all of his fields were irrigated, but "not very well". It is clear from  
Mr. White's testimony that when his diversion and a portion of the ditch were destroyed in 1996, he  
intended to resume irrigation of the land and the only thing preventing the expenditure of money to  
repair the diversion was uncertainty over the extent of the right the Court might confirm in this

1 proceeding. RCW 90.14.140 (2)(b) provides there shall be no relinquishment if the right is claimed  
2 for a determined future development to take place within 15 years of the most recent beneficial use  
3 of the water right. The Court finds there is no relinquishment.

4 Some of the water Mr. White uses to irrigate comes from Wiley Springs, which originate off  
5 his lands. He testified that AID has told him he could use those springs to irrigate after July 10 of  
6 each year and that has been his practice. He considers use of the springs to be part of his Ahtanum  
7 Creek water right. Wiley Springs are not the springs addressed in Court Claim No. 08454.  
8 Mr. White's testimony about use of Wiley Springs is a bit contradictory. At one point he testifies  
9 that he first used the springs in the late 1970's, "when everyone else started using springs." RP  
10 @69, line 18. However, later he testified that his grandparents used the springs in the old days  
11 when they were called Kamiakin Springs. RP @70, line 10. His testimony also leads the Court to  
12 conclude that flow from Wiley Springs would reach Ahtanum Creek if the water was not being  
13 used. Clearly, Wiley Springs supplies sufficient water that its use would have been addressed in  
14 *Achepohl*. Thus, any right to use the water must be authorized by a certificate. The certificates that  
15 issued following conclusion of *Achepohl* almost exclusively identified Ahtanum Creek as the sole  
16 source of water being used, even when branches or tributaries were also being used. The Court  
17 finds that Wiley Springs, as a tributary to Ahtanum Creek, is authorized for use under Certificate  
18 No. 133, however, use of water is limited to April 1 through July 10 as with other rights emanating  
19 from *Achepohl*.

20 It also appears that Mr. White, in Exhibit AID-37, is taking exception to the Court not  
21 awarding a right to the land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16 (parcels 14002 and 14003). The Court  
22 did award a junior right to Mr. White under Answer No. 27 for the irrigation of 20 acres in the  
23 SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16 and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 15. Mr. White appears to be asking for a  
24 senior right for the 55 acres that originally were determined to have been irrigated in 1908.  
25 However, Judge Pope found that 20 acres originally attributed to a 1908 signatory were in fact not  
owned by a party to the Code Agreement. Based on the evidence in the record, it appears that 20  
acres is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16, as the record shows that the White land in Section 15 was  
owned by a party to the Code Agreement, but no such information is available for the land in  
Section 16. The Court cannot confirm rights in excess of what was recognized in the *Pope* Decree.  
The Court initially ruled that it could correct an obvious error in Appendix B to the decree. The  
Yakama Nation in exception #30 objects to the Court confirming a right to Mr. White in excess of

1 the quantity in Appendix B. Their position is that if Mr. White believes there is an error his  
2 recourse is to take the matter to Federal District Court; that the matter is outside this Court's  
3 jurisdiction. The Court GRANTS the Nation's exception. Neither Mr. White nor AID have  
4 demonstrated any grounds for relief from *Pope* (based on court rule or otherwise). Therefore, this  
5 Court cannot alter the prior ruling. Their only remedy is with the 9<sup>th</sup> Circuit.

6 The right described on page 401 of Report, lines 11 to 22 is amended to authorize the  
7 diversion of 0.25 cfs, 42.86 acre-feet per year for the irrigation of 24.92 acres. Mr. White's  
8 exception seeking a right to irrigate lands in the SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Section 16 is DENIED.

9 **Answer No. 28 - *Michael J. Hager***

10 The Court confirmed both junior and senior water rights to Mr. Hager for lands described in  
11 Answer No. 28. The Court did ask for confirmation that the diversion used to serve the property  
12 was into the Shaw Knox Ditch, Report @157. At the supplemental hearing, George Marshall,  
13 appearing on behalf of AID testified the Shaw Knox Ditch does deliver water to this property and  
14 the diversion from the North Fork Ahtanum Creek to the Shaw Knox Ditch is in the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of  
15 Section 7, T. 12 N., R. 16 E.W.M. The other two points of diversion locations on page 441, lines  
16 22<sup>1</sup>/<sub>2</sub> and 23 are stricken. A junior water right was confirmed on page 442 of the Report. This right  
17 is withdrawn consistent with the ruling above in the Special Issues section on junior rights.

18 **Answer No. 29 -- *Deborah R. Puskas-Huck (Claim No. 01020)***  
19 ***Patricia Patterson***

20 The Court confirmed a right under Answer No. 29 to Lester W. Roy in the amounts of 0.30  
21 cfs, 51.68 acre-feet for irrigation of 30 acres within a portion of the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of  
22 Section 18, T. 12 N., R. 16 E.W.M.. Certificate No. 244. See Report @157-159; 443. The Court  
23 also confirmed a junior water right for some lands. Report @ 444. That will be discussed later.

24 AID presented testimony the land that was previously owned by Lester Roy has been  
25 subdivided into four parcels, so what once was Parcel No. 161218-12005 is now Parcels Nos.  
161218-12401, 12402, 21401 and 21402. There has also been a change in ownership from the  
original AID-8A filing. A senior right for 30 acres was originally claimed by AID. Deborah R.  
Puskas-Huck now owns much of the land under Answer No. 29. AID also filed a late exception on  
behalf of Patricia Patterson claiming she owns a portion of the land covered by Answer No. 29.  
Ms. Patterson owns Parcel No. 161218-12009 and claims a right for a portion of the 30 acres  
authorized under Pope Answer No. 29. AID-102.

1 Ms. Patterson testified on May 11, 2006. Parcel No. 12009 is 2.13 acres total and 1.2 acres  
2 are irrigated from the creek. The property is located off the South Fork Ahtanum road just west of  
3 the North and South Fork "Y" junction. Ms. Patterson grew up in the Ahtanum Valley and is  
4 familiar with the general history of the property. She is also the daughter of Willis and Doris  
5 Mondor who were previous owners of the property. Ms. Patterson has lived on the property since  
6 1967-68 and her knowledge goes back to the early 1960s. The property has been historically  
7 irrigated from both sprinklers and ditches (flood) and there were animals on the property. Water  
8 has been and continues to be diverted from Ahtanum Creek via the Shaw-Knox ditch. The Shaw-  
9 Knox ditch conveys water along her north boundary. Ms. Patterson irrigates the lawn around her  
10 home and a field to the south of her home with sprinklers.

11 There is sufficient information to allocate a portion of right under Answer 29 to Patricia  
12 Patterson in the amount of 0.01 cfs and 2.06 acre-feet per year for irrigation of 1.2 acres within  
13 Parcel No. 161218-12009. AID-102 offered a breakdown of acres based on Ms. Patterson being  
14 entitled to 1.75 acres and the remaining 28.25 acres belonging to Ms. Puskas-Huck. Ms. Patterson  
15 testified she irrigates 1.2 acres, not 1.75 acres. The rest of the Answer No. 29 right, totaling 28.8  
16 acres, will be recalculated and awarded to Deborah Puskas-Huck for her four parcels as follows:

161218-12401	5.17 acres
161218-12402	11.23 acres
161218-21401	5.26 acres
161218-21402	<u>7.14 acres</u>
	28.8 acres

17 The Court withdraws the right described on page 443 and confirms two water rights to divert  
18 water from North Fork of Ahtanum Creek into the Shaw-Knox ditch at a point located 1250 feet  
19 north and 700 feet east from the southwest corner of Section 7, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
20 Section 7, T. 12 N., R. 16 E.W.M. The priority date is June 30, 1873. The season of use is April 15  
21 through July 10.

22 1) A right to Patricia Patterson in the amounts of 0.01 cfs, 2.06 acre-feet per year for  
23 irrigation of 1.2 acres within Section 18, T. 12 N., R. 18 E.W.M. more particularly described as:

24 Beginning N 01°01'07" W 150 feet and N 88°58'53" E 185.63 feet of southwest corner of  
25 the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , thence S 88°58'53" W 185.63 feet; thence S 01°01'07" E 17 feet, thence S  
88°09'13" W 10 feet, thence S 01°01'07" E 133 feet; thence S 88°09'13" W 257.17 feet,  
thence N 05°50'15" E 377.3 feet, thence S 73°28'30" E 232.74 feet, thence S 01°01'07" E  
15.53 feet, thence N 88°58'53" E 50 feet; thence S 01°01'07" E 105 feet, thence N  
88°58'53" E 155.48 feet, thence S 32°28'15" W to beginning. Parcel #161218-12009.

1  
2 2) A right to Deborah Puskas-Huck in the amounts of 0.29 cfs and 49.54 acre-feet per year  
3 for irrigation of 28.8 acres within the following four parcels:

4 Lot 2, Short Plat AF 7152855 in Section 18, T. 12 N., R 16 E.W.M. Parcel #161218-12401  
5 (5.17 acres).

6 Lot 4, Short Plat AF 7152855 in Section 18, T. 12 N., R 16 E.W.M. Parcel #161218-12402  
7 (11.23 acres).

8 Lot 1, Short Plat AF 7152855 in Section 18, T. 12 N., R 16 E.W.M. Parcel #161218-21401  
9 (5.26 acres).

10 Lot 3, Short Plat AF 7152855 in Section 18, T. 12 N., R 16 E.W.M. Parcel #161218-21402  
11 (7.14 acres).

12 The Court also confirmed a junior right for the lands now owned by Deborah Puskas-Huck.  
13 See Report @ 444. Junior rights are not being awarded consistent with the Court's ruling above on  
14 page ###. The right confirmed on page 444 of the Report is hereby withdrawn.

15 **Answer No. 30 - No Claim**

16 **Answer No. 31 - *David M. & Ida Guillard***  
17 ***Douglas & Barbara Brown***  
18 ***Barry Heid***

19 The Court concluded in the Report, page 160, there was evidence to confirm both senior and  
20 junior water rights to lands within Answer No. 31. Those lands are covered by three surface water  
21 certificates that issued after *Achepohl*. Two of the certificates have a priority date of 1879 and one  
22 has a priority date of 1874; therefore, it is necessary to know how many acres are irrigated within  
23 the lands described in each certificate. That information was not initially provided, so the Court did  
24 not confirm water rights to the lands described in Answer No. 31. AID, through its witness, George  
25 Marshall, presented that information during the supplemental hearing. However, as discussed in the  
Special Issues section above, junior rights will not be confirmed.

A total of 40.95 acres are irrigated within the Answer No. 31 lands -- 28.40 acres identified  
in AID-8A as senior acres and 11.60 as junior acres. Some of the land has been subdivided and sold  
since the initial hearing and issuance of the Court's Report. AID-8A provides the new parcel and  
ownership information, as well as identifying the number of acres irrigated within each parcel and  
the appropriate certificate appurtenant to each parcel. That information allows the Court to confirm  
the following water rights for the lands within Answer No. 31.

1 The following water rights have a priority date of June 30, 1879, a season of use from April  
2 15 through July 10 and a point of diversion on North Fork Ahtanum Creek in Government Lot 3 of  
3 Section 7, T. 12 N., R. 16 E.W.M. Mr. Marshall testified water is delivered through the Johncox  
4 Ditch, which has a diversion in Section 12, T. 12 N., R. 15 E.W.M.; however, the certificates  
5 authorize a diversion in Government Lot 3, Section 7 and that diversion will be confirmed. If the  
6 diversion into the Johncox Ditch is in fact used, the landowners or AID need to follow the  
7 application for change procedures in RCW 90.03.380 if they have not already done so.

8 To Douglas P. and Barbara J. Brown, a right to divert 0.02 cfs, 3.39 acre-feet per year for  
9 the irrigation of 1.97 acres in Lot 1 of Short Plat 82-49, being within the NE¼SW¼ of Section 7, T.  
10 12 N., R. 16 E.W.M. (Parcel #161207-31405).

11 To David H. Guilland, a right to divert 0.04 cfs, 6.45 acre-feet per year for the irrigation of  
12 3.75 acres in Lots 2 and 3 of Short Plat 82-49, being within the NE¼SW¼ of Section 7, T. 12 N., R.  
13 16 E.W.M. (Parcels #161207-31406 and 31407).

14 To Barry Heid, a right to divert 0.17 cfs, 29.82 acre-feet per year for the irrigation of 17.34  
15 acres in Lots 3 and 4 of Short Plat 82-50 (Parcels #161207-32403 and 32404), the east 149.77 feet  
16 of Lot 1 and Lot 2 of Short Plat 82-50, except those portions lying northerly of a line 20 feet south  
17 of the right of way of Johncox Ditch and except the north 20 feet of Lot 1 lying west of the ditch  
18 right of way (Parcels #161207-32406 and 32407), all within Government Lot 3 of Section 7, T. 12  
19 N., R. 16 E.W.M.

20 Also to Barry Heid, a right with a June 30, 1874 priority date, 0.05 cfs, 9.18 acre-feet per  
21 year for the irrigation of 5.34 acres in Lots 1, 2, 3 and 4 of Short Plat 82-51 (Parcels #161207-  
22 33401, 33402, 33403, 33404), all within Government Lot 4 of Section 7, T. 12 N., R. 16 E.W.M.

23 **Answer No. 32 - Gary and Ruth Hansen (Claim Nos. 00133 and 01082)**

24 In the Court's 2002 Report, both senior and junior water rights were confirmed to the  
25 Hansens for the North Fork Ahtanum Creek for irrigation purposes. An additional senior right was  
confirmed to Russell Daniels. Report at 160-162, 447-448.

The Court confirmed an 1875 right to the Hansens in the amount of 0.19 cfs, 32.73 acre-feet  
per year for irrigation of 19 acres. A second right with a 1882 priority was confirmed to Mr.  
Daniels in the amount of 0.01 cfs, 1.72 acre-feet per year for irrigation of 1 acre within Parcel No.  
161217-24402. However, AID concedes that Parcel No. 24402 is not within Answer No. 32 which  
covers lands within Government Lot 3 and the east 208.7 feet of the south 208.7 feet of the

1 SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 12 N., R. 16 E.W.M. All of the Answer 32 lands are owned by the  
2 Hansens and they irrigated 23.4 acres. According to AID, AID-8A should be modified to remove  
3 Russell and Joann Daniels and the two rights should be issued to Gary and Ruth Hansen.

4 The Court also notes it originally authorized two points of diversion. The first is 700 feet  
5 south and 1,200 feet east of west quarter corner of Section 17, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
6 Section 17, and the second is 200 feet from the east line between Lots 3 and 4, being within  
7 Government Lot 4 of Section 17, all in T. 12 N., R. 16 E.W.M. However, after a review of  
8 Certificates No. 254 and No. 303, it appears that only the diversion located in Government Lot 4 is  
9 authorized by those certificates. The point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17 is described in the  
10 State's Investigation Report (SE-97). If the Hansens utilize a diversion within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 17, they'll need to file an application for change to either add an additional point of  
12 diversion or to change their existing point. The Hansens should contact Ecology's Yakima Office.

13 The Court withdraws the original confirmation on page 447 of the Report and confirms two  
14 water rights to Gary and Ruth Hansen as follows: A June 30, 1875 water right to divert 0.19 cfs,  
15 32.68 acre-feet per year for irrigation of 19 acres within that portion of Government Lot 3 of  
16 Section 17, T. 12 N., R. 16 E.W.M. lying east of the North Fork Ahtanum Creek, except the north  
17 745 feet thereof, Parcel #161217-31001. A June 30, 1882 water right to divert 0.01 cfs, 1.72 acre-  
18 feet per year for irrigation of 1 acre within the east 208.7 feet of the south 208.7 feet of the  
19 SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 12 N., R. 16 E.W.M., Parcel #161217-31001. For both rights, the  
20 authorized season of use shall be April 15 through July 10 and the point of diversion from the North  
21 Fork Ahtanum Creek are located 200 feet from the east line between Lots 3 and 4, being within  
22 Government Lot 4 of Section 17, T. 12 N., R. 16 E.W.M.

23 The Yakama Nation filed an exception to the Court's rulings on the Hansen claim in regard  
24 to junior rights. See Exception No. 49. The U.S. also filed an exception on the junior right issue  
25 and offered evidence of where Answer No. 32 lands are located. (US-391). AID responded  
supporting the concept of junior rights. The Court has elected to not move forward with  
confirmation of junior water rights, see the Special Issues section above on page ###. The junior  
right described on page 448 of the Report is herein rescinded.

1           **Claim Nos. 00133 and 01082:** The Hansen's also requested a right to use a spring for  
2 irrigation, garden use and stock water supply. Testimony by Forrest Marshall indicated the spring  
3 did not join Ahtanum Creek. See Report at 312-313. The Court requested evidence of historic use  
4 prior to confirming a water right.

5           For purposes of their claim to the spring, the Hansens were represented by Attorney  
6 Lawrence Martin. The Hansens requested they be allowed to file a late exception which the Court  
7 granted. See *Order* entered February 3, 2004 (Doc. #17,545). The Yakima Nation took exception  
8 to a right being confirmed for the use of the spring for two reasons. First, the claimants must prove  
9 there is no continuity between the spring and Ahtanum Creek. See *Memorandum Opinion Re:*  
10 *Return Flow Exceptions of Harry Masterson and Mary Lou Masterson* July 16, 1996, and  
11 *Memorandum Opinion and Order RE: Exceptions of Worrell to Supp. Report Sub. No. 22 (Wide*  
*Hollow)*, November 9, 1999. Second, historic use of water for the purposes claimed should have  
12 been addressed in the 1908 Code Agreement, *Achepohl* and the Pope Decree.

13           The Hansen's now claim only a non-diversionary stock water right from the spring. Gary  
14 Hansen testified on February 4, 2004. The spring originates on their neighbors property and flows  
15 onto the Hansen's property. It then disappears. DE-313 is an aerial photo of the area. Mr. Hansen  
16 identified the spring location on that photo (in red). The spring flows continuously year-around and  
17 stock drink directly from the spring. No diversion of water occurs. This practice has been  
18 occurring since approximately 1910.

19           The use of water for such de minimus use has been addressed by the Court in its  
20 *Memorandum Opinion Re: Ahtanum Creek Threshold Legal Issues*, October 8, 2003. It is  
21 unnecessary for a claimant to prove a spring is not tributary to Ahtanum Creek as long as the use is  
22 limited to non-diversionary stock water supply. (Issue No. 8; hydraulic continuity.) The Court also  
23 held that "claimants who seek such a limited use of springs are not bound by the Code Agreement,  
24 *Achepohl* or the Pope Decree." See *Memo. Opinion @ 28*, Issue No. 8. The Yakama Nation  
25 acknowledges the rulings by the Court but still maintains its objection to the legal issues decided by  
the Court in its *Memorandum Opinion*. This is so noted by the Court.

          The Court confirms a water right to Gary and Ruth Hansen for use of an unnamed spring for  
continuous non-diversionary stock water supply. This right shall issue solely to the Hansens, as  
George and Maxine Loren no longer have an interest in this property or claim. The Hansens name  
shall be included on the list of claimants entitled to a right for non-diversionary stock water.

1 **Answer No. 33** - ***Charles E. and Nancy Jacobs***

2 The evidence presented at the initial evidentiary hearing lead the Court to conclude that  
3 water rights existed for the lands described in Answer No. 33. See Report at 163. Although a water  
4 right was confirmed in *Achepohl* for the land, a certificate had not been issued, as the land owner at  
5 the time of the earlier adjudication did not pay the required fees. The Court concluded water rights  
6 could be confirmed upon payment of the fees and issuance of the certificate. The Yakama Nation  
7 filed an objection to Ecology being able to issue the certificate upon payment of the fees. This  
8 objection was denied in the *Memo. Op. on Legal Issues*. AID, through George Marshall, presented  
9 AID-51 to show the fees had been paid. Certificate No. 255, with a priority date of 1875, authorizes  
10 the diversion of 0.54 cfs for irrigation of 27 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , namely Lot 1, in Section 17,  
11 T. 12 N., R. 16 E.W.M. No diversion point is described in the certificate.

12 Charles and Nancy Jacobs own 27 acres within Government Lot 1 of Section 17 and irrigate  
13 15.4 of those acres. Based on the conclusions reached on page 163 and 164 of the Report, the Court  
14 conditionally confirms a right to the Jacobs with a priority date of June 30, 1875, for the diversion  
15 from April 15 through July 10 of 0.15 cfs, 25.84 acre-feet per year for the irrigation of 15 acres in  
16 Government Lot 2 of Section 17, T. 12 N., R. 16 E.W.M. (Parcel #161217-41001). The certificate  
17 did not identify a point of diversion, nor did Mr. Marshall testify to where the water is being  
18 diverted to irrigate this parcel. In order for this right to be confirmed, AID shall present the location  
19 of the point of diversion being used by the Jacobs by April 21, 2008.

20 **Answer No. 34** - ***Robert N. Schuller***  
21 ***Carl F. George***

22 The Court confirmed both a senior right and a junior right for the lands described in Answer  
23 No. 34. Those rights are described on pages 164, 165, 449 and 450 of the Report. At the  
24 supplemental hearing AID, through its witness, George Marshall, presented evidence of a new  
25 owner of one of the parcels and presented evidence in AID-8A that allows the Court to divide the  
water right between the two parcels and two ownerships. The Yakama Nation indicated Answer  
No. 34 was one that was addressed in Niel Allen's declaration that was filed along with the Nation's  
response to AID exceptions. Although AID-8A shows 20.3 acres being irrigated, Dr. Allen's  
review resulted in his conclusion that only 12.70 acres were irrigated between 1996 and 2000. Mr.  
Marshall was not able to recall whether the acreage shown in AID-8A was only taken from the

1 Report or was also supported by information obtained from the landowners. The conclusions in the  
2 Report are from evidence presented at the 1994 hearing.

3 In response to AID's inquiry concerning the date through which beneficial use must be  
4 demonstrated, the Court ruled in its October 8, 2003 *Memorandum Opinion Re: Ahtanum Creek*  
5 *Threshold Legal Issues* that if AID does not ask to have the court reconsider its decision on a claim  
6 for its constituents, then the analysis will remain the same, see page 5, line 6. AID did not ask the  
7 Court to reconsider its decision on Answer No. 34, nor did the Yakama Nation or any other party,  
8 which explains why Mr. Marshall was not prepared to address questions concerning the source of  
9 information in AID-8A. The Court has reviewed Dr. Allen's declaration and attachments and  
10 concludes the evidence is not sufficient to warrant changing the original confirmation.

11 However, the Court has now determined that junior rights cannot be confirmed. See Special  
12 Issues Section above. Therefore, the junior right described on page 450 of the Report is withdrawn.  
13 The Court also recognizes the advantage of having the remaining rights more specifically described  
14 and will replace the right described on page 449, lines 12½ to 21½ with the following:

15 The following two rights have a priority date of June 30, 1875, a point of diversion on the  
16 North Fork Ahtanum Creek located in Government Lot 4 of Section 17, T. 12 N., R. 16 E.W.M. and  
17 a season of use of April 15 through July 10.

18 To Robert N. Schuller for the diversion of 0.05 cfs, 8.17 acre-feet per year for the irrigation  
19 of 4.75 acres in Parcel 1 of Book 81-0155, being within Government Lot 2 of Section 17, T. 12 N.,  
20 R. 16 E.W.M. (Parcel #161217-42401).

21 To Carl F. George a right for the diversion of 0.15 cfs, 26.23 acre-feet per year for the  
22 irrigation of 15.25 acres in that portion of Lot 2 of Short Plat 81-155 being within Government Lot  
23 2 of Section 17, T. 12 N., R. 16 E.W.M. (portion of Parcel #161217-42404). The Court notes that a  
24 portion of Lot 2 Parcel # 161217-42404 lies in the SW¼NE¼ of Section 17; however Certificate  
25 No. 253, which is the basis for this right, only authorizes irrigation of lands in Government Lot 2 of  
Section 17. Therefore, this right is only appurtenant to that portion of the parcel that lies in  
Government Lot 2.

**Answer No. 35 - Robert M. Meyers**

No exceptions were filed to the water right awarded for Answer No. 35 lands. However, in  
its Report the Court asked AID to provide the point of diversion location. Report @165-166; 460.

1 George Marshall appeared at the supplemental hearing on behalf of AID and testified the land is  
2 served by the Shaw-Knox Ditch. Although Mr. Marshall did not provide the exact location, the  
3 diversion into the Shaw-Knox Ditch is located approximately 1250 feet north and 700 feet east of  
4 the southwest corner of Section 7, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  (Government Lot 4) of Section 7,  
5 T. 12 N., R. 16 E.W.M. Also, the source of water for the Shaw-Knox is the North Fork Ahtanum  
6 Creek. Additionally, Mr. Marshall testified that Yakima County has assigned new parcel numbers  
7 to the lands owned by Mr. Meyers in Answer No. 35. AID-8A provides the new parcel numbers  
8 and a more specific legal description for the lands. The right described on page 460 is so modified.

9 In summary, the Court confirms a right to Robert W. Meyers in the amounts of 0.004 cfs,  
10 0.68 acre-foot per year from the North Fork Ahtanum Creek for irrigation of 0.40 acre within the  
11 Lot 3 of Short Plat P-24 (Parcel #161218-11410) and Lot 4 of Short Plat 80-208 (Parcel #161218-  
12 11411) being within that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T. 12 N., R. 16 E.W.M. lying west  
13 of the North and South Forks of Tampico Road, except the south 1500 feet. The point of diversion  
14 is located approximately 1250 feet north and 700 feet east of the southwest corner of Section 7,  
15 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  (Government Lot 4) of Section 7, T. 12 N., R. 16 E.W.M. (Shaw-Knox  
16 Ditch). The priority date is June 30, 1882.

17 **Answer No. 36** - *Allen W. Grissom*  
18 *George H. and Judy L. Grissom*  
19 *Thomas D. Richardson*  
20 *Charles H. & Colleen Meginn*

21 Although no exceptions were filed for water rights confirmed for Answer No. 36 lands,  
22 George Marshall, on behalf of AID, testified about the need to file applications to change the point  
23 of diversion for the water rights. This caused the Court to review the water rights confirmed and  
24 AID-8A. There are new owners for some of the parcels and AID-8A shows fewer acres being  
25 irrigated with the 1870 date of priority. Additionally, the Court has revisited its decision concerning  
junior rights and concluded that junior rights cannot be confirmed. See Special Issues Section  
above. Therefore the water right on page 374, lines 13 through 25 is withdrawn.

The Court replaces the water right on page 374, lines 1 through 12 with a right for George  
H. and Judy L. Grissom, with a priority date of June 30, 1866, to divert from Hatton Creek 0.13 cfs  
and 22.9 acre-feet per year for the irrigation of 13.31 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 12 N.,  
R. 17 E.W.M. (Parcels #171209-34401 and 34402). The point of diversion is in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$   
of Section 8, T. 12 N., R. 17 E.W.M.

1 The water right on page 413, lines 1 through 11 is replaced with the following three rights,  
2 each having a priority date of June 30, 1870, points of diversion on Bachelor Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$   
3 of Section 8 and on Hatton Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 12 N., R. 17 E.W.M. and a  
4 period of use from April 15 through July 10:

5 To Charles H. and Colleen Meginn, a right to divert 0.01 cfs, 2.4 are-feet per year for the  
6 irrigation of 1.4 acres Lot 1 of Short Plat 91-55 (Parcel #171208-41406) being within the  
7 E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M.;

8 To Thomas D. Richardson, a right to divert 0.05 cfs, 8.27 acre-feet per year for the irrigation  
9 of 4.81 acres in Lot 1 of Short Plat 82-83 (Parcel #171208-44401) being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
10 Section 8, T. 12 N., R. 17 E.W.M.;

11 To Allen W. Grissom, a right to divert 0.05 cfs, 8.6 acre-feet per year for the irrigation of 5  
12 acres in Lot 4 of Short Plat 82-83 (Parcel #171208-44404), being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section  
13 8, T. 12 N., R. 17 E.W.M.

14 **Answer No. 37** - *Roger R. & Edna A. Meusborn*  
15 *Lawrence R. & Teresa White*  
16 *Lewis M. Thomason*

17 There were no exceptions filed to the water right confirmed under Answer No. 37, however,  
18 Ecology identified a typographical error in the point of diversion described in the Report @ page  
19 428, line 8 $\frac{1}{2}$ . The first point of diversion is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18, not the  
20 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18. That correction is noted. Additionally, AID-8A contains sufficient  
21 information to divide the confirmed water right between the three landowners. Therefore, the water  
22 right on page 428 is withdrawn and the following three water rights are confirmed, each with a  
23 priority date of June 30, 1871, points of diversion on Bachelor Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and Hatton  
24 Creek in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T. 12 N., R. 17 E.W.M. and a season of use from April 15  
25 through July 10.

26 To Roger R. and Edna A. Meusborn, a right to divert 0.46 cfs, 78.78 acre-feet per year for  
27 the irrigation of 45.8 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 (Parcel #171207-44001) and that portion  
28 of the W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, lying southerly of Bachelor Creek, except the south 124 feet of the  
29 east 104 feet and except 20 feet for road (Parcel #171208-33001), ALL in T. 12 N., R. 17 E.W.M.

30 To Lawrence R. & Teresa White, a right to divert 0.01 cfs, 1.67 acre-feet per year for the  
31 irrigation of 0.97 acre in that portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M.

1 described as follows: Beginning at the northeast corner of the SW¼; thence S 89°35'25" W 398.62  
2 feet; thence S 69°28' W 964.82 feet to the east line of the W½SW¼ and true point of beginning;  
3 thence S 69°28' W 613.67 feet; thence S 6°39' E 284 feet; thence N 90°00' E 538.23 feet to the east  
4 line of said W½SW¼; thence N 0°24'34" E 497.35 feet to the true point of beginning; except  
5 beginning S 69°28' W 613.67 feet of the true point of beginning above, thence S 6°39' E 284 feet;  
6 thence E 236 feet; thence north to the center line of road; thence southwesterly to point of beginning  
(Parcel #171208-32005).

7 To Lewis M. Thomason, a right to divert 0.10 cfs, 17.60 acre-feet per year for the irrigation  
8 of 10.23 acres in the following described portions of the W½SW¼ of Section 8, T. 12 N., R. 17  
9 E.W.M.: Beginning at the northeast corner of the SW¼; thence W along the north line S 89°35'85"  
10 W 398.62 feet; thence S 69°28' W along the centerline of Tampico Road, 1578.49 feet to the true  
11 point of beginning; thence continuing along the centerline 553.35 feet; thence S 20°32' E 115.18  
12 feet; thence E 513 feet; thence N 6°39' W to the centerline of road and true point of beginning,  
13 except right-of-way for road (Parcel # 171208-32007) and that portion of the W½SW¼ of Section  
14 8, lying southerly of Tampico Road and northerly of Bachelor Creek, except beginning at the  
15 northeast corner of the SW¼; thence S 89°35'25" W 398.62 feet; thence S 69°28' W 2131.84 feet to  
16 the true point of beginning; thence S 20°32' E 115.18 feet; thence E 513 feet; thence N 6°39' W to  
17 point 284 feet S 6°39' E of the centerline of the Tampico Road; thence E 538.23 feet to the east line  
18 of the NW¼SW¼; thence N 0°24'34" E 497.35 feet to the centerline of Tampico Road; thence S  
19 69°28' W 1167.02 feet to the true point of beginning (Parcel # 171208-32008).

20 The Court had previously confirmed a junior right to lands within Answer No. 37, said right  
21 described on page 429 of the Report. The Court has revisited its ruling on junior rights and has  
22 determined that junior rights cannot be confirmed. See Special Issues Section above. Therefore,  
23 the water right on page 429 is withdrawn.

24 **Answer No. 38 -** *Robert and Sean Wiley*  
25 *Michael A. and Debbie L. Hanks*  
*Ernest S. and Julie A. Edwards*  
*Inocencio and Cynthia Arreola*  
*Bryan Hille*  
*Bruce Ball*

AID filed an exception to the water rights confirmed for Answer No. 38 lands. The United States also filed an exception, asserting lands within Answer No. 38 had not been irrigated with

1 surface water. George Marshall testified for AID at the supplemental hearing and Exhibit No. AID-  
2 52 was put into evidence.

3 According to Mr. Marshall's testimony, the original AID-8 contained errors in describing  
4 the parcel numbers associated with lands in Answer No. 38, resulting in parcels of land being  
5 described that were not irrigated and irrigated parcels omitted. Additionally, some of the parcels  
6 have been divided and new parcel numbers assigned. Certificates 97 and 98, each with an 1868  
7 date of priority and 329, with a priority date of 1888, are appurtenant to the Answer No. 38 lands.

8 In the Report, beginning on page 170, line 24, the Court found that in 1957, 204.1 acres  
9 were being irrigated, but that at the time of hearing a right was being asserted to irrigate only 70.38  
10 acres. The evidence lead to a conclusion that there could be a senior right to irrigate up to 75 acres  
11 within Answer No. 38, but since only 70.38 acres were being irrigated, a right was confirmed to  
12 irrigate 70.38 acres. The information in AID-8A includes all parcels within Answer No. 38 that are  
13 irrigated with water from Ahtanum Creek. It also shows how many acres are irrigated within each  
14 parcel and the parcel's proportionate share of senior and junior rights. AID-8A shows 75 acres  
15 irrigated with a senior right and 77.48 acres irrigated with a junior right. Due to the change in  
16 parcel numbers, it is not possible to compare the information presented in the original AID-8 with  
17 that presented in AID-8A. In response to the new information provided by AID, the United States  
18 withdrew its exception to Answer No. 38. Mr. Marshall testified that the acres identified in AID-8A  
19 are in fact being irrigated. However, since the Court has reconsidered its decision on issuing junior  
20 rights, only the land identified as having senior rights will be confirmed a right. See Special Issues  
21 section above. The water rights described on page 397, lines 1 to 12 and page 475, lines 1 to 11½  
22 are withdrawn and the following rights are herein confirmed. Each has a season of use from April  
23 15 through July 10, a priority date of June 30, 1868, and points of diversion located on Ahtanum  
24 Creek in the NE¼NW¼ of Section 15 and the SE¼NE¼ of Section 16 or on Hatton Creek in the  
25 SE¼SE¼ of Section 8, all in T. 12 N., R. 17 E.W.M.

To Michael A. and Debbie L. Hanks, a right to divert 0.01 cfs, 2.55 acre-feet per year for the  
irrigation of 1.48 acres in Lot 1 of Short Plat 85-227, being within the SE¼NE¼NW¼ of  
Section 15, T. 12 N., R. 17 E.W.M. (Parcel No. 171215-21405).

To Robert and Sean Wiley, a right to divert 0.32 cfs, 55.44 acre-feet per year for the  
irrigation of 32.23 acres in Lot 1B of Short Plat 89-161, except beginning at the southwest corner of  
Lot 1A; thence N 89°33'20" E 240.44 feet; thence S 00°33'30" W 51.41 feet; thence S 89°15'40" W

1 240.78 feet; thence N 00°44'20" E 50.47 feet to the point of beginning [aka Tract G ROS 7226778]  
2 (Parcel #171215-22410) and Lot 1A of Short Plat 89-161, except that portion described as follows:  
3 Beginning at the northwest corner of said Lot-1A; thence N 89°33'20" E 281.09 feet; thence S  
4 00°33'30" E 605 feet; thence S 89°15'40" W 240.44 feet; thence N 00°44'20" W 292.95 feet; thence  
5 N 67°17'44" E 94.57 feet; thence N 00°22'48" E 207.42 feet; thence S 89°33'20" W 130.50 feet;  
6 thence N 00°44'00" W 69 feet to point of beginning [aka Tract F ROS 7226778] (Parcel #171215-  
22411), all being within the NW¼ of Section 15, T. 12 N., R. 17 E.W.M.

7 To Ernest S. and Julie A. Edwards, a right to divert 0.04 cfs, 6.91 acre-feet per year for the  
8 irrigation of 4.02 acres in the W½ of Lot 4 of Short Plat 90-22 [aka Lot 4 of SP 85-226), being  
9 within Government Lot 1 of Section 15, T. 12 N., R. 17 E.W.M. (Parcel #171215-23406).

10 To Inocencio and Cynthia Arreola, a right to divert 0.02 cfs, 4.02 acre-feet per year for the  
11 irrigation of 2.34 acres in that portion of Lot 2 of Short Plat 89-160 lying in the NW¼NW¼ of  
12 Section 15 and that portion of Lots 1A and 1B of Short Plat 89-161 described as follows:  
13 Beginning at the northwest corner of said Lot 1A; thence N 89°33'20" E 315.09 feet; thence S  
14 00°33'33" E 655.41 feet; thence S 89°15'40" W 240.78 feet; thence N 00°44'20" W 343.36 feet;  
15 thence N 67°17'44" E 94.57 feet; thence N 00°22'48" E 207.42 feet; thence S 89°33'20" W 130.50  
16 feet; thence N 00°44'00" W 69 feet to the point of beginning [aka Tract E ROS 7226778] (portion  
17 of Parcel #171216-11405), being within the NW¼NW¼ of Section 15, T. 12 N., R. 17 E.W.M.

18 The following rights are confirmed with a June 30, 1888, date of priority, season of use from  
19 April 15 through July 10 and points of diversion on Hatton Creek in the NE¼NE¼ of Section 17  
20 and on Ahtanum Creek in Government Lot 2 of Section 17, T. 12 N., R. 17 E.W.M.

21 To Inocencio and Cynthia Arreola, a right to divert 0.003 cfs, 0.45 acre-foot per year for the  
22 irrigation of 0.26 acre in that portion of Lot 2 of Short Plat 89-160 lying in the NE¼NE¼ of  
23 Section 16, T. 12 N., R. 17 E.W.M. (portion of Parcel #171216-11405)

24 To Robert and Sean Wiley, a right to divert 0.16 cfs, 27.92 acre-feet per year for the  
25 irrigation of 16.23 acres in that part of the NE¼ of Section 16, T. 12 N., R. 17 E.W.M. described as  
follows: Beginning at the northeast corner of Lot 1 of Short Plat 89-160, thence west 242.69 feet;  
thence S 01°37'00" W 182.47 feet; thence W 247.63 feet; thence S 01°37'00" W 128.25 feet; thence  
N 89°04'28" W 156.19 feet; thence S 00°45'20" E 357.94 feet; thence W 636.32 feet; thence S  
787.11 feet; thence N 89°19'40" W 815.02 feet; thence N 09°44'00" E 320 feet; thence N 86°07'34"  
E 249.32 feet; thence S 00°20'20" E 1011.97 feet; thence S 82°22'00" E 113.11 feet; thence S

1 70°02'00" E 203.74 feet; thence N 00°44'20" W 1558.80 feet; thence N 89°01'00" W 103.22 feet;  
2 thence N 01°20'00" W 232.50 feet; thence N 23°38'00" E 92 feet; thence N 00°41'00" E 360.60  
3 feet to point of beginning [aka Tract B ROS 7226778] (Parcel #171216-11407).

4 To Bryan Hille, a right to divert 0.01 cfs, 1.53 acre-feet per year for the irrigation of 0.89  
5 acres in Lot 1 of AF No. 7014013, being within the NW¼NW¼NE¼ of Section 16, T. 12 N., R. 17  
6 E.W.M. (Parcel #171216-12406)

7 To Bruce Ball, a right to divert 0.34 cfs, 58.38 acre-feet per year for the irrigation of 33.94  
8 acres in Lot 4 of Short Plat 84-224 and also beginning at the northwest corner of said Lot 4; thence  
9 east 163.04 feet; thence S 01°37'00" W 310.32 feet; thence N 89°04'28" W 156.19 feet; thence N  
10 00°45'20" E to the point of beginning [aka Tract D ROS 7226778] (Parcel No. 171216-12408) and  
11 Beginning at the southwest corner of Lot 4, Short Plat 84-224; thence S 00°13'20" E 591.12 feet;  
12 thence S 67°50'00" E 824.66 feet; thence S 89°38'00" E 510 feet; thence N 46°00'00" E 160 feet;  
13 thence N 71°40'00" E 670 feet; thence S 82°22'00" E 356.89 feet; thence N 00°22'20" W 1011.97  
14 feet; thence S 86°07'34" W 249.32 feet; thence S 09°44'00" W 320 feet; thence S 88°19'40" W  
15 815.02 feet; thence N 787.11 feet; thence W 650.02 feet; thence S 821.52 feet; thence N 88°38'10"  
16 W 646.79 feet to the point of beginning [aka Tract A ROS 7226778] (Parcel #171216-13002) ALL  
17 being in the NE¼ of Section 16, T. 12 N., R. 17 E.W.M.

18 **Answer No. 39 - R. E. Cornelius**

19 The United States filed an exception to the right confirmed under Answer No. 39; however,  
20 that exception was withdrawn. Due to the Court's reconsideration of its ruling on junior rights, see  
21 Special Issues section above, the right on page 458 of the Report is withdrawn. Responding to  
22 Ecology's request for clarification concerning creek names, the Court amends line 13 of the right  
23 described on page 457 of the Report so the source of water is Hatton Creek.

24 **Answer No. 40 - Timothy J. Yearout**

25 There was no exceptions filed for Answer No. 40, however, AID-8A did provide the name  
of the current owner of the land within Answer No. 40 with a water right. The name on page 427,  
line 16 is changed to Timothy J. Yearout. The Court also notes that the two points of diversion  
identified are on Hatton Creek rather than Ahtanum Creek, so line 17 is also amended to indicate  
Hatton Creek as the source of water. All other aspects of the water right remain unchanged.

1 **Answer No. 41 -** *Mark Flake*  
2 *Chadwick & Nancy Fife*  
3 *Clifford H. & Debra Dovel*  
4 *Nina Nyvonen*  
5 *Melvin & Donna Crawford*  
6 *Lloyd E. Dovel*  
7 *Shelby L. & Tracy Brown*  
8 *Lynch Lane LLC*  
9 *Oakshire Estate LLC*  
10 *Russell & Catherine Wilkinson*  
11 *Kenneth P. Bates, Jr.*

12 There were no exceptions filed to the rights confirmed by the Court for Answer 41 lands.  
13 However, one parcel was incorrectly identified; one parcel describes lands both in Answer No. 41  
14 and Answer No. 1 and several parcels have been divided with new parcel numbers assigned and  
15 new owners. George Marshall testified on behalf of AID at the supplemental hearing and Exhibit  
16 AID-53 was offered into evidence.

17 The Court concluded there was a senior right to irrigate 90.2 acres appurtenant to the land  
18 described in Answer No. 41 and a junior right for 1.8 acres and those rights were described on  
19 pages 454 and 455 of the Report. The Court withdraws the confirmation of those rights and will  
20 divide the right on page 454 between the current property owners. Consistent with the ruling in the  
21 Special Issues section above, there will be no junior right confirmed. Certificate No. 270, with a  
22 priority date of 1878 issued for this land following the earlier adjudication and authorized  
23 diversions in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Government Lots 2 and 4, all in  
24 Section 18, T. 12 N., R. 17 E.W.M., which are on both Bachelor and Hatton Creeks. These  
25 locations will be authorized in the following rights, all with a season of use from April 15 through  
26 July 10, and with a June 30, 1878, date of priority:

27 To Mark Flake, a right to divert 0.02 cfs, 4.27 acre-feet per year for the irrigation of 2.48  
28 acres in that part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T. 12 N., R. 17 E.W.M. described as follows:  
29 Beginning N 88°48'25" W 1327.34 feet and N 42'50" E 16.46 feet from the southeast corner of the  
30 section; thence N 42'50" E 333 feet; thence N 89°17'10" W 405 feet; thence S 42'50" W 430 feet to  
31 the center line of Bachelor Creek; thence easterly along the center line of the creek to beginning  
32 (Parcel #171207-43003).

33 To Chadwick and Nancy Fife, a right to divert 0.02 cfs, 3.61 acre-feet per year for the  
34 irrigation of 2.1 acres in the West 513.7 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of

1 Section 18 lying southerly of the county road right-of-way and northerly of Bachelor Creek, in T.  
2 12 N., R. 17 E.W.M. (Parcel #171207-43006).

3 To Clifford H. & Debra Dovel, a right to divert 0.06 cfs, 10.11 acre-feet per year for the  
4 irrigation of 5.88 acres in that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
5 18 lying northerly of Bachelor Creek and southerly of Ahtanum Road and westerly of a line parallel  
6 with and 871.06 feet easterly of the west line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$ , except the west 513.7 feet thereof;  
7 also that portion of Lot 3 of Short Plat 93-17 described as follows: beginning 119.06 feet S  
8 02°04'21" E of the northwest corner of said Lot 3; thence S 89°17'10" E 124.82 feet; thence S  
9 0°42'50" E 115 feet; thence S 89°17'10" E 175 feet; thence S 0°42'50" E 232.23 feet; thence S  
10 89°17'10" E 200 feet; thence S 0°42'50" W 20 feet; thence N 89°17'10" W 405 feet; thence S  
11 0°42'50" E 430 feet more or less to Bachelor Creek right-of-way; thence westerly along said right-  
of-way to a point S 02°04'21" E of the point of beginning; thence N 02°04'21" W 893 feet more or  
less to the point of beginning (Parcel # 171207-43410).

12 To Nina Nyvonen, a right to divert 0.05 cfs, 9 acre-feet per year for the irrigation of 5.23  
13 acres in that portion of NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T. 12 N., R. 17 E.W.M. described as follows:  
14 Beginning S 01°20'09" W 484.76 feet from the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; thence N 89°40'  
15 W 618.39 feet; thence S 56°55' W 400 feet; thence S 89°40' E 615.68 feet; thence N 01°20'09" E  
400.04 feet to the beginning, except road right-of-way (Parcel #171218-12005).

16 To Melvin and Donna Crawford, a right to divert 0.03 cfs, 4.8 acre-feet per year for the  
17 irrigation of 2.79 acres in that portion of the west 580 feet of the south 300 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
18 Section 18, T. 12 N., R. 17 E.W.M. lying north of the following described line: Beginning S  
19 01°20'09" W 934.8 feet from the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; thence N 89°40' W to the west  
line and end of said line (Parcel #171218-12010).

20 To Lloyd E. Dovel a right to divert 0.14 cfs, 23.70 acre-feet per year for the irrigation of  
21 13.78 acres in that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7 lying south of Bachelor Creek and that  
22 portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 18 lying south of Bachelor Creek and north of Hatton Creek,  
23 except beginning S 01°20'09" W 484.76 feet from the northeast corner of the W $\frac{1}{2}$ NE $\frac{1}{4}$ ; thence N  
24 89°40' W 618.39 feet; thence S 56°55' W 400 feet; thence S 89°40' E 615.68 feet; thence N  
25 01°20'09" E 400.04 feet to the beginning; AND except the west 580 feet of the south 300 feet of the  
NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, lying north of the following described line: Beginning S 01°20'09" W  
934.8 feet from the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ ; thence N 89°40' W 934.8 feet to the west

1 line to point "A" and end of said line; and except the north 170 feet of the west 430 feet of the  
2 NW¼NE¼ lying south of the following described line: beginning S 01°20'09" W 984.8 feet from  
3 the northeast corner of said subdivision; thence N 89°40' W to the west line of said subdivision and  
4 end of said line (Parcel #171218-12011).

5 To Shelby L. and Tracy Brown, a right to divert 0.01 cfs, 1.58 acre-feet per year for the  
6 irrigation of 0.92 acre in the north 170 feet of the west 430 feet of the NW¼NE¼ of Section 18, T.  
7 12 N., R. 17 E.W.M. lying south of the following described line: Beginning S 01°20'09" W 984.4  
8 feet from the northeast corner of the NW¼NE¼; thence N 89°40' W to the west line of the  
9 subdivision and end of said line (Parcel #171218-12012).

10 To Lynch Lane LLC, a right to divert 0.05 cfs, 8.82 acre-feet per year for the irrigation of  
11 5.13 acres in the north 396 feet of the E½SW¼NE¼ of Section 18, T. 12 N., R. 17 E.W.M. lying  
12 southerly of Hatton Creek, also that portion of the E½NW¼NE¼ of Section 18 lying southerly of  
13 Hatton Creek., except road right-of-way (Parcel #171218-13001).

14 To Oakshire Estate LLC, a right to divert 0.26 cfs, 44.26 acre-feet per year for the irrigation  
15 of 25.73 acres in that portion of the W½NE¼ of Section 18, T. 12 N., R. 17 E.W.M. lying south of  
16 Hatton Creek, except that portion of the E½W½NE¼ lying north of a line 396 feet south of the  
17 northeast corner of the SW¼NE¼ and except that portion of the west 250 feet lying north of a line  
18 396 feet south of the northwest corner of the SW¼NE¼ (Parcels #171218-13005 and 13006).

19 To Russell and Catherine Wilkinson, a right to divert 0.12 cfs, 20.3 acre-feet per year for the  
20 irrigation of 11.8 acres in Government Lot 3, the south 100 feet of the SE¼NW¼, and Government  
21 Lot 4, except beginning S 89°24' W 1325.9 feet and S 0°08' E 2906 feet from the northeast corner  
22 of Section 18; thence S 89°52' W 597.3 feet; thence S 0°08' E 197 feet more or less to the center of  
23 Ahtanum Creek; thence easterly along the center line of the creek to a point S 0°08' E of the point  
24 of beginning; thence N 0°08' W 65 feet more or less to the point of beginning; all in Section 18, T.  
25 12 N., R. 17 E.W.M. (Parcels #171218-31003 and 42002).

To Kenneth P. Bates, Jr., a right to divert 0.05 cfs, 9.03 acre-feet per year for the irrigation  
of 5.25 acres in Government Lot 5 of Section 18, T. 12 N., R. 17 E.W.M. (Parcel #171218-41001).

**Answer No. 42 - R.E. Cornelius**

The Court confirmed both a senior and junior right to lands owner by R.E. Cornelius under  
Answer No. 42 and Certificate No. 174 (Report @173-175, 410, 411). The United States took  
exception to the confirmation. AID provided additional information and in response, the United

1 States withdrew its exception. This was confirmed during the February 17, 2004, hearing. Based  
2 on AID-8A, the confirmation in the Report on page 410 is modified as follows.

3 The Court confirms water right to R.E. Cornelius with a June 30, 1870 priority date to divert  
4 0.33 cfs, 56.76 acre-feet from Ahtanum Creek and Hatton Creek from April 15 through July 10 for  
5 irrigation on the following tracks of land in Section 17, T. 12 N., R. 17 E.W.M.

6 The NW $\frac{1}{4}$ NE $\frac{1}{4}$ , except beginning at the northeast corner thereof, thence west 208 feet,  
7 thence south 314.13 feet, thence east 80.5 feet, thence southeasterly 255 feet to a point 16.5  
8 feet west and 545.13 feet south of the northeast corner of NW $\frac{1}{4}$ NE $\frac{1}{4}$ , thence south to a point  
9 on the south line of NW $\frac{1}{4}$ NE $\frac{1}{4}$ , thence east 16.5 feet, thence north to beginning. And  
10 except west 50 feet of the east 258 feet of north 194 feet and except west 20 feet of county  
11 road and except west 260 feet of east 518 feet of north 164 feet and except north 25 feet of  
12 county road (19 acres within Parcel #1712217-12001).

13 Government Lot 3, except the east 16.5 feet of the north 756 feet; and except the west 20  
14 feet for county road; and except that part of Governmental Lot 3 lying south of a line 2003.5  
15 feet south of north line of NW $\frac{1}{4}$ NE $\frac{1}{4}$  (14 acres within Parcel #171217-13001).

16 The points of diversion are located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 17, T. 12 N., R. 17 E.W.M.  
17 (Hatton Creek), and Government Lot 2 of Section 17, T. 12 N., R. 17 E.W.M. (Ahtanum Creek).

18 A junior right was also confirmed to R.E. Cornelius. Report @ 411. The Court has  
19 determined no junior rights will be confirmed and are DENIED. See Special Issues section above.

20 **Answer No. 43** - *Donald Day*  
21 *Charles T. Williams*  
22 *Smiley S. and Melissa Garver (Claim No. 2081)*  
23 *Harry A. Sodeman*  
24 *Stanley W. and Linda M. Emerick*  
25 *Michael R. and Sherry Drury*  
*Roger R. Meusborn*

26 In the Report, page 179, a senior right was confirmed to irrigate 22.79 acres within the area  
27 covered by Answer No. 43. AID took exception, seeking to present evidence that there are five  
28 additional parcels lying within Answer No. 43 that were not considered by the Court. George  
29 Marshall testified in support of the exception and exhibit No. AID-54 was entered into evidence.

30 The evidence presented at the initial hearing lead to a finding there could be a senior water  
31 right to irrigate up to 68.1 acres, but a right was being asserted to irrigate only 22.79 acres. See  
32 Report beginning on page 178, line 18 to page 179, line 2. Therefore, the water right confirmed and  
33 described on page 424 of the Report authorized the irrigation of 22.79 acres within four parcels in  
34 the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M. According to Mr. Marshall's testimony and  
35

1 AID-8A, there is an additional parcel in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 and four parcels in the  
2 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8 that were not considered in the initial report. Mr. Marshall testified the  
3 parcels have historically been irrigated and continue to be irrigated. Some of the parcels are  
4 irrigated pasture and hay is grown on others. A total of 63.71 acres are being irrigated within the  
5 area described in Answer No. 43. The Yakama Nation responded to AID's exceptions and  
6 addressed this land in the Niel Allen declaration and attachments, indicating fewer acres were being  
7 irrigated. However, on February 18, 2004, the Nation withdrew its objections to Answer 43.

8 AID-8A shows the following parcels, irrigated acres and ownership for Answer No. 43  
9 lands: Parcel #171208-31003, 4.25 irrigated acres owned by Charles T. Williams; 171208-31004,  
10 2.88 irrigated acres owned by Donald Day; 171208-31005, 1.32 irrigated acres owned by Donald  
11 Day; 171208-31404, 28.0 irrigated acres owned by Smiley S. and Melissa Garver; 171208-34001,  
12 4.81 irrigated acres owned by Harry A. Sodeman; 171208-34002, 4.25 irrigated acres owned by  
13 Stanley W. and Linda M. Emerick; 171208-34003, 4.80 irrigated acres owned by Michael R. and  
14 Sherry Drury; 171208-34005, 4.20 irrigated acres owned by Michael R. and Sherry Drury; 171208-  
15 34004, 9.20 irrigated acres owned by Roger R. Meusborn. It is noted that in the 2002 Report @  
16 134, the Court stated that AID-8 identified Parcels #171208-31403 and 04 and 171208-31007 as  
17 being within Answer No. 11, but the Court was not able to confirm a water right because those  
18 lands were not within the Answer No. 11 area. Although AID points out that Parcel No. 171208-  
19 31007 is within Answer No. 43, not Answer No. 11, and appears to assert a right for that parcel,  
20 AID-8A does not list the parcel as being assessed or having any irrigated acres. Therefore, the  
21 Court will not confirm a right for that parcel.

22 The right previously confirmed by the Court did not break down the right for each parcel,  
23 which the Court will now do. Therefore, the right described on page 424, lines 12 through 21 is  
24 deleted and the following rights are herein confirmed, all with a June 30, 1871, date of priority, a  
25 season of use from April 15 through July 10, and the point of diversion that will be authorized is on  
Bachelor Creek in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. The Court would note that during the supplemental  
hearing there was testimony of where the current landowners divert their water and the testimony  
would indicate that only Smiley and Melissa Garver are using the historical point of diversion on  
Bachelor Creek in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. Although Mr. Marshall's testimony suggested that  
the diversion by Charles Williams was within the quarter/quarter authorized by the certificate, the  
Court does not reach the same conclusion. Mr. Marshall testified that Mr. Williams had a pump on

1 the creek as it flowed through his property. Mr. Williams' property is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8  
2 and the authorized point of diversion is in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8. Any of the landowners  
3 confirmed a right here must file with Ecology an application to change the point of diversion if they  
4 are not using the historical diversion that is being used by the Garvers. The Court confirms the  
following rights for use of Bachelor Creek, for the irrigation of a total of 63.71 acres.

5 To Donald Day, a right to divert 0.04 cfs, 7.22 acre-feet per year for the irrigation of 4.2  
6 acres within two parcels in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M. described as  
7 follows: 1) Beginning at the southeast corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8; west 466.7 feet; thence  
8 north 515 feet; thence east 258.7 feet; thence south 314 feet; thence east 208 feet; thence south 201  
9 feet to the point of beginning (Parcel #171208-31004, 2.88 acres); 2) Beginning at the south quarter  
10 corner of Section 8, thence north along Carson Road, 1521 feet to the true point of beginning;  
11 thence west 208 feet; thence north 314 feet; thence east 208 feet; thence south 314 feet more or less  
to the true point of beginning (Parcel #171208-31005, 1.32 acres).

12 To Michael R. and Sherry Drury, a right to divert 0.09 cfs, 15.48 acre-feet per year for the  
13 irrigation of 9 acres in two parcels within Section 8, T. 12 N., R. 17 E.W.M. described as follows:  
14 1) the north 330 feet of the south 660 feet of the east 660 feet of the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, (Parcel  
15 #171208-34003, 4.8 acres) and 2) the south 330 feet of the east 660 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
Section 8 (Parcel #171208-34005; 4.2 acres).

16 To Stanley W. and Linda M. Emerick, a right to divert 0.04 cfs, 7.31 acre-feet per year for  
17 the irrigation of 4.25 acres in the north 330 feet of the south 990 feet of the east 660 feet of the  
SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M. (Parcel #171208-34002).

18 To Smiley S. and Melissa Garver (Claim No. 2081), a right to divert 0.28 cubic feet per  
19 second, 48.16 acre-feet per year for the irrigation of 28 acres in Parcel 2, Book D-0045, being  
20 within the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M. (Parcel #171208-31404).

21 To Roger R. Meusborn, a right to divert 0.09 cfs, 15.82 acre-feet per year for the irrigation  
22 of 9.2 acres in the south 660 feet of the west 660 feet of the east 1320 feet of the E $\frac{1}{2}$ SW $\frac{1}{4}$  of  
Section 8, T. 12 N., R. 17 E.W.M. (Parcel #171208- 34004).

23 To Harry A. Sodeman, a right to divert 0.05 cfs, 8.27 acre-feet per year for the irrigation of  
24 4.81 acres in the north 330 feet of the east 660 feet of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N.,  
25 R. 17 E.W.M. (Parcel #171208-34001).

1 To Charles T. Williams, a right to divert 0.04 cfs, 7.31 acre-feet per year for the irrigation of  
2 4.25 acres in that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M. described as follows:  
3 Beginning at a point 1835 feet north of the south quarter corner; thence west 466.7 feet; thence  
4 north 466.7 feet; thence east 466.7 feet; thence south 466.7 feet to the point of beginning (Parcel  
#171208-31003).

5 **Answer No. 44** - *Orville M. & Gweneth Seward*  
6 *Bradley & Kelli Vetsch*  
7 *Charles E. Vetsch, Sr. and Sharon Vetsch*

8 The only exception filed concerning this answer number was Ecology's regarding adequate  
9 proof of beneficial use. Ecology and the Vetsches reached a stipulation whereby Ecology agreed to  
10 not pursue its exception regarding beneficial use. See Stipulation dated January 26, 2004.  
11 However, the county parcel numbers have changed for the land owned by Orville M. and Gweneth  
12 Seward. AID provided the Court with the updated parcel information as part of AID-8A. The  
13 number of acres for which a right can be confirmed for lands in Answer No. 44 has not changed, see  
14 the Report @180. AID-8A contains a breakdown of the right confirmed under Answer No. 44 and  
found in the Report @ 476. Therefore, the right on page 476, lines 1 through 12, from the Report is  
replaced with the following three water rights for use of Ahtanum Creek and Hatton Creek:

15 To Orville M and Gweneth Seward a water right to divert 0.16 cfs, 27.43 acre-feet per year  
16 for irrigation of 15.95 acres within Lot 1 of Short Plat AF#7132622 within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
Section 16, T. 12 N., R. 17 E.W.M. (Parcel #171216-21405).

17 To Bradley and Kelli Vetsch a water right to divert 0.03 cfs, 5.16 acre-feet per year for  
18 irrigation of 3 acres within Lot 2 of Short Plat 85-268 within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 16, T. 12 N.,  
19 R. 17 E.W.M. (Parcel # 171216-24400).

20 To Charles E. Vetsch, Sr. and Sharon Vetsch, a water right to divert 0.03 cfs, 5.16 acre-feet  
21 per year for irrigation of 3 acres within Lot 3 of Short Plat 85-268 within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
22 16, T. 12 N., R. 17 E.W.M. ( Parcel #171216-24401).

23 The priority date for all three water rights is June 30, 1891. The season of use is April 15  
24 through July 10. One authorized point of diversion is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 16;  
25 however, currently there is no water source that flows through this part of the section. The other  
two authorized diversions are on Ahtanum Creek in Government Lot 3 and on Hatton Creek in the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, all in T. 12 N., R. 17 E.W.M.

1 **Answer No. 45 -** *Vernon & Jo Marie Carson (Claim No. 00370)*  
2 *Laddy L. Vibbert*  
3 *Loren F. Wiley*  
4 *David Carson*

5 The Yakama Nation filed an exception (#32) to the water right confirmed for lands in  
6 Answer No. 45. AID, on behalf of the Answer No. 45 landowners, and the Yakama Nation  
7 informed the Court during the January 28, 2004, hearing that a stipulation had been reached  
8 resolving the exceptions. Pursuant thereto, the parties agreed that the extent of the water right set  
9 forth on page 407, line 17 would be reduced to authorize the irrigation of 67 acres rather than 70  
10 and the Report is so modified. The stipulation filed on April 22, 2004, shows that within the lands  
11 owned by Laddy Vibbert, there is a right to irrigate 2.83 acres. AID has provided the Court  
12 sufficient information to divide the water right described on page 407, lines 13 through 25 between  
13 the landowners. Therefore, that right is withdrawn and the following rights are confirmed for the  
14 use of water from Bachelor or Hatton Creeks, with diversions in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
15 Section 17; the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and a point located 200 feet south and 300 feet east from the center of  
16 Section 8, in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, all in T. 12 N., R. 17 E.W.M. The priority date is June 30,  
17 1870 and the season of use is April 15 through July 10.

18 To Vernon and Jo Marie Carson, a right to divert 0.43 cfs, 73.93 acre-feet per year for the  
19 irrigation of 42.98 acres in the N 200 feet of the S 2035.55 feet of the W 326.70 feet of the W $\frac{1}{2}$ SE $\frac{1}{4}$   
20 of Section 8 (Parcel #171208-42002), the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , except beginning at the SW corner of the  
21 SE $\frac{1}{4}$ ; thence N 1835.55 feet to the true point of beginning; thence N 200 feet; thence E 326.70 feet;  
22 thence S 200 feet; thence W 326.7 feet to the true point of beginning and except the N 266 feet of  
23 the W 155 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , in Section 8 (Parcel #171208-42006), and Parcel 1, of Short  
24 Plat recorded in Book 79-0158, being a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 (Parcel #171208-  
25 43401), ALL in T. 12 N., R. 17 E.W.M.

To David Carson, a right to divert 0.08 cfs, 14.05 acre-feet per year for the irrigation of 8.17  
acres in Lot 3 of Short Plat 79-158, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N. R. 17 E.W.M.  
(Parcel #171208-43403).

To Loren F. Wiley, a right to divert 0.13 cfs, 22.38 acre-feet per year for the irrigation of  
13.01 acres in the N 388 feet of the S 675 feet of the E 338 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8  
(Parcel #171208-43001), the E 388 feet of the S 287 feet of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 (Parcel

1 #171208-43002) and Lot 4 of Short Plat 79-158, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 (Parcel  
2 #171208-43404) ALL in T. 12 N. R. 17 E.W.M.

3 To Laddy L. Vibbert, a right to divert 0.03 cfs, 4.87 acre-feet per year for the irrigation of  
4 2.83 acres in Lot 2 of Short Plat 79-158, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N.  
5 R. 17 E.W.M. (Parcel #171208-43402).

6 Consistent with the Court's ruling above on junior rights, the junior right set forth at page  
7 408 for lands within Answer No. 45 is withdrawn.

8 **Answer No. 46** - *Russell and Catherine Wilkinson*  
*Dwinell's Central Neon Company*  
*Chancery*

9 Based on evidence from the initial hearing, the Court confirmed a right to the Chancery and  
10 Dwinell's Central Neon for lands lying within Answer No. 46, Report at 183 -184. AID filed an  
11 exception and presented evidence that two parcels within Answer No. 46 were incorrectly included  
12 on the portion of the original AID-8 that showed lands without a Pope Answer. The Yakama  
13 Nation initially objected to the number of acres for which a right was being asserted but withdrew  
14 its exception February 18, 2004. George Marshall, Theodore Hague, Michael Drury, Edmund  
15 Campbell and Melanie Cornelius testified at the supplemental hearing in support of the claim.

16 The two parcels incorrectly identified as not having a Pope Answer were 171218-23001 and  
17 171218-24001. Parcel 171218-24001 is owned by Russell and Catherine Wilkinson. Since the  
18 initial evidentiary hearing, the county changed the parcel number designation and it is now Parcel  
19 171218-24004. Parcel 171218-23001 is owned by the Chancery and is part of the Ahtanum  
20 Mission property.

21 In its Report @ 182, the Court concluded a senior right existed for the irrigation of 60 acres  
22 within Answer No. 46. No objection was made to this conclusion. AID-8A divides the 60 acres up  
23 between the three landowners as follows: Within Parcel 171218-21006, the Chancery has a right  
24 for 23.54 acres and within Parcel 171218-23001, it has a right to 20.07 acres; within Parcel 171218-  
25 21402, Dwinell's Central Neon has a right to 2.39 acres; and within Parcel 171218-24004, the  
Wilkinsons have a right to 14 acres. AID-8A also shows each land owner irrigating more acres than  
reflected in the senior right that can be awarded within Answer No. 46. AID-34 was offered to  
support the claim for the Wilkinson's portion of the land. In addition to parcel information that is  
specific to the Wilkinson land, there are also aerial photographs that include the other lands lying

1 within Answer No. 46. The aerial photos show the Answer No. 46 land during those years material  
2 to the Court's inquiry. The testimony and evidence presented was not entirely clear concerning the  
3 number of acres being irrigated, leading the Court to pay particular attention to the aerial  
4 photographs. There are three aerial photographs which have fields designated and acres written. In  
5 most cases, those numbers differ significantly from AID-8A. AID-8A shows that within parcel  
6 21004 there are 39.0 acres irrigated; however the aerial photo reflects about 31 acres; for parcel  
7 23001, AID-8 shows 43 acre irrigated, the photo 31; for parcel 21402 AID-8 shows the entire parcel  
8 being irrigated (5.13 acres), yet in the aerial photo the land appears to be totally in sagebrush. The  
9 only parcel where the number of acres in AID-8 A and the aerial photo are consistent is 24004,  
10 owned by the Wilkinsons.

11 Certificate No. 328, a Class 22 right with an 1888 date of priority, was initially the only  
12 certificate offered into evidence for the Answer No. 46 lands. AID-8A identifies that a portion of  
13 Certificate No. 76, a Class 1 right with an 1852 priority date is also appurtenant. Certificate No. 76  
14 originally authorized the diversion of 0.66 cfs for the irrigation of 33 acres in most of Lot 1 of  
15 Section 13, T. 12 N., R. 16 E.W.M. A 1935 Certificate of Change recorded in Volume 1, page 140  
16 authorized Andrew Hague, the owner of the land, to change the place of use and point of diversion  
17 for 0.20 cfs of the water right. Although the number of acres subject to the change were not  
18 identified, 0.20 cfs would have been sufficient for the irrigation of 10 acres. The certificate of  
19 change authorized changing the point of diversion for this portion of the water right to a point in  
20 Government Lot 1 of Section 13 and changing the place of use to the  $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$  of Section 18,  
21 T. 12 N., R. 17 E.W.M., which is part of Parcel #171218-21004, owned by the Chancery.

22 The Court on pages 183, 473 and 474 of the Report confirmed water rights to Dwinell's  
23 Central Neon and the Chancery. Although the extent of the senior right described on page 473 will  
24 not change, the Court will divide it between the landowners. Therefore, the Court rescinds the  
25 rights described on page 473 and 474. Because the testimony of the number of acres being irrigated  
was not clear and the Court has aerial photos with what appears to be better information, the aerial  
photos will be used. As discussed in the Special Issues section above beginning on page ###, the  
Court will not confirm junior rights. The following rights to use Ahtanum Creek, Bachelor Creek  
and Hatton Creek will all have a season of use from April 15 through July 10.

The Court confirms a water right to the Chancery with a June 30, 1852, date of priority for  
the diversion of 0.10 cfs, 17.2 acre-feet per year for the irrigation of 10 acres in the  $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$

1 of Section 18, T. 12 N., R. 17 E.W.M. (portion of Parcel #171218-21004). The point of diversion  
2 on either Bachelor or Hatton Creek is in Government Lot 1 of Section 13, T. 12 N., R. 16 E.W.M.  
3 A right is also confirmed to the Chancery with a June 30, 1888, date of priority for the diversion of  
4 0.14 cfs, 23.29 acre-feet per year for the irrigation of 13.54 acres in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  and that  
5 portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  lying north of Hatton Creek, in Section 18, T. 12 N., R. 17 E.W.M. (a  
6 portion of Parcel #171218-21004). The points of diversion are on Bachelor and Hatton Creeks  
7 within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and Government Lot 4 of Section 13, T. 12 N., R. 16 E.W.M., Government  
8 Lots 1 and 2 and the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 18, T. 12 N., R. 17 E.W.M.

9 The Court confirms a right to Russell and Catherine Wilkinson with a June 30, 1888, date of  
10 priority for the diversion of 0.14 cfs, 24.08 acre-feet per year for the irrigation of 14 acres in that  
11 part of Government Lot 2 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18, T. 12 N., R. 17 E.W.M. lying south of  
12 Hatton Creek and north of Ahtanum Creek (Parcel #171218-24004). The points of diversion are  
13 located on Bachelor and Hatton Creeks in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and Government Lot 4 of Section 13, T.  
14 12 N., R. 16 E.W.M., Government Lots 1 and 2 and the E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 18, T. 12 N., R. 17  
15 E.W.M.

16 At this time the Court will not confirm a right for the portion of the Answer No. 46 lands  
17 owned by Dwinell's Central Neon Company. Additional evidence of beneficial use of water on this  
18 parcel is needed to confirm a water right.

19 **Answer No. 47 – Robert S. Anderson**

20 The Court reviewed the evidence presented in support of a water right for lands in Answer  
21 No. 47 on pages 184 -186 of the Report. The Court found a senior water right existed for the  
22 irrigation of 100 acres and a junior water right existed for the irrigation of 1.1 acres. However,  
23 there are two certificates from *Achepohl* appurtenant to the Answer 47, each with a different priority  
24 date. The evidence was not adequate to allow the Court to determine how many acres were being  
25 irrigated under each of the water right certificates, resulting in the Court not confirming water rights  
and asking that additional information be provided. The Court also denied the right that was  
asserted for use of water from Wiley Springs. Mr. Anderson filed an exception to denial of a right  
to use Wiley Springs and to allow presentation of the additional information requested by the Court.

George Marshall, manager of AID, and Michael Drury, who farms the land, testified at the  
supplemental hearing. According to Mr. Marshall's testimony and revised AID-8A, 92.19 acres of  
the senior water right are within the place of use on *Achepohl* Certificate No. 125 with a priority

1 date of June 30, 1869, and 7.81 acres are within the place of use on *Achepohl* Certificate No. 339  
2 with a priority date of June 30, 1902. The junior water right for the irrigation of 1.1 acres is within  
3 the area described on Certificate No. 125. AID-8A shows 78.13 acres of senior water right in  
4 Government Lots 1, 2 and 3 of Section 16 and 14.06 acres of senior water right in that portion of  
5 Government Lot 4 of Section 15 lying north of Ahtanum Creek. Mr. Drury testified about his  
6 estimation of the number of acres irrigated in each of the fields on the Anderson property and the  
7 method of irrigating. That testimony is not consistent with the information contained in AID-8A.  
8 When the acres to which Mr. Drury testified are added, the total is 77 acres, not the 101.1 acres  
9 reflected in AID-8A. Mr. Marshall's testimony was that the acres in AID-8A for senior and junior  
10 rights came from the Court's Report - from evidence presented at the initial hearing for Subbasin  
11 No. 23. The Court finds Mr. Drury's testimony does not lead to changing the number of acres for  
12 which a water right can be confirmed. His testimony was based on his recollection of how many  
13 acres might be irrigated in different portions of the claimant's land and appeared to be estimates. A  
14 review of the aerial photographs leads to a conclusion Mr. Drury likely underestimated the number  
15 of acres. Therefore, the Court's prior ruling on the confirmed number of acres will not be disturbed.

16 Mr. Anderson also took exception to the Court not confirming a water right for use of Wiley  
17 Springs. The evidence presented leads the Court to conclude Wiley Springs has historically been  
18 used to irrigate the land and is a source authorized for use in the certificates appurtenant to the land.  
19 Both certificates describe a point of diversion in the portion of the section where the spring is  
20 located - although one describes it as Government Lot 2 and other as Government Lot 3 of the  
21 section. The spring is close to the line between the two government lots. A 1907 map that is part of  
22 AID-39 shows the spring flowing into Eglin Ditch within the area owned and irrigated by  
23 Mr. Anderson. The Court finds that Certificates No. 125 and 339 do authorize use of Wiley Springs.  
24 At the initial evidentiary hearing, Mr. Anderson testified the spring is used after July 10 when he  
25 must stop diverting creek water. However, the Court finds that use of spring water carries the same  
constraints as diversions directly from Ahtanum Creek - use must stop on July 10.

26 The Court confirms a water right with a June 30, 1869, date of priority for the diversion of  
27 0.92 cubic foot per second, 158.52 acre-feet per year from Ahtanum Creek and/or Wiley Springs for  
28 the irrigation of 92.16 acres. The place of use shall be 78.13 acres within Government Lots 1, 2 and  
29 3 of Section 16 (Parcel #161216-31002) and 14.06 acres within Government Lot 4 of Section 15,  
30 except beginning at the northwest corner of Government Lot 4; thence E 1352 feet; thence S 198

1 feet; thence N 76°20' W 568 feet; thence S 81°45' W 353 feet; thence N 81°48' W 454 feet; thence  
2 N 50 feet to the beginning (Parcel #161215-32001), both in T. 12 N., R. 16 E.W.M. The points of  
3 diversion are in Lot 3 of Section 16 and the NE¼SE¼ of Section 17, T. 12 N., R. 16 E.W.M.

4 The Court also confirms a senior water right with a June 30, 1902, priority date for the  
5 diversion of 0.08 cubic foot per second, 13.43 acre-feet per year from Ahtanum Creek for the  
6 irrigation of 7.81 acres in Government Lot 4 of Section 16, T. 12 N., R. 16 E.W.M. (portion of  
7 Parcel #161216-31002). The authorized points of diversion are in Government Lot 2 of Section 16  
8 and the NE¼NE¼ of Section 17, T. 12 N., R. 16 E.W.M. The Court is not identifying the spring as  
9 a source of water due to the place of use being updrainage from the spring location.

10 The Court has reconsidered its decision regarding confirmation of junior rights. See Special  
11 Issues section above. Any claim to a junior right is denied for the reasons stated in that section.

12 **Answers No. 48 & 49 - No Claim**

13 **Answer No. 50 - *Leo Richardson***  
14 ***Richard & Terry C. Welch***  
15 ***Leanne & George R. Amer***  
16 ***James & Elizabeth Amer***  
17 ***William G. Evans (Court Claim No. 01911)***

18 The Court concluded there was a senior right for the irrigation of 56.5 acres and a junior  
19 right for the irrigation 12.47 acres in the SW¼SW¼ of Section 11, the W½ of Lot 1 and the west 18  
20 feet of the E½ of Lot 1 in Section 14, Government Lots 3 and 4 of Section 15, all in T.12 N.,  
21 R. 17 E.W.M. Report at 189. Certificate No. 199, with a priority date of 1871 is appurtenant to  
22 these lands and authorized the diversion of 1.6 cubic feet per second for the irrigation of 80 acres.  
23 Answer No. 50 also included lands in Government Lot 3 of Section 15, T. 12 N., R. 16 E.W.M.,  
24 however, the evidence at the initial hearing did not address that land, leading the Court to conclude  
25 a right was not being claimed. Government Lot 3 of Section 15, T. 12 N., R. 16 E.W.M. is owned  
26 by William Evans and both Mr. Evans and AID filed exceptions to a right not being confirmed.

27 AID offered the testimony of George Marshall in support and Mr. William Evans testified as  
28 well. AID-8A shows that within the area described in Answer No. 50, there are 19 acres irrigated  
29 with surface water in that portion of Government Lot 3 lying south of Ahtanum Road and north of  
30 Ahtanum Creek, in Section 15, T. 12 N., R. 16 E.W.M. Water from a spring located in Government  
31 Lot 4 of Section 15 flows into a ditch that conveys water to the Evans property in that portion of  
32 Government Lot 3 south of Ahtanum Road. Certificate No. 297, from *Achepohl*, with a priority

1 date of 1882, authorizes the diversion of 0.38 cfs for the irrigation of 19 acres in Lot 3 of Section  
2 15, T. 12 N., R. 16 E.W.M. The authorized point of diversion is in Lot 4 of Section 15.

3 AID-8A shows that portions of the land initially confirmed a water right do not actually lie  
4 within Answer No. 50, but are within Answer No. 217. Parcels 171215-12400, 402, 403 and 404,  
5 171215-11402, 403 and 404 lie partly in the area included in Answer No. 50 (Lots 3 and 4 of  
6 Section 15) and partly in the area included in Answer No. 217 (N½NE¼ of Section 15). According  
7 to AID-8A, excluding the portions of the identified parcels that lie in Answer No. 217, reduces the  
8 number of acres irrigated by the 19 acres now being claimed for the Evans parcel in Section 15, T.  
9 12 N., R. 16 E.W.M.

10 Mr. Evans testified to irrigating an apple orchard in Section 15, T. 12 N., R. 16 E.W.M. with  
11 water diverted from a spring and carried in the Slavin Ditch. However, the testimony does not  
12 indicate when Mr. Evans acquired the land or whether it was being irrigated prior to his acquisition,  
13 so the Court has no information about historic water use. Although Answer No. 50 indicates 56.50  
14 acres are being irrigated, the lands described in Answer No. 50 are much larger than that. Evidence  
15 of what land was being irrigated at the time of filing the answer would assist in determining the  
16 lands which have a water right. The Court reviewed SE-174 which is a map prepared in 1957 as  
17 part of the proceedings that lead to the Pope Decree. The map is of the Ahtanum Creek basin and  
18 irrigated lands are yellow if irrigated with water supplied by AID, green if irrigated with water  
19 supplied by Johncox Ditch Company and brown if irrigated with water supplied by another means.  
20 The Evans property is not colored at all, indicating it was not irrigated. The other lands within  
21 Answer No. 50 are colored in yellow, indicating they are irrigated and are part of Ahtanum  
22 Irrigation District. The Court estimates that there are at least 56.50 acres irrigated within the area  
23 that is colored yellow.

24 Since the only beneficial use evidence on the Evans' property was for the period after the  
25 Evans acquired the land, the Court cannot conclude it is entitled to a portion of the water right  
protected through the filing of Answer No. 50. Thus, the Court will confirm a senior right for all  
Answer No. 50 irrigated land lying in Sections 11 and 15, T. 12 N., R. 17 E.W.M. The exception of  
William Evans and AID for a water right for land in Section 15, T. 12 N., R. 16 E.W.M. is denied.

The Court also notes Certificate No. 199, which AID identified as being the Achepohl  
certificate for all Answer No. 50 lands in Sections 11, 14 and 15, does not describe all of the  
Answer No. 50 lands in the place of use description. A portion of Parcel 171215-11001 lies in the

1 E½ of Lot 1 in Section 14, T. 12 N., R. 17 E.W.M. The place of use for Certificate No. 199 only  
2 describes the W½ of Lot 1 in Section 14. However, the Court has located Certificate No. 200,  
3 issued to Alice Simpson Angela with an 1871 date of priority, which authorizes the diversion of 1.2  
4 cfs for the irrigation of 60 acres in the E½ of Lot 1 and all of Lot 2 of Section 14, T. 12 N., R. 17  
5 E.W.M. This certificate authorizes irrigation of the small portion of the E½ of Lot 1 in Section 14  
6 that is part of Parcel No. 171215-11001.

7 As discussed in the Special Issues section, the Court has reconsidered its prior ruling on  
8 junior rights and the claim for junior rights for lands in Answer No. 50 is denied.

9 The Court confirms the following water rights for use of Ahtanum Creek for lands within  
10 Answer No. 50, each a priority date of June 30, 1871, a season of use of April 15 through July 10  
11 and a point of diversion in Government Lot 2 of Section 14, T. 12 N., R. 17 E.W.M.:

12 To James and Elizabeth Amer, a right to divert 0.05 cfs, 7.98 acre-feet per year for the  
13 irrigation of 4.64 acres in Lot 3 of Short Plat 86-219, being within the SW¼SW¼ of Section 11, T.  
14 12 N., R. 17 E.W.M. (Parcel #171211-33403).

15 To Leanne and George R. Amer, a right to divert 0.05 cfs, 7.98 acre-feet per year for the  
16 irrigation of 4.64 acres in Lot 4 of Short Plat 86-219, being within the SW¼SW¼ of Section 11, T.  
17 12 N., R. 17 E.W.M. (Parcel #171211-33404).

18 To Richard & Terry C. Welch, a right to divert 0.07 cfs, 11.4 acre-feet per year for the  
19 irrigation of 6.63 acres in Lots 1 and 2 of Short Plat 86-219 and the east 250 feet of Lots 3 and 4 of  
20 Short Plat 86-220, within the SW¼SW¼ of Section 11, T. 12 N., R. 17 E.W.M. (Parcel 171211-  
21 33409).

22 To Leo Richardson, a right to divert 0.21 cfs, 36.12 acre-feet per year for the irrigation of 21  
23 acres in the following described parcel in Government Lot 1 of Section 14, T. 12 N., R. 17 E.W.M.:  
24 Beginning at the northwest corner of Section 14; thence N 89°58'05" E 653.48 feet; thence S 16°39'  
25 W 1784.22 feet to Ahtanum Creek; thence westerly along Ahtanum Creek to the west section line  
for Section 14; thence north to the point of beginning (portion of Parcel #171215-11001).

To Leo Richardson, a right to divert 0.12 cfs, 20.64 acre-feet per year for the irrigation of 12  
acres in those part of Lots 1, 2, 3, 4 of Short Plat 86-223 and those parts of Lots 1, 2, 3, 4 of Short  
Plat 86-224 lying in the Government Lots 3 and 4 of Section 15, T. 12 N., R. 17 E.W.M. (Parcels  
#171215-11402, 11403, 11404, 12400 through 12404).

1 **Answer No. 51** - *Douglas R. and Nancy D. Hartshorn*  
2 *James E. and Darlene Riddle*  
3 *John L. Record*  
4 *Stanley R. and Illa Glenn*

5 The Court awarded a June 30, 1866, water right pursuant to Answer No. 51 and Certificate  
6 No. 80 in the amounts of 0.24 cubic feet per second, 41.34 acre-feet per year for irrigation of 24  
7 acres within Parcels 171209-32001, 171209-33001 and 171209-33003. The Court also awarded a  
8 junior water for these lands and that will be discussed later. Report @190-191, 373.

9 The United States took exception to the water right for Parcel 171209-32001 based on lack  
10 of beneficial use. Parcel 32001 is owned by Douglas R. and Nancy D. Hartshorn. It is 40.29 acres  
11 in size and AID now makes no claim to a water right for this parcel (AID-8A). This resolves the  
12 United States' exception.

13 AID failed to claim three additional parcels that fall under Answer No. 51 and Certificate  
14 No. 80. AID also offered clarifying testimony of the landowners and evidence to assist in properly  
15 allocating the water rights as well as AID 62.

16 ***1. Point of Diversion on Certificate No. 80***

17 On the Pope Map (part of AID-62) there are two turnouts that appeared to serve the original  
18 Rutherford land under Answer No. 51. Turnout No. 61 is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8 and  
19 Turnout No. 60 is within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9. However, Certificate No. 80 authorizes  
20 only one point of diversion and it's within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M.  
21 Hatton Creek flows through this area. The location identified in the certificate controls. If any of  
22 the following water users' point of diversion is outside SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, compliance with  
23 RCW 90.03.380 to correct the point of diversion would be necessary.

24 ***2. Stanley and Illa Glenn, Parcels #171209-33401, 33402 and 33403***

25 Illa Glenn testified regarding Parcels 171209-33401, 33402 and 33403 which were omitted  
from AID-8 in 1994. Stanley Glenn passed away in 2003. These parcels were originally owned by  
Edith Rutherford, who, in 1957, filed Answer No. 51. The Glenns purchased their property in 1964  
and have irrigated 2 acres since. Mrs. Glenn has a pump in Hatton Creek with three mainlines  
going to the east, west and north. The property is sprinkler irrigated. The prior owners had a dam  
in the creek and flood irrigated the property. Mrs. Glenn testified that her pump is behind her house  
making it more than likely that it is on her property within the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9. If the point

1 of diversion is not within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, compliance with RCW 90.03.380 to  
2 change the point of diversion will be needed, if AID or Mrs. Glenn has not done so.

3 Based on the evidence, the Court confirms a June 30, 1866, water right to Illa Glenn in the  
4 maximum amounts of 0.02 cfs, 3.44 acre-feet per year from Hatton Creek for irrigation of 2 acres  
5 further broken down by parcel:

6 Parcel 1 book 84-0013 (Parcel #171209-33401, 0.4 acres).

7 Parcel 2 Book 84-0013 (Parcel #171209-33402, 0.6 acres).

8 Parcel 3 Book 84-0013 (Parcel #171209-33403, 1.0 acre).

9 The authorized point of diversion is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N., R. 17  
10 E.W.M. The season of use is April 15 through July 10.

11 **3. James E. Riddle, Parcel #171209-33001:**

12 James E. Riddle testified regarding Parcel 171209-33001. He has owned it since 1991-92  
13 and irrigates 9.75 acres. He has personal knowledge of the area dating back to 1965. Mr. Riddle  
14 bought his property from Carl Brown. This parcel is part of the Edith Rutherford property and  
15 historically irrigated via gravity flow and rills to grow hops, corn and pasture. A 1974 flood  
16 destroyed the original distribution system and a pump was installed to irrigate the property. There  
17 was no testimony establishing the location of the pump or the point of diversion. However, if it is  
18 not within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, compliance with RCW 90.03.380 to change the point of  
19 diversion will be needed, if it has not already been done.

20 Based on Mr. Riddle's testimony and evidence (AID-62, AID-8A), the Court confirms a  
21 June 30, 1866, water right to James E. and Darlene Riddle in the amounts of 0.10 cfs, 16.77 acre-  
22 feet per year from Hatton Creek for irrigation of 9.75 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 12  
23 N., R. 17 E.W.M., in Parcel #171209-33001. The point of diversion is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
24 Section 8, T. 12 N., R. 17 E.W.M. The season of use is April 15 through July 10.

25 **4. John L. and Suzanne Record, Parcel #171209-33003:**

Suzanne Record testified on behalf of Parcel 171209-33003. John L. and Suzanne Record  
bought this property in 1989 from Carl Brown. The original Rutherford home is on their land, built  
in 1950. The historic use testimony offered by Mr. Riddle applies to this land as well. The Records  
irrigate 5.05 acres of pasture but have raised hay in the past. They also keep stock on the property.  
They have a pump in Hatton Creek. It's unclear where the Record's pump is located, however, if

1 the point of diversion is not within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, compliance with RCW  
2 90.03.380 the process to change the point of diversion, if the claimants have not already done so.

3 Based on the testimony and evidence, the Court confirms a June 30, 1866 water right to  
4 John L. and Suzanne Record in the amounts of 0.05 cfs, 8.69 acre-feet per year from Hatton Creek  
5 for irrigation of 5.05 acres and stock water. The place of use is Parcel 171209-33003, more  
6 particularly described as the west 790 feet of the east 810 feet of the south 331 feet of the  
7 S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M., except the south 25 feet for county road. The  
8 point of diversion is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N., R. 17 E.W.M. The season of  
9 use is April 15 through July 10.

10 **5. Junior Water Right:**

11 The Court also had previously confirmed a junior water right, but vacates that finding  
12 consistent with the decision in the Special Issues section above.

13 **Answer No. 52 & 53 - Royal Schlepp**

14 The Court was not able to confirm a right for land described in Answer No. 52 and 53 due to  
15 uncertainty about the appropriate priority dates to assign. AID filed an exception so it would have  
16 the opportunity to supply the missing information. George Marshall, Carl Brown and Royal  
17 Schlepp testified at the supplemental hearing.

18 At the time of the 1994 hearing Carl Brown owned the land described in Answer Nos. 52  
19 and 53. Mr. Brown testified about irrigation of the land from 1957, when his family began living  
20 next door. Mr. Brown owned the land from 1975 until its transfer to Royal Schlepp in 2002 and  
21 testified that prior to 1975 water was delivered to the property by gravity flow through a ditch.  
22 When he bought the land, he put a pump on the west boundary. However, the maps in the record do  
23 not show a creek where Mr. Brown indicated the pump is located. Mr. Schlepp testified about his  
24 continued irrigation of the land since his purchase. The Court concluded water rights could be  
25 confirmed for the land described in Answers No. 52 and 53, but because three certificates with three  
different priority dates are appurtenant, additional information on how many acres are irrigated  
under each certificate was needed. The three certificates are Certificate No. 80, Certificate No. 78,  
as changed by Certificate of Change Recorded in Volume 1, page 113 and Certificate No. 195, as  
changed by Certificate of Change Recorded in Volume 1, page 114. The Court reviewed the  
certificates and the certificates of change which was not helpful and makes it difficult to determine  
how the water rights were historically exercised prior to the 1950's. Both certificates of change

1 issued in 1931. The Court will rely on AID-8A to divide the water rights reflected by these  
2 certificates, unless there is an inconsistency between AID-8A and the certificates. AID-8A split the  
3 irrigated acres between senior and junior rights. The Court has reconsidered its decision to confirm  
4 junior rights, see Special Issues section above, and any claim for a junior right is denied.

5 Certificate No. 80, with an 1866 date of priority authorized the diversion of 2.7 cfs for the  
6 irrigation of 135 acres in the SW $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. According to AID-8A, 40  
7 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 are irrigated and 20 acres would have a water right. The  
8 rest of Certificate No. 80 is for lands that are part of Answers No. 51 and 36. AID is asserting  
9 rights under all answers for irrigating less than the 135 acres authorized by the certificate.

10 Certificate No. 78, with an 1865 date of priority originally authorized the diversion of 1.4  
11 cfs for the irrigation of 70 acres in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9. However, Certificate of Change  
12 recorded in Volume 1, page 113 changed the place of use for half of the water right to the  
13 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9. According to AID-8A, 35 acres are irrigated in the  
14 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 under this certificate, 32 acres have a senior right and 3  
15 acres have a junior right. AID is not claiming that any of the remaining acreage would be  
16 appurtenant to the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9; leading the Court to find the rest of Certificate No. 78  
17 (35 acres) would be appurtenant to lands described in Answer No. 15 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9.

18 Certificate No. 195, with a priority date of 1871, originally authorized the diversion of 1.5  
19 cfs for the irrigation of 75 acres in the S $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9. Certificate of Change  
20 Recorded in Volume 1, page 114, changed the place of use for 0.7 cfs to irrigate 35 acres from the  
21 S $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9 to the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 9, which would leave a right to  
22 irrigate 40 acres under this certificate appurtenant to the S $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9.  
23 However, according to AID-8A there are 46 acres irrigated being irrigated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and  
24 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and it states that the right for those 46 acres derives from Certificate No. 195.  
25 Therefore, the Court will only confirm a right to irrigate a total of 40 acres.

A water right was originally claimed by AID for lands described in Answer No. 133, which  
includes the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9 and could be covered by either Certificates No. 195 or 78, as  
amended. However, AID withdrew its claim for this land.

The Court confirms the following water rights for the lands described in Answers No. 52  
and 53, with a point of diversion on Hatton Creek in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, T. 12 N., R. 17  
E.W.M. and a season of use of April 15 through July 10:

1 With a June 30, 1866 date of priority a right to divert 0.20 cfs, 34.4 acre-feet per year for the  
2 irrigation of 20 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. (part of Parcel  
3 #171209-31001).

4 With a June 30, 1871 date of priority a senior right to divert 0.32 cfs, 55.04 acre-feet per  
5 year for the irrigation of 32 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. (part of Parcel  
6 #171209-31001).

7 Certificate of Change Recorded in Volume 1, page 219 authorized changing the point of  
8 diversion of two water rights that appear to be portions of Certificate No. 78 and 195. However, the  
9 testimony is unclear on whether this diversion was used on the lands described in Answers No. 52  
10 and 53. The testimony was clear that neither the diversion described in the certificate of change,  
11 nor the one described in the certificates has been used since at least 1975. The water rights  
12 confirmed above with 1866 and 1871 priority dates will have the following points of diversion  
13 authorized: The SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 9 (Hatton Creek) and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8  
14 (Bachelor Creek), both in T. 12 N., R. 17 E.W.M. Mr. Schleppe should contact the Department of  
15 Ecology Central Regional Office about the process for obtaining authorization to use the pumping  
16 location that Mr. Brown constructed when he purchased the property in 1975.

17 **Answers No. 54 to 59 - No Claim**

18 **Answer No. 60 - *Gemella Clausing***  
19 ***Douglas and Barbara Clausing***  
20 ***Janet Clark***

21 These parties relied on AID to defend the water right for their property. The Court  
22 confirmed a water right for the irrigation of 62 acres and the water right is described on page 409 of  
23 the Report. The Clausings and Clark filed an exception seeking correction of the legal description  
24 for the property within their collective ownership. Douglas Clausing, a former Referee in this  
25 adjudication, appeared at the supplemental hearing in support of the exception.

The legal description used by the Court on page 409, beginning at line 14 describes land in  
the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 12 N., R. 17 E.W.M., with an exception, and land in Government  
Lot 4 of Section 14, T. 12 N., R. 17 E.W.M., also with an exception. According to the testimony at  
the supplemental hearing, the two exceptions to the legal description were created when Gemella  
Clausing sold two small parcels to her son, Douglas Clausing, and her daughter, Janet Clark.  
However, the land described in those two exceptions is still irrigated with Ahtanum Creek water

1 and should not have been excluded from the legal description for the water right. In fact, the legal  
2 description includes four parcel numbers and two of the parcel numbers are for the two excluded  
3 parcels. Therefore, the legal description is contradictory, as in one place it excludes the two parcels  
4 and in the next it includes the parcels. The parties are not asking for more acres to be awarded, just  
5 to have the legal description include the lands that had previously been excluded. The Court grants  
6 this exception. AID-8A provides sufficient information to allow the water right on page 409,  
beginning at line 14, to be divided between the three landowners.

7 Therefore, that right is withdrawn and replaced with the following three water rights, all  
8 with a priority date of June 30, 1870, season of use from April 15 through July 10 and points of  
9 diversion located 1) 50 feet north and 660 feet west of the southeast corner of Section 11, within the  
10 SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11; 2) 1000 feet south and 660 feet west of the northeast corner of Section 14,  
11 within Government Lot 4 of Section 14; and 3) 1860 feet south and 500 feet west of the northeast  
12 corner of Section 16, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 16; all in T. 12 N., R. 17 E.W.M. The Court  
notes the first diversion, in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 is not on any identified creek, however, the  
other two diversions are on Ahtanum Creek.

13 To Douglas and Barbara Clausing, a right to divert 0.01 cfs, 1.72 acre-feet per year for the  
14 irrigation of 1 acre in that part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 12 N., R. 17 E.W.M., described as  
15 follows: Beginning at the center of the intersection of Rutherford and South Wiley Roads; thence  
16 west 331.9 feet; thence S 6°47' E 176.5 feet; thence east 311.2 feet; thence north 166 feet to the  
17 point of beginning, except the north 25 feet to county road for right-of-way (Parcel #171211-  
44001).

18 To Janet L. Clark, a right to divert 0.01 cfs, 2.06 acre-feet per year for the irrigation of 1.2  
19 acres in the east 315 feet of the E $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 14, T. 12 N., R. 17 E.W.M. lying south of a line  
20 876 feet south of the north line of the NE $\frac{1}{4}$  and parallel to the north line and north of Ahtanum  
21 Creek, except east 25 feet for road (Parcel #171214-11002).

22 To Gemella Clausing, a right to divert 0.60 cfs, 102.86 acre-feet per year for the irrigation of  
23 59.8 acres in Lot 4 of Section 14, T. 12 N., R. 17 E.W.M., except the east 25 feet for county road,  
24 and except the east 315 feet of the E $\frac{1}{2}$ NE $\frac{1}{4}$  lying south of a line 876 feet south of the north line of  
25 the NE $\frac{1}{4}$  and parallel to the north line and north of Ahtanum Creek and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11,  
T. 12 N., R. 17 E.W.M., except beginning at the center of the intersection of Rutherford and South  
Wiley Roads; thence west 331.9 feet; thence S 6°47' E 176.5 feet; thence east 311.2 feet; thence

1 north 166 feet to the point of beginning, and except the east 25 feet for road (Parcel Nos. 171211-  
2 44002; 171214-11001).

3 **Answers No. 61, 62, 63 - No Claim**

4 **Answer No. 64 - *Leland & Marie Torzon***

5 The Yakama Nation's took exception to the water right confirmed for lands described in  
6 Answer No. 64. AID, on behalf of the Answer No. 64 landowners, and the Yakama Nation  
7 informed the Court during the January 29, 2004, hearing that a stipulation had been reached  
8 resolving their exception No. 33. That stipulation was filed with the Court on April 14, 2005.  
9 Pursuant thereto, the parties agreed that the only irrigated land within Answer No. 64 is that owned  
10 by Robert L. Torzon within Parcel # 171210-33404. Within the 19.25 acres in that parcel, 17 acres  
11 are being irrigated and will be confirmed a water right. That land is specifically described on  
12 Exhibit AID-64.

13 The right described on page 430 of the Report is withdrawn and a right is confirmed to the  
14 Torzons with a June 30, 1871, date of priority for the diversion from Hatton Creek of 0.17 cfs,  
15 29.24 acre-feet per year for the irrigation of 17 acres in a portion of Lot 1 of Short Plat O-10 and a  
16 portion of the W 312 feet of the S 150 feet of the N 804 feet of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  lying south and east  
17 of the following described line: Beginning 789.88 feet S 0°12' E of the NW corner of the  
18 SW $\frac{1}{4}$ SW $\frac{1}{4}$ , thence S 88°57' E 76 feet; thence S 89°10' E 99 feet; thence N 88°53' E 19 feet; thence  
19 S 89°06' E 35 feet; thence S 89°42' E 86 feet; thence N 02°47' E 49 feet; thence N 01°33' E 90.7  
20 feet to the northerly line of said Lot 1 of Short Plat O-10 and terminus of said line, all in Section 10,  
21 T. 12 N., R. 17 E.W.M. (Parcel 171210-33404). The authorized point of diversion is in the  
22 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 12 N., R. 17 E.W.M. Consistent with the Court's rulings on junior  
23 rights, the water right described in page 431 is withdrawn.

24 **Answer No. 65 - *Dale R. and Janelle Y. Pottenger***  
25 ***Jerry Wade Purdom***  
***John O. Reese, Jr. & Patricia Reese***  
***Jody Reese***

26 There were no exceptions filed to the water rights confirmed for lands described in Answer  
27 No. 65. However, AID presented adequate information in AID-8A to divide the water right  
28 between the landowners. Therefore, the water right on page 384, lines 1 through 12 is withdrawn  
29 and is replaced with the four water rights, all with a June 30, 1868, date of priority, a period of use

1 from April 15 through July 10 and a point of diversion located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  and  
2 W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. The diversions are either on Ahtanum Creek  
3 or near Hatton Creek, so those will be the sources of water for these rights. Additionally, the Court  
4 has reconsidered its decision on junior rights and withdraws the junior right described on page 384,  
lines 14 through 25. See Special Issues section above.

5 To Dale R. and Janelle Y. Pottenger, a right to divert 0.01 cfs, 1.82 acre-feet per year for the  
6 irrigation of 1.06 acres in that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M.  
7 lying north of Hatton Creek, except the west 228 feet, except the north 97 feet and except that  
8 portion lying south and east of the following described line: Beginning 247 feet south of the  
9 northeast corner of the SE $\frac{1}{4}$ ; thence west 355 feet; thence south to the south line of Hatton Creek  
and the terminus of said line (Parcel #171210-41009).

10 To Jerry Wade Purdom, a right to divert 0.03 cfs, 5.26 acre-feet per year for the irrigation of  
11 3.06 acres in that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. lying north of  
12 Hatton Creek, except the east 450.5 feet, and the north 97 feet of said east 450.5 feet of the  
NE $\frac{1}{4}$ SE $\frac{1}{4}$  (Parcel #171210-41010).

13 To John O. Reese, Jr. and Patricia Reese, a right to divert 0.02 cfs, 3.68 acre-feet per year  
14 for the irrigation of 2.14 acres in Parcel 3 of Book C-0047, also beginning at a point on the east line  
15 of the E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, 574 feet north of the southeast corner thereof, thence S 89°06' W  
16 200 feet; thence N 160 feet to the center of Hatton Creek; thence east along the creek to east line of  
17 said subdivision; thence south along said east line to point of beginning, Except E 25 feet for county  
road right-of-way (Parcel #171210-41405 [formerly 171210-41403 and 171210-41013]).

18 To Jody Reese, a right to divert 0.01 cfs, 2.13 acre-feet per year for the irrigation of 1.24  
19 acres in Parcel 2 of Book C-0047 being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17  
20 E.W.M.

1 Answer No. 66 - *Roger L. and Renee L. Biles*  
2 *Norman A. Cornelius*  
3 *Jill W. Rogers, et vir*  
4 *Daryl G. & Margo J. Hill*  
5 *Shirley Linton*  
6 *John & Cathy Cockrum*  
7 *Donald M. & Mary L. Adkins*  
8 *Gail Woodhouse*

9 No exceptions were filed to the water right confirmed for Answer No. 66 lands. However,  
10 one of the parcels previously described on the water right has been subdivided into five parcels and  
11 AID provided updated ownership information. George Marshall testified in behalf of AID.

12 The lands described in Answer No. 66 lie in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, T.  
13 12 N., R. 17 E.W.M. and two certificates from the prior adjudication are appurtenant to the lands.  
14 Certificate No. 96, with an 1868 date of priority authorized irrigation of 40 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$   
15 of Section 10 and Certificate No. 176A, with an 1879 date of priority authorized the irrigation of 40  
16 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10. AID-8A identified the landowners and the number of acres  
17 entitled to senior and junior water rights. However, the Court has reconsidered its position on  
18 confirming junior rights, see Special Issues section above, and no junior rights will be confirmed.  
19 According to AID-8A, there are now three owners of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10 and the parcels  
20 they own and acres that are entitled to what has previously been described as senior rights are as  
21 follows: Roger L. and Renee L. Biles own Parcels #171210-32001 and 171210-32003 and have a  
22 right for 23.54 acres; Norman A. Cornelius owns Parcel #171210-32004 and has a right for 0.61;  
23 Jill W. Rogers, et. vir. owns Parcel #171210-32006 and has a right for 7.85. The water rights  
24 described on page 383 of the Report of the Court are replaced with the following three water rights,  
25 each with a priority date of June 30, 1868, and point of diversion on Hatton Creek within the  
NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. and a season of use of April 15 through July 10.  
The Court notes that the number of acres authorized to be irrigated within Answer No. 66 as a result  
of the information presented at the supplemental hearing is slightly less that was initially confirmed  
by the Court.

To Roger L. and Renee L. Biles a right to divert 0.24 cfs, 40.49 acre-feet per year for the  
irrigation of 23.54 acres in Parcels #171210-32001 and 171210-32003, being the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$   
and the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , except the west 25 feet for county road right-of-way and except beginning  
at the northwest corner of the S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence east 210 feet; thence S 07°00'27" E 337.45

1 feet; thence S 89°55'47" W 250 feet; thence N 0°12' W 334.99 feet to the point of beginning, ALL  
2 in Section 10, T. 12 N., R. 17 E.W.M.

3 To Norman A. Cornelius, a right to divert 0.01 cfs, 1.05 acre-feet per year for the irrigation  
4 of 0.61 acres in Parcel #171210-32004, being that portion of the S½N½NW¼SW¼ of Section 10,  
5 T. 12 N., R. 17 E.W.M. described as follows: Beginning at the northwest corner of the  
6 S½N½NW¼SW¼; thence east 210 feet; thence S 07°00'27" E 337.45 feet; thence S 89°55'47" W  
250 feet; thence N 0°12' W 334.99 feet to the point of beginning.

7 To Jill W. Rogers, et. vir., a right to divert 0.08 cfs, 13.50 acre-feet per year for the irrigation  
8 of 7.85 acres in Parcel #171210-32006, being the SW¼NW¼SW¼ of Section 10, T. 12 N., R. 17  
9 E.W.M., except the west 25 feet for county road right-of-way.

10 According to AID-8A there are now four owners of eight parcels that lie within the place of  
11 use on Certificate No. 176A and are entitled to senior rights. The parcels they own and number of  
12 acres irrigated are as follows: Daryl G. and Margo J. Hill, Parcels #171210-43008, 43009 and  
13 430010, 2.14 acres; Shirley Linton, Parcel No. 171210-43401 and 43402, 3.46 acres; John and  
14 Cathy Cockrum, Parcel #171210-43403 and 43404, 3.0 acres; and Gail Woodhouse, Parcel #  
15 171210-43406, 6.23 acres. Additionally, Donald M. and Mary L. Adkins own Parcel #171210-  
43405, which is 0.99 acre in size, but is not irrigated with water from Ahtanum Creek and a right is  
not being asserted on their behalf.

16 The water rights described on pages 422 of the Report of the is replaced with the following  
17 four water rights, each having a priority date of June 30, 1870, a period of use of April 15 through  
18 July 10 and point of diversion on Ahtanum Creek located 1800 feet south and 500 feet west of the  
northeast corner of Section 16, being in the SE¼NE¼ of Section 16, T. 12 N., R. 17 E.W.M.:

19 To Daryl G. and Margo J. Hill, a right to divert 0.02 cfs, 3.68 acre-feet per year for the  
20 irrigation of 2.14 acres in Parcels #171210-43008, 43009, and 43010, being the south 192.9 feet of  
21 the north 940 feet of the SW¼SE¼ (Parcel 1#71210-43008 and portion of 171210-43010), the south  
22 123 feet of the north 675.1 feet of the SW¼SE¼ (Parcel #171210-43009 and portion of 171210-  
23 43010) and the S 72 feet of the north 747.1 feet (rest of 171210-43010) all in that portion of the  
SW¼SE¼ of Section 10, T. 12 N., R. 17 E.W.M. lying east of the county road.

24 To Shirley Linton a right to divert 0.03 cfs, 5.95 acre-feet per year for the irrigation of 3.46  
25 acres in Parcels 1 and 2, Book 84-0022 (Parcel #171210-43401 and 43402), being a portion of the  
S½SW¼SE¼ of Section 10, T. 12 N., R. 17 E.W.M.

1 To John and Cathy Cockrum, a right to divert 0.03 cfs, 5.16 acre-feet per year for the  
2 irrigation of 3 acres in Parcels 3 and 4, Book 84-0022 (Parcel #171210-43403 and 43404), being  
3 within the S½SW¼SE¼ of Section 10, T. 12 N., R. 17 E.W.M.

4 To Gail Woodhouse, a right to divert 0.06 cfs, 10.72 acre-feet per year for the irrigation of  
5 6.23 acres in Lot 2 of Short Plat 92-26 (Parcel #171210-43406), being within the N½SW¼SE¼ of  
6 Section 10, T. 12 N., R. 17 E.W.M.

7 **Answer No. 67 - No Claim**

8 **Answer No. 68 - *Eric B. & Judy L. Edwards*  
*Jeffrey M. & Diane K. Caldwell*  
*Karen B. & C. Hardison Stiles***

9 The lands described in Answer No. 68 were not included in the original AID-8 filed prior to  
10 the 1994 hearings and evidence was not presented in support of a water right for these lands. This  
11 resulted in the Court not confirming a water right. AID filed an exception asking the Court to take  
12 evidence regarding the lands described in Answer No. 68. Eric Edwards, Karen Stiles, Timothy  
13 Caldwell and George Marshall testified at the supplemental hearing. AID-8A indicates that Jeffrey  
14 and Diane Caldwell own a portion of the land in Answer No. 68, however, Timothy Caldwell  
15 testified at the supplemental hearing, implying he was the owner of the land.

16 The land described in Answer No. 68 is the north 416 feet of the west 1040 feet of the  
17 S½SW¼ of Section 10, T. 12 N., R. 17 E.W.M., consisting of 9.76 acres. Answer No. 68 was filed  
18 by Opal Burke, Herschel Burke and Sylvia E. Burke and it states that 9 inches of water is being  
19 claimed and J. P. Marks and Elmer Marks signed the 1908 agreement. Karen Stiles is Herschel  
20 Burke's daughter. She testified about water use on the land from the time her father acquired it to  
21 the present. Some of the land was sprinkler irrigated from a pump on the ditch and some of it was,  
22 and continues to be, flood irrigated. Ms. Stiles testified that the riparian zone along the ditch is also  
23 irrigated and used as pasture for livestock. When her father subdivided the land, he sold a two acre  
24 parcel to Jeff and Diane Caldwell and Ms. Stiles acquired the rest. She then sold 3.5 acres to the  
25 Edwards. Mr. Edwards testified about irrigation of the property from when he acquired it in 1990 to  
the present. The testimony of Ms. Stiles and Mr. Edwards was sufficient for the Court to conclude  
there is a right to irrigate 7.63 acres.

According to the AID submissions, 8 acres were irrigated by the owner of the land in 1908.  
The land is included in the place of use for Certificate No. 201 from *Achepohl*, which issued to

1 Myrtle Marks with a priority date of 1871 authorizing the diversion of 2.24 cfs for the irrigation of  
2 112 acres in the S½SW¼ and NE¼SW¼ of Section 10, T. 12 N., R. 17 E.W.M. Apparently in  
3 1939, Certificate 201 was split and Certificate No. 201-A issued to Ida Green authorizing the  
4 diversion of 1.46 cfs for the irrigation of 73 acres in the SW¼SW¼ and SE¼SW¼ of Section 10,  
5 which includes the lands described in Answer No. 68. Certificate No. 201-a issued to William  
6 Greenwalt with the same priority date, authorizing the diversion of 0.78 cfs for the irrigation of 39  
acres in the NE¼SW¼ of Section 10, which are described in Answer No. 69, see below.

7 The Court finds there has been sufficient information presented to confirm the following  
8 water rights for lands within Answer No. 68; each water right has a priority date of June 30, 1871,  
and a point of diversion on Hatton Creek in the NE¼NE¼ of Section 17, T. 12 N., R. 17 E.W.M.

9 To Eric B. and Judy L. Edwards, a right to divert 0.03 cfs, 5.85 acre-feet per year for the  
10 irrigation of 3.4 acres in Lot 2 of Short Plat N-75, except the north 148 feet of the west 148 feet,  
11 (Parcel #171210-33411) being within the N½SW¼SW¼ of Section 10, T. 12 N., R. 17 E.W.M.

12 To Jeffrey M. & Diane K. Caldwell, at right to divert 0.02 cfs, 3.01 acre-feet per year for the  
13 irrigation of 1.75 acres in Lot 1 of Short Plat 91-1 (Parcel #171210-33421), being within the  
N½SW¼SW¼ of Section 10, T. 12 N., R. 17 E.W.M.

14 To Karen B. & C. Hardison Stiles, a right to divert 0.03 cfs, 4.27 acre-feet per year for the  
15 irrigation of 2.48 acres in Lot 2 of Short Plat 91-1 (Parcel #171210-33422), being within the  
16 N½SW¼SW¼ of Section 10, T. 12 N., R. 17 E.W.M.

17 The Court does note the exception filed by AID identified Parcel #171210-33407, consisting  
18 of 1.55 acres as also being within Answer 68. However, there was no evidence to show that  
Ahtanum Creek water had been used on this land. Therefore, the Court declines to confirm a right.

19 **Answer No. 69 – *Russell and Gladys Carlson***

20 No one appeared at the evidentiary hearing in support of a water right for any of the lands  
21 encompassed in Answer No. 69, therefore, the Court concluded that any right that may have existed  
22 had been abandoned or relinquished. AID filed exception and at the supplemental hearing provided  
evidence in support of a water right for the property described in Answer No. 69.

23 According to George Marshall, the lands within Answer No. 69 are the NE¼SW¼ of  
24 Section 10, T. 12 N., R. 17 E.W.M. and currently owned by Russell and Gladys Carlson. AID-85 is  
25 a summary of the claim for Answer No. 69. It states William Greenwalt participated in *USA v. AID*  
and filed Pope Answer No. 69 stating that 31.6 acres were under irrigation at that time. AID-85

1 also indicates in 1908 his predecessor irrigated 28 acres; however, AID-8A shows a claim is being  
2 made for a senior right for 25 acres rather than 28 acres. The Court reviewed the *USA v. AID* record  
3 and the correct number is 25 acres. The certificate record for this property is a bit unusual. At the  
4 completion of *Achepohl*, Certificate No. 201 issued to Myrtle Marks with a priority date of 1871  
5 authorizing the diversion of 2.24 cfs for the irrigation of 112 acres in the S $\frac{1}{2}$ SW $\frac{1}{4}$  and NE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
6 Section 10, T. 12 N., R. 17 E.W.M. Apparently in 1939, Certificate 201 was split and Certificate  
7 No. 201-A issued to Ida Green authorizing the diversion of 1.46 cfs for the irrigation of 73 acres in  
8 the SW $\frac{1}{4}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10. Certificate No. 201-a issued to William Greenwalt  
9 with the same priority date, authorizing the diversion of 0.78 cfs for the irrigation of 39 acres in the  
10 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10 and is appurtenant to the land now owned by the Carlsons. Although  
11 AID-8A shows 40 acres being irrigated, there exists a right only for the irrigation of 39 acres.

12 The Court confirms a right to Russell and Gladys Carlson with a June 30, 1871 date of  
13 priority for the diversion of 0.25 cfs, 43 acre-feet per year and the irrigation of 25 acres in the  
14 NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. (Parcel #171210-31001). The points of diversion  
15 on Hatton Creek are as described in Certificate No. 201-a; in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10 and the  
16 NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, T. 12 N., R. 17 E.W.M. The season of use is April 15 through July 10.

17 **Answer No. 70 - *Russell and Gladys Carlson***

18 The Court confirmed a senior and junior right under Answer No. 70 and Certificate 93 for  
19 Parcel 171210-24001 (Report @ 202-203). The United States filed an exception, but withdrew it on  
20 February 17, 2004. The senior right described on page 381, line 15 $\frac{1}{2}$  through 25 stands as follows:

21 To Russell and Gladys Carlson a right with a June 30, 1868 priority date in the amounts of  
22 0.31 cfs, 52.46 acre-feet per year for irrigation of 30.5 acres within Parcel 171210-24001 which is  
23 located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, except the right of way for Tampico Road (AID 8A).  
24 The diversion points from Bachelor Creek and Hatton Creek are within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  and the  
25 NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. The season of use is April 15 through July 10.

The Court has determined it will not confirm junior rights. See Special Issues section above.  
The junior right described on page 382, lines 1- 13, of the Report is rescinded.

**Answer No. 71 - **No Claim****

1 Answer No. 72 - *Hull Ranches, Inc.*  
2 *Jesse A. & Tina Marie Bowden*

3 AID filed an exception to the water right confirmed for Answer No. 72 lands. At the first  
4 evidentiary hearing, one parcel within Answer No. 72 was not listed on AID-8 as being within the  
5 answer, but was instead listed in the section for lands without a Pope Answer number. AID also  
6 discovered one of the parcels identified as being within Answer No. 72 has a few acres that are set  
7 forth in Answer Nos. 179 and 215. Sam Hull, the owner of most of the land described in Answer  
8 No. 72, and also an AID director testified at the supplemental hearing, along with George Marshall.

9 Answer No. 72 was filed by Frances Lindsay and describes lands in Government Lot 2 and  
10 the E½ of Government Lot 1, except the west 18 feet, of Section 14, T. 12 N., R. 17 E.W.M. Parcel  
11 No. 171214-22003 is the parcel that was incorrectly designated as being land without a Pope  
12 Answer number. This parcel, in the E½ of Government Lot 1 of Section 14, is 19.25 acres in size  
13 and according to Mr. Hull's testimony is mostly irrigated. Mr. Hull's family acquired the land in  
14 the late 1960's, however, he has been familiar with the land since around 1960. Certificate No. 200  
15 from the earlier adjudication authorized the diversion of 1.20 cfs to irrigate 60 acres in the E½ of  
16 Government Lot 1 and Government 2 of Section 14, T. 12 N., R. 17 E.W.M. Parcel No. 171214-  
17 21001 had previously been identified as lying solely in the area described in Answer No. 72.  
18 However, that is not correct. A portion of that parcel, approximately 7.33 acres, lies in the  
19 SE¼SW¼ of Section 11. The SE¼SW¼ of Section 11 is described in both Answer No. 179 and  
20 215 – the west 1067 feet is in Answer No. 179 and the east 253 feet is in Answer No. 215.  
21 Disposition of water rights for the portion of Parcel #171214-22003 in those two answers are  
22 addressed under those answer numbers later in the report.

23 The testimony indicates that more land is being irrigated within the area described in  
24 Certificate No. 200 than is authorized by the certificate. The Court can only confirm rights to the  
25 extent previously authorized by the certificate. Mr. Marshall appears to have divided the acres  
amongst the parcels in proportion to the acres owned with the place of use on the certificate. The  
Court will confirm rights based on that division. The two water rights previously confirmed by the  
Court on page 426, lines 13 to 24 of the original Report are withdrawn and the following rights are  
confirmed. Each of the following rights will have a priority date of June 30, 1871, a season of use  
of April 15 through July 10 and two points of diversion on Ahtanum Creek; one located 1800 feet  
south and 500 feet west of the northeast corner of Section 16, being within the SE¼NE¼ of

1 Section 16, T. 12 N., R. 17 E.W.M. and the second in the W½SW¼SE¼ of Section 11, T. 12 N., R.  
2 17 E.W.M.

3 To Jesse A. and Tina Marie Bowden, a right to divert 0.05 cfs, 8.43 acre-feet per year for the  
4 irrigation of 4.9 acres in that part of Government Lot 2 and the E½ Government Lot 1, except the  
5 west 18 feet, lying northwesterly of a line beginning at the northwest corner of the S½SW¼ of  
6 Section 11; thence N 89°55' E 1345 feet; thence S 0°05' E 1385 feet more or less to the north line of  
7 Section 14 and the True Point of Beginning of line to be described; thence S 0°05' E 256 feet more  
8 or less to a point 1641 feet S 0°05' E of the north line of the S½SW¼ of Section 11; thence S 89°55'  
9 W 88 feet; thence S 0°05' E 110 feet; thence S 86°21' W 121.40 feet; thence S 43°11' W 562 feet  
10 more or less to the east line of the W 18 feet of the E½ of Government Lot 1, all in Section 14, T.  
11 12 N., R. 17 E.W.M. (Parcel #171214-22002).

12 To Hull Ranches Inc., a right to divert 0.68 cfs, 116.96 acre-feet per year for the irrigation of  
13 68 acres in Government Lot 2 and Government Lot 1, except the west 18 feet and except that  
14 portion lying northwesterly of the following described line: Beginning at the northeast corner of  
15 Government Lot 1; thence south 256 feet; thence S 89°55' W 88 feet; thence S 110 feet; thence S  
16 86°21' W 121.4 feet; thence S 43°11' W 562 feet more or less to the east line of the west 18 feet of  
17 the E½ of Government Lot 1 and the end of said line, all in Section 14, T. 12 N., R. 17 E.W.M.  
18 (Parcel #171214-22003 and a portion of 171214-22001).

19 As discussed above in the Special Issues section, the Court has determined it will not  
20 confirm junior rights. The right described on page 427, lines 1 through 15 is withdrawn.

21 **Answer No. 73** - *Jerry Ribail (Now Harlond B. & Millie J Clift)*  
22 *Clayton Stewart & Linda Marie Barnes*  
23 *Tammy M. Conrad*  
24 *Ronald E. & Mary Lou Calahan*

25 There were no exceptions filed to the water right confirmed for lands described in Answer  
No. 73. However, AID presented testimony about division of the property to clarify which land has  
the water right. George Marshall testified and referred to the portion of AID-8A.

The Court confirmed a water right to irrigate 12 acres within the N½NW¼SW¼ of Section  
12, T. 12 N., R. 17 E.W.M., which is within Answer No. 73, see page Report at 206. Since the  
original evidentiary hearing, the parcel was subdivided from one 18.9 acre parcel, to three, one-acre  
parcels and one 15.90-acre parcel. The landowner's intent when the land was subdivided was to  
keep the surface water right with the larger parcel. The three one-acre parcels were developed into

1 home sites that are served by individual wells. Mr. Marshall testified that the land in the larger  
2 parcel is where the 12-acre water right was exercised.

3 The Court has reviewed the evidence presented at the first evidentiary hearing, which shows  
4 that Mr. Ribail and his immediate predecessors irrigated more land than was authorized by  
5 Certificate No. 157, which is appurtenant to the land. Certificate No. 157 authorized the irrigation  
6 of 12 acres and the entire almost 19-acre parcel was being irrigated. The Court finds that Mr. Ribail  
7 as the landowner has the right to determine which portion of the property will have the appurtenant  
8 water right. The Court has reviewed the Yakima County Assessor's web page and discovered that  
9 the parcel number has yet again changed. The appropriate parcel number for the land for which the  
10 water right has been confirmed is 171212-32414.

11 Therefore, the Court modifies the place of use for the water right described on page 420,  
12 beginning on line 13½, so that that it reads at line 21, Lot 4 of SP 7232791 being within the  
13 N½NW¼SW¼ of Section 12, T. 12 N., R. 17 E.W.M., except beginning 294.04 feet east of the  
14 northwest corner of the SW¼, thence S 01°20' W 218.62 feet; thence S 88°50' E 229.46 feet; thence  
15 N 223.23 feet; thence W 224.32 feet to the point of beginning (Parcel #171212-32414). The Court  
16 also notes that the authorized point of diversion is on Hatton Creek, so line 14½ is amended to  
17 reflect the source being Hatton Creek.

18 **Answer No. 74 -** *Frederic L. Hatfield*  
19 *Brenda L. Burnam*  
20 *Elizabeth W. Bray*

21 AID provided updated ownership and parcel number information in AID-8A for the lands  
22 within Answer No. 74. Therefore, the water right described on page 434, lines 1 through 11 is  
23 withdrawn and the following three water rights are confirmed, each with a priority date of June 30,  
24 1872, season of use from April 15 through July 10 and point of diversion on Bachelor Creek located  
25 in the E½NE¼NW¼ of Section 12, T. 12 N., R. 17 E.W.M.:

To Frederic L. Hatfield, a right to divert 0.08 cfs, 13.45 acre-feet per year for the irrigation  
of 7.82 acres in Lots 1, 2, 3, and 4 of Short Plat 86-30, being within the E½SE¼NE¼ of Section 12,  
T. 12 N., R. 17 E.W.M. (Parcels #171212-14401, 14402, 14403 and 14404).

To Brenda L. Burnam, a right to divert 0.02 cfs, 3.51 acre-feet per year for the irrigation of  
2.04 acres in Lot 2 of Short Plat 88-49, being within the E½SE¼NE¼ of Section 12, T. 12 N., R. 17  
E.W.M. (Parcel #171212-14406).

1 To Elizabeth W. Bray, a right to divert 0.03 cfs, 5.4 acre-feet per year for the irrigation of  
2 3.14 acres in Lots 3 and 4 of Short Plat 88-49, being within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12  
3 N., R. 17 E.W.M. (Parcels #171212-14407 and 14408).

4 **Answer No. 75 - *Nellie C. Burks, et al.***

5 There were no exceptions filed to the water rights confirmed for lands described in Answer  
6 No. 75. However, AID-8A provided updated ownership information and the Court discovered an  
7 error in one of the point of diversion locations in the Report at page 436, line 7 $\frac{1}{2}$ . Line 7 $\frac{1}{2}$  is  
8 amended to describe points of diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 12 N., R.  
9 17 E.W.M. and Peggy Madson is removed from line 1 and replaced with Nellie C. Burks, et al.  
10 Additionally, the points of diversion are on Hatton Creek, so the Court amends line 2 to show  
11 Hatton Creek as the source of water.

12 In sum, the right on page 436 is modified to confirm a right to Nellie C. Burks, et al., with a  
13 June 30, 1872 date of priority to divert 0.18 cfs, 31 acre-feet per year between April 15 and July 10  
14 for the irrigation of 18 acres in the W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M. (Parcel  
15 #171212-14005). The point of diversion on Hatton Creek is in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 12, T. 12 N., R. 17 E.W.M.

17 The Court also notes errors in AID-8A that had not been pointed out by any other party.  
18 The legal description for Answer No. 75 is identified in AID-8A as being in Section 10, when the  
19 correct section number is 12. Additionally, the Achepohl Class is identified as 7 when it actually is  
20 9 and the priority date is identified as 1870 when the correct priority date is 1872.

21 Lastly, the Court had confirmed a junior right described in the Report at page 436, lines 12  
22 through 24. This right is withdrawn consistent with the ruling in the Special Issues section above.

23 **Answer No. 76 - *James R. and Deborah Carmack***

24 AID-8A identified new owners for the lands within Answer No. 76 that were confirmed a  
25 water right in the Court's Report. The name on line 1 at page 421 is changed from Fred Trupp to  
James R. and Deborah Carmack. Additionally, one of the authorized points of diversion is on  
Hatton Creek, so line 2 is amended so the source of water is Ahtanum Creek and Hatton Creek.

A junior right was also confirmed on page 421, lines 12 through 25. This right is withdrawn  
consistent with the Court's ruling on junior rights set forth above in the Special Issues section.

1 **Answer No. 77:**     *Marcella Laramore, Et Al*  
2                             *Felix David and Dari Melero*  
3                             *Dave Melero*  
4                             *Harland and Millie Clift*  
5                             *Marvin L. Birkby*  
6                             *Bar 56 LLC*  
7                             *David F. and Susan G. Myra*  
8                             *L. Jean Shockley*  
9                             *Charles E. and Cherie Vetsch, Jr.*

7             The Court confirmed water rights for lands under Answer No. 77 and Certificates 102 and  
8 126 (Report @ 211-214; 389, 399, and 412.). The United States took exception to the right  
9 awarded on page 412 for those lands in Section 6 within Parcel #181206-33401-03, and -33406, for  
10 lack of evidence of beneficial use. AID is not claiming a right to lands in Section 6 under Answer  
11 No. 77 and these parcels are not on AID-8A. On February 17, 2004, the United States withdrew its  
12 exception. The Court rescinds the right confirmed on page 412, lines 1 through 11½. The Yakama  
13 Nation also took exception to the rights awarded under Answer No. 77. On February 18, 2004, the  
14 Nation withdrew its exception. Ecology and the Vetsches reached a stipulation whereby Ecology  
15 agreed to not pursue its exception regarding beneficial use. See Stipulation dated January 26, 2004.

14             The rights the Court awarded have been further refined by AID by owner name, a specific  
15 accounting of the number of irrigated acres each parcel is entitled to due to subdivision of other  
16 parcels. The June 30, 1868, right described on page 389, lines 11½ to 22 is replaced with the  
17 following two water rights:

17             A right to Marcella Laramore, et al, for the diversion of 0.10 cfs, 17.61 acre-feet per year for  
18 the irrigation of 10.24 acres within the NE¼NE¼, except the north 173 feet of the east 148 feet, and  
19 except the south 970 feet, and except the east 25 feet for the county road right-of-way in Section 12,  
20 T. 12 N., R. 17 E.W.M. (Parcel #171212-11003).

21             A right to Felix David and Dari Melero for the diversion of 0.05 cfs, 8.7 acre-feet per year  
22 for the irrigation of 5.06 acres within the north 165 feet of the south 495 feet of the NE¼NE¼,  
23 except the east 25 feet for the county road right-of-way in Section 12, T. 12 N., R. 17 E.W.M.  
(Parcel #171212-11005).

24             The two rights both hold a priority date of June 30, 1868. The season of use is April 15  
25 through July 10. The points of diversion are:

1.     200 feet south and 1,500 feet west of the northeast corner of Section 12, being within  
the NW¼NE¼ of Section 12, T. 12 N., R. 17 E.W.M. (Bachelor Creek)

1  
2 2. Within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M. (Hatton Creek)

3 AID also claimed rights for an additional 9.25 acres pursuant to Certificate No. 102 (1868)  
4 all owned by Dave Melero. Those parcels are 171212-11401-04 (AID-8A). However, there was no  
5 testimony by Mr. Melero or by George Marshall regarding historic and current use. AID-35 does  
6 pertain to the Melero's claim under Answer No. 77; however, it was not entered into the record. As  
7 these are newly claimed acres, testimony is needed.

8 Parcel #171212-31004-05 was subdivided into eight parcels: 1711212-31401 through  
9 31408. AID is claiming a right to Parcel Nos. 31401, 31402, and 31404 only. See AID-8A. The  
10 following rights are based on Certificate No. 126 with a June 30, 1869 priority date. Two points of  
11 diversion were authorized. One in the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11 and on the certificate there is a  
12 handwritten notation identifying the source as Stanton Creek, however, the Court also recognizes  
13 that Hatton Creek flows through this 80-acre tract. The second location is described at a point near  
14 the west line of Government Lot 2 in Section 12. The source of water at this point is not clear. This  
15 could be either 1) an unnamed spring or Ahtanum Creek via a ditch that diverts water at a point  
16 within Government Lot 4 in Section 16, T. 12 N., R. 17 E.W.M. then conveys in a north and  
17 easterly direction through Sections 15, 11 and into 12. (SE-2 map, Inset A). The Court will rely on  
18 the locations described in Certificate No. 126 and asks that AID verify the source. To achieve  
19 specificity, the right on page 399, lines 12 through 23 is replaced with the following rights:

20 A right to Harland and Millie Clift to divert 0.02 cfs, 3.44 acre-feet per year for the  
21 irrigation of 2 acres within Lot 1 of Short Plat 96-161, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T.  
22 12 N., R. 17 E.W.M. (Parcel #171212-31401).

23 A right to Marvin L. Birkby to divert 0.02 cfs, 3.44 acre-feet per year for the irrigation of 2  
24 acres within Lot 2 of Short Plat 96-161, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, T. 12 N., R. 17  
25 E.W.M. (Parcel 171212-31402).

A right to Bar 56 LLC to divert 0.54 cfs, 92.38 acre-feet per year for the irrigation of 53.71  
acres within Lot 4 of Short Plat 96-161, within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and Government Lot 2 of Section 12,  
T. 12 N., R. 17 E.W.M. (Parcel #171212-31404).

A right to David F. and Susan G. Myra to divert 0.04 cfs, 6.88 acre-feet per year for the  
irrigation of 3.64 acres within Lot 1 of Short Plat 90-112, within Government Lot 3 of Section 12,  
T. 12 N., R. 17 E.W.M. (Parcel #171212-42401).

1 A right to L. Jean Shockley to divert 0.34 cfs, 57.83 acre-feet per year for the irrigation of  
2 33.62 acres within Lot 2 of Short Plat 90-112 (Parcel #171212-42402, 4.36 acres) being within the  
3 NW¼SE¼ of Section 12 and within Lot 4 of Short Plat 90-112 (Parcel No. 171212-42404, 29.26  
4 acres), being within the NW¼SE¼ and Government Lot 3 of Section 12, T. 12 N., R. 17 E.W.M.

5 A right to Charles E. and Cherie Vetsch Jr. for the diversion of 0.26 cfs, 43.91 acre-feet per  
6 year for the irrigation of 25.53 acres within Lot 3 of Short Plat 90-112, within the NW¼SE¼ of  
7 Section 12, T. 12 N., R. 17 E.W.M. (Parcel #171212-42403).

8 The priority date for the six rights described above is June 30, 1869. The season of use is  
9 April 15 through July 10. The two points of diversion are authorized:

- 10 1. Within the E½SE¼ of Section 11, T. 12 N., R. 17 E.W.M.
- 11 2. A point near the west line of Government Lot 2 in Section 12, T. 12 N., R. 17 E.W.M.

12 AID also claims that Parcel No. 171212-13403 was analyzed under Pope 77 but needs to be  
13 under Pope 78 (AID 8A, listing for Pope 78). After a review of Answer No. 77, the Court cannot  
14 find any analysis of this parcel under Answer No. 77.

15 **Answer No. 78 -** *Bob E. Bohannon*  
16 *Donald Rennie*  
17 *Donald & Lorena Rennie*  
18 *Curtis L. & Peggy Carter*  
19 *Federal National Mortgage Association*  
20 *Dale E. & Pamela Jackman*  
21 *Charles L. & Marjory Walton*  
22 *William B. & Susan D. Farris*  
23 *Tania & Troy Reynolds*  
24 *Todd P. & Lavina Record*

25 The Court confirmed a senior right under Answer No. 78 for lands covered by Certificate  
Nos. 99 and No. 100, with a priority date of June 30, 1868, to divert 1.26 cfs, 216.38 acre-feet per  
year from April 15 through July 10 for the irrigation of 125.61 acres in Section 12, T. 12 N., R. 17  
E.W.M.. See Report @214-216.

The United States and the Yakama Nation took exception to the number of acres authorized  
for irrigation for the lands described in the answer. As a result of the information provided by AID  
in its response to the US exception, the United States withdrew its exception to Answer No. 78.  
The exception was scheduled to be heard February 17, 2004, and on that date the United States  
affirmed it had withdrawn the exception. There was discussion about the need for evidence or

1 whether the Yakama Nation exception would be settled as part of a stipulation, but no action was  
2 taken.

3 On April 14, 2005, the Yakama Nation and AID filed a stipulation that resolved YN  
4 Exception No. 34 to water rights confirmed for several answer numbers, including Answer No. 78.  
5 The stipulation asked the Court to confirm a right to irrigate 106.15 acres for the lands described in  
6 Answer No. 78 and divided that acreage between the parcels identified as being within Answer No.  
7 78. However, one parcel was identified that was omitted from the stipulation. That parcel is owned  
8 by Todd T. and Lavina Record and Mr. Record appeared to testify in support of a right for his land.  
9 The YN stated there was no objection to the Court considering the evidence for this land and, if  
10 appropriate, confirming a right in addition to that identified in the stipulation. Exhibits AID-98, 99,  
11 and 100 were entered into the record.

12 The Records own Parcel #171212-21421, which is 6.21 acres in size and lies within the  
13 NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M. They irrigate 5 acres of grass hay using an  
14 irrigation system that was in place when the land was purchased. Mr. Record testified to the past  
15 owners of the land from 1988 to the time he purchased in 2001. AID-98 is a statement from Fred  
16 Krumpeck, who owned the land from 1991 - 1996, that he had irrigated the land during his  
17 ownership with water diverted from Bachelor Creek. The land is part of the former Wiley Ranch  
18 and is within the place of use of Certificate No. 100. The addition of the five acres irrigated on the  
19 Record property to the 106.15 acres identified in the stipulation is within the water right the Court  
20 found based on the evidence presented in 1994. The Court withdraws the right described on page  
21 392 of the Report and confirms the following rights consistent with the stipulation, with the addition  
22 of the Record parcel. All of the rights have a priority date of June 30, 1868, a period of use from  
23 April 15 through July 10 and points of diversion on Bachelor and Hatton Creeks located in the  
24 NW $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12; SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1;  
25 S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 11, all in T. 12 N., R. 17 E.W.M. A couple diversions are not actually on any of  
the creeks as they are located today; however, they are authorized diversions on the certificate.

To Todd P. and Lavina Record, a right to divert 0.05 cfs, 8.6 acre-feet per year for the  
irrigation of 5 acres in Lot 3 of Short Plat 88-56, being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 12  
N., R. 17 E.W.M. (Parcel #171212-21421).

To Bob E. Bohannon, a right to divert 0.77 cfs and 131.89 acre-feet per year for the  
irrigation of 76.68 acres within the following two parcels: SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, T. 12 N.,

1 R. 17 E.W.M., except railway right-of-way (Parcel #171201-43001, 38.7 acres) and in Lot 4 of  
2 Short Plat L-15, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M. (Parcel  
3 #171212-12401, 37.98 acres).

4 To Donald Rennie, a right to divert 0.05 cfs, 7.74 acre-feet per year for the irrigation of 4.5  
5 acres in the west 330 feet of the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M., (Parcel  
6 #171212-13004).

7 To Donald & Lorena Rennie, a right to divert 0.14 cfs and 24.42 acre-feet per year for the  
8 irrigation of 14.2 acres within the following three parcels:

9 The east 330 feet of the west 660 feet of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17  
10 E.W.M., (Parcel #171212-13001, 4.5 acres);

11 The west 330 feet of the S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M., (Parcel  
12 #171212-13003, 5 acres).

13 Lot 3 of Short Plat L-15, being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17  
14 E.W.M., (Parcel #171212-13403, 4.7 acres).

15 To Dale E. and Pamela Jackman, a right to divert 0.02 cfs, 3.25 acre-feet per year for the  
16 irrigation of 1.89 acres in Lot 2 of Short Plat 88-56, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
17 12, T. 12 N., R. 17 E.W.M., (Parcel #171212-22420).

18 To Charles L. and Marjory Walton, a right to divert 0.04 cfs, 7.59 acre-feet per year for the  
19 irrigation of 4.41 acres in Lot 1 of Short Plat 88-55, being within that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
20 Section 12, T. 12 N., R. 17 E.W.M. lying north of McCullough Road and South of Hughes Road,  
21 (Parcel #171212-22421).

22 To William B. and Susan D. Farris, a right to divert 0.02 cfs, 3.04 acre-feet per year for the  
23 irrigation of 1.77 acres in Lot 3 of Short Plat 88-55, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T.  
24 12 N., R. 17 E.W.M., (Parcel #171212-22422).

25 To Tania and Troy Reynolds, a right to divert 0.02 cfs, 3.78 acre-feet per year for the  
26 irrigation of 2.2 acres in Lot 4 of Short Plat 88-55, being within that portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
27 Section 12, T. 12 N., R. 17 E.W.M., lying south of McCullough Road (Parcel #171212-22423).

28 **Answer No. 79 - Bobbette Ewing**

29 There were no exceptions filed to the water right confirmed for lands described in Answer  
30 No. 79, however, the Yakama Nation in the Declaration of L. Niel Allen filed on April 25, 2003,  
31 did indicate that fewer acres were being irrigated within Answer No. 79 than originally confirmed.  
32 However, during the supplemental hearing no evidence was brought in support of this position.

1 The Court in its review of the record discovered an error in the Section number for the point  
2 of diversion. The Report states it is in Section 12. Report @216, 217, 395. However, Certificate  
3 No. 120 authorizes a diversion in Section 11, not Section 12. Hatton Creek flows through this area.  
4 Ownership of the land has also changed. Based on this information, the Court will correct the  
5 Report at p. 395 as follows: line 18 to Hatton Creek, line 23 to the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11, T. 12  
N., R. 17 E.W.M. and line 17 to Bobbette Ewing.

6 **Answer No. 80** - *William Eaton*  
*William Hipner*

7  
8 The Yakama Nation filed their Exception No. 35, to this right, but withdrew the exception  
9 prior to the hearing. At the time of the evidentiary hearing, the two parcels within Answer No. 80  
10 were both owned by William Eaton and a single water right was confirmed to Mr. Eaton. He has  
11 since sold one of the parcels to William Hipner and the Court finds that it would more efficient to  
divide the water right between the parcels in the manner described in AID-8A.

12 Therefore, the water right described on page 387, lines 1 through 10 is replaced with the  
13 following two water rights for use of Bachelor and Hatton Creeks, each with a priority date of June  
14 30, 1868, season of use from April 15 through July 10 and points of diversion located near the west  
15 line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12 and 500 feet west of the east line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of  
16 Section 12, T. 12 N., R. 17 E.W.M. The Court notes that the second diversion location does not  
appear to actually be on a creek, but is closest to Hatton Creek:

17 To William Eaton a right to divert 0.02 cfs, 3.44 acre-feet per year for the irrigation of 2  
18 acres in Lot A-1 of SP 81-37, within the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M.  
(Parcel #171212-21405).

19 To William Hipner a right with a June 30, 1868 date of priority to divert 0.02 cfs, 3.44 acre-  
20 feet per year for the irrigation of 2 acres in the south 390.5 feet of the north 440 feet of the west  
21 111.5 feet of the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 12, T. 12 N., R. 17 E.W.M. (Parcel #171212-21002).

22 **Answers No. 81 through 89** -- **No Claim**

23 **Answer No. 90** - *Anna Marie & Paul Morton (Claim No. 0863)*

24 The Mortons and the United States entered into a stipulation whereby the parties agreed that  
25 certain parcels were irrigated by ground water and not by surface water. Those parcels are 181208-  
12006, 181208-12012, 181208-21401 and 181208-21402, which is the entire place of use for the

1 water right described in the Report at pages 390 and 391. Therefore, the rights as set forth on those  
2 pages are withdrawn, resolving the United States' exception to Answer No. 90.

3 **Answers No. 91 through 95 -- No Claim**

4 **Answer No. 96 -** *George R. & Bernice Hammermeister*  
5 *Bernard F. & Linda J. Hammermeister*  
6 *Robert Gimlin*  
7 *Jeffrey M. & Erin J. Thomas*  
8 *Richard Donaldson*  
9 *Denise & Lisa Hopkins*  
10 *Clara Wolff*

11 No exceptions were filed to the water right confirmed for lands described in Answer No. 96.  
12 However, one parcel was subdivided so AID presented evidence to show the current parcel numbers  
13 associated with the answer. George Marshall testified at the supplemental hearing and referred to  
14 the portion of AID-8A that provides information on the lands described in Answer No. 96.

15 The Court confirmed a water right with an 1870 priority date for irrigating 45.38 acres for  
16 the Answer No. 96 lands. Report @ 222. At the time of the initial hearing, the land was owned by  
17 three individuals and one right was confirmed. AID-8A contains sufficient information to allow  
18 the water right to be divided among the current landowners, which now number seven. Therefore,  
19 the Court withdraws the right described on page 413 of the Report, lines 12 - 23 and confirms the  
20 following water rights, all with a priority date of June 30, 1870, a season of use of April 15 through  
21 July 10 and with a point of diversion on Bachelor Creek located near the southwest corner of the  
22 E½SE¼ of Section 1, T. 12 N., R. 17 E.W.M.:

23 To Clara Wolff, a right to divert 0.10 cfs, 16.91 acre-feet per year for the irrigation of 9.83  
24 acres in the south 330 feet of the north 1992 feet of the E½SE¼ of Section 1, T. 12 N., R. 17  
25 E.W.M., except the east 25 feet for road (Parcel #171201-44003).

To Bernard F. & Linda J. Hammermeister, a right to divert 0.09 cfs, 15.7 acre-feet per year  
for the irrigation of 9.13 acres in that portion of the E½SE¼ of Section 1, T. 12 N., R. 17 E.W.M.  
described as follows: Beginning 787.27 feet west of the east quarter corner of Section 1; thence S  
33°30' E 1055 feet more or less to the south line of Lot 3 of Short Plat 88-41; thence northeasterly  
to the southeast corner of Lot 3; thence N 00°30' W 737.59 feet; thence west to the point of  
beginning; except the north county road right-of-way (Parcel #171201-41402).

1 To George R. and Bernice Hammermeister, a right to divert 0.18 cfs, 30.15 acre-feet per  
2 year for the irrigation of 17.53 acres in Lot 3 of Short Plat 88-41, except the east 480.48 feet (Parcel  
3 #171201-41403), being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, T. 12 N., R. 17 E.W.M.

4 To Robert Gimlin, a right to divert .01 cfs, 2.06 acre-foot per year for the irrigation of 1.2  
5 acres in that portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 1, T. 12 N., R. 17 E.W.M. described as follows:  
6 Beginning 479.9 feet north of the southeast corner of Section 1, thence N 89°30' W 502.5 feet;  
7 thence N 206 feet; thence S 89°30' E 502.5 feet; thence S 206 feet to the point of beginning, except  
8 the E 25 feet for county road right-of-way (Parcel #171201-44011).

9 To Jeffrey M. & Erin J. Thomas, a right to divert 0.01 cfs, 1.29 acre-feet per year for the  
10 irrigation of 0.75 acres in Lot 4 of Short Plat AF 7202591, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1,  
11 T. 12 N., R. 17 E.W.M. (Parcel #171201-44408).

12 To Richard Donaldson, a right to divert 0.06 cfs, 10.78 acre-feet per year for the irrigation of  
13 6.27 acres in Lot 1 of Short Plat 7202591, except the east 106 feet of the north 206 feet, being  
14 within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, T. 12 N., R. 17 E.W.M. (Parcel #171201-44409).

15 To Denise and Lisa Hopkins, a right to divert 0.01 cfs, 1.29 acre-feet per year for the  
16 irrigation of 0.75 acres in Lot 2 and the east 106 feet of the north 206 feet of Lot 1 of Short Plat  
17 7202591, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, T. 12 N., R. 17 E.W.M. (Parcel #171201-44410).

18 **Answer No. 97 -- No Claim**

19 **Answer No. 98 - *John & Pamela Bohannon***  
20 ***Russel & Darlene Bohannon***  
21 ***Robert E. Bohannon***

22 The Court confirmed a consolidated water right for Answer No. 98 lands. AID-8A contains  
23 sufficient information to divide the water right described in the Report, page 403, between the three  
24 landowners. Therefore, the water right on page 403 is withdrawn and replaced with the following  
25 three water rights, all with a priority date of June 30, 1870, a season of use from April 15 through  
26 July 10 and a point of diversion on Bachelor Creek located 750 feet north and 430 feet west from  
27 the center of Section 10, being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M.:

28 To John & Pamela Bohannon a right to divert 0.15 cfs, 25.75 acre-feet per year for the  
29 irrigation of 14.97 acres in that portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 1, T. 12 N., R. 17 E.W.M.  
30 described as follows: Beginning 1200 feet north of the south quarter corner of Section 1; thence  
31 west 765 feet; thence south 1200 feet; thence N 89°27'40" W 160.92 feet; thence N 27'40" W

1 1523.25 feet; thence N 75°26'25" E 517.04 feet; thence N 7°33'33" W to the south line of Ahtanum  
2 Road; thence easterly to the east line of the SW¼; thence south to the point of beginning (Parcel  
3 #171201-31006).

4 To Russel and Darlene Bohannon, a right to divert 0.40 cfs, 68.82 acre-feet per year for the  
5 irrigation of 40.01 acres in the following two parcels: That portion of the SW¼ of Section 1, T. 12  
6 N., R. 17 E.W.M. described as follows: Beginning at the southeast corner of the SW¼ of Section 1;  
7 thence N 89°27'40" W 925.92 feet; thence N 27'40" W 1323.25 feet; thence N 75°26'25" E 517.04  
8 feet and the true point of beginning; thence S 75°26'25" W 517.04 feet; thence S 27'40" E 1523.25  
9 feet; thence N 89°27'40" W 531.57 feet; thence N 27'40" W 1223.51 feet; thence S 89°47'41" E  
10 331.28 feet; thence N 27'40" W 371.75 feet; thence N 75°26'25" E 223.55 feet; thence N 27'40" W  
11 to south county road right-of-way; thence easterly along right-of-way to a point N 07°33'35" W of  
12 the true point of beginning; thence S 07°33'35" E to the true point of beginning, except right-of-  
13 ways (Parcel # 171201-31008) AND that portion of the E½SW¼ of Section 1, T. 12 N., R. 17  
14 E.W.M. lying south of the county road right-of-way and E½SW¼SW¼ lying east of the following  
15 described line: Beginning N 89°27'40" W 1457.49 feet of the southeast corner of the SW¼; thence  
16 N 27'40" W 1223.51 feet; thence S 89°47'41" E 331.28 feet; thence N 27'40" W 371.75 feet;  
17 thence N 75°26'25" E 223.55 feet; thence N 47'40" W to the south county road right-of-way and  
18 end of said line, except right-of-ways (Parcel #171201-31009).

19 To Robert E. Bohannon, a right to divert 0.15 cfs, 25.82 acre-feet per year for the irrigation  
20 of 15.01 acres in that portion of the E½SW¼ of Section 1, T. 12 N., R. 17 E.W.M. described as  
21 follows: Beginning at the southeast corner of the SW¼ of Section 1; thence north along the east  
22 line 1200 feet; thence west at right angles 765 feet; thence south parallel to the east line 1200 feet to  
23 the south line; thence along the south line 765 feet to the point of beginning; except right-of-ways  
24 (Parcel # 171201-34001).

25 The Court had previously confirmed a junior water right for lands described in Answer No.  
98 and this right is described on page 404 of the Report. As discussed in the Special Issues section  
above, the Court has reconsidered its position on junior rights and withdraws the right on page 404.

**Answer No. 99: Gary Miller**

At the 1994 hearings AID did not make a claim for lands under Answer No. 99. AID/Gary  
Miller filed a late exception seeking a junior right only, as no right was confirmed in *Ahtanum II*  
under Answer No. 99. Gary Miller testified on behalf of his claim stating he irrigates about 4.5

1 acres and waters stock from the Hugh Bowman ditch. There is a 1.5 hp pump in the ditch to divert  
2 water to his property. There are solid-set sprinklers running east to west and hand lines running  
3 north and south in the pasture. There are also faucets around the property to irrigate other portions  
4 of the land. Water use evidence dates back to the 1950's.

5 Mr. Miller owns land within the  $W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$  and  $E\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$  of Section 2, T.  
6 12 N., R. 17 E.W.M. Parcel #171202-43401, -43402, and -43006. Mr. Miller traced ownership of  
7 his land back to the Code Agreement. The 1908 Code Agreement signatory was S.V. Hughes.  
8 Certificate No. 179 was issued to the Oregon Mortgage Company for 1.0 cfs for irrigation of 50  
9 acres within the  $SW\frac{1}{4}SE\frac{1}{4}$ ,  $N\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$ ,  $N\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$  of Section 2, T. 12 N., R. 17 E.W.M.  
10 Answer No. 99 was filed by Charles and Barbara Bocz claiming a right to 9 inches within the  
11  $SE\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$  of Section 2, T. 12 N., R. 17 E.W.M. except the south 20 feet for road. However,  
no right was confirmed in *Ahtanum II* under Answer No. 99. Under the Court's prior rulings in its  
Report, only a junior right could be considered for this property.

12 AID made a claim for a junior right. Exceptions were filed regarding the issue of junior  
13 rights. Based on those exceptions and legal arguments, the Court has reconsidered its original  
14 decision will not be confirming junior rights. See Special Issues Section above. The Court  
DENIES the exception and claim for a right for the Miller property under Answer No. 99.

15 **Answers No. 100 through 105 -- No Claim**

16 **Answer No. 106 - Eugene E. Carlson**  
17 **Kenneth A. & Gina Marquis**

18 In the initial Report, the Court found the evidence supported a conclusion a right existed to  
19 irrigate 0.90 acre within the area described in Answer No. 106, Report @ 224. The *Achepohl*  
20 decree confirmed a Class 7 water right to J. M. Snyder for the irrigation of 39 acres in Government  
21 Lot 2 of Section 7, T. 12 N., R. 18 E.W.M., which is the land described in Answer No. 106.  
22 However, there was no certificate in the record for this water right. Thus, a right could be confirmed  
for irrigating 0.90 acres if a certificate of water right was presented during the exception hearings.

23 AID filed an exception stating its intent to pay the necessary fees so the certificate could be  
24 issued. At the supplemental hearing it identified Certificate No. 145 as the appropriate certificate  
25 and AID-82 is a copy of documents from the county showing that the certificate, along with others  
had been recorded. However, a copy of the certificate was not offered into the record when this  
answer number was discussed. AID was to bring in a copy and present at a later date, but the Court

1 cannot find where this certificate was presented. Additionally, AID-8A states that 8.9 acres are  
2 being irrigated within the answer, contrary to the 0.90 acres that the evidence at the initial  
3 evidentiary hearing showed. There was no testimony or evidence offered to explain this difference.

4 The Court will not confirm a water right for lands in Answer No. 106 until a copy of  
5 Certificate No. 145 is placed in the record and until there is evidence offered to explain the  
6 difference in acreage shown between AID-8 and AID-8A. The Yakama Nation's objection to  
7 issuance of the certificate was addressed in the Court's Memorandum Opinion Re: Ahtanum Creek  
8 Threshold Legal Issues, entered on October 8, 2003.

8 **Answer No. 107 - *Royal L. Schlepp***

9 There were no specific exceptions to the water right confirmed for lands described in  
10 Answer No. 107, however, AID-8A provided the name of the current owner of the land. The  
11 claimant name on the water right in the Report at page 414 is amended at line 1 to Royal L.  
12 Schlepp. As a result of the Court's decision to reconsider its earlier ruling on junior rights, see  
13 Special Issues section above, the Court withdraws the right confirmed on page 415.

13 **Answer No. 108 - *Wayne Gohl***

14 Although the Court recognized a right existed for lands within Answer No. 108, no right was  
15 confirmed due to the need for additional information. AID filed an exception, but ultimately  
16 withdrew its claim to a water right for lands under Answer No. 108. Based on this, the United  
17 States withdrew its exception. The Yakama Nation also had filed an exception (#37). AID's  
18 withdrawal of Answer No. 108 claim renders this exception moot.

18 **Answers No. 109 through 111 - **No Claim****

19 **Answer No. 112 - *Raymond A. Decoto***

20 The United States and the Yakama Nation filed exceptions (YN Exception #38) to the water  
21 right confirmed for lands in Answer No. 112. AID responded by reducing the claim so that instead  
22 of asserting a right to irrigate lands within 11 parcels owned by 8 landowners a right is being  
23 asserted for only two parcels under a single ownership. The Court had confirmed a right to irrigate  
24 27.26 acres within Government Lot 1 of Section 7, T. 12 N., R. 18 E.W.M., Report @ 229. AID is  
25 now asserting a right to irrigate 18 acres, AID-8A. George Marshall testified at the supplemental  
hearing.

1 According to AID-8A, Raymond A. Decoto irrigates 18 acres in Government Lot 1 and that  
2 is the total right be asserted for Answer No. 112. As a result of this, the United States withdrew its  
3 exception. The documents submitted by the Yakama Nation and part of Niel Allen's declaration  
4 and supporting documentation indicate that 22.97 acres were being irrigated. However, since AID  
5 is only asserting a right to irrigate 18 acres, the Court will confirm a right consistent with AID-8A.

6 The right described in the report at page 412, lines 12 through 25, is replaced with the  
7 following right, also with a priority date of June 30, 1870, a season of use of April 1 through July  
8 10, and a point of diversion on Hatton Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 17  
9 E.W.M.: To Raymond Decoto, a right to divert 0.18 cfs, 30.96 acre-feet per year for the irrigation  
10 of 18 acres in Lots 3 and 4 of Short Plat B-133, being within Government Lot 1 of Section 7, T. 12  
11 N., R. 18 E.W.M. (Parcel #181207-22403 and 22404).

12 **Answers No. 113 through 121 -- No Claim**

13 **Answer No. 122 - *Craig Schultz Properties LLC***

14 There were no specific exceptions filed to the water right confirmed for lands described in  
15 Answer No. 122. AID-8A provided the current owner of the property, so the name on the water  
16 right described in the Report @ 440, line 1 is changed to Craig Schultz Properties, LLC. In  
17 response to Ecology's request for clarification on the source of water the Court reviewed the  
18 identified points of diversion and discovered an error. The second diversion described on line 8 as  
19 being near the southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  should be near the southwest corner of the  
20 SE $\frac{1}{4}$ NW $\frac{1}{4}$ . Line 8 is amended to reflect that correction. The Court also notes that this location is  
21 not on any of the creeks; however, it is one of the locations described in the prior certificate.

22 **Answers No. 123 through 125 - No Claim**

23 **Answer No. 126 - *Craig Schultz Properties LLC***

24 There were no exceptions filed to the water right confirmed for lands described in Answer  
25 No. 126. AID did have George Marshall testify concerning new ownership of the land and  
consolidation of two parcels into one. Craig Schultz Properties LLC now owns the land and it is all  
within Parcel No. 181203-41005. The water right described in the Report at page 439, lines 15 - 25  
is amended so that the Claimant Name on line 15 is Craig Schultz Properties LLC and the place of  
use on lines 23 $\frac{1}{2}$  to 25 is amended to read: The E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , except the east 25 feet and except the  
north 259 feet of the west 180 feet and except the south 500.69 feet of the north 1153.25 feet of the

1 west 174 feet of the east-199 feet, and except the north 30 feet for county road right-of-way; also the  
2 E½ of Government Lot 8, except the north 25 feet of the east 25 feet (Parcel No. 181203-41005).  
3 The Court also notes that one of the authorized diversions is on Bachelor Creek, so line 16½ is  
4 modified to add Bachelor Creek as a source.

4 **Answer No. 127 -**                    *Craig Schultz Properties, LLC*  
5 **Court Claim No. 00026**        *Kimco Group, LLC*

6        There were no specific exceptions filed to the water right confirmed for lands described in  
7 Answer No. 127, however, AID provided the name of the current owner of the land. When the  
8 Court reviewed the Report in order to identify the water right for Answer No. 127 lands, it  
9 discovered an error had been made when the water right was described in the schedule of rights. On  
10 page 233, lines 8 through 14, the Court intended to confirm two senior water rights. One for the  
11 irrigation of 13 acres with an 1868 date of priority and a second for the irrigation of 2 acres with an  
12 1872 date of priority. Therefore, the water right on page 432, lines 1 through 12 is withdrawn and  
13 the following two rights are confirmed to Craig Schultz Properties, Inc.:

13        With a June 30, 1868 date of priority, a right to divert 0.13 cfs, 22.36 acre-feet per year from  
14 Ahtanum Creek for the irrigation of 13 acres in the east 16 acres of Government Lot 7, Section 3,  
15 T. 12 N., R. 18 E.W.M., now known as Lots 1-4 of Short Plat 85-136 and Lots 1-4 of Short Plat 85-  
16 135 (Parcels #181203-43401, 402, 403, 404, 405, 406, 407 and 408). The point of diversion is in  
17 the SE¼SE¼ (Government Lot 8) of Section 4, T. 12 N., R. 18 E.W.M. The season of use is April  
18 15 through July 10.

18        With a June 30, 1872 date of priority, a right to divert 0.02 cfs, 3.44 acre-feet per year from  
19 Ahtanum and Bachelor Creeks for the irrigation of 2 acres in the NW¼SE¼ of Section 3, T. 12 N.,  
20 R. 18 E.W.M., except that portion lying east of the following described line: Beginning 1364.9 feet  
21 west of the northeast corner; thence S 00°35' E 1320.7 feet and the end of said line (Parcel  
22 #181203-42001). The point of diversion from Ahtanum Creek is near the southeast corner of  
23 Government Lot 8 of Section 4 and the point of diversion on Bachelor Creek is near the southwest  
24 corner of the SE¼NW¼ of Section 3, both in T. 12 N., R. 18 E.W.M. The season of use is April 15  
25 through July 10.

24        Due to the Court reconsidering its earlier decision on junior rights, see Special Issues section  
25 above, the water right described in the Report on page 432, lines 13 through 25 is withdrawn.

1 **Answer No. 128 - Clark R. and Janet Johnson**

2 There were no exceptions filed to the right confirmed for lands described in Answer No.  
3 128; however, AID provided updated ownership information. The claimant name on the water right  
4 described on page 393, lines 12 through 21 is changed at line 12 to Clark R. and Janet Johnson.  
5 Additionally, AID-8A provided a more precise legal description, so the place of use at line 20 is  
6 changed to read Parcel 1 of Book 79-0196, being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 3, T. 12 N.,  
7 R. 18 E.W.M., except the east 25 feet thereof for road (Parcel #181203-31422). Additionally, the  
8 Court has reconsidered its earlier ruling on junior rights, see Special Issues section above, and,  
therefore, withdraws the right described on page 394, lines 1 through 12.

9 **Answer No. 129 - No Claim**

10 **Answer No. 130 - Elmer L. Rhodes  
Robert W. & Carolyn A. Benner**

11 The Court, following presentation of the evidence related to Answer No. 130, was prepared  
12 to confirm a senior water right for the irrigation of 8 acres and a junior right for the irrigation of 1.5  
13 acres. See Report @ 236. However, water rights were not confirmed because there was no evidence  
14 to show where water was diverted to serve the property. Certificate No. 88 did not describe a point  
15 of diversion and there was no evidence presented to show where the landowners were diverting  
16 water. George Marshall testified on behalf of AID at the supplemental hearing regarding Answer  
17 No. 130. However, the only information provided either through testimony or in AID-8A was  
18 updated ownership and parcel number information. Lacking point of diversion information, the  
Court will continue to not confirm a water right.

19 As discussed above in the Special Issues section, the Court had determined it will not  
20 confirm what has been characterized as "junior rights" and the junior right, beginning on page 236,  
line 22, is withdrawn, even if point of diversion information is provided.

21 **Answer No. 131 - No Claim**

22 **Answer No. 132 -- Donna Vetsch  
R.E. Cornelius, et al.**

23  
24 The Court confirmed senior water rights pursuant to Answer No. 132 in the aggregate for 50  
25 acres within three parcels: Parcels #171217-11001, 171217-14001 and 171217-12006 based on the  
following breakdown: June 30, 1866, right in the amounts of 0.16 cfs and 27.56 acre-feet per year

1 for 16 acres located within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , being a portion of Parcel No. 171217-11001 in  
2 Section 17, T. 12 N., R. 17 E.W.M.; a second right holds June 30, 1870 priority date in the amounts  
3 of 0.34 cfs, 58.57 acre-feet per year for irrigation of 34 acres within the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , the north  
4 22.40 acres of Lot 4 and 2.5 acre parcel within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  all in Section 17, T. 12 N., R. 17  
5 E.W.M. The points of diversion are within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section  
6 18, and Lot 3 of Section 17, all in T. 12 N., R. 17 E.W.M. A junior right was also confirmed and is  
discussed later in this analysis. Report @ 237-239; 372, 405 and 406.

7 The United States took exception to this award based on lack of surface water facilities on  
8 the properties and subsequently a lack of beneficial use of surface water from 1973 through 1998  
(Exception No. 11).

9 ***1. Parcels 171217-11001 and 14001, Donna Vetsch***

10 The United States agreed that Parcel Nos. 11001 and 14001 are irrigated, but there are no  
11 visible surface water facilities for the parcels in question. The main question then is source of water  
12 for these two parcels. Ralph Saunders testified on behalf of the United States regarding his  
stereoscopic analysis of several aerial photos.

13 US-388B is an aerial photo from September 27, 1973. There is faint line visible on this map  
14 that reflects some depth suggesting a ditch was once there. It was grassed over and ended at the  
15 east boundary of Parcel 11001, approximately mid-point in the parcel. Mr. Saunders believed there  
16 had been a historic diversion point at the headworks of this ditch as well as older furrows. US-388C  
17 is an aerial photo dated May 30, 1979, and the properties are sprinkle irrigated. It is Mr. Saunders  
18 belief that both parcels are irrigated from a well and pump due to the wheel line and pressurized  
19 system that can be seen on the photo. The well is within Parcel 14002. This map does not include  
20 the creek or any distribution facilities, only a portion of Parcels 11001 and all of 14001. Both  
photos show irrigation on the parcels.

21 US-388E is a June 20, 1990 photo and US-388F is a July 18, 1991, photo. As marked on  
22 US-388F, the Hatton Creek diversion point would be in the northern portion of Parcel 11001  
23 (approximately 130 feet south and 770 feet west of the east quarter corner of Section 17). Both  
24 photos show flow in Hatton Creek. No ditch is visible to either parcel. However, both parcels  
25 showed signs of irrigation. The power poles were also visible at the location of what appeared to be  
the well on Parcel 14002. The parcels on this photo have a mountainous appearance due to the soil

1 conditions and the result of historic flooding from Hatton Creek; however, the parcels are in fact  
2 fairly flat.

3 US-388G is dated September 18, 1995 and US-394 is dated September 2, 1991, and both  
4 photos show that Hatton Creek is dry which would not be unusual for that time of year.

5 Mr. Saunders also reviewed AID's 2002 ortho photo, and the diversion point and conveyance ditch  
6 was visible. Mr. Saunders superimposed that ditch onto a piece of Mylar and attached it to US-394  
(1991 photo). However, the ditch was not visible on the 1991 photo without the Mylar overlay.

7 US-388I is an August 10, 1998, photo and similar to other photos shows no surface water  
8 facilities. However, there is a road in the northern portion of 11001. The properties were irrigated.  
9 According to US-126, Parcels 11001 and 14001 were not irrigated from surface water in 1977.

10 Based on the photos, it is Mr. Saunders belief that a ditch existed prior to 1973. However,  
11 between 1973 and 1998, there were no headworks, pump or distribution system from the creek  
12 visible in the photos. Mr. Saunders visited the site just prior to giving his testimony and saw the  
13 main ditch but no laterals. Lacking laterals to convey water and the flat terrain are limiting factors  
14 in applying water to the land. The current ditch follows a very similar, yet faint line that can be  
15 seen on the 1973 photos. The aerial photography did not show any pumps on Hatton Creek  
although he acknowledged they could be removed when not in use. Several photos might support  
this claim as they were taken late in the season (well after July 10<sup>th</sup>).

16 Jay Vetsch, brother-in-law of Donna Vetsch, testified on her behalf. AID offered a 2002  
17 ortho photo showing the facilities (AID-94). The Vetsches have owned the property in question  
18 since 1991. Mr. Vetsch has helped with farming the property since then, and with the passing of his  
19 brother Ray in 2001, has worked full-time on the property. Ahtanum Creek is the south border of  
20 Parcel 14002 and Hatton Creek is the north boundary of Parcel 11001. Mr. Vetsch testified to a  
21 concrete diversion structure with a dam on Hatton Creek (blue "X" on US-388A). See also AID-94.  
22 However, there was no testimony to establish when the concrete structure was installed which might  
23 be helpful in answering the question of continued beneficial use. Mr. Vetsch did not testify to a  
24 pump being either on the creek or removed from the creek. Mr. Vetsch stated that the ditch marked  
25 on US-388G was there since 1991. He also testified that there has been no five-year period of non-  
use since 1991. Mr. Vetsch reviewed US-394 (with Mylar attached). He stated there are small  
lateral ditches off this ditch to flood irrigate. In the past those ditches have been disked over or  
filled up in the fall to make access through the fields easier. This may explain why they are not

1 visible on the later photos. On US-388G the distribution lines are marked in orange and the wells  
2 with a green "X".

3 According to Mr. Vetsch, Parcels 11001 and 14001 are irrigated from Hatton Creek and a  
4 spring. Hatton Creek is used to flood irrigate 35 acres with 5 acres being subirrigated. AID claims  
5 a right to 35.13 acres within these two parcels (AID-8A). A spring is used for sprinkle irrigation on  
6 these two parcels and it is located within Government Lot 3 of Section 17 (see state's exhibit map  
7 SE-2). The spring is in a low depression on Parcel No. 14002 that fills with irrigation runoff water.  
8 There are tiles and a pump installed to pump the water back up to the fields. This source of water  
9 has been called a spring, a well, and a sump well. This is the source of water that Mr. Saunders  
10 believed to be a well and is circled on US-388G. The Court is unable to make a judgment on the  
11 source of water with the current evidence. If AID/Vetches believe it to be surface water, then this  
12 adjudication is the proper forum to address the claim to natural surface waters. One of the locations  
13 authorized on Certificate No. 175 is Government Lot 3 of Section 18, and there is a spring in that  
14 location. If it is a well, then the State's Ground Water Code controls. See RCW 90.44.

15 Applied irrigation water flows down to the spring area and Mr. Vetsch pumps that water  
16 back up to the place of use. This reuse of applied surface water (return flows) can be allowed  
17 under the Supreme Court's rulings on use of return flows, which state in pertinent part: "The  
18 appropriator's rights in the particular molecules of diverted water do not necessarily end when the  
19 water has been used once for irrigation. (Cites omitted.) An appropriator has a right to recapture  
20 and reuse this WSRF<sup>7</sup> water. . . ." *Ecology v. Bureau of Reclamation*, 118 Wn.2d 761, 827 P.2d  
21 275, 768 (1992). However, any naturally occurring surface waters in the spring area needs to be  
22 authorized on any water right ultimately confirmed. In addition to Hatton Creek and the spring, the  
23 Vetches also use two irrigation wells, one located in Parcel 11001 and the other in Parcel 14001,  
24 both of which may have State-issued permits.

25 Mr. Vetsch has knowledge of the irrigation practices back to sometime in 1991; evidence  
which answers the question of use of Hatton Creek from that point forward. However, the United  
States has argued non-use of surface water beginning in 1973. That means there is a period of 18  
years (1973-1991) that must be addressed. US-388B (May 1973), US-388E (June 1990), US-388C  
(May 1991), US-388F (July 1991) and US-394 (Sept. 1991) show no obvious sign of diversion or

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<sup>7</sup> WSRF=waste, seepage and return flows.

1 distribution facilities. See also US-126 (no apparently surface water irrigation in 1977).  
2 Evidence/testimony of beneficial use of surface water during this period is needed.

3 **2. Parcel #171217-14002, Donna Vetsch**

4 Parcel 14002 was originally placed on the "Not on Pope List" in AID-8. As such, there was  
5 no analysis of historic beneficial use on this parcel. This parcel lies within Answer No. 132 and  
6 Certificate No. 175. Parcel No. 14002 is irrigated using wells and the spring pump. The spring  
7 pump can supply water to 40 acres in 14002. AID claims a right to 12.62 acres (AID-8A).  
8 Mr. Vetsch's testimony supports surface water irrigation on this property from the spring, however,  
9 his knowledge only dates back to 1991. Testimony regarding historic use is needed. Also, AID  
10 must identify the source of water serving this property: a well or a spring. The issues of whether it  
11 is naturally occurring surface water, return flow or ground water will need to be addressed.

12 **3. Points of Diversion**

13 The Court confirmed three diversion locations: Within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  and Government Lot  
14 3 of Section 17, and NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18, all in T. 12 N., R. 17 E.W.M. Report @372, 405.  
15 Based on the Certificates of Change, Hatton Creek appears to be the authorized source of water.  
16 Hatton Creek flows through the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17 (SE-2). Based on the location of where  
17 the ditch diverts from Hatton Creek, the point of diversion would appear to be within the  
18 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17 not as authorized in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17. If AID/Ms. Vetsch  
19 elects to provide additional evidence regarding beneficial use between 1973 and 1991, and are  
20 successful in defending these rights, either AID or Ms. Vetsch will also need to file an application  
21 for change to correct the point of diversion to the current location on Hatton Creek, if they have not  
22 yet done so.

23 **4. Parcel #171217-12006, R.E. Cornelius, et al.**

24 As a result of AID's response to the United States' exception, on June 10, 2003, the  
25 sovereign withdrew its exception regarding Parcel No. 171217-12006 which is owned by R.E.  
Cornelius, et al. and a right will be confirmed according to the information found in AID-8A. The  
Court confirms a portion of the right found on p. 405 to R.E. Cornelius, et al., specifically in the  
amounts of 0.02 cfs, 3.87 acre-feet per year for irrigation of 2.25 acres within Parcel No. 171217-  
12006 (AID-8A). This parcel is more particularly described as:

Beginning 25 feet south of the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , thence west 208 feet,  
thence south 5 feet, thence west 50 feet, thence south 120 feet, thence southeasterly 255 feet  
to a point 16.5 feet west and 351.13 feet south of point of beginning, thence south to a point

1 765 feet south of the north line of Government Lot 3, thence east 16.5 feet, thence north to  
2 beginning.

3 The priority date is June 30, 1870. Although the Court originally confirmed three points of  
4 diversion, it would appear that Hatton Creek may be the proper source. The Court will confirm the  
5 diversion point within the NW¼NE¼ of Section 17, T. 12 N., R. 17 E.W.M.

6 A similar problem may exist with the above described points of diversion for R.E.  
7 Cornelius' portion of the water right as it does for Ms. Vetsches portion. If the Cornelius' use a  
8 different point of diversion than described, a change application will be necessary to correct the  
9 location if AID or Mr. Cornelius has not yet done so.

10 The Court also confirmed junior water right for these lands as well. Report @ 406. The  
11 Court has reconsidered that ruling and herein denies any junior right previously confirmed. See  
12 Special Issues section above.

13 **Answer No. 133 - *Lynn Tobin***  
14 ***Eugene Carpenter***

15 During the supplemental hearing on February 17, 2004, the AID withdrew its claim to a  
16 water right for lands under Answer No. 133. Based on this, the United States withdrew its  
17 exception. The Court had found on page 240 that rights could be confirmed upon submission of  
18 evidence on the source of water and point of diversion being used. That confirmation is withdrawn  
19 as a result of AID not pursuing a claim for the lands described in Answer No. 133.

20 **Answer No. 134 - **No Claim****

21 **Answer No. 135 - *Russel E. & Darlene Bohannon***

22 AID filed an exception to the place of use for the water right confirmed for Answer No. 135  
23 lands. The Court confirmed a senior right to irrigate 10.60 acres and a junior right to irrigate 1.6  
24 acres for lands described in Answer No. 135. Report @241-242; 380; 381. However, one of the  
25 parcels within that answer was excluded from AID-8, resulting in the Court not identifying all the  
applicable parcels that are owned and irrigated by the Bohannons within Answer No. 135. Parcel  
#181203-14413, which is Lot 3 of Short Plat 86-4, was not identified. George Marshall testified at  
the supplemental hearing and exhibit AID-66 was entered.

Based on the information provided at the supplemental hearing, the Court amends the water  
right described in the Report on page 380, lines 12 through 23, so that the place of use beginning on

1 line 20 will read: Lots 1, 2, 3 and 4 of Short Plat 86-4, being within the SE¼NE¼ of Section 3, T.  
2 12 N., R. 18 E.W.M. (Parcels #181203-14411, 14412, 14413 and 14414).

3 The Court confirms a right to Russel E. and Darlene Bohannon to divert water from  
4 Ahtanum Creek in the amounts of 0.11 cfs, 18.23 acre-feet per year for irrigation of 10.6 acres  
5 within Lots 1, 2, 3 and 4 of Short Plat 86-4, being within the SE¼NE¼ of Section 3, T. 12 N., R. 18  
6 E.W.M. (Parcels #181203-14411, 14412, 14413 and 14414).

7 As discussed in the Special Issues section, the Court had determined in was incorrect to  
8 confirm what has been called "junior rights". Therefore, the right described in the Report on page  
9 381, lines 1 through 15 is withdrawn.

10 **Answer No. 136 - James R. Decoto**  
11 **James R. and Darlene Decoto**  
12 **Yakima Air Terminal**

13 In the stipulation between AID and the Yakama Nation filed on April 21, 2005, the Yakama  
14 Nation withdrew its exception to this answer number (Yakama Exception No. 39). The Court  
15 confirmed a right for lands owned by James Decoto and Willis Decoto. See Report @ 243, 385.

16 This land is described under Answer No. 136. The confirmed place of use is as follows:

17 Beginning 1,046.6 feet east of the northwest corner of Government Lot 3; thence south 2081  
18 feet; thence east 1886.5 feet; thence north 2081 feet; thence west 1886.5 feet to the  
19 beginning in Section 3, T. 12 N., R. 18 E.W.M.; except beginning at eh northeast corner of  
20 said tract; thence south 835 feet; thence north 80°30" west 344.6 feet; thence north 30°15'  
21 west 888.8 feet to the north line of the Section; thence east to beginning. Parcels #181203-  
22 13001, 181203-14004.

23 AID, through AID-8A, divided up the right confirmed on page 385 of the Report to three  
24 parties. In addition to the lands owned by James Decoto and described above, the other land owners  
25 are the Yakima Air Terminal and James and Darlene Decoto. AID claims both a senior and junior  
right for the Air Terminal lands described as:

That portion of Government Lot 2 beginning at the southeast corner of Section 34, T. 13 N.,  
R. 18 E.W.M.; thence S 89° 48'24 E 99.2 feet to the true point of beginning; thence N 89°  
48'24" W 257.72 feet; thence S 0° 35'51" W 889.1 feet to center of Bachelor Creek; thence  
northeasterly along center line 762.9 feet more or less to the line bearing S 30° 04'26" E of  
the true point of beginning; thence N 30° 04'26" W 630.1 feet to the true point of beginning.  
Parcel #181203-12003.

James R. and Darlene Decoto own the following described land:

1 SE $\frac{1}{4}$ NE $\frac{1}{4}$ , except that part lying east of the following described line beginning S 89°59'05"  
2 W 1085.26 feet of the southeast corner said subdivision; thence N 12'15" E to north line  
3 said subdivision and end of said line except that part lying north of the following described  
4 line: beginning S 0°16' E 1012 feet of northeast corner of NE $\frac{1}{4}$ ; thence N 80°30' W to west  
line of said subdivision and end of said line, except south 30 feet of county road right of  
way. Parcel #181303-14004.

5 Neither Government Lot 2 nor the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 3 are described in Answer No. 136  
6 or Certificate No. 109. Both parcels lie to the east of Answer No. 136/Certificate No. 109 lands.  
7 Lacking an answer number and certificate, no right can be confirmed for these lands.

8 AID claims both a senior and junior right for the James Decoto land totaling 55 acres. As  
9 the James Decoto land is the only land described on Answer No. 136, the Court will confirm a right  
10 for 50 acres. The right described on page 385 is affirmed. The Court will limit the right to Parcel  
11 #181203-13001 and exclude Parcel -14004 as that is the parcel described on AID-8A as owned by  
12 James and Darlene Decoto and not within Answer No. 136. The Court confirms a water right to  
13 James Decoto to divert from Bachelor Creek 0.50 cfs, 86 acre-feet for irrigation of 50 acres from  
April 15 through July 10. The priority date is June 30, 1868. The point of diversion is within the  
SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3, T. 12 N., R. 18 E.W.M. The place of use is:

14 Beginning 1,046.6 feet east of the northwest corner of Government Lot 3, thence south 2081  
15 feet; thence east 1628.38 feet to the east line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , thence north 2081 feet;  
16 thence west to beginning; except beginning 2927.2 feet east of the northwest corner of  
17 Government Lot 3; thence south 835 feet; thence N 80°30" W 344.5 feet; thence N 30°15' W  
18 888.8 feet; thence east to beginning, except beginning S 89°48'24" E 99.2 feet east of the  
southeast corner of 181334-; thence S 89°48'24" W 356.92 feet; thence S 35°51" W 889.1  
feet to center line of Bachelor Creek; thence northeasterly along center line 762.9 feet;  
thence north 30°04'26" west 630.1 feet to beginning. (Parcel #181203-13001).

19 The Court also awarded a junior right for these lands. Report @ 386. However, the Court  
20 has since reconsidered its previous ruling that allowed for confirmation of junior rights. See Special  
21 Issues section above. The right described on page 386 is withdrawn.

22 **Answer No. 137 - *Estate of Delmar F. Woerner***

23 There was no exception filed to the water right confirmed by the Court for Answer No. 137  
24 lands. However, the parcel that was confirmed the water right has been subdivided and AID has  
25 presented evidence to show how the water right should be divided between the four parcels and  
provided an updated legal description. George Marshall testified at the Supplemental Hearing.

1 According to AID-8A, the Estate of Delmar F. Woerner owns four parcels that are now  
2 described as Lots 1, 2, 3 and 4 of Short Plat AF # 7030396, all of which lie in the west 1046.6 feet  
3 of Government Lot 3 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 3, T. 12 N., R. 18 E.W.M. The Court confirmed  
4 a senior right for the irrigation of 20 acres and set forth in the Report on page 397, lines 13 $\frac{1}{2}$  to 23.  
5 The Court notes that the landowner's name was misspelled in the Report at pages 244 and 397. The  
6 Court will amend the place of use beginning on line 22 $\frac{1}{2}$  to read: Lots 1, 2, 3 and 4 of Short Plat  
7 AF # 7030396, all of which lie in the west 1046.6 feet of Government Lot 3 and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
8 Section 3, T. 12 N., R. 18 E.W.M. (Parcels #181203-21401, 21402; 181203-24400, 24401).

9 Also, Certificate No. 108 which is the basis for the right on page 397 has a hand-written  
10 notation on the front that states the source is Bachelor Creek. The right at page 397, line 14 $\frac{1}{2}$  is  
11 changed to Bachelor Creek.

12 The Court had also confirmed a junior water right. As discussed above in the Special Issues  
13 section, the Court has determined that "junior rights" cannot be confirmed. Therefore, the right  
14 described on page 398, lines 1 --14 of the Report is withdrawn.

15 **Answers No. 138 through 141 - No Claim**

16 **Answer No. 142 - *Riley James Kelly***

17 There were no exceptions filed to the right confirmed for lands described in Answer No.  
18 142. However, the Court has reconsidered its ruling concerning junior rights, see Special Issues  
19 section above; therefore, the water right described on page 417, lines 11 through 23 is withdrawn.

20 **Answers No. 143 & 144 - No Claim**

21 **Answer No. 145 - *John and Judy Hartshorn*  
22 *Westwood West Corporation*  
23 *McAllister Field Ind. LLC***

24 The Court found that a senior right could be confirmed for the irrigation of 20 acres and a  
25 junior right for the irrigation of 24.31 acres for the lands described in Answer No. 145, Report @  
250 - 251. However, although two water rights were awarded in the *Achepohl* decree for these  
lands, only one certificate, No. 194, was in the record. The Court ruled that the rights would be  
confirmed if a copy of the missing certificate was put in the record during the exception phase for  
the Report. AID took exception to rights not being confirmed for the lands in Answer No. 145 and  
as part of Exhibit AID-68 entered a copy of the missing certificate. The certificate apparently

1 issued upon payment of fees that were not previously paid. The Court denied the Nation's  
2 exception to Ecology issuing certificates in these circumstances. See *Memo Op. Re: Legal Issues*.

3 Certificate No. 171, with a priority date of 1870, authorizes the diversion of 0.80 cfs for the  
4 irrigation of 40 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1 and Lot 1 and the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2,  
5 T. 12 N., R. 18 E.W.M. The certificate does not describe a point of diversion. Certificate No. 171 is  
6 for the lands that were missing a certificate during the Court's initial analysis of Answer No. 145  
7 lands. Also, since the Report was filed one of the parcels within Answer No. 145 has been divided  
8 into three parcels. Land in Parcel #181202-23003 is now in Parcels #181202-23408, 23409, 23416.  
9 Exhibit AID-8A breaks down the water right the Court found between six parcels.

10 As discussed on in the Special Issues section above, the Court has reconsidered its position  
11 on the existence of "junior rights" and found it was not appropriate to confirm such rights. The  
12 junior right previously recognized for Answer No. 145 lands will not be confirmed. The Court  
13 confirms the following rights, all with a season of use of April 15 through July 10 and points of  
14 diversion within Government Lot 3 of Section 2, and Government Lot 1 of Section 3, on Bachelor  
15 Creek and Government Lot 8 of Section 4 on Ahtanum Creek, all in T. 12 N., R. 18 E.W.M.

16 To John Hartshorn with a priority date of June 30, 1871, a right to divert 0.05 cfs, 8.07 acre-  
17 feet per year for the irrigation of 4.69 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T. 12 N., R. 18 E.W.M.,  
18 except the west 102 feet and except that portion lying south and east of the county road right-of-way  
19 (Parcel #181202-13003).

20 To John R. and Judy Hartshorn, with a priority date of June 30, 1870, a right to 0.05 cfs,  
21 9.12 acre-feet per year for the irrigation of 5.3 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$   
22 of Section 2, T. 12 N., R. 18 E.W.M. (Parcels #181202-14011 and 14012).

23 To Westwood West Corporation, with a priority date of June 30, 1871, a right to divert 0.09  
24 cfs, 14.79 acre-feet per year for the irrigation of 8.6 acres in Lot 8 of SP 7137496 Amended by  
25 Binding Site Plan AF 7169990 (Parcel #181202-23408) and the NW $\frac{1}{4}$  of Lot - 7A BSP 7254384  
(Amending BSP 7169990) (Parcel #181202-23416); all being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2,  
T. 12 N., R. 18 E.W.M.

To McAllister Field Ind. LLC, with a priority date of June 30, 1871, a right to divert 0.01  
cfs, 1.32 acre-feet per year for the irrigation of 0.77 acre in Lot 9 of SP 7137496 Amended by  
Binding Site Plan AF 7169990 (Parcel #181202-23409), being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2,  
T. 12 N., R. 18 E.W.M.

1 **Answers No. 146 through 150 - No Claim**

2 **Answer No. 151 - *Congdon Orchards, Inc.***

3 AID filed an exception to the Court not awarding a right for lands described in Answer No.  
4 151. The lands described in Answer No. 151 were not included in the original AID-8 filed with the  
5 Court prior to the 1994 hearings and evidence was not presented in support of a water right for these  
6 lands. AID's exception asks the Court to take evidence regarding the lands described in Answer  
7 No. 151. Dick Woodin, president and general manager for Congdon Orchards and George Marshall  
8 testified at the supplemental hearing.

9 Answer No. 151 was filed by Congdon Orchards and described five parcels as follows:  
10 Parcel No. 1, the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 33, T. 13 N., R. 18 E.W.M.; Parcel No. 2, the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of  
11 Section 34, T. 13 N., R. 18 E.W.M.; Parcel No. 3, the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34, T. 13 N., R. 18  
12 E.W.M.; Parcel No. 4, the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 34, T. 13 N., R. 18 E.W.M.; and Parcel No. 5, a  
13 portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, T. 13 N., R. 18 E.W.M. The answer also identified the  
14 owners of the land when the 1908 Code Agreement was signed. Congdon Orchards continues to  
15 own parcels 1, 2 and 5; however parcels 2 and 5 are irrigated solely with water withdrawn from  
16 wells, so a claim is not being made in this proceeding for those parcels. Parcels 3 and 4 are owned  
17 by the City of Yakima, who is appearing on its own behalf in this proceeding and apparently did not  
18 file an exception to a right not being confirmed for these two parcels. According to AID-86,  
19 Answer No. 151 stated that 231 acres were owned and 119.7 acres were being irrigated.

20 Although Parcel 1 is the only remaining land within Answer No.151 that is owned by  
21 Congdon Orchards and irrigated with surface waters, a right under this answer number is also being  
22 asserted for land in the N $\frac{1}{2}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33 – land that is not described in  
23 Answer No. 151. AID did not identify an answer that includes this land, nor was the Court able to  
24 determine that this land is within any answer. According to Mr. Woodin's testimony, the land in  
25 the S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 33 is irrigated with water diverted from Bachelor Creek and carried in the  
Hugh Bowman Ditch. The parcel is 80 acres in size with 77.55 acres being irrigated after removal  
of areas covered by roads and buildings. The land has historically been planted in orchard and hay  
and currently is back in hay production. No other party is making a claim under Answer No. 151.

Certificate No. 265 from the prior adjudication is appurtenant to this land. With an 1877  
priority date, the certificate authorized the diversion of 1.6 cfs for the irrigation of 80 acres in the

1 S½NW¼ of Section 33. The point of diversion is described as being in Lot 4 of Section 5, T. 12 N.,  
2 R. 18 E.W.M.; however, the Court reviewed maps that are in the record and Bachelor Creek does  
3 not appear to flow through Lot 4 of Section 5, nor does any other surface water source. During the  
4 presentation of evidence in support of claims for other answer, AID has shown that the diversion  
5 into the Hugh Bowman Ditch is in Section 10, T. 12 N., R. 18 E.W.M. The Court directs AID to  
6 provide additional information on the diversion used to serve this property and any source of water  
7 that may be located in Lot 4 of Section 5. Once the point of diversion information is submitted, the  
8 Court is prepared to confirm a right with a June 30, 1877, date of priority for the diversion of 0.78  
9 cfs, 133.39 acre-feet per year for the irrigation of 77.55 acres in the S½SW¼ of Section 33, T. 13  
10 N., R. 18 E.W.M.(Parcel #181333-23001). The season of use is April 15 through July 10.

11 A right is also being asserted on behalf of Congdon Orchards for 80 acres in the N½NW¼  
12 and NE¼NE¼ of Section 33. This land is also in hay, having previously been an orchard. Water  
13 from the Hugh Bowman Ditch is also used on a portion of this land. The total acreage irrigated is  
14 approximately 122 acres; however, the northerly portion of the land is irrigated with water delivered  
15 by Yakima Valley Canal Company. Mr. Woodin's knowledge of irrigation on this land began in  
16 1976 when he first began working for Congdon Orchards. It was a mature orchard at that time.  
17 Although information about this parcel is included in AID-8A under Answer No. 151, this land is  
18 not described in Answer No. 151, nor did AID identify another answer that would include this land.  
19 The Court concludes there is no answer that covers this land. Certificate No. 266 from the  
20 *Achepohl* adjudication is appurtenant to the land. It has a priority day of 1877 and authorizes the  
21 diversion of 1.6 cfs for the irrigation of 80 acres in the N½NW¼ of Section 33. However, since the  
22 land is not included in any answer, the Court cannot confirm a right for this land.

23 The Court also notes that there was significant testimony about the contribution to the Hugh  
24 Bowman Ditch from sources other than Bachelor Creek. Mr. Marshall testified that two warehouse,  
25 one owned by Gilbert Orchards in Wiley City and the other by Clausen Fruit in the town of  
Ahtanum, discharge water into the ditch. Mr. Marshall believes that the discharge is well water  
used in operation of the warehouses. Additionally, spill and return flows from the Yakima-Tieton  
Irrigation District also enter the ditch. As a result, the Hugh Bowman Ditch will carry water after  
July 10, even though the diversion from Bachelor Creek is shut down. These water sources may  
contribute to the quantity of water that is available for use in the Hugh Bowman Ditch, but the  
Court cannot confirm a right for its use.

1 **Answers No. 152 through 159 -**

**No Claim**

2 **Answers No. 160 and 187 -**

***R. Scott & Debra Roberts***

***R. S. Roberts, et ux.***

***Dennis & Krystal Dale***

3  
4 At the initial evidentiary hearing there was no evidence submitted for lands described in  
5 these two answer numbers. The stipulation filed on April 21, 2005, stated the parties had agreed  
6 that the named parties collectively have a right to irrigate 5 acres within both answer numbers. The  
7 stipulation itself provided no details beyond the 5 acres. However, exhibit A-160/187 identifies that  
8 the 5 acres are within the lands owned by R. S. Roberts, et ux, and that the legal description for the  
9 land is the S 672 feet of the W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  and also the E 495 feet of the S 1147 feet of the said  
10 subdivision, also the west 20 feet of the east 495 feet of the north 189 feet, except that portion north  
11 and west of the county road right of way, and except beginning S 00°30' W 599 feet from the  
12 northeast corner; thence N 00°30' E 150 feet of said subdivision; thence S 50°34' W 166 feet;  
13 thence S 19°09'E 177 feet to Ahtanum Creek; thence northeasterly along creek to the point of  
14 beginning, all within Section 5, T. 12 N., R. 18 E.W.M. According to Exhibit A-160/187,  
15 Certificate No. 85 from the *Achepohl* decree is appurtenant to this land. It is a right with a priority  
16 date of 1867 and authorized the diversion of 0.80 cfs for the irrigation of 40 acres in the  
17 W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5, T. 12 N., R. 18 E.W.M. The location of the points of diversion described  
18 on the certificate is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 12 N., R. 18 E.W.M., which  
19 places one on Ahtanum Creek and one on Bachelor Creek. The Court agrees that the lands  
20 addressed in the stipulation are within the place of use on Certificate No. 85 and confirms a right  
21 consistent with the stipulation for the diversion of 0.05 cfs, 8.6 acre-feet per year for the irrigation  
22 of five acres with a priority date of June 30, 1867. The season of use is April 15 through July 10.

23 **Answers No. 161, 162, 163 -**

**No Claim**

24 **Answer No. 164 -**

***Frances E. Eno (Court Claim No. 00678)***

***Thomas Carpenter, Jr. (Trustee)***

25 Thomas Carpenter, Jr., as trustee for Frances E. Eno, responded to the exceptions filed by  
Ecology to the Report of the Court. The Court heard the exceptions on February 25, 2004.  
Mr. Carpenter is represented by Charles Flower. Mr. Carpenter offered exhibits DE-298-305 in  
support of his claim. The Eno claim is addressed in the Report @ 252-253; 377.

1 Ecology's first exception pertained to proof of beneficial use. Ecology withdrew that  
2 exception. In Ecology's second exception it requested clarification on ownership of land. The  
3 claim and water rights are held in the name of Thomas Carpenter, Jr. as trustee for Frances E. Eno.  
4 Ecology had requested clarification regarding the source of water for this property. Mr. Carpenter  
5 responded by saying "at this time the sources of Claim No. 0678's surface irrigation water and  
6 water right are Ahtanum/Bachelor Creeks." Citing to "C" which is a copy of Achepohl Certificate  
7 No. 87. This lead Ecology to question if there had been a point of diversion change and discussion  
8 ensued on this subject at the hearing. Apparently Mr. Carpenter does not use Bachelor Creek.

9 Certificate No. 87 authorized three points of diversion<sup>8</sup> all within T. 12 N., R. 18 E.W.M.  
10 The first authorized point of diversion is located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5. In the Report,  
11 this point is identified as No. 2 and specifically described as being 500 feet south and 10 feet west  
12 from the east quarter corner of Section 5, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  (Report @ 377). This places  
13 the diversion point on Bachelor Creek and this point is no longer used. (RP @ 26).

14 The second certificated point of diversion is within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8, where there  
15 is no water course shown the State's exhibit map, Inset A (SE-2). This point, as described on the  
16 certificate, is south of Ahtanum Creek on the Yakama Reservation. The Court confirmed a point  
17 located 500 feet south and 1200 feet east of the north quarter corner of Section 8, being within the  
18 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8. Eno/Carpenter stated this point mirrors the location on the State's  
19 Investigation Report, SI-50. This point is also on SE-2. This location does not match up with  
20 Certificate No. 87. Although the second point of diversion obviously is described incorrectly, the  
21 Court must adhere to Certificate No. 87's location, unless a change had been approved by Ecology.  
22 The claimants should contact Ecology's Yakima Office to seek a change in point of diversion  
23 pursuant to RCW 90.03.380 if the diversion used is not within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 8.

24 The Court did not award a junior water right to Eno/Carpenter. The claimants now request a  
25 junior water right for 7.25 acres based on the Court's prior rulings. Both Ecology and the Nation  
expressed concerns about timeliness. However, the Court has reconsidered its ruling on junior  
rights, see Special Issues section above, and the Court DENIES Eno/Carpenter's junior right claim.

The Court confirms a right to Thomas Carpenter, Jr., as trustee for Frances E. Eno, to divert  
from Hatton Creek 0.70 cfs, 120.4 acre-feet per year for irrigation of 70 acres from April 15 through

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<sup>8</sup> A spring branch within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 is authorized but no claim was made.

1 July 10. The priority date is June 30, 1867. The authorized point of diversion is located within the  
2 NW¼SE¼ of Section 8, T. 12 N., R. 18 E.W.M. The place of use, derived from DE 304/AID-8A is  
3 the following land within Section 4, T. 12 N., R. 18 E.W.M.: The NW¼SW¼ and Government Lot  
4 5, excluding the east 488 feet of the north 893 feet and except the north county road right of way  
5 (62.3 acres). Parcel #181204-32004; and the East 488 feet of the north 893 feet of the NW¼SW¼,  
6 except the north county road right of way (7.7 acres). Parcel #181204-32005.

6 **Answer No. 165 - No Claim**

7 **Answer No. 166 & 168 – Claims Withdrawn**

8 At the supplemental hearing held on February 10, 2004, AID withdrew its claim for water  
9 rights for the lands described in Answers No. 166 and 168. No evidence was presented at the initial  
10 evidentiary hearing so no water rights were confirmed for the lands described in these two answers.

11 **Answer No. 167 & 169 - No Claim**

12 **Answer No. 170 - *Donald & Carol Trammell***

13 The Court confirmed water rights for land described in Answer No. 170. Report @ 253,  
14 400. The Yakama Nation (YN exception #41) and the United States filed exceptions to these water  
15 rights. During the supplemental hearing on February 10, 2004, AID withdrew its claim for lands  
16 described in Answer No. 170. Therefore, the Court withdraws the water rights confirmed on page  
17 400 to Donald and Carol Trammell, which resolves the two exceptions.

17 **Answer No. 171 - No Claim**

18 **Answer No. 172 - *James C. Ives***

19 In response to Ecology's request for clarification, the Court reviewed the right confirmed for  
20 lands described in Answer No. 172 in order to determine the appropriate source of water. The  
21 point of diversion authorized by the certificate is on Hatton Creek. The water right described in the  
22 Report at page 416, lines 1 through 9 is amended on line 2 to reflect Hatton Creek as the source of  
23 water. Additionally, the Court found a typographical error in the point of diversion resulting in the  
24 need to amend line 7½ to read Within the NE¼NW¼ of Section 17, T. 12 N., R. 17 E.W.M.

24 The Court has also reconsidered its decision on junior rights, see Special Issues section  
25 above, and the right describe in the Report on page 416, lines 11 through 22 is withdrawn.

**Answers No. 173, 174, 175 - No Claim**

1 **Answer No. 176** - *Richard A. & Helen F. Skagen*  
2 *Randall & Catherine Vanloock*

3 AID filed an exception to the Court not confirming a water right for lands described in  
4 Answer No. 176. AID-8, filed during the initial evidentiary hearing, did not include any  
5 information about Answer No. 176, leading the Court to conclude no right was being claimed for  
6 the land, Report @ 256. George Marshall, on behalf of AID, along with Richard Skagen and  
7 Randall Vanloock appeared at the supplemental hearing to provide evidence in support of a water  
8 right for the Answer No. 176 land. Exhibit AID-72 was offered into the record. Additionally, John  
9 Rennie and Daniel Baggarley testified about their knowledge of water use on the land prior to it  
10 being owned by the Swages and Vanloocks.

11 Answer No. 176 describes land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , the east 75 feet of the  
12 north 581 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  and a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , all in Section 5, T. 12 N.,  
13 R. 18 E.W.M. However, AID is asserting rights only for two parcels that are in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$   
14 of Section 5. The land is part of what was once called the Chisholm Ranch and Mr. Baggarley and  
15 Mr. Rennie both testified about water use on land that includes the parcels owned by the Skagens  
16 and Vanloocks from the 1950's until the 1980's when the Chisholm family began selling off the  
17 land. It was primarily used as pasture and hay ground for raising cattle. The Vanloocks purchased  
18 their parcel in 2000 from the Chisholm family. They initially did not irrigate the land, but by the  
19 time of the supplemental hearing in 2004, had purchased a pump and irrigation equipment and were  
20 prepared to irrigate his parcel. The parcel is 4.54 acres and AID-8A shows 4 acres that have been  
21 irrigated. The Skagens purchased their parcel in 1990 and irrigate about 2 of the 4.54 acres.  
22 Approximately half of the Skagen parcel is in the area described in Answer No. 176 and the other  
23 half is in the area described in Answer No. 178. AID-8A divides the 2 irrigated acres between the  
24 two answer numbers. Mr. Skagens testified that the division was appropriate.

25 The owner of the land when Answer No. 176 was filed was Almenia Heaton, who indicated  
that when the answer was filed 5.7 acres were being irrigated. The 1908 signor was Cyrus Walker,  
who irrigated 30 acres. Certificate No. 222, with an 1872 date of priority, issued as a result of  
*Achepohl* and authorized the irrigation of 75 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T.  
12 N., R. 18 E.W.M. The point of diversion authorized is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5. Neither  
of the two landowners testified to using a diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, which would be

1 on Bachelor Creek, leading the Court to conclude that a prior owner changed the location of the  
2 point of diversion without complying with the change procedures in RCW 90.03.380.

3 According to AID-8A, the only claim being made for lands within Answer No. 176 is for the  
4 two parcels discussed above. A portion of Certificate No. 222 is appurtenant to land described in  
5 Answer No. 178 and between the two answer numbers, rights are being asserted for the irrigation of  
6 less than 15 acres.

7 The Court finds sufficient evidence to confirm rights to the Skagens and the Vanloocks for  
8 their Answer No. 176 lands. The Court confirms the following water rights on Bachelor Creek with  
9 a priority date of June 30, 1872, a period of use from April 15 through July 10 and a point of  
10 diversion in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T. 12 N., R. 18 E.W.M. Since this is not the diversion  
11 being used, the landowners will need to comply with the change procedures in RCW 90.03.380.

12 To Richard A. & Helen F. Skagen a right to divert 0.01 cfs, 1.72 acre-feet per year for the  
13 irrigation of 1.01 acres in the W $\frac{1}{2}$  of Lot E-3 of Short Plat 85-167, being within the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$   
14 of Section 5, T. 12 N., R. 18 E.W.M. (Parcel #181205-31416).

15 To Randall and Catherine Vanloock, a right to divert 0.04 cfs, 6.88 acre-feet per year for the  
16 irrigation of 4 acres in Lot E-2 of Short Plat 85-167, being within the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, T.  
17 12 N., R. 18 E.W.M. (Parcel #181205-31415).

18 The Court notes that although AID-8A describes only the above two parcels as the only land  
19 within Answer No. 176 and irrigated with water from Ahtanum Creek, Exhibit AID-72 includes a  
20 map that highlights Parcel No. 181205-31414, along with the parcels owned by the Skagens and the  
21 Vanloocks. There is no analysis of this parcel, nor is there an explanation of why it is highlighted.

22 **Answer No. 177 - No Claim**

23 **Answer No. 178 - *Dan & Teresa Baggarley***  
24 ***Douglas & Audrey Nash***  
25 ***Richard A. & Helen F. Skagen***  
***John M. & B. Brown Rennie***

During the initial evidentiary hearing, there was no claim made for water rights for the lands  
described in Answer No. 178 and the answer was not included in AID-8. This resulted in the Court  
finding that a right was not being claimed for this land, Report @ 256. AID filed an exception to  
put in evidence in support of a claim for the property described in this answer. Dan Baggarley,

1 Richard Skagen, Audrey Nash and John Rennie, along with George Marshall, testified at the  
2 supplemental hearing. Exhibit AID-74 was offered into the record.

3 Answer No. 178, by Iva Wilcox and Oliver Chisholm, describes lands in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$   
4 and the W $\frac{1}{2}$ SE $\frac{1}{4}$ , except the east 310 feet of the north 150 feet, all in Section 5, T. 12 N., R. 18  
5 E.W.M. According to the answer, Cyrus Walker owned the land in 1908 and signed the Code  
6 Agreement. Two certificates from the *Achepohl* decree describe portions of the Answer No. 178  
7 lands. Certificate No. 92, with a priority date of 1868 authorizes the diversion of 0.96 cfs for the  
8 irrigation of 48 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and Lots 2 and 3 of Section 8,  
9 T. 12 N., R. 18 E.W.M. The point of diversion described in Certificate No. 92 is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$   
10 of Section 8, which is on Hatton Creek. Certificate No. 222, with an 1872 date of priority  
11 authorized the irrigation of 75 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 12 N.,  
12 R. 18 E.W.M. The point of diversion authorized is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5, which would be  
13 on Bachelor Creek. According to AID-8A, Answer No. 178 could include a right to irrigate up to  
14 30.7 acres; however, the right being claimed is for the irrigation of 17.39 acres.

15 Dan Baggarley and John Rennie are familiar with the land from the 1950's to the present. It  
16 is part of a larger parcel known as the Chisholm Ranch. During their period of knowledge, the land  
17 was used for irrigated pasture and hay. In the 1980's subdivision of the ranch began.

18 The evidence is sufficient to allow the Court to confirm rights for the land identified in AID-  
19 8A lying within Answer No. 178. The testimony also leads the Court to conclude that the points of  
20 diversion authorized by the certificates are no longer used. However, there is no evidence that the  
21 landowners complied with the change provisions of RCW 90.03.380, to legally change the location  
22 for the points of diversion. Therefore, the water rights confirmed herein will authorize use of the  
23 same diversions described in the appropriate certificate. The landowners should contact Ecology's  
24 Central Regional Office to seek authorization to use the points of diversion presently being used.

25 The Court confirms the following rights with a June 30, 1868, date of priority, a season of  
use from April 15 through July 10 and a point of diversion on Hatton Creek located in the  
NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T. 12 N., R. 18 E.W.M.:

To Dan and Teresa Baggarley, a right to divert 0.06 cfs, 10.73 acre-feet per year for the  
irrigation of 6.24 acres in Lot 1 and 2 of Short Plat 97-9, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5,  
T. 12 N., R. 18 E.W.M. (Parcels #181205-34414 and 34415).

1 To Douglas & Audrey Nash, a right to divert 0.003 cfs, 0.43 acre-feet per year for the  
2 irrigation of 0.25 acres in Lot F-2 of Short Plat 85-168, being within the SW¼SE¼ of Section 5, T.  
3 12 N., R. 18 E.W.M. (Parcel #181205-43402).

4 The Court confirms the following rights with a June 30, 1872, date of priority, a season of  
5 use from April 15 through July 10 and a point of diversion on Bachelor Creek in the SW¼SW¼ of  
6 Section 5, T. 12 N., R. 18 E.W.M.

7 To Richard A. & Helen F. Skagen, a right to divert 0.03 cfs, 5.28 acre-feet per year for the  
8 irrigation of 3.07 acres in that portion of Lot E-3 of Short Plat 85-167 lying in the NW¼SE¼ of  
9 Section 5, T. 12 N., R. 18 E.W.M. (Parcel #181205-31416).

10 To Richard A. & Helen F. Skagen, a right to divert 0.03 cfs, 5.28 acre-feet per year for the  
11 irrigation of 3.07 acres in Lot E-4 of Short Plat 85-167 lying in the NW¼SE¼ of Section 5, T. 12  
12 N., R. 18 E.W.M. (Parcel #181205-42411).

13 To John M. & B. Brown Rennie, a right to divert 0.03 cfs, 4.4 acre-feet per year for the  
14 irrigation of 2.55 acres in Lot C-4 of Short Plat 85-165, lying in the NW¼SE¼ of Section 5, T. 12  
15 N., R. 18 E.W.M. (Parcel #181205-42409).

16 The Court notes that in Exhibit AID-74 land owned by Matthew Loran and identified as  
17 Parcel #181205-42412 is also shown as using water within Answer No. 178 and is highlighted on  
18 the maps that are part of the exhibit. However, AID-8A does not include the Loran property as  
19 land for which a water right is being asserted. Additionally, there was no testimony about water use  
20 specifically on the Loran land, even though it appears to be part of the former Chisholm Ranch.  
21 The Court will not, therefore, confirm a right for this land.

22 **Answer No. 179** - *Samuel Hull, et al.*  
*Harlond B. Clift, Jr.*

23 The AID filed an exception to the Court confirming only a junior right for the lands  
24 described in Answer No. 179. Sam Hull, AID director/owner of a portion of the land, and George  
25 Marshall testified at the supplemental hearing. Exhibits AID-31 and AID-75 were entered.

Mr. Hull provided considerable testimony about irrigation on the parcels that lie within  
Answer No. 179 from the 1960's to the present. Mr. Hull's testimony shows that during the last  
several years approximately 66 acres, which is all of the acres within each parcel, have been  
irrigated. However, the record from the initial hearing was that in 1908 only 35 acres were  
irrigated. When Answer No. 179 was filed in 1957, 31.6 acres were being irrigated. Certificate No.

1 82 from the prior adjudication is appurtenant to this land and authorized the diversion of 2.6 cfs for  
2 the irrigation of 130 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 11 and Government Lot 3 of  
3 Section 14, T. 12 N., R. 17 E.W.M. This certificate is also appurtenant to lands lying in Answer  
4 No. 215, which will be addressed below. The Court concluded in its first report that the right for  
5 lands in Answer No. 179 is limited to the number of acres being irrigated in 1908, which was 35  
6 acres. The Court confirmed only a junior water right for the irrigation of 35 acres because Answer  
7 No. 179 stated that the 1908 owner of the land, Sophia Woodhouse, did not sign the Code  
8 Agreement. The Pope Decree found that water rights could only be recognized for signors of the  
9 1908 Code Agreement, so no water right was recognized for lands within Answer No. 179.

10 AID is challenging this finding of the Pope Court. Their research revealed that in 1908 the  
11 land was occupied and farmed by Norman and Isabella Woodhouse, who did sign the 1908 Code  
12 Agreement. They argue that in light of this error, a senior right should be confirmed in this  
13 proceeding. The Court has ruled that the Pope Decree is binding on individuals who were parties to  
14 the proceeding, or their successors. The owners of the Answer 179 lands clearly were parties to the  
15 proceeding, as they responded with Answer No. 179. They apparently responded with incorrect  
16 information that led the federal courts to determine there was no water right for the land. This Court  
17 cannot disturb this finding. This Court has no authority to consider new evidence that should have  
18 been presented to the Federal District Court. The Court has reconsidered its earlier ruling on junior  
19 rights, see Special Issues section above, and will not confirm any water right for lands described in  
20 Answer No. 179.

21 **Answers No. 180 through 186 - No Claim**

22 **Answer No. 188 - Adolph A. & Pauline L. Elhard**

23 At the 1994 evidentiary hearing, there was no evidence presented for Answer No. 188, nor  
24 was it included in AID-8 and the Court did not confirm a water right for any of the lands described  
25 in that answer. Report @ 258. AID filed an exception and presented evidence at the supplemental  
hearing in support of a water right for a portion of the lands in Answer No. 188 and Adolph Elhard  
and George Marshall testified. In addition to referring to the portion of AID-8A that addresses  
Answer No. 188, AID also entered Exhibit AID-76.

Answer No. 188 was filed by Oral and Addie Brown for the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5, T. 12  
N., R. 18 E.W.M. According to the answer, this land was owned by M. C. Cope in 1908 and

1 Mr. Cope signed the 1908 Code Agreement. Certificate No. 86 from *Achepohl* with a priority date  
2 of 1867, authorizes the irrigation of 40 acres in the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 5. The points of  
3 diversion described on the certificate are within the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5 and the  
4 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 8, both in T. 12 N., R. 18 E.W.M. The diversions in Section 5 are on  
Bachelor Creek and the one in Section 8 is on Hatton Creek.

5 According to the evidence offered during the supplemental hearing, a right is only being  
6 asserted for the lands currently owned by the Elhards -- 1.76 acre parcel. Mr. Elhard irrigates 1.5  
7 acres of pasture with water drawn from a sump that is very close to Bachelor Creek. The Elhards  
8 have owned the land since 1992, but lived across the street from it from 1977 to 1991. Mr. Elhard  
9 testified that during that period he recalls the land being irrigated with handlines and sprinklers and  
10 a dairy being operated on the site. The buildings associated with the dairy operation were old at the  
time and Mr. Elhard estimates they were built in the 1920's.

11 The Pope Decree allowed for the irrigation of 30.64 acres within the 40 acres described in  
12 Answer No. 188 and US-126, which is based on analysis of a 1977 aerial photograph, shows 6.3  
acres irrigated at that time.

13 The Court finds sufficient evidence to support confirming a water right to Adolph A. &  
14 Pauline L. Elhard with a June 30, 1867 date of priority for the diversion of 0.02 cfs, 2.58 acre-feet  
15 per year between April 15 and July 10 for the irrigation of 1.5 acres in Lot 2 of Short Plat 92-45,  
16 being a portion of E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5, T. 12 N., R. 18 E.W.M. The point of diversion from  
17 Bachelor Creek through a sump is located approximately 400 feet south and 550 feet west of the  
east quarter corner of Section 5, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 5.

18 Several other parcels are located within the area described in Answer No. 188, however,  
19 according to AID, there is no water use from Ahtanum Creek on the other parcels.

20 **Answers No. 189 and 190 - No Claim**

1 **Answer No. 191** - *Ladie Saucedo*  
2 *William M. and Billie J. Woodcock*  
3 *Lisa Meusborn<sup>9</sup>*  
4 *Gregory Gohl*  
5 *Talbert & Shirley Taylor*  
6 *Talbert William Taylor*  
7 *Talbert Taylor*  
8 *Andrew W. and Cheryl A. Hanks*  
9 *Richard Nathlich*  
10 *Garrison R. Lamarche*  
11 *Scott E. and Tracy A. Feist*  
12 *Phillip Moyer*

13 The Court did not confirm a water right in the Report for Answer No. 191 lands, asking AID  
14 to submit a legal description for the place of use. The Yakama Nation filed an exception, their  
15 exception #42, regarding beneficial use on certain parcels in Answer No. 191. The AID, on behalf  
16 of Answer No. 191 landowners, and the Yakama Nation informed the Court during the January 30,  
17 2004 hearing that a stipulation was close that would resolve the exceptions. The parties agreed to  
18 postpone the hearing and reschedule it for later should a stipulation not be reached. The parties did  
19 not request rescheduling and on April 21, 2005, a stipulation was filed resolving the Nation's  
20 exception.

21 The stipulation withdrew the claim by Talbert and Shirley Taylor, Talbert William Taylor  
22 and Talbert Taylor for a right on Parcels #181206-24410, 181206-24411 and 181206-24412, while  
23 identifying Taylor Parcels #181206-24507 and 24508 now being entitled to this right. Certificate  
24 No. 214 is appurtenant to these lands. It authorizes a diversion from Ahtanum Creek/McGonagle  
25 Ditch in Section 6. A more refined diversion location is needed, at a minimum to the nearest  
quarter-quarter, section, township and range. The Court is also not convinced that Ahtanum Creek  
is the proper source. AID shall provide source information as well. Upon receipt of the requested  
information, the Court is prepared to confirm a right to Talbert and Shirley Taylor to divert 0.02 cfs,  
3.44 acre-feet per year for irrigation of 2 acres within the Plat of Ahtanum City as follows: A  
portion of Lot 1, Block 3 lying southerly of McGonagle Ditch and Lot 4 of Block 3 (Parcel  
#181206-24507), and beginning at the southwest corner of Lot 4, Block 2, thence south 55 feet,  
thence east 150 feet, thence north 25 feet, thence east 360 feet, thence north 30 feet to the southeast

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<sup>9</sup> John & Nancy Nelson (Claim No. 0203)

1 corner of Lot 4, Block 3, thence west to the point of beginning (Parcel #181206-24508). The  
2 priority date is June 30, 1877. The season of use is April 15 through July 10.

3 The stipulation included identification of new landowners and land descriptions associated  
4 with the certificates that are appurtenant to Answer No. 191 lands. The Court identified several  
5 certificates that appeared appurtenant to Answer No. 191.<sup>10</sup> AID also matched certificates to lands.

6 The following right derives from Certificate No. 257 which authorizes (and the Court  
7 confirmed) Ahtanum Creek as the source and with two points of diversion. See SE 8 (Volume 2 of  
8 3). One is within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 6 and Bachelor Creek flows through this area. The  
9 second is within the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, and the headwaters of  
10 Gillette Springs are located here. Ahtanum Creek is some distance to the south. SE-2 (Inset A).

11 The Court confirms a right to Ladie Saucedo to divert 0.04 cfs and 7.10 acre-feet per year  
12 with points of diversion from Bachelor Creek within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  and Gillette Springs within  
13 the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  both in Section 6, T. 12 N., R. 18 E.W.M. Mr. Saucedo is  
14 authorized to irrigate 4.13 acres within the east 500 feet of the south 582 feet of the north 1291 feet  
15 of the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ , except the east 25 feet for county road and except the south 90 feet of the north  
16 930 feet of the east 250 feet in Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-41004). The  
17 priority date is June 30, 1877. The season of use is April 15 through July 10.

18 The following right derives from Certificate No. 258. Certificate No. 258 authorizes  
19 Ahtanum Creek as the source and the Court confirmed Ahtanum Creek. In reviewing this  
20 Certificate (SE-8, Volume 2 of 3) and SE-2 (map, Inset A), the authorized point of diversion is  
21 located within the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. The  
22 source in the northwest corner is the headwaters of Gillette Springs. The Court confirms a right to  
23 Scott E. and Tracy A. Feist in the amounts of 0.01 cfs and 1.72 acre-feet per year from Gillette  
24 Springs for irrigation of 1 acre within Lot 3 of Short Plat 95-106 in the SE $\frac{1}{4}$  of Section 6, T. 12 N.,  
25 R. 18 E.W.M. (Parcel No. 181206-41416). The point of diversion is within the northwest corner of  
the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. The priority date is June 30, 1877. The  
season of use is April 15 through July 10.

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<sup>10</sup> The Court originally identified Certificate 152 being appurtenant to this land. However, it does not appear appurtenant to Answer No. 191 lands.

1 The following rights derive from Certificate No. 168 and hold a June 30, 1870 priority date.  
2 The Court confirmed Ahtanum Creek as the source. In reviewing Certificate No. 168 (SE 8,  
3 Volume 1 of 3) and SE-2 (map, Inset A), the authorized point of diversion is located within the  
4 northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. The source that  
5 originates in this area is headwaters of Gillette Springs not Ahtanum Creek. Ahtanum Creek is some  
6 distance to the south. The Court will use Gillette Springs as it is the source located in the above  
7 described location, unless the landowner provided a more specific location. The season of use for  
all rights is April 15 through July 10.

8 The Court confirms a right to Lisa Meusborn in the amounts of 0.05 cfs and 8.12 acre-feet  
9 per year from Gillette Springs to irrigate 4.72 acres within Lot 1 of Short Plat 85-218; also  
10 beginning at the southeast corner of Lot 1, thence N 00°58' E 292.29 feet; thence N 89°59'25" W  
11 255.05 feet; thence S 00°58' W 99 feet; thence N 89°29'25" W 100 feet; thence S 00°58' W 201.6  
12 feet; thence N 88°15' E 335.38 feet to beginning. All in the SE $\frac{1}{4}$  of Section 6, T. 12 N., R. 18  
13 E.W.M. (Parcel No. 181206-43403). There is a pump located on Gillette Springs at the Meusborn  
property located 1255 feet north and 260 feet west from the south quarter corner of Section 6, being  
within the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. (SE-2).

14 A right to William M. and Billie Woodcock for irrigation of 3.49 acres in the amounts of  
15 0.04 cfs and 6 acre-feet per year from Gillette Springs from a point located within the northwest  
16 corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. The place of use is described as:

17 Lot 1 (Parcel #181206-43414, 1.25 acres), Lot 2 (Parcel #181206-43415, 1.14 acres) and  
18 Lot 3 (Parcel #181206-4341, 1.1 acres), ALL in Short Plat 95-102 in the SE $\frac{1}{4}$  of Section 6,  
T. 12 N., R. 18 E.W.M.

19 A right to Garrison R. Lamarche the amounts of 0.02 cfs and 2.61 acre-feet per year from  
20 Gillette Springs for irrigation of 1.52 acres within Lot 4 of Short Plat 95-102 in the SE $\frac{1}{4}$  of  
21 Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-43417). The authorized point of diversion is  
located within the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M.

22 The point of diversion authorized under Certificate No. 150 is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
23 Section 7, T. 12 N., R. 18 E.W.M. (SE-8, Volume 1 of 3). The handwritten notation of "Hatton  
24 Creek" is found on Certificate No. 150 Hatton Creek, as well as Bachelor Creek, flows through  
25 this quarter-quarter (SE-2, map Inset A). The Court will use Hatton Creek as indicated by the  
certificate. If Hatton Creek is not the source, AID may supplement the record.

1 A right to Gregory Gohl in the amounts of 0.03 cfs and 5.5 acre-feet per year from Hatton  
2 Creek for irrigation of 3.2 acres within Lot 4 of Short Plat 85-178 in the SE $\frac{1}{4}$  of Section 6, T. 12 N.,  
3 R. 18 E.W.M. (Parcel #181206-44410). The point of diversion is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
4 Section 7, T. 12 N., R. 18 E.W.M. The priority date is June 30, 1870. The season of use is April 15  
through July 10.

5 The following rights derive from Certificate No. 161. The Court originally identified  
6 Ahtanum Creek as the water source; however, in reviewing Certificate No. 161 (SE 8, Volume 1 of  
7 3) the authorized points of diversion identified are from Hatton Creek (handwritten notation) within  
8 the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7 and Gillette Springs in the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of  
9 Section 6, both in T. 12 N., R. 18 E.W.M. See also SE-2 (map, Inset A). The Court will rely on the  
10 certificate. If necessary, AID can supplement the record. The two authorized points of diversion  
11 for the following five water rights are Hatton Creek within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7 and Gillette  
12 Springs within the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, both in T. 12 N., R. 18  
13 E.W.M. All rights hold a June 30, 1870 priority date. The season of use is April 15 through July  
14 10.

15 A right to William M. and Billie J. Woodcock to divert 0.01 cfs and 1.74 acre-feet per year  
16 from Hatton Creek and Gillette Springs for irrigation of 1.01 acres within Lot 2 of Short Plat 95-105  
17 in the SE $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-41413).

18 A right to Phillip Moyer in the amounts of 0.01 cfs and 1.70 acre-feet per year from Hatton  
19 Creek and Gillette Springs for irrigation of 0.99 acres within Lot 3 of Short Plat 95-105 in the SE $\frac{1}{4}$   
20 of Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-42414).

21 A right to Andrew W. and Cheryl A. Hanks in the amounts of 0.01 cfs and 1.70 acre-feet per  
22 year from Hatton Creek and Gillette Springs for irrigation of 0.99 acres within Lot 4 of Short Plat  
23 95-105 in the SE $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-42415).

24 A right to Richard Nathlich the amounts of 0.01 cfs and 1.72 acre-feet per year from Hatton  
25 Creek and Gillette Springs for irrigation of 1 acre within the west 360 feet of Lot 4 of Short Plat 85-  
217 in the SE $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-43410).

A right to William and Billie Jean Woodcock in the amounts of 0.05 cfs and 9.03 acre-feet  
per year from Hatton Creek and Gillette Springs for irrigation of 5.25 acres within Lot 3 of Short  
Plat 85-178 in the SE $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. (Parcel #181206-44409).

1 AID also claimed an 1870 right for William and Billie Jean Woodcock, Parcel No. 181206-  
2 44408, for irrigation of 11.5 acres. On AID-8A, AID listed the following Certificates: 150, 161,  
3 170<sup>11</sup> and 259<sup>12</sup>. However, it is Certificates No. 150 and 161 that are appurtenant to the Woodcock  
4 property. The point of diversion on both Certificate Nos. 150 and 161 is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of  
5 Section 7 and the source is Ahtanum Creek. However, Hatton Creek and Bachelor Creek flow  
6 through this quarter-quarter, but not Ahtanum Creek. See also SE-2 (map, Inset A). Hatton Creek  
7 is handwritten on the certificates. The Court will use Hatton Creek as the source. If any of these  
8 water users uses another source, AID can supplement the record. Additionally, Certificate No. 161  
9 authorized Gillette Springs in the northwest corner of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 6, T. 12 N., R.  
10 18 E.W.M. Since the diversion points on the two certificates are not identical, the Court will  
11 confirm two separate water rights.

12 Both certificates cover different portions of the Woodcock Parcel 44408. Certificate No.  
13 161 is appurtenant to those lands lying within the west portion of the parcel and Certificate No. 150  
14 generally covers the east portion. The west portion of the parcel is slightly larger than the east and  
15 the estimated acres are 6.5 acres in the west portion and 5 acres in the east portion.

16 The Court confirms two June 30, 1870 rights to William and Billie Jean Woodcock for  
17 irrigation within Lot 1 of Short Plat 85-178 in the SE $\frac{1}{4}$  of Section 6, T. 12 N., R. 18 E.W.M. (Parcel  
18 #181206-44408). Both have a season of use of April 15 through July 10.

19 1) 0.07 cfs and 11.18 acre-feet per year for irrigation of 6.5 acres from two points of  
20 diversion: Hatton Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7 and Gillette Springs in the northwest corner  
21 of the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  corner of Section 6, both in T. 12 N., R. 18 E.W.M.

22 2) 0.05 cfs and 8.6 acre-feet per year for irrigation of 5 acres from Hatton Creek at a point  
23 within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T. 12 N., R. 18 E.W.M.

24 **Answers No. 192 through 214 - No Claim**

25 <sup>11</sup> Appears to describe lands adjacent to and south of Parcel 44408.

<sup>12</sup> Has a June 30, 1877 priority date.

1 Answer No. 215 - *Samuel Hull, et al.*

2 The AID filed an exception to the Court confirming only a junior right for lands described in  
3 Answer No. 215 and also seeks to have more acres authorized to be irrigated. Sam Hull, AID  
4 director and owner of a portion of the land, and George Marshall testified at the supplemental  
5 hearing and Exhibits AID-31 and AID-75 were entered.

6 Mr. Hull provided considerable testimony about irrigation on the parcels that lie within  
7 Answer No. 215 from the 1960's to the present. The record from the initial hearing was that in  
8 1908, 55 acres were irrigated. When Answer No. 215 was filed in 1957, approximately 35 acres  
9 were being irrigated and exhibit US-126 shows 37 acres were irrigated in 1977. The original AID-8  
10 filed by the district indicated that 44.4 acres were being irrigated, as does AID-8A filed in  
11 December 2003. Certificate No. 82 from the prior adjudication is appurtenant to this land and  
12 authorized the diversion of 2.6 cfs for the irrigation of 130 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  of  
13 Section 11 and Government Lot 3 of Section 14, T. 12 N., R. 17 E.W.M. This certificate is also  
14 appurtenant to lands lying in Answer No. 179, which was addressed above. The Court confirmed a  
15 junior right to the lands described in Answer No. 215, finding that since the 1908 owner did not  
16 sign the Code Agreement, a water right was not recognized in the Pope Decree.

17 AID is challenging this finding of the Pope Court. Their research revealed that in 1908 the  
18 land was occupied and farmed by Norman and Isabella Woodhouse, who did sign the 1908 Code  
19 Agreement. They argue that in light of this error, a senior right should be confirmed in this  
20 proceeding. The Court has ruled that the Pope Decree is binding on successors to individuals  
21 actually involved in the proceeding. The owners of the Answer 215 lands clearly were parties to the  
22 proceeding, as they responded with Answer No. 215. They apparently responded with incorrect  
23 information that led to the Court determining there was no water right for the land. This Court  
24 cannot disturb this finding. This Court has no authority to consider new evidence that should have  
25 been presented to the Federal District Court.

26 The Court has reconsidered its earlier decision that junior rights could be confirmed in this  
27 proceeding. See Special Issues section of this report. Accordingly, the water right described on  
28 page 375 of the Report is withdrawn and no water right can be confirmed for lands described in  
29 Answer No. 215. The exception is DENIED.

1 **Answer No. 216** - *James & Holly Phillips*  
2 *Clint & Cheri Friday*  
3 *Joanne Pace*  
4 *KLC Holdings Ltd*  
5 *Glaspey Ahtanum LLC*  
6 *William Terry & Denise F. Campbell*  
7 *Pacific Ca Systems*  
8 *Elvin J. & Judith Martinsen*  
9 *Thomas R. & Delores A. Rupel*  
10 *R & R Anderson Construction*  
11 *Frank Glapsey, Jr.*  
12 *Vicki Bowman*

13 There were no exceptions filed to the confirmation of water rights for lands described in  
14 Answer No. 216. However, several parcels within Answer No. 216 have been subdivided and AID  
15 presented evidence of the subdivisions to enable the Court to amend the rights confirmed in the  
16 original report on page 387, lines 12 – 35, page 398, lines 15 – 24, page 399, lines 1 – 10, page 401  
17 lines 1-9, and page 451 lines 15-23. George Marshall testified at the supplemental hearing and  
18 referred to exhibit AID-8A.

19 Answer No. 216 includes lands in Section 11, T. 12 N., R. 17 E.W.M. and Sections 1 and 2,  
20 T. 12 N., R. 18 E.W.M. – said land being several miles apart. The land in Section 11 is in the NW¼  
21 and N½SW¼ of Section 11. Several certificates are appurtenant to portions of the Section 11 land  
22 so the Court will analyze the land according to the appropriate certificate. AID-8A identifies five  
23 certificates AID believes are for Answer No. 216 lands. The Court has reviewed those five  
24 certificates and cannot agree with AID in this regard. Certificates Nos. 121 and 123 authorize use  
25 of water to irrigate of 7.33 acres in the northwest corner of the SW¼NW¼ of Section 11, within  
Parcels #171211-23002 and 23003, land that is not described in Answer No. 216. Since the two  
certificates do not authorize water use on land described in Answer No. 216, they will be excluded  
from consideration.

Certificate No. 124, with an 1869 date of priority authorizes the irrigation of 30 acres in the  
NE¼NW¼ of Section 11. The Court found that there was a senior right for 18.10 acres in this area,  
which is the right being asserted by AID. James & Holly Phillips irrigate 6 acres in the  
E½NE¼NW¼ of Section 11, and the Court confirms a right to use 0.06 cfs, 10.32 acre-feet per year  
from April 15 through July 10 for the irrigation of 6 acres in Lot 1 of SP 7341070, in the  
E½NE¼NW¼ of Section 11, (Parcel #171211-21402). The point of diversion is on Bachelor Creek

1 in the  $W\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 11 or the  $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$  of Section 11, T. 12 N., R. 17 E.W.M.  
2 Clint and Cheri Friday irrigate 12.10 acres in the  $NE\frac{1}{4}NW\frac{1}{4}$  of Section 11 and the Court confirms a  
3 right to use 0.12 cfs, 20.81 acre-feet per year from April 15 through July 10 for the irrigation of 12.1  
4 acres in Lot 2 of SP 7341070, in the  $NE\frac{1}{4}NW\frac{1}{4}$  of Section 11 (Parcel #171211-21403). The point  
5 of diversion is on Bachelor Creek in the  $W\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 11 or the  $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$  of  
6 Section 10, T. 12 N., R. 17 E.W.M.

7 Certificate No. 274, with an 1878 date of priority authorizes the irrigation of 15 acres in the  
8  $E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 11 and virtually all of that land is owned by Joanne Pace who irrigates 15  
9 acres. The Court previously found that a senior right existed to irrigate the 15 acres. Therefore, a  
10 right is confirmed for the diversion of 0.15 cfs, 25.8 acre-feet per year for the irrigation of 15 acres  
11 in the  $E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 11, T. 12 N., R. 17 E.W.M. (Parcel #171211-22001). The point of  
12 diversion on Bachelor Creek is located in the  $W\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$  of Section 11 or the  $E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$  of  
13 Section 10, T. 12 N., R. 17 E.W.M. The season of use is April 15 through July 10.

14 Certificate No. 122, with a priority date of 1869 authorizes the irrigation of 102 acres in the  
15  $S\frac{1}{2}NW\frac{1}{4}$  and  $NW\frac{1}{4}SW\frac{1}{4}$  of Section 11, T. 12 N., R. 17 E.W.M. (with exclusions). The Court  
16 relied on AID's presentation at the initial hearing that showed Certificate Nos. 121 and 123 were  
17 also appurtenant to these lands, leading the Court to conclude a senior right existed for 109.33 acres.  
18 However, that conclusion was in error, as only Certificate No. 122 is appurtenant to land in Answer  
19 No. 216. The land described in Certificate No. 122 is owned by KLC Holdings, Ltd. AID-81  
20 shows that 109.33 acres are being irrigated; however, the certificate authorizes irrigation of 102  
21 acres, and that is the maximum right that can be confirmed. Therefore, the Court confirms a right to  
22 KLC Holdings, Ltd. with a June 30, 1869, date of priority for the diversion of 1.02 cfs, 175.44 acre-  
23 feet per year for the irrigation of 102 acres in the  $S\frac{1}{2}NW\frac{1}{4}$ , except north 488 feet of the  
24  $NW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ , and the  $NW\frac{1}{4}SE\frac{1}{4}$ , except beginning 142.5 feet south of the west quarter corner;  
25 thence south 738.4 feet; thence N  $87^{\circ}36'$  E 482.3 feet; thence north 251.2 feet; thence W 58.36 feet;  
thence N 463 feet; thence west 423.6 feet to the point of beginning, all in Section 11, T. 12 N., R.  
17 E.W.M. (Parcels #171211-23004, N $\frac{1}{2}$  of 171211-24001 and N $\frac{1}{2}$  of 171211-24002). The point  
of diversion on Bachelor Creek is located in the N $\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$  and/or Hatton Creek in the  
 $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M. The season of use is April 15 through July 10.

Certificate No. 301 is appurtenant to land owned by Glaspey Ahtanum LLC in the  $NE\frac{1}{4}SE\frac{1}{4}$   
of Section 2, T. 12 N., R. 18 E.W.M. and authorizes the irrigation of 40 acres with an 1882 date of

1 priority. The Court had previously determined there was a senior right for the irrigation of 12.63  
2 acres in this area, which is the number of acres for which a right is being claimed in AID-8A. The  
3 Court confirms a right with a June 30, 1882, date of priority for the diversion of 0.13 cfs, 21.72  
4 acre-feet per year for the irrigation of 12.63 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 2, T. 12 N., R. 18  
5 E.W.M (Parcels #181202-41431, 41432, 41433, 41434, 41435). The point of diversion on  
6 Ahtanum Creek is in Government Lot 8 of Section 4, T. 12 N., R. 18 E.W.M. The season of use is  
7 April 15 through July 10.

8 Certificate No. 132, with an 1869 date of priority, authorized the irrigation of 40 acres in  
9 Government Lot 8 of Section 2 and 17.3 acres in the west 330 feet of the SW $\frac{1}{4}$  of Section 1, T. 12  
10 N., R. 18 E.W.M. AID-8A shows that 10.12 acres are irrigated in Government Lot 8 of Section 2  
11 and 15.3 acres are irrigated in the west 330 feet of the SW $\frac{1}{4}$  of Section 1; however, it erroneously  
12 states that Certificate No. 118 covers the land. That is not correct. Certificate No. 118 describes the  
13 east 990 feet of the SW $\frac{1}{4}$  of Section 1. The SW $\frac{1}{4}$  of Section 1 is not part of the land described in  
14 Answer No. 216, nor has any other answer been identified that includes this land. Therefore, the  
15 Court cannot confirm a right. Previously, the Court recognized a junior right for lands not covered  
16 by an answer number. As discussed in the Special Issues section of this report, the Court has  
17 reconsidered that decision and will no longer confirm junior rights.

18 The Court does confirm a right with a June 30, 1869, date of priority for the lands in  
19 Government Lot 8 of Section 2 as follows. The point of diversion for all of the rights is on  
20 Ahtanum Creek in Government Lot 8 of Section 4, T. 12 N., R. 18 E.W.M. The season of use for  
21 all rights is April 15 through July 10.

22 To William Terry and Denise Campbell a right to divert 0.02 cfs, 3.11 acre-feet per year for  
23 the irrigation of 1.81 acres in Lot A of Short Plat 89-134, being within the NW $\frac{1}{4}$  of Government  
24 Lot 8 of Section 2, T. 12 N., R. 18 E.W.M. (Parcel #181202-44416).

25 To Pacific Ca Systems, a right to divert 0.02 cfs, 3.11 acre-feet per year for the irrigation of  
1.81 acres in Lot B of Short Plat 89-134, being within the N $\frac{1}{2}$  of Government Lot 8 of Section 2, T.  
12 N., R. 18 E.W.M. (Parcel #181202-44417).

To Glaspey Ahtanum LLC, a right to divert 0.03 cfs, 5.16 acre-feet per year for the  
irrigation of 3 acres in Lot D of Short Plat 89-134 and the following described land: Beginning N  
89°20'07" E 150.03 feet from the southwest corner of Lot C of SP 89-134; thence N 89°20'07" E  
571.97 feet; thence N 02°57'08" W 226.59 feet; thence S 89°20'07" W 569.15 feet; thence S

1 58'39" 226.41 feet to the beginning, within Government Lot 8 of Section 2, T. 12 N., R. 18 E.W.M.  
2 (Parcel #181202-44422).

3 To Elvin J. & Judith Martinsen, a right to divert 0.02 cfs, 3.65 acre-feet per year for the  
4 irrigation of 2.12 acres in Lots 1 (Parcel #181202-44423, 1.2 acres) and Lot 3 (Parcel #181202-  
5 44425, 0.92 acres) of SP AF# 7050254 being within the E½ of Government Lot 8 of Section 2, T.  
6 12 N., R. 18 E.W.M.

7 To Thomas R. and Delores A. Rupel, a right to divert 0.01 cfs, 2.37 acre-feet per year for the  
8 irrigation of 1.38 acres in Lot 2 of SP AF# 7050254 (Parcel #181202-44424) being within the E½ of  
9 Government Lot 8 of Section 2, T. 12 N., R. 18 E.W.M.

10 **Answer No. 217 - Claudia Richardson**  
11 **Benn V. and Carol A. Splawn**  
12 **David J. and Christine Lynde**

13 Ahtanum Irrigation District did not file an exception to the confirmation for lands within  
14 Answer No. 217, but did address clarification of parcels for the land described in the answer.  
15 During the supplemental hearing, George Marshall testified about the clarifications, resulting in  
16 additional evidence being offered. Exhibit AID-78 was introduced into evidence.

17 Answer No. 217 describes lands in the SE¼SE¼ of Section 10 and the N½NE¼ of  
18 Section 15, T. 12 N., R. 17 E.W.M. The Court determined that the lands in Answer No. 217 are  
19 entitled to a senior right for irrigation of 65 acres and a junior right to irrigate 23.60 acres, Report at  
20 267. Due to uncertainty about whether the certificate from the Achepohl adjudication had been  
21 issued, rights were not confirmed. AID determined that Certificate No. 176, with a priority date of  
22 1870, issued in 1929 and authorized the diversion of 2.4 cubic feet per second for the irrigation of  
23 120 acres in the SE¼SE¼ of Section 10 and the N½NE¼ of Section 15, T. 12 N., R. 17 E.W.M.,  
24 see Exhibit AID-78. The following parcels were identified as being within Answer No. 17: 171210-  
25 44405 and 06, 171210-44411 and 12 (these are in the SE¼SE¼ of Section 10), 171215-11402, 03  
and 04, 171215-12400, 01, 02, 03 and 04 and a portion of 171215-11001 (all but the last parcel are  
in the N½NE¼ of Section 15 and the last parcel is in both the N½NE¼ of Section 15 and the  
SE¼SE¼ of Section 10).

Generally, AID-8A has served to provide information on how many acres are irrigated  
within each parcel and how the senior and junior acres should be distributed amongst the parcels.  
However, in the case of Answer No. 217, the Court concludes that AID-8A is not accurate. It

1 identifies *Achepohl* Certificate No. 176a as being appurtenant to the land, however, the copy of  
2 176a that is AID-78, describes a place of use in the SW¼SE¼ of Section 10, which is outside of  
3 Answer No. 217. Certificate No. 176 appears to be the appropriate certificate. Additionally, AID-  
4 8A describes only three parcels, whereas AID-78 shows parts of 14 parcels being within Answer  
5 No. 217 and sharing portions of the water right. Prior to confirming a water right for Answer No.  
6 217 lands, the Court requests that AID review AID-8A and address what appears to be  
inconsistencies between that document and what is being described in AID-78.

7 **Answer No. 218 - No Claim**

8 **Answer No. 219 - *Kwik Lok (KLC Holdings Ltd)***

9 There were no exceptions filed to the water right confirmed by the Court for land described  
10 in Answer No. 219. However, the parcel has been subdivided and AID brought the new parcel  
11 information to the Court's attention at the supplemental hearing. George Marshall testified and  
referred to the portion of Exhibit AID-8A that covers Answer No. 219.

12 The Court previously had found that there was a senior right for the irrigation of 70 acres  
13 within the lands described in Answer No. 219. Report @ 269. The Court has reviewed AID-8A as  
14 related to Answer No. 219 and finds a problem that AID did not address. Answer No. 219 describes  
15 the N½SE¼ and S½NE¼ of Section 11, T. 17 N., R. 12 E.W.M. However, AID-8A includes Parcel  
16 #171211-13002, which is the N½NE¼ of Section 11, land not included in Answer No. 219. US-  
17 130A, which is a map of the Ahtanum basin on which the United States has drawn the lands  
18 encompassed by answer numbers, does not show an answer that includes the N½NE¼ of  
19 Section 11. Additionally, Certificate No. 134 from *Achepohl*, which is cited by AID as appurtenant  
to the Answer No. 219 lands does not include the N½NE¼ of Section 11 within its place of use.  
Therefore, that land is not entitled to a water right.

20 AID-8A divided the 70-acre senior right between three parcels, one of which is not entitled  
21 to a water right. The Court does not adopt that division and will leave the 70 acre right as  
22 recommended for two parcels that are within Answer No. 219, but will correct the parcel numbers.  
23 The Court amends the water right on page 418, at line 10, so that the parcel numbers for the place of  
24 use are as follows: Parcels #171211-13003 and 171211-41001. Additionally, the Court notes that  
25 the points of diversion authorized are on Hatton Creek, so the source on line 2 is changed from  
Ahtanum Creek to Hatton Creek.

1 The Court had previously confirmed a junior right for this land. However, since the Court  
2 has reconsidered its earlier ruling concerning junior rights, the junior right described on page 418,  
3 lines 12 through 24 is withdrawn. See Special Issues section above.

4 **Answer No. 220** -- ***Bernard & Marylyn Novobielski (Claim No. 02086)***  
5 ***Paul Morton (Claim No. 00863)***  
6 ***Larry E. & Kori L. Wolf***

7 AID filed an exception to the water rights confirmed for lands described in Answer No. 220.  
8 AID-8 omitted one parcel that is within the answer and irrigated with water from Ahtanum Creek.  
9 George Marshall testified at the supplemental hearing and Exhibit AID-79 was entered.

10 The Court found that a senior right existed for the irrigation of 57.71 acres in Answer No.  
11 220 and confirmed water rights for the irrigation of a total of 57.71 acres. Report @ 271. There are  
12 three certificates with three different priority dates appurtenant to the land within Answer No. 220,  
13 resulting in three water rights be confirmed.

14 Ecology's Exception No. I.1, relates to the Morton's land that is described in Answer No.  
15 220. Ecology and the Mortons entered into a stipulation that resolved the exception. The portion  
16 of the stipulation dated January 21, 2004, for lands described in Answer No. 220 stated that the  
17 "Source" on pages 457 and 461 of the Report should be modified to read "Ahtanum Creek (Hatton  
18 Creek)." The Court concurs and so modifies the Report.

19 The water right confirmed to Paul Morton with a June 30, 1882, date of priority, and  
20 described on page 461 of the report is modified to authorize the diversion of 0.09 cfs, 14.62 acre-  
21 feet per year from Hatton Creek and Ahtanum Creek for the irrigation of 8.5 acres in Government  
22 Lot 1, Section 9, T. 12 N., R. 18 E.W.M. (Parcel #181209-22001) . Likewise, the right confirmed  
23 to Mr. Morton on page 457, lines 1 through 10, is modified to clarify the source of water is Hatton  
24 Creek and Ahtanum Creek.

25 The water right confirmed to Bernard & Marylyn Novobielski on page 438 of the Report is  
modified to just describe the water right being confirmed for lands still owned by the Novobielskis.  
A separate water right will be confirmed for the parcel that was omitted from the first Report, as it  
is for lands owned by Larry and Kari Wolf. The water right originally confirmed for the  
Novobielskis had a place of use that included 10 separate parcels. That has been reduced to three  
parcels owned by the Novobielskis and one parcel owned by the Wolfs.

1 The Court withdraws the water right on page 438 and confirms two rights, each with a  
2 priority date of June 30, 1872, season of use from April 15 and July 10, and points of diversion  
3 located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 5; NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, and SE $\frac{1}{4}$ SE $\frac{1}{4}$   
4 of Section 6, all in T. 12 N., R. 18 E.W.M. The Court notes that the points of diversion authorized  
5 are on Hatton and Bachelor Creeks (or near them), and is the source of water that will be  
6 authorized.

7 To Bernard & Marylyn Novobielski a right for the diversion of 0.22 cfs, 37.77 acre-feet per  
8 year for the irrigation of 21.96 acres in the W $\frac{1}{2}$  of Government Lot 4, except the east 150 feet and  
9 the following described part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , beginning at the northwest corner of Lot 1 of Short  
10 Plat 86-21 (said point being approximately 1520 feet south of the northwest corner of Section 4);  
11 thence east 473.39 feet; thence N 57°37' W to the south line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ ; thence  
12 57°37' W 150 feet; thence east 200 feet; thence north to the northeast corner of said subdivision;  
13 thence N 89°44'43" W 678.86 feet; thence south 860.89 feet the point of beginning; all in Section 4,  
14 T. 12 N., R. 18 E.W.M. (Parcel #181204-22002 and 181204-23005) and Lot B of Short Plat J-6,  
15 being the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, T. 12 N., R. 18 E.W.M., (181205-14402).

16 The Court also confirms a right to Larry E. and Kori L. Wolf for the diversion of 0.04 cfs,  
17 6.88 acre-feet per year for the irrigation of 4 acres in the W $\frac{1}{2}$  of Parcel A of Short Plat J-6, being  
18 approximately the W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, T. 12 N., R. 18 E.W.M. (Parcel #181205-  
19 14405).

20 **Answer No. 221** - *Jeff Van Wechel & Della Fikkan*  
21 *Gail Hernandez*  
22 *Dennis Frank*  
23 *Leslie Barr*  
24 *Michael D. & Nancy Dale*  
25 *Flumencio Garza*  
*Neil D. Monoian*  
*Gary & Laurene Aranas*

AID filed an exception to the Report related to water rights confirmed for Answer No. 221  
lands. The exception suggests that the schedule of rights at the back of the report did not include  
one of the water rights the Court confirmed for lands in Answer No. 221. The exceptions indicate  
the missing water right should have been described on page 393 of the Report. However, the water  
rights on page 393 have a priority date of 1868, while the water right that allegedly is missing has a  
priority date of 1878. The water rights are in chronological order, so water rights within different

1 priority dates, even though issuing to the same landowner, will not be consecutive in the report.  
2 The water right that AID thought was missing is described on page 452. AID's exception also  
3 indicates that the land has been sold and subdivided, so additional information was provided that  
4 allows for the water rights previously confirmed to be divided amongst the current owners.

5 AID-8A divides the water rights that the Court recognized amongst the parcels within  
6 Answer No. 221. However, it does contain errors that will not be adopted. Three certificates have  
7 places of water use that include the lands within Answer No. 221. AID-8A indicates that the  
8 priority date for water rights for all land in Answer No. 221 is 1878. That is incorrect. Certificate  
9 No. 105 has a priority date of 1868 and authorized the irrigation of 40 acres in the N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$  of  
10 Section 10. This certificate would cover all land in Parcel #171210-13406 and a little less than half  
11 of 171210-12404 and 12401. Water rights for these parcels will have an 1868 priority date. AID-  
12 8A erroneously indicates a portion of 171210-21401 is within the place of use on Certificate No.  
13 105. The other two certificates both have a priority date of 1878. Certificate No. 271 authorizes the  
14 irrigation of 40 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10 and Certificate No. 272  
15 authorizes the irrigation of 40 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10. A little more than half of  
16 Parcels #171210-12404 and 12401 and all of 21401, 12403, 11409 and 11410 are within this area.  
According to AID-8A and Exhibit AID-80, the portion of the land described in Certificates No. 271  
and 272 lying south of the Ahtanum Road have been irrigated and there are several parcels in the  
NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10 for which rights are not being asserted.

17 The Court withdraws the right on page 393 of the Report, lines 1 - 11 and confirms the  
18 following rights, all with a season of use from April 15 through July 10 and a point of diversion on  
19 Bachelor Creek into the Hugh Bowman Ditch, located 725 feet north and 325 feet west from the  
center of Section 10, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M.

20 To Gary & Laurene Aranas, with a June 30, 1868 date of priority, a right to divert 0.14 cfs,  
21 24.51 acre-feet per year for the irrigation of 14.25 acres in that portion of Lot 4 of AF #7025514,  
22 lying easterly of Bachelor Creek, being a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R.  
17 E.W.M. (Parcel #171210-13406).

23 To Leslie Barr, with a June 30, 1868 date of priority, a right to divert 0.03 cfs, 5.16 acre-feet  
24 per year for the irrigation of 3 acres within that portion of Lot 1 of SP #7354181 lying within the  
25 N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M., (Parcel No. 171210-12404). Also to Leslie  
Barr, a right with a June 30, 1878 date of priority, to divert 0.03 cfs, 5.42 acre-feet per year for the

1 irrigation of 3.15 acres within that portion of Lot 1 of SP #7354181 lying within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$   
2 of Section 10, T. 12 N., R. 17 E.W.M., south of the Ahtanum Road (Parcel #171210-12404).

3 To Michael D. & Nancy Dale, with a June 30, 1868 date of priority, a right to divert 0.03  
4 cfs, 4.3 acre-feet per year for the irrigation of 2.5 acres within that portion of Lot 2 of SP #7354181  
5 lying within the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M., (Parcel #171210-12401).

6 Also to Michael D. & Nancy Dale, a right with a June 30, 1878 date of priority, to divert  
7 0.04 cfs, 6.71 acre-feet per year for the irrigation of 3.9 acres within that portion of Lot 2 of SP  
8 #7354181 lying within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M., south of the  
9 Ahtanum Road (Parcel #171210-12404).

10 The remaining rights all have a priority date of June 30, 1878, but have the same source,  
11 point of diversion and period of use as the above rights. The Court withdraws the right described on  
12 page 452 of the Report and replaces it with the following:

13 To Jeff Van Wechel & Della Fikkan, a right to divert 0.03 cfs, 4.56 acre-feet per year for the  
14 irrigation of 2.65 acres in Lot 1 of Short Plat AF #7036573, being within that portion of the  
15 NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M lying south of Ahtanum Road, (Parcel #171210-  
16 11409)

17 To Gail Hernandez, a right to divert 0.03 cfs, 4.64 acre-feet per year for the irrigation of 2.7  
18 acres in Lot 2 of Short Plat AF #7036573, being within that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10,  
19 T. 12 N., R. 17 E.W.M., lying south of Ahtanum Road, (Parcel #171210-11410).

20 To Dennis Frank, a right to divert 0.06 cfs, 10.15 acre-feet per year for the irrigation of 5.9  
21 acres in Lot 2 of Short Plat #7354181, being within that portion of the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 10, T.  
22 12 N., R. 17 E.W.M., lying south of Ahtanum Road, (Parcel #171210-21401).

23 To Flumencio Garza, a right to divert 0.05 cfs, 8.69 acre-feet per year for the irrigation of  
24 5.05 acres in Lot 2 of AF #7025514, being within that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10,  
25 T. 12 N., R. 17 E.W.M., lying south of Ahtanum Road, (Parcel #171210-12402).

To Neil D. Monoian, a right to divert 0.06 cfs, 10.15 acre-feet per year for the irrigation of  
5.9 acres in Lot 3 of AF #7025514, being within a portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and a portion of the  
W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 10, T. 12 N., R. 17 E.W.M., lying south of Ahtanum Road, (Parcel  
#171210-12403).

1 The Court had previously confirmed a junior right to this land on page 453 of the Report.  
2 The Court has now reconsidered the position that junior rights can exist and the right on page 453 is  
3 withdrawn. See Special Issues section above.

4 **Answers No. 222 through 240 - No Claim**

5 **Court Claim No. 1693 - Johncox Ditch Company**

6 The Court awarded both a senior and junior water right to Johncox Ditch Company  
7 (Johncox). Report @ 274-279, 468-471. The senior right authorized diversion of 6.55 cfs, 1128.3  
8 acre-feet per year from Ahtanum Creek for irrigation of 654.9 acres within specifically described  
9 lands with a priority date of June 30, 1884. The point of diversion is approximately 700 feet north  
10 and 650 feet west from the east quarter corner of Section 12, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
11 12, T. 12 N., R. 15 E.W.M. The junior right is discussed below. Johncox filed a number of  
12 exceptions to the Report. Ecology, Yakama Nation and the United States filed  
13 exceptions/responses/replies to several of the issues that affect Johncox. Many of those issues are  
14 addressed in detail in the Special Issues Section of this Supplemental Report or in the Court's  
15 earlier *Memorandum Opinion*. Those objections that pertain directly to the claim of Johncox are  
16 addressed below. Johncox is represented by Attorneys Patrick Andreotti and Charles Flower. Mark  
17 Herke, President and water user, and John P. Herke, water user and former President, Vice  
18 President and Director, testified on behalf of Johncox. Both have resided in the Ahtanum Valley  
19 their entire lives.

20 **1. Offer of Proof**

21 Johncox made an offer of proof relating to a number of issues including availability of  
22 water, excess water both pre- and post-July 10, and instantaneous quantity. The Court finds that  
23 these exceptions are inconsistent with the rulings in *Ahtanum II*.

24 **2. Number of Acres Confirmed within the Yakama Reservation**

25 Johncox had also objected to the number of acres confirmed for water rights within the  
26 Yakama Reservation. The Court will address this exception below when the reaming Yakama  
27 Nation exceptions are considered.

**3. Junior Water Right**

The Court confirmed a junior water right to Johncox. Report @470-471. Johncox took  
exception to the issue of junior rights for a number of reasons, as did the Yakama Nation, Ecology

1 and United States. The Court has reconsidered its prior ruling establishing junior water rights and  
2 use of excess water, and the junior right previously confirmed is herein DENIED for the reasons  
3 stated in the Special Issues section above beginning on page ####.

4 **4. Partial Relinquishment by Sam and Pamela Sue Rich**

5 The Yakama Nation sought clarification in its exception #43 regarding a partial  
6 relinquishment of Certificate No. 310 that is in the record. On June 13, 1984, Sam W. and Pamela  
7 Sue Rich signed a "Partial Relinquishment of Surface Water Certificate No. 310, Issued Subsequent  
8 to the Ahtanum Creek Adjudication, Decree Cause No. 18279." SE-8, Volume 2 of 3, Section VIII.  
9 In that document, the Riches "convey, quit claim, and relinquish that portion of Surface Water  
10 Certificate No. 310 which may authorize use of irrigation water delivered by Johncox Ditch  
11 Company on the following parcel (description omitted)." They owned 10 acres generally within the  
12 N½ of Section 9, T. 12 N., R. 16 E.W.M. The Riches also stated they did not and would not  
13 exercise Johncox water on this property.

14 Johncox provided the following regarding the Riches ownership of Johncox stock (Response  
15 @11). On May 23, 1989 the Riches obtained Certificate No. 135 for ¼-share from James Martin.  
16 The Riches sold their land to James F. Blonde and transferred Certification No. 135 to him, which  
17 Johncox reissued as No. 147. See also Declaration of Lulu Alexander (April 25, 2003). According  
18 to the information from Johncox records, the Riches did not own any shares in 1984. If they did,  
19 Johncox would be obligated to inform the Court. The Yakama Nation believes Certificate No. 135  
20 is for other lands than the lands the relinquishment pertains to.

21 The Court reviewed the Partial Relinquishment, and it is vague at best. It does not state that  
22 the Riches actually own any shares in Johncox nor does the document identify a stock certificate  
23 number. The Riches did not state they used Johncox water on their property and have stopped.  
24 Based on the information supplied by Johncox, the Riches did not own shares in 1984, but  
25 purchased ¼-share in 1989. The Court would also question whether the Riches, or any individual  
shareholder in Johncox, possess the authority to sign a relinquishment pertaining to Certificate No.  
310 without the express and written concurrence of the ditch company. That said, the Court wants  
to emphasize that Johncox's rights can be relinquished through nonuse. *R.D. Merrill v. Pollution  
Control Hearings Board*, 137 Wn.2d 118 (1999); *Okanogan Wilderness League v. Town of Twisp*,  
135 Wn2d 769 (1997). The Court finds that the Partial Relinquishment as written does not result in  
relinquishment of any portion of the Johncox right.

1           **5.        Instantaneous Quantity**

2           Johncox requests a right for 18.52 cfs based on Certificate No. 310, less that amount applied  
3 to the senior lands (6.55 cfs). Johncox claims to have historically diverted 18.52 cfs and the fish  
4 screen is built for a maximum diversion of 22-23 cfs. For the senior lands, the Court is bound by  
5 *Ahtanum II*, which limits the quantity at 0.01 cfs per acre or 6.55 cfs. *Id.* RP@208. The Court  
6 DENIES this portion of Johncox's exception.

7           On occasion, excess water may be available only for those 654.9 acres which benefit from a  
8 water right confirmed in this adjudication. Excess water is available only when the total of the  
9 stream flow exceeds a certain quantity which will be determined when all the Answer Number lands  
10 are established. See discussion of excess water in Special Issues section above.

11           **6.        Beginning Date for the Irrigation Season**

12           The Court confirmed April 15<sup>th</sup> as the beginning date for the irrigation season for Johncox as  
13 well as the rest of the north side water users. *Ahtanum II* established the irrigation season "From the  
14 beginning of each irrigation season, in the spring of each year, to and including the tenth day of July  
15 of each such year...." *Id.* @915. The authorized April 15<sup>th</sup> date is based on the 1994 testimony of  
16 Forrest Marshall, who at that time was the stream patrolman for the basin.

17           Johncox took exception to this beginning date arguing the Court failed to consider its  
18 evidence, specifically JCD-4, that the Court's ruling was contrary to state law and the provisions of  
19 Certificate No. 310, which authorized a season of use beginning April 1. The Yakama Nation  
20 argues that Johncox is bound by Ninth Circuit's rulings in 1964 and that *Achepohl* does not take  
21 precedent over those rulings. Management of differing water rights with different start dates would  
22 be difficult. *U.S. v. AID*.

23           The Court addressed this issue in its *Memorandum Opinion RE: Ahtanum Creek Threshold*  
24 *Legal Issues @20-21* (No. 6) ruling that "At this time, the Court may, upon admission of applicable  
25 evidence, quantify rights that allow diversions beginning April 1." Page 21, lines 16½-17½. The  
certificates issued in *Achepohl* have a season of April 1 through October 15. According to Mark  
Herke, Johncox does not have historic evidence pertaining to the beginning of the irrigation season  
as records have not been kept. Dean Frey, who in 1994 was the Vice President and former  
President, testified on April 19, 1994, that Johncox has diverted water as early as April 1 for frost  
protection and, depending on the weather/soils conditions, for irrigation purposes. Frost protection  
is included within the umbrella of irrigation or agricultural purposes. See generally *Neubert v.*

1 *Yakima-Tieton Irrigation District*, 117 Wn.2d 232, 814 P.2d 199 (1991). JCD-4 is entitled “John  
2 Cox Facts & Figures” which Mr. Frey prepared based on his understanding of the history of  
3 Johncox. It contains the claimed quantities and season, appearing to mimic Certificate No. 310. It  
4 also has limited historic information regarding improvement efforts by the Company.

5 Johncox has kept track of their use since the 1999 irrigation season. JCD-36 is a summary  
6 of JCD-23, the March 26, 1999-December 5, 2003 operating log. Those documents show the  
7 following regarding the beginning date for diversion of water:

8 April 1, 1999 (JCD-36)  
9 April 1, 2000 (JCD-36)  
10 April 3, 2001 (JCD-36)  
11 April 3, 2002 (JCD-23)

12 For 2003, it is somewhat difficult to tell what day water was turned on for irrigation  
13 purposes, but it could have been as early as March 18. The notations for that day indicate that  
14 Johncox “turned ditch up to medium frost water” and there was “85% submergence” (JCD-23).

15 As to the Yakama Nation’s argument that management of rights with differing dates for the  
16 beginning of irrigation season would be difficult, many rights confirmed in other subbasins have  
17 differing irrigation season start dates, so this is no different.

18 The Court GRANTS Johncox’s exception and the season will begin on April 1.

19 **7. Increase in Quantity based on April 1-July 10**

20 Johncox also request that its annual quantity be increased commensurate with the increase in  
21 the number of days water can be diverted—April 1 through July 10. Johncox claims 1,325.10 acre-  
22 feet for irrigation of 654.9 acres over a 101-day season results in 2.023 acre-feet per acre. The  
23 Nation also believes *Ahtanum II* settled and limited the annual quantity to 1.72 acre-feet per acre.  
24 The Court determined the annual quantity based on a continuous diversion of 0.01 cfs during the  
25 irrigation season. Report @ 117, lines 7-13½.

Although Johncox asks for 2.023 acre-feet, the Court believes that 2.0 acre-feet per acre is a  
more appropriate quantity (0.01 cfs x 101 days x 1.98 ac-ft). The Court GRANTS Johncox’s  
exception and the annual quantity will be 2.0 acre-feet per acre or 1,309.8 acre-feet per year.

**8. Stock Water—April 1 through July 10**

The Court did not include stock water as a use in its original confirmation. Johncox took  
exception to that ruling. The Court in its *Memorandum Opinion RE: Threshold Legal Issues* @115  
held “that the diversionary stock water right must be incidental to irrigation practices on non-

1 riparian lands in order to be consistent with the Ninth Circuit's decision." Stock water has been  
2 diverted and used by Johncox. The Court GRANTS Johncox's exception and incidental stock water  
3 will be included in the confirmed right. No additional quantities will be confirmed.

4 **9. Use of Water Post-July 10 through October 15**

5 Johncox claims it can and has used water after the cut-off date of July 10<sup>th</sup> when water is  
6 available, although most years it is not available. Limited evidence does support this use. JCD-5.  
7 Johncox also argues that there is excess water (offer of proof). Ecology, the United States and the  
8 Yakama Nation argue that Johncox is bound by the rulings in *Ahtanum II*.

9 The Court held that *Ahtanum II* controlled regarding diversionary uses post-July 10 through  
10 the end of the irrigation season. *Memo. Op.* @14, lines 1-5. No water shall be diverted for either  
11 irrigation purposes or stock water supply from July 11 through October 15. The Court DENIES  
12 Johncox's exception.

13 Johncox also argues that it has not voluntarily relinquished its July 10 to October 15 water  
14 right due to the sufficient cause under RCW 90.14.140(1)(d) "operation of legal proceedings". See  
15 *R.D. Merrill Co. v. PCHB*, 137 Wn.2d 118, 142-143, 969 P.2d 458 (1999) "the legal proceedings  
16 must prevent the use of water". Johncox expressed concerned that the Nation might bring up the  
17 issue of relinquishment in some other proceeding and seeks a ruling on this issue from the Court.  
18 The Yakama Nation asks that this exception be denied due to the prior rulings of the federal court  
19 requiring cessation of use after July 10<sup>th</sup>.

20 This is not an issue of state-based relinquishment. The Ninth Circuit in *Ahtanum II*  
21 eliminated any right to divert after July 10<sup>th</sup>. There is no right to relinquish, as there is no right to  
22 divert. The Court will make no other findings on this issue as an answer is not required for  
23 purposes of this adjudication.

24 **10. October 16 to April 1, Non-Irrigation Season Stock Water Use**

25 Johncox requests a right to divert water from October 16 to April 1 for stock water. The  
26 Yakama Nation argues that the Pope Decree required diversions to stop on July 10 and could not  
27 again begin until April 15. The Court, relying on *Ahtanum II*, stated that "Since the Pope Decree  
28 only applies to irrigation season issues; north side water users may begin diverting water after the  
29 irrigation season concludes provided they have certificates to authorize such a diversion." *Id.* @14,  
30 lines 5-7. Johncox can make such a claim.

1 Johncox claims its use of 3 cfs of water for stock water is "consistent with Achepohl  
2 Certificate #310" (2003 Exceptions, #16,745, p.12). Certificate No. 310 authorizes a continuous  
3 diversion for domestic and stock, but sets forth no specific quantity. No records were ever  
4 maintained. Previous testimony by both Mark Herke and Dean Frey indicates that they use Johncox  
5 water for stock watering purposes and wells when Ahtanum Creek is not available (April 19, 1994).  
6 JDC-4 claims a right from October 1 through April 1.

7 Johncox has recent records that show it has diverted water during this period. JCD-36 and  
8 JCD-23 include the following regarding diversions dates for stock:

9 October 23, 1999  
10 November 6, 2000  
11 November 21-27, 2001 (one week of use)  
12 January 7, 2002

13 Part of the Nation's exception is it's belief that Johncox failed to provide sufficient evidence  
14 of historic use of water. The evidence is limited, however, there is past testimony supporting this  
15 use. However, Johncox has not provided, as far as the Court can determine, is whether 3 cfs is a  
16 reasonable diversion amount and an estimate of the consumptive stock water needs/annual quantity  
17 within the company. That evidence is needed and must be provided consistent with the briefing  
18 dates accompanying this Supplemental Report.

19 The Court provisionally GRANTS this exception by Johncox upon receipt of the quantity  
20 and consumptive stock water information. Johncox shall provide this information to the Court no  
21 later than April 21, 2008.

### 22 *11. Place of Use*

23 The Court confirmed a water right to Johncox with a place of use that describes portions of  
24 several sections within T. 12 N., R. 16 E.W.M., generally following JCD-1A, for a total of 654.9  
25 acres. Johncox is not objecting to the senior water right as awarded by the Court for 654.9 acres. It  
is Johncox's position that as a ditch company, and in accordance with its by-laws, it may transfer its  
shares to any of the 926 acres in its service area and authorized by Certificate No. 310.

Ecology does not object to the place of use for the senior right. Ecology agrees that Johncox  
can transfer these shares and use this water anywhere within its place of use, so long as no more  
than 654.9 acres are irrigated at any one time. The Yakama Nation argues that in this adjudication  
the standard for a ditch company, or a claimant without a federal contract, is irrigated. See Report  
of the Court for Naches-Cowiche Canal Company, October 10, 1994, @25-27.

1 The Court, in its Threshold Issues ruling, held,

2 IT IS HEREBY FURTHER ORDERED that the irrigation district and water  
3 companies are not required to describe each parcel of property within their boundaries  
4 or service area which has been historically irrigated and the water right certificate  
5 which the department issues at the end of the adjudication may be issued to the . . .  
6 .water company for use of water within the boundaries or service area of the district  
7 or water company. *Order RE: Threshold Issues*, August 13, 1992, ¶3, p. 2, lines 8-  
8 15.

9 The Court did not require a Major Claimant to provide a parcel by parcel accounting of each  
10 irrigated acre. In Naches-Cowiche, as well as other companies, the Court confirmed the number of  
11 acres based on the irrigated standard. The Court also asked that a place of use be provided to the  
12 nearest quarter-quarter, section, township and range. Naches-Cowiche complied and provided the  
13 Court with NCCC-21. This is a broad description. However, within this description Naches-  
14 Cowiche water service is limited by the number of irrigated acres confirmed or 1,015.07 acres.

15 The Court sees no distinction between Johncox and Naches-Cowiche in this regard.  
16 Irrigated is the standard for both. Unlike Johncox, Naches-Cowiche was not subject to a federal  
17 ruling regarding their water rights. The Ninth Circuit confirmed both the number of acres with a  
18 very general and large place of use. Thus, this issue is governed by the principles of res judicata.  
19 See Findings of Fact and Conclusions of Law, January 30, 1962 (DOE 136); *Ahtanum II*. The  
20 Court relied on JDC-1A to narrow down the land description and will continue to use the  
21 description on pp. 468-469. Johncox will be limited to no more than 654.9 acres -- the maximum  
22 limit of the irrigated acres. This legal description comports with rulings by the Ninth Circuit and  
23 the Order on Threshold Issues.

24 a. Answer No. 16 Overlap

25 The Court has questions regarding certain lands within Johncox based on the evidence  
provided by AID under Answer 16 as follows:

1. Robert S. Anderson: There are two primary questions. First, who supplies  
water to the Anderson property in Answer 16, AID or Johncox? Anderson Parcel No. 161218-  
11412 is located generally within the NE¼NE¼ of Section 18, T. 12 N., R. 16 E.W.M. This parcel  
is listed on AID-8A, is 15.8 acres total and AID appeared to be claiming a senior right for five  
acres. During AID's presentation for Answer No. 16, Lonnie Dillman testified on behalf of Robert  
S. Anderson, his father-in-law. Mr. Dillman testified that they get water from Johncox for this  
property.

1 The parcel in question is also within the broader place of use for the water right confirmed  
2 for Johncox. Report @ 468-469. This parcel is within its exterior boundaries. JCD-1A. The 1977  
3 shareholder list for Johncox does not list a Robert Anderson. JCD-9. However, Mr. Anderson may  
4 have purchased land since the 1977 shareholder list. JCD-3 and JCD-6 are also shareholder lists  
5 that show somewhat different information but also do not list a Robert Anderson. JCD-3 shows that  
6 an Anderson owns 1-½ shares and water is taken from Box 11, which is in Section 9 located  
7 approximately 2 miles north and east of Section 18. As Johncox is a ditch company, there was no  
8 specific testimony regarding Robert S. Anderson and/or the conveyance system to the property  
9 within the NE¼NE¼ of Section 18. At this point, the Court has no evidence of how water is  
10 diverted to the property, or how the land is irrigated. Is the land provided water via Johncox? Or  
11 does AID provide water to the Anderson property and in what manner?

12 The second question is whether there has been continued beneficial use of water on the  
13 property: The Yakama Nation believed this land had not been historically irrigated. Dr. Niel Allen  
14 testified during the Nation's presentation regarding Answer No. 16 on February 16, 2004. The  
15 property in question is located just before the Tampico junction of the north and south forks. The  
16 DOQQ for this parcel shows this ground as being fairly dry (YIN-355). On July 22, 2002, this land  
17 was ploughed by a neighbor but not irrigated. According to Dr. Allen, the LANDSAT images  
18 show no irrigation View No. 1 for Parcel No. 11412 from 1996 through 2000 (Anderson).  
19 Dr. Allen suggests that depending on the soil moisture content, there could be signs of irrigation  
20 that occurred up to three weeks earlier.

21 Mr. Dillman lived in this area in 1997 and 1998 and became familiar with the property at  
22 that time. Mr. Dillman outlined the property in black with an "RA" in the center. Pasture grass was  
23 grown on the property. According to Mr. Dillman, the property was irrigated in 1997, 1998 and  
24 1999, and possibly 2000. The land is irrigated and is green from spring until July, and then there is  
25 no water available to keep the grass alive. Mr. Dillman reviewed YIN-355 and stated that the field  
does look this way every year toward the end of July when there is no water available. By the end  
of July the grass is dead and appears as such in the photos.

The Court recognizes there is a difference between the testimony of Mr. Dillman and that of  
Dr. Allen and the LANDSAT images. Given Mr. Dillman's first-hand knowledge of the property  
and the fact that water is generally turned off on July 10<sup>th</sup>, the Court will rely on the testimony of  
beneficial use by Mr. Dillman rather than the July 22<sup>nd</sup> photo and testimony of Dr. Allen.

1           2.     Puskas: In AID's response to the United States regarding Answer 16, Parcel  
2 Nos. 161207-43004 and -43404, owned by Jeffery and Deborah Puskas, is 9.78 acres. However,  
3 AID is not claiming a right pursuant to Answer 16 for lands in Section 7 (AID 8A). Parcel No.  
4 161207-43004 appears to receive Johncox water and the Court included the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 7  
5 in its confirmation for Johncox. Report @ 468-469. No testimony contradicted or supplemented  
6 the above, thus, the Court will not alter the place of use confirmation for Johncox.

6           **12.     Water Right Confirmed to Johncox Ditch Company**

7           The rights are provisionally\* confirmed awaiting the requested information on the Anderson  
8 place of use and service purveyor, and stock water consumptive use information.

9           The Court provisionally\* confirms to Johncox Ditch Company two water rights with a  
10 priority date of June 30, 1884. This first right is in the amounts 6.55 cfs, 1309.8 cfs-feet per year  
11 from Ahtanum Creek for irrigation of 654.9 acres and stock water from April 1 through July 10.  
12 The second right is confirmed for stock water use from October 16 to March 31.

13           The point of diversion for both rights is approximately 700 feet north and 650 feet west from  
14 the east quarter corner of Section 12, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, T. 12 N., R. 15

15           E.W.M. The place of use for both rights:

16           Section 3 -- SW $\frac{1}{4}$ ;<sup>13</sup>

17           Section 4 -- NE $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

18           Section 7 -- E $\frac{1}{2}$ SE $\frac{1}{4}$ ,<sup>14</sup> NE $\frac{1}{4}$ NE $\frac{1}{4}$

19           Section 8 -- SW $\frac{1}{4}$ NE $\frac{1}{4}$ ,<sup>15</sup> W $\frac{1}{2}$ SW $\frac{1}{4}$ ,<sup>16</sup> SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;<sup>17</sup>

20           Section 9 -- All, except for a small amount in the N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  outside Johncox boundary (see  
21 JDC - 1A);

22           Section 10 -- All

23           Section 11 -- N $\frac{1}{2}$ SW $\frac{1}{4}$ ;<sup>18</sup>

24           <sup>13</sup> JCD - 1A includes a parcel within the W $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 3 and owned by J.A. Herke. A review of DOE - 136 does  
25 not include lands within that legal description.

26           <sup>14</sup> DOE - 136 indicates the E $\frac{1}{2}$ E $\frac{1}{2}$  of Section 7. However, a review of JCD - 1A discloses that the lands lying in the  
27 NE $\frac{1}{4}$  are outside the boundaries of JCD.

28           <sup>15</sup> The Johncox Answer shows a legal description of the W $\frac{1}{2}$ NE $\frac{1}{4}$ . However, JCD - 1A depicts that only about 50% of  
29 the SW $\frac{1}{4}$ NE $\frac{1}{4}$  lies within Johncox's boundaries and none of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ .

30           <sup>16</sup> The Court notes that the Answer number shows the land is in the W $\frac{1}{2}$ SW $\frac{1}{4}$  as being a part of the Johncox.  
31 Comparing JCD - 1A indicates that SW $\frac{1}{4}$ SW $\frac{1}{4}$  lies within Johncox but only a small amount of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  lies  
32 within Johncox's boundaries.

33           <sup>17</sup> DOE - 136 indicates that the SW $\frac{1}{4}$ NW $\frac{1}{4}$  is part of the Johncox claim in U.S. v. AID. JDC - 1A shows that land is  
34 outside Johncox's boundaries.

35           <sup>18</sup> JCD - 1A indicates that the entirety of Section 11 lies within Johncox. DOE - 136, in the Answer analysis set forth  
36 for Johncox, shows only the N $\frac{1}{2}$ SW $\frac{1}{4}$ . However, on page 54 of DOE - 136, under J.A. Herke, the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Section  
37 11 is listed but it also shows the parcel to be 480 acres. This is somewhat confusing and may require some analysis  
38 from Johncox.

1 Section 14 – There is no description in DOE – 136 of lands in Section 14;  
2 Section 15 – N $\frac{1}{2}$ NE $\frac{1}{4}$ , Lots 1, 2 and 3, N $\frac{1}{2}$ NW $\frac{1}{4}$  (except 1 acre to YWCA and that land lying  
3 north of Ahtanum Creek and south of county road);  
4 Section 16 – NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;<sup>19</sup>  
5 Section 17 – North 12 acres of NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ ;<sup>20</sup>

6 \*Section 18 is the location where Robert Anderson’s land is located (Parcel 11412). Prior to  
7 including this in the service area for Johncox, it shall provide the clarifying testimony and evidence  
8 requested by the Court:

9 Section 18 – That part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  lying above Ahtanum Road.  
10 T. 12 N., R. 16 E.W.M.

11 Like all other rights confirmed in Subbasin No. 23, Johncox’s irrigation right shall carry the  
12 provision regarding use of excess water.

13 **3. Lands Located in the Ahtanum Basin With No Answer Number**

14 The following claimants have land within Subbasin No. 23, but no predecessor filed an  
15 answer number in *U.S. v. Ahtanum*.

- 16 **Court Claim No. 00040** - *Donald and Sylvia Brule*
- 17 **Court Claim No. 01924** - *Jerome Durnil*  
*Morgan Collins*
- 18 **Court Claim No. 02060** - *Albert Lantrip*

19 Exceptions were filed by these claimants to rights either not being confirmed at all for their  
20 property or for a junior water right being confirmed. Some of the exceptions were filed late,  
21 resulting in testimony being taken on February 26, 2004, and April 14, 2005. Donald Brule,  
22 Morgan Collins, Jerome Durnil and June Batt testified in support of the exceptions.

23 These claimants’ property is irrigated with Spring Creek water, which is diverted near the  
24 former fish hatchery located on South 16<sup>th</sup> Avenue, in Government Lot 2 of Section 2, T. 12 N., R.  
25 18 E.W.M. The land of these claimants lies in Government Lots 3 and 4, the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the  
W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1, T. 12 N., R. 18 E.W.M. The land in Government Lots 3 and 4 share  
ownership history and will be discussed first, followed by the other parcel.

<sup>19</sup> JCD – 1A includes most of the N $\frac{1}{2}$  of Section 16. The only reference to Section 16 in DOE – 136 is property held  
then by Charley Jewett in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  for 40 acres.  
<sup>20</sup> JCD – 1A includes the NE $\frac{1}{4}$  and most of the N $\frac{1}{2}$ NW $\frac{1}{4}$  in Section 17. The only reference to Section 17 in DOE – 137  
were those set forth above.

1 Government Lots 3 and 4 of Section 1 was owned at the turn of the century by Carl  
2 Shroeder, who signed the 1908 Code Agreement. He also participated in the first adjudication of  
3 Ahtanum Creek and was awarded Certificate No. 172, with a priority date of 1870, authorizing the  
4 diversion of 0.8 cfs for the irrigation of 40 acres in Government Lots 3 and 4 of Section 1, T. 12 N.,  
5 R. 18 E.W.M. Although the certificate described the source of water as Ahtanum Creek, the  
6 authorized point of diversion is on the east line of Lot 2 in Section 2, T. 12 N., R. 18 E.W.M., which  
7 is the approximate location of the diversion from Spring Creek that serves the claimants' property.  
8 In 1930 an agreement was entered into between James Harvey, John and Elizabeth Campbell and  
9 Carl and Augusta Schroeder and David L. Savage to settle disagreements over use of water from  
10 Spring Creek. Harvey and Campbell owned land further east of the claimants' land; Carl and  
11 Augusta Schroeder were shown as owning Lots 3 and 4 of Section 1 (now owned by Lantrip, Durnil  
12 and Collins) and Savage was shown as owning the Brule land. Carl Schroeder conveyed his land to  
13 Elsa Schroeder, who then sold it in 1934 to Hugo Contardi. Documents are in the record showing  
14 portions of the land being conveyed to Fred and June Batt (the Durnil parcel) and Thurston Lewis  
15 and Elvera Rose Gardner (the Lantrip parcel). The documents in the record do not indicate when or  
16 to whom the rest of Government Lot 3 was sold. Mrs. Batt testified extensively about irrigation on  
17 this land from the time her father, Hugo Contardi first owned it, until modern times. The testimony  
18 at the various hearings was sufficient for the Court to conclude that water has been beneficially used  
19 on this land since the water rights were established in the late 1800's.

17 Claimants acknowledge that Hugo Contardi was a named party to the *U.S. v. Ahtanum* case  
18 which resulted in the Pope Decree; however, they assert that he sold the land at about the time that  
19 the case was initiated and that his successors were not properly served. The Court has reviewed  
20 YIN-370 and 375 that were entered into evidence as part of the hearing for the late exception filed  
21 by LaSalle High School. These exhibits contain several documents, including a copy of the Order  
22 to Drop and Include Additional Party Defendants in the *U.S. v. Ahtanum* case, which was filed on  
23 October 14, 1949, and several affidavits of service, both in 1947 and 1949. Named in the order to  
24 add and exclude parties are Fred and June Batt and Thurston Lewis and Elvera Rose Gardner. This  
25 leads the Court to conclude that they were properly joined to the case and had an obligation to file  
an answer to the complaint. No such answer appears to have been filed. Although Mr. Collin's  
testimony would suggest that he believes he is also a successor to Batt and Gardner, the legal  
descriptions for the land conveyed from Contardi to Batt and Gardner does not include his land.

1 The Court has access to a Metsker Map dated 1959 showing this area and indicates ownership of  
2 land at that time. The owners of Mr. Collins land in 1959 were Kenneth Bracy and Eugene Loop.  
3 YIN-375 shows both of these individuals were served copies of the complaint in *U.S. v. Ahtanum*,  
4 and the Court is again persuaded they did not file an answer to the complaint.

5 The Brule property lies in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 1. DE-321 is a chain  
6 of title for this land, which shows a different ownership history than for the other claimants. When  
7 the 1908 agreement was prepared and signed by water users, the ownership of the Brule land  
8 changed frequently. It may have been owned by D. L. Savage or George H. Fresh. Neither signed  
9 the 1908 agreement. D. L. Savage participated in *Achepohl* and Certificate No. 238 (DE-322)  
10 issued to David L. Savage with an 1872 priority date authorizing the diversion of 1.27 cfs for the  
11 irrigation of 63.6 acres in the west 23.5 acres of the SW $\frac{1}{4}$ NE $\frac{1}{4}$  and the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 1, T.  
12 12 N., R. 18 E.W.M. – the Brule land. As with other claimants discussed herein, although the  
13 certificate described the source of water as Ahtanum Creek, the diversion described is in Lot 2 of  
14 Section 2, T. 12 N., R. 18 E.W.M., where the Spring Creek diversion is located.

15 In 1947, when the Summons and Complaint were filed, the Brule land was owned by W. C.  
16 and Inez Cope. The copy of the Summons and Complaint that is part of DE-321, lists a Walter G.  
17 and Rose Cope, which arguably could be different people than the owners of the Brule land.  
18 However, YIN-370 includes a copy of the Affidavit of Service for the initial summons and  
19 complaint, stating that Walter G. Cope is actually Walter C. Cope, who was served on September 4,  
20 1947, and that W. C. Cope was also served on October 27, 1949, when additional parties were  
21 added to the case. The Court concludes that the Brules' predecessors were properly served notice in  
22 *U.S. v. Ahtanum* and had an obligation to answer the complaint. Nothing in the record indicates an  
23 answer was filed.

24 All of these claimants argue that Spring Creek should not be considered part of the Ahtanum  
25 basin and should not be bound by the rulings in *U. S. v. Ahtanum*. They point out Spring Creek joins  
Ahtanum Creek well below the diversions that serve the land lying south of Ahtanum Creek on the  
Yakama Reservation.

All claimants discussed here have certificates from the prior adjudication that authorize  
diversions that obviously are from Spring Creek, clearly showing that in the 1920's Spring Creek  
was considered part of the Ahtanum basin. Additionally, the owners of the land in Government  
Lots 3 and 4 were parties to the 1908 Code Agreement that addressed water use for irrigation in the

1 basin. These claimants' predecessors were also served with a summons and complaint in *U. S. v.*  
2 *Ahtanum* and had an obligation to answer. It was in that forum their predecessors had the  
3 responsibility to make the argument that they should be excluded - now is too late.

4 The Court's ruling that junior rights cannot be confirmed applies in this case, see the Special  
5 Issues section of this report. Therefore, the water rights previously confirmed on pages 419 and  
6 439, lines 1 through 14, are withdrawn and the late exceptions of Don and Sylvia Brule, Albert  
7 Lantrip, Morgan Collins and Jerome Durnil are DENIED. No water right will be confirmed.

8 **Court Claim No. 02320, (A)2434 - Karen L. Klingele**

9 There was no appearance at the initial evidentiary hearing on behalf of this claim, resulting  
10 in the Court not confirming a water right. Ms. Klingele filed an exception to a right not being  
11 confirmed and appeared at the supplemental hearing to offer testimony in support of her claim.  
12 Exhibits DE-297, 306 and 325 were entered. Ms. Klingele is also relying on evidence submitted by  
13 her neighbors, Gerald and Helen Sauer.

14 Ms. Klingele owns the N $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 15 E.W.M. She is  
15 asserting a right to irrigate from Ahtanum Creek approximately one-half acre and provide domestic  
16 supply from a spring or well on a one-acre parcel that lies south of the North Fork Ahtanum Road  
17 and north of the North Fork Ahtanum Creek (Parcel No. 151208-34002). According to  
18 Ms. Klingele's testimony, water is pumped from Ahtanum Creek to irrigate a pasture area and  
19 landscape around a mobile home on the property. Ms. Klingele's land is described on Certificate  
20 No. 317 from the earlier adjudication of Ahtanum Creek. Certificate No. 317, with a 1884 date of  
21 priority, authorized the diversion of 0.2 cfs for the irrigation of 10 acres in the SW $\frac{1}{4}$  of Section 8,  
22 T. 12 N., R. 15 E.W.M. Ms. Klingele has been familiar with the property since the 1950's when she  
23 traveled to the area with her family for picnics and other outings. Her early memory of the land is  
24 when it was part of the Soda Springs recreational area. Until at least the 1940's, her land had the  
25 same ownership and use history as that owned by Gerald and Helen Sauer, see pertinent section  
below. The Sauers submitted considerable evidence showing water use on the property for  
domestic supply and recreational purposes on land that the Court believes includes the Klingele  
property. However, evidence of water use for irrigation prior to the 1950's is lacking. In the 1950's  
when Ms. Klingele visited the property, it was owned by Ronald Shore, who continued to own it  
until his death in 1974. Ms. Klingele and her husband bought the land in 1975 from Mr. Shore's  
widow.

1 Ms. Klingele makes the same case as the Sauers concerning the applicability of the 1908  
2 Code Agreement and *U. S. v. Ahtanum* that resulted in the Pope Decree. The owners of the land in  
3 1908 did not sign the Code Agreement, nor did the owners in the late 1940's and early 1950's  
4 answer the complaint in *U. S. v. Ahtanum*. There is nothing in the record concerning any actions  
5 leading up to signing the Code Agreement, so it is not possible for the Court to determine whether  
6 the owner of the Klingele/Sauer property did not participate because of no intention of irrigating the  
7 land or for some other reason. However, contrary to the position taken by both Ms. Klingele and  
8 Mr. Sauer, the owner of the property in the late 1940's was served the Summons and Complaint, see  
9 YN-375. There is no evidence that an answer was filed. The Court does note that DE-297, chain of  
10 title submitted by Ms. Klingele for her land, does show that when the land was sold in 1952 the *U.S.*  
11 *v. Ahtanum* case was disclosed. The Court concludes that the prior owner of the Klingele property  
12 was a named party to *U.S. v. Ahtanum* and bound by its ruling that irrigation rights existed only for  
13 those landowners who signed the Code Agreement and filed answers in *U.S. v. Ahtanum*.

14 The Court had previously concluded that neither the Code Agreement nor *U.S. v. Ahtanum*  
15 had any implication on water rights for domestic supply, since both actions were intended to settle  
16 irrigation rights. Ms. Klingele is claiming a right to use water for domestic supply for the mobile  
17 home. At the beginning of the hearing process the source of water was described as a spring, but as  
18 the testimony progressed the source of water was described as a dug well. The testimony and  
19 evidence presented was not sufficient for the Court to determine the actual characteristics of the  
20 water source. However, the claimant concluded her testimony by taking the position that the source  
21 of water was ground water from a well and not subject to this Court's jurisdiction. Lacking any  
22 evidence to the contrary, the Court will accept this position and will not confirm a right for  
23 domestic supply. The Court also cannot confirm a right for irrigation under Court Claim No. 02320  
24 due to Ms. Klingele's predecessor not participating in *U.S. v. Ahtanum*.

25 **Court Claim Nos. 01019, A4253, A5469 - La Salle High School**

26 La Salle High School (La Salle) filed a petition to allow filing a late exception. The Court  
27 granted the petition and subsequently held a hearing on the late exception. The Court issued its  
28 *Memorandum Opinion La Salle High School* on June 1, 2006 denying La Salle's request for a senior  
29 water right. *Id.* The issue left unresolved was whether La Salle would be entitled to a junior right.

30 Upon reconsideration, the Court has determined it will not confirm junior rights. See  
31 Special Issues above. The claim of La Salle High School is DENIED.

1 **Court Claim Nos. 00542 through 00545 - Theodore and Wanda Mellotte, Jr.**

2 The Mellottes claimed water rights to four springs for stock water and irrigation. The Court  
3 was unable to confirm rights to those springs as set forth in its analysis of the claim. See Report at  
4 pp. 315-317. The Mellottes did not file an exception nor provide the evidence requested by the  
5 Court. The Yakama Nation took exception to these claims. First, the claimants must prove there is  
6 no continuity between the spring and Ahtanum Creek. See *Memorandum Opinion Re: Return Flow*  
7 *Exceptions of Harry Masterson and Mary Lou Masterson* July 16, 1996, and *Memorandum Opinion*  
8 *and Order RE: Exceptions of Worrell to Supp. Report Sub. No. 22 (Wide Hollow)*, November 9,  
9 1999. Second, historic use of water for the purposes claimed should have been addressed in the  
10 1908 Code Agreement, *Achepohl* and the Pope Decree. Third, the period of use should be limited  
11 to April 15 through July 10. See Exception No. 50.

12 Since there was no exception by the Mellottes, the Court will only say that the original  
13 rulings will not be modified. Also, this Court has addressed the use of springs in its *Memorandum*  
14 *Opinion Re: Ahtanum Creek Threshold Legal Issues*, October 8, 2003. No right can or will be  
15 confirmed for the springs, except spring No. 543 located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T. 12 N., R.  
16 16 E.W.M. At the original hearing, Mr. Mellotte testified that this spring was used for stock water  
17 supply only. Mr. Mellotte did not say that water was diverted, nor did he describe a delivery  
18 system, so the Court concludes that this is a non-diversionary stock water use.

19 The Court confirms a water right to Theodore and Wanda Mellotte for use of an unnamed  
20 spring for continuous non-diversionary stock water supply located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section  
21 18, T. 12 N., R. 16 E.W.M. The Mellottes name shall be included on the list of claimants entitled to  
22 a right for non-diversionary stock water from the spring.

23 **Court Claim No. 02243 - Gerald F. and Helen M. Sauer**

24 The Sauers filed an exception to the court not confirming a water right. Mr. Sauer testified  
25 at the supplemental hearing. The Sauers own that portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12  
N., R. 15 E.W.M. lying south of the North Fork Ahtanum Road. At the initial evidentiary hearing,  
the Sauers put into evidence a copy of Certificate No. 317 from *Achepohl*. Certificate No. 317, with  
an 1884 date of priority, authorizes the diversion of 0.2 cfs for the irrigation of 10 acres in the  
SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 15 E.W.M., which includes the Sauers' land. However, there was  
no evidence that the land owner in 1908, Yakima Mineral Springs, signed the Code Agreement, nor

1 is there any evidence that the owner of the land during *U. S. v. Ahtanum* filed an answer to the  
2 complaint. Mr. Sauer had testified to not diverting water during their ownership; leading the Court  
3 to ask the parties to address whether the right had relinquished.

4 Most of the evidence of historic water use that has been provided for the Sauer land relates  
5 to the area being part of the Soda Springs Resort. Beginning in the late 1800's, the land was  
6 developed as a recreational area. Cabins and tents were placed on the land, a swimming pool was  
7 constructed, and frequently between 200 and 250 people would be on the property using it as a  
8 resort or recreational camp. Water from Ahtanum Creek was used for domestic supply, filling the  
9 swimming pool, and watering livestock kept at the camp. James Biggham bought the property and  
10 bottled the soda water as a commercial venture. It is not clear how long that activity continued, but  
11 at least into the 1930's. As mentioned above, Certificate No. 317 is appurtenant to the claimant's  
12 land. Although the certificate specifically addresses irrigation as a purpose of use, it also states that  
13 water is used for domestic supply and stock watering.

14 At the initial hearing, the Sauers claimed a right to irrigate five acres. However, at the  
15 supplemental hearing, it appears they sought a right for domestic supply for a recreational area or  
16 resort. The Sauers acquired the land in 1970, and at that time a log jam at the diversion point  
17 prevented them from diverting water. In 1974, a flood took out the log jam, but also caused the  
18 creek channel to move away from the diversion facility. That same year, Mr. Sauer filed Water  
19 Right Claim No. 152809 pursuant to the requirements of RCW 90.14, claiming a right to irrigate 5  
20 acres with water diverted from the North Fork Ahtanum Creek. Mr. Sauer testified that at the time  
21 he filed this claim, he learned that a court case had been filed involving water rights in the Yakima  
22 Basin, and he did not want to invest in replacing the diversion facility until he knew how the case  
23 might affect any water right for the property. The Court notes that the adjudication, the only case  
24 involving all surface water rights in the Yakima Basin, was filed in 1977, not 1974.

25 Since they acquired the land in 1970, the Sauers have used water from Ahtanum Creek, but  
have not had a functioning diversion facility. They carry water from the creek using buckets – a lot  
of buckets. The water is then used around the camp for domestic purposes, except for drinking. The  
Sauers argue that use of water from Ahtanum Creek has never ceased and there is a sufficient cause  
for their failure to divert water, which prevents relinquishment, see RCW 90.14.140. The sufficient  
causes that they believe apply are unavailability of water and operation of legal proceedings. Water  
has not been available at their diversion site due to the creek channel changing course during a flood

1 and the legal proceedings has prevented them from having the certainty in their water right that is  
2 needed to warrant expending money to modify the diversion facility to be able to divert.

3 The Court is faced with several issues that must be resolved in order to determine whether a  
4 water right can be confirmed for the Sauer property. The first is participation in what is commonly  
5 referred to as the Code Agreement. It is clear that the parties to the 1908 Code Agreement were  
6 claiming rights to use water for irrigation purposes and that the agreement was intended to resolve a  
7 dispute over the quantity of water that could be used for that purpose. The evidence put in the  
8 record by the Sauers lead to a conclusion that prior to 1908 water was being used on the property  
9 for domestic supply and recreational purposes. There is no evidence that water was being used for  
10 irrigation. Therefore, the Court concludes that not signing the Code Agreement does not influence  
11 the existence of a water right for domestic supply and recreational purposes.

12 The Sauers contend that their predecessor was also not a party to *U. S. v. Ahtanum*, and,  
13 therefore, they are not bound by the findings in that case. However, the owner of their land in 1949,  
14 Francis Ray, was served the summons and complaint in *U.S. v. Ahtanum* (see YN-375), but does not  
15 appear to have answered. It may be this land is outside of the area considered in both the Code  
16 Agreement and *U. S. v. Ahtanum*, however, since Francis Ray was served, he had an obligation to  
17 answer – even if the answer was an assertion that his land was outside the area of concern. His  
18 failure to file an answer prevents this Court from confirming a water right for irrigation.

19 A water right can be confirmed for domestic supply, however. There was no evidence  
20 presented on the quantity of water historically used for domestic supply at the site when it was  
21 being used as a resort and camp. The record also doesn't indicate the quantity of water the Sauers  
22 believe they have used during their ownership. Because there has not been a diversion facility and  
23 water use occurred through filling buckets, the water use during the past 30 years would have been  
24 less than was historically used when the diversion facility was functioning. The Court believes that  
25 the type of water use associated with the resort and camp facility would be similar to the water use  
at campgrounds operated by the U.S. Forest Service. Lacking testimony of water use, the Court  
will look to the analysis for those facilities for guidance. The rights confirmed in the Conditional  
Final Order that issued to the U. S. Forest Service authorized between 0.005 cfs to 0.04 cfs and  
between 1 acre-foot per year and 7 acre-feet per year, depending on the campground size.

The Court will confirm a water right under Court Claim No. 02243 with a June 30, 1884,  
date of priority for the diversion from Ahtanum Creek of 0.02 cubic foot per second, 2 acre-feet per

1 year for domestic supply and recreational purposes in that portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of  
2 Section 8, T. 12 N., R. 15 E.W.M. lying south of the North Fork Ahtanum Road. The point of  
3 diversion is located 700 feet north and 500 feet east of the southwest corner of Section 8, being  
4 within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, T. 12 N., R. 15 E.W.M. If the Sauers have evidence of  
5 the quantity of water historically used, they should file an exception to provide that information.

6 **Court Claim No. 01132 - *Rod and Betty Swanson***

7 The Swansons assert a right to irrigate land they own north of Ahtanum Creek in  
8 Government Lots 1 and 2 of Section 24. As far as the Court has been able to determine, the owner  
9 of their land in the 1940's and 1950's did not file an answer in the *U. S. v. Ahtanum I.D.* case,  
10 resulting in the Court finding that only a junior right could be confirmed. However, the Court has  
11 reconsidered that ruling and in the Special Issues section above ruled that junior rights could not be  
12 confirmed and withdraws the water right described on page 427, lines 11 – 24.

13 **Court Claim No. 01071 -- *Trail's End Lodge***

14 The Yakama Nation took exception (#53) to the water right confirmed to Trail's End Lodge.  
15 Chuck Tissell and John Tissell appeared at the supplemental hearing to respond to the exception.  
16 The Nation believes that the water right confirmed to Trail's End Lodge should be no greater than  
17 the junior water rights recognized for irrigation purposes. The Nation points out that Trail's End  
18 Lodge was not awarded a water right in the *Achepohl* decree, was not a signor of the Code  
19 Agreement and did not file an answer in *U. S. v. Ahtanum*. Accordingly, any water right awarded to  
20 the lodge should be no better than the junior irrigation rights the Court has recognized. As  
21 discussed in the Special Issues section, the Court had reconsidered its rulings on junior rights and all  
22 have been withdrawn and will not be confirmed.

23 Trail's End Lodge responds that it did not own the land during the time the Code agreement  
24 was signed and the *Achepohl* case was decided – in fact at the time the Code agreement was signed,  
25 title to the land was still in the Federal government – and they were not a named party in *U. S. v.*  
*Ahtanum*. They argue that these cases dealt with irrigation water rights and their water right is only  
for domestic supply. Therefore, they should not be bound by the restrictions in the Pope Decree.

The property owned by Trail's End Lodge lies in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18,  
T. 12 N., R. 15 E.W.M. The ownership history of the land is discussed on page 331 of the Report.  
The evidence shows there was no water use on the land until sometime in the 1930's – well after

1 *Achepohl* was decided. As pointed out by Mr. Tissell, the Code Agreement and the *Achepohl* case  
2 addressed water used for irrigation. There were no water rights confirmed in *Achepohl* strictly for  
3 domestic supply. The decree recognized that the right to use water for domestic and stock water  
4 purposes existed along with the irrigation rights identified in the decree. Since the water right that  
5 issued to Trail's End Lodge did not exist until 1974, there is no way that it could have been  
6 considered during the *Achepohl* proceeding. Likewise, the water right did not exist when *U. S. v.*  
7 *Ahtanum* was filed. The Nation also makes the argument that the Code agreement divided up the  
8 available water. However, the Court finds that the agreement is clear that only use of water for  
9 irrigation was being addressed.

10 The right being claimed is based on Surface Water Certificate No. S4-23160C, with a  
11 June 19, 1974, priority date. The Nation argues that the water used under this certificate will have  
12 an impact on the Nation's federally reserved water right. The certificate issued pursuant to RCW  
13 90.03, specifically Section 90.03.290, which requires Ecology (or its predecessor agency) to make a  
14 determination that water is available for appropriation for a beneficial use and the appropriation will  
15 not impair existing rights or be detrimental to the public welfare. That determination was made  
16 and as far as can be determined, issuance of the permit was not challenged in any way.

17 Trail's End Lodge followed the administrative procedures in RCW 90.03 to obtain from the  
18 state a water right permit and ultimately a certificate. The evidence shows that since the certificate  
19 issued, and even before, water has been beneficially used for domestic supply at various times  
20 during the year. The water right was established under the laws of this state and is a valid right.

21 The Court DENIES the Nation's exception. The Nation's remedy if it feels that exercising  
22 this right has a negative impact on its senior reserved water right is through regulatory action by  
23 Ecology, not by denying the water right. Trail's End has provided evidence of the distance between  
24 the spring and Ahtanum Creek, the small spring flow and lack of surface connection between the  
25 spring and the creek as factors suggesting its water use has no impact on the creek flow.

**Court Claim No. 00589 -- *Washington State Department of Natural Resources***

26 The Washington State Department of Natural Resources (DNR) filed an exception to a right  
27 not being confirmed for non-diversionary stock watering on lands owned by the state and leased for  
28 grazing. The Yakama Nation responded to this exception, as well as filing exceptions to other  
29 claims for non-diversionary stock watering, arguing that the Pope Decree did not provide for use of  
30 water for stock watering. The Court ruled on the overriding legal issue of whether there could be

1 non-diversionary stock water rights in its *Memorandum Opinion Re: Ahtanum Creek Threshold*  
2 *Legal Issues*, October 8, 2003.

3 The remaining issue for DNR was whether there had been sufficient evidence of beneficial  
4 use to confirm a non-diversionary stock water right. DNR, in its briefing, referred the Court to the  
5 State's Investigation Report, which described this use. DNR also on June 17, 2003, filed with the  
6 Court the Declaration of Paul Penhallegon (Doc #17049), which described the lands leased for  
7 grazing and the water sources used for non-diversionary stock watering. DNR was scheduled to  
8 appear at the February 2, 2004, supplemental hearing, along with other claimants asserting rights to  
9 non-diversionary stock water; however, the Court determined that sufficient evidence of beneficial  
10 use was in the record and cancelled the hearing that day. The Court, therefore, confirms a non-  
11 diversionary stock water right to the Washington State Department of Natural Resources and its  
12 name is added to the list of claimants entitled to such a right.

11 **4. *Yakama Nation's Exceptions (not addressed above)***

12 The Court has addressed many of the Nation's exceptions above. The following are the  
13 remaining exceptions taken in order of the exception:

14 1 & 4: The Court grants exceptions #1 and 4 – the rulings in *In Re Ahtanum Creek*, 139  
15 Wash. 84, 77, 245 P.2d 758 (1926) are not binding on the Nation, as neither the  
16 United States nor the Nation were parties to that case.

17 2. The Court grants exception #2 – the sentence on page 36, lines 11 to 13, which states  
18 that WIP water users pay assessments, is stricken.

19 3. The Court grants exception #3 – the Court's description of the Code Agreement on  
20 page 37 was not intended to be inconsistent with the Court's ruling on page 109.

21 **5. Does the "Order Re: Ahtanum Watershed Practicably Irrigable Acreage"  
22 Establish Maximum for the Yakama Nation Irrigation Right?**

23 This issue concerns the ruling of the Court in its November 9, 1994, "Memorandum Opinion  
24 Re: Ahtanum Watershed Practicably Irrigable Acreage" (1994 Memo. Op.). The Yakama Nation  
25 argued that south side irrigation was not limited to how much land was irrigated at any particular  
time, but how much land could be served by the Project as constructed by 1915. As a result, the  
Nation believes that at least 5,146.85 acres were susceptible to irrigation based on an analysis of the  
1951 Pretrial Order, Exhibit A. YIN – 353. Johncox and AID counter that the 1994 Memo. Op.  
(also based on the Court's reading of the 1951 Pretrial Order) set the irrigable acreage as of 1915

1 for reservation land in the Ahtanum Creek basin at 4,968 acres (Johncox) or 4,920.4 acres (AID).  
2 Johncox further argues that the decisions in *Pope*, as well as the historical pattern of diversion,  
3 establish that south side diversions have never approximated anything close to an amount that  
4 would allow irrigation of those quantities of land and that to allow it now would constitute waste.  
5 There is some dispute as to whether this issue should be addressed now or after the Court issues this  
6 Supplemental Report. The issue is well briefed and the Court will decide it now.

7 All parties rely, and this issue turns, on an interpretation of the 1951 Pretrial Order and the  
8 intention of the Court when drafting the 1994 Memo. Op. The Court agrees that the 1994 Memo.  
9 Op. intended to interpret *U.S. v. AID* as limiting irrigation on the south side to the acreage  
10 susceptible to irrigation and that the 1951 Pretrial Order was the primary, although not exclusive,  
11 document that would set the amount. However, AID and Johncox are incorrect that the 1994 Memo.  
12 Op. is res judicata as to the issue of the exact number of south side irrigable acres. An exact  
13 number of acres were never identified until the January 31, 2002, Ahtanum Report. Page 4 of the  
14 decision is illustrative – it quotes from two paragraphs of the 1951 Pretrial Order that support the  
15 interpretation advanced by both sides – paragraph 6 (which incorporates Exhibit “A”) and  
16 paragraph 10 contains the 4,968 acre figure.

17 Thus, if the 1951 Pretrial Order is the only document to identify the number of irrigable  
18 acres, the two interpretations are both correct. Page 5, line 5 of the 1951 Pretrial Order does  
19 indicate that 4,968 acres are susceptible of being irrigated pursuant to the project constructed as of  
20 1915. Similarly, Exhibit A indicates 5,146.85 acres on the reservation were susceptible to irrigation  
21 from the project as constructed in 1915. However, the Yakama Nation points out the Pretrial  
22 Order on the Merits, submitted by AID, which indicates on page 6, lines 23-26 that:

23 The lands situated south of Ahtanum Creek within the Ahtanum Indian Irrigation  
24 Project and the small diversions above Main Canal, for which rights to the use of  
25 water from that stream are claimed in this proceeding, total approximately 5100 acres.

26 This is some additional proof the larger amount set forth in Exhibit “A” was the figure  
27 actually claimed by the United States on behalf of the Yakama Nation. Further, there is no  
28 indication as to why the 1951 Pretrial Order contains a smaller number of acreage than Exhibit A.  
29 No basis for 4,968 acres has been identified. Thus, the actual tabulation of irrigable acreage set  
30 forth in Exhibit “A” is more persuasive, as the numbers are traced to specific properties.  
31 Accordingly, the Court finds and so modifies the Report of the Court to indicate that a total of

1 5,146.85 acres of tribal trust and fee lands can be served on the Reservation pursuant to the project  
2 as constructed in 1915.

3 The Court will confirm an annual quantity of water right based on 4.4 acre-feet per acre duty  
4 of water as identify in the 1951 Pretrial Order, (DI – 240). That equates to 22646.14 acre-feet per  
5 irrigation season. However, consistent with the argument of Johncox and *Pope*, the south side can  
6 only divert water to the south side “to the extent that said water can be put to a beneficial use.”  
7 Contrary to the assertions of Johncox, there is no corresponding right for the ditch company or other  
8 north side water users to divert such unused flows except as otherwise stated in this decision in the  
9 section pertaining to junior rights.

10 The Court grants exception #6.

11 The instantaneous quantity is as set forth in the Report at page 347. Specifically from  
12 April 1 through July 10: 25% of the natural flow of Ahtanum Creek, as measured at the north and  
13 south gauging stations. If the natural flow exceeds 51.8 cubic feet per second (north side users are  
14 permitted to divert 38.839 cfs, which is equal to 75% of 51.8 cfs), all the excess over that figure is  
15 awarded to the United States as trustee for the Yakama Nation, allottees and non-Indian successors  
16 to allottees, to the extent water can be put to a beneficial use. From July 11 through October 1: All  
17 waters of Ahtanum Creek not use for instream fishery purposes and livestock watering shall be  
18 available to, and subject to diversion by the United States, Bureau of Indian Affairs, as trustee for  
19 the Yakama Nation, allottees and non-Indian successors to allottees.

20 7. The Court grants exception #7 – See 5-6 above.

21 8. The Court grants exception #8 – the Nation is not asserting a water right for wildlife  
22 watering and the analysis beginning on page 45, line 15 is stricken.

23 9. The Court grants exception #9 – the Court’s discussion and rulings on application of  
24 *Walton* does not apply to lands held in trust or fee by the Yakama Nation or its members, only to  
25 non-Indian successors to Indian allottees. On page 48, lines 16, 17, and 19, the phrase “on  
reservation claimant” is replaced with “non-Indian purchaser” and on lines 15 – 16, the phrase “is  
either owned by an Indian allottee or was conveyed from an Indian allottee” is replaced with “was  
acquired from an Indian”.

10. The Court grants exception No. 10 – All fee owners on the reservation side of  
Ahtanum Creek are entitled to a prorata share of available water for all Reservation lands and all  
have the same maximum water duty.

1           19.     Exception 19 is now moot due to the Court revisiting the junior rights issue and  
2 ruling that junior rights cannot be confirmed. See Special Issues Section above.

3           22.     Exception 22 – the first part of the exception is granted as the water rights confirmed  
4 under each answer number have been subdivided based on parcel information contained in AID-8A.  
5 Specific places of use have been provided in the schedule of rights. The Nation also requests in this  
6 exception that water rights only be awarded to parcels identified in Appendix B of the 1964 Ninth  
7 Circuit decision and that the Court only recognize transfers for the north side lands if it has occurred  
8 pursuant to the requirements of RCW 90.03.380. The Nation has not identified a specific instance  
9 where the Court confirmed a water right for lands not described in Appendix B (except for the  
10 junior right situation), so the Court is not aware of a ruling that should be re-examined. The Court's  
11 intent is to require claimants or AID to comply with the change procedures in RCW 90.03.380.

12           23.     Exception 23 is granted – the Court acknowledged the existence of ground water  
13 rights when the evidence was presented to show there were ground water rights appurtenant to lands  
14 that were also asserting surface water rights, but since this case is not addressing ground water  
15 rights, no determination was made of the extent and validity of those rights. The Nation in this  
16 exception reserved the right to challenge the ground water rights at a later date when it is  
17 appropriate to do so and to whether the cumulative water duty for the north side lands irrigated with  
18 both ground and surface water is appropriate. This case is not the forum to consider the extent and  
19 validity of ground water rights and any party will have the opportunity to do so if a ground water  
20 adjudication is conducted in the Yakima Basin.

21           44.     Exception No. 44 is moot, as Boise Cascade did not file an exception.

22           47.     Exceptions No. 47 and 60 (Claim No. 2310 - Paul Hart, Jr. and Linda Hart; Claim  
23 No. 2310 – Alice Hart) is moot, as the Harts did not file an exception seeking a senior water right  
24 and the Court withdraws the junior right that was previously confirmed on page 433, lines 14 to 24.  
25 The Court notes that in the schedule of rights, this right did not contain the limitation of use that  
identifies it as a junior right; however, it is clear from the Court's ruling on page 302, lines 8  
through 15, that a junior right was indeed confirmed.

          51.     Exception No. 51 is moot as the claimants did not file an exception and seek to  
renew their claim (Claim No. 01248 – Michael Noel, Tony Wellner, Sandra Johnson Oversby,  
Kenneth & Donna Ritter, Yakima Realty).

          55.     The Court has already addressed the bulk of this exception in Exceptions 5-7 above.

1 The Court agrees with the Nation's contention that the summary should contain a  
2 reversionary right and inserts the following language at page 347, line 10. "All waters not used on  
3 north side Pope Decree parcels shall become available for use on the reservation lands."

4 The Court further agrees, and would place a Special Terms of Use section at line 13, page  
5 349 indicating "the United States may divert the entirety of the river subject to water rights  
6 allocated to users located north of Ahtanum Creek and the Nation's instream flow right."

7 All other issues raised in this exception have been addressed elsewhere in this decision and  
8 the Court will not address them any further.

9 56. The Court grants exception No. 56 and the third point of diversion described in the  
10 Report at page 44, line 8 and page 347, line 20 is amended to read: Unnamed Canal: 500 feet east of  
11 the southwest corner of Section 18, T. 12 N., R. 16 E.W.M.

12 57. The Court grants exception No. 57 – All fee owners on the south or Reservation side  
13 of Ahtanum Creek are entitled to a prorata share of available water for all Reservation lands.

14 58. Exception No. 58 – this exception is moot as the Court has withdrawn confirmation  
15 of all of the junior rights.

16 Any exceptions not addressed in this section are otherwise addressed in this Supplemental  
17 Report in the Special Issues section or in the section pertaining to the specific claimant.

### 18 **5. Ecology's Exceptions**

19 This section considers Ecology's exceptions not previously addressed elsewhere in this  
20 Supplemental Report. Ecology's first exception concerning proof of due diligence in putting water  
21 to beneficial use was addressed in the Court's Memorandum Opinion Re: Ahtanum Creek  
22 Threshold Legal Issues.

23 Ecology's second exception was to the diversion point authorized in the water right  
24 confirmed to Paul and Linda Hart under Court Claim No. 01205. The Hart's predecessor changed  
25 the point of diversion from the diversion into the Ahtanum Main Canal to a diversion on the north  
side of Ahtanum Creek. Water is then piped back to the south side of the creek. Ecology maintains  
that compliance with the change procedures in RCW 90.03.380 is necessary because the diversion  
was moved to the north side of the creek and it is no longer on the reservation. Ecology asks the  
Court to rule that any non-Indian successor with land on the Yakama Reservation who wishes to  
make a similar change in point of diversion to a location off the reservation must comply with State  
law. The Yakama Nation filed a response opposing Ecology's position, but raising its own issues

1 related to the water right. The Nation queries whether the right should be counted as part of the  
2 allocation to the north side since it is diverted from the north side of the creek and whether the Harts  
3 obtained permission from the Nation to bring water diverted off the reservation back onto the  
4 reservation.

5 Although the water may be diverted to the north, it is not used on north side property and  
6 cannot be used on the north side without the approval of the Nation. All water users on the  
7 reservation share the same priority date, and receive water as part of a "just and equal distribution."  
8 Citing the General Allotment Act and *U.S. v. Powers*. Thus, it doesn't matter where the water is  
9 diverted because given the small amount of water that is available to south side users and the shared  
10 priority date the distribution should be the same. The Court does not believe that impairment is a  
11 consideration here because of the unique circumstances of Ahtanum – the south side only gets 25%  
12 of the water in the creek pursuant to a 1908 agreement. Ecology's argument relies on the notion that  
13 the Hart's water is diverted "off-reservation." That point is true only in the skinniest sense.  
14 Although the water may be diverted north it then immediately goes southward back to the  
15 reservation and will not be used on non-reservation ground. The distinction between diverting  
16 water north of the creek, which is off the reservation, and south of the creek, on the reservation, is  
17 only a matter of a few feet. The water source is the same. Ecology's exception is denied.

18 Ecology's third exception concerned the Court's analysis for claims to use springs. Ecology  
19 generally agreed with it, but requested the opportunity to respond to any additional factual evidence  
20 presented by the claimants in support of claims to use the springs. An issue Ecology identified was  
21 distinguishing whether the water source was actually ground or surface water. The process set up in  
22 all subbasins allows any party, including Ecology, to respond to evidence entered in support of a  
23 claim. Ecology may respond on this issue just as it has in other subbasins and on other issues.

24 Ecology's last exception related to the claim of Gerald and Helen Sauer and whether the  
25 "operation of legal proceedings" exception to relinquishment applied in their case. Ecology's  
26 position is that it did appear to apply based on the evidence presented at the initial hearing.  
27 Resolution of this exception is addressed above with the Sauer exception.

28 On September 2005, Ecology filed a late exception to the water right confirmed to the  
29 Washington State Department of Fish and Wildlife (WDFW), see Report @ 325, 479. Ecology had  
30 learned that the water right confirmed in the report had not been exercised for a number of years  
31 and it was their position that the right had relinquished. There was no formal response from

1 WDFW, nor did they make an appearance at the hearing to consider the late exception. At the  
2 hearing, counsel for Ecology reported that he had heard from counsel representing WDFW and they  
3 had no objection to either the late exception or to a finding that the water right had relinquished.  
4 The Court granted the late exception and withdraws the water right confirmed to WDFW and  
described on pages 327 and 479 of the Report.

5 Ecology also requested several clarifications to the Court's report as follows:

6 1. Lack of specificity relating to "senior" and "junior" rights. This issue is resolved as  
7 the Court reconsidered its prior ruling and withdrew confirmation of junior rights.

8 2. Need for identification of portions of water rights held by separate parties in a single  
9 claim involving multiple parties. This exception mostly applies to water rights confirmed to lands  
10 within AID. AID presented sufficient information to allow the Court to divide the water right  
11 amongst the parties who own land within each answer number. This action should resolve  
Ecology's concern.

12 3. The Court should identify the actual stream channel authorized as the water source.  
13 In the Report, for the most part the confirmed rights identified the source as Ahtanum Creek, while  
14 often Bachelor or Hatton Creeks were the source of water. The *Achepohl* certificates all described  
15 Ahtanum Creek as the source of water, leading the Court to do the same. However, the Court  
16 agrees that it would be more accurate to identify the actual stream on which the authorized  
17 diversion is located, and has attempted to do that. In some instances the point of diversion  
18 described on a certificate from the *Achepohl* case, which is most often just a quarter/quarter location  
19 with a section, is not actually on a water source. This may be because over the years flooding has  
caused the creek channel to change. However, unless the landowner has complied with the change  
procedures in RCW 90.03.380, the Court must use the point of diversion location on the certificates.

20 4. Overlapping places of use: Ecology has identified two sets of water rights where it  
21 believes the places of use overlap:

22 a. James M. and Janet Campbell, Craig and Sharon Campbell, Claim No. 1002,  
23 page 353 and Lewis W. and Joyce L. Langell, Claim No. 1018, page 359. The Court  
24 has reviewed the place of use for both of these water rights and does not agree there  
25 is an overlap. The Langell property is in the SE $\frac{1}{4}$  of Section 11 and the Campbell  
property is in the N $\frac{1}{2}$  and SW $\frac{1}{4}$  of Section 11. There is no overlap.

1           b.       Olen Nichols, Jr. and Elenore Nichols, Claim No. 8439, page 362 and  
2 Marguerite Jorgenson, Claim No. 1245, page 356. The Court agrees there is an  
3 overlap. The place of use was clarified above when the Court considered the  
4 Yakama Nation exception to the Nichols water right.

5           5.       Potential errors in place of use or point of diversion – the Court concurs with  
6 Ecology’s identification of errors and makes the corrections unless otherwise noted:

7           a.       Marguerite Jorgenson, Claim No. 1245, page 356 – the place of use should be  
8 within Section 12, T. 12 N., R. 18 E.W.M.

9           b.       Paul and Anna Marie Morton, Claim No. 0863, page 361 – the place of use  
10 description is modified to replace the “above” on the second line of the description  
11 with “northerly”.

12           c.       Albert and Florence Lantrip, Claim No 2060, page 419 – the point of  
13 diversion description would be changed to read 1320 feet west from the northeast  
14 corner. However, this right is being withdrawn as it is a junior right.

15           d.       Roger and Edna Meusborn, Wayne and Francis Gohl, Lewis Thomason, page  
16 428 – the point of diversion should be in the NE¼NW¼ of Section 18. However,  
17 this right has been withdrawn replaced with separate water rights for each  
18 landowner.

19           e.       Michael J. Hager, page 442 – the range number in the place of use should be  
20 16 E. However, this is a junior right that is being withdrawn.

21           f.       Thomas Worrell, page 440 – the point of diversion described does not appear  
22 to be located adjacent to a body of water. Ecology may be correct, however, the  
23 Court is using point of diversion locations from the certificates that issued following  
24 completion of the *Achepohl* adjudication.

25           g.       Roberta and Jim Buchanan, Randy and Cheri Johnson, Mark and Nancy  
Roehr, Claim No. 1759, page 465 – the point of diversion should be in T. 12 N.  
However, this is a junior right that is being withdrawn

          h.       Catholic Bishop of Yakima County, page 477 – Ecology asks that the place  
of use description be changed to describe the 20-foot wide strip that is referenced in  
the description. This is addressed above in the discussion of Answer No. 10.

1 i. Olen and Elenore Nichols, page 362 – the claim number has a typographical  
2 error; it should be Claim No. 8439.

3 During the discussion of admission of Exhibit AID-8A, Ecology brought up an issue that  
4 was not previously part of its exceptions. AID-8A identifies the lands irrigated under each answer.  
5 The lands are identified by parcel number and legal description. Ecology has objected to legal  
6 descriptions that are lots within a short plat, suggesting that those legal descriptions are not  
7 acceptable since they cannot be accurately mapped. AID responded asking that the Court accept the  
8 legal descriptions provided in AID-8A. The Court has specifically reviewed the legal description  
9 portion of AID-8A and legal descriptions used for water rights confirmed in other subbasins. In  
10 many of the other subbasins, the places of use on the water rights are expressed as lots within a  
11 short plat and Ecology has not previously lodged an objection. The Court has also reviewed the  
12 Yakima County Assessor's web site and finds that no other legal description is provided for parcels  
13 expressed as a lot within a short plat. The Court concludes that there is no basis for a conclusion  
14 that these types of legal descriptions are not valid. Ecology contends that it is not possible to map  
15 such a place of use description. However, from the Yakima County Assessor's web page there is a  
16 direct link for each parcel to a map that will show the parcels location within a section. As part of  
17 the place of use description, the Court will use this link to identify where within a section the parcel  
18 lies, mainly to confirm that it is within the place of use of the underlying certificate. Ecology's  
19 objection to use of lots within a parcel or short plat as the legal description is denied.

17 **V. NON-DIVERSIONARY STOCK WATER RIGHTS**

18 The Court confirmed several rights for non-diversionary stock water purposes in its Report  
19 (@344). Those claims are:

<u>Claim No.</u>	<u>2003 Claimant</u>	<u>Current Claimant</u>
02206	Boise Cascade, Inc.	Same
01154	Leroy and Hazel Duckworth	Same
02195	Merritt Fines	Same
01615	Sharon Glenn/Estate of Martha Ohms	Same
02398	Hansen Fruit & Cold Storage/ Park Avenue Storage Co.	Same
02310	Alice Hart	Same
02310, 01205	Paul & Linda Hart, Jr.	Same
01627	Kathleen Hille	Same

1 01019 Lewis & Joyce Langell Same  
2 01645 Earl & Ardis Lewis Ardis Lewis & Estate of Earl Lewis  
3 00830 Clarence A. & Marian Thompson Same  
4 02398 Ervin & Jureta Yoerger Same

5 Additionally, the following claimants appeared during the exception hearings for Subbasin  
6 No. 23 and were confirmed a right for non-diversionary stock water purposes:

7 Claim No. Claimant  
8 00898 Marc & Sue Downes Martin  
9 00133, 00182 Gary & Ruth Hansen  
10 00543 Theodore & Wanda Mellotte, Jr.  
11 00589 Washington State Department of Natural Resources

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**SCHEDULE OF RIGHTS BEGINS IN VOLUME 48-A, PART II**