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YAKIMA, WASHINGTON

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2016

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

REPORT OF THE COURT
CONCERNING THE WATER RIGHTS FOR THE

SUBBASIN NO. 23
(AHTANUM CREEK)

AHTANUM IRRIGATION DISTRICT

JOHNCOX DITCH COMPANY

UNITED STATES/YAKAMA NATION

VOLUME 48 - PART I

15625
(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)
5 SURFACE WATERS OF THE YAKIMA RIVER) No. 77-2-01484-5
6 DRAINAGE BASIN, IN ACCORDANCE WITH)
7 THE PROVISIONS OF CHAPTER 90.03,)
8 REVISED CODE OF WASHINGTON,) REPORT OF THE COURT RE:
9) SUBBASIN NO. 23 (AHTANUM)
10 STATE OF WASHINGTON,)
11 DEPARTMENT OF ECOLOGY,) AHTANUM IRRIGATION DISTRICT
12) (CLAIM NOS. 2398, (A)3080, (A)3097,
13 Plaintiff,)
14 vs.) JOHNCOX DITCH COMPANY
15) (CLAIM NOS. 1693, (A)5448)
16 JAMES J. ACQUAVELLA, ET AL.,)
17 Defendants) UNITED STATES/YAKAMA NATION
18) (CLAIM NOS. 2276, (A)7253)
19)
20)
21)
22)
23)
24)
25)

12 I. INTRODUCTION

13 Although all subbasins in this adjudication are unique, the Ahtanum watershed may be the most
14 extraordinary. It has been previously adjudicated twice, once in federal court and once in state court.
15 Ahtanum Creek also forms part of the northern boundary of the Yakama Nation Reservation
16 (Reservation). Additionally, an agreement between water users on the north side of Ahtanum Creek
17 (off-reservation, non-Indian owners -- hereinafter "northside users") and the United States on behalf of
18 the Yakama Nation divided the stream's flows. Now, some of that reservation land has transferred to
19 non-Indian ownership. Finally, this Court has made certain rulings regarding Ahtanum Creek which
20 also impact the rights of both northside and southside residents. Yet for all the legal history that defines
21 this creek, never before has every surface water claim been examined in a single comprehensive
22 analysis. The following pages constitute that effort.

23 Oddly, this complex history makes the task of setting forth the water rights of the individuals
24 both more difficult and less difficult. The Court must be mindful and integrate the previous findings of
25 the other tribunals who have addressed the legal rights of Ahtanum Creek water users. See In Re
Ahtanum Creek, 139 Wash 84, 87, 245 P. 758 (1926)(Under the provisions of the water code, "it is the
duty of the referee and the court to notice and give effect to all such prior decrees"). However, certain
key rulings have been and provide some guidance to the Court. All of these factors combine to make

1 quantification of Ahtanum Creek water rights challenging, frustrating and fascinating.

2 The hearing for Subbasin 23 (including Ahtanum Irrigation District, Johncox Ditch Company
3 and the United States/Yakama Nation) occurred February 7-15 and April 19-20.

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

5 Court
6 Claim

<u>No.</u>	<u>Name</u>	<u>Attorney</u>	<u>Page</u>
2398	Ahtanum Irrigation District P.O. Box 1188 Moxee, WA 98936-1188	Jerry D. Talbott Talbot, Simpson, et al. P.O. Box 590 Yakima, WA 98907	119
1120	Allan Brothers, Inc. 31 Allen Road Naches, WA 98937	Lawrence E. Martin Halvorson & Applegate P.O. Box 22730 Yakima, WA 98907-2715	53, 350
2398	Herbert E. Anderson		280
2398	Larry G. Anderson		280
0749	Orland Anderson P.O. Box 1641 Eureka, MT 59917-1641		343
2398	Robert Anderson		343
2398	Robert L. Anderson, et ux.		184, 280,
2398	Robert S. Anderson, et ux.		280,
0201	George Ashbaugh & Mary K. Ashbaugh 6921 Baggarley Drive Yakima, WA 98903-9488		280,
1828	Dale J. Atkinson & Marie J. Atkinson 2503 McCullough Road Yakima, WA 98903		343

1	2398	Marvin A. Baggarley	280
2	0736	John R. Bailey & Mary Bailey	280
3		3502 S. 79 th Avenue	
4		Yakima, WA 98903-9430	
5	1160	Paul Bak & Violet M. Bak	56,350
6		791 Lynch Lane	
7		Yakima, WA 98903	
8	0047	Dennis Baker	228,412
9		8611 Canter Lane	
10		Yakima, WA 98903-9685	
11	1239	Robert A. Ball & Joan Marie Ball	J. Eric Gustafson Lyon Law Office 57,351
12		1908 S. 64 th Avenue	P.O. Box 1689
13		Yakima, WA 98903	Yakima, WA 98907-1689
14	2398	George E. Barton	280
15	1918	Barbara Bartz	343
16		601 Meadowbrook Road	
17		Yakima, WA 98903	
18	2398	Kenneth Bates	119,280,371
19	2398	Kenneth Bates, Jr.	177,454,455
20	2398	Thomas H. Bates	119,371
21	1901	Fred Batt & June Batt	343
22		3631 S. 40 th Avenue	
23		Yakima, WA 98903	
24	1401	Ralph E. Baugher & Shirley E. Baugher	343
25		143301 N. River Road	
		Prosser, WA 99350	

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YAKIMA COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF YAKIMA

IN THE MATTER OF THE DETERMINATION)
 OF THE RIGHTS TO THE USE OF THE)
 SURFACE WATERS OF THE YAKIMA RIVER)
 DRAINAGE BASIN, IN ACCORDANCE WITH)
 THE PROVISIONS OF CHAPTER 90.03,) NO. 77-2-01484-5
 REVISED CODE OF WASHINGTON)
)
 THE STATE OF WASHINGTON,)
 DEPARTMENT OF ECOLOGY,)
)
 Plaintiff,)
)
 v.)
)
 JAMES J. ACQUAVELLA, et al.,)
)
 Defendants.)

TO: All Subbasin No. 23 (Ahtanum) Claimants, Major
Claimants and Attorneys/Agents of Record

Page 4 of the Report of the Court for Subbasin No. 23
(Ahtanum) was inadvertently left out of the report during
the printing process. Enclosed is Page 4. Please include
it in your copy of the Report of the Court for Subbasin No.
23. Thank you.

DATED this 13th day of February, 2002.


Elaine Peterson
Office of the Referee

15652

1	2398	Kenneth Beck		211, 412
2	1488	Roy Bennett		79, 344
3		1705 W. Ahtanum		
		Union Gap, WA 98903		
4	2398	Alfred A. Berndt		280
5	0524	Mrs. Nylah Bocz		280
6		Lewis Bocz		
7		11003 Gilbert Road		
		Yakima, WA 98903-9267		
8	2398	Bob Bohannon		214, 231, 380, 439
9				
10	2398	John Bohannon		222, 403, 404
11	2398	Robert Bohannon		222, 403, 404
12	2398	Russell Bohannon		222, 241, 280, 380, 381, 403, 404
13				
14	2206	Boise Cascade Corporation	Dennis Dumphy	285, 344
15		c/o Joe Munson	1420 5 th Avenue, Ste. 3500	
16		Legal Department	Seattle, WA 98101-2339	
17		P. O. Box 50		
		Boise, ID 83707		
18	1880	Patricia Bombard		280, 343
19		295 So. Fork Ahtanum Rd.		
		Yakima, WA 98903		
20	1642	Borton and Sons, Inc.	G. Scott Beyer	59, 351
21		2550 Borton Road	807 N. 39 th Avenue	
		Yakima, WA 98903	Yakima, WA 98902-6389	
22	1488	Rudy Bossert		79, 352
23		506 Hillside Drive		
		Yakima, WA 98903		
24	2398	Jess Bowden		204, 426, 427
25				

1	1488	Todd Braman & Helga Braman 3505 Meadowcrest Lane Yakima, WA 98903	79, 352
2			
3			
4	2198	Elizabeth W. Bray 2878 NW Arlington Drive Albany, OR 97321	James P. Hutton Velikanje, Moore & Shore P.O. Box 22550 Yakima, WA 98907-2550
5			206, 280, 434
6			
7	2398	Maurice Brem	280
8	2398	Carl Brown	190, 191, 237, 280, 372, 373, 405, 406
9			
10	1489	Norman R. Brown & Jeanette E. Brown 130 Section 12 Road Yakima, WA 98903	343
11			
12			
13	8440	Robert H. Brown & Judy A. Brown 46 Meadowbrook Rd. Yakima, WA 98903	60
14			
15	0040	Donald P. Brule & Sylvia M. Brule 9 N. 65 th Avenue Yakima, WA 98908	322, 439
16			
17			
18	2398	J. H. Brummelt	235
19	0076	Dale Bryan c/o Norman & Myrtle Chapman 10724 - 19 th Ave. SW Seattle, WA 98146-2038	343
20			
21			
22	1164	Jake Bryan & Sue Bryan 2827 Wiley Road Yakima, WA 98903	280, 290, 407
23			
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25			

1	2055	Gerald L. Bryant & Gladys E. Bryant 10803 Ahtanum Road Yakima, WA 98903	282
2			
3			
4	1759	Roberta Buchanan & Jim Buchanan 160 W. Tampico Pk. Rd. Yakima, WA 98903	291, 465
5			
6	2398	Herschel & Sylvia Burke	280
7			
8	0732	H. Douglas Burrill & Donna Burrill 2402 S. 5 th Avenue Yakima, WA 98903	343
9			
10	2398	William & Camden C. George Camden	164, 449, 450
11			
12	1002	James M. Campbell & Janet Campbell P.O. Box 2761 Yakima, WA 98907	64, 353
13			
14			
15	2398	Lanny G. Campbell, et ux.	280
16	2398	Russell Carlson	202, 280, 381, 382
17	2398	Steve A. Carlson	127, 382
18			
19	0369	James R. Carmack & Deborah Carmack 9306 Meadowbrook Road Yakima, WA 98903-9671	258, 280
20			
21	2398	Eugene Carpenter	190, 239, 373
22	0678	Thomas Carpenter, Jr. (Trust)	252, 377
23	0703	Keith Carson 2906 S. 42 nd Avenue Yakima, WA 98903	343
24			
25			

1	0370	Vernon Carson & Jo Marie Carson 131 Carson Road Yakima, Wa 98903	181, 407, 408
2			
3			
4	8441	William Cartwright 48 Meadowbrook Road Yakima, WA 98903	61
5			
6	2398	Lawrence Carver	211, 412
7	2398	Gaylord R. Case	123
8	2398	Catholic Bishop of Yakima County	131, 345, 346, 477, 478
9			
10	2398	David G. & Jo Lou Catron	280
11	2398	Richard M. and G. Champie	280
12	2398	Chancery	182, 280, 473, 474
13			
14	2398	John Clark	193, 409
15	0440	Johnny L. Clark 3611 S. Wiley Road Yakima, WA 98903	125, 420
16			
17	2398	Doug Clausing	193, 409
18	2398	Gemella Clausing	193, 409
19	2398	Harlong Clift, Jr.	256, 376
20	2398	Alice Clow	280
21	0332	Darrell W. Clow	280
22	0333	& Peggy L. Clow 2803 S. 74 th Avenue Yakima, WA 98903-9448	
23			
24	2398	Robert & Janice Conrad	134
25			

1	2398	Mary Copeland	280
2	2398	Norman Cornelius	199, 280, 383
3	2398	R.E. Cornelius	172, 237, 372,
4			405, 406, 410,
			411, 457, 458
5	2090	George E. Coson, III	343
6		801 Country Club Drive	
7		Yakima, WA 98901	
8	1121	Douglas & Linda Couette	67, 353
9		3102 Lila Avenue	
		Yakima, WA 98902	
10	2398	Charles A. Criddle	280
11	2371	Sylvia J. Crockett	293, 466
12		14422 SW Pohl Road	
		Vashon, WA 98070-8709	
13	2398	K. Crook	138, 449
14	2398	Brad Cunningham	152, 462, 463
15	0290	James G. Daley	343
16		& Doris Daley	
17		1409 S. 91 st Avenue	
		Yakima, WA 98908	
18	2398	Russell G. Daniels	160, 459
19	2398	Francis Davis	211, 412
20	0925	Jerry Davis	197, 384
21		1165 E. Commercial Street	
		Weiser, ID 83672-2424	
22	2398	Roger & Barbara Deaver	139
23	2398	James Decoto	243, 385, 386
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1	2398	Raymond Decoto	228, 280, 412
2	2398	Willis Decoto	243, 280, 385, 386
3			
4	0716	Hazel (Delorme) Derr 605 Locust Avenue Yakima, WA 98902	343
5			
6	2398	Eugene O. Dillard	280
7	1488	Raymond M. Dirks, Jr. 37 Crestview Dr. Kettle Falls, WA 99141-9584	79, 354,
8			
9	1903	Cliff Dovel 120 Lynch Lane Yakima, WA 98903	177, 454, 455
10			
11	1903	Lloyd Dovel & Margaret Dovel 1880 SW 27 Road Mattawa, WA 99344	177, 454, 455
12			
13			
14	2398	Michael & Sherry Drury	178, 424
15	1154	H. Leroy Duckworth & Hazel M. Duckworth 2405 Draper Road Yakima, WA 98903	295, 344
16			
17			
18	2308	Dwinell's Central Neon Company 1112 E. Nob Hill Blvd. Yakima, WA 98901	182, 473, 474
19			
20	0731	Chester W. Dyson, et al. 610 Pioneer Street Yakima, WA 98903	343
21			
22	2398	James R. Eagle	280
23			
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1	5064	Bill Eaton 3004 S. 99 th Avenue Yakima, WA 98903		214, 217, 387, 392
2				
3	2398	Charles & Nan Eaton		170, 397, 475
4	0915	Odetta A. Eglin Sutton 622 S. 25 th Avenue Yakima, WA 98902		134, 424
5				
6	0371	Adolph Elhard & Pauline Elhard 5910 Ahtanum Road Yakima, WA 98903-1049		282
7				
8				
9	2398	Elaine Eller		280
10	2398	Stanley & Linda Emerick 360 Carson Road Yakima, WA 98903-9706		178, 424
11				
12	0678	Frances E. Eno P.O. Box 1295 Granger, WA 98932-1295		252, 377
13				
14				
15	1121	Erickson Orchards, Inc. Erickson Water System 3011 S. 42 nd Avenue Yakima, WA 98903	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, WA 98907-1689	67, 354
16				
17	2398	Carl Eutencier		141, 437
18				
19	1911	William G. Evans & Jeannette M. Evans 360 McCoy Road Yakima, WA 98908	James P. Hutton Velikanje, Moore & Shore P.O. Box 22550 Yakima, WA 98907-2550	296, 280, 344
20				
21	1645	Evergreen State Refuse System		338, 441
22	2398	Rosemary Falon		280
23				
24				
25				

1	2195	Merritt C. Fines 402 W. White Street Union Gap, WA 98903	James P. Hutton Velikanje, Moore & Shore P.O. Box 22550 Yakima, WA 98907-2550	297, 344
2				
3	0993	Ida Fitzsimmons 1600 NE 156 th Avenue Portland, OR 97230		343
4				
5	1903	Robert J. Flake & Veronica E. Flake 170 Lynch Lane Yakima, WA 98903		177, 454, 455
6				
7				
8	2398	Randy & Dee Fleming		195, 430, 431
9	0026	James D. Forsythe 1506 S. 34 th Avenue Yakima, WA 98908		232, 432
10				
11	0616	Sally Frye & Florance Kober 2833 S. Wiley Yakima, WA 98903		280
12				
13				
14	0047	Mary Gaines & Terry Biles PMB 213 5303 Pacific Hwy E #213 Tacoma, WA 98424-2601		228, 412
15				
16				
17	0573	Daniel Gamache & Kathleen Gamache 2909 S. Wiley Road Yakima, WA 98903		280
18				
19				
20	2081	Smiley S. Garver & Melissa Garver 16160 Ahtanum Road Yakima, WA 98903		134
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1	2398	Leanne George Amber George	187
2			
3	2398	Steven M. Gerdes	136, 395
4	2398	Loren Gerdes	136, 395
5	0047	Leta Watson Gibson 1308 Spokane Street Yakima, WA 98902-5761	228, 412
6			
7	2161	Curtiss M. Gilbert & Betty L. Gilbert 3160 Marks Road Yakima, WA 98903-9754	343
8			
9			
10	2398	Jean L. Gillette	280
11	2398	Ronald S. & Sharon Gillette	280
12	1301	Don E. Gimlin & Lillie Gimlin 1506 Beaudry Road Yakima, WA 98901-9707	280, 343
13			
14			
15	2398	Robert Gimlin	221, 413
16	0773	Glaspey & Sons 3019 W. Topeka Drive Phoeniz, AZ 85027-4925	262, 387, 398, 459
17			
18	0773	Frank Glaspey & Jeanette Glaspey c/o Glaspey & Sons, Inc. 3019 W. Topeka Drive Phoenix, AZ 85027-4925	262, 387, 398, 459
19			
20			
21	2398	Frank Glaspey, Jr.	280
22	0773	Robert & Loraine Glaspey c/o Glaspey & Sons, Inc. 3019 W. Topeka Drive Phoenix, AZ 85027-4925	262, 280, 387, 398, 459
23			
24			
25			

1	1615	Sharon Glenn & Estate of Martha Ohms 1250 Ahtanum Road North Fork Yakima, WA 98903	298, 344, 456
2			
3			
4	2398	Brian Gohl	280
5	2398	Gregory Gohl	258
6	2398	Jodie & S. Rosencranc Gohl	280
7	2398	Wayne & Frances Gohl	167, 227, 428, 429
8			
9	2183	Delores Burdine Goodman Delores Burdine Watson Verdell Burdine Rutherford Helen Catlett Erma Jean Ruffin Audrey A. Puala Fuller 2406 S. 16 th Avenue Yakima, WA 98903	James P. Hutton Velikanje, Moore & Shore P.O. Box 22550 Yakima, WA 98907-2550
10			
11			
12			
13			
14	0382	James D. Goodman APDO Postal 89 Nuevo Guaumas, Mexico 85506	280
15			
16	1488	Steve Gottlieb 3500 Meadowcrest Lane Yakima, WA 98903	79, 355
17			
18	2398	Julius Gray	125, 420
19	2181	Myrtle Greene 2800 Tahoma Avenue Yakima, WA 98902-5094	85
20			
21	0387	Lelia C. Lumaguip Griffiths & Donald R. Griffiths 2812 S. 42 nd Avenue Yakima, WA 98903	343
22			
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1	2398	Allen W. Grissom		167, 374, 413
2	2398	George H. Grissom		167, 374, 413
3	2398	David & Ida Guiland		159, 281
4	2398	Michael Guillozet		152, 462, 463
5	2148	Estate of Ruth F. Gunnoe & Estate of Leonora R. Barnes c/o Steven Lilla/US Bank Trust P.O. Box 1352 Yakima, WA 98907		318
6				
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8				
9	2398	Jimmy Haedrick		136, 395
10	2398	Michael J. Hager		156, 441, 442
11	2398	W.C. Hall		127, 425
12	0205	Walter C. Hall		282
13	0206	2802 S. 3 rd Street Union Gap, WA 98903		
14	2398	George Hammermeister, Jr.		221, 281, 413
15	2398	Hansen Fruit & Cold Storage P.O. Box 9755 Yakima, WA 98909	Lawrence E. Martin Halvorson & Applegate P.O. Box 22730 Yakima, WA 98907-2715	130, 460, 476, 477
16				
17				
18	1645	Hansen Fruit & Cold Storage/ Park Avenue Storage P.O. Box 9755 Yakima, WA 98909	Lawrence E. Martin Halvorson & Applegate P.O. Box 22730 Yakima, WA 98907-2715	338, 344, 433
19				
20				
21	0133	Gary Hansen		160, 312, 447,
22	1082	& Ruth Hansen P.O. Box 9755 Yakima, WA 98909		448
23				
24	2398	Laurel Hansen		130, 460, 476, 477
25				

1	2118	Catherine Ann Hardison & Karen Burke Stiles 1213 N. 20 th Avenue Yakima, WA 98902-1287	282
2			
3			
4	2398	Harris Farms, Inc.	225, 281, 414, 415
5			
6	2310	Alice H. Hart 1130 Barton Square East Wenatchee, WA 98801	74, 300, 344, 433
7			
8	1205 2310	Paul R. Hart, Jr. & Linda Hart 1130 Barton Square East Wenatchee, WA 98801	74, 300, 344, 355, 433
9			
10	2398	John R. Hartshorn	249
11			
12	2398	Frederic Hatfield	206, 434
13			
14	1272	Walter E. Hathaway & Anna L. Hathaway 2402 S. 66 th Avenue Yakima, WA 98903-9404	281, 302, 344
15			
16	2398	Brian Helle	170, 397, 475
17			
18	1694	John P. Herke & JoAnn Herke 19190 Ahtanum Road Yakima, Wa 98903	76, 143, 281, 425, 426
19			
20	0732	Brad Hernandez & Deborah Hernandez 7011 State Route 410 Naches, WA 98937-9402	343
21			
22	1121	Mike Herndon & Evelyn Herndon 4011 McCullough Road Yakima, WA 98903	67, 356,
23			
24			
25	2398	Dennis and Carloy Herron	177, 281, 454, 455

1	0489	Daryl Hill & Margo Hill P.O. Box 367 Hansville, WA 98340-0367	199, 422, 423
2			
3			
4	2082	Stanley Hill & Arlene Hill 162 Lombard Loop Wapato, WA 98951-9631	343
5			
6			
7	2083	Steve S. Hill & Carole F. Hill 15 S. 6 th Street #1 Yakima, WA 98901	343
8			
9	2398	Ivan Hille	281
10	1627	Kathleen Hille 1250 Ahtanum Road South Fork Yakima, WA 98903-9065	304, 344, 467
11			
12	2398	Terry & Robert Himrod	125, 420
13			
14	2398	Nathan & Bernice Hinkle	281
15	1400	Craig Hinman 1300 N. Bennett Street Silver City, NM 88061-6518	343
16			
17	0186	Bradly Wayne Hinote c/o Ardean Empie 433 Craig Avenue Fairbanks, AK 99701	343
18			
19	0047	Steven L. Hixon & Lynette Hixon 8817 Canter Lane Yakima, Wa 98903	228, 412
20			
21			
22	2398	Holtzinger Ranch, Inc.	137, 281, 388
23			
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1	2398	Eugene Hoppis		147, 281, 389
2	2398	Ivan Houfek et ux.		281
3	2065	Laurence E. Hovenkotter & Marian H. Hovenkotter 7602 Occidental Yakima, WA 98903		306, 451
4				
5				
6	2065	Michael J. Hovenkotter & Kathleen A. Hovenkotter 7602 Occidental Avenue Yakima, WA 98903	Jerry D. Talbott Talbot, Simpson, et al. P.O. Box 590 Yakima, WA 98907	306, 451
7				
8				
9	0220	Doris Hugill 912-A S. 41 st Ave. Yakima, WA 98908		343
10				
11	2398	Hull Ranches, Inc.		204, 281, 426, 427
12				
13	2398	John Hull		256, 260, 281, 375, 376
14	2398	Roger A. & T. Hutchinson		176, 427
15	2398	James E. Ireland		281
16	2398	James Ives		255, 416
17	0916	Lloyd C. Jackson & Reba Jackson 7103 Ahtanum Yakima, WA 98903		281
18				
19				
20	2398	Charles & Nancy Jacobs		162
21	1693	Johncox Ditch Company c/o Lula Alexander, Secretary 500 W. Slavin Road Yakima, WA 98903	Jerry D. Talbott Talbot, Simpson, et al. P.O. Box 590 Yakima, WA 98907	274, 468, 469
22				
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24	2398	John-Ken, Inc.		149, 464
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1	2398	Lester Johnson	136, 152, 395, 462, 463
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3	2398	Randall W. Johnson Robert Johnson	281
4	1759	Randy M. Johnson & Cheri J. Johnson P.O. Box 3526 Jackson, WY 83001-3526	152, 291, 462, 463, 465
5			
6			
7	1245	Marguerite Jorgensen 566 E. Channel Road Santa Monica CA 90402-1344	Ted Roy Roy Law Office P.O. Box 2566 Yakima, WA 98907-2566
8			77, 356
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10	2398	Riley Kelley	248, 417
11	2398	Virginia Lee Kerl	281
12	1488	Gary E. King	79, 357
13	1917	& Margaret Ann King 3404 S. 8 th Avenue Yakima, WA 98903	
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15	0188	John Kinnunen 2105 W. Chestnut Yakima, WA 98902	343
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17	2398	KLC Holdings	262, 268, 281, 399, 418
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19	2320	Karen L. Klingele 251 Valley Vista Lane Yakima, WA 98901	343
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21	2398	Clarence Knoblick	199, 422, 423
22	1488	John & Karen Krantz 1008 Meadowbrook Yakima, WA 98903	79, 358
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1	2398	Roger & Karen Kroboth	141, 437
2	0524	Tommie A. Krohn	281
3		& Sandra B. Krohn	
4		11101 Gilbert Road	
		Yakima, WA 98903	
5	2181	Lawrence Kunkel	85, 358
6		2201 McCullough	
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7	2398	Kwik Loc Corporation	246
8	0573	Thomas O. Lakey	281
9		& Beulah M. Lakey	
10		753 E. Ponderosa Drive	
		Yakima, WA 98903	
11	1018	Lewis W. Langell	78, 307, 344,
12	1019	& Joyce Langell	359
13		310 Meadowbrook	
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		Ted A. Roy	
		Roy Law Office	
		P.O. Box 2566	
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14	2060	Albert D. Lantrip	309, 419
15		& Florence Y. Lantrip	
16		808 Pioneer Lane	
17		Yakima, WA 98903	
18	1157	Marcelle Laramore	211, 389
19		& Loretta Laramore	
20		P.O. Box 150	
21		Tacoma, WA 98401	
22	8437	Mark A. Layman	62
23		42 Meadowbrook Road	
24		Yakima, WA 98903	
25	1205	Danny R. Lee	74
		& Neta Sue Lee	
		1022 Beane Road	
		Moxee, WA 98936	

1	1121	Thomas Leonard P.O. Box 8213 Yakima, WA 98908-0213	67,359
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3	1695	Lesh Ditch c/o John Herke 19190 Ahtanum Road Yakima, WA 98903	282
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6	8438	Charles W. Lewis 62 Meadowbrook Road Yakima, WA 98903	63
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8	1645	Earl E. Lewis & Ardis Lewis 2802 S. 1 st Avenue Union Gap, WA 98903	338, 344, 435
9			
10		Lawrence Martin Halvorson & Applegate P.O. Box 22730 Yakima, WA 98907-2715	
11	1488	Melvin Light & Linda Light 9805 Orchard Avenue Yakima, WA 98908-9599	79, 360,
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14	2398	Marlin Lindgren	125, 420
15	2398	Rulon Linton	199, 281, 422 423
16	2398	W. A. Livingston	281
17	2398	Robert Lockbeam, Jr.	125, 420
18	2398	William Loffswold	281
19	2398	Elsie Hawn Lombard	281
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21	1633	John Long 2 Meadowbrook Road Yakima, WA 98903-9505	343
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1	2398	James & Jacquleen Mackie	170
2	2398	Peggy Madson	207, 436
3	0417	Kenneth A. Marquis	223, 281
4		& Gina Pistoresi	
5		8602 Kail Drive	
		Yakima, WA 98908-1040	
6	2398	Forrest H. Marshall, et ux.	281
7	0898	Marc Martin	313
8		& Susan Martin	
9		580 Ahtanum Road South Fork	
		Yakima, WA 98903	
10	2398	Tim Martin	211, 412
11	0219	Donald C. McConnell	343
12		& Lucinda M. McConnell	
13		111 E. Tampico Park Road	
		Yakima, WA 98903	
14	1829	Ronald L. McDougall	343
15		& Nancy McDougall	
		2205 McCullough Road	
		Yakima, WA 98903	
16	2398	John P. & Connie McGahan	281
17	1880	Richard McGahan	148, 464
18		293 South Fork Ahtanum Road	
		Yakima, WA 98903	
19	1229	Brad A. McGuire	104, 370
20		13171 S. Ahtanum	
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22	2398	Robert & Donna McInnis	139
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1	2181	Margaret McNamara & Thomas McNamara 308 Ski Hill Drive Leavenworth, WA 98826		85
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4	0541 -0545 2398	Theodore W. Mellotte & Wanda E. Mellotte 213 Santa Roza Drive Yakima, WA 98901-5606		141, 281, 315, 437
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6	2398	M.W. Melton		138, 449
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8	0203	Lisa Ann Meusborn 2714 S. 79 th Yakima, WA 98903		258
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10	2398	Roger & Edna Meusborn		168, 178, 424, 428, 429
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12	2398	Robert W. Meyers		165, 460
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14	1905	Gary L. Miner & Diane J. Miner 2401 McCullough Road Yakima, WA 98903		85, 360
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16	2398	Brad Mitchell		281
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18	1240	Vernon Mondor & Dorothy Mondor 3606 S. 79 th Yakima, WA 98903	Lauren Dobbs No mail per request of Dobbs	91, 361
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20	2398	Willis Mondor		150, 445, 446
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22	2398	Steven J. Morkert		167, 374
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24	0863	Anna Marie Morton & Paul Morton 3114 S. 62 nd Avenue Yakima, WA 98903-9571	G. Scott Beyer 807 N. 39 th Avenue Yakima, WA 98902-6389	89, 218, 269, 281, 361, 390, 391, 457, 461
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1	2398	Ron & Rhonda R. Morton	281
2	1121	James Murphy	67
3		6681 S. Naches Road	
		Naches, WA 98937-7711	
4	1121	Marie (Erickson) Murphy	67, 362
5		3011 S. 42 nd	
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6	0528	Napi Corporation	281
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9	2058	Richard L. Nathlich	317, 344
		& Vicki A. Nathlich	
10		2914 S. 79 th Avenue	
		Yakima, WA 98903	
11	0203	John Nelson	258, 281
12		& Nancy Nelson	
13	0221	Milburn B. Nelson	281
14		& Arlene Nelson	
		5304 W. Washington Avenue	
15		Yakima, WA 98903	
16	8349	Olen Nichols, Jr.	92, 362
17		& Elenore M. Nichols	
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19	1488	Ronald L. Nichols	79, 344
20		& Brenda Nichols	
		1201 W. Washington	
		Yakima, WA 98903	
21	1044	Rodney A. Niemi	85, 363
22		& Sally Norman	
		6960 Ahtanum Road North Fork	
23		Yakima, WA 98903-9015	
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1	2148	Michael Noel P.O. Box 963 Dutch Harbor, AK 99692	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, Wa 98907-1689	318,344
2				
3				
4	2022	David Norman & Sharron Norman 6960 Ahtanum Road, North Fork Yakima, WA 98903-9015		343
5				
6	2086	Bernard E. Novobielski & Marylyn Novobielski 5707 Ahtanum Road Yakima, WA 98903	James P. Hurley 411 N. 2 nd Street Yakima, WA 98901	269,438
7				
8				
9	1743	Hannah Nurss 2290 Ahtanum Road South Fork Yakima, WA 98903		319,475
10				
11	1248	Sandra L. (Johnson) Oversby 8670 Ahtanum Road North Fork Yakima, WA 98903-9014		318,343
12				
13				
14	2398	Anthony Pace		262,451
15	2398	Shirely M. Pettis		123
16	1924	C. Earl Peugh & Alice G. Peugh 4504 Webster Street Yakima, WA 98908-3611	Patrick Andreotti Flower & Andreotti 303 E. "D" Street, Ste. 1 Yakima, WA 98901	281
17				
18	0218	Wallie Pierce (Stone) 770 Highland Drive Zillah, WA 98953-9751		343
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21	2398	Linda Kay Poteet		214,392
22	0192	Carl F. Prather & Ida M. Prather 8304 Marion Street Yakima, WA 98903		282
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1	0040	Robert F. Pulse & Phyllis A. Pulse 303 Lower Ahtanum Road Yakima, WA 98903	322, 439
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4	0999	Jerry W. Purdom 3404 Stanton Road Yakima, WA 98903	197, 384
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6	1121	Simon Ramirez & Bonnie Ramirez 4161 McCullough Road Yakima, WA 98903	67, 363
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9	2398	John & Judy Record	190, 373
10	2398	John & Patricia Reese, Jr.	197, 384
11	2398	Shaun M. & Sharon Rehfield	152, 462, 463
12	1488	Gary Reich & Alana Reich 3406 Meadowcrest Lane Yakima, WA 98903-9522	79, 364
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15	0470	Theodore R. Reich & Elsie M. J. Reich 3005 Chestnut Yakima, WA 98902	281
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17	0450	J. W. Reid & Sally Reid 325 Jackpine Drive Grants Pass, OR 97526-8722	272, 393, 452, 453
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19			
20	2398	Donald Rennie	214, 281, 392
21	2398	Elmer Rhodes & Georgia Rhodes 4014 Lower Ahtanum Road Yakima, WA 98903	235
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1	2398	Jerry Ribail	205, 420
2	2398	Jules Ribail, Jr.	281
3	2398	Mike & Tammie Ribail	136, 281, 395
4	2094	Leo Richardson	187, 266, 281,
5		& Claudia Richardson	
6		9409 Coolidge Road	
		Yakima, WA 98903	
7	2398	Rhomas D. Richardson	167, 374, 413
8	1121	Gary Riddle	67, 364
9		& Ena Riddle	
10		4211 McCullough Road	
		Yakima, WA 98903	
11	1121	Leona M. Riedlinger	67, 365
12		& Adam W. Riedlinger	
		4215 McCullough Road	
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13	2398	Lawrance & Shirley Riegel	234, 393, 394
14	1248	Kenneth Ritter	318, 343
15		& Donna Ritter	
16		4691 Ahtanum Road North Fork	
		Yakima, WA 98903-9054	
17	0912	James Robinson	96, 344
18		& Margie L. Robinson	
19		11721 NE 75 th Place	
		Kirkland, WA 98033	
20	0528	Louis F. Roederer, et ux.	281
21	1759	Mark Roehr	291, 465
22		& Nancy Roehr	
23		2150 Ahtanum Road North Fork	
		Yakima, WA 98903-9019	
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1	2398	Jill Rogers	199, 383
2	2398	Blenn E. & Deborah S. Roof	281
3	0047	Rodney Ross	228, 412
4		& Gloria Ross	
5		881 Stone Road	
		Yakima, WA 98908-8080	
6	2398	William & Rebecca Ross	281
7	2398	Richard Rousseau	125, 420
8	1020	Lester W. Roy	150, 157, 443,
9		890 Walters Road	444, 445, 446
		Moxee, WA 98936	
10	1121	Robert & Michelle Runciman	67, 365
11		20855 SW Siletz Court	
		Tualatin, OR 97062-9187	
12	2398	Darel Sanger	211, 281, 389
13	2398	Antoino Saucedo	258, 281
14		& Ladie Saucedo	
15	2243	Gerald F. Sauer	323, 344
16		& Helen M Sauer	
17		733 Roza Drive	
		Zillah, WA 98953	
18	2215	Dale Schlieman	336, 472
19		& Joanne Schlieman	
		3270 Ahtanum Road South Fork	
20		Yakima, WA 98903	
21	7460	Michael E. Schreiner	96, 366
22		& Anna Schreiner	
		7405 Sali Road	
		Yakima, WA 98903-9247	

1	6332 7460	Michael J. Schreiner & Ella Kay Schreiner 2326 McCullough Road Yakima, WA 98903-9534	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, WA 98907-1689	93, 96, 366
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4	2398	Robert Schuller		164, 449, 450
5	2398	Gary & Dixie Senter		152, 187, 462, 463
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7	2398	Orville & Gwene Seward		179, 476
8	2398	Enis Shockley		211, 399
9	2398	Jean Shockley		211, 399
10	2398	Joy D. Shockley		281
11	0047	William G. Sizemore 8715 Canter Lane Yakima, WA 98903-9632		228, 412
12				
13	0694	Billy Smith & Sheryl Smith 2806 S. 42 nd Avenue Yakima, WA 98903	Jerry D. Talbott Talbot, Simpson, et al. P.O. Box 590 Yakima, WA 98907	120, 378, 379
14				
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16	2398	Vicki Smith		136, 395
17	0429	Harry A. Sodeman, Jr. & Gini Sodeman 1032 Pioneer Way Yakima, WA 98908		187
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20	0846 0847	Donald L. Sperry & Jean M. Sperry 907 Ahtanum Road, #L Union Gap, WA 98903-1538		343
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22	2398	Benny & Carol Splawn		266
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1	0218	Tommie Stone Wallie (Pierce) Stone 1520 Ahtanum Road North Fork Yakima, WA 98903	343
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4	2398	Irene A. Storms	281
5	2398	William & Idel Stradler	195, 430, 431
6	0205	Pat Stump	282
7	0206	& Dora Stump 13602 Ahtanum Road Yakima, WA 98903-9784	
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9	0569	Erma A. Swalley 12907 Rutherford Road Yakima, WA 98903	195, 281, 430, 431
10			
11	1132	Rod D. Swanson & Betty B. Swanson 12964 Road A NW Ephrata, WA 98823	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, WA 98907-1689
12			97, 327, 472
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14	2398	Jody L & Kathy Taylor	282
15	2398	C.A. Thomas	342
16	2398	Lewis Thomason	168, 428, 429
17	0830	Clarence A. Thompson & Marian Thompson 1331 Ahtanum Road North Fork Yakima, WA 98903	329, 344
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20	1633	Mary Jane Thornton 709 Pickens Road Yakima, WA 98908-1844	343
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22	2398	Lynn Tobin	239
23	0569	Leland & Marie Torzon	195, 430, 431
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1	1071	Helen Larson, Secretary Trail's End Lodge 101 N. 58 th Avenue #9 Yakima, WA 98908	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, WA 98907-1689	330, 480
4	2398	Donald & Carol Trammell		253, 400
5	2398	Fred Trupp		209, 421
6	1704	Eugene R. Tyler & Helen E. Tyler 17200 Ahtanum Union Gap, WA 98903		99, 367
9	1273	Paul Burlingame City of Union Gap P.O. Box 3008 Union Gap, WA 98903	Jerry D. Talbott Talbott, Simpson, et al. P.O. Box 590 Yakima, WA 98903	332, 344
11	2276	United States of America	Charles O'Connell, Jr. Indian Resources Section P.O. Box 44378 Washington, D.C. 20026-4378	41, 347
14	2398	Martin Valla		152, 462, 463
15	2398	Bradley Vetsch		179, 476
16	7621	Charles E. Vetsch & Sharon G. Vetsch 3208 S. 62 nd Avenue Yakima, WA 98908	G. Scott Beyer 807 N. 39 th Avenue Yakima, WA 98902-6389	89, 179, 211, 367, 399, 476
19	2398	Chuck Vetsch		216, 295
20	2398	Raymond Vetsch		282,
21	2398	Laddy Vibbert		181, 407, 408
22	2398	Lorain O & Peggy Walder		282
23	0428	David Walter		343

1	2109	WA State Dept of Fish & Wildlife P.O. Box 43200 Olympia, WA 98504-3200	Matthew D. Love, AAG Attorney General's Office P.O. Box 40100 Olympia, WA 98504-0100	325, 479
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4	0589	WA State Dept. of Natural Resources c/o Ron Johnson Agricultural Resources P.O. Box 47061 Olympia, WA 98504-7061	James R. Schwartz Attorney General's Office 1125 Washington Street, SE P.O. Box 40100 Olympia, WA 98504-0101	343
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7				
8	1766	Ricky D. Watts & Linda M. Watts 10303 Wide Hollow Road Yakima, WA 98908-9187		343
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10	2398	Franklin A. Weed		126, 262, 370, 400
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12	2398	Frank & Ruth Weed		141, 437
13	2398	William Weed		128, 396
14	1121	David Welch & Ruth Welch 4207 McCullough Road Yakima, WA 98903		67, 368
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17	1248 2528	Anthony L. Wellner 5950 Yost Road Toppenish, WA 98948-9460	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, WA 98907-1689	318, 344
18				
19	0047	Russell D. Wells 3001 S. 90 th Avenue Yakima, WA 98903		228, 412
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22	1493	Art Wentz & Mary Wentz 2704 McCullough Road Yakima, WA 98903		66, 344
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1	2202	Arthur Wertenberger 3530 Yakima Valley Highway Wapato, WA 98951	343
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3	2398	Ray L. & Jean H. West	120, 378, 379
4	2398	West Valley School	282
5	2398	Donald Wetzel & Deborah Wetzel	195, 430, 431
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7	2280	Violet Wetzel 3512 S. Wiley Road Yakima, WA 98903	282
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9	2398	Hiram E. White	154, 401, 402, 479
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11	8454	Hiram H. White & Sharon P. White Dorothy R. White 20580 Ahtanum Road Yakima, WA 98903	333
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14	2398	Robert White	282
15	2398	Joseph & Lorra Wiebler	120, 378, 379
16	2326	L. Dennis Wiese & Barrie Wiese 18704 Snowy Plover Circle Anchorage, AK 99516-6130	343
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19	2398	Clifford Wiley	214, 392
20	2398	Douglas Wiley	214, 392
21	2398	Joe Wiley	170, 181, 282, 397, 407, 408, 475
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23	2398	John Wiley	282
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1	2398	Loren Wiley		181, 407, 408
2	2398	Malsena Wiley		214, 392
3	2398	Rosemary Wiley		214, 392
4	1459	James T. Wilkinson & Belinda Wilkinson 2910 McCullough Road Yakima, WA 98903-9540		100, 368
5				
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7	2398	Russell Wilkinson & Cathy Wilkinson		177, 282, 454, 455
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9	1459	Stanley L. Wilkinson & Mary J. Wilkinson 2908 McCullough Road Yakima, WA 98903	J. Eric Gustafson Lyon Law Office P.O. Box 1689 Yakima, WA 98907-1689	100, 368
10				
11	2181	Rocky D. Willette & Lousie M. Willette 2207 McCullough Road Yakima, WA 98908		85, 369
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14	2215	Richard & Eileen Williams		336
15	0732	Gary Willoughby 715 Meadowbrook Road Yakima, WA 98903		343
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17	1226	James Wilson & Patsy Wilson 1106 S. 33 rd Avenue Yakima, WA 98902-4919		103, 369
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20	2398	Ruth A. Wilson		282
21	1229	Kenneth N. Withers & Estate of Winifred Withers 1624 S. 15 th Avenue Yakima, WA 98902		104, 370
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1	2398	Demor Woener		244, 397, 398
2	0737	Clara M. Wolff		221, 413
3		2812 S. 90 th Avenue		
		Yakima, WA 98903-9688		
4	0076	Judith V. Woodburn		343
5		& Jerry L. Woodburn		
6		345 E. Old Ranch Road #6K		
		Allyn, WA 98524-9725		
7	2398	Eugene & Kim Woodcock		123
8	2398	William Woodcock		258, 282
9	2398	Gail Woodhouse		199, 282, 422, 423
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11	2398	Alvin Woolem		231, 439
12	2398	Melvin & Mildred Woolen		258
13	2398	Thomas Worrell		229, 440
14	2276	Yakama Nation	Jeffrey S. Schuster	41, 347,
15		P.O. Box 151	P.O. Box 151	
16		Toppenish, WA 98948	Toppenish, WA 98948	
17	2398	Yakima Air Terminal		282
18	0695	Raymond L. Paoella,	Elizabeth Thomas	337, 344
19		City Attorney	Preston, Gates & Ellis	
20		City of Yakima	701 Fifth Avenue	
		Attn: Legal Department	Suite 5000	
		200 S. 3 rd Street, 2 nd Floor	Seattle, WA 98104-7078	
		Yakima, WA 98901		
21	1248	Yakima Realty, Inc.		318, 343
22		Patty J. Kloat		
23		& Arland Kloat		
24		3930 Speyers Road		
25		Selah, WA 98942		

1	1645	Ervin Yoerger & Jureta Yoerger 2801 S. 1 st Avenue Union Gap, WA 98903	338, 344, 441
2			
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4	2398	Boyd K. Zerbe	282
5	2398	Darrell Ziegler, et ux.	282
6	2398	Curtis D. & Rebecca Zike	282
7	1880	David M. Zueger c/o American Fine Art & Frame Company 1611 Dragon Street Dallas, TX 75207-3910	343
8			
9			
10			

11 **III. LEGAL AND FACTUAL HISTORY OF AHTANUM CREEK**

12 As noted previously, Ahtanum Creek water users are familiar with water right disputes: This is
 13 the third proceeding since the 1920's to inventory the rights and priorities in that watershed. As
 14 counsel for the Ahtanum Irrigation District (AID) so accurately noted:

15 "The Ahtanum area has produced more litigation per gallon of water involved, than any other
 16 irrigation district in the State of Washington, maybe the United States." Trial Brief at 5.

17 The factual and legal history surrounding these controversies will be set forth below.

18 a. Factual History

19 The headwaters of Ahtanum Creek arise on the eastern slope of the Cascade Mountains flowing
 20 40 miles east to the confluence with the Yakima River. The South Fork and the North Fork join to
 21 form the main channel of Ahtanum Creek. However, after the two forks join, Ahtanum Creek splits
 22 into three principal channels and rejoin downstream before Ahtanum Creek empties into the Yakima
 23 River. YIN - 34 at 28 (Foxworthy, Geology and Groundwater Resources of the Ahtanum Valley,
 24 Yakima County Washington, Geological Survey Water-Supply Paper, 1962.) Those channels are
 25 separately named as Bachelor Creek, Stanton Creek and Hatton Creek. In addition, Spring Creek,
 which has its source in the northeastern section of the Ahtanum valley, also provides irrigation water to
 various users in that section of the subbasin. Ahtanum Creek then empties into the Yakima River near
 the town of Union Gap, approximately four miles south of the city of Yakima. Ahtanum Creek also
 serves as a portion of the northern boundary of the Reservation. There are no existing storage facilities

1 on Ahtanum Creek. The average annual inflow of the North Fork and South Fork is about 62,000 acre-
2 feet. Id., at 27. May is the month of greatest average runoff, and September is the month of minimum
3 average flow. Id.

4 AID and Johncox Ditch Company (Johncox) provide service to northside users. AID contains
5 over 10,000 acres and claims a right to irrigate 5,932 acres while Johncox claims 909 acres. AID is
6 somewhat unique as an irrigation provider in that it owns no canals, diversions works or distribution
7 systems. Rather, the creek channel is the conveyance work and the individual right holders divert
8 water from the creek. Consequently, to establish AID's rights requires the Court to determine the
9 rights of the individuals who make up AID. More on this issue later.

10 The reservation landowners are served by the Wapato Irrigation Project, Ahtanum Unit. Two
11 main canals divert water from Ahtanum Creek for delivery to the water users: Ahtanum Main Canal
12 and the Lower Canal. The Ahtanum Main Canal has its point of diversion in Section 14, T. 12 N., R.
13 16 E.W.M., not far from where the south and north forks of Ahtanum Creek join. The water users pay
14 assessments to the WIP, which delivers the water prorata to the many fee owners as well as those
15 properties held in trust for the benefit of the Yakama Nation.

16 b. Legal History

17 Although the entire Yakima Basin is layered with many adjudication decrees, consent decrees
18 and various contracts, nowhere is this more concentrated than in the Ahtanum watershed. To
19 determine the rights, in addition to an understanding of what the water users are actually doing, one
20 must analyze the following precedents: Treaty with the Yakama Indian Nation of June 9, 1855;
21 Benton v. Johncox, 17 Wash. 277, 49 P. 495 (1897); State of Washington v. Annie Wiley Achepohl et
22 al., Yakima County Cause Number 18279; In Re Ahtanum Creek, 139 Wash 84, 245 P. 758 (1926);
23 United States v. Ahtanum Irrigation District, 124 F. Supp. 818 (1954); United States v. Ahtanum
24 Irrigation District, 236 F.2d 321 (9th Cir., 1956)(Ahtanum I); United States v. Ahtanum Irrigation
25 District, 330 F.2d 897 (1964)(Ahtanum II); and this Court's rulings in Acquavella.

1. 1855 Treaty with Yakama Nation

As previously noted, Ahtanum Creek constitutes a part of the northern boundary of the
Reservation which was created by the Treaty with the Yakama Nation of Indians, June 9, 1855, 12 Stat.
951. That treaty has been previously analyzed and the Court found two primary purposes of the treaty
were to reserve water for irrigation on-reservation and also to maintain fish life in the Yakima basin.
Memorandum Opinion Re: Motions For Partial Summary Judgment (As Amended), dated October 22,

1 1990 at p. 44 affirmed Ecology v. Yakima Reservation Irrig. Dist., 121 Wn.2d 257, 850 P.2d 1306
2 (1993). Two treaty rights have also been found for Yakama Nation's use of Ahtanum Creek. Ahtanum
3 I and Ahtanum II; Memorandum Opinion: Treaty Reserved Water Rights At Usual and Accustomed
4 Fishing Places, dated September 1, 1994. The specific water rights deriving from these treaty rights
5 will be discussed later in this Report.

6 2. Benton v. Johncox

7 The next significant water-related event in the Ahtanum watershed transpired in 1897. In
8 Benton v. Johncox, the early riparian water users sought a restraining order against the later,
9 appropriative water users, most of whom were in the Johncox area. The non-riparians argued the
10 riparian doctrine did not apply to the Yakima watershed. The Supreme Court disagreed, holding the
11 common law right of a riparian existed in Washington. Unlike common law riparian rights, which do
12 not require priority dates, a date of priority was enunciated for these riparian rights as being the date the
13 settler first took action to acquire title. Demarcating a priority date was necessary to accommodate
14 both the riparian and prior appropriation methods of securing a water right and protect which ever was
15 earlier in time. That case was crucial to Acquavella as it did affect the priority of rightholders and was
16 essentially an adjudication between riparian and appropriative users.

17 3. "Code" Agreement

18 In 1908, the federal government and northside Ahtanum water users entered into an agreement.
19 Pursuant thereto, the north side users agreed to limit their claim to 75% of the streamflow and the U.S.,
20 on behalf of the Yakama Nation, agreed to use 25% of the natural flow. These quantities approximated
21 what the users on either side were using in 1908. The agreement limits itself to the "natural flow" of
22 the stream. Return flow was to be divided in the same quantity. The agreement, signed by W.H. Code
23 on behalf of the then Indian bureau, also provides for use of flows for stock watering.

24 4. State Court Adjudication -- Achepohl

25 In State of Washington v. Annie Wiley Achepohl et al., Yakima Superior Court Judge V. O.
Nicholson, after considering the report of the referee and exceptions thereto, entered a final adjudication
decree quantifying the rights of the northside water users to Ahtanum Creek flows. Signatories and
non-signatories to the 1908 Code Agreement were divided into 31 separate priority classes based on a
"first in time, first in right" analysis. According to AID, that decree is still used to apportion the 75%
flow among northside users. Certain claimants in that adjudication, including Johncox, appealed to the
Supreme Court but the trial court's findings were upheld. In Re Ahtanum Creek, supra. The results

1 from the Achepohl proceeding were ultimately reduced to adjudicated water right certificates issued by
2 Ecology's predecessor. Those certificates form one of the primary legal backbones for determining the
3 water rights of defendants in Acquavella.

4 5. Federal Court Action

5 The U.S. on behalf of the Yakama Nation filed a complaint in 1947 to undo the 1908 Code
6 Agreement and assert a right to more of the creek flow than the 25% reserved to Yakama Nation.
7 United States v. Ahtanum Irrigation District, Civil Cause No. 312 (1947). The District Court, finding
8 that neither the U.S. nor YIN had any rights to water from Ahtanum Creek dismissed the complaint on
9 October 29, 1954. The U.S. appealed the dismissal resulting in the Ninth Circuit's decision in Ahtanum
10 I.

11 The Ahtanum I court was concerned with two questions on appeal. First, based on the ruling
12 by the lower court that the U.S. and the Yakama Nation had no interest in Ahtanum Creek whatsoever,
13 the Ninth Circuit had to determine if the Treaty of 1855 had reserved any rights to the creek. Because
14 that was found to be true, the Ahtanum I court then needed to determine if the right was greater than
15 the 25% of the creek's natural flow set forth in the 1908 Code Agreement.

16 In addressing the question as to the amount reserved for the Yakama Nation, the Ninth Circuit
17 determined the Code Agreement was enforceable and valid. Judge Pope, writing for the panel, also
18 limited the use of the water in regard to the Yakama Nation to those rights initiated prior to 1915 and
19 the northside users to only those who were signatories to the 1908 Agreement. The court stated that:

20 "an agreement of the character of that executed in 1908, must be construed as reserving to the
21 Indians, who previously owned substantially all of the waters, everything not clearly shown to
22 have been granted." Ahtanum I at 341.

23 The appellate court remanded the case back to the District Court with direction to conduct a
24 parcel-by-parcel investigation as to whether the 1908 lands were continuing to beneficially use the 75%
25 of the water granted in the 1908 Agreement.

26 The trial to determine beneficial use by the northside users before the Special Master began
27 July 22, 1957, and lasted 135 days. Answers for 221 individuals along with Johncox were filed in
28 response to the complaint of the U.S. After hearing the evidence, the Special Master issued his
29 findings which set forth the specific acres that were irrigated by successors of the 1908 signatories in
30 1957 as well as the land that was irrigated in 1908. The Special Master did not make an examination to

1 ensure that use of water on the lands in any way conformed with Washington water law. Ahtanum II at
2 901. In total, 5,718 acres were decreed a water right.

3 The U.S. appealed again to the Ninth Circuit and Judge Pope again authored the opinion in
4 Ahtanum II. Judge Pope admonished the Special Master for basing the water right on the needs of the
5 1908 landowner rather than on the actual use. Id. at 901-904. The court then proceeded to re-evaluate
6 the evidence and reach its own conclusion as to proof of beneficial use by the answering defendants.
7 One conclusion reached by the court was the water rights of the northside diverters, as used in 1908,
8 were limited in period and ceased each year on July 10. After that date, all water reverts to the
9 southside users. The Ninth Circuit also reduced the acreage findings to the lesser of the amount
10 irrigated in 1908 or 1957. This decreased the amount of allowable irrigated lands to 4,696 acres and
11 the northside users were also limited to a maximum 46.96 cubic feet per second (cfs). The southside
12 users received the remainder of the flows and any amount in excess of 62.59 cfs (the amount needed to
13 maintain the 75%-25% split) provided that water could be put to a beneficial use. The court also found
14 no right for stock water. The Court will take this matter up later.

15 6. Acquavella Rulings

16 This Court, on two separate occasions, has addressed water right issues in Ahtanum Creek
17 regarding Yakama Nation's treaty fishing and irrigation rights. Memorandum Opinion: Treaty
18 Reserved Water Rights At Usual and Accustomed Fishing Places, September 1, 1994 (fish ruling) and
19 Memorandum Opinion Re: Ahtanum Watershed Practicably Irrigable Acreage, November 9, 1994
20 (PIA ruling).

21 A. **Fish ruling**

22 The major claimant irrigators motioned the Court to limit the Yakama Nation's water right at
23 off-reservation "usual and accustomed" fishing locations, see Treaty of 1855, Article 3, including
24 Ahtanum Creek. (See Consolidated Motion To Clarify 11/29/90 "Amended Partial Summary
25 Judgment," For Declaratory Judgment and In Limine Re: Reserved Treaty Fish Water Rights dated
December 22, 1993; see also Amended Supplemental, Consolidated Motion to Clarify 11/29/90
"Amended Partial Summary Judgment," For Declaratory Judgment And In Limine Re: Reserved
Treaty Fish Water Rights dated December 23, 1993). The Court considered all the federal actions in
developing the Ahtanum reservation location and concluded the treaty fishing right had been
diminished, but not completely destroyed. The Court directed the Wapato Irrigation Project manager

1 to ensure enough water remained in the creek to maintain fish life in light of annual prevailing
2 conditions.

3 B. PIA ruling

4 In Arizona v. California, 373 U.S. 546 (1963), the Supreme Court clarified the means by which
5 the treaty water rights of Indian tribes would be measured; the practicably irrigable acreage (PIA)
6 standard. When the U.S. put forth its case-in-chief regarding the PIA susceptible to irrigation from
7 Ahtanum Creek flows, a number of southside, non-Indian irrigators objected to the admission of
8 certain evidence submitted by the U.S. on the grounds of relevance. It was the non-Indian's argument
9 that all of the Yakama Nation's reserved rights to flows in Ahtanum Creek had been quantified in
10 Ahtanum I and II. The Court, relying on those cases and the doctrine of res judicata set forth in
11 Nevada v. U.S., 463 U.S. 110 (1983), agreed with the non-Indians but did permit the U.S. to submit its
12 evidence on PIA for the following purpose:

13 “to the extent it applies to future projects for irrigation of the irrigable acres as already
14 quantified and claimed in the Ahtanum proceeding.”

15 7. Conclusion

16 Although not directly argued by the parties, there is some inference by AID that the federal
17 decree established by the Ninth Circuit in Ahtanum II is not binding on the parties. That inference
18 arises from the fact that AID has continued to deliver water pursuant to the 1926 decree. Although it
19 has been implied in other Acquavella rulings, this Court will now make a specific finding regarding the
20 binding effect of the federal court decree.

21 Federal water right decrees are not unusual. In fact, the two river systems in western Nevada
22 that might be the subject of more litigation than Ahtanum Creek, the Truckee and Carson rivers, were
23 the subject of two federal decrees. U.S. v. Orr Ditch and U.S. v. Alpine Lake. Prior to enactment of the
24 McCarren Amendment in 1952, 43 U.S.C. § 666, no statute waived the sovereign immunity of the
25 United States to allow the adjudication of federal water rights in state court. Thus, in 1947 when the
United States began to litigate in federal court rights to Ahtanum Creek, there would have been nothing
authorizing the transfer of that litigation to state court. Thus, on that basis alone, this Court could find
that federal jurisdiction in U.S. v. Ahtanum was appropriate and the resulting decree binding.

However, the United States Supreme Court examined the issue in Colorado River Water
Conservation District v. United States, 424 U.S. 800 (1976) and made specific rulings dispositive of
the issue. One of the questions before the Supreme Court was whether the McCarren Amendment

1 terminated jurisdiction of federal courts to adjudicate federal water rights. 424 U.S. 806. Under 28
2 USC § 1345, the federal district courts have original jurisdiction over all civil actions brought by the
3 Federal Government “[e]xcept as otherwise provided by Act of Congress.” The Supreme Court
4 determined the McCarren Amendment did not repeal jurisdiction under § 1345, and federal courts have
5 jurisdiction to hear cases involving federal rights to the use of water. 424 U.S. 809. Federal district
6 court and Ninth Circuit decisions in the U.S. v. Ahtanum litigation must be given full force and effect.

6 IV. RELATIONSHIP WITH CERTAIN PARTIES

7 At the outset of drafting this Report, the Court acknowledges relationships with some of the
8 parties in this subbasin. None of those relationships have affected the ability of the Court to render a
9 fair and impartial decision and the identical analysis was utilized for all Ahtanum subbasin claimants.

10 Doug Clausing, the Referee in this adjudication, is an Ahtanum subbasin land owner and AID
11 submitted a claim to a water right on his behalf. Additionally, Mr. Bill Evans and Mr. Tom Carpenter
12 who have claims in this subbasin were former Executive Committee members of the now disbanded
13 Yakima River Watershed Council. I served as Director of that organization for a short period in 1997
14 and ultimately reported to them. Finally, LaSalle High School is presently located in the Ahtanum
15 subbasin. It has not filed a claim on its own behalf nor has it been substituted for any other claimant.
16 However, it may in the future. I am currently a paid part-time Assistant Football Coach at LaSalle.

15 V. YAKAMA NATION WATER RIGHTS

16 The Court will now take up the treaty water rights of the Yakama Nation, both in regard to
17 irrigation rights as well as instream flow rights for fish.

18 a. Irrigation Rights

19 As has been previously discussed, the PIA, in its traditional sense, was found not to apply to
20 Ahtanum Creek. Memorandum Opinion Re: Ahtanum Watershed Practicably Irrigable Acreage, dated
21 November 9, 1994. However, the Court did permit the U.S. on behalf of YIN to submit the study
22 completed by its expert. The Court stated in the conclusion of its opinion:

23 However, that does not mean the evidence cannot be admitted at this time. In some of
24 the cited language set forth above and throughout Ahtanum I and II, the Ninth Circuit
25 enunciated their desire to make available more water from Ahtanum Creek for use of
the south side irrigable acreage as quantified and set forth in the United States’
complaint. The Court of Appeals considered the 25% allocation insufficient for
watering the acreage as it existed in 1915. See, e.g., Ahtanum I, 236 F.2d at 327-28.
That is why the Ahtanum court provided for the use on the reservation of any surplus
water that became available or was relinquished by the pertinent northside users. The
Court is also mindful of Judge Chamber’s concurring opinion in regard to Congress’s
ability to correct some of the effect of the 1908 Agreement by development of future

1 projects. Accordingly, the Court will accept the evidence provisionally to the extent it
2 applies to future projects for the irrigation of the irrigable acres as already quantified
and claimed in the Ahtanum proceeding. Id. at 14.

3 In reviewing this statement and the Ahtanum cases, it appears the Court contemplated
4 evaluating the evidence submitted by the U.S. to ensure historically irrigated lands would receive a
5 water right and an adequate water supply should stored water become available. In its evidence, the
6 U.S.'s experts differentiated between historically irrigated lands, both active and idle and future lands
7 that would, for the first time, be irrigated from stored water. The Court will quantify and confirm
rights to the Yakama Nation for those lands historically irrigated.

8 1. Historically Irrigated Lands

9 The U.S., on behalf of the Yakama Nation, claims that 2,728.7 acres are presently being
10 irrigated and an additional 577.8 acres that were historically irrigated but were idle during the years
11 1985 to and including 1987. Report of Ralph Saunders entitled "South Side Ahtanum Creek
12 Hydrographic Survey, Irrigated Lands" dated June 15, 1993 (U.S. 112). Although the idle lands are
13 intended to eventually be irrigated from stored water, treaty reserved rights remaining in Indian, tribal
14 or trust ownership are not subject to loss by forfeiture or abandonment. See e.g. Colville Confederated
15 Tribes v. Walton, 647 F.2d 42, 51 (9th Cir. 1981). Therefore the 3,306.5 acres historically irrigated will
16 be treated the same for purposes of quantifying the water rights with an 1855 priority date. Compare
17 U.S. v. AID, 330 Fed.2d 897, 899 (9th Cir. 1964) ("The record then before us showed that by 1915, the
Indian Irrigation Service had completed the construction of irrigation canals and ditches and other
works sufficient to provide irrigation water for approximately 5,000 acres on the Indian Reservation.").

18 The place of use of these historically irrigated acres are, with a few exceptions, located in a
19 west-to-east narrow band that is north of Ahtanum Canal #1 and south of Ahtanum Creek as set forth
20 in U.S. Exhibit 112-B entitled "Yakama Indian Reservation Ahtanum Creek Drainage Irrigated and
Arable Land Base Trust and Tribal Fee" and as described immediately below:

21 Township 12N., Range 19 E.W.M.

22 -Section 7 - A portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$

23 Township 12N., Range 18 E.W.M.

24 -Section 3 - That portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ lying south of Ahtanum Creek.

25 -Section 10 - The NE $\frac{1}{4}$ NW $\frac{1}{4}$; the NW $\frac{1}{4}$ NE $\frac{1}{4}$, except the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ and except the
N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$; the N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.

- 1 -Section 11 - A portion of the NE¹/₄NW¹/₄ and the NE¹/₄ except the W¹/₂SW¹/₄NE¹/₄.
- 2 -Section 12 - That portion of the NE¹/₄ and the NW¹/₄NW¹/₄.
- 3 -Section 7 - That portion of the S¹/₂SW¹/₄SW¹/₄ and SE¹/₄SW¹/₄ south of Ahtanum Creek and that
4 portion of the E¹/₂E¹/₂SE¹/₄ south of Ahtanum Creek.
- 5 -Section 8 - That portion lying south of Ahtanum Creek except that portion of the NE¹/₄ lying
6 north of Ahtanum Canal #2.
- 7 -Section 9 - All of Section 9 except the SE¹/₄.
- 8 -Section 16 - That portion of the NW¹/₄NW¹/₄ north of Ahtanum Canal #1.
- 9 -Section 17 - The N¹/₂NW¹/₄ and the NW¹/₄NE¹/₄.
- 10 -Section 18 - That portion lying north of Ahtanum Canal #1.

11 Township 12 N., Range 17 E.W.M.

- 12 -Section 13 - That portion lying south of Ahtanum Creek and north of Ahtanum Canal #1.
- 13 -Section 14 - The W¹/₂ lying south of Ahtanum Creek. That portion of the E¹/₂NE¹/₄ south of
14 Ahtanum Creek. That portion of the E¹/₂SE¹/₄ and SW¹/₄SE¹/₄ north of Ahtanum Canal #1.
- 15 -Section 15 - That portion lying south of Ahtanum Creek except the SW¹/₄SW¹/₄.
- 16 -Section 16 - The SW¹/₄, that portion of the SE¹/₄NW¹/₄ and the S¹/₂NE¹/₄ south of Ahtanum
17 Creek and the NE¹/₄SE¹/₄.
- 18 -Section 17- That portion of the S¹/₂ south of Ahtanum Creek except the NW¹/₄SW¹/₄ and except
19 that portion south of Ahtanum Canal #1.
- 20 -Section 18- That portion of the NW¹/₄SE¹/₄ south of Ahtanum Creek and north of Ahtanum
21 Canal #1.
- 22 -Section 21- That portion of the N¹/₂N¹/₂ north of Ahtanum Canal #1.
- 23 -Section 22- That portion of the N¹/₂N¹/₂ north of Ahtanum Canal #1.
- 24 -Section 23- That portion of the N¹/₂NW¹/₄NW¹/₄ north of Ahtanum Canal #1.

25 Township 12 N, Range 16 E.W.M.

- Section 13- That portion of the NW¹/₄NW¹/₄SE¹/₄ and NE¹/₄SE¹/₄ south of Ahtanum Creek and
north of Ahtanum Canal #1.
- Section 15 - That portion of the S¹/₂ lying south of Ahtanum Creek and north of unnamed
canal.
- Section 18 - That portion of the S¹/₂S¹/₂ lying south of Ahtanum Creek and north of unnamed
canal.

1 Township 12 N, Range 15 E.W.M.

2 -Section 26- That portion of Government Lots 2 and 3 lying south of the south fork of Ahtanum
3 Creek and north of the unnamed ditch.

4 The two ditches serving these historically irrigated properties (Ahtanum Canals #1, #2) and the
5 three unnamed ditches have the following points of diversion:

- 6 - Ahtanum Canal #1 - Approximately 300 feet south and 400 feet west of the east ¼ corner
7 within the NE¼SE¼ of Section 14, T. 12 N., R. 16 E.W.M.
- 8 - Ahtanum Canal #2 - Approximately 600 feet south and 600 feet west of the east ¼ corner
9 within the NE¼SE¼ of Section 7, Township 12 N., R. 18 E.W.M.
- 10 - Unnamed Canal - Approximately 500 feet east of the SW corner of Section 18, T. 12 N, R.
11 18 E.W.M.
- 12 - Unnamed Canal - Approximately 2,000 feet west and 1,000 feet north of the SE corner
13 within the SW¼SE¼ of Section 16, T. 12 N., R. 16 E.W.M.
- 14 - Unnamed Canal - Approximately 1,000 feet east of the NW corner of Section 19, T. 12 N,
15 R. 16 E.W.M.

16 2. Water Quantity

17 A. **Instantaneous quantity**

18 With the considerations set forth above in mind, this Court will quantify a right for the U.S., in
19 trust for the Yakama Nation in a proratable amount (along with non-Indian, reservation land owners to
20 be quantified below) of 25% of the Ahtanum Creek natural flow from April 1 to July 10 each year.
21 After July 10, the U.S. may divert the entirety of the river with the caveats that sufficient flow must be
22 retained in Ahtanum Creek to maintain fish life and in the late winter and early spring enough flow
23 must be made available to permit AID to recharge its conveyance facilities.

24 B. **Annual quantity**

25 The U.S., through its experts have requested a right to 21,553 acre-feet during the months of
March through December. Specifically, the monthly diversion requirements break down as follows:

Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total ¹
198	1,096	3,039	4,141	5,447	4,175	2,452	896	97	12	21,553

¹ (See Report of Dr. Woldezion Mesghinna, US - 116).

1 Dividing the annual acre-feet requirements between presently irrigated (both active and idle
2 lands) with a date of reservation priority date breaks down as follows. For the presently irrigated lands,
3 2,728.7 acres, Dr. Mesghinna set forth the requirements at 9,966 acre feet. For the idle but historically
4 irrigated lands, the Court will multiply the number of acres, 577.8 with the historic recorded irrigation
5 diversion of 3.73 acre-feet used by Dr. Mesghinna in his report, which equals 2,155 acre-feet. The
6 total annual requirement for historically irrigated lands is therefore 12,121 acre-feet and represents the
7 maximum allowable diversion for the Nation's historically irrigated lands. That quantity may not be
8 available consistently, or perhaps ever, in light of southside user limits imposed by the 1908
9 Agreement as upheld by the Ninth Circuit.

8 b. Treaty Fishing Right

9 The Court has already quantified the Yakama Nation's treaty reserved fishing right in
10 Memorandum Opinion: Treaty Reserved Water Rights At Usual and Accustomed Fishing Places, dated
11 September 1, 1994; Final Order Re: Treaty Reserved Water Rights At Usual And Accustomed Fishing
12 Places, March 1, 1995. That right was held to be the minimum instream flow necessary to maintain
13 fish life in Ahtanum Creek in light of the annual prevailing conditions. The priority date of the treaty
14 fishing right is time immemorial. U.S. v. Adair, 723 F.2d 1394, 1414 (9th Circ., 1984).

14 c. Wildlife Water

15 Although the Yakama Nation provided the Court with no authority or analysis as to the basis
16 for their claim to water for wildlife purposes, the Court will assume the request is based on a federally
17 reserved rights analysis. Pursuant thereto, the Yakama Nation is entitled to a water right for all
18 purposes, implied or express, associated with the federal government's act of creating the Yakama
19 reservation as set forth in the Treaty of June 9, 1855. Ecology v. Yakima Reservation Irrig. Dist., 121
20 Wn.2d 257, 276, 850 P.2d 1306 (1993); See also Winters v. United States, 207 U.S. 564 (1908);
21 Cappaert v. United States, 426 U.S. 128 (1976). Through the testimony of Dr. Bill Bradley, the
22 Yakama Nation made a request for an instream flow from 1-5 cfs throughout the spring and summer
23 periods of the year. April 19, 1994 Verbatim Report of Proceedings at p. 89. According to Dr.
24 Bradley, that quantity should be made available throughout the major subdrainages in the Ahtanum
25 including the north middle and south forks, and major tributaries to those forks. RP at 93-94.

This Court, on several occasions, has considered the meaning and effect of the Treaty as it
relates to water rights of the Yakama Nation. See e.g. Amended Partial Summary Judgment Entered
As Final Judgment Pursuant to Civil Rule 54(b), dated November 29, 1990; Report of the Court

1 Concerning the Water Rights for the Yakama Indian Nation, Volume 25, November 13, 1995; Final
2 Order Re: Treaty Reserved Water Rights at Usual and Accustomed Fishing Places, March 1, 1995.

3 Those decisions concern the Yakama Nation's right to instream flows for fish or diversionary rights for
4 irrigation purposes. To date, the Court is unaware of any effort by the Yakama Nation to establish a
5 right for wildlife purposes.

6 The Court must first determine whether supporting wildlife is a primary purpose of the Treaty.
7 This is a question of no small scope or importance. In addition to its discussion of the right to take fish
8 exclusively upon the reservation and in common with non-Indian citizens at usual and accustomed
9 places, Article 3 also conferred upon the Yakama people "the privilege of hunting, gathering roots and
10 berries, and pasturing their horses and cattle upon open and unclaimed land." Emphasis added. That is
11 the only statement in the Treaty that concerns the Yakama Nation's treaty reserved right regarding
12 wildlife. This Court is unaware of any decisions on the meaning of this section of the treaty in regard to
13 whether or not it supports a finding of reserved water rights for supporting wildlife.

14 Because this Court is unaware of any briefing or analysis by any party on this issue, it does not
15 behoove this Court to make an uninformed decision. Therefore, it invites all parties to submit briefing
16 on this issue as a part of the exception process. The Court does note the burden is on the Yakama
17 Nation to establish the existence of such a right.

18 **VI. INDIAN ALLOTTEE AND NON-INDIAN SUCCESSOR CLAIMANTS - SOUTHSIDE**

19 During the federal action which culminated in the Ninth Circuit's findings in U.S. v. Ahtanum
20 Irrig. Dist., a certain class of water users was defined as "Class Three Defendants." Those water users
21 were "individual owners of irrigable land within the Indian reservation boundaries who are the
22 successors in interest to the Indian allottees whose allotments were patented in fee simple and
23 subsequently sold." U.S. v. Ahtanum Irrig. Dist., 236 F.2d 321, 323 (1956). These landowners
24 participated in U.S. v. AID collectively answering in August, 1951 in a "Statement of Contentions"
25 which included a six page tabulation of allotments seeking confirmation of water rights. Brief of
Ahtanum Irrigation District on Issue of Adjudication of Southside Claims, May 18, 1994 (Doc. 9258).
The Ninth Circuit concluded that these non-Indian landowners would be "entitled to participate
rateably with the Indian beneficiaries in the use of such waters as may be decreed to the United States
in this suit." Ahtanum I, 236 F.2d at 342 (emphasis added).

1 a. Measure Of Non-Indian Successor's Water Right

2 This Court has analyzed the law that applies to allotted lands once owned by non-Indians
3 within the boundaries of the reservation that subsequently returned to tribal or federal trust ownership.
4 Report Concerning the Water Rights For the Yakama Nation, Volume 25, dated November 13, 1995.
5 As a part of that analysis, the Court analyzed the cases containing the legal principles that apply to the
6 question of what share, if any, of the Yakama Nation's Winters rights do Indian allottees and non-
7 Indian successors receive. See Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir., 1981)
8 cert. denied 454 U.S. 1092 (1981); United States v. Anderson, 736 F.2d 1358 (9th Cir., 1984); United
9 States v. Adair, 723 F.2d 1394 (9th Cir., 1983) cert. denied 104 S.Ct. 3536 (1984).

10 Reservation lands passed from trust status to private ownership pursuant to the General
11 Allotment Act of 1887, also known as the Dawes Act, 24 Stat. 388. Codified at 25 U.S.C.A. § 331 et
12 seq. A tribal member could be "allotted" 80 acres of irrigable land or 160 acres of grazing land. 25
13 U.S.C. § 331. After holding allotted lands in trust for individual tribal members for a 25-year period,
14 the federal government could convey the land to the allottee in fee, "discharged of said trust and free of
15 all charge or incumbrance whatsoever." 25 U.S.C. § 348. That Indian allottees have a right to use
16 federally reserved water was settled in United States v. Powers, 305 U.S. 527 (1939)("when allotments
17 were made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal
18 waters essential for cultivation passed to the owners"). In Walton, *supra*, the Court extended the
19 Powers decision to allow non-Indian purchasers of allotted lands a right to some portion of reserved
20 waters. The Walton court ruled as follows regarding the right acquired by non-Indian purchasers:

21 First, the extent of an Indian allottee's right is based on the number of irrigable acres he owns.
22 If the allottee owns 10% of the irrigable acreage in the watershed, he is entitled to 10% of the
23 water reserved for irrigation (i.e., a "ratable share"). This follows from the provision for an
24 equal and just distribution of water needed for irrigation.

25 A non-Indian purchaser cannot acquire more extensive rights to reserved water than
were held by the Indian seller. Thus, the purchaser's right is similarly limited by the number of
irrigable acres he owns.

Second, the Indian allottee's right has a priority as of the date the reservation was
created. This is the principal aspect of the right that renders it more valuable than the rights of
competing water users, and therefore applies to the right acquired by a non-Indian purchaser.
In the event there is insufficient water to satisfy all valid claims to reserved water, the amount
available to each claimant should be reduced proportionately.

Third, the Indian allottee does not lose by non-use the right to a share of reserved water.
This characteristic is not applicable to the right acquired by a non-Indian purchaser. The non-
Indian successor acquires a right to water being appropriated by the Indian allottee at the time
title passes. The non-Indian also acquires a right, with a date-of-reservation priority date, to
water that he or she appropriates with reasonable diligence after the passage of title. If the full
measure of the Indian's reserved water right is not acquired by this means and maintained by
continued use, it is lost to the non-Indian successor. 647 F.2d at 50-51.

1 The measure of the non-Indian successor's water right was further examined in the Walton case
2 after the case was remanded to the District Court to apply the standards set forth above. The Colville
3 Tribe appealed and the Ninth Circuit clarified the meaning of the passage set forth and how that law
4 should be applied to determine a non-Indian successor's rights. Colville Confederated Tribes v.
5 Walton, 752 F.2d 397 (1985)². The Walton III Court stated:

6 A careful reading leaves no doubt that the immediate grantee of the original allottee must
7 exercise due diligence to perfect his or her inchoate right to the allottee's ratable share of
8 reserved waters. . . Once perfected, the water right must be 'maintained by continued use [or] it
9 is lost'. . . Calculating Walton's share required an investigation into the diligence with which
10 the immediate grantee from the Indian allottees appropriated water, and the extent to which
11 successor grantees, up to and including Walton, continued to use the water thus appropriated.
12 752 F.2d at 402.

13 This standard is particularly applicable for Ahtanum Creek given the Ninth Circuit's decision
14 in Walton II relies on its earlier decision in U.S. v. Ahtanum Irrigation District, where it was held non-
15 Indian purchasers of allotted lands are entitled to "participate ratably" with Indian allottees in the use of
16 reserved waters. 236 F.2d at 342. Essentially, the Walton cases are only an elaboration of a standard
17 initially established in Ahtanum.

18 Thus, when this Court analyzes the claims of allottees or non-Indian purchasers of allotted
19 lands, it will look for evidence that proves the following elements:

- 20 1. The on-reservation claimant must prove the claimed property is either owned by an
21 Indian allottee or was conveyed from an Indian allottee.
- 22 2. The on-reservation claimant must show that the claimed water was put to beneficial use
23 by an Indian predecessor(s) or within a reasonable time after this property passed out of
24 Indian allottee ownership.
- 25 3. The on-reservation claimant must show that the claimed water right has been
continuously used since the time of initial beneficial use.
4. The on-reservation claimant must show that the claimed property subject to the claim is
practicably irrigable.

² The second Ninth Circuit decision is referred to in the literature as Walton III. The first Ninth Circuit decision is referred to as Walton II. The initial District Court decision is referred to as Walton I. Those abbreviations shall be used in this opinion.

1 See In Re: Big Horn River System, Civil No. 77-4493/86-0012, Amended Judgment and Decree
2 (Wyo., August 30, 2000). All lands meeting these criteria will receive a date-of-reservation priority.

3 b. Does State Law Apply

4 Another question raised by the Walton cases is whether state law is applicable to reservation
5 water use. There, the court determined Ecology had no power to regulate water in the No Name
6 hydrologic system and Walton's state permits were held to be of no force and effect. 647 F.2d at 53.
7 During the course of the Referee's Ahtanum hearing, Ecology questioned many water claimants as to
8 whether they or their predecessors had registered their water right claims pursuant to RCW 90.14. See,
9 e.g. February 7, 1994 R.P. at p. 192. Some allottee successors filed during the requisite time period
10 while some did not. Must non-Indian allottee successors demonstrate compliance with RCW 90.14?

11 The Walton cases, along with United States v. Anderson, 736 F.2d 1358 (9th Cir., 1984) bear on
12 the decision. Anderson, a Ninth Circuit decision that distinguished the circuit's earlier decision in
13 Walton II, held the state, not the Spokane Tribe, had regulatory authority over *excess water* (water not
14 needed to satisfy the reserved rights of the Spokane Tribe) in Chamokane Creek. See also Holly v.
15 Totus, 655 F. Supp. 548 (1983) *aff'd without opinion*, 812 F.2d 714 (9th Cir. 1987)(Yakama Nation
16 lacked the authority to regulate the uses of "excess" waters appurtenant to the tribe's reservation and
17 regulatory authority over such water remained with the state). The Anderson court factually
18 distinguished Chamokane Creek from No Name Creek; Chamokane Creek borders the reservation and
19 empties into another stream while No Name Creek runs and ends entirely within the reservation.

20 In Walton III, decided only a year after Anderson, the Ninth Circuit reviewed the District
21 Court's findings regarding the water rights quantified for Walton and other claimants to No Name
22 Creek. 752 F.2d 397. In a section entitled "Law Applied," the Walton III court stated:

23 [r]eserved rights are 'federal water rights' and 'are not dependent upon state law or state
24 procedures.' [Cite omitted]. It is appropriate to look to state law for guidance [cite omitted]
25 although the 'volume and scope of particular reserved rights ... [remain] federal questions.'
Colorado River Water Conservation District v. United States, 424 U.S. 800, 813 (1976). This
dispute involves relative shares of Colville's reserved waters, and is governed by federal law.
We look to state law only for guidance. Walton III, at 400.

26 This Court must reconcile Anderson and the Walton decisions to determine whether or not
27 RCW 90.14 applies to the on-reservation, non-Indian landowners that are successors to allottees in the
28 Ahtanum subbasin. This Court finds state law does not apply to lands that were allotted from the
29 original reserved right and have now transferred to non-Indian ownership. Although the factual

1 situation in Anderson is more like the Ahtanum scenario, the Court finds the decision in Walton III
2 controlling. Most importantly, the water at issue here is part of the Yakama Nation's reserved waters,
3 and therefore governed by federal law. See Walton III at 400. Because the water at issue is part of the
4 Yakama Nation's reserved right, and not "excess water," to accord the state regulatory authority over
5 those rights would threaten the Nation's right to self-government. Walton II, at 51. Accordingly,
6 RCW 90.14 does not apply to those rights derivative of the Yakama Nation's reserved right and this
7 Court will in general "look to state law only for guidance." See Walton III at 400.

8 c. Effect of Federal Adjudication On Non-Indian Successors

9 The Court, in its November 10, 1994 Memorandum Opinion Re: Ahtanum Watershed
10 Practicably Irrigable Acreage ruled that the:

11 federal litigation, commencing as United States v. Ahtanum Irrigation District, Civil Cause
12 312, and continuing through the two Ninth Circuit cases authored by Judge Pope resolved the
13 reserved rights of the Yakama Nation in regard to diversions from Ahtanum Creek inasmuch as
14 it quantified the 'practicably irrigable acreage.' Therefore, the decisions by that Court, in light
15 of principles of res judicata and stare decisis bar relitigation of the practicably irrigable acreage
16 in the Ahtanum unit of the Wapato Irrigation Project. Id. at 13-14.

17 That ruling raises the question as to whether quantification regarding the rights of Class III
18 water users in Civil Cause No. 312 are res judicata as to the rights quantified in Acquavella. In a Pre-
19 Trial Order dated August 1, 1951 at Paragraph 6 the parties agreed and admitted to the following:

20 Attached, marked "Exhibit A" and by reference made a part of this Pre-Trial Order is a
21 tabulation relating to lands located south of Ahtanum Creek in the Yakima Indian Reservation,
22 disclosing (1) the allotment number, (2) names of ditches, (3) dates relating to initiation and
23 history of increase of irrigation by allotments, (4) location of points of diversion, (5) total
24 irrigated acreage (maximum), (6) description of irrigated acreage, (7) irrigable acreage
25 (maximum), (8) description of irrigable acreage, and (9) comments.

Further, at Paragraph 13, the Pre-Trial Order indicates "[t]hat of the lands irrigated on the Indian side
of the creek 925.45 acres have been patented in fee simple which said patents had been issued more
than ten years prior to the institution of this action." Finally, Paragraph 5 establishes that the diversion
duty for the lands in the Ahtanum Indian Irrigation Project is 4.4 acre-feet per irrigation season.

However, the final decree, entered by Judge Lindberg on January 31, 1962 orders as follows:

IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the Class III defendants
herein are not barred from sharing rateably in the water awarded plaintiff, in accordance with
such rules as plaintiff may adopt; that this court, however makes no order regarding water
rights of any individuals north or south of Ahtanum Creek. Decree at p. 4.

1 The Court holds the decisions and quantification of rights in the Civil Cause No. 312
2 proceeding are not res judicata nor do they collaterally estop the on-reservation claimants in this
3 adjudication from claiming water rights different than those set forth in Exhibit A as part of the pre-
4 trial order agreed facts. This conclusion follows because the federal court did not enter any final
5 decisions regarding the specific water rights of any landowners on the reservation. Accordingly, there
6 is no final judgment on the specific individual rights of the Class III defendants which is required for
7 this Court to find that the decision in Civil Cause No. 312 is res judicata or collateral estoppel as to the
8 claims in Acquavella. 93 Wn.2d 454. However, the conclusions set forth in that exhibit will be used
9 by the Court as evidence to prove the specifics of the water rights.

10 d. Evidentiary Matters

11 The southside landowners submitted evidence and participated in a hearing before Referee
12 John Acord on February 7-9, 1994. Their claims are addressed below. The Court notes at the outset
13 that certain documents were submitted by many of the claimants to prove the historical use of the right.
14 These documents will be used to assist in evaluating the rights of the claimants discussed herein. One
15 such document was admitted as DE - 240, which is a copy of a Pre-Trial Order entered in U.S. v.
16 Ahtanum, Civil Cause No. 312 on August 1, 1951 setting agreed facts. Paragraph 6 of the Pre-Trial
17 Order specifically incorporated an exhibit that was a tabulation relating to lands located south of
18 Ahtanum Creek in the Yakima Indian Reservation. DE-240 at page 4. That tabulation included
19 information regarding (1) the allotment number, (2) names of ditches, (3) dates relating to initiation
20 and history of increase of irrigation by allotments, (4) location of points of diversion, (5) total
21 irrigated acreage (maximum), (6) description of irrigated acreage, (7) irrigable acreage (maximum),
22 (8) description of irrigable acreage, and (9) comments. The Court finds that document to be
23 extremely helpful and will utilize it to analyze all the Class III water rights below.

24 Also of particular value to the Court was a document submitted by many landowners
25 entitled Recapitulation of Ownerships and Final Assessable Acreages - Ahtanum Irrigation Project
Established By Notice In Federal Register. The Recapitulation details the name of the Allottee, the
allotment number given to the parcel, a description of the parcel, the quantity of Assessable acreage,
the quantity of total irrigable acreage, the total number of acres ever irrigated within the allotment
and number of acres irrigated in 1957 when the document was assembled. The document is
particularly helpful because it was developed by the United States to establish ownership data for
the purpose of determining a Final Notice of Construction Assessments. That document received

1 different exhibit numbers because numerous claimants relied upon it. Some claimants did not
2 submit a copy of the document and in those instances the Court will cite to the document as DE –
3 69, an exhibit number given to the copy of the document submitted by Michael J. and Ella
4 Schreiner. If a claimant entered a copy of the document and it has been given a different exhibit
5 number, the Court will use that number and describe the document.

6 A third document is DE – 8 submitted by Robert Ball, a claimant of water rights for allotted
7 lands. DE – 8 is a copy of U.S. Exhibit 21 filed pursuant to Pretrial Order No. 10. It includes a set
8 of maps depicting the development of Ahtanum Irrigation System by date and allotment number.
9 The document assists the Court in determining when the water was first put to beneficial use.

10 The Yakama Nation provided the expert testimony of Ralph Saunders. Mr. Saunders is a water
11 rights specialist employed by HKM Associates who testified on behalf of the Yakama Nation regarding
12 water use on the Yakama Reservation by non-Indian water users. He was qualified as an expert
13 witness during the February 7, 1994 hearing without objection. His professional expertise is in the area
14 of hydrographic surveys including stereoscopic photo interpretation and photogrammetry. He testified
15 regarding interpretation of aerial photographs of lands for certain claimants involving land and water
16 use during the years of 1939, 1979 and 1991. Although the Court took his testimony into
17 consideration in evaluating the reservation water claims, certain issues limit the impact of that
18 testimony. First, Mr. Saunders indicated his photoanalysis would have a margin of error of 5%. RP
19 at 122. Second, he indicated he did not consider areas such as lawns or gardens. RP at 126. Third,
20 the claimants were not afforded an opportunity to review the photographs utilized by Mr. Saunders,
21 were unaware of the focus of his testimony, and in fact Mr. Saunders testified with little or no
22 notice to the claimants. See RP at 14-15 documenting the objection of the Allan Brothers. Fourth,
23 the testimony was not concurrent with the presentation of the individual claims and the claimants
24 were not provided a meaningful opportunity to refute Mr. Saunders' conclusions. Finally, the
25 photographs were for single years, with many years between photos and not correlated with when
the allotments were transferred out of Indian ownership. Thus, the "snapshot in time" the testimony
provides may be of little consequence depending on what type of crop was grown, when the land
went into non-Indian ownership, etc.

Finally, numerous water right claimants presented evidence that rarely, if ever, had adequate
water been available to irrigate the reservation lands. Further, evidence regarding quantity of water
actually diverted was not presented. Therefore, the Court will utilize the standard duty set forth in

1 U.S. v. Ahtanum Irrigation District, Civil Cause No. 312 of 4.4 acre-feet per acre. To provide for
2 the unlikely scenario that adequate supplies become available for reservation users for a maximum
3 diversion, the Court will also assign an instantaneous quantity of 0.0125 cfs per acre (which equals
4 about 4.4 acre-feet per acre on a continuous basis) unless specific evidence demonstrating a
5 different water use requirement was put in the record. That figure is close to what the northside
6 water users receive (0.01 cfs per acre) and recognizes the additional conveyance losses that occur in
7 the reservation irrigation system (water is diverted at two main points into canals that run for miles
8 and diversions to water users take place off the canals). The instantaneous quantity is also limited
9 by the 1908 Code Agreement provision of 25% of available flows for reservation users. Further, all
10 reservation users hold the same priority and available water supplies are delivered prorata.

9 e. Specific Water Right Claims

10 The Court now turns to the specific claims of landowners on the Yakama Reservation set
11 forth in alphabetical order. The index may need to be consulted to find certain rights as the Court
12 has grouped claims with a common history and development .

13 Claim No. 1120 – Allan Brothers, Inc.

14 The Allan Brothers Inc. (Allan Brothers) claim was presented during a February 15, 1994
15 hearing. See Transcript at page 110. Allan Brothers assert a right to irrigate 57 acres on the Yakama
16 Reservation. It claims a period of use of April 1 – October 31 and a place of use within Yakima
17 County parcels 181211-31001 and 181211-42001. The point of diversion is 100 feet north and 300
18 feet west from the east quarter corner of Section 14, being within the SE1/4SE1/4NE1/4 of Section
19 14, T. 12 N., R. 16 E.W.M. Allan Brothers also request a priority date of June 9, 1855, based on
20 establishment of the reservation. In terms of quantity, they ask for a proportionate share of the
21 Wapato Irrigation Project, Ahtanum Unit, or, in the alternative, 1.34 cfs and up to 313.5 acre-feet.

22 Allan Brothers is assessed for 59.6 acres by the Wapato Irrigation Project. DE – 288. Their
23 right derives from two allotments. The 19.6 acres in the NE1/4SW1/4 of Section 11 were originally
24 allotted to Mary Langell in 1910 as Allotment 3361 and patented to the same on April 6, 1920. DE
25 – 240; DE – 145. Michael J. Schreiner also owns a portion of that allotment - the Court has
analyzed that right later in this report and awarded a water right for 22 acres. James and Janet
Campbell also own lands that were part of Allotment 3361. The Allan Brothers also own a forty-
acre section in the NW1/4SE1/4 of Section 11 that was originally allotted to Mark Wilcox in 1910
as Allotment No. 3362. DE – 240; DE – 146. It is not clear when the property went out of Indian

1 ownership. As of 1957, both allotments were owned by LeRoy Schreiner. DE – 149. The Allan
2 Brothers acquired the entire 59.6 acres in 1962.

3 In terms of water use, DE – 240 discloses that water was first used on the Allotment 3361
4 parcel in 1914 and was used up to 1951. DE – 149, a document entitled Recapitulation of
5 Ownerships and Final Assessable Acreages – Ahtanum Irrigation Project Established By Notice In
6 Federal Register, shows the Allotment was divided into 3361 (now owned by Michael J. Schreiner)
7 and 3361A, now owned by Allan Brothers and the Campbells. The land owned by the Campbells is
8 shown as Allotment No. 3361A and the land owned by Allan Brothers is 3361A-1. According to
9 DE – 149, 26 of the 30 assessable acres that make up Allotment 3361A were irrigated in 1957 and
10 that was also the maximum ever irrigated. However, Mr. Ralph Saunders testified that, according to
11 his photographic interpretation, 13.6 acres of Allotment 3361A-1 had been irrigated as of 1939,
12 16.1 acres in 1979 and 16.5 acres as of 1991. The Allan Brothers are assessed for 19.6 acres in
13 Allotment 3361 and the Campbells are assessed for 10.4 acres which equals the total of the assessed
14 acreage for Allotment 3361A as expressed in DE – 149.

15 In response to the conclusions reached by Mr. Saunders, David Allan measured and
16 performed calculations to determine exactly how much land is irrigated. For the two allotments
17 combined he reached a total of 56.41 acres, DE – 287, whereas Mr. Saunders had concluded that a
18 total of 45 acres had been irrigated as of 1939, 51.1 acres as of 1979 and 51.5 acres as of 1991.
19 February 7, 1994 Report of Proceedings at 97-98. Mr. Allan did not divide his analysis by
20 allotment.

21 It is not clear how many acres of the 19.6 assessed acres in Allotment 3361-A are actually
22 irrigated. According to the evidence, it is somewhere between 13.6 acres, according to Mr.
23 Saunders' interpretation of the 1939 aerial photograph, and 19.6 acres which is the assessed portion.
24 Given that DE – 149 indicates that 26 acres were irrigated in 1957 and also the maximum ever
25 irrigated, the Court believes the acreage identified to by Mr. Saunders are reasonable. He estimates
Allan Brothers irrigated 16.5 acres in 1991, see February 7, 1994 RP at 98, and the Campbells
irrigated 8.7 acres in 1991. *Id.* at 100. That would amount to a total of 25.2 acres which is very
close to the 26 acres that were the maximum irrigated as of 1957 according to DE – 149. A non-
Indian successor may only establish a right to those acres that were irrigated by the allottee or the
allottee's successor within a reasonable time after acquiring the property.

1 The non-Indian successor acquires a right to water being appropriated by the Indian allottee at
2 the time title passes. The non-Indian also acquires a right, with a date-of-reservation priority
3 date, to water that he or she appropriates with reasonable diligence after the passage of title. If
4 the full measure of the Indian's reserved water right is not acquired by this means and
5 maintained by continued use, it is lost to the non-Indian successor. Walton II, 647 F.2d at 51.

6 Based on the totality of the evidence, the Court believes the acreage irrigated in 1991 within
7 Allotment No. 3361A-1 by the Allan Brothers reasonably reflect the quantities that were historically
8 irrigated. According to DE – 149, 26 acres were being irrigated in Allotment No. 3361A. Mr.
9 David Allan testified that they have consistently irrigated the same amount of land and that amount
10 is also consistent with the historical use of water. Therefore, the Court believes the Allan Brothers'
11 share of Allotment 3361A that has been historically irrigated is 16.5 acres.

12 Allotment 3362 constitutes the NW1/4SE1/4 of Section 11 and was first irrigated in 1914,
13 DE – 240, and according to DE – 149, a maximum of 37.1 acres of the parcel have been irrigated.
14 Ralph Saunders testified that based on his interpretation of aerial photos, 31.4 acres were irrigated
15 in 1939 and 35 acres in 1979 and 1991. February 7, 1994 RP at 98. However, when David Allan
16 measured the property, he found a total of 56.41 were irrigated. Mr. Saunders determined that 51.5
17 acres were irrigated in 1991. The Court has found that 16.5 acres of Allotment 3361A-1 were
18 irrigated. Mr. Saunders analysis of the use of water is based on specific years while DE – 149
19 represents maximums up to a certain date. This Court must determine water rights for reservation
20 lands based on the amount of acres irrigated by the allottee or their successor within a reasonable
21 time. Walton II, supra. According to DE – 149, 37.1 acres were the maximum acres irrigated in
22 Allotment 3362 as of 1957. When the Allan Brothers purchased the property in 1962, there were
23 mature cherry trees on the property estimated to be 40-45 years old. Mr. David Allan testified that
24 they have consistently irrigated the same amount of land, and that amount is also consistent with the
25 historical use of water. The Court finds that the Allan Brothers have established a right to irrigate
37.1 acres in Allotment No. 3362.

The Court finds that the Allan Brothers enjoys a right to a proportionate share of the
reserved water right of the Yakama Nation as a successor to the lands allotted to Mary Langell and
Mark Wilcox. Based on the evidence, the allottees diverted water from the Wapato Project,
Ahtanum Unit and irrigated the property now owned by the Allan Brothers either at the time the
parcel was allotted or shortly thereafter. Successive owners continued to beneficially use the water
on the property up to the time of the hearing. Therefore, the Allan Brothers are awarded a June 9,

1 1855 water right for irrigation of 53.6 acres, with a maximum annual diversion of 235.84 acre-feet
2 based on the water duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause No.
3 312. The maximum instantaneous diversion shall be 0.67 cfs based on a 0.0125 cfs per acre duty.
4 The place of use is Parcel Nos. 181211-31001 and 181211-42002, located below the Ahtanum Main
5 Canal in the East 1024.5 feet of the NE1/4SW1/4 and the NW1/4SE1/4 of Section 11, T. 12 N., R.
6 18 E.W.M. Period of use shall be April 1 to October 1. The point of diversion is from the Ahtanum
7 Main Canal, Wapato Irrigation Project at 100 feet north and 300 feet west from the east quarter corner
8 of Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

8 Court Claim No. 1160 – Paul and Violet Bak

9 The Bak's claim was presented during a hearing on February 7, 1994 beginning at page 199.
10 The Baks own property on the Yakama Reservation located in the SE1/4SE1/4 and Lot 6 in Section 18,
11 T. 12 N., R. 17 E.W.M. between the Ahtanum Main Canal, Wapato Irrigation Project and Ahtanum
12 Creek. They claim a right to irrigate 34 acres. Mr. Bak testified that his parents purchased the property
13 in 1941 and he purchased it in 1969. The parcel was originally allotted to Sah-si-y-a-pum Cuy-use as
14 Allotment No. 951. DE – 69.

15 In terms of water use, DE – 8 (U.S. Exhibit 21, 1915 Map filed pursuant to Pretrial Order No.
16 10) shows that some of the property was first irrigated in 1871-1885 and the remainder between 1886 –
17 1895. According to DE – 240, 34 acres of Allotment No. 951 were irrigated from 1896 through 1951.
18 DE – 69 shows 30.6 acres were the maximum irrigated as of 1957. Mr. Paul Bak testified the property
19 was irrigated when his parents purchased the property in 1941 and had been since acquisition. RP at
20 202. He also indicated that he continues to irrigate 34 acres – 20 in alfalfa and the remainder in pasture
21 and that he raises approximately 50 head of cattle, on average.

22 The Court finds that the Baks enjoy a right to a proportionate share of the reserved water
23 right of the Yakama Nation as a successor to the lands allotted to Sah-si-y-a-pum Cuy-use. Based
24 on the evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and irrigated
25 the property in Section 18 either at the time the parcel was allotted or shortly thereafter. Successive
owners continued to beneficially use the water on the property up to the time of the hearing.
Therefore, the Baks are awarded a June 9, 1855, prorata water right for irrigation of 30.6 acres on
Allotment No. 951. They are entitled to a maximum annual diversion of 134.64 acre-feet based on
the diversion duty of 4.4 acre-feet per irrigated acre established in U.S. v. Ahtanum, Civil Cause
No. 312. The maximum instantaneous diversion shall be 0.383 cfs based on a 0.0125 cfs per acre

1 duty. The place of use is the SE1/4SE1/4 and Government Lot 6 of Section 18, T. 12 N., R. 17
2 E.W.M. The period of use shall be April 1 to October 1. The point of diversion is into the Ahtanum
3 Main Canal, located at 100 feet north and 300 feet west from the east quarter corner of Section 14,
4 being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

Court Claim Nos. 1239 and A2406 -- Robert Ball

5 The claim of Robert Ball was presented during a hearing on February 14, 1994 beginning at
6 page 2. Robert Ball owns an eighty-acre parcel on the Yakama Reservation that contains the lands
7 subject to this claim. He is a successor in interest to lands owned by Lee and Emma Bell. There are
8 no structures on the property. He filed a claim for irrigation of 78 acres within the S1/2NW1/4 of
9 Section 17, T. 12N., R. 18 E.W.M. Mr. Ball uses the water for irrigation of orchard and frost
10 protection. Mr. Ball raises apples, pears and cherries. He asks for a ratable share of the Yakama
11 Nation's reserved right.

12 The land owned by Mr. Ball was included in DE - 240, see page 2 of the attachment to DE -
13 240. According to DE - 240, Mr. Ball is the successor to lands that were allotted to Andrew Foster
14 as Allotment No. 3151 (SE1/4NW1/4 of Section 17 - allotment 3151) and Pauline Yapishmet as
15 Allotment No. 3353 (SW1/4NW1/4 of Section 17 - allotment 3353). See also DE - 7. Both
16 allotments were patented to Isaac Pue. Id.

17 DE-240 indicates that Allotment 3151 consisted of 56.5 irrigable acres in the SE1/4NW1/4
18 of Section 17. It also shows 56 acres were irrigated from 1909 to the time of the exhibit's filing in
19 1951. DI -240 also shows that Allotment 3353 consisted of 39 irrigable acres in the SW1/4NW1/4
20 of Section 17. The tabulation indicates that 40 acres were actually irrigated from 1911 to 1951, the
21 date of the exhibit's filing. The land ultimately patented to Isaac Pue consisted of 40 acres from
22 each allotment for a total of 80 acres. DE-7.

23 There is some discrepancy between Ecology's Investigation Report (SE -16) in terms of
24 irrigated acres and what Mr. Ball has claimed. In addition, Ralph Saunders indicated that 73.4 acres
25 were irrigated in 1939 and 68 acres in 1979. February 7, 1994 RP at p. 99. In SE-16, Ecology found
water was diverted for irrigation of 70 acres and frost protection, with a band along the southern
portion of the property not being irrigated. Mr. Ball submitted considerable evidence to convince
the Referee 78 acres were irrigated. As noted above, the maximum acreage patented to Mr. Pue
was 80 acres. DE-240 shows up to 79 acres were considered irrigable and were irrigated as of
1951. DE-8, a reproduction of a set of maps filed by the United showing when particular lands on

1 the reservation were irrigated from the Ahtanum Unit of the Wapato Irrigation Project, shows nearly
2 all of the two allotments were irrigated between 1896-1908. See also Report of Proceedings,
3 February 14, 1994 at p. 6.³ The Ahtanum Main Canal runs through the very southeast corner of
4 Allotment 3151 and only a very small parcel of property lies on the southside of the Wapato
5 Irrigation Project canal and thus is incapable of irrigation from the canal. See id. at 24. Mr. Ball
6 testified that prior to instituting his current irrigation practice, the property was rill-irrigated. Id. at
7 8. The water would need to go through the property Ecology found not irrigated to be used on the
8 remainder of the property. Finally, DE—239 indicates that owners of allotments 3151 and 3353
9 were assessed for 78 acres from 1926-1951. All assessments were paid.

10 In terms of water use, Mr. Ball testified he was familiar with irrigation practices going back to
11 1945. Mr. Ball further testified the original non-Indian successor, Isaac Pue, farmed the property well
12 into the 1920's. Lee Bell then bought the property in the 1930's, ultimately selling it to Mr. Ball in
13 1976. However, Mr. Ball's family leased the property from Bell in about 1945-46 and farmed the
14 property until Ball purchased it in 1976. A portion of the property has been in orchard from the early
15 1920's. The balance was farmed in open crops until the 1960's when a well was drilled and the
16 remainder of the property was converted into orchard. Maps prepared by the United States show the
17 property was irrigated from the 1900's until 1931.

18 The Court finds that Mr. Ball enjoys a right to a proportionate share of the reserved water
19 right of the Yakama Nation as a successor to the lands allotted to Pauline Yapishmet and Andrew
20 Foster. Based on the evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit
21 and irrigated the property in Section 17 either at the time the parcel was allotted or shortly
22 thereafter. Accordingly, the Court finds that a water right has been established for 78 acres consisting
23 of lands in the S1/2NW1/4 of Section 17, T.12 N., R. 18 E.W.M. The point of diversion is into the
24 Ahtanum Main Canal, Wapato Irrigation Project located 100 feet north and 300 feet west from the east
25 quarter corner of Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16
E.W.M. The purpose of use is irrigation and frost protection with a priority date of June 9, 1855. In
terms of quantity, the property receives a pro-rata share of available flows from Ahtanum Creek along
with other on-reservation water users. Mr. Ball claimed an annual quantity of 273 acre-feet, which

³ The Court notes the objection of the Yakama Nation to the testimony of Mr. Ball regarding the contents of the map and overrules that objection.

1 calculates out to a water duty of 3.5 acre-feet which is reasonable for orchard use. The maximum
2 instantaneous diversion shall be 0.98 cfs based on a 0.0125 cfs per acre duty. Mr. Ball testified that
3 he uses water, when available, from April 1 to October 1. That shall be the period of use.

4 Claim No. 1642 – Borton and Sons, Inc.

5 The Borton and Sons, Inc. (Borton) claim was presented during a hearing on February 9, 1994
6 beginning at page 60. Borton owns property on the Yakama Reservation in the SE1/4SE1/4 of Section
7 16, the SW1/4SW1/4 of Section 15 and NW1/4SE1/4 and Government Lot 6 of Section 14, all within
8 T. 12 N., R. 17 E.W.M. The Section 15 and 16 parcels were originally allotted to Cadie Shike as
9 Allotment No. 908 in approximately 1893 and patented to Ms. Shike on July 10, 1897. DE – 1
10 (Abstract of Title). The property went out of Indian ownership when conveyed by Ms. Shike's father
11 to W. L. Powell. In 1920, the property was acquired by American Fruit Growers Inc., which in turn
12 conveyed it to Byron Borton, et al. on May 28, 1941. DE – 2 (Deed from American Fruit Growers to
13 Byron E. Borton Et Al). The Borton property in Section 14 was originally allotted to James Um-Tuch
14 as Allotment No. 1677 in approximately 1894. Celia Um-tuch, widow of James Um-Tuch conveyed
15 the property to Byron E. Borton on March 21, 1957. DE – 3 (Deed).

16 As of May 19, 1908, lands comprising Allotment No. 908 had not been irrigated. DE – 1, p.
17 10. According to DE – 240, irrigation commenced in 1909 on Allotment 908 and continued
18 through 1951 when DE – 240 was filed in U.S. v. Ahtanum, Civil Cause No. 312. DE -- 240 also
19 shows that 80 acres of the allotment were irrigated from 1909-1951. DE – 69 (Recapitulation of
20 Ownerships and Final Assessable Acreages – Ahtanum Irrigation Project Established By Notice In
21 Federal Register) shows that 78.5 acres had been irrigated as of 1957. Mr. Kenneth Withers
22 testified that most of the 80 acres was in fruit trees and approximately 8 acres was used for growing
23 hay during the 1920's. Mr. Virgil Gibson testified that in 1937 he worked on the American Fruit
24 Ranch and that nearly 60-70 acres was covered with orchard. He also recalled planting a garden and
25 pasturing a cow and calf on some of the acreage. Mr. John Borton testified that as of 1940,
approximately 40 of the 80 acres that comprise Allotment No. 908 were covered with mature fruit
trees and he estimated them to be approximately 20 years old. The remainder of the property was in
hay or pasture. Mr. Gail Kingsboro testified that as of 1944, there were 50-plus acres of orchard on
the eighty-acre allotment. Mr. Kingsboro also indicated that the remainder of the property was
planted into orchard after a well was drilled in 1944 or 1945. According to Mr. Kingsboro, the
remaining thirty acres, or some portion of it were used for raising grain when the water was

1 available. Finally, Mr. Richard Borton, one of the present owners, testified that he had discovered a
2 wooden pipe network on the property that covered the entire 80 acres. Further, the pipe was not
3 installed by his relatives and was likely in place prior to his family taking ownership.

4 As to water use on the lands that make up Allotment No. 1677, John Richard Borton
5 testified that the property was used for growing hay, alfalfa and other crops prior to Borton
6 ownership. After the Bortons acquired it, they converted all of the NE1/4SE1/4 and part of Lot 8
7 into orchard within one year and the remainder of the property over the next 6-7 years. They also
8 grew grain and hay on the remaining property. DE – 240 sets forth that 76.6 acres were irrigated on
9 Allotment No. 1677 from 1909 – 1951. DE – 69 shows 77.2 acres were irrigated as of 1957.

10 The Court finds that Borton & Sons, Inc. enjoy a right to a proportionate share of the
11 reserved water right of the Yakama Nation as a successor to the lands allotted to Cadie Shike and
12 James Um-Tuch. Based on the evidence, James Um-Tuch diverted water from the Wapato Project,
13 Ahtanum Unit and irrigated the property in Section 14 either at the time the parcel was allotted or
14 shortly thereafter. As to Allotment No. 908, the Court finds that Cadie Shike did not use water but
15 after the land left Indian ownership, her successors put the water to beneficial use with reasonable
16 diligence. Successive owners continued to beneficially use the water on the property up to the time
17 of the hearing. Therefore, the Bortons are awarded a June 9, 1855 water right for irrigation of 78.5
18 acres on Allotment No. 908 and 77.2 acres on Allotment No. 1677. They are entitled to a maximum
19 annual diversion of 345.4 acre-feet for Allotment 908 lands and 339.7 acre-feet for Allotment 1677
20 lands based on the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil
21 Cause No. 312. The maximum instantaneous diversion shall be 0.965 cfs for Allotment 908 and
22 0.981 cfs for Allotment 1677 based on a 0.0125 cfs per acre duty. The place of use is the
23 SE1/4SE1/4 of Section 16, the SW1/4SW1/4 of Section 15 and NW1/4SE1/4 and Government Lot 6 of
24 Section 14, All within T. 12 N., R. 17 E.W.M. The period of use shall be April 1 to October 1. The
25 point of diversion is from the Ahtanum Main Canal, Wapato Irrigation Project at 100 feet north and
300 feet west from the east quarter corner of Section 14, being within the SE1/4SE1/4NE1/4 of Section
14, T. 12 N., R. 16 E.W.M.

Court Claim No. 8440 – Robert H. Brown

24 The Brown's claim was presented during a hearing held February 10, 1994 beginning at page
25 167. In Claim No. 8440, the Browns asserted a right to irrigate 3.89 acres in the NE1/4SE1/4 of
Section 12, T. 12 N., R. 18 E.W.M. Ecology, in SE-167, an Investigation Report of the Brown

1 property, set forth that 3.89 acres were irrigated. The property is part of Allotment No. 3366, originally
2 allotted to Josephine Skahan and patented in October, 1915. DE – 233.

3 In terms of water use, DE – 240 discloses that water was first used on the Allotment 3366
4 parcel in 1915 and was used through 1951 when DE – 240 was prepared. DE – 69 shows that by
5 1957, Allotment No. 3366 had been sold to non-Indians, although Antoine Skahan (perhaps a
6 relative of the original allottee Josephine Skahan) had acquired the SE1/4NE1/4. Charles Lewis
7 owned the irrigable land in the NE1/4SE1/4, the property at issue here. As of 1957, 20.6 acres of
8 the Allotment 3366 lands had been irrigated. DE – 69. Other claimants asserting a water right claim
9 for lands that may be part of Allotment 3366 include William Cartwright, Mark Layman, and
10 Charles Lewis. In total, a right to irrigate 24.43 acres are being asserted which exceeds the amount
11 that the allottee or her immediate successor irrigated. DE – 69. Those rights will be examined in
this report. Mr. Lewis Langell testified that the property had been continuously irrigated during his
life-long tenancy in the area, which dates back to the 1930's.

12 The Court finds that the Browns enjoy a right to a proportionate share of the reserved water
13 right of the Yakama Nation as a successor to the lands allotted to Josephine Skahan. Based on the
14 evidence, the allottees diverted water from the Wapato Project, Ahtanum Unit and irrigated the
15 property now owned by the Browns either at the time the parcel was allotted or shortly thereafter.
16 Successive owners continued to beneficially use the water on the property up to the time of the
17 hearing. However, the maximum number of acres irrigated in that portion of Allotment No. 3366
18 was 20.9 acres; the total claim in this adjudication is 24.43 acres. In light of the fact that the
19 collective claims of water users in the NE1/4SE1/4 of Section 12 exceeds the amount used by the
20 allottee or her successor within a reasonable time, this Court will need additional evidence to
21 determine the amount each claimant enjoys. See Walton III, 752 F.2d at 402. Alternatively,
additional evidence will be needed to show that the allottee or their successor irrigated more than
20.9 acres within a reasonable time. These issues should be addressed during the exceptions period.

Court Claim No. 8441 – William Cartwright

22 The Cartwright claim was presented during a hearing held February 10, 1994 beginning at page
23 167. In Claim No. 8441, Mr. Cartwright asserted a right to irrigate 3.89 acres in the NE1/4SE1/4 of
24 Section 12, T. 12 N., R. 18 E.W.M. Ecology, in SE-167, an Investigation Report of the Cartwright
25 property, set forth that 3.89 acres were irrigated. The property is part of Allotment No. 3366, originally
allotted to Josephine Skahan and patented in October, 1915. DE – 233.

1 In terms of water use, DE – 240 discloses that water was first used on the Allotment 3366
2 parcel in 1915 and was used through 1951 when DE – 240 was prepared. DE – 69 shows that by
3 1957, Allotment No. 3366 had been sold to non-Indians, although Antoine Skahan (perhaps a
4 relative of the original allottee Josephine Skahan) had acquired the SE1/4NE1/4. Charles Lewis
5 owned the irrigable land in the NE1/4SE1/4, the property at issue here. As of 1957, 20.6 acres of
6 the Allotment 3366 lands had been irrigated. DE – 69. Other claimants asserting a water right claim
7 for lands that may be part of Allotment 3366 include Robert Brown, Mark Layman, and Charles
8 Lewis. In total, those claims assert a right to 24.43 acres which exceeds the amount that the allottee
9 or her immediate successor irrigated. DE – 69. Those rights will be examined in this report. Mr.
10 Lewis Langell testified that the property had been continuously irrigated during his life-long
11 tenancy in the area, which dates back to the 1930's.

12 The Court finds that Mr. Cartwright enjoys a right to a proportionate share of the reserved
13 water right of the Yakama Nation as a successor to the lands allotted to Josephine Skahan. Based
14 on the evidence, the allottees diverted water from the Wapato Project, Ahtanum Unit and irrigated
15 the property now owned by the Campbells either at the time the parcel was allotted or shortly
16 thereafter. Successive owners continued to beneficially use the water on the property up to the time
17 of the hearing. However, the maximum number of acres irrigated in that portion of Allotment No.
18 3366 was 20.9 acres; the total claim in this adjudication is 24.43 acres. In light of the fact that the
19 collective claims of water users in the NE1/4SE1/4 of Section 12 exceeds the amount used by the
20 allottee or her successor within a reasonable time, this Court will need additional evidence to
21 determine the amount each claimant enjoys. See Walton III, 752 F.2d at 402. Alternatively,
22 additional evidence will be needed to show that the allottee or their successor irrigated more than
23 20.9 acres within a reasonable time. These issues should be addressed during the exceptions period.

24 Court Claim No. 8437 – Mark Layman

25 The original claim was filed by Grace Layman. Mark Layman was substituted on February 3,
1999. The Layman claim was presented during a hearing held February 10, 1994 beginning at page
167. In Claim No. 8437, Ms. Layman asserted a right to irrigate 6 acres in the NE1/4SE1/4 of Section
12, T. 12 N., R. 18 E.W.M. Ecology, in an Investigation Report of the Layman property, set forth that 6
acres were irrigated on three parcels, one that belonged to Mark Layman. The property is part of
Allotment No. 3366, originally allotted to Josephine Skahan and patented October, 1915. DE – 233.

1 In terms of water use, DE – 240 discloses water was first used on the Allotment 3366 parcel
2 in 1915 and was used through 1951 when DE – 240 was prepared. DE – 69 shows that by 1957,
3 Allotment No. 3366 had been sold to non-Indians, although Antoine Skahan had acquired the
4 SE1/4NE1/4. Charles Lewis owned the irrigable land in the NE1/4SE1/4, the property at issue here.
5 As of 1957, 20.6 acres of the Allotment 3366 lands had been irrigated. DE – 69. Other claimants
6 asserting a water right claim for lands that may be part of Allotment 3366 include Robert Brown,
7 William Cartwright, and Charles Lewis. In total, those claims assert a right to 24.43 acres which
8 exceeds the amount that the allottee or her immediate successor irrigated. DE – 69. The other
9 claims will be examined in this report. Mr. Lewis Langell testified the property had been
10 continuously irrigated during his life-long tenancy in the area, dating to the 1930's.

11 The Court finds Mr. Layman enjoys a right to a proportionate share of the reserved water
12 right of the Yakama Nation as a successor to the lands allotted to Josephine Skahan. Based on the
13 evidence, the allottees diverted water from the Wapato Project, Ahtanum Unit and irrigated the
14 property now owned by the Laymans either at the time the parcel was allotted or shortly thereafter.
15 Successive owners continued to beneficially use the water on the property up to the time of the
16 hearing. However, in 1957 the maximum number of acres irrigated in that portion of Allotment No.
17 3366 was 20.9 acres; the total claim in this adjudication is 24.43 acres. In light of the fact that the
18 collective claims of water users in the NE1/4SE1/4 of Section 12 exceeds the amount used by the
19 allottee or her successor within a reasonable time, this Court will need additional evidence to
20 determine the amount each claimant enjoys. See Walton III, 752 F.2d at 402. Alternatively,
21 additional evidence will be needed to show that more than 20.9 acres was irrigated by the allottee or
22 successor within a reasonable time. These issues should be addressed during the exceptions period.

23 Court Claim No. 8438 Charles W. Lewis

24 The Lewis claim was presented during a hearing held February 10, 1994 beginning at page
25 167. In Claim No. 8438, Mr. Lewis asserted a right to irrigate 10.65 acres in the NE1/4SE1/4 of
Section 12, T. 12 N., R. 18 E.W.M. Ecology, in an Investigation Report of the Lewis property, set forth
that 10.65 acres were irrigated on three parcels. The property is part of Allotment No. 3366, originally
allotted to Josephine Skahan and patented in October, 1915. DE – 233.

In terms of water use, DE – 240 discloses water was first used on the Allotment 3366 parcel
in 1915 and was used through 1951 when DE – 240 was prepared. DE – 69 shows that by 1957,
Allotment No. 3366 had been sold to non-Indians, although Antoine Skahan had acquired the

1 SE1/4NE1/4. Charles Lewis owned the irrigable land in the NE1/4SE1/4, the property at issue here.
2 As of 1957, 20.6 acres of the Allotment 3366 lands had been irrigated. DE – 69. Other claimants
3 asserting a water right claim for lands that may be part of Allotment 3366 include Robert Brown,
4 Mark Layman, and William Cartwright. In total, those claims assert a right for irrigation of 24.43
5 acres which exceeds the amount that the allottee or her immediate successor irrigated. DE – 69.
6 Those claims are examined in this report. Mr. Lewis Langell testified the property was
continuously irrigated during his life-long tenancy, dating back to the 1930's.

7 The Court finds that Mr. Lewis enjoys a right to a proportionate share of the reserved water
8 right of the Yakama Nation as a successor to the lands allotted to Josephine Skahan. Based on the
9 evidence, the allottees diverted water from the Wapato Project, Ahtanum Unit and irrigated the
10 property now owned by Mr. Lewis either at the time the parcel was allotted or shortly thereafter.
11 Successive owners continued to beneficially use the water on the property up to the time of the
12 hearing. However, in 1957 the maximum number of acres irrigated in that portion of Allotment No.
13 3366 was 20.9 acres; the total claim in this adjudication is 24.43 acres. Since the collective claims
14 of water users in the NE1/4SE1/4 of Section 12 exceeds the amount used by the allottee or her
15 successor within a reasonable time, this Court will need additional evidence to determine the
16 amount each claimant enjoys. See Walton III, 752 F.2d at 402. Alternatively, additional evidence
will be needed to show more than 20.9 acres was irrigated by the allottee or their successor within a
reasonable time. These issues should be addressed during the exceptions period.

17 Court Claim No. 1002 -- James and Janet Campbell

18 The Campbells claim was presented during a hearing held February 15, 1994 beginning at page
19 167. In Claim No. 1002, the Campbells asserted a right to irrigate 74.84 acres in Section 11, T. 12 N.,
20 R. 18 E.W.M. Ecology, in SE-31, an Investigation Report of the Campbell's property, set forth that
21 68.6 acres were irrigated. During the February 15, 1994 hearing, the Campbells modified their claim to
22 67 acres. RP at 169. The property is located in the W1/2SW1/4NE1/4, SE1/4NW1/4, and that portion
23 of the NE1/4NW1/2SW1/4 lying north of Ahtanum Main Canal and easterly of an unnamed
24 intermittent stream, and the W1/2W1/2NE1/4SW1/4 lying north of Ahtanum Main Canal; all within
25 Section 11, T. 12 N., R. 18 E.W.M. The property in the NE1/4 and NW1/4 comprises Allotment 2779
and consists of 64.4 acres. The property in the SW1/4 is part of Allotment 3361A and consists of
approximately 10.40 acres. Allotment 2779 was originally allotted to Phyllis You-Tom-con-wit and a

1 patent issued in 1910. DE – 240. The property in Allotment 3361A was allotted to Mary Langell (who
2 became Mary Agnew) in 1910 and a patent issued in 1919. DE – 240, DE – 149.

3 In terms of water use, DE – 240 shows water was first used on the Allotment 3361 parcel in
4 1914 and was used through 1951. DE – 240; DE – 150. DE – 149 shows the Allotment was divided
5 into 3361 (now owned by Michael J. Schreiner) and 3361A, now owned by the Allan Brothers and
6 the Campbells. The allotment was further divided into 3361A, owned by the Campbells, and
7 3361A-1, owned now by the Allan Brothers. According to DE – 149, 26 of the 30 assessable acres
8 that make up Allotment 3361A were irrigated in 1957 and that was also the maximum ever
9 irrigated. The Allan Brothers are assessed for 19.6 acres in Allotment 3361 and the Campbells are
10 assessed for 10.4 acres which equals the total of the assessed acreage for Allotment 3361A.

11 This Court determined, based on DE – 149, testimony by Ralph Saunders concerning
12 interpretation of aerial photographs and testimony by Mr. David Allan, that the Allans were entitled
13 to 16.5 acres of water rights and the Campbells 8.7 acres. The Court refers the Campbells to the
14 analysis relating to the Allan Brothers' claim set forth above.

15 Water was first used on Allotment 2779 in about 1913 and, according to DE-240, was used
16 on the property through 1951. See also DE --143 (Brooks Report) and DE –150 (Maps showing
17 development of Ahtanum Unit). As of 1957, Allotment 2779 was comprised of 71.30 acres of
18 assessable lands with 64.4 acres irrigated. DE – 149. Mr. Kenneth Van Amburg testified that the
19 present area that is being irrigated was historically irrigated. RP at 170. Ralph Saunders, on behalf
20 of the Yakama Nation, testified that based on his interpretation of the 1939 aerial photographs, 58.4
21 acres were irrigated. February 7, 1994 Report of Proceedings at p. 101. As of 1979, the number of
22 irrigated acres had reduced to 55.8 acres and 56.1 acres in 1991. The Court is unaware of any other
23 claimants asserting a water right claim for lands that were part of Allotment 2279.

24 The Court finds the Campbells enjoy a right to a proportionate share of the reserved water
25 right of the Yakama Nation as a successor to the lands allotted to Mary Langell and Phyllis You-
Tom-con-wit. The allottees diverted water from the Wapato Project, Ahtanum Unit and irrigated the
property now owned by the Campbells either at the time the parcel was allotted or shortly thereafter.
Successive owners continued to beneficially use water on the property up to the time of the hearing.
Therefore, the Campbells are awarded a June 9, 1855 prorata water right for irrigation of 73.1 acres,
with a maximum annual diversion of 321.64 acre-feet based on the diversion duty of 4.4 acre-feet
per acre established in U.S. v. Ahtanum, Civil Cause No. 312. The maximum instantaneous

1 diversion shall be 0.92 cfs based on a 0.0125 cfs per acre duty. The place of use is in the
2 W1/2SW1/4NE1/4, SE1/4NW1/4, and that portion of the NE1/4NW1/4SW1/4 lying north of Ahtanum
3 Main Canal and easterly of an unnamed intermittent stream, And the W1/2W1/2NE1/4SW1/4 lying
4 north of Ahtanum Main Canal; All within Section 11, T. 12 N., R. 18 E.W.M. The period of use shall
5 be April 1 to October 1. The point of diversion is from the Ahtanum Main Canal, Wapato Irrigation
6 Project at 100 feet north and 300 feet west from the east quarter corner of Section 14, being within the
7 SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

Court Claim No. 1493 – George and Vera Davis; Art and Mary Wentz

8 The Davis' claim was presented at a February 10, 1994 hearing beginning on page 55 of the
9 Verbatim Report. The Davises own approximately 5.2 acres on the Yakama Reservation being the
10 north 676 feet of the W1/2NE1/4SE1/4NE1/4 of Section 10, T. 12 N., R. 18 E.W.M. Mr. and Mrs.
11 Davis did not provide any documentary evidence in support of their claim but Vera Davis did
12 testify. She provided no testimony regarding ownership except to indicate that they purchased the
13 property from Dr. Merlin Anderson in March, 1974. Art and Mary Wentz were substituted for the
14 Davises on February 14, 2001.

15 According to DE – 8, the property now owned by the Wentzes was originally a portion of
16 Allotment No. 3360 that included the SE1/4NE1/4 and NE1/4SE1/4 of Section 10. Michael J. and
17 Ella Kay Schreiner (Claim No. 6332) and Stanley Wilkinson (1459) also own land that was part of
18 the original allotment. No evidence was provided on when the allotment left Indian ownership.

19 According to DE – 240, 51 acres were allegedly irrigated on the allotment from 1914-1951.
20 Id. DE – 77 confirms that irrigation was commenced in 1914 for Allotment No. 3360 and DE – 76
21 indicates that from the federal government's perspective, water had been used on the allotment from
22 1915-1931. However, DE – 69, a document submitted by Michael and Anna Schreiner, indicates
23 only 36.1 acres were irrigated in 1957 and only 38.9 acres in Allotment 3360 had ever been
24 irrigated.

25 Although this information indicates generally that water was used on a portion of the
allotment, the specific testimony of Vera Davis shows the portion they acquired had not been
irrigated. At the time she and her husband purchased the property from Dr. Anderson, it was
covered with sagebrush. They began irrigating approximately 3 – 3.5 acres. Prior to their
acquisition in 1974, Mrs. Davis testified the property had not been used.

1 Absent evidence showing the land was still in Indian ownership when purchased by the
2 Davises, this Court cannot grant a water right. Pursuant to Walton II, non-Indian successors can
3 only establish a right to the amount the allottee actually put to beneficial use or the amount put to
4 beneficial use by the immediate successor within a reasonable period.

5 A careful reading leaves no doubt that the immediate grantee of the original allottee must
6 exercise due diligence to perfect his or her inchoate right to the allottee's ratable share of
7 reserved waters. . . . Once perfected, the water right must be 'maintained by continued use
8 [or] it is lost'. . . . Calculating Walton's share required an investigation into the diligence with
9 which the immediate grantee from the Indian allottees appropriated water, and the extent to
10 which successor grantees, up to and including Walton, continued to use the water thus
11 appropriated. 752 F.2d at 402.

12 Based on the record before the Court, water was not put to use by the allottee on this
13 property. If intervening owners between the allottee and the Davises failed to use water, then no
14 right can be confirmed and the right is herein DENIED.

15 Court Claim No. 1121 – Erickson Orchards, Erickson Water Service, et al. (Erickson Orchards)
16 Thomas Leonard, Douglas and Linda Couette, Robert and Michelle Runciman, David Welch, Mike
17 and Evelyn Herndon, James Murphy, Marie Erickson Murphy, Leona and Adam Riedlinger, Gary
18 and Ena Riddle and Simon and Bonnie Ramirez

19 Testimony in support of Claim No. 1121 was offered on February 14, 1994 as set forth in
20 the Verbatim Report beginning at about page 128. Erickson Orchards asserts a claim to divert
21 water from the Ahtanum Unit of the Wapato Irrigation Project to irrigate 60 acres consisting of six
22 acres of orchard and 54 acres of grain crops. The claim filed by Erickson Orchard states the
23 irrigated property is located on the Yakama Nation's reservation in the NW1/4NW1/4 of Section 10
24 and the E1/2NE1/4NE1/4 of Section 9, T. 12 N., R. 18 E.W.M. It requests a date of reservation
25 priority date of June 9, 1855, as a successor to an Indian allottee. It also claims a right to divert
instantaneously up to 1.2 cfs and 210 acre-feet during the irrigation season of April 1 – October 1 or
a prorata share of the Yakama Nation's reserved right. Erickson Orchards has sold some of the land
that constitutes the parcel for which it claims a water right. The Court will analyze the claims of the
successors subsequent to that of Erickson Orchards.

In terms of ownership, the record reflects the property in question was allotted to Dick yaaco
or Dick Wy-na-co in 1894 as Allotment No. 1506. See DE – 240; See also DE – 42. The land was
patented to L.L. Iles on March 23, 1911. DE – 37. The Erickson family acquired the property in

1 approximately 1938.⁴ They continued to own it until recently when some of the property was
2 plotted and sold for residential development.

3 The Court makes the following findings regarding water use on the Erickson Orchard
4 property. According to DE – 39 (a five-sheet set of maps submitted by the United States as a part of
5 Pre-Trial Order 10 depicting when irrigation in the Ahtanum Unit began on specific parcels)
6 irrigation on allotment No. 1506 commenced between 1909-1913. Additionally, DE – 40 (a series
7 of maps prepared by the Department of the Interior to depict irrigated lands on an annual basis from
8 1915 through 1930) demonstrates that water was used on the property through 1930. DE – 240 (a
9 tabulation of on-reservation water rights submitted in United States v. AID, Civil Cause No. 312 as
10 part of a pre-trial order) shows that water was diverted for irrigation from the lower Ahtanum Canal
11 from 1895 to 1911 and then from the Main Canal through 1951. The tabulation represents that 77.8
12 acres were irrigated in the NW1/4NW1/4 of Section 10, the E1/2NE1/4NE1/4 of Section 9 and the
13 E1/2 of Government Lot 9 in Section 4 all within T. 12 N., R. 18 E.W.M. Finally, Erickson
14 Orchards also submitted DE – 42, a document entitled Recapitulation of Ownerships and final
15 Assessable Acreages – Ahtanum Irrigation Project Established By Notice In Federal Register. DE –
16 42 demonstrates that as of 1957, the Department of the Interior assessed the owner of the Section 9
17 and 10 lands for 60 acres but that only 57.5 had ever been irrigated. Although Ralph Saunders
18 testified regarding the use of water in 1939, 1971 and 1991, based on an interpretation of aerial
19 photographs, the Court will determine the rights for these claimants based on the testimony
20 presented at trial by the individual landowners because the property has been subdivided.

21 Mr. Bernard Erickson testified to water use on the allotment from 1948 until 1981, when
22 the Acquavella claim was filed by Erickson Orchard. According to Mr. Erickson, water is diverted
23 from the main canal of the Ahtanum Unit in the SW1/4SW1/4 of Section 10, T. 12 N., R. 18
24 E.W.M. through a weir into two six inch pipes that bring the water northerly, under McCullough
25 Road, to an irrigation structure on the southern edge of the NW1/4NW1/4 of Section 10 that is just
east of the middle of the allotment. DE – 38 (Map of property modified by the witness at the time
of trial). The pipeline structure delivers some of the water to lands toward the east and west and
some of the water remains in the six inch pipes which proceed to the northern portion of the

⁴ The Yakama Nation lodged four hearsay objections during the testimony of Bernard Erickson and one asking that counsel for Mr. Erickson not lead the witness. See RP at 133, 134, 139, 143 and 152. The objections at pages 133, 134, 139 are overruled. The objections at 143 and 152 are sustained. The testimony will be utilized accordingly.

1 property where a second structure takes the water east and west. Mr. Erickson also testified to the
2 historic use of water on the 60-acre parcel, indicating that at one time 50% of the property was in
3 orchard and the remainder in rotational crop. He stated the southern half was used for orchard and
4 the northern half was used for growing a rotation of hay, corn, potatoes and barley.

5 The Court finds that water was diverted for Allotment No.1506 either prior to being patented
6 to Mr. Ilie or shortly thereafter. DE – 240; DE – 39. The water was continuously beneficially used
7 during the early part of the century, DE – 40, in the 1950's, DE – 240 and DE – 42, and through the
8 1980's. Testimony of Bernard Erickson. Further, although some of the land was enrolled in federal
9 programs that prohibited growing crops (and consequently the use of water), Washington state law
10 recognizes that as a sufficient cause for nonuse. See RCW 90.14.140(e). The Court also finds that
11 as of the time the property was developed and sold in lots, the maximum of the water right used in
12 1957 was 57.5 acres and shall be the maximum of the right. However, the owners of the lots have
13 used less water because of road and home development in the last 8 years and the right is
14 accordingly reduced to the quantities the successors to Erickson Orchards have used. See Walton
15 III, 752 F.2d at 402 (“Calculating Walton’s share required an investigation into the diligence with
16 which the immediate grantee from the Indian allottees appropriated water, and the extent to which
17 successor grantees, up to and including Walton, continued to use the water thus appropriated”). The
18 purpose of use is seasonal irrigation. The place of use is the NW1/4NW1/4 of Section 10 and the
19 E1/2NE1/4NE1/4 of Section 9, T. 12 N., R. 18 E.W.M. The irrigation season is April 1 – October 1.
20 The quantity shall be a prorata share of the Yakama Nation’s reserved right to irrigate 37.8 acres
21 (the process for reaching that total is set forth below for the individual claimants) up to 132.3 acre-
22 feet per year, based on testimony by Mr. Erickson that 3.5 acre-feet per acre was adequate to
23 irrigate the property. The maximum instantaneous diversion shall be 0.473 cfs based on a 0.0125 cfs
24 per acre duty. The point of diversion is from the Ahtanum Main Canal, Wapato Irrigation Project at
25 100 feet north and 300 feet west from the east quarter corner of Section 14, being within the
SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

Other parties joined as additional parties to the claim filed by Erickson Orchards include
Thomas Leonard, Douglas and Linda Couette, Robert and Michelle Runciman, David Welch, Mike
and Evelyn Herndon, James and Marie Murphy, Leona and Adam Riedlinger, Gary and Ena Riddle
and Simon and Bonnie Ramirez. Their use of water on the individual lots will be analyzed below.

1 Robert and Michelle Runciman purchased approximately two acres in the southwest corner
2 of Allotment 1506 from Erickson Orchards in January, 1992. The Runcimans irrigate pasture, fruit
3 trees and lawn with an in-ground sprinkler system. They divert from the east/west irrigation
4 pipeline running along McCullough Road that takes water from the main line on the southern
5 portion of the allotment. Mr. Runciman testified that approximately three-quarters of his property is
6 in pasture and trees and that his house, lawn and driveway would consume the other one-quarter.
7 They are also a member of the Erickson Water Service.

8 The Court finds that the Runcimans enjoy a portion of the water right appurtenant to
9 Allotment No. 1506 as established by Mr. Illes and are entitled to a prorata right to irrigate 1.75
10 acres derivative of the Yakama Nation's reserved right. The place of use is Lot 1 of Short Plat No.
11 92-5, Parcel No. 181210-22403, in the E1/2SE1/4NW1/4NW1/4 of Section 10, T. 12 N., R. 18
12 E.W.M. The Runcimans are entitled to divert a maximum of 6.13 acre-feet per year for irrigation of
13 orchard, pasture and lawn. The maximum instantaneous diversion shall be 0.022 cfs based on a
14 0.0125 cfs per acre duty. The remainder of their right is as confirmed to Erickson Orchards above.

15 Gary and Ena Riddle purchased approximately 2 acres from Erickson Orchards in 1989 in
16 the E1/2W1/2SE1/4NE1/4NE1/4 of Section 9, also a portion of Allotment No. 1506. It is also
17 described as Lot 3 of Short Plat No. 86-108 and is Parcel No. 181209-11403. The Riddle's property
18 is located in the area identified by Mr. Bernard Erickson to have historically been used for orchard.
19 The Riddles use an underground water system consisting of approximately 40-50 sprinklers and
20 have irrigated their property since its purchase. They are also a member of Erickson Water Service.

21 The Court finds that the Riddles enjoy a portion of the water right appurtenant to Allotment
22 No. 1506 and are entitled to a prorata right to irrigate 1.75 acres derivative of the Yakama Nation's
23 reserved right. The place of use is in E1/2W1/2SE1/4NE1/4NE1/4 of Section 9, T. 12 N., R. 18
24 E.W.M. It has also been described as Lot 3 of Short Plat No. 86-108 and is Parcel No. 181209-
25 11403. The Riddles are entitled to divert a maximum of 6.13 acre-feet per year for irrigation of
pasture and lawn. The maximum instantaneous diversion shall be 0.022 cfs based on a 0.0125 cfs
per acre duty. The remainder of their right is as confirmed to Erickson Orchards above.

Adam and Leona Riedlinger purchased from the Riddles a two-acre parcel that is part of
Allotment No. 1506. The parcel owned by Riedlingers is in the W1/2W1/2SE1/4NE1/4NE1/4 of
Section 9. It is also described as Lot 2 of Short Plat No. 86-108 and Parcel No. 181209-11402. The
Riedlingers did not appear due to health problems. Mr. Gary Riddle testified on their behalf.

1 According to Mr. Riddle, the Riedlingers entire two acres is served by an underground sprinkler
2 system and consists of about 75 sprinklers. They are also a member of the Erickson Water Service.

3 The Court finds the Riedlingers enjoy a portion of the water right appurtenant to Allotment
4 No. 1506 and are entitled to a prorata right to irrigate 1.75 acres derivative of the Yakama Nation's
5 reserved right. The place of use is in the W1/2W1/2SE1/4NE1/4NE1/4 of Section 9. It is also
6 described as Lot 2 of Short Plat No. 86-108 with the Parcel No. 181209-11402, T. 12 N., R. 18
7 E.W.M. The Riedlingers may divert a maximum of 6.13 acre-feet per year for irrigation of pasture
8 and lawn. The maximum instantaneous diversion shall be 0.22 cfs based on a 0.0125 cfs per acre
9 duty. The remainder of their right is as confirmed to Erickson Orchards above.

10 Mike and Evelyn Herndon purchased two acres from Erickson Orchards in 1986. Their
11 property is located in the E1/2SW1/4SE1/4NW1/4NW1/4 of Section 10, also described as Lot 2 of
12 Short Plat No. 85-140. The property is Parcel No. 181210-22404. Mr. Herndon testified to taking
13 water from a four-inch pipe that runs near his house, attaching it to a hose, and irrigating 1-1/2 acres
14 of the two-acre parcel. They are also a member of the Erickson Water Service. However, it appears
15 to the Court the Herndon's property is 1.25 acres in size with 1.2 acres irrigated.

16 The Court finds that the Herndons enjoy a portion of the water right appurtenant to
17 Allotment No. 1506 and are entitled to a prorata right to irrigate 1.2 acres derivative of the Yakama
18 Nation's reserved right. The place of use is in E1/2SW1/4SE1/4NW1/4NW1/4 of Section 10, also
19 described as Lot 2 of Short Plat No. 85-140. The property is Parcel No. 181210-22404. The
20 Herndons are entitled to divert a maximum of 4.2 acre-feet per year for irrigation of pasture and
21 lawn. The maximum instantaneous diversion shall be 0.015 cfs based on a 0.0125 cfs per acre duty.
22 The remainder of their right is as confirmed to Erickson Orchards above.

23 Tom Leonard purchased the two-acre parcel immediately west of the Herndons in 1986.
24 Mr. Herndon testified that Mr. Leonard utilized the same irrigation system as the Herndons. RP at
25 172. Mr. Herndon also indicated that only one-quarter acre immediately around the house was
being irrigated in 1994. However, Tom Leonard testified that in 1985 and 1986 the entire two acres
was covered by orchard and was therefore irrigated. In 1987 the property was left bare and not
irrigated. Mr. Leonard began watering the property again in 1988 and covered the entire two acres
in 1989 and 1990. In 1991-1993, system problems prevented watering of one-half acre. Mr.
Leonard was joined to the Erickson Orchard claim on February 14, 1994. Court Doc. No. 8972.

1 The Court finds that Tom Leonard enjoys a portion of the water right appurtenant to
2 Allotment No. 1506 and is entitled to a prorata right to irrigate 1.75 acres derivative of the Yakama
3 Nation's reserved right. The place of use is Short Plat 85-139 Lot 2, Parcel Number 181210-22402
4 in the E1/2E1/2 and the W1/2SE1/4 all in the NW1/4NW1/4 of Section 10, T. 12 N., R. 18 E.W.M.
5 Mr. Leonard is entitled to divert a maximum of 6.13 acre-feet per year for irrigation of pasture and
6 lawn. The maximum instantaneous diversion shall be 0.022 cfs based on a 0.0125 cfs per acre duty.
7 The remainder of their right is as confirmed to Erickson Orchards above.

8 David and Ruth Welch purchased 1.6 acres from Erickson Orchard in 1991. Mrs. Welch
9 testified water was used on about half of the property at the time of hearing and that they intended
10 to irrigate the entire parcel that summer. When they purchased the property in 1991, it was bare
11 ground but had been covered with orchard prior to the date of conveyance. The Welch's property is
12 located in the S1/2E1/2NE1/4NE1/4 of Section 9 of Allotment 1506. They are members of the
13 Erickson Water Service and have notified and been billed by the Wapato Irrigation Project for
14 delivery of water.

15 The Court finds that the Welches enjoy a portion of the water right appurtenant to Allotment
16 No. 1506 and are entitled to a prorata right to irrigate 1.4 acres derivative of the Yakama Nation's
17 reserved right. Although they were using water on only 0.8 acres and the parcel was not irrigated at
18 the time of purchase, that lack of use only covered 2.5 years. That does not meet the state
19 requirements for relinquishment that this Court will look to as a guide. See Walton III, at 400.
20 Further, the Welch's demonstrated an intent to continue irrigation of the entire parcel. RP at 177.
21 The place of use is Parcel No. 181209-11405, Lot 2 of Short Plat No. 91-133, in the
22 SE1/4SE1/4NE1/4NE1/4 of Section 9, T. 12 N., R. 18 E.W.M. The Welches are entitled to divert a
23 maximum of 4.9 acre-feet per year for irrigation of pasture and lawn. The maximum instantaneous
24 diversion shall be 0.018 cfs based on a 0.0125 cfs per acre duty. The remainder of their right is as
25 confirmed to Erickson Orchards above.

Douglass and Linda Couette purchased 16.4 acres from Erickson Orchards in May, 1993.
That land is located in NW1/4NW1/4 of Section 10. Mr. Couette testified the property is not
presently being irrigated but he intends to construct a home and grow hay and crops. The land was
covered with weeds and stubble when he purchased the property and that underground pipe and
risers were already installed. The Couettes notified the Wapato Irrigation Project official that they

1 are owners of the property and have paid assessments. They are members of Erickson Water
2 Service.

3 The Court finds that the Couettes enjoy a portion of the water right appurtenant to
4 Allotment No. 1506 and are entitled to a prorata right to irrigate 16.4 acres derivative of the
5 Yakama Nation's reserved right. Although they were not using water on the parcel nor had any
6 been used at the time of purchase, that lack of use only covered 1 year. That does not meet the state
7 requirements for relinquishment that this Court will look to as a guide. See Walton III, at 400.
8 Further, the Couettes demonstrated an intent to continue irrigation of the entire parcel. RP at 177.
9 The place of use is Parcel Number 181210-22408, Lot 2 of Short Plat 92-05 in the
10 E1/2NW1/4NW1/4 of Section 10, T. 12 N., R. 18 E.W.M. The Couettes are entitled to divert a
11 maximum of 57.4 acre-feet per year for irrigation of pasture, crops and lawn. The maximum
instantaneous diversion shall be 0.21 cfs based on a 0.0125 cfs per acre duty. The remainder of their
right is as confirmed to Erickson Orchards above.

12 Marie Erickson Murphy and James Murphy assert ownership of 19 acres of the original 60
13 acres once owned by Erickson Orchards. Based on Marie Murphy's drawing of the property
14 boundaries in DE - 38, the property occupies all of the W1/2NW1/4NW1/4 of Section 10, except
15 for a small parcel owned by Simon Ramirez. Approximately 3 acres of the property is planted in
16 orchard, one acre in buildings and the remainder in alfalfa. In addition, Marie Murphy indicated
17 that she allows up to 30 head of livestock to graze on the 19 acres. The Murphys received the 19
18 acres when the Erickson Orchard corporation dissolved. Although some of the property has been
19 included as a part of a government program that compensates owners for not growing crops, Mrs.
20 Murphy testified the property was being irrigated at the time of hearing and the entire property had
been under irrigation in 1987. Marie Murphy indicated that payments have been made to the
Wapato Irrigation Project for delivery of water to the property.

21 However, when Marie Murphy filed her Motion to be Joined as an Additional Party, the
22 deed attached to that Motion evinces ownership of something less than 19 acres - perhaps more on
23 the order of 10 acres in the NW1/4NW1/4NW1/4 of Section 10. See Motion to Join Additional
24 Parties or Substitute Parties, Doc. No. 8520. Further, it is unclear whether Marie Murphy is
25 representing claims of James Murphy. James Murphy also filed a Motion to Join Additional Parties
but did not participate in the February 14, 1994 hearing.

1 The Court finds that Marie Murphy enjoys a portion of the water right appurtenant to
2 Allotment No. 1506 and are entitled to a prorata right to irrigate 9.75 acres derivative of the
3 Yakama Nation's reserved right. The place of use is the NW1/4NW1/4NW1/4 of Section 10, T. 12
4 N., R. 18 E.W.M. as more specifically set forth in Parcel No. 181210-22003. Ms. Murphy is entitled
5 to divert a maximum of 34.13 acre-feet per year for irrigation of orchard and crops. The maximum
6 instantaneous diversion shall be 0.122 cfs based on a 0.0125 cfs per acre duty. Ms. Murphy shall
7 also be allowed a stock watering right incidental to the irrigation right. The remainder of their right
8 is as confirmed to Erickson Orchards above. The Court notes the SW1/4NW1/4NW1/4 of
9 Section 10 may include land that either Marie or James Murphy own and which may have a water
10 right, but the Court does not have adequate ownership documents to make that finding.

11 Simon and Bonnie Ramirez purchased two acres from James Murphy in 1990. The property
12 is located in the SW1/4NW1/4NW1/4 of Section 10 described as Lot 2 of Short Plat No. 90-115,
13 recorded under Auditor's file No. 2904016, records of Yakima County, Washington and has a
14 Parcel No. 181210-22406. Ms. Marie Murphy testified on behalf of the Ramirezes and stated that
15 the entire 2 acres, minus a house and shed, is under irrigation. The water is used to grow lawn and
16 irrigate pasture. RP at 206. He also allows Ms. Murphy to pasture her goats on the property.

17 The Court finds that the Ramirezes enjoy a portion of the water right appurtenant to
18 Allotment No. 1506 and are entitled to a prorata right to irrigate 1.75 acres derivative of the
19 Yakama Nation's reserved right. The place of use is in the SW1/4NW1/4NW1/4 of Section 10, T.
20 12 N., R. 18 E.W.M. described as Lot 2 of Short Plat No. 90-115, recorded under Auditor's file No.
21 2904016, records of Yakima County, Washington and has a Parcel No. 181210-22406. The
22 Ramirezes are entitled to divert a maximum of 6.13 acre-feet per year for irrigation of pasture, crops
23 and lawn. The maximum instantaneous diversion shall be 0.022 cfs based on a 0.0125 cfs per acre
24 duty. They are also entitled to stock water as an incident of the irrigation right. The remainder of
25 their right is as confirmed to Erickson Orchards above.

Court Claim No. 1205 – Paul and Linda Hart; Danny and Neta Lee
Court Claim No. 2310 – Alice Hart

26 The Harts were substituted as owners for two different claims – Claim Nos. 1205 and 2310.
27 This analysis concerns only Claim No. 1205 for property located on the reservation. The remainder of
28 the claim is addressed in the section below pertaining to off-reservation claims to water rights.

1 Testimony was presented by the Harts in support of their claims on February 11, 1994,
2 beginning at page 3 of the Verbatim Report. The reservation property owned by the Harts is located in
3 Government Lot 9 of Section 1, T. 12 N., R. 18 E.W.M. The property was originally a portion of the
4 land allotted to Ike Isaacs as Allotment No. 2787 and patented to John Olson on August 8, 1918. DE –
5 213 (Chain of Title). Lot 9 consists of 17.65 acres. Id. Danny and Neta Lee acquired ownership of
6 Lot 9 in June, 1972 and in turn conveyed the property to the Harts in April, 1983. Id.

7 According to DE – 8, irrigation was initiated on Allotment No. 2787 in 1915. However, the
8 delivery system at that time was from the Ahtanum Main Canal, which is not the point of diversion
9 described by the claimant. The delivery system is such that water is actually diverted to the Hart’s
10 property to the north and run through a pipe back to the south under Ahtanum Creek for irrigation of
11 the reservation property. Mr. Hart also indicated that to the best of his knowledge the reservation
12 property had always been used for pasture. The Harts provided the Statements of Danny Lee and
13 Erwin Yoerger to demonstrate use of water on the property. Mr. Yoerger’s statement is quite general
14 and indicates the parcel was generally used for pasture. Mr. Lee, a prior owner, states that he watered
15 “pretty much the whole place” from 1972-1983 except for a “marsh area” on the south side of the
16 creek. DE – 271. DE – 69 indicates that Allotment No. 2787 lands were irrigated in 1957, but only
17 that portion located in Section 12. DE -- 69 was compiled by the BIA and is consistent with Mr. Paul
18 Hart’s testimony that he paid no assessments to the Wapato Irrigation Project for water used to irrigate
19 the property. A state water right certificate was issued to Mason L. Kagy as a part of the state court
20 adjudication in State v. Achepohl, Cause No. 18279 (1925). See DOE – 133. That 32-acre right
21 applies to lands in the SW1/4SE1/4 of Section 1, which includes the reservation, lands within
22 Government Lot 9 of Section 1. SE – 94, Ecology’s Investigation Report, shows that 6 acres on the
23 reservation are irrigated with the rest being unirrigable lands.

24 The Court finds the Harts enjoy a right to a proportionate share of the reserved water right of
25 the Yakama Nation as a successor to the lands allotted to Ike Isaacs for irrigation of 6 acres in
Government Lot 9. Based on the evidence, the allottee diverted water from the Wapato Project,
Ahtanum Unit and irrigated the property in Section 1 either at the time the parcel was allotted or
shortly thereafter. Evidence of use of water on the property is provided by the fact that Mr. Mason
Kagy received a certificate from the 1925 Achepohl adjudication for land that included the
reservation property, although the point of diversion differed from the original diversion.
Successive owners continued to beneficially use the water on the property up to the time of the

1 hearing. See DE – 213, Statement of Edwin Yoerger. At some date, the point of diversion was
2 changed to Ahtanum Creek. However, since the right is a federal reserved right, there is no
3 requirement the user comply with state law. Therefore, the Harts are awarded a June 9, 1855
4 prorata water right for irrigation of 6 acres on Allotment No. 2787. They are entitled to a prorata
5 share of available supply to the reservation users with a maximum annual diversion of 26.40 acre-
6 feet based on the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil
7 Cause No. 312. The maximum instantaneous diversion shall be 0.33 cfs based on a 0.0125 cfs per
8 acre duty. The place of use is the west 700 feet of Government Lot 9 of Section 1, T. 12 N., R. 18
9 E.W.M. Period of use shall be April 1 to October 1. The point of diversion is from Ahtanum Creek,
at a point 2350 feet south and 625 feet east from the center of Section 1, on the border of where
Ahtanum Creek divides Government Lots 7 and 9 of Section 1, T. 12 N., R. 18 E.W.M.

10 Court Claim No. 1694 -- John P. and Jo Ann Herke

11 The Herkes presented their claim during a February 7, 1994 hearing as set forth at the Verbatim
12 Report beginning at page 175. The Herkes own property on the Yakama Reservation and are asserting
13 a right to irrigate 23 acres within Government Lots 8 and 9, Section 15, T.12 N., R.16 E.W.M. Mr.
14 Herke acquired the property and all water rights on March 5, 1959, from James and Doris Olson. See
15 DE – 222 (Statutory Warranty Deed). Although the record is not entirely clear, Mr. Herke appears to
16 have testified that the irrigated lands were originally allotted as Allotment No. 964. Mr. Herke
17 submitted no documentary evidence identifying the original allotment number. However, after
18 reviewing other evidence in the record, DE – 240, DE – 69, and DE – 8, the Court has determined that
19 Government Lots 8 and 9 were probably a part of Allotment 965 but possibly part of 964. According
to those records, Allotment No. 964 encompassed Government Lots 5, 6, 11 and 12 of Section 15, T.
12 N., R. 16 E.W.M. Allotment No. 965 was originally allotted to Emma Tomaskin. DE – 240.

20 The history of water use on Allotment No. 965 or Government Lots 8 and 9 is very confusing.
21 According to DE – 8, water was first used on Lot 8 beginning in 1871 – 1885. DE – 240 shows that
22 water use began in 1888 and continued through the time that document was filed in U.S. v. Ahtanum
23 Irrigation District, Civil Cause No. 312 in 1951. However, that water use was on the northernmost part
24 of Lot 8 and although the testimony and evidence is far from clear on any point, the best the Court can
25 ascertain is that the portion now claimed to be irrigated is the southeast portion of Lot 8 and the
northeast portion of Lot 9. DE – 223. Further, DE – 69 makes no mention of Allotment No. 965, nor
does it discuss irrigation of Government Lots 8 or 9, nor are the Olsons, who would have most likely

1 been the owners in 1957 just prior to the Herkes acquisition in 1959, mentioned. Further Mr. Herke
2 asserts that DE – 224, pages 9 and 10 of a document submitted in U.S. v. Ahtanum Irrigation District,
3 Civil Cause No. 312, shows a right was confirmed for the diversion that serves his property. However,
4 the point of diversion claimed in DE – 221 does not match up with that recognized in the excerpt of DE
5 – 224. The point of diversion claimed by Mr. Herke is in the S1/2 of Section 16 which he claims is the
6 “Canal No. 3” recognized in DE – 224. However, Canal No. 3 has its point of diversion in Section 17
7 according to DE -- 224. Mr. Herke indicates that the property had been irrigated at all times prior to
8 his acquisition. DE – 221 at 1. The property is now served by the Herke-Eglin Ditch which flows
9 easterly from its point of diversion until it turns northerly approximately midway through the northern
10 portion of Lot 9. The water is used to irrigate pasture and grow hay and grain. Prior to 1967, Mr.
11 Herke used the water to grow hops.

12 The Court cannot grant a right to the Herkes at this point. The evidence presented is
13 incomplete and too conflicting to establish a chain of title or a historical use. Therefore, the Court
14 cannot determine if the allottee or the subsequent owner put the water to beneficial use with reasonable
15 diligence and that the use continued to the present time. Walton II, 647 F.2d at 50-51. Further, it is
16 unclear which part of Lots 8 and 9 have been irrigated historically. Therefore, should they choose to
17 file an exception to this Report, the Herkes need to provide evidence to trace the ownership and use of
18 water from the time the parcel was allotted and left Indian ownership to the present.

19 Court Claim No. 1245 - Marguerite Jorgensen

20 Testimony was presented by Louis Langell regarding the Jorgensen claim on February 10,
21 1994, at page 76 of the Verbatim Report. The reservation property owned by Ms. Jorgensen is located
22 in the E1/2NW1/4 of Section 12, T. 12 N., R. 18 E.W.M. and consists of approximately 26.78 acres.
23 See Claim No. 1245; testimony of Louis Langell. The property was originally a portion of the land
24 allotted in 1915 to Antoine Skahan, (Allotment No. 2789- SE1/4NW1/4) and Ike Issacs, (Allotment
25 No. 2787 – S1/2NE1/4NW1/4). DE – 240. The two allotments were patented to Antoine Skahan
(April 9, 1951) and Charles Isaacs (January 13, 1918). Claim No. 1245

Water was first used on Allotments 2787 and 2789 in about 1915 and, according to DE-240,
was used on the property through 1951. See also DE --143 (Brooks Report) and DE –150 (Maps
showing development of Ahtanum Unit). As of 1957, Allotment 2787 was comprised of 94.4 acres
of assessable lands with 64.4 acres irrigated. DE – 240. However, DE – 69 shows that 18.3 acres
were irrigated within Allotment No. 2787. Allotment No. 2789 consists of 80 acres with the entire

1 80-acre parcel irrigated from 1915 through 1951. Id. According to DE – 69, only 65.2 out of the
2 entire 80 acres was irrigated. Mr. Langell testified approximately 24-25 acres are irrigated and that
3 those acres have been irrigated dating back the 60-plus years Mr. Langell has been associated with
4 the property. RP at 76. Ecology's investigation report shows that 20.3 acres were irrigated and the
5 property was being irrigated on the day of the investigation. The Court has confirmed a right to the
6 Harts deriving from Allotment No. 2787, but that right concerned 6 acres in Lot 9 of Section 1, T.
7 12 N., R. 18 E.W.M. – leaving 12.3 acres historically irrigated in that allotment and not otherwise
8 accounted for. See DE – 69. The Allotment No. 2787 lands owned by Ms. Jorgensen in the
9 NE1/4NW1/4 of Section 12 would not exceed the 12.3 acres historically irrigated in that allotment.

10 The Court finds that Ms. Jorgensen enjoys a right to a proportionate share of the reserved
11 water right of the Yakama Nation as a successor to the lands allotted to Antoine Skahan and Ike
12 Isaacs. Based on the evidence, the allottees diverted water from the Wapato Project, Ahtanum Unit
13 and irrigated the property now owned by Ms. Jorgensen either at the time the parcel was allotted or
14 shortly thereafter. Successive owners continued to beneficially use the water on the property up to
15 the time of the hearing. Therefore, Ms Jorgensen is awarded a June 9, 1855 prorata water right for
16 irrigation of 24 acres, with a maximum annual diversion of 105.6 acre-feet based on the diversion
17 duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause No. 312. The maximum
18 instantaneous diversion shall be 0.30 cfs based on a 0.0125 per acre duty. The place of use is in the
19 W1/2S1/2NE1/4NW1/4 and the W3/4N3/4N1/2SE1/4NW1/4, EXCEPT the south 220 feet of the west
20 198 feet thereof, all within Section 12, T. 12 N., R. 18 E.W.M. The period of use shall be April 1 to
21 October 1. The point of diversion is from the Ahtanum Main Canal, Wapato Irrigation Project at 100
22 feet north and 300 feet west from the east quarter corner of Section 14, being within the
23 SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

24 Court Claim No. 1018 – Lewis and Joyce Langell

25 The Langells own land on the Yakama Reservation in the NW1/4SE1/4 of Section 12, T. 12
N., R. 18 E.W.M. Mr. Langell is an enrolled member of the Yakama Nation and his claim was
presented during a February 10, 1994 hearing as set forth in the Verbatim Report of Proceedings
beginning at page 71. They own 40 acres and are assessed by the Wapato Irrigation Project for
30.79 acres. The land owned by the Langells was originally allotted to George Eaton as Allotment
No. 3365 in 1910. DE – 240. Mr. Eaton received the patent to the property in 1922. Id. George
Eaton was Mr. Langell's great-great uncle. The property was then sold to Jim Hubbard, who also

1 was an enrolled member of the Yakama Nation. Id. Mr. Hubbard then sold the property to Mr.
2 Langell's grandmother, who was a Yakama Nation member. Id. Finally, Mr. Langell's parents
3 lived on the property beginning around 1934-35, as did Mr. Langell. There was no testimony that
4 the ownership of the parcel ever left Indian ownership. Therefore, no water right could be lost for
nonuse. Walton II, 647 F.2d at 50-51.

5 In terms of water use, irrigation was initiated on the property in 1915 and the land was
6 irrigated through 1951. DE – 240; DE -- 150 (Maps showing development of Ahtanum Unit). DE –
7 69, submitted in the claim of Michael J. Schreiner, shows that George Eaton owned Allotment No.
8 3365 in 1957. That document shows 42.8 acres is the maximum acres irrigated within Allotment
9 No. 3365, some of which is in the NE1/4SW1/4. Mr. Langell indicated that he irrigated
approximately 30 acres and was assessed for 30.79 acres.

10 The Court finds that the Langells enjoy a right to a proportionate share of the reserved water
11 right of the Yakama Nation as a successor to the lands allotted to George Eaton. The allotment
12 never left Indian ownership and is therefore not subject to a non-use analysis. The Langells are
13 awarded a June 9, 1855 prorata water right for irrigation of 30.79 acres and stock watering, with a
14 maximum annual diversion of 135.5 acre-feet based on the diversion duty of 4.4 acre-feet per acre
15 established in U.S. v. Ahtanum, Civil Cause No. 312. The maximum instantaneous diversion shall
16 be 0.385 cfs based on a 0.0125 cfs per acre duty. The place of use is in the NW1/4SE1/4, lying north
17 of Ahtanum Main Canal within Section 11, T. 12 N., R. 18 E.W.M. The period of use shall be April
18 1 to October 1. The point of diversion is from the Ahtanum Main Canal, Wapato Irrigation Project at
100 feet north and 300 feet west from the east quarter corner of Section 14, being within the
SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

19 Court Claim No. 1488 – (Original McMechan claim) Rudy Bossert; Todd and Helga Braman,
20 Melvin and Linda Light, Ronald and Brenda Nichols, Steve Gottlieb, Roy Bennett, John and Karen
21 Krantz, Raymond Dirks, and Gary and Alana Reich
22 Court Claim No. 1917 -- Gary and Margaret King

23 M. H. McMechan filed Court Claim No. 01488 asserting a right for lands within the Yakama
24 Reservation. On June 12, 1992, Todd and Helga Braman, Melvin and Linda Light, Gary and Margaret
25 King, Ronald and Brenda Nichols, Steve Gottlieb, Roy Bennett, John and Karen Krantz, Raymond
Dirks and Gary and Alana Reich were joined to the claim. On August 29, 2000, Rudy Bossert was
substituted for M. H. McMechan for the remaining interest in the claim. The Kings filed Court Claim

1 No. 1917 for land adjoining that described in Court Claim No. 1488. Testimony and evidence was
2 presented on February 14, 1994. Mrs. M. H. McMechan testified.

3 Court Claim No. 01488 claims a right to use 0.66 cfs from April 15 to October 15 to irrigate
4 35.7 acres in the NW1/4SW1/4 of Section 12, T. 12 N., R. 18 E.W.M. The property is located on the
5 Yakama Reservation and water is diverted from the Ahtanum Unit of the Wapato Irrigation Project.
6 Accordingly, a priority date of June 9, 1855 is being asserted. As evidenced by the motions to
7 join/substitute parties, the land has been actively managed since the claim was filed in 1981.

8 The United States allotted a forty-acre parcel to the Wilcox family in approximately 1910. DE
9 - 240. Ruby Wilcox Parks entered into a contract to sell the 36-acre property to Frigid Fruit Company,
10 a corporation owned by the McMechans in 1964, reserving four acres for her daughter. DE - 237. The
11 corporation quitclaimed its ownership of the 36-acre property to M. H. and Florence McMechan in
12 1982. DE - 236. M. H. McMechan then conveyed the property to Florence McMechan in November,
13 1987, however Court Claim 1488 remained in M. H. McMechan's name. At the time of the hearing,
14 Mrs. McMechan still owned 20.7 acres. However, in 2000 that land was sold to Rudy Bossert. The
15 property has primarily been used for growing orchard. DE - 235.

16 In terms of water use, DE -- 240, the tabulation of water rights incorporated in the Agreed
17 Statement of Facts and filed in 1951 during United States v. Ahtanum Irrigation District, Civil Cause
18 No. 312, indicates that water was used on 35.7 acres from 1915 - 1951. In the Land Contract between
19 Ruby Wilcox Parks and Frigid Fruit Co, Inc., (DE-237), the following is recited:

20 The property herein described consists of a highly developed orchard property and the
21 purchaser agrees to care for the same in the customary approved manner and then used and in
22 force in the Yakima area and to properly prune, spray, cultivate and irrigate the same.

23 That statement evidences the condition of the property as of 1964, and would stretch back a
24 considerable time given the statement that the "property herein described consists of a highly
25 developed orchard property." The provision also indicates that the purchaser is to care for the property
in the same fashion. Further, Mrs. McMechan testified that the property had been irrigated prior to
1981 dating back to the time of the contract referenced above. RP at 36. She also provided a
photograph and drew a line around the entire 36-acre parcel. DE - 244. All of the property not
covered by structures appears to be irrigated with a majority of the property still covered with orchard.
Finally, DE - 239 are water user ledgers that were obtained from the Wapato Irrigation Project. They
show that Mrs. Parks was assessed for water deliveries for irrigation of 35.7 acres from 1926-1950 and

1 that those assessments were paid. Additionally, DE—8 and DE – 49 are maps submitted by the United
2 States that demonstrate the property was irrigated from 1915-1931. See also RP at 42.

3 The Court finds that the allottee, Mrs. Parks irrigated 35.7 acres after the land was patented to
4 her family in 1911 until 1964. The McMechans, or a corporation they owned, are the successors to
5 Mrs. Wilcox and they continued to irrigate the 35.7 acres until 1981. Mr. Bossert now owns 20.7 acres
6 that continued to be irrigated from 1981 to the time of the hearing. Accordingly, Mr. Bossert shall be
7 awarded a prorata right for the irrigation of 20.7 acres, being a portion of the Yakama Nation's water
8 right. 18.7 of the 20.7 acres is located in the E1/2NW1/4SW1/4 except the N 540 feet of the E 360 feet
9 thereof and also a narrow strip extending 200 feet into the W1/2NW1/4SW1/4 except for the southern
10 most 600 feet all in Section 12, T. 12 N., Range 18 E.W.M. The other two acres, which are also in
11 orchard, are located in the SW corner of the NW1/4SW1/4 Section 12, T. 12 N., Range 18 E.W.M. The
12 irrigation season shall be April 1- October 1. The point of diversion from the Ahtanum Main Canal
13 shall be 100 feet north and 300 feet west from the east quarter corner of Section 14, being within the
14 SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M. Absent a specific claim for an annual
15 quantity, this Court will revert to the Agreed Statement of Facts for Civil Cause No. 312 wherein a 4.4
16 acre feet per acre diversionary right was accepted by all parties. Mr. Bossert enjoys a prorata annual
17 diversion right of up to 91.08 acre feet from the Ahtanum Main Canal, Wapato Irrigation Project with a
18 maximum instantaneous diversion of 0.259 cfs based on a 0.0125 cfs per acre duty.

19 The other people joined to the claim own portions of the remaining 15 acres as follows: Todd
20 and Helga Braman, Melvin and Linda Light, Gary and Margaret King, Ronald and Brenda Nichols,
21 Steve Gottleib, Roy Bennett, John and Karen Krantz, Raymond Dirks, and Gary and Alana Reich.

22 Todd and Helga Braman purchased 0.7 acres from Mrs. McMechan in June, 1984. Their
23 property is located at the southern boundary of the original parcel beginning approximately 300 feet
24 from the Southwest corner and running easterly approximately 130 feet, then running northerly
25 approximately 287 feet except for an area in the southeast corner separated by a canal and totaling .15
acres, all within Section 12, T. 12 N., R. 18 E.W.M. Mr. Braman testified that they irrigate a 1/3-acre
lawn and approximately 12 fruit trees. The Bramans have constructed a house on the property. The
property was in mature orchard when purchased by the Bramans in 1984.

The Court finds that since 1984, the Bramans have continued to use water from the Ahtanum
Canal, Wapato Irrigation Project to irrigate 0.5 acres and that shall be the extent of their right. The
place of use shall be approximately 300 feet from the Southwest corner and running easterly

1 approximately 130 feet, then running northerly approximately 287 feet except for an area in the
2 southeast corner separated by a canal and totaling .15 acres, all within Section 12, T. 12 N., R. 18
3 E.W.M.. The maximum of the Braman's right shall be a prorata share of the Yakama Nation's
4 reserved right up to a maximum diversion of 2.2 acre-feet on an annual basis. The maximum
5 instantaneous diversion shall be 0.001 cfs based on a 0.0125 cfs per acre duty. Every other aspect of
6 the Bramans right shall be as outlined for the overall McMechan/Bossert right.

7 Melvin and Linda Light purchased the lot north of the Bramans and also the lot north of that, all
8 three having approximately the same east-west width. The most northerly lot is approximately 0.6
9 acres in size, has a home that was the original McMechan home and was purchased by the Lights in
10 1990. The lot between the Light's home and the Bramans has no structures on it, is approximately 0.8
11 acres in size and was purchased in 1985.

12 Mr. Light testified to irrigating lawn, shrubbery and 5 fruit trees on the residential lot. The
13 second lot is planted with orchard grass and irrigated for fire prevention. Mr. Light testified to not
14 being able to get a reliable quantity of water for irrigation of the second lot, thereby preventing him
15 from growing any other crops.

16 The Court finds that Mr. and Mrs. Light enjoy a water right that was part of the Wilcox
17 allotment and are entitled to a prorata right to irrigate 1.25 acres derivative of the Yakama Nation's
18 reserved right. The property is located in the E1/2SW1/4NW1/4SW1/4, except for the lot immediately
19 south owned by the Bramans that is approximately 130 feet by 287 feet, all within Section 12, T. 12 N.,
20 R. 18 E.W.M. The maximum of the Light's diversionary right on an annual basis is 5.5 acre feet. The
21 maximum instantaneous diversion shall be 0.02 cfs based on a 0.0125 cfs per acre duty. The
22 remainder of their right is as confirmed to McMechan/Bossert above.

23 Wayne and Carol Worsham purchased 2 acres from Mrs. McMechan in 1991 after leasing the
24 property beginning in 1989 and in 1996 sold that property to Steve Gottlieb who was substituted for the
25 Worshams. The property lies, for the most part, directly west from that owned by Mr. and Mrs. Light,
and would be located in the NW1/4SW1/4NW1/4SW1/4 of Section 12. Mr. Worsham testified to
irrigating 175 apple trees, over a hundred trees, arbor vitae and shrubs and approximately 20,000
square feet of grass. He utilizes a pipe and sprinkler system for the entire irrigated portion. There is
one large building located on the property that is used for a residence. DE - 244.

The Court finds that Mr. Gottlieb enjoys a water right that was part of the Wilcox allotment and
is entitled to a prorata right to irrigate 1.80 acres derivative of the Yakama Nation's reserved right. The

1 property is located in the NW1/4SW1/4NW1/4SW1/4 of Section 12, T. 12 N., R. 18 E.W.M. Mr.
2 Gottlieb is entitled to divert a maximum 7.92 acre-feet per year for lawn and garden purposes as well
3 as orchard. The maximum instantaneous diversion shall be 0.023 cfs based on a 0.0125 cfs per acre
4 duty. The remainder of their right is as confirmed to McMechan/Bossert above.

5 Gary and Alana Reich purchased one acre from Mrs. McMechan in April 7, 1984. The
6 property lies directly north of the Gottlieb property along the west boundary of the McMechan
7 property. The Reich's use the irrigation water to irrigate lawn and garden and some shrubbery. They
8 have a house and one outbuilding on the property.

9 The Court finds that the Reichs enjoy a water right that was part of the Wilcox allotment and
10 are entitled to a prorata right to irrigate .75 acre derivative of the Yakama Nation's reserved right. The
11 property boundary begins at about 390 feet south from the northwest corner of the NW1/4SW1/4 of
12 Section 12, T. 12 N., R. 18 E.W.M. and runs southerly approximately 150 feet and easterly 300 feet.
13 The Worshams are entitled to divert a maximum of 3.3 acre-feet per year for lawn and garden. The
14 maximum instantaneous diversion shall be 0.01 cfs based on a 0.0125 cfs per acre duty. The
15 remainder of their right is as confirmed to McMechan/Bossert above.

16 John and Karen Krantz purchased one acre from Mrs. McMechan on January 3, 1983. At that
17 time, there were approximately 60 fruit trees on the property which Mr. and Mrs. Krantz continued to
18 irrigate for three years until they constructed a home, removing all but seven of the fruit trees. They
19 continue to use the irrigation water for the fruit trees as well as lawn and garden. Approximately one-
20 quarter acre is undeveloped. Mrs. Krantz testified that she estimates that approximately three-quarters
21 of the acre is irrigated.

22 The Court finds that Mr. and Mrs. Krantz enjoy a water right that was part of the Wilcox
23 allotment and are entitled to a prorata right to irrigate 0.75 acre derivative of the Yakama Nation's
24 reserved right. The property boundary begins at about 234 feet south of the northwest corner of the
25 NW1/4SW1/4 of Section 12, T. 12 N., R. 18 E.W.M. and runs southerly approximately 145 feet and
easterly 300 feet. The Krantzes are entitled to divert a maximum 3.3 acre-feet per year for irrigation of
lawn and garden as well as fruit trees. The maximum instantaneous diversion shall be 0.01 cfs based
on a 0.0125 cfs per acre duty. The remainder of their right is as confirmed to Bossert/McMechan
above.

Richard M. Dirks, Jr. purchased approximately 15/8 acres from the Albin J. Hansons in 1990,
who had purchased it from Mrs. McMechan sometime before. Mr. Dirks estimates that approximately

1 11/3 acres, including 2 fruit trees, raspberries and blueberries and lawn and garden are currently
2 irrigated. Mr. Dirks testified that prior to the building of the house in the latter half of the 1980's, the
3 property was covered in orchard. Toward that proof, he testified that a concrete, round weir box is
4 located on the northwest corner of his property.

5 The Court finds that Mr. Dirks enjoys a water right that was part of the Wilcox allotment and is
6 entitled to a prorata right to irrigate 11/2 acres derivative of the Yakama Nation's reserved right. The
7 property boundary begins at the northwest corner of the NW1/4SW1/4 of Section 12, T. 12 N., R. 18
8 E.W.M. and runs southerly approximately 234 feet, easterly 300 feet, then northerly 234 feet and west
9 300 feet to the point of beginning. The Dirks are entitled to divert a maximum 5.85 acre-feet per year
10 for irrigation of lawn and garden. The maximum instantaneous diversion shall be 0.02 cfs based on a
11 0.0125 cfs per acre duty. The remainder of their right is as confirmed to Bossert/McMechan above.

12 Sometime between 1981 and 1992, Gary and Margaret King purchased five acres of property
13 from Mrs. McMechan. No specific date of purchase was included with the testimony. Mr. King
14 testified to irrigating apples on the five acres with water from the main Ahtanum Canal, Wapato
15 Irrigation Project. There are no buildings or structures on that parcel. DE - 244.

16 The Court finds that the Kings enjoy a water right that was part of the Wilcox allotment and are
17 entitled to a prorata right to irrigate 5 acres derivative of the Yakama Nation's reserved right. The
18 property boundary begins at the southeast corner of the NW1/4SW1/4 of Section 12, T. 12 N., R. 18
19 E.W.M. and runs northerly approximately 600 feet and westerly 360 feet, thence southerly 600 feet and
20 east 360 feet to the point of beginning. The Kings are entitled to divert a maximum 22 acre-feet per
21 year for that portion of the property in the NW1/4SW1/4 of Section 12. The maximum instantaneous
22 diversion shall be 0.063 cfs based on a 0.0125 cfs per acre duty. The remainder of their right is as
23 confirmed to Bossert/McMechan above.

24 In addition to the five acres that the Kings purchased from Mrs. McMechan, they also acquired
25 a parcel in the same 40-acre tract that was originally allotted to the Wilcox family. He owns over 4
acres of property for which a right is asserted under Court Claim No. 1917. The McMechans acquired
35.7 of the 40 acre tract from Ruby Wilcox Parks and the remaining 4.3 acres was conveyed to Melissa
Parks, Ruby Wilcox Parks' daughter. Mrs. McMechan testified that the 4.3 acres eventually owned by
Melissa Parks was planted in cherries when the McMechans acquired the remainder of the 40-acre tract
in 1964. She also indicated that the trees were bearing and therefore on the property at least 10-12 years
prior to 1964 and were irrigated from the Ahtanum main canal. The Kings acquired the 4.3 acres from

1 Melissa Parks in 1976 and have diverted water from the Ahtanum Main Canal, Wapato Irrigation
2 Project for irrigation purposes since that time. There appears to be a small building in the southeast
3 corner of the property. DE – 244.

4 The Court finds that the Kings enjoys a water right that was part of the Wilcox allotment and
5 are entitled to a prorata right to irrigate 4.15 acres derivative of the Yakama Nation's reserved right.
6 The property boundary begins at the northeast corner of the NW1/4SW1/4 of Section 12, T. 12 N.,
7 R. 18 E.W.M. and runs southerly approximately 500 feet and westerly 360 feet, thence northerly
8 500 feet and easterly 360 feet. The Kings are entitled to divert a maximum of 18.26 acre-feet per
9 year for that portion of the property in the NW1/4SW1/4 of Section 12, with a maximum
10 instantaneous diversion of 0.052 cfs based on a 0.0125 cfs per acre water duty.

11 Roy Bennett did not appear at the evidentiary hearing, nor was there any evidence offered in
12 support of the portion of the claim for his property. Lacking a record to show that beneficial use of
13 the water has continued, the Court cannot confirm a water right to Mr. Bennett and the right is
14 herein DENIED.

15 Ronald and Brenda Nichols were joined to the original McMechan claim at one time.
16 However, the Nichols no longer own any of the land included in Claim No. 1488 as it was
17 reacquired by Mrs. McMechan prior to the February 14, 1994 hearing. RP at p. 44-45; DE-232
18 (Notice to Internal Revenue Service of Intention to Forfeit Real Estate Contract). Any right claimed
19 by the Nichols is hereby DENIED.

20 Court Claim No. 2181 – Thomas and Margaret McNamara; Lawrence Kunkel; Myrtle Green;
21 Louise and Rocky Willette
22 Claim No. 1905 -- Gary and Diane Miner
23 Claim No. 1044 – Rodney and Sally Niemi

24 These claimants own property in the NW1/4NW1/4 of Section 11, T. 12 N., R. 18 E.W.M.
25 The property was originally allotted to James Tee-i-as as Allotment No. 947 and patented to E. R.
Beckett in 1919. DE – 162 (Patent). The McDougalls owned the entire allotment, including lands
in the NE1/4NE1/4 of Section 10 in T. 12 N., R. 18 E.W.M., in 1957. DE – 164 (Deed); DE – 69.
The allotment began to be subdivided in the early 1970's. See DE – 168 (Deed).

In terms of water use, Allotment No. 947 was initially irrigated between 1909 and 1913. DE
– 8 (U.S. Exhibit 21, 1915 Map filed pursuant to Pre-trial Order No. 10 depicting the development
of Ahtanum Irrigation System). DE – 240 indicates that the entire 80 acres was irrigated through

1 1951, including the 40 acres in the NW1/4NW1/4 of Section 11. DE – 69 shows that 73.3 acres
2 was the maximum irrigated as of 1957.

3 Of the various landowners in the NW1/4NW1/4 of Section 11 that are successors to any
4 rights held by the original allottee, the following claimants appeared at the hearing: Gary and Diane
5 Miner, Claim 1905; Louise and Rocky Willette (on their own behalf as well as that of Lawrence
6 Kunkel), Claim 2181; and, Rodney and Sally Niemi, Claim No. 1044. Testimony was taken on
7 February 8, 1994. See Report of Proceedings beginning at page 51.

8 Gary and Diane Miner own the SW1/4NW1/4NW1/4 of Section 11 with Parcel No. 181211
9 – 22007. They acquired the property in approximately 1990 and testified to irrigation of “a little
10 over 8 acres.” They are assessed for 9.55 acres by the Wapato Irrigation Project. Mrs. Miner
11 testified that there was evidence of irrigation at the time the property was purchased and
12 investigators for Ecology noted evidence of growing alfalfa plants and stubble. SE – 107. Mrs.
13 Miner testified that she agreed with Ecology’s Investigation Report. SE – 107. RP at 56.
14 According to that report, 9 acres have been irrigated. She also indicated that they first irrigated
15 when they purchased the property, but have not been able to raise a crop because of a lack of water.

16 The Court finds that Gary and Diane Miner enjoy a right to a prorata share of the reserved
17 water right of the Yakama Nation as a successor to the lands allotted to James Tee-i-as. Based on
18 the evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and irrigated the
19 property now owned by the Miners either at the time the parcel was allotted or shortly thereafter.
20 Successive owners continued to beneficially use the water on the property up to the time of the
21 hearing. Therefore, the Miners are awarded a June 9, 1855 prorata water right for irrigation of 8.5
22 acres and stock watering, with a maximum annual diversion of 37.4 acre-feet based on the diversion
23 duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause No. 312. The maximum
24 instantaneous diversion shall be 0.106 cfs based on a 0.0125 cfs per acre duty. The place of use is
25 Parcel No. 181211-22007, located in the SW1/4NW1/4NW1/4 of Section 11, T. 12 N., R. 18
E.W.M. The point of diversion is the lower Ahtanum Canal at 750 feet south and 700 feet west
from the east quarter corner of Section 7, being within the SW1/4NE1/4SE1/4 of Section 7, T. 12
N., R. 18 E.W.M. The period of use shall be April 1 to October 1.

Claim No. 2181 involves lands owned now by Rocky and Louise Willette and Lawrence
Kunkel. Thomas and Margaret McNamara were the prior owners of the entire parcel which was
described as the East 330 feet of the SW1/4NW1/4NW1/4, EXCEPT the South 237.8 feet of the

1 East 230 feet thereof, and EXCEPT the South 180 feet thereof all within Section 11, T. 12 N., R. 18
2 E.W.M. Myrtle Greene (Court Doc. No. 4109) and Lawrence Kunkel (Court Doc. No. 4107) have
3 been joined to the claim. The Willettes are successors to the claim of Myrtle Greene. DE – 170.
4 The McNamaras were successors to the McDougals. DE – 168. The McNamaras were assessed for
5 a total of 3.33 acres by the Wapato Irrigation Project. DE – 172 (Water User Ledger). It appears
6 that the Willettes now own approximately 2.17 acres and Mr. Kunkel 1.19 acres of that total. DE –
7 160 (Short Plat Map). The Willettes purchased the property in 1991 and Mr. Kunkel was joined to
8 the claim in November, 1988. Mr. Willette appeared at the hearing and testified on behalf of his
9 claim and briefly in regard to that of Lawrence Kunkel. Mr. Willette requested confirmation of a
10 right for seasonal irrigation of 2.17 acres of orchard and pasture and stock watering.

11 In terms of water use, the Court incorporates the discussion above regarding the record of
12 use through 1957 for Allotment No. 947. Mr. Willette included copies of water ledger information
13 showing the McNamaras were assessed for 3.33 acres. DE – 172. Mr. Willette also submitted
14 photographs depicting the use of water on his property that included a developed sprinkler system.
15 DE – 180 -182. The photos also show fairly matured apple trees on the property. DE – 178.

16 Lawrence Kunkel owns the remainder of the original McNamara claim consisting of
17 approximately 1.19 acres. DE – 160. Although he did not participate at the hearing Mr. Kunkel
18 had requested Mr. Willette to ask the Court to adjudicate the Kunkel right with the Willette right
19 since they evolved from the identical preceding landowner. However, the only statement regarding
20 actual water use since 1957 is contained in Ecology's Investigation Report where it notes that
21 Mr. Kunkel was irrigating .25 acres of pasture. SE – 103. Absent specific testimony regarding
22 recent use of water, the Court must rely on the information in the Investigation Report.

23 The Court finds that Rocky and Louise Willette and Lawrence Kunkel enjoy a right to a
24 prorata share of the reserved water right of the Yakama Nation as a successor to the lands allotted to
25 James Tee-i-as. Based on the evidence, the allottee diverted water from the Wapato Project,
Ahtanum Unit and irrigated the property now owned by the Willettes and Mr. Kunkel either at the
time the parcel was allotted or shortly thereafter. Successive owners continued to beneficially use
the water on the property up to the time of the hearing. Therefore, the Willettes are awarded a
June 9, 1855 prorata water right for irrigation of 2 acres and stock water, with a maximum annual
diversion of 8.8 acre-feet based on the diversion duty of 4.4 acre-feet per acre established in U.S. v.
Ahtanum, Civil Cause No. 312. The maximum instantaneous diversion shall be 0.025 cfs based on

1 a 0.0125 cfs per acre duty. The place of use for the Willette's right is Parcel No. 181211-22402, Lot
2 2 of Short Plat No. 84-110, located in the N1/2E1/2 of the SE1/4NW1/4NW1/4 of Section 11, T. 12
3 N., R. 18 E.W.M. SE - 103 (Investigation Report). Lawrence Kunkel is confirmed a right to
4 irrigate .25 acres with a maximum annual diversion of 1.1 acre-feet per acre, 0.003 cfs. The place
5 of use of Mr. Kunkel's right is the north 225 feet of the south 495 feet of the east 230 feet of the
6 SE1/4NW1/4NW1/4 of Section 11, T. 12 N., R. 18 E.W.M. The point of diversion is the lower
7 Ahtanum Canal at 750 feet south and 700 feet west from the east quarter corner of Section 7, being
8 within the SW1/4NE1/4SE1/4 of Section 7, T. 12 N., R. 18 E.W.M. The period of use shall be
9 April 1 - October 1.

10 Rodney and Sally Niemi purchased 3.7 acres in the W1/2NW1/4NW1/4NW1/4 of Section
11 11, T. 12 N., R. 18 E.W.M. in August, 1978. The property was part of Allotment No. 947 that was
12 owned by R.L. McDougall in 1956. Mr. Niemi testified that he irrigated 2.5 acres from 1979 -
13 1986 to raise alfalfa. The land was not irrigated in 1987 and other years when water was
14 insufficient to allow the Niemis to grow hay profitably. The water is supplied by the Lower
15 Ahtanum Canal, Wapato Irrigation Project through a 6-inch buried pipeline which runs from the end
16 of the ditch to his property. The property is then rill irrigated.

17 The Court finds that Rodney and Sally Niemi enjoy a right to a prorata share of the reserved
18 water right of the Yakama Nation as a successor to the lands allotted to James Tee-i-as. The allottee
19 diverted water from the Wapato Irrigation Project, Ahtanum Unit and irrigated the property now
20 owned by the Niemis either at the time the parcel was allotted or shortly thereafter. Successive
21 owners continued to beneficially use the water on the property up to the time of the hearing.
22 Therefore, the Niemis are awarded a June 9, 1855 prorata water right for irrigation of 2.5 acres, with
23 a maximum annual diversion of 11 acre-feet based on the diversion duty of 4.4 acre-feet per acre
24 established in U.S. v. Ahtanum, Civil Cause No. 312. The instantaneous quantity is 0.03 cfs based
25 on 0.0125 cfs per acre duty. The place of use is the W1/2NW1/4NW1/4NW1/4 of Section 11, T. 12
N., R. 18 E.W.M. The point of diversion is the lower Ahtanum Canal at 750 feet south and 700 feet
west from the east quarter corner of Section 7, being within the SW1/4NE1/4SE1/4 of Section 7, T.
12 N., R. 18 E.W.M. The period of use shall be April 1 to October 1.

1 Claim No. 0863 -- Anna Marie and Paul Morton
2 Claim No. 7621 -- Charles and Sharon G. Vetsch

3 So as to avoid duplication of recitation of history, along with the fact that testimony was
4 provided for the Vetsch claim at the same time the Morton's claim was presented, the Court has
5 combined analysis and decision for both claims in this section. The Vetsches also own land north of
6 Ahtanum Creek within the area covered by the Ahtanum Irrigation District. That land will be
7 addressed separately in this report.

8 The Morton claim was presented to the Court on February 9, 1994 as set forth in the Verbatim
9 Report beginning at page 173. The Mortons own three parcels on the Yakama Reservation that were
10 referred to during trial as the Home Place, the James Place and the Old Cherries Block. The Home
11 place was originally comprised of Lots 5, 6 and 8, Section 8, T. 12 N., R. 18, E.W.M. and was
12 originally allotted to Sappeouke as Allotment No. 944. DE - 124 (Patent). The patent issued to James
13 S. Morton on June 18, 1920, although testimony established that the Mortons were on the property
14 prior to the date the patent issued. Mr. Morton eventually sold Lot 8, consisting of approximately 37.8
15 acres, to the Yakima Trust Company who then conveyed it to the Vetsch family in 1933. DE - 133; DE
16 - 135. The James Place was purchased by Carrel J. Morton from the descendants of Andrew Foster in
17 October, 1967. DE - 122 (Deed). The James Place was originally allotted to Andrew Foster as
18 Allotment No. 3151, with 56.5 irrigable acres, and is located in the SW1/4NE1/4 of Section 17, T. 12
19 N., R. 18 E.W.M. The patent ultimately issued to Issac Pue. Id. The Old Cherries Block was
20 purchased by Carrel J. Morton from Julia Seelatsee Sam on November 15, 1956. DE - 123 (Deed).
21 The Old Cherries Block was originally allotted to Julia Seelatsee as Allotment No. 2380 and is located
22 in the NE1/4NE1/4 of Section 17, T. 12 N., R. 18 E.W.M. DE - 123 (Deed).

23 According to DE - 8 (Sheet Index of Development of Ahtanum Irrigation System), submitted
24 in support of the claim of Robert Ball, water use on the Home Place was initiated in two periods. Lots
25 5 and 6 and approximately one-half of Lot 8 were irrigated from the Lower Canal beginning in 1886 -
1895. DE - 240 is in accord, and shows that water use was initiated in two stages on the Home Place
beginning in 1893. DE - 240 also establishes that 75 total acres were irrigated through 1951. DE - 69
indicates that as of 1957, 67.5 acres were irrigated on lands referred to as the Home Place - 33.1 acres
by the Mortons and 34.4 acres by the Vetsch family. The Home Place was initially used by the
Mortons as a dairy and for orchard in approximately 1917 - 1918. In the 1920's, 3-4 acres were
utilized for growing nursery plants. In the 1930's, when the Vetsch family acquired Lot 8, the parcel

1 was equally divided, half in orchard and half in grain. The Vetsch family used the property to grow
2 grain, hay and orchard, and raised up to 40 head of cattle. The property is still used to grow hay, grain
3 and pasture and raise cattle. Approximately 31-32 acres is being used for those purposes at this time.

4 Testimony of Ralph Saunders, February 7, 1994 RP at p. 105.

5 In terms of water use on the Old Cherries Block (Allotment No. 2380), irrigation began in 1908
6 or 1909, and 32.5 acres was irrigated through 1951. DE - 240; DE - 8. DE - 69 establishes that as of
7 1957, 34 acres were irrigated, primarily in pasture and hay. According to Paul Morton, 34 acres are still
8 being irrigated.

9 In terms of water use on the James Place or Allotment No. 3151, irrigation began between 1896
10 and 1908, or in 1909. See DE - 240; DE - 8. According to DE - 240, 56 acres were irrigated from
11 1909 - 1951. DE - 69 shows that 15.6 acres of the allotment had ever been irrigated and that none
12 were irrigated in 1957. The Mortons acquired the property in 1967 and planted it entirely in orchard
13 within one year. The Court notes that it granted a water right for 39 acres above to Robert Ball that
14 involved a portion of Allotment No. 3151.

15 The Court finds that the Mortons enjoy a right to a proportionate share of the reserved water
16 right of the Yakama Nation as a successor to the lands allotted to Sappeouke, Andrew Foster, and
17 Julia Seelatsee. Based on the evidence, the allottees or their immediate successors diverted water
18 from the Wapato Project, Ahtanum Unit and irrigated the property either at the time the parcel was
19 allotted or shortly thereafter. As to Allotment No. 944A, the Court finds that the Mortons are
20 awarded a June 9, 1855 prorata water right for irrigation of 33.1 acres and stock water and are
21 entitled to a maximum annual diversion of 145.64 acre-feet. The maximum instantaneous diversion
22 shall be 0.414 cfs. As to Allotment No. 2380, the Court finds the Mortons are awarded a June 9,
23 1855 prorata water right for irrigation of 34 acres and stock water and are entitled to a maximum
24 annual diversion of 149.6 acre-feet. The maximum instantaneous diversion shall be 0.425 cfs. As to
25 Allotment No. 3151, the Court finds the Mortons are awarded a June 9, 1855 prorata water right for
irrigation of 15.6 acres and stock water and are entitled to a maximum diversion of 68.64 acre-feet.
The maximum instantaneous diversion shall be 0.195 cfs. Although the Allotment No. 3151 lands
were not being irrigated in 1957, there is no evidence that these lands were not irrigated for any
significant period of time. Similarly, under the Walton II standard, this Court is unable to confirm a
water right for any acreage not irrigated by the allottee or successors with reasonable diligence.
According to DE - 69, 15.6 acres were the maximum that had ever been irrigated on the allotment.

1 All three rights are based on the water duty of 4.4 acre-feet per acre established in U.S. v.
2 Ahtanum, Civil Cause No. 312 and 0.0125 cfs per acre. The place of use is Government Lots 5 and
3 6 in Section 8 and the NE1/4NE1/4 and the SW1/4NE1/4 of Section 17, all lying above the Main
4 Canal, Wapato Irrigation Project, all within T. 12 N., R. 18 E.W.M. The period of use shall be April
5 1 to October 1. The points of diversion are from the Ahtanum Main Canal, Wapato Irrigation Project
6 at 100 feet north and 300 feet west from the east quarter corner of Section 14, being within the
7 SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M. and the Ahtanum Lower Canal a 750 feet
8 south and 700 feet west from the east quarter corner of Section 7, being within the SW1/4NE1/4SE1/4
9 of Section 7, T. 12 N., R. 18 E.W.M.

10 The Court finds the Vetsches enjoy a right to a proportionate share of the reserved water right
11 of the Yakama Nation as a successor to the lands allotted to Andrew Foster. The allottee diverted
12 water from the Wapato Project, Ahtanum Unit and irrigated the parcel either at the time the parcel
13 was allotted or shortly thereafter. Successive owners continued to beneficially use the water up to
14 the time of the hearing. Therefore, the Vetsches are awarded a June 9, 1855 prorata water right for
15 irrigation of 32 acres and stock water on Allotment No. 944. They are entitled to a maximum annual
16 diversion of 140.8 acre-feet based on the diversion duty of 4.4 acre-feet per acre established in U.S.
17 v. Ahtanum, Civil Cause No. 312. The maximum instantaneous diversion shall be 0.4 cfs based on a
18 0.0125 cfs per acre duty. The place of use is Government Lot 8 of Section 8, T. 12 N., R. 18 E.W.M.
19 The period of use shall be April 1 to October 1. The points of diversion are from the Ahtanum Main
20 Canal, Wapato Irrigation Project at 100 feet north and 300 feet west from the east quarter corner of
21 Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M and the
22 Ahtanum Lower Canal at 750 feet south and 700 feet west from the east quarter corner of Section 7,
23 being within the SW1/4NE1/4SE1/4 of Section 7, T. 12 N., R. 18 E.W.M.

24 Court Claim No. 1240 – Vernon and Dorothy Mondor

25 The Mondors presented their claim on February 7, 1994 as set forth in the Verbatim Report
beginning at page 204. The Mondors own property on the Yakama Reservation in the SW1/4SE1/4
and Government Lot 9 within Section 7, T. 12 N., R. 18 E.W.M. The Mondors acquired the
property in 1951 from Abigail and Clyde Wallace. DE – 229 (Deed). The parcel was originally
allotted to Pe-yea Yap-wish-met as Allotment No. 933. DE – 240; DE – 233 (Recapitulation of
Ownerships and Final Assessable Acreages – Ahtanum Irrigation Project Established By Notice In
Federal Register).

1 Irrigation of portions of Allotment No. 933 occurred as early as 1870. DE – 229
2 (Development of Ahtanum Irrigation System; Sheet Index of Map). According to DE – 240,
3 irrigation on the allotment, which consisted of 80.5 total irrigated acres, continued through 1951.
4 At some point, the ownership of the allotment split and as of 1957, the Mondors owned one section
5 and W. A. Knight owned the remainder of the original Allotment No. 933. DE – 233
6 (Recapitulation of Ownerships). In 1957, the parcel owned by the Mondors included 42.7 acres that
7 had been irrigated and were being irrigated as of that date. DE – 233. Ralph Saunders testified on
8 behalf of the Yakama Nation that, based on his review of aerial photographs, the Mondors had
9 irrigated 31.3 acres in 1939, 35.3 acres in 1979 and 35.7 acres in 1991. At the time of hearing, Mr.
10 Mondor claimed to irrigate 42 acres: 23 acres of hay, approximately 6 acres in orchard and the
11 remaining 13 acres in pasture. Mr. Mondor also testified to watering up to 20 head of cattle.

12 The Court finds that the Mondors enjoy a right to a proportionate share of the reserved water
13 right of the Yakama Nation as a successor to the lands allotted to Pe-Yea Yap-wish-met. Based on
14 the evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and irrigated the
15 property in Section 7 either at the time the parcel was allotted or shortly thereafter. Successive
16 owners continued to beneficially use the water on the property up to the time of the hearing.
17 Therefore, the Mondors are awarded a June 9, 1855 prorata water right for irrigation of 42 acres and
18 stock water on Allotment No. 933. They are entitled to a maximum annual diversion of 184.8 acre-
19 feet based on the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil
20 Cause No. 312. The maximum instantaneous diversion shall be 0.525 cfs based on a 0.0125 cfs per
21 acre duty. The place of use is within the SW1/4SE1/4 and Government Lot 9 of Section 7, T. 12 N.,
22 R. 18 E.W.M. The period of use shall be April 1 to October 1. The point of diversion is from the
23 Ahtanum Main Canal, Wapato Irrigation Project at 100 feet north and 300 feet west from the east
24 quarter corner of Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16
25 E.W.M.

Court Claim No. 8349 – Olen & Elenore Nichols

26 The Nichols own land on the Yakama Reservation in the N1/2NW1/4 and the
27 N1/2S1/2SW1/4NW1/4 of Section 12, T. 12 N., R. 18 E.W.M. The claim was presented on
28 February 10, 1994 in the Verbatim Report of Proceedings beginning at page 76. They claim a right
29 to divert water to irrigate 24 acres in the areas described above with 19.5 acres being located in the
30 N1/2NW1/4. Ecology's Investigation Report reveals that the Nichols own 23.6 acres with 23 acres

1 irrigated. The land owned by the Nichols was originally allotted to Joseph Skahan as Allotment No.
2 1951 in 1894. DE – 240. As of 1957, the land was still in trust status. DE – 69.

3 In terms of water use, irrigation was initiated on the property between 1898 and 1913 and
4 the land was irrigated through 1951. DE – 240; DE -- 150 (Maps showing development of
5 Ahtanum Unit). According to DE – 69, submitted in support of the claim of Michael J. Schreiner,
6 29.7 acres had been irrigated on the allotment with 20.9 irrigated in 1957. The Court notes that
7 some of the allotment includes land in Government Lots 10 and 11 of Section 1. The Court is
unaware of any other party claiming rights deriving from Allotment No. 1951.

8 The Court finds that the Nichols enjoy a right to a proportionate share of the reserved water
9 right of the Yakama Nation as a successor to the lands allotted to Joseph Skahan. Based on the
10 evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and irrigated the
11 property now owned by the Nichols either at the time the parcel was allotted or shortly thereafter.
12 Successive owners continued to beneficially use the water on the property up to the time of the
13 hearing. Although only 20.9 acres were irrigated in 1957, as many as 29.7 acres had been
14 historically irrigated on the allotment. A reduced acreage in one year is not adequate to reduce the
15 right claimed. Therefore, the Nichols are awarded a June 9, 1855 prorata water right for irrigation
16 of 23 acres and stock watering, with a maximum annual diversion of 101.20 acre-feet per year
17 based on the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause
18 No. 312. The maximum instantaneous diversion shall be 0.288 cfs based on a 0.0125 cfs per acre
19 duty. The place of use is the N1/2NW1/4 and the N1/2S1/2SW1/4NW1/4 of Section 12, T. 12 N.,
20 R. 18 E.W.M. The period of use shall be April 1 to October 1. The point of diversion is from the
Ahtanum Main Canal, Wapato Irrigation Project at 100 feet north and 300 feet west from the east
quarter corner of Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16
E.W.M.

21 Court Claim No. 6332 -- Michael J. and Ella Kay Schreiner

22 The Schreiners claim a right to divert water for irrigation of approximately 35 acres from the
23 Ahtanum Main Canal. Their claim was presented on February 15, 1994 beginning at page 17 of the
24 Verbatim Report of Proceedings. They own a total of 48.22 acres described as Parcel Nos. 181210-
25 14005 (6 acres) and 181210-41001 (42.22 acres). That property is located within the
W1/2NW1/4SW1/4 and W1/2SW1/4NW1/4 of Section 11 as well as the E1/2NE1/4SE1/4 and
E1/2SE1/4NE1/4 of Section 11, all lying within T. 12 N., R. 18 E.W.M. The property owned by the

1 Schreiners was originally allotted to Anna Bradley as No. 3360 (the portion of Allotment 3360 not
2 owned by Stanley Wilkinson) and Mary Langell as No. 3361 in 1910. Michael Schreiner's
3 grandfather, S. H. Schreiner, purchased a portion of Allotment No. 3360 lands (consisting of 21.62
4 acres) in 1965 from Stanley Wilkinson and Allotment No. 3361 (26.6 acres) in approximately 1941.

5 As to water use, DE – 240, a Pre-Trial Order filed in 1951 in U.S. v. Ahtanum, Civil Cause
6 No. 312, indicates that 51 acres of Allotment No. 3360 were first irrigated in 1914 and that use
7 continued through 1951 when the DE-240 was entered. DE – 240 also shows 55 acres of Allotment
8 No. 3361 were irrigated from 1914-1951. DE – 72, federal maps depicting development of the
9 Ahtanum Unit, verifies irrigation on the two allotments commenced in 1914 while DE – 71 shows
10 that irrigation on the allotments continued from 1915 to 1931. DE – 69, a document entitled
11 Recapitulation of Ownerships and Final Assessable Acreages – Ahtanum Irrigation Project
12 Established By Notice In Federal Register, indicates that 36.1 acres were irrigated in 1957 and that
13 38.9 acres in Allotment 3360 were the maximum ever irrigated. DE – 69 also shows that S.H.
14 Schreiner owned Allotment 3361 in 1957 and that 22 acres had been irrigated as of 1957.

15 The claimant, Michael J. Schreiner testified regarding water use on the property. Shortly
16 after the Schreiner family purchased the Allotment 3361 lands, they converted it from hay ground
17 into orchard property. At that time they were irrigating approximately 17 acres. The property was
18 rill irrigated until the late 1950's when a pipe and sprinkler unit was installed. Ralph Saunders
19 testified on behalf of the Yakama Nation that based on his review of aerial photographs,
20 approximately 12 acres of the Allotment 3361 lands were irrigated in 1939, and 14.3 acres in both
21 1979 and 1991.

22 The lands in Allotment 3360 the Schreiners acquired from Stanley Wilkinson in 1965 were
23 already in orchard. Shortly after Mr. Wilkinson acquired the Allotment 3360 property from the
24 Bradley family, he conveyed a portion consisting of approximately 21.62 acres to Michael J. and
25 Ella Kay Schreiner. The entire irrigable acreage on the allotment was 53.2 acres, DE – 69, and Mr.
Wilkinson established a right to irrigate 40 of those acres. Mr. Schreiner testified that
approximately 15 of the 21.62 acres are irrigated. However, Ralph Saunders, a water rights
specialist, testified on behalf of the Yakama Nation that 12.2 acres were irrigated in 1979 and 1991

1 on the Schreiner-owned portion of Allotment 3360.⁵ Mr. Saunders also testified that he did not
2 provide analysis of some claims because the claims of the water users closely approximated the
3 acreage identified by HKM Associates to have been irrigated. Id. at 135. Finally, Mr. Schreiner
4 also testified that he was unaware of anyone abandoning or forfeiting the water rights on the
property and that at no time was water not used for five consecutive years.

5 The Court also notes that Mr. Schreiner testified that 30-32 acres were irrigated on his
6 property when combining the lands from the two allotments. Ecology, in their Investigation Report,
7 also found that 30 acres in total were irrigated. SE – 129.

8 The Court finds that the Schreiners enjoy a right to a prorata share of the reserved water
9 right of the Yakama Nation as a successor to the lands allotted to Anna Bradley and Mary Langell.
10 Based on the evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and
11 irrigated the property now owned by Mr. Schreiner either at the time the parcel was allotted or
12 shortly thereafter. Successive owners continued to beneficially use the water on the property up to
13 the time of the hearing. Therefore, Michael J. and Ella Kay Schreiner are awarded a June 9, 1855
14 prorata water right for irrigation of 31 acres, with a maximum annual diversion of 136.4 acre-feet
15 based on the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause
16 No. 312. The maximum instantaneous diversion shall be 0.388 cfs based on a 0.0125 cfs per acre
17 duty. The place of use is that portion of the SE1/4NE1/4SE1/4 Section 10 lying north of the
18 Ahtanum Main Canal, and the E3/4NE1/4NE1/4SE1/4 of Section 10, and the
19 E1/2E1/2SE1/4SE1/4NE1/4 of Section 10 and that portion of the W1/2NW1/4SW1/4 lying north and
20 west of the Ahtanum Main Canal, and SW1/4SW1/4NW1/4 except the North 608 feet of the East 427
21 feet and the North 1105 feet of the West 233 feet of Section 11, ALL within T. 12 N., R. 18 E.W.M.
22 The irrigation season is April 1 – October 1. The point of diversion is from the Ahtanum Main Canal,
23 Wapato Irrigation Project at 100 feet north and 300 feet west from the east quarter corner of Section
24 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

25 ⁵ According to Mr. Saunders, the 1939 photograph depicted 7 acres of irrigated ground. However, because the land was
still owned by the original allottee until Mr. Wilkinson purchased it, the use could be expanded to the maximum
irrigable acres.

1 Claim No. 7460 – Michael E. Schreiner; Michael J. Schreiner & Ella Kay Schreiner
2 Claim No. 0912 - James Robinson

3 Michael E. Schreiner, son of Michael J. Schreiner owns approximately 5.06 acres on the
4 Yakama Reservation. He diverts water from the Ahtanum Lower Canal, Wapato Irrigation Project,
5 for irrigation of pasture and orchard. The property is Parcel No. 181210-11404 located in the
6 E1/2E1/2E1/2 of the NE1/4NE1/4 of Section 10, T. 12N., R. 18 E.W.M. The property was
7 originally allotted to James Tee-i-as as Allotment No. 947 in approximately 1895 and the patent
8 issued to the same individual in 1919. DE – 240 (a Pre-Trial Order filed in 1951 in U.S. v.
9 Ahtanum, Civil Cause No. 312). Mr. Schreiner purchased the property in August, 1991 from James
10 and Margie Robinson, who had filed Court Claim No. 00921. The Schreiners were not joined to
11 Claim No. 00921, but instead filed their own claim for the property, Claim No. 7460. Mr. Robinson
12 did not appear at the hearing in support of the claim, therefore, the Court DENIES Mr. Robinson's
13 claim for a water right pursuant to Claim No. 0921. Claim No. 7460 is addressed herein.

14 In terms of water use, DE – 240 indicates that the property was irrigated from 1894 to 1915.
15 DE – 47, maps showing the development of the Ahtanum Unit, indicate that the property was
16 irrigated from 1909-913. DE – 48, maps developed by the United States depicting irrigation in the
17 Wapato Project, show that the Allotment was irrigated from 1915 – 1931. Finally, DE – 46,
18 Recapitulation of Ownerships and Final Assessable Acreages – Ahtanum Irrigation Project, states
19 that 68.2 acres were irrigated in 1957 and that 73.3 acres of Allotment 947 is the maximum that had
20 ever been irrigated. Michael J. Schreiner testified on behalf of claim No. 7460. He stated that
21 approximately 4.5 acres are irrigated on the portion of Allotment No. 947 he owns. Michael J.
22 Schreiner also noted his agreement with Ecology's Investigation Report, SE – 130, in nearly every
23 respect except for Purpose of Use whereby 3.4 acres of irrigated property were identified. RP at 45.
24 SE – 130 details the water delivery system as follows:

25 A 35-foot long 3-foot high concrete dam diverts water from Ahtanum Creek to a concrete
screw headgate located on the Lower Canal (Wapato Irrigation Project). The water flows in
an easterly direction approximately 3 miles in the gravity-flow canal, where a concrete
control box diverts the water through a drop gate and into a buried pipeline. This pipeline
conveys the water to the claimant's property where it is filtered into a catch basin and
gravity-fed to impact sprinklers for irrigation of lawn, and pasture.

Michael J. Schreiner disagreed with SE – 130 in regard to the number of acres irrigated.
The discrepancy appears to have arisen from the fact a well is utilized to irrigate the orchard that

1 makes up a portion of the southern half of the property. However, Ecology's finding was based on
2 what was observed on the particular day the investigation was conducted. Michael J. Schreiner
3 indicated that the orchard can be irrigated through either the Wapato Irrigation Project or through
4 the well. RP at 48. Canal problems prevented Mr. Schreiner from taking deliveries of Wapato
5 Project water in 1993. Id. Finally, it was identified through SE – 130 and testimony that the
6 property was used for watering up to 10 animals.

7 The Court finds that Michael E. Schreiner enjoys a right to a prorata share of the reserved
8 water right of the Yakama Nation as a successor to the lands allotted to James Tee-i-as. Based on
9 the evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and irrigated the
10 property now owned by Mr. Schreiner either at the time the parcel was allotted or shortly thereafter.
11 Successive owners continued to beneficially use the water on the property up to the time of the
12 hearing. Therefore, Michael E. Schreiner is awarded a June 9, 1855 prorata water right for
13 irrigation of 4.5 acres and stock water, with a maximum annual diversion of 19.8 acre-feet based on
14 the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause No. 312.
15 The instantaneous quantity is 0.056 cfs based on a 0.0125 cfs per acre duty. The place of use is
16 Parcel No. 181210-11404, located in the E1/2E1/2E1/2NE1/4NE1/4 of Section 10, T. 12N., R. 18
17 E.W.M. The point of diversion is 750 feet south and 700 feet west from the east quarter corner of
18 Section 7, being within the SW1/4NE1/4SE1/4 of Section 7, T. 12 N., R. 18 E.W.M. The period of
19 use shall be April 1 to October 1.

20 Court Claim No. 1132 – Rod and Betty Swanson

21 The Swansons own two parcels of property for which they are claiming a water right – one
22 parcel on the northside of the creek and one on the southside. This section will address the water
23 right claim for the southside, on-reservation property. The Court's analysis of the northside
24 property will be analyzed in the section below regarding off-reservation water right not within
25 Ahtanum Irrigation District. The Swansons claim was presented on February 14, 1994 beginning at
page 103 of the Verbatim Report.

The Swansons are claiming a water right for 30 acres for their on-reservation property in
Government Lots 7 and 8 of Section 24, T. 12 N., R.15 E.W.M. and Government Lot 6 of Section
19, T. 12 N., R. 16 E.W.M. The Swansons purchased the property in 1979 from Franklin and Ruth
Weed. DE – 64. The property in question was patented to E.A. Shannafelt on October 12, 1908.
DE – 65 at 17. There is nothing in the record regarding ownership prior to 1908. DE – 66, does

1 provide evidence the United States considered the property to have been irrigated starting in 1870-
2 1880. Additionally, DE - 61 is a copy of State of Washington v. Annie Wiley Achepohl, et. al.,
3 Case No. 18279, a 1925 water rights adjudication instituted pursuant to the 1917 Water Code.
4 Pursuant to that decree, A. L. Thompson was awarded a right to divert water from Ahtanum Creek
5 to irrigate lands in Government Lots 7 and 8 of Section 24, T. 12 N., R. 15 E.W.M and Government
6 Lots 6 and 7 in Section 19, T. 12 N., R. 16 E.W.M. Mr. Thompson was subsequently awarded a
7 Certificate of Water Right from Ecology's predecessor, but not for the on-reservation lands. DE -
8 62.

9 It is not clear that E.A. Shannafelt was a successor to an Indian allottee, but rather may have
10 been a homesteader of public lands. Pursuant to 25 U.S.C. § 348, the Secretary of the Interior was
11 authorized to negotiate with tribes for disposition of all "excess" lands remaining after allotments,
12 for the purpose of non-Indian settlement. Accordingly, after five years of occupation and
13 cultivation, the settler of surplus reservation lands would be entitled to a patent to those lands.
14 There is not enough information in the record to allow the Court to make that finding.

15 Mr. Shannafelt's successor, Mr. A. L. Thompson, participated in the 1925 adjudication and
16 was awarded a Class 20 right pursuant to the decree. See Achepohl, Final Decree at p. 63.
17 Although Mr. Thompson did receive a Certificate of Water Right for the northside lands, it does not
18 appear that Mr. Thompson was subsequently awarded a Certificate of Water Right from Ecology's
19 predecessor for the on-reservation lands. This may owe to a variety of reasons, one being that the
20 purpose of the 1925 adjudication was not to quantify rights on the reservation side. See, e.g. United
21 States v. Ahtanum Irrigation District, Civil Cause No. 312, Findings of Fact and Conclusions of
22 Law at p. 8 (1962)("That there was entered on the 7th day of May, 1925, a Decree in the case
23 entitled State of Washington, plaintiff, vs. Annie Wiley Achepohl . . .the Supervisor of Hydraulics,
24 now the Supervisor of Water Resources of the State of Washington, caused to be issued certificates
25 of water rights appurtenant to the lands of the defendants herein located upon the north side of
Ahtanum Creek"). Mr. Swanson also testified that Mr. Thompson was a participant in the federal
proceeding, U.S. v. AID, Civil Cause No. 312 and was awarded a variety of rights. He references
Claim No. 1132 and pages 8-10. The Court has reviewed that claim, and pages 8-10 are portions of
the 1925 Achepohl adjudication and not from the federal proceeding. Therefore, the Court cannot
determine whether any right was established in the federal proceeding with the current evidence.

1 Although there may be a right for the on-reservation lands, the Court does not have enough
2 evidence at this time to make that determination. If the water right derives from an Indian allottee,
3 (which must be the assertion since the Swansons claim an 1855 priority date) the Swansons need to
4 provide evidence tracing ownership back to the allottee. If the water right does not derive from an
5 Indian allottee, the Swansons need to provide evidence of historical ownership and use. Further, the
6 Court is confused as to why a right was confirmed in the 1925 Achepohl proceeding. The
7 Swansons should provide evidence and analysis to address these questions during the exceptions
8 phase of the Ahtanum subbasin process.

8 Court Claim No. 01704 – Eugene R. & Helen E. Tyler

9 Court Claim No. 01704 was presented for testimony on February 7, 1994 beginning at page
10 189. The Tylers purchased Government Lot 8 and the SE1/4SW1/4 of Section 18, T. 12 N., R. 17
11 E.W.M. from Paul and Violet Bak in 1971. DE – 187 (Deed). The irrigated portion of the property
12 appears to cover all of Lot 8 and the northern portion of the SE1/4SW1/4 lying above the Ahtanum
13 Canal. SE – 2 (Subbasin 23 Map). The 76.95-acre parcel was originally allotted to Louis Yesnottwa
14 as Allotment No. 1808. It was patented to Frank Ward on January 19, 1921. DE – 185. Joe Bak
15 owned the parcel in 1957. DE – 69.

16 In terms of water use, DE – 8 indicates that irrigation of Allotment 1808 commenced
17 between 1871-1895. Sheet 4. DE – 240 is in accord, showing that 28.5 acres was irrigated between
18 1885 and 1951, when the document was developed and filed. As of 1957, 30.6 acres were the
19 maximum number of acres being irrigated. DE –69. The Tylers purchased the property in 1971 and
20 continued to irrigate 28.5 acres to grow hay/pasture, grain and water up to 100 pair of cattle.

21 The Court finds that the Tylers enjoy a right to a proportionate share of the reserved water
22 right of the Yakama Nation as a successor to the lands allotted to Louis Yesnottwa. Based on the
23 evidence, the allottee diverted water from the Wapato Project, Ahtanum Unit and irrigated the
24 property in Section 18 either at the time the parcel was allotted or shortly thereafter. Successive
25 owners continued to beneficially use the water on the property up to the time of the hearing.
Therefore, the Tylers are awarded a June 9, 1855 prorata water right for irrigation of 28.5 acres and
stock water on Allotment No. 951. They are entitled to a maximum annual diversion of 125.4 acre-
feet based on the diversion duty of 4.4 acre-feet per acre established in U.S. v. Ahtanum, Civil
Cause No. 312. The maximum instantaneous diversion shall be 0.356 cfs based on a 0.0125 cfs per
acre duty. The place of use is the northern portion of SE1/4SW1/4 lying north of the Ahtanum Main

1 Canal and Government Lot 8 of Section 18, T. 12 N., R. 17 E.W.M. The period of use shall be April 1
2 to October 1. The point of diversion is from the Ahtanum Main Canal, Wapato Irrigation Project at
3 100 feet north and 300 feet west from the east quarter corner of Section 14, being within the
4 SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

5 Claim No. 1459 – Stanley and Mary J. Wilkinson; James T. and Belinda L. Wilkinson

6 Stanley and Mary J. Wilkinson (Stanley Wilkinson) and James (son of Stanley and Mary
7 Wilkinson) and Belinda Wilkinson (James Wilkinson) assert a claim to irrigate 2 parcels that total
8 approximately 77.5 acres within the NE1/4SW1/4, NW1/4SE1/4, SE1/4NE1/4 and NE1/4SE1/4 all
9 in Section 10, T. 12 N., R. 18 E.W.M. They ask for a date of reservation priority of June 9, 1855.
10 Stanley Wilkinson bought both parcels initially on June 30, 1963 from Mabel Bradley Whitesel.
11 DE – 75. At the February 14, 1994 hearing, Stanley Wilkinson testified that he owned 40 acres of
12 irrigated land and James Wilkinson owned 33.5 acres of irrigated land. RP at 210-211. In the Court
13 Claim filed by Stanley Wilkinson in 1981, he asserted a right to irrigate 80 acres on the two parcels.
14 Stanley Wilkinson is assessed for 44 acres by the Wapato Irrigation Project and James Wilkinson is
15 assessed for 33.5 acres. DE – 74.

16 In analyzing water use on the two parcels, the Court will start with the parcel in the
17 NE1/4SW1/4 and the NW1/4SE1/4 of Section 10 owned by James Wilkinson. That parcel was first
18 allotted to Helen Bradley in 1910 as Allotment No. 3359. DE – 240 (1951 Pre-Trial Order filed in
19 U.S. v. Ahtanum, Civil Cause No. 312). According to DE – 240, 44 acres had been irrigated on
20 Allotment No. 3359 from 1914 to 1951. DE – 77 confirms that irrigation was commenced in 1914
21 for Allotment No. 3359 and DE – 76 indicates that from the federal government’s perspective,
22 water had been used on the allotment from 1915-1931. Stanley Wilkinson testified that grain was
23 being grown on a 33.5-acre parcel in 1961 when he purchased the property. RP at 215.
24 Assessments have been paid for water to irrigate 33.5 acres. DE – 74. Finally, Stanley Wilkinson
25 testified, over objection,⁶ that the individual who had managed the property prior to the Wilkinson
acquisition, had provided information regarding historical use on the property that was consistent
with the maps obtained from the federal government that comprise DE – 75 and 76.

26 The parcel owned by Stanley Wilkinson, in the SE1/4NE1/4 and the NE1/4SE1/4 of Section
27 10, was originally allotted to Anna Bradley in 1910 as Allotment No. 3360. DE – 240. 51 acres

⁶ The Yakama Nation lodged an objection based on hearsay which is overruled by the Court.

1 were allegedly irrigated on the allotment from 1914-1951. Id. DE – 77 confirms that irrigation
2 was commenced in 1914 for Allotment No. 3360 and DE – 76 indicates that from the federal
3 government’s perspective, water had been used on the allotment from 1915-1931. However, DE –
4 69, a document entitled Recapitulation of Ownerships and Final Assessable Acreages – Ahtanum
5 Irrigation Project Established By Notice In Federal Register, submitted in regard to the claim of
6 Michael and Anna Schreiner, indicates that only 36.1 acres were irrigated in 1957 and that only 38.9
7 acres of the 53.2 irrigable acres in Allotment 3360 had ever been irrigated. However, DE –69 also
8 shows that as of 1957, the land was still owned by Anna Bradley.

9 Stanley Wilkinson testified that alfalfa was grown on his share of Allotment 3360 when he
10 purchased it in 1961. Stanley Wilkinson also testified that, based on discussions with the manager
11 of the farm prior to the Wilkinson acquisition, the historical use of the property was consistent with
12 the proof provided by the federal government’s maps, DE –75 and 76. Stanley Wilkinson began
13 growing orchard on the parcel in 1963 and irrigates approximately 40 acres. He has been assessed
14 by the Wapato Irrigation Project for irrigation of 44 acres. DE – 74.

15 DE – 78 shows that only 38.9 acres of the 53.2 irrigable acres in Allotment No. 3360 had
16 ever been irrigated and Mr. Wilkinson is now claiming a right to irrigate 40 acres. In addition, the
17 Schreiners, *infra*, claim a right to irrigate a parcel of land that was originally a part of Allotment
18 3360 and sold to their predecessors by Mr. Wilkinson. The question arises as to whether the non-
19 Indian successor can expand the water right beneficially used by the Indian allottee so long as the
20 use does not exceed the overall irrigable acres? Based on the Ninth Circuit’s discussion in Walton
21 II, below, it would appear the answer is yes:

22 Third, the Indian allottee does not lose by non-use the right to a share of reserved water. This
23 characteristic is not applicable to the right acquired by a non-Indian purchaser. The non-Indian
24 successor acquires a right to water being appropriated by the Indian allottee at the time title
25 passes. The non-Indian also acquires a right, with a date-of-reservation priority date, to water that he or she appropriates with reasonable diligence after the passage of title. If the full
measure of the Indian” reserved water right is not acquired by this means and maintained by
continued use, it is lost to the non-Indian successor. 647 F.2d at 50-51 (emphasis added).

Anna Bradley, the original allottee, or her heirs, agreed to sell the property to Mr. Wilkinson
in 1961. See DE – 73. Therefore, he was the first non-Indian successor to own the property.
Accordingly, he also acquired a right, with a date-of-reservation priority date, to water he
appropriated with reasonable diligence. Walton II.

1 Shortly after Mr. Wilkinson acquired the Allotment 3360 property from the Bradley family,
2 he conveyed a portion to Michael J. and Ella Kay Schreiner consisting of approximately 21.62
3 acres. Mr. Schreiner testified that approximately 15 of these acres are irrigated. However, Ralph
4 Saunders, a water rights specialist, testified on behalf of the Yakama Nation that 12.2 acres were
5 irrigated in 1979 and 1991 on the Schreiner-owned portion of Allotment 3360.⁷ Mr. Saunders also
6 testified that he did not provide analysis of some claims because the claims of the water users
7 closely approximated the acreage identified by HKM Associates to have been irrigated. Id. at 135.

8 In approximately 1982, Stanley Wilkinson began using water that was appurtenant to 33.5
9 acres in Allotment 3359 on Allotment 3360 because of frequent shortage. In 1983, Stanley
10 Wilkinson sold the Allotment 3359 property to James Gatliff. Mr. Gatliff then sold the property to
11 James Wilkinson in June, 1991. DE – 75. Stanley Wilkinson continued to pay assessments to the
12 Wapato Irrigation Project during the entire period. Once the Wilkinsons reacquired the property,
13 they intended to put orchard on the 33.5 acres that makes up the historically irrigated acreage in
14 Allotment 3359. Stanley Wilkinson also testified that he undertook the transfer at the urging of a
15 Wapato Irrigation Project ditch rider, who allegedly informed Mr. Wilkinson that he should pay for
16 the water and continue to use the water where needed, rather than give up the right to it. No party
17 disputes that Stanley Wilkinson failed to use his entire water allocation for both allotments.

18 The Court has ruled that state law does not apply, supra, and therefore Mr. Wilkinson was
19 not required to file a temporary change application with Ecology under RCW 90.03.380 to use the
20 water appurtenant to Allotment 3359 on Allotment 3360. The evidence also indicates water was
21 used on Allotment 3359 from approximately 1914 to 1982. There was evidence that after Stanley
22 Wilkinson sold the property that comprises Allotment 3359 to James Gatliff, Wilkinson continued
23 to use the water, but felt the water right had been made a part of the conveyance. Stanley Wilkinson
24 also indicated that he or James Wilkinson intended, in the near future, to use the water for
25 Allotment 3359 on the specific allotted lands that make up that parcel. A distribution system was
available at all times to deliver water to Allotment 3359 lands. Additionally, Stanley Wilkinson
continued to use the water appurtenant to both allotments, albeit on one property. The testimony of
numerous on-reservation water users during the course of the Subbasin 23 hearing was that the

⁷ According to Mr. Saunders, the 1939 photograph depicted 7 acres of irrigated ground. However, the Court has already determined that because the land was still owned by the original allottee until Mr. Wilkinson purchased it, the use could be expanded to the maximum irrigable acres.

1 water supply is insufficient. Drought, or unavailability of water is a “sufficient cause” for the
2 nonuse of water in Washington, RCW 90.14.140(1)(a), and Mr. Wilkinson’s choice to transfer the
3 water appears to have been motivated by the fact that he had insufficient water to irrigate both
4 parcels adequately during times of shortage. Finally, no one disputed his testimony that the transfer
5 was accomplished at the recommendation of the Wapato Irrigation Project ditchrider.

6 The Court finds that water was diverted for Allotment Nos. 3359 and 3360 shortly after it
7 was allotted to Helen and Anna Bradley in 1914. DE – 240; DE – 77. The water was continuously
8 beneficially used during the early part of the century, DE – 76, in the 1950’s, DE – 240 and DE –
9 78, and into the 1980’s. The Court rules that the water right for the 33.5-acre parcel in Allotment
10 3359 was not relinquished when Stanley Wilkinson temporarily transferred it to the 40-acre parcel
11 in Allotment 3360. See Walton III, 752 F.2d at 402 (“Calculating Walton’s share required an
12 investigation into the diligence with which the immediate grantee from the Indian allottees
13 appropriated water, and the extent to which successor grantees, up to and including Walton,
14 continued to use the water thus appropriated”).

15 The purpose of use of the right is irrigation of 73.5 acres. The place of use is the
16 NE1/4SW1/4 and the NW1/4SE1/4, all in Section 10, T. 12 N., R. 18 E.W.M. The irrigation season
17 is April 1 – October 1. The quantity shall be a prorata share of the Yakama Nation’s reserved right
18 to irrigate 73.5 acres up to 323.4 acre-feet per year based on the diversion duty of 4.4 acre-feet per
19 acre established in U.S. v. Ahtanum, Civil Cause No. 312 and 0.919 cfs based on a 0.0125 cfs per
20 acre water duty. The priority date shall be June 9, 1855. The point of diversion is from the Ahtanum
21 Main Canal, Wapato Irrigation Project at 100 feet north and 300 feet west from the east quarter corner
22 of Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

23 Claim Nos. 1226/A2412 – James and Patsy Wilson

24 The Wilsons own approximately 24.7 acres on the Yakama Reservation described as Parcel
25 No. 181211-41402 encompassing the NE1/4SE1/4 of Section 11, T. 12 N., R. 18 E.W.M EXCEPT the
north 364.04 feet of the East 359.17 feet thereof, and EXCEPT the West 208.7 feet of the East 567.87
feet of the North 417.44 feet thereof. The Wapato Irrigation Project assesses the Wilsons for 24.53
acres. DE – 269. Mr. James Wilson passed away March 17, 1993. Mr. Robert Swart testified on
behalf of the claim of his sister, Ms. Patsy Wilson, during the February 10, 1994 hearing. The Wilsons
purchased the property from Allen Sapp in June, 1976. DE – 266. Mr. Sapp was married to the

1 original allottee, Ms. Georgia Wilcox. Ms. Wilcox was allotted the parcel as Allotment No. 4122 in
2 1910. DE – 240.

3 According to Mr. Swart, 24 of the 24.7 acres has been irrigated. Irrigation of the property was
4 initiated in 1915, at which time the entire allotment was in one ownership. DE -- 150 (Maps showing
5 development of Ahtanum Unit); DE – 240. The property was irrigated through 1951. DE – 240. As
6 of 1957, 37.5 acres had been and were being irrigated. DE – 270 (Recapitulation of Ownerships And
7 Final Assessable Acreages – Ahtanum Irrigation Project Established By Notice In Federal Register).
8 Approximately 15.3 acres in the N1/2NE1/4SE1/4 has been sold to other entities.

9 The Court finds that Ms. Patsy Wilson enjoys a right to a proportionate share of the reserved
10 water right of the Yakama Nation as a successor to the lands allotted Ms. Georgia Wilcox. Based
11 on the evidence, the allottees diverted water from the Wapato Project, Ahtanum Unit and irrigated
12 the property now owned by Ms. Wilson either at the time the parcel was allotted or shortly
13 thereafter. Successive owners continued to beneficially use the water on the property up to the time
14 of the hearing. Therefore, Ms. Wilson is awarded a June 9, 1855 prorata water right for irrigation of
15 24 acres, with a maximum annual diversion of 105.6 acre-feet based on the diversion duty of 4.4
16 acre-feet per acre established in U.S. v. Ahtanum, Civil Cause No. 312 and 0.3 cfs based on a
17 0.0125 cfs per acre water duty. The place of use is Parcel No. 181211-41402 encompassing the
18 NE1/4SE1/4 of Section 11, T. 12 N., R. 18 E.W.M., EXCEPT the North 364.04 feet of the East 359.17
19 feet thereof, and EXCEPT the West 208.7 feet of the East 567.87 feet of the North 417.44 feet thereof.
20 The period of use shall be April 1 to October 1. The point of diversion is from the Ahtanum Main
21 Canal, Wapato Irrigation Project at 100 feet north and 300 feet west from the east quarter corner of
22 Section 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

23 Claim No. 1229 – Kenneth Withers; Brad McGuire

24 Court Claim No 01224 was presented for testimony February 9, 1994 beginning at page 60.
25 Mr. Withers owned approximately 80 acres on the Yakama Reservation in the W1/2SE1/4 of Section
16, T. 12 N., R. 17 E.W.M which he purchased in 1938 from Gerald Stewart. He sold the property by
contract to Kenneth McGuire in 1989. The property owned by Mr. Withers was originally allotted to
Thee-wall Sluse-cum in 1893 as Allotment No. 909. DE – 240. It was ultimately patented in 1920. Id.

DE – 240 shows water was first used on Allotment 909 in 1896 and that use continued through
1951 when DE – 240 was constructed. DE – 150, maps showing development of the Ahtanum Unit,
indicate the property was first irrigated sometime between 1886-1895. According to the federal

1 government, as of 1957, about 72.2 acres had been irrigated. DE – 169 (Recapitulation of Ownerships
2 And Final Assessable Acreages – Ahtanum Irrigation Project Established By Notice In Federal
3 Register). Mr. Withers testified that approximately 76 acres were under irrigation and had been during
4 the entire time of his occupation. RP at 67. He also substantially agreed with the quantities of irrigated
5 lands set forth in DE – 169. Mr. Withers also indicated that the property had been used to grow hay,
6 alfalfa and grain, RP at 66-67, back to the 1920's. He testified that he had pastured up to 180 head of
7 cattle and the current owner, Brad McGuire had pastured up to 62 head. SE – 151, Ecology's
8 Investigation Report for the property, indicates that 75 acres were being irrigated.

9 The Court finds that Ken Withers as contract holder and Brad McGuire enjoy a right to a
10 proportionate share of the reserved water right of the Yakama Nation as a successor to the lands
11 allotted to Thee-wall Sluse-cum. Based on the evidence, the allottees diverted water from the
12 Wapato Project, Ahtanum Unit and irrigated the property now owned by Mr. McGuire either at the
13 time the parcel was allotted or shortly thereafter. Successive owners continued to beneficially use
14 the water on the property up to the time of the hearing. Therefore, Mr. McGuire is awarded a June
15 9, 1855 prorata water right for irrigation of 72.2 acres and stock water, with a maximum annual
16 diversion of 317.7 acre-feet based on the diversion duty of 4.4 acre-feet per acre established in U.S.
17 v. Ahtanum, Civil Cause No. 312. The instantaneous quantity shall be 0.9 cfs based on a 0.0125 cfs
18 per acre water duty. The place of use is the W1/2SE1/4 of Section 16, T. 12 N., R. 17 E.W.M. The
19 period of use shall be April 1 to October 1. The point of diversion is from the Ahtanum Main Canal,
20 Wapato Irrigation Project at 100 feet north and 300 feet west from the east quarter corner of Section
21 14, being within the SE1/4SE1/4NE1/4 of Section 14, T. 12 N., R. 16 E.W.M.

22 **VII. "NORTHSIDE" OFF-RESERVATION WATER RIGHTS**

23 a. Background

24 Unlike their counterparts on the reservation, water users on the northside of Ahtanum Creek, or
25 off-reservation, have been through several water right court cases; the 1925 Achepohl state
adjudication and United States v. Ahtanum Irrigation District, Civil Cause No. 312, culminating in the
"Pope Decree" (named for the Ninth Circuit federal court judge who authored the final opinion
resolving that case). The Court has analyzed generally the background and findings from those two
proceedings. See discussion, supra, at 3-6. Key rulings were made by the Ninth Circuit and will affect
how claims are analyzed in this adjudication.

1 First, the Ninth Circuit upheld the division of water between reservation and northside users set
2 forth in the 1908 Code Agreement but made some related decisions that affect the 75%-25% split. In
3 addition, because that proceeding took place, other criteria must be met to establish a water right. For
4 example, entitlements to use water from Ahtanum Creek on the northside of the creek can only be
5 established if the following requirements are met. First, a claimant's predecessor had to be a signatory
6 to the 1908 Code Agreement. Ahtanum II, 330 F.2d 900 ("it was plain that the only water rights which
7 the court would be required to measure and ascertain would be the water rights of the specific
8 individuals who entered into the 1908 agreement"). Second, the claimant's predecessor must have
9 participated in the 1925 Achepohl proceeding and provide evidence of compliance with state law,
10 namely an adjudicated water right certificate. Third, the claimant, or his predecessor, must have filed
11 an answer in U.S. v. AID, Civil Cause No. 312, and had that claim affirmed by the Ninth Circuit in
12 Ahtanum II. Finally, the claimant, or his predecessor must show that water has been beneficially used
13 on his property after 1964 when the Civil Cause No. 312 was finalized. RCW 90.14.160; Ahtanum II
14 at 911 ("We recognize that the same diminution of use may take place hereafter, and that in some
15 instances there may in fact be an abandonment of some water rights"). The Court will address the
16 evidence presented relative to these requirements for each of the landowners for which a right is
17 asserted.

15 b. Can A Right Be Established In Acquavella Without An Answer Number

16 The United States, the Yakama Nation, AID and Ecology have, in various ways, raised an issue
17 regarding whether water rights can be established for claimants who do not meet the criteria above, but
18 who have beneficially used water when reservation users were not diverting the flows to which they
19 were entitled.⁸ Apparently, AID members (and possibly non-AID members) who were adjudicated
20 water rights in the 1925 Achepohl proceeding are diverting such flows. According to Kenneth Bates,
21 AID President in 1994, it is AID's policy to supply water to persons who were not awarded rights in
22 the Pope Decree if water is available to do so. Verbatim Report of Proceedings, April 18, 1994 at 98.
23 Further, Mr. Bates testified that it was AID's position that the Pope Decree did not terminate any
24 individuals water rights, but reduced the total amount of water received by the District. Id. at 97-98.
25 Other parties who are not assessed by AID have submitted claims in this adjudication and do not have

⁸ The U.S. essentially asked this Court to decide that question when it filed its Motion For Declaratory Judgment; Ahtanum Irr. District, John Cox Ditch Company. That Motion was withdrawn at the April 18, 1994 Hearing. RP at p. 7.

1 an answer to support that claim. The question is do individuals who did not have rights confirmed in
2 the Pope Decree, but received water right certificates from the state as a part of the Achepohl
3 adjudication, have any remaining water right?

4 The first issue to unravel is what is the reach of the Pope Decree? Civil Cause No. 312 was
5 originally commenced by the United States to challenge the legality of the 1908 Code Agreement and
6 to establish and quiet title the Yakama Nation's federally reserved right to Ahtanum Creek as against
7 the non-Indian irrigators on the north side of the creek. See U.S. v. AID, U.S. Civil Cause No. 312,
8 Complaint at p. 12 (July 2, 1947). The Complaint and Summons named hundreds of defendants,
9 constituting four, single-spaced pages. No party has argued or provided evidence that United States v.
10 AID, et al, Civil Cause No. 312, did not involve all claimants to water rights in the Ahtanum basin.
11 Further, the Pope Decree states that "It is ordered, adjudged and decreed that the waters of Ahtanum
12 Creek shall be and are hereby divided between the parties to this action in the following manner and at
13 the following times." 330 F.2d at 915 (emphasis added). The decree then goes on to apportion 75% to
14 the northside defendants and 25% to the reservation users for a total of 100% of Ahtanum Creek,
15 consistent with the provisions of the Code Agreement. Finally, Article 3 of the Code Agreement was
16 carefully drafted to ensure all natural flow in Ahtanum Creek was included when the 25%/75% split
17 was established. For these reasons, and in light of the objectives and processes utilized in the federal
18 court proceeding to be analyzed further below, the Court finds that the decisions and conclusions
19 reached in Civil Cause No. 312 are binding on all off-reservation, Ahtanum Creek claimants, unless
20 those claimants can prove that they or their predecessor was not a party to that proceeding.

21 However, the specifics of what the Ninth Circuit ultimately decided in Ahtanum II is somewhat
22 confusing when considered in conjunction with the issue discussed by Mr. Bates regarding whether the
23 rights awarded were individual to AID members or could be used collectively by AID patrons. For
24 example, in that decision Judge Pope analyzed the following district court conclusion of law:

25 That this water rights adjudication under the issues as presented herein is restricted to a
determination of plaintiff's rights to the waters of Ahtanum Creek, as originally reserved under
the Treaty of 1855, so far as they were retained by the agreement of 1908, and a determination
of defendants' rights, collectively, so far as they were fixed under said agreement. That these
rights, under the terms of said agreement, are to be ascertained by measurement and by a
percentage division in the aggregate, of Ahtanum Creek waters as provided therein without an
adjudication of waters to or for any particular tract of lands. Ahtanum II at 910.

On one hand, the Ahtanum II court indicated that granting an in-gross or aggregate right to
AID's patrons was a proper exercise of its discretion. The main justification for this ruling was the

1 court's concern over potential transfers and the "distribution and control functions" that were better
2 dealt with by the state under Washington's 1917 Water Code. Id. at 911-12. Second, the court also
3 noted that the purpose of the United States in filing the suit:

4 was to procure an adjudication which would protect the rights of the Indians and of the
5 Government, as trustee for them, as against claims of the defendants. The Government cannot
6 be interested in a general adjudication as to the relative rights, among themselves, of the
7 various defendants. Id.

8 On the other hand the court noted that its instructions in Ahtanum I were primarily aimed at
9 remanding the matter to the district court for more information regarding the water use by the
10 individual water users north of Ahtanum Creek:

11 Since the cause must be remanded for further proceedings in the trial court, and since those
12 proceedings must determine and adjudicate the respective rights of the parties, during which
13 defendants must be required to show and disclose their rights and titles, it is apparent that
14 proper and appropriate answers must be required from all defendants. Id. at 910.

15 At minimum, the court thought it necessary for each of the defendants to show what their water
16 rights were, the lands they claimed the right to irrigate, and how they deraigned their titles. Id.
17 Further, notwithstanding the generalizations contained in the alleged error of law quoted above, the
18 findings addressing each answer did set forth a great deal of information, including a description of
19 lands on which the right to use water was claimed and a statement of the number of acres irrigated
20 in 1908 on each parcel described. See Findings of Fact and Conclusions of Law, DOE – 136. Such
21 proof was needed because the entire theory of the Ninth Circuit underlying the federal adjudication
22 was that the 1908 Code Agreement limited the aggregate diversions of northside users to 75% of
23 Ahtanum Creek. The court makes that abundantly clear when it points out, in response to another
24 alleged error set forth by the U.S., that 456 defendants did not have their claims adjudicated because
25 by not granting those claimants a right, the district court had made

26 "a determination as to the entire use of waters in 1908. By excluding therefrom other tracts,
27 the finding . . . adequately disposes of any claims that might have been made by other
28 persons in respect to lands not listed in the findings." Id. at 912.

29 Of course, the court then proceeded to confirm water rights only to those defendants who
30 supplied answers that could trace their use back to a 1908 Code agreement signatory.

31 Finally, the Ahtanum II court repeated a specific holding it had reached in Ahtanum I:

32 As we noted in our former opinion, 'the right to the use of the 75 percent of the waters must
33 have been limited to the needs as of 1908 of the particular individuals who were parties to

1 the agreement,” and “when the needs of those parties, [i.e. these particular individuals] were
2 such as to require less . . . then their rights to the use of the water was correspondingly
3 reduced, and those of the Indians, in like measure, greater. Id. at 913 quoting Ahtanum I at
340-41.

4 That holding was based, in part, on the court’s adherence to the

5 “general principle that an agreement of the character of that executed in 1908, must be
6 construed as reserving to the Indians, who previously owned substantially all of the waters,
everything not clearly shown to have been granted.”

7 Based on the analysis of the Ninth Circuit in Ahtanum I and II, it is the decision of this
8 Court that there is no true “aggregate” right for AID patrons. Rather the only rights confirmed were
9 to off-reservation users by the Ninth Circuit and those were set forth in the tabulation of answers.
10 The quantities of those rights were then added together to ensure that the northside water use did not
11 exceed the 75% Code Agreement limitation. In light of its understanding of federal treaty
12 interpretation law, the Pope Decree court established that although northside users could transfer
13 their rights, if such rights were abandoned or relinquished under state law, they reverted to the tribe
14 to satisfy the treaty rights that were established as of 1915. Ahtanum I, 236 F.2d 341. In essence,
15 the percentage allocation of Ahtanum Creek established by the Code Agreement was modified by
16 the Pope Decree. As off-reservation water use by entities with a confirmed right in the Pope Decree
17 decrease because of abandonment/relinquishment, so does the northside allocation. Those flows
18 revert to satisfy the needs of reservation users as they existed in 1915 as a part of their reserved
19 right. Ahtanum I, 236 F.2d 321.

20 However, Ecology has asserted that “any person adjudicated a water right under the
21 Achepohl Decree whose right is not derivative from the 1908 Code Agreement may exercise that
22 right if surplus water is available.” Ecology’s Response to Motion For Declaratory Judgment at pp.
23 9-10, April 5, 1994. AID argued something similar, stating that:

24 Ahtanum II very specifically does not, then, deprive any individual property of its respective
25 water right. This court and the Ahtanum Irrigation District, and the Department of Ecology,
are therefore, still bound by the undisturbed findings of the State of Washington Supreme
Court in the Achepohl Decree. To the extent water is available, without depriving either the
reservation or the 1908 lands of the water allocated, en gross, in Ahtanum II, it is completely
proper that these other lands allocated priority in the Achepohl Decree should continue to be
irrigated in accordance with that decree. AID Trial Brief, April 6, 1994 at 16.

1 These assertions, read appropriately, appear consistent with the Pope Decree's modification
2 of the actual judgment in the Ahtanum proceeding:

3 It is ordered, adjudged and decreed that the waters of Ahtanum Creek shall be and are
4 hereby divided between the parties to this action in the following manner and at the
5 following times, to-wit:

6 From the beginning of each irrigation season, in the spring of each year, to and including the
7 tenth day of July of each such year, said waters shall be divided as follows:

- 8 a. To defendants, for use of their lands north of Ahtanum Creek, seventy-five per cent
9 of the natural flow of Ahtanum Creek, as measured at the north and south gauging
10 stations, provided that the total diversion for this purpose shall not exceed 46.96
11 cubic feet per second, and provided that when the said measured flow exceeds 62.59
12 cubic feet per second defendants shall have no right to the excess, except in
13 subordination to the higher rights of the plaintiff.

14 330 F.2d 915 (emphasis added).

15 It is the task of this Court to harmonize the findings in Achepohl with those set forth in the
16 Pope Decree. Generally speaking, this Court believes it should adhere to both.

17 The testimony regarding water availability for use on the reservation was clear and
18 consistent: there is simply not enough water supplied from Ahtanum Creek and most water users
19 have resorted to digging wells to supplement the insufficient supply. See, e.g., Testimony of David
20 Allan, February 15, 1994 Report of Proceedings at 117-18. Indeed, the Ninth Circuit stated that an
21 award of sufficient water to irrigate the lands served by the Wapato Irrigation Project, Ahtanum
22 Unit as of 1915 "would take substantially all of the waters of Ahtanum Creek." Ahtanum I, 236
23 F.2d at 327. Further, the United States supplied considerable evidence in this proceeding aimed at
24 constructing a reservoir system, in part to provide better water supplies for existing on-reservation
25 uses. Thus, although the Court can quantify rights to off-reservation water users who did not file
answers, those rights are subordinate to the rights of the reservation water users as they existed in
1915 and subordinate to the rights of those northside users who had rights confirmed in the Pope
Decree. But when the available flow exceeds 62.59 cfs, and the on-reservation users are not using
that excess nor is it being used to maintain fish life in Ahtanum Creek, then other water right
holders off the reservation may divert the excess flows. The "surplus" water availability may be
further reduced if/when the federal government constructs a reservoir to retain such surplus waters

1 to more adequately supply senior rights. The Court will base its award to surplus water claimants
2 on an analysis of rights established by the 1925 Achepohl Decree and continued beneficial use.

3 Further, the Court will also award junior or excess water rights to those AID patrons who
4 were awarded rights under the Pope Decree but have been using more water than that decree
5 authorized. The Court does not have any evidence other than the 1957 findings set forth in the Pope
6 Decree as to how much water was used on those lands between 1925 and 1994 other than the
7 United States' findings of 1977 water use. The Court acknowledges that the Pope Decree
8 extinguished the senior water right, but there are no specific findings of abandonment as to the
9 answer numbers set forth in the Pope Decree nor any evidence of nonuse for a long period of time
10 as is required by the law of this state. Okanogan Wilderness League v. Twisp, 133 Wn.2d 769, 781
11 (1997). This Court will not enter a finding of abandonment without specific evidence that between
12 1908 and 1957, water use on the answer number property was reduced for a significant period of
time and there was an intent to abandon that right or portion thereof. However, any such remaining
right will be subordinate to other waters uses in the reservation, both on and off the reservation.

13 Similarly, to the extent that water use on the answer number parcels has lessened since 1957,
14 the Court will enter a finding of abandonment/relinquishment and AID or the specific patron will be
15 required to show that water was not abandoned/relinquished or the nonuse of water was authorized
pursuant to the "sufficient causes" set forth in RCW 90.14.140.

16 The Court recognizes that it was a common practice in adjudications conducted in the 1920s
17 to award in-choate water rights. In other words, irrigation rights were awarded for lands not
18 irrigated at the time of the adjudication. This was particularly true for lands riparian to a water
19 source. As previously mentioned, the evidence of beneficial use is very limited. The Answers filed
20 pursuant to U.S. v. AID provide evidence of the number of acres irrigated in 1908 and 1957. U.S. –
21 126 shows the number of acres irrigated in 1977 and AID – 8 shows the number of acres irrigated in
1993.

22 The Court has found many instances where the number of acres irrigated in 1908 and 1957
23 is less than that authorized by the rights awarded in the Achepohl Decree, but by 1993 more land
24 was being irrigated than was irrigated in 1908 or 1957. The Washington Supreme Court, in Dept.
25 of Ecology v. Abbott, 103 Wn.2d. 686, 694 P.2d 1071 (1985) determined that riparian water rights
initiated prior to adoption of the surface water code in 1917, must have been exercised prior to
December 30, 1932 or were forfeited. There is no evidence in the record to show that the larger

1 acreage set forth in AID – 8 was irrigated prior to the end of 1932. Lacking that evidence, the Court
2 will not recommend confirmation of a right in excess of that irrigated in either 1908 or 1957.

3 c. Stock water

4 With few exceptions, it was the testimony of most water users in the Ahtanum subbasin that
5 use of Ahtanum Creek for stock water is a matter of extreme importance. See e.g., Testimony of
6 Mark Herke, April 19, 1994 Verbatim Report of Proceedings at 22; Dean Frey, *id.*, at 53. Despite
7 the importance and evidence of historic use, the Ninth Circuit refused to recognize stock water
8 rights. As stated in the Trial Brief of AID, “In its second most amazing decision, the Ninth Circuit
9 Court of Appeals disposed of all rights to stock water in the Ahtanum with a mere footnote.” It was
10 the Ninth Circuit’s conclusion in Ahtanum II that there was no evidence of use of water in 1908 nor
11 was settling stock water rights a purpose of the 1908 Code Agreement. Ahtanum II, 330 F.2d 897,
12 908 fn. 14. However, as pointed out by AID, the testimony indicated the land was largely used for
13 pasture and hay during 1908 – hay and pasture needed to feed animals for farming, food and
14 transportation. Further, there were no wells at that time. As succinctly stated by AID, “Exactly
15 what did Judge Pope think these animals using the pasture and the hay and pulling the farm
16 machinery were going to drink? Stock water was so important, it was virtually assumed. It
17 continues to be important today.” Further, the Ninth Circuit was simply incorrect in finding that
18 that 1908 Code Agreement did not provide for stock water. Article 6 of the Agreement, submitted
19 as DOE – 132, states:

20 “It is further understood and agreed that the water herein divided between the parties hereto
21 may be used for domestic, power, stock and irrigation purposes.”

22 To think there were no stock in the Ahtanum subbasin in 1908, stock who needed water to
23 survive and who relied on the creeks, tributaries, springs and ditches for that water, is an
24 unfortunate oversight that ignores the reality of the past and the present. See, e.g. DOE – 130,
25 Decree, Benton v. Johncox, Cause No. 19 (April 11, 1896)(“[T]he following named persons made
settlement upon lands through which the said Ahtanum Creek, its branches, forks and tributaries ran
... and made appropriations and diversions of water from said streams ...for stock and domestic
purposes”). That Ninth Circuit ruling is also contrary to an obvious purpose of the 1908 Code
Agreement – the very document that the Ninth Circuit had declared valid and binding in U.S. v.
AID.

1 The legal issue before this Court is whether AID is collaterally estopped from rearguing in
2 this forum an issue that was already considered by the Ninth Circuit. Collateral estoppel applies
3 when the previously decided issue is identical with the one presented in the action in question, there
4 was a final judgment on the merits, the party against whom the collateral estoppel is asserted was a
5 party to or in privity to the prior adjudication, and application of the doctrine will not work an
6 injustice on the party against whom it will be applied. McDaniels v. Carlson, 108 Wn.2d 299, 303,
7 738 P.2d 254 (1987); Cunningham v. State, 61 Wash. App. 562, 566, 811 P.2d 225 (1991). This
8 Court believes that as many as two of the collateral estoppel requirements are in doubt. The Court
9 will discuss those below. However, it is the fundamental principle of collateral estoppel that
10 appears to be in question here. Has AID or its patrons had a full and fair opportunity to argue this
11 matter before a court? There is absolutely no evidence before this Court that it/they have. The
12 Ninth Circuit appears to have taken up the matter on its own initiative while addressing another
13 point concerning the length of the irrigation season. The matter seems to have occurred to the court
14 while citing to an Oregon case that analyzed season of use, including effects on stock water.
15 Finally, the entire issue was disposed of summarily in a footnote. Given that the logic used in
16 resolving the matter was based on an erroneous premise, it is difficult to imagine the issue was
17 adequately briefed, if it was briefed at all.

18 In analyzing the prongs of collateral estoppel, the two that appear established are identity of
19 the parties and issue. Beyond that, it is debatable whether the doctrine is satisfied. First, was there
20 a final judgment on the merits? According to the Restatement (Second) of Judgments (1982), for
21 purposes of issue preclusion, a final judgment “includes any prior adjudication of an issue in
22 another action that is determined to be sufficiently firm to be accorded conclusive effect.”
23 Restatement § 13. According to the Restatement, factors for a court to consider in determining
24 whether the requisite firmness is present include whether the prior decision was adequately
25 deliberated, whether it was firm rather than tentative, whether the parties were fully heard, whether
the court supported its decision with a reasoned opinion, and whether the decision was subject to
appeal or in fact was reviewed on appeal. Id., comment g. Cunningham v. State, 61 Wn.App. 562,
567, 811 P.2d 225 (1991). Here, the Ninth Circuit’s decision does not appear firm. The issue was
not adequately deliberated nor was the opinion reasoned: it was considered and resolved in four
sentences in a footnote. Furthermore, the basis of the decision (that the 1908 Code Agreement

1 made no provision for stock water) is factually inaccurate. Nor does it appear the parties were fully
2 heard. The Court finds that the decision was not a final judgment on the merits.

3 Furthermore, application of the doctrine will work an injustice on the party against whom it
4 will be applied. The result here is unjust if the affected parties did not get a fair opportunity to
5 present their case and receive, in turn, a reasoned decision. The inequity rises to an even higher
6 level when the decision rendered is not in accord with the facts. The Court finds that AID and its
patrons will suffer an injustice if the doctrine is applied.

7 Consistent with Judge Stauffacher's ruling regarding a minimum treaty right for fish in
8 Ahtanum Creek, this Court respectfully departs from the conclusions of the Ninth Circuit and rules
9 that there is also a non-diversionary stock water right in Ahtanum Creek for 0.25 cfs, identical to
10 every other subbasin in the Yakima Basin. Because the Yakama Nation objected to a stock water
11 right for northside Ahtanum Creek users, the Court enters the following as a decision of the Court
12 rather than as a stipulation as has occurred in other subbasins. It is the intent of the Court to
13 establish a non-diversionary stock and wildlife watering right throughout the Ahtanum subbasin in a
fashion identical to other subbasins. The non-diversionary stock and wildlife watering right shall be
defined as follows:

- 14 1. Waters in natural watercourses in the subbasin shall be retained when naturally
15 available, in an amount not to exceed 0.25 cubic feet per second (cfs), for stock
16 water uses in such watercourses as they flow across or are adjacent to lands, which
17 are now used as pasture or range for livestock. Retention of such water shall be
18 deemed senior (or first) in priority, except as that use is inconsistent with the
19 Yakama Nation's instream right for fish which carries a priority date of 'time
immemorial,' in which case the Nation's right shall have priority. Regulation of
these watercourses by the plaintiff shall be consistent with such retention
requirements.
- 20 2. Waters in natural watercourses in the subbasin shall be retained when naturally
21 available, in an amount not to exceed 0.25 cubic feet per second (cfs), for wildlife
22 water uses in such watercourses as they flow across or are adjacent to lands, which
23 are now used as pasture or range for wildlife. Retention of such water shall be
24 deemed senior (or first) in priority, co-equal with the Yakama Nation's instream
25 right for fish which carries a priority date of 'time immemorial.' Regulations of
these watercourses by the plaintiff shall be consistent with such retention
requirements.
3. Waters in naturally occurring ponds and springs (with no surface connection to a
stream) in the subbasin shall be retained for stock water uses, when such ponds and
springs are located on or adjacent to lands which are now used as pasture or range

1 for livestock. Said uses embody entitlements to a level in the water bodies sufficient
2 to provide water for animals drinking directly therefrom while ranging on riparian
3 lands, and with the same priority as provided in paragraph 1. Regulation of the
4 ponds and springs by the plaintiff shall be consistent with such retention
5 requirements.

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

9 Diversionary stock water is a different issue. The Court has found that the development of
10 the Ahtanum subbasin would require the settlers and water users to own and raise livestock. It is
11 not clear how the animals received their water. The 1925 adjudication of Ahtanum Creek states in
12 the final decree that "all of the lands in the above schedules are entitled to water continuously
13 throughout the year for stock and domestic use." DOE - 133 at p. 67. Clearly some of the rights
14 set forth in the decree are non-riparian and would therefore permit the user to divert out of the
15 irrigation season for purposes of supplying stock water. However, that state court decision was
16 modified considerably by the Ninth Circuit's decision in Ahtanum II, 330 F.2d 897. That decision
17 precludes the use of all water in Ahtanum Creek after July 10 each year by northside diverters. Id.
18 at 915. Therefore, this Court finds that the diversionary stock water right must be incidental to
19 irrigation practices on non-riparian lands in order to be consistent with the Ninth Circuit's decision.

18 d. Point of Diversion Changes

19 The testimony and evidence shows that in many cases the points of diversion authorized for
20 use in the certificates that issued following the 1925 Ahtanum Creek Adjudication are no longer
21 being used. When these water rights were established in the late 1800's, gravity flow ditches were
22 predominately used to convey the water to the irrigated lands and the land was rill or flood irrigated.
23 Often these ditches were over a mile in length.

23 As technology advanced, many of the landowners abandoned the gravity flow ditches and
24 installed pumps on or near their property to withdraw water from the creek. In other cases several
25 small ditches were abandoned in favor of using one larger ditch resulting in landowners pumping
their water from the ditch to lands that previously had been served by a gravity flow ditch. Many of

1 the landowners have changed their irrigation practice from flood or rill irrigation to use of
2 sprinklers.

3 The record indicates that these changes have all resulted in moving points of diversion down
4 stream, which allows the water to remain in the creek for a longer period of time and reduces or
5 eliminates any conveyance loss that may have occurred in the gravity flow ditches. In many cases
6 the changes in point of diversion were made before the current owners acquired the property, so the
7 exact date of the change is unknown.

8 RCW 90.03.380 provides that the point of diversion of water for beneficial use may be
9 changed if such change can be made without detriment or injury to existing rights. That section
10 also provides a process for filing an application for change and obtaining the approval of the
11 Department of Ecology prior to making the change. The record shows that some landowners
12 complied with the requirements of RCW 90.03.380 when they changed their point of diversion,
13 however, a large number did not. If the testimony and evidence presented at the evidentiary hearing
14 is adequate to recommend confirmation of a water right, the Court will recommend that a right be
15 confirmed with a request that the claimant contact Ecology to undertake the appropriate process to
16 legitimize the change.

17 e. Evidentiary Issues

18 Forest Marshall, stream patrolman for AID at the time of hearing, testified that water users
19 generally begin using water on April 15. April 18, 1994 Report of Proceedings at 48. Pursuant to
20 the Pope Decree, all diversions to the northside of the Creek must cease diverting after July 10.
21 Therefore, the irrigation season for all water users diverting from Ahtanum Creek to the northside
22 of Ahtanum Creek shall be April 15 – July 10. Ahtanum II at 915.

23 Decisions in Ahtanum II and U.S. v. AID, Civil Cause No. 312 also play an important role
24 in determining the specifics of the water rights – particularly in regard to the instantaneous quantity
25 that may be diverted. In U.S. v. AID, Findings of Fact and Conclusions of Law (submitted to the
Court as DOE – 133) the District Court calculated instantaneous diversions at the rate of one-half
miner's inch per acre. See DOE – 133 at 8 (That the defendants have established that their
diversion requirements are 4.8 acre-feet during the year 1957 and were 3.7 acre feet in the year
1908, with a continuous flow requirement of one-half miner's inch per acre during the irrigation
season). That calculation amounts to approximately .01 cfs per acre. That calculation was also
used by the Ninth Circuit in establishing the overall diversion right of AID's patrons. See Ahtanum

1 II, 330 F.2d at 915 (The court multiplied 4695.72 by .01 to reach the maximum diversion right of
2 46.96 cfs). This decision was made despite contrary findings in Achepohl where the instantaneous
3 diversion portion of the water right was based on a calculation of .02 cfs per acre. (See DOE – 133,
4 the Achepohl Final Decree, wherein the instantaneous diversion for each water right holder was
5 calculated at .02 cfs per acre). However, the decision in Ahtanum II, as discussed above, is binding
6 on this Court and that is particularly true here where instantaneous uses of water was at the crux of
7 the 1908 Code Agreement as that document was interpreted by the Ninth Circuit.

8 As a result of the findings in Ahtanum II and U.S. v. Ahtanum, when the Court concludes
9 that a water right can be confirmed for lands on the north side of Ahtanum Creek, the Court will
10 award no more than 0.01 cubic foot per second for each acre irrigated. Although the evidence may
11 have shown that 4.8 acre-feet per year was used in 1957 to irrigate these lands, subsequent to the
12 entry of the Pope Decree, the period of use of water reduced to April 15 through July 10, a 87 day
13 period. A continuous diversion of 0.01 cfs for 87 days results in about 1.72 acre-feet per acre being
14 diverted. Therefore, when quantifying the rights confirmed herein, the Court will use 0.01 cfs
15 diverted on a continuous basis which is approximately 1.72 acre-feet per year for each acre
16 irrigated. All parties should note that 1.72 acre-feet per acre was not the water duty utilized.

17 AID, on behalf of the water users within, submitted AID – 8 which is a tabulation of water
18 users divided on the basis of whether those users can trace their right to a Pope number or not. It is
19 the primary document that will assist the Court in correlating claims in this adjudication with Pope
20 numbers and rights resulting from the Achepohl proceeding. AID did not choose to have each
21 irrigation district member testify but rather relied on the testimony of stream patrolman Forrest
22 Marshall and President Kenneth Bates. To establish the amount of acres that were irrigated after
23 US v. AID concluded, AID – 8 contained column 6. The number of acres set forth in that column is
24 the amount of water used on the parcels in 1977 based on Mr. Marshall's analysis of aerial
25 photography combined with his personal knowledge of water use in the area. April 18, 1994 Report
of Proceedings at 35. Also helpful in correlating water right claims with Pope Decree numbers and
state rights is US – 126. That exhibit contains other useful information and also utilized 1977 aerial
photography to determine water use as of that date. Where the information in the two documents
conflicts, the Court intends to rely on the information provided in AID – 8 given Mr. Marshall's
long-term experience and familiarity with water use in the district.

1 Many off-reservation claimants appear to have state-based rights resulting from the
2 Achepohl proceeding and also have claims based on Answer Numbers in U.S. v. AID but no
3 corresponding state certificate. It is the Court's understanding that in some instances the lack of a
4 adjudicated state certificate may have resulted from the failure to pay the necessary fees to the state
5 agency after an adjudication has transpired. The Court has attempted to note those instances when
6 analyzing the various claims and has provisionally confirmed with the understanding that a
7 certificate shall be provided to the Court by the date set forth for filing exceptions.

8 The Court quantified many rights for patrons within AID. The point of diversions identified
9 for the confirmed rights are general and track the certificates upon which the rights are based. AID
10 submitted AHID - 3 which purports to be a map of points of diversion within the district. The
11 Court scoured the room that contains the exhibits and was unable to locate that document. Since
12 AID is a major claimant (and a unique one in the sense that the members primarily divert from the
13 water course), Ecology has not provided individualized analyses for the members. As a byproduct,
14 the legal descriptions for the points of diversion are more broad than the Court would prefer. The
15 Court requests that a point of diversion legal description be provided for each right confirmed below
16 that is more narrow than that set forth. AID should keep in mind in supplying that description that
17 since the rights are based on existing certificates, the point of diversion cannot differ from that set
18 forth in the certificate unless a change is pursued with Ecology pursuant to RCW 90.03.380.

19 In addition to the point of diversion problems identified above, the Court was also limited in
20 defining the place of use for the confirmed water rights. AID - 8 provided considerable
21 information but did not provide place of use legal description information for each user. Therefore,
22 the Court relied on the legal description set forth by the Special Master in U.S. v. AID. Utilizing
23 that document did not allow the Court to identify specific places of use for each landowner for those
24 instances when the property ownership has subdivided since the 1960s.

25 Another problem that this lack of specificity causes is the division between lands that carry a
26 Pope Decree right and those lands that have a state water right but no Pope right. As the parcels are
27 subdivided it will be very difficult to ascertain which parcels have a senior, Pope Decree right and
28 which parcels do not. That problem already exists with many of the claims analyzed below. The
29 Court has attempted to identify which specific acres the Pope Decree based rights attach to - but in
30 some cases there is not enough evidence. In those instances the right was confirmed to all the
31 owners in aggregate. This issue may need further attention at the exception phase.

1 f. Specific Claims

2 During the 1994 hearing, some off-reservation Ahtanum Creek claimants participated on
3 their own behalf and others were represented by AID. The Court will begin by analyzing the rights
4 of those entities represented by AID. The following claims are not analyzed in alphabetical order
5 but rather by Pope Decree Answer Number as was presented to the Court. Claimants should consult
6 the index to identify the location of this Court's analysis of their specific rights.

6 *Represented by AID – Deriving from Answer Numbers*

7 Kenneth Bates and Thomas H. Bates

8 Kenneth Bates and Thomas H. Bates own Parcel Nos. 17121811001-03 and 17121811005
9 consisting of approximately 166.94 acres in the E1/2NE1/4 of Section 18 and Government Lots 1
10 and 2 in Section 17 ALL within, T. 12 N., R. 17 E.W.M. DOE – 136. Kenneth Bates participated
11 in U.S. v. AID and filed Answer No. 1. Id. According to AID – 8, the Bates are assessed for
12 133.96 acres and currently use water on 131.2 acres to raise hay and hops and grow pasture. In
13 1957, Kenneth Bates irrigated 151.7 acres. Id. US – 126, based on 1977 aerial photography,
14 indicates the Bates were irrigating 146.6 acres with surface water, which is the amount authorized
15 under Adjudicated Water Right Certificate No. 81. According to Answer No. 1, 80 acres were
16 being irrigated in 1908. The Bates apparently also have a supplemental groundwater right. US –
17 126.

18 The Court finds that the Bates were confirmed a senior right to irrigate 80 acres pursuant to
19 Answer No. 1 in U.S. v. AID. They have continued to beneficially use water from Ahtanum Creek
20 on at least 80 acres. They have supported that right with Adjudicated Water Right Certificate No.
21 81. As discussed above in the section entitled “Evidentiary Matters” of this report, Ahtanum II
22 places a limit on the right in an amount of 0.01 cfs and 1.72 acre-feet per year for each irrigated
23 acre. The Bates are therefore confirmed a right with a June 30, 1866 priority date to divert 0.80 cfs,
24 137.80 acre-feet per year from Ahtanum Creek between April 15 and July 10 for the irrigation of 80
25 acres.

26 The Bates did not submit specific information regarding which 80 acres out of the 146 acres
27 irrigated has the senior water right. According to DOE – 136, the Findings of Fact and Conclusions
28 of Law leading to the final decree in U.S. v. AID, Kenneth Bates irrigated the E1/2NE1/4 of Section
29 18 and Lots 1 and 2 of Section 17. This Court will confirm the senior right to the E1/2NE1/4 of

1 Section 18 and Lots 1 and 2 of Section 17, T. 12N., R. 17 E.W.M. The points of diversion are in
2 the SE1/4NW1/4 and the SW1/4NE1/4 of Section 18, T. 12 N., R. 17 E.W.M.

3 The Court also confirms a junior right to Thomas and Kenneth Bates that may only be used
4 when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including potential storage, are
5 being made of the excess by water right holders on the reservation. The junior right is appurtenant
6 to the E1/2NE1/4 of Section 18 and Government Lots 1 and 2 in Section 17, T. 12 N., R. 17
7 E.W.M. With the caveat set forth above, the period of use shall be April 15 – July 10. The
8 maximum instantaneous diversion shall be 0.66 cfs with a maximum annual diversion of 113.69
9 acre-feet. The points of diversion are in the SE1/4NW1/4 and the SW1/4NE1/4 of Section 18, T. 12
N., R. 17 E.W.M. The purpose of use shall be irrigation 66 acres. The date of priority, to be used
in conjunction with other excess water users, is 1866.

10 Ray L. & Jean H. West; Joseph & Lorra Wiebler; Billy & Sheryl Smith (694, (A) 1366)

11 According to AID – 8, the above named claimants own the six parcels (Parcel Nos.
12 18120444001, 18120441007, 18120431003, 18120431004, 18120431007, 18120442001)
13 encompassed in Answer No. 2 and located as follows:

14 The southerly 412.5 feet of the easterly 527 feet of the SE1/4 lying northerly of Ahtanum
Creek;

15 The east 527 feet of the SE1/4 lying northerly of Ahtanum Creek;

16 The east 2191.86 feet of that part of the SE1/4 of Section 4 lying north of Ahtanum Creek,
17 except the east 527 feet;

18 The NE1/4SW1/4, Lot 6 and the west 528 feet of the NW1/4 SE1/4 and the west 528 feet of
Lot 7;

19 All in Section 4, T. 12 N., R. 18 E.W.M.

20 Court Claim No. 0694 was filed in this proceeding by Billy G. and Patricia J. Frazier and on
21 July 25, 1986, Billy and Sheryl Smith were joined to the claim. The motion to be joined indicates
22 the Smiths acquired all of the land described in Court Claim No. 00694, which is the southerly
23 412.5 feet of the easterly 527 feet of the SE1/4 of Section 4 north of Ahtanum Creek. The Fraziers
24 name does not appear on AID – 8. The Wests and Wieblers are relying on the AID claim.

25 The claimants grow hay on their lands. Mr. Ray N. West participated in U.S. v. AID and
filed Answer No. 2. DOE – 136 at 9. In 1957, he irrigated 101.3 acres within four parcels totaling

1 176 acres; his predecessors irrigated 90 acres in 1908. Id. Lands encompassed by Answer No. 2 are
2 therefore entitled to a senior right for a maximum of 90 acres, Ahtanum II, 330 F.2d at 917, if a
3 certificate supports the right and beneficial use continued.

4 AID – 8 shows that approximately 155.66 acres are within the Answer No. 2 area and
5 receiving water. US -- 126, based on 1977 aerial photography, indicates 121.9 acres encompassed
6 by Answer No. 2 were irrigated with surface water. US – 126 also indicates that the lands
7 encompassed by Answer No. 2 have applicable state certificates authorizing irrigation of 138.87
8 acres, which appears to be correct. Adjudicated Water Right Certificate Nos. 83 and 84 apply to the
9 lands contained in Answer No. 2. Certificate No. 83 is a Class 4 right that issued to Ray N. West
10 and authorizes irrigation of 50 acres in the NE1/4SW1/4, NW1/4SE1/4, Lot 6 and Lot 7 of Section
11 4, T. 12 N., R. 18 E.W.M. Certificate No. 84 is a Class 4 right awarded to Walter Cope and
12 authorizes irrigation of 88.87 acres. However, that certificate has been the subject of two changes
13 in point of diversion and place of use. See Certificate of Change Recorded in Volume 3, page 1152
14 Records of Change and Volume 1-4, Page 155. Pursuant to those changes, the place of use was
15 changed in 1978 and irrigation of 5 acres authorized in the NE1/4NE1/4SE1/4 of Section 4. In
16 1971, Ecology authorized a change of 0.08 cfs of water for irrigation of 4 acres in the north 332 feet
17 of the south 2030.37 feet of the east 542 feet of Section 4. As noted above, the amount of acreage
18 allowed to be irrigated pursuant to Certificate No. 84 is 88.87 acres which corresponds exactly with
19 Parcels 1-3 of the land set forth in Answer No. 2. The Court has no evidence to determine if the
20 changes in place of use have affected the amounts of land that were authorized to be irrigated under
21 Answer No. 2. However, enough evidence exists to find that Certificate Nos. 83 and 84 apply to the
22 Section 4 lands within Answer No. 2. The claimants also have a supplemental groundwater right.
23 US – 126.

24 As noted above in the Section entitled “Evidentiary Matters”, Ahtanum Creek water users
25 are limited to the quantities of water set forth in Ahtanum II, 330 F.2d at 917. Use of water in
Section 4 is supported by the Class 4 rights confirmed to Ray N. West and Walter C. Cope in
Achepohl and set forth in Certificate Nos. 83 and 84. The Court requests that the changes in place
of use set forth in Volume 3, page 1152 and Volume 1-4, page 155 be considered by AID and the
appropriate steps, if any, be taken to rectify the legal descriptions set forth above.

The Court confirms a right to divert 0.9 cfs, 155 acre-feet per year from April 15 to July 10
for the irrigation of 90 acres. The evidence does not specify which 90 acres out of the total acres

1 irrigated has the senior water right. The points of diversion in Certificate No. 83 are a point near the
2 SW corner of Lot 6 and a point near the center of the NW1/4SW1/4 all in Section 4, T. 12 N., R 18
3 E.W.M. The points of diversion authorized under Certificate No. 84 and appurtenant change
4 certificates are all in Section 4, T. 12 N., R. 18 E.W.M. Those points are located on the west line of
5 the NE1/4SE1/4; in the NW1/4SW1/4; on the south boundary of Lot 6; on the line between Lots 7
6 and 8 and to be used to irrigate 4 acres in the north 332 feet of the south 2036.37 feet of the east 542
7 feet of Section 4; and a point located about 1,300 feet west and 825 feet north of the southeast
8 corner of Section 4, said point being within Government Lots 7 and 8; and a point located about 100
9 feet west and 70 feet south of the E1/4 corner of Section 4, said point being within the NE1/4SE1/4
10 to be used to irrigate 5 acres in NE1/4NE1/4SE1/4 of Section 4. The purpose of use shall be
11 irrigation of hay. AID – 8. The date of priority shall be 1867. Certificates Nos. 83-84.

12 Based on Certificate No. 83, the Court also confirms a junior right to the Wests and their
13 successors that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
14 including potential storage, are being made of the excess by water right holders on the reservation.
15 The only evidence on water use was provided in US - 126. Pursuant to that document, water has
16 been used on 121.6 acres. The Court granted a senior right for 90 acres above. Therefore, the
17 junior right is appurtenant to 31.6 acres and located as follows:

18 The southerly 412.5 feet of the easterly 527 feet of the SE1/4 lying northerly of Ahtanum
19 Creek;

20 The east 527 feet of the SE1/4 lying northerly of Ahtanum Creek;

21 The east 2191.86 feet of that part of the SE1/4 of Section 4 lying north of Ahtanum Creek,
22 except the east 527 feet;

23 The NE1/4SW1/4, Lot 6 and the west 528 feet of the NW1/4 SE1/4 and the west 528 feet of
24 Lot 7;

25 All in Section 4, T. 12 N., R. 18 E.W.M. Use of water in Section 4 is supported by the Class
4 rights confirmed to Ray N. West and Walter C. Cope in Achepohl and set forth in Certificate Nos.
83 and 84. See also DOE – 133 at 5. The Court requests that the changes in place of use set forth
in Volume 3, page 1152 and Volume 1-4, page 155 be considered by AID and the appropriate steps,
if any, be taken to rectify the legal descriptions set forth above.

With the caveat set forth above, the period of use shall be April 15 – July 10. The maximum
instantaneous diversion shall be .32 cfs with a maximum annual diversion of 55.12 acre-feet. The

1 points of diversion set forth in Certificate No. 83 are a point near the SW corner of Lot 6 and a point
2 near the center of the NW1/4SW1/4 all in Section 4, T. 12 N., R 18 E.W.M. The points of diversion
3 authorized under Certificate No. 84 and appurtenant change certificates are all in Section 4, T. 12
4 N., R. 18 E.W.M. Those points are located on the west line of the NE1/4SE1/4; NW1/4SW1/4; on
5 the south boundary of Lot 6; on the line between Lots 7 and 8; and a point located about 1,300 feet
6 west and 825 feet north of the southeast corner of Section 4, said point being within Government
7 Lots 7 and 8; and a point located about 100 feet west and 70 feet south of the E1/4 corner of Section
8 4, said point being within the NE1/4SE1/4. The purpose of use shall be irrigation of hay. AID – 8.
9 The date of priority, to be used in conjunction with other junior/excess water users shall be 1867.
10 Certificate Nos. 83-84.

11 Eugene Woodcock; Kim Woodcock; Shirley May Pettis; Gaylord Ray Case

12 According to AID – 8, Eugene Woodcock and successors Kim Woodcock, Shirley May
13 Pettis, Gaylord Ray Case (Woodcocks) own six parcels of land (Parcel Nos. 18120643402,
14 18120711003, 18120711007, 18120712401-02, 18120721002) which are described in Answer No.
15 3 and are planted in hay and pasture.

16 According to AID – 8, Woodcocks are assessed and receive water for 54.74 acres of land
17 described as the south 8 acres of the east 12 acres of SW1/4SE1/4 of Section 6, T. 12 N., R. 18
18 E.W.M., the NW1/4NE1/4NE1/4, N1/2NW1/4NE1/4 and the NE1/4NW1/4 of Section 7, T. 12 N.,
19 R. 18 E.W.M. Answer No. 3 indicates that in 1908, 80 acres were being irrigated, however, in 1957
20 only 72.2 acres were irrigated. Therefore, the lands covered by Answer No. 3 are entitled to a right
21 for the irrigation of 72.2 acres, if a right was awarded in the Achepohl Decree for the land and
22 beneficial use has continued.

23 US – 126, which is based on a 1977 aerial photograph, indicates that 40.20 acres within the
24 area covered by Answer No. 3 were irrigated with surface water. The Court notes that this
25 photography reflects the status of the land only in 1977, which was a significant drought year and is
not helpful in determining the extent of beneficial use for other years. US – 126 indicates the
existence of water rights for the irrigation of 50 acres within the area covered by Answer No. 3.
However, the Court's review of the record reveals that three water rights were awarded in the
Achepohl decree for these lands authorizing the irrigation of a total of 78 acres. Certificate No. 143
issued for a Class 7 right, to Rudolph Wadekaemper and W. J. Davis, authorizing the irrigation of
31 acres in the NE1/4NW1/4 of Section 7, T. 12 N., R. 18 E.W.M. That land is the same as that set

1 forth for Parcel 5 in Answer No. 3. Certificate No. 170 issued to Elbert Chandler for a Class 7 right
2 authorizing the irrigation of 8 acres described as the "South 8 acres of the East 12 acres of the
3 SW1/4SE1/4 of Section 6, T. 12 N., R. 18 E.W.M. That description is the same as the description
4 for Parcel 1 in Answer No. 3. This land may have been owned by Kim Woodcock at the time of the
5 evidentiary hearing. Elbert Chandler was granted a second right in the Achepohl decree. A Class 7
6 right was awarded for the irrigation of 39 acres in the N1/2NW1/4NE1/4 and W1/2NE1/4NE1/4 of
7 Section 7, T. 12 N., R. 18 E.W.M. However, according to SE – 8, Volume 2, the fees to obtain the
8 certificate for this right were not paid and therefore, the certificate (which would have been
9 Certificate No. 154) has not issued. That right would cover Parcels No. 3 and 4 of Answer No. 3.

10 Certificates not being issued due to nonpayment of fees was addressed by the Court in
11 Subbasin No. 3 (Teanaway River). Apparently, during the early part of the century, state law
12 required that the costs of an adjudication be borne by those awarded water rights. Therefore, prior
13 to a certificate issuing, the landowner had to pay a fee. If the fee was not paid, the certificate did
14 not issue. The unpaid fees in Subbasin No. 3 were relatively small. As was done in Subbasin No.
15 3, the Court will provide an opportunity during the exception period for this report for the fees to be
16 paid and a certificate issue. Either AID or the current owner of the affected parcel should contact
17 Ecology to determine the fee.

18 The Court finds that the parcels of lands encompassed by Answer No. 3 are now entitled to a
19 right to irrigate 54.74 acres. There is no evidence before the Court indicating which of the acres
20 comprising Answer No. 3 have continued to be irrigated. AID – 8. Between 1957 and 1993, a
21 portion of the water rights on the parcel were either abandoned or has relinquished. The Ninth
22 Circuit stated plainly that water rights not used on the parcels comprising the Answer Numbers
23 would revert to reservation users. Ahtanum II at 911, 913. Based on US – 131, the surface water
24 right is being used on six parcels of land (Parcel Nos. 18120643402, 18120711003, 18120711007,
25 18120712401-02, 18120721002) for a total of 54.74 acres located as follows:

The south 8 acres of the east 12 acres of the SW1/4SE1/4 of Section 6, T. 12 N., R. 18
E.W.M.;

The NW1/4NE1/4NE1/4, N1/2NW1/4NE1/4 and the NE1/4NW1/4 of Section 7, T. 12 N.,
R.18 E.W.M.; see also DOE – 136.

Use of water in the Section 7 areas are supported by Certificate No. 143 and a right confirmed to
Elbert Chandler in Achepohl that would be Certificate No. 154. Use of water in Section 6 is

1 supported by Certificate No. 170. Although no certificate was issued to Mr. Chandler for lands in
2 Section 7, the Court believes that a state based right exists for those lands. The Court is prepared to
3 confirm a right for the lands covered by what is likely Certificate No. 154 that has not issued if the
4 appropriate fees are paid. That right will be confirmed to the Cases, Kim Woodcock, Eugene
5 Woodcock and Shirley Pettis for 51.83 acres, .52 cfs and 89.58 acre-feet. The date of priority for
6 that right shall be 1870. A point of diversion consistent with the certificate that will issue with the
7 payment of fees shall be provided.

8 The Court will confirm a right for the Section 6 lands owned by Kim Woodcock once more
9 definitive legal descriptions for place of use and point of diversion are provided. The quantities
10 shall be .03 cfs, 5.17 acre-feet per year from April 15 to July 10 for the irrigation of 2.91 acres in
11 Section 6 owned by Kim Woodcock. The Date of Priority is 1870.

12 Robert Lockbeam, Jr.; Richard Rousseau; Marlin Lindgren; Johnny Clark (Claim No. 440); Julius
13 Gray; Terry & Robert Himrod

14 According to AID – 8, six claimants own the seven parcels (17121233401-02, 04-05, 07-09)
15 that are encompassed in Answer No. 4, which are located in Lot 1 (except the west 25 feet) and the
16 S1/2NW1/4SW1/4 of Section 12 and Lot 1 of Section 13 all within, T. 12 N., R. 17 E.W.M. See
17 also DOE – 136, p. 10. They grow pasture. AID – 8. Wesley Carson participated in U.S. v. AID
18 and filed Answer No. 4 indicating 47.1 acres were irrigated in 1957 and 51 acres were irrigated in
19 1908⁹. Id. Lands encompassed by Answer Number 4 are, therefore, entitled to a right to irrigate a
20 maximum of 47.1 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
21 beneficial use continued.

22 AID – 8 shows that 24.65 acres are currently receiving water. US -- 126, based on 1977
23 aerial photography, indicates 44.20 acres within Answer No. 4 were irrigated with surface water and
24 also have a state right for 45 acres of irrigation. See Adjudicated Water Right Certificate No. 158.
25 Certificate No. 158, a Class 7 right issued to Merle Carson for the irrigation of 45 acres in the
S1/2NW1/4SW1/4 and Lot 1 of Section 12 and Lot 1 of Section 13.¹⁰ The property also appears to
have a supplemental groundwater right. US – 126.

⁹ A correction was made for Answer No. 4 on acres irrigated in 1908.

¹⁰ The Court notes that Certificate incorrectly lists the place of use as the S1/2NW1/4NW1/4. The Achepohl decree shows the place of use to be the S1/2NW1/4SW1/4 which is identical to the place of use set forth in Answer No. 4. The Court will follow the Decree.

1 There is no evidence before the Court indicating which specific acres within Answer No. 4
2 have continued to be irrigated. The Ninth Circuit stated that water rights not used on the parcels
3 comprising the Answer Numbers would revert to reservation users. Ahtanum II at 911, 913. As
4 noted above, AID – 8 shows that 24.65 acres are receiving water. US -- 126, based on 1977 aerial
5 photography, indicates 44.20 acres were irrigated with surface water. Those quantities are both
6 something less than the quantity of irrigated lands found in U.S. v. Ahtanum.

7 The Court finds that the parcels of lands encompassed by Answer No. 4 are now entitled to a
8 right to irrigate 24.65 acres. AID – 8. It may be that AID inadvertently overlooked a parcel as
9 being within the legal description for Answer No. 4 lands. That analysis should be reviewed.
10 Based on the current record, the Court concludes that between 1957 and 1993, a portion of the water
11 rights on the parcels were either abandoned or relinquished. Based on US – 131, the surface water
12 right is being used in Lot 1 and the S1/2NW1/4SW1/4 of Section 12 and Lot 1 of Section 13 ALL
13 within, T. 12 N., R. 17 E.W.M. Use of water on these lands is supported by Certificate No. 158.
14 Therefore, the Court will confirm a right to the Woodcocks and their successors to irrigate 24.65
15 acres with a date of priority of 1870.

16 The Court confirms a right with a June 30, 1870 priority date for the diversion of 0.25 cfs,
17 43 acre-feet per year from April 15 to July 10 for the irrigation of 24.65 acres. The right is
18 appurtenant to land in Lot 1 and the S1/2NW1/4SW1/4 of Section 12 and Lot 1 of Section 13 ALL
19 within, T. 12 N., R. 17 E.W.M. The point of diversion, pursuant to Certificate No. 158, shall be the
20 SE1/4SE1/4 of Section 11, T. 12N., R. 17 E.W.M. The purpose of use shall be seasonal irrigation.
21 AID – 8.

22 Frank A. Weed

23 According to AID – 8, one claimant, Frank Weed, owns Parcel No. 17120943001 that
24 matches the legal description for lands encompassed in Answer No. 5 and located in the S1/2SE1/4
25 of Section 9, T. 12 N., R. 17 E.W.M. See also DOE – 136, p. 11. He grows hay and pasture. AID –
8. Charles T. Chambers participated in U.S. v. AID and filed Answer No. 5 indicating that he
irrigated 63.7 acres and 67 acres were irrigated in 1908. Id. Lands encompassed by Answer No. 5,
are therefore entitled to a senior right to irrigate 63.7 acres, Ahtanum II, 330 F.2d at 917, if a
certificate supports the right and beneficial use continued.

AID – 8 shows that 63.4 acres are receiving water. US -- 126, based on 1977 aerial
photography, indicates that 71.50 acres covered by Answer No. 5 were irrigated with surface water

1 and there is a state right for 79 acres. Adjudicated Water Right Certificate No. 79 issued to Charles
2 T. Chambers authorizing a Class 2 right with an 1865 priority date for the irrigation of 79 acres in
3 the S1/2SE1/4 of Section 9. That legal description matches identically that set forth in Answer No.
4 5. Mr. Weed does not appear to have a supplemental groundwater right. US – 126.

5 The Court finds that the owner of lands encompassed by Answer No. 5 are now entitled to
6 use water from Ahtanum Creek for irrigation of 63.4 acres. US – 126; AID – 8. The surface water
7 right is being used on Parcel No. 17120943001 in the S1/2SE1/4 of Section 9, T. 12 N., R. 17
8 E.W.M. Use of water in Section 9 are supported by Certificate No. 79. Therefore, the Court will
confirm a right to Mr. Weed to divert water for irrigation of 63.4 acres with an 1865 date of priority.

9 The Court will confirm a right to divert 0.634 cfs, 109.21 acre-feet per year from April 15 to
10 July 10 for the irrigation of 63.4 acres. Pursuant to Certificate No. 79, the water right is appurtenant
11 to land in the S1/2SE1/4 of Section 9, T. 12 N., R. 17 E.W.M. The points of diversion, pursuant to
12 Certificate No. 79 shall be the SE1/4SW1/4, SW1/4SE1/4 and SE1/4SE1/4 of Section 9, T. 12 N.,
R. 17 E.W.M. The date of priority shall be June 30, 1865.

W.C. Hall; Steve A. Carlson

13 According to AID – 8, two claimants, W.C. Hall and Steve Carlson, own the five parcels
14 (17120914002, 17121023411-14) encompassed in Answer No. 6, located in the SW1/4NW1/4 of
15 Section 10 and the N1/2SE1/4NE1/4 of Section 9, all within T. 12 N., R. 17 E.W.M. See also DOE
16 – 136 at 11. Hall owns the Section 9 property and Carlson the Section 10 parcels. The water is used
17 to grow pasture and hay. AID – 8. Walter C. Hall, along with Irene Hall and Marian Hall,
18 participated in U.S. v. AID and filed Answer No. 6 indicating that in 1957, 30 acres were being
19 irrigated and their predecessors irrigated 37.6 acres in 1908. Id. Lands encompassed by Answer
20 Number 6 are therefore entitled to a senior right for a maximum of 30 acres, Ahtanum II, 330 F.2d
at 917, if a certificate supports the right and beneficial use continued.

21 AID – 8 shows that 8.34 acres are currently receiving water. US -- 126, based on 1977
22 aerial photography, indicates 21.3 acres within the area covered by Answer No. 6 were irrigated
23 with surface water and there is also a state right for 47.50 acres appurtenant to the land. Certificate
24 No. 94, a Class 5 right, issued to Wilbur C. Hall for the irrigation of 40 acres in the SW1/4NW1/4
25 of Section 10. Certificate No. 196, a Class 8 right, issued to Wilbur C. Hall for the irrigation of 7.5
acres in the N1/2SE1/4NE1/4 of Section 9. The lands encompassed by Answer No. 6 do not appear
to have a supplemental groundwater right. US – 126.

1 It appears that Mr. Hall and Mr. Carlson are irrigating somewhat less land than was
2 established in U.S. v. Ahtanum under Answer No. 6. There is no evidence before the Court
3 indicating which specific acres within the Answer No. 6 lands have continued to be irrigated. The
4 Ninth Circuit stated plainly that water rights not used on the parcels comprising the Answer
5 Numbers would revert to reservation users. Ahtanum II at 911, 913. Although the state certificates
6 authorize irrigation of 47.50 acres, as noted above, AID – 8 shows that 8.34 acres are receiving
7 water.

8 The Court finds that within the parcels of lands described in Answer No. 6, a right continues
9 to exist to irrigate 8.34 acres. AID -- 8. Thus between 1957 and 1993, a portion of the water right
10 on the parcel was either abandoned or relinquished. Given the extent of water use in 1977 as shown
11 in US – 126, AID may have overlooked parcels that are within the legal description for lands
12 covered by Answer No. 6. Based on DOE – 136 and AID – 8, the surface water right is being used
13 on five parcels (17120914002, 17121023411-14) located in the SW1/4NW1/4 of Section 10 and the
14 N1/2SE1/4NE1/4 of Section 9, within T. 12 N., R. 17 E.W.M. Approximately 7.34 acres within
15 Section 9 are being irrigated and that use is supported by Certificate No. 196. That right carries an
16 1871 priority date. Approximately 1 acre is being irrigated within Section 10 and that use is
17 supported by Certificate No. 94. That right therefore carries an 1868 right.

18 The Court will confirm two rights – one with an 1871 date of priority to divert 0.073, 12.62
19 acre-feet per year for the irrigation of 7.34 acres in Section 9 and the second with an 1868 date of
20 priority, and a right to divert .01 cfs, 1.72 acre-foot per year for the irrigation of 1 acre in Section
21 10. The period of use for both rights shall be from April 15-July 10. The place of use shall be the
22 N1/2SE1/4NE1/4 of Section 9, T. 12 N., R. 17 E.W.M. owned by W. C. Hall and the SW1/4NW1/4
23 of Section 10, T. 12 N., R. 17 E.W.M. owned by Steve Carlson. The points of diversion authorized
24 by Certificate No. 94 are in the SW1/4NW1/4 of Section 10, the SE1/4NE1/4 of Section 8 and the
25 SE1/4NE1/4 of Section 9, while Certificate No. 196 authorizes the diversion Section 8 and 9. AID
– 8. According to the State's map, the diversion point in Section 9 is located approximately 600
feet north and 1250 feet west from the east quarter corner of Section 9. The date of priority shall be
1868 for Section 10 lands and 1871 for Section 9 lands.

William Weed

According to AID – 8, William Weed, owns Parcel No. 17120914003 encompassed in
Answer No. 7 and located in S1/2SE1/4NE1/4 of Section 9, T. 12 N., R. 17 E.W.M. See also DOE

1 – 136, p. 11. He grows hay and pasture. AID – 8. Flossie M. Chambers participated in U.S. v. AID
2 and filed Answer No. 7, indicating that in 1957, she irrigated 16.8 acres and in 1908, 12 acres were
3 irrigated. Lands encompassed by Answer Number 7 are, therefore, entitled to a senior right for a
4 maximum of 12 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
5 use continued.

6 AID – 8 shows that 18.1 acres are receiving water. US -- 126, based on 1977 aerial
7 photography, indicates 16.20 acres covered by Answer No. 7 were irrigated with surface water and
8 there is a state right for 20 acres. Adjudicated Water Right Certificate No. 95 is a Class 5 right
9 issued to Bert Snyder describing a right to irrigate 20 acres in the S1/2SW1/4NE1/4 of Section 9.
10 Mr. Weed is irrigating approximately the same land as was established in U.S. v. Ahtanum for
11 Answer No. 7. Mr. Weed does not have a supplemental groundwater right. US – 126.

12 The Court finds that William Weed is now entitled to a senior right from Ahtanum Creek for
13 irrigation of 12 acres. US – 126; AID – 8. The surface water right is being used on one parcel
14 (17120914003) in the S1/2SE1/4NE1/4 of Section 9, T. 12 N., R. 17 E.W.M. The Court confirms a
15 right to Mr. Weed to divert water for irrigation of 12 acres with a date of priority of 1868.

16 The Court will confirm a right to divert 0.12 cfs, 20.67 acre-feet per year from April 15 to
17 July 10 for the 12 acres. Pursuant to Certificate No. 95, the water right is appurtenant to land in the
18 S1/2SE1/4NE1/4 of Section 9, T. 12 N., R. 17 E.W.M. and the point of diversion shall be in the
19 SW1/4SE1/4 of Section 9, T. 12N., R. 17 E.W.M.

20 Based on Certificate No. 95 and US -- 126, the Court also confirms a junior right to Mr.
21 Weed. That right may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no
22 uses, including potential storage, are being made of the excess flows by water right holders on the
23 reservation. The only evidence on water use was provided in US – 126 and AID – 8. US – 126
24 indicates that 16.2 acres have been irrigated, while AID – 8 shows that 18.1 acres has been irrigated.
25 The certificate authorizes irrigation of up to 20 acres. The Court finds the junior right is appurtenant
to 4.8 acres in the S1/2SE1/4NE1/4 of Section 9, T. 12 N., R. 17 E.W.M. That reflects the
maximum irrigated in 1908 and 1957. With the caveat set forth above, the period of use shall be
April 15 – July 10. The maximum instantaneous diversion shall be .048 cfs, with a maximum
annual use of 8.27 acre-feet. The point of diversion, pursuant to Certificate No. 95 shall be the
SW1/4SE1/4, of Section 9, T. 12N., R. 17 E.W.M. The date of priority, to be used in conjunction
with other excess/junior water users, is 1868.

1 Hansen Fruit & Cold Storage; Laurel R. Hansen

2 According to AID – 8, Laurel Hansen and Hansen Fruit & Cold Storage (Hansens), own the
3 two parcels (16121623001 and 16121714002) encompassed in Answer No. 8 and located in the
4 SW1/4NW1/4 of Section 16 and the SE1/4NE1/4 of Section 17, T. 12 N., R. 16 E.W.M. See also
5 DOE – 136, p. 11. Hansens grow hay and pasture. AID – 8. Alta R. Hazen participated in U.S. v.
6 AID and filed Answer No. 8, which shows that in 1957, she irrigated 45 acres and Hazen’s
7 predecessors irrigated 53.9 acres in 1908. Id. Lands encompassed by Answer Number 8 are
8 therefore entitled to a senior right for a maximum of 45 acres, Ahtanum II, 330 F.2d at 917, if a
9 certificate supports the right and beneficial use continued.

10 AID – 8 shows that 55.18 acres are receiving water and Hansens are assessed for 45.8 acres.
11 US -- 126, based on 1977 aerial photography, indicates 40.20 acres encompassed by Answer No. 8
12 were irrigated with surface water and there is a state right for 77 acres. Certificate No. 333 is a Class
13 25 right on the Shaw-Knox-Eglin Ditch for the irrigation of 35 acres in the SW1/4NW1/4 of Section
14 16. Certificate No. 296 is a Class 18 right issued to T.M. Hazen for the irrigation of 42 acres in the
15 SE1/4NE1/4, NW1/4NE1/4 and the south 28 acres of the NE1/4NE1/4 of Section 17. The legal
16 descriptions set forth in Answer No. 8 are included in those legal descriptions, although Certificate
17 No. 296 describes additional lands. The Court finds that the two certificates apply to the land the
18 Hansens are irrigating and the same parcels that were recognized in U.S. v. Ahtanum for Answer
19 No. 8. Hansens also may have a supplemental groundwater right. US – 126

20 The Court finds that the owner of lands encompassed by Answer No. 8 are now entitled to a
21 senior right to use water from Ahtanum Creek for the irrigation of 45 acres on two parcels
22 (16121623001, 16121714002). US – 126; AID – 8. Pursuant to DOE – 136, the surface water right
23 is appurtenant to 25.1 acres in the SW1/4NW1/4 of Section 16 and 19.9 acres in the SE1/4NE1/4 of
24 Section 17, T. 12 N., R. 17 E.W.M. Use of water in Sections 16 and 17 are supported by Certificate
25 Nos. 333 and 296. Therefore, the Court will confirm a right to Hansens to divert water for irrigation
of 25.1 acres with a date of priority of 1893, and 19.9 acres with a date of priority of 1882.

The Court will confirm a right to divert 0.251 cfs, 43.24 acre-feet per year for the 25.1 acres
in Section 16 and 0.20 cfs, 34.45 acre-feet per year for the 19.9 acres in Section 17. The period of
use for both rights shall be from April 15-July 10. Pursuant to Certificate Nos. 333 and 296, the
water right is appurtenant to 25.1 acres in the SW1/4NW1/4 of Section 16 and 19.9 acres in the

1 SE1/4NE1/4 of Section 17, T. 12 N., R. 17 E.W.M. The point of diversion, pursuant to Certificate
2 Nos. 296 and 333 shall be the Shaw-Knox-Eglin Ditch and the Wiley-Knox-Eglin Ditch.

3 According to SE-3, one of the Subbasin 23 maps prepared by Ecology, the point of diversion
4 for the Shaw-Knox Ditch is approximately 1250 feet north and 700 feet east of the southwest corner
5 of Section 7, being within the SW1/4SW1/4 of Section 7, T. 12 N., R. 16 E.W.M. There is no
6 Wiley-Knox-Eglin Ditch identified on the State's exhibit map. SE-3 shows the Lower Shaw-Knox
7 Ditch diverting off of the Shaw-Knox Ditch. It appears that the Lower Shaw-Knox Ditch may be
8 the same ditch as the Wiley-Knox-Eglin Ditch. That makes the actual Ahtanum Creek diversion
9 point for the Lower Shaw-Knox Ditch/Wiley-Knox-Eglin Ditch the same diversion point as the
10 main Shaw-Knox Ditch. The Court will confirm only one point from Ahtanum Creek, that being
11 the Shaw-Knox Ditch. If this is not the case, AID should be prepared to address these ditches and
12 respective locations at the exception hearing.

13 Based on Certificate Nos. 296 and 333 and AID -- 8, the Court also confirms a junior right
14 to Hansens that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
15 including potential storage, are being made of the excess by water right holders on the reservation.
16 The only evidence on water use was provided in US – 126, 128 and AID – 8. US – 126 indicates
17 that 40.20 acres have been irrigated. AID – 8 shows that 55.18 acres has been irrigated and the
18 certificates authorize irrigation of up to 77 acres. It also shows that in 1908, 53.9 acres were
19 irrigated and in 1957, 45 acres were irrigated. The Court finds the junior right is appurtenant to 8.39
20 acres in the SW1/4NW1/4 of Section 16, T. 12 N., R. 16 E.W.M. With the caveat set forth above,
21 the period of use shall be April 15 – July 10. The maximum instantaneous diversion shall be 0.084
22 cfs with a maximum annual diversion of 14.47 acre-feet. The point of diversion, pursuant to
23 Certificate Nos. 296 and 333 shall be the Shaw-Knox-Eglin Ditch/Wiley-Knox-Eglin Ditch. The
24 date of priority, to be used in conjunction with other excess/junior water users, is 1893, as all the
25 1882 priority land was confirmed a senior right.

Catholic Bishop of Yakima County

According to AID – 8, Catholic Bishop of Yakima County (Bishop), owns the land
encompassed in Answer No. 10, located in the SW1/4NE1/4 and Government Lot 1 of Section 13,
T. 12 N., R. 16 E.W.M. See also DOE – 136, p. 12. Water is used to grow hay and pasture. AID –
8. John Hague participated in U.S. v. AID and filed Answer No. 10 indicating that in 1957, he
irrigated 41 acres; Hague's predecessors irrigated 41.8 acres in 1908. Lands included in Answer

1 Number 10 are therefore entitled to a senior right for a maximum of 41 acres, Ahtanum II, 330 F.2d
2 at 917, if a certificate supports the right and beneficial use continued.

3 AID – 8 shows that 49.76 acres are receiving water and the Bishop is assessed for 51.19
4 acres. US -- 126, based on 1977 aerial photography, indicates 24.30 acres encompassed by Answer
5 No. 10 were irrigated with surface water and there is a state right for 59.50 acres. Certificate No. 76
6 is a Class 1 right issued to Andrew Hague for irrigation of 33 acres in Lot 1, Section 13, with the
7 same exceptions to the legal description as set forth in Parcel 1 of Answer No. 10. Certificate No.
8 335 is a Class 27 right issued to Andrew Hague for irrigation of 26.5 acres in the SW1/4NE1/4 of
9 Section 13. That description matches the description of Parcel 2 in Answer No. 10.

10 However, Certificate Nos. 76 and 335 were the subject of a change process in 1935. See
11 RCW 90.03.380. Certificates of Change recorded in Vol. 1, pages 140-142, are set forth in SE – 8.
12 Pursuant to these change certificates, the water rights for the lands subject to these certificates were
13 swapped and also part of the Class 1 right was moved to a location not set forth in either original
14 certificate nor in Answer No. 10. According to Change Certificate Vol. 1, page 140, 0.20 cfs of the
15 Class 1 (Certificate No. 76) right was moved to the W1/2NE1/4NW1/4.¹¹ Change Certificate Vol.
16 1, page 141, authorized the transfer of 0.46 cfs from Lot 1 to the SW1/4NE1/4. Change Certificate
17 Vol.1, page 142 authorized the transfer of 0.53 cfs from the SW1/4NE1/4 to Lot 1. This quantity
18 would be sufficient for 0.26.5 acres. There were no indications that any portions of the original
19 certificates not subject to the change were cancelled or rescinded.

20 The Change Certificates Nos. 140-142 do not reflect the number of acres associated with
21 this change. However, the Achepohl decree and the certificates allowed for the use of 0.02 cfs for
22 each acres irrigated. Therefore, the Court concludes a right to irrigate 10 acres was transferred.
23 The Court further concludes that after the changes took place, Lot 1 lands had a Class 1 right
24 remaining for two acres,¹² and a Class 27 right for irrigation of 26.5 acres. In addition, Certificate
25 No. 77 was issued to the Corporation of the Catholic Bishop of Seattle for irrigation of two acres in
the portion of Lot 1 that was specifically excluded from Certificate No. 76 and Answer No. 10.
The Court concludes that the land encompassed in Certificate No. 77 was not confirmed a right in
the Pope Decree and therefore has at best a junior right. However, AID – 8 includes two, one-acre

¹¹ A water right was not claimed by AID for this acreage.

¹² Change Certificates 140 and 141 transferred 0.66 cfs of a total 0.70 cfs authorized in Certificate No. 76, leaving 0.04 cfs appurtenant to Lot 1.

1 parcels, and the Court cannot determine whether those parcel numbers lie within the portion of Lot
2 1 set forth in Certificate No. 76 (confirmed a right in the Pope Decree) or the portion of Lot 1 set
3 forth in Certificate No. 77 (not confirmed a right in the Pope Decree). After the change process,
4 lands in the SW1/4NE1/4 had a Class 1 water right for irrigation of 23 acres. See Change
5 Certificate No. 141. The Bishop does not have a supplemental groundwater right. US-126.

6 The Court finds that the Bishop has beneficially used and is now entitled to use water from
7 Ahtanum Creek for irrigation of a total of 41 acres. The first right consists of 23 acres (Parcel No.
8 16121313001) in that portion of the SW1/4NE1/4 lying south of the County Road, in Section 13, T.
9 12N., R 16 E.W.M. AID - 8; DOE - 136, p. 12. That right is supported by Certificate No. 76 as
10 modified by Change Certificate No. 142 and shall carry a priority date of 1852. The Court also
11 finds that the Bishop is entitled to divert water from Ahtanum Creek for irrigation of 18 acres on 1
12 parcel (Parcel No. 16121314001) in Lot 1. That parcel is described as follows:

13 Lot 1; except beginning 761.6 feet south and 385.1 feet east of the northwest corner of Lot
14 1; thence north 250 feet; thence east 125 feet; thence north 5° west 385 feet; thence east 30
15 feet; thence south 5° east 385 feet; thence east 195 feet; thence south 250; thence west 350
16 feet to beginning;

17 And also a strip 20 feet wide described specifically in Answer No. 10.

18 That right is supported by Certificate No. 335, as modified by Change Certificate No. 141 and
19 carries a priority date of 1896.

20 The Court denies a senior right to 2 acres in Parcel Nos. 16121314004-05. The land within
21 those parcels was not included in Answer No. 10, or any other answer number set forth in DOE -
22 136 as modified by the Ninth Circuit in Ahtanum II, 330 F.2d at 917. The land contained in those
23 parcel numbers will be considered below.

24 The Court will confirm a right to divert 0.23 cfs, 39.62 acre-feet per year for the 23 acres in
25 the SW1/4NE1/4 and 0.18 cfs, 31 acre-feet per year for the 18 acres in Lot 1. The period of use for
both rights shall be from April 15-July 10, a total of 87 days. Pursuant to DOE -- 133, the 1852
water right is appurtenant to 23 acres in the SW1/4NE1/4 lying south of the County Road and the
1896 water right is appurtenant to 18 acres in Lot 1 (with the exclusion set forth above) in Section
13, T. 12 N., R. 16 E.W.M. The points of diversion are as follows: Lot 4 and Lot 3 in Section 13,
T. 12 N., R. 16 E.W.M.

Based on Certificate No. 77, and AID -- 8, the Court also confirms a junior right to the
Bishop that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,

1 including potential storage, are being made of the excess by water right holders on the reservation.
2 The only evidence on water use was provided in US-126, 128 and AID – 8. AID – 8 shows that
3 49.76 acres have been irrigated. The certificates and rights awarded in Achepohl authorize irrigation
4 of up to 61.5 acres. The Court granted a right to irrigate 41 acres above. The Court finds the junior
5 right is appurtenant to 2 acres in two parcels (Parcel Nos. 16121314004-05) within Lot 1 as
6 described in Certificate No. 77 and an additional 6.26 acres in Lot 1 as described in Certificate No.
7 76 of Section 13, T. 12 N., R. 16 E.W.M. as described in Certificate No. 76. AID – 8. With the
8 caveat set forth above, the period of use shall be April 15 – July 10. The maximum instantaneous
9 diversion for the two acres in Parcel Nos. 16121314004-05 shall be 0.02 cfs with a maximum
10 annual diversion of 3.45 acre-feet. The point of diversion, pursuant to Certificate No. 77, shall be
11 from Bachelor Creek, near the west line of the SE1/4NE1/4 of Section 13, T. 12 N., R. 16 E.W.M.
12 As to the other 6.26 acres in Lot 1, the maximum instantaneous diversion shall be .07 cfs with a
13 maximum annual diversion of 12.06 acre-feet. The point of diversion shall be Lot 3 and Lot 4,
14 Section 13, T. 12 N., R. 16 E.W.M. The date of priority, to be used in conjunction with other
15 excess/junior water users, is 1852 for 2 acres in Lot 1 and 1896 for the remaining 6.26 acres in Lot
16 1. See Certificate No. 77 and Certificate No. 335 as modified by Change Certificate No. 141.

17 The Court is mindfull of the fact that Bishop's water right predates the Yakama Nation's
18 1855 treaty right. This may affect the particulars of the Bishop's water rights. AID may want to
19 brief these issues.

20 Smiley and Melissa Garver (substituted for Bessie Goldsmith [Claim No. 2081]); Robert and Janice
21 Conrad; Odetta A. Eglin Sutton (Claim No. 0915)

22 Although Bessie Goldsmith (and therefore Smiley and Melissa Garver as substituted parties)
23 filed a separate claim, the Court will analyze it herein as a part of Answer No. 11 presented by AID.
24 The Court is unaware of any specific evidence submitted by Ms. Goldsmith in support of her claim.

25 According to AID – 8, Bessie Goldsmith, Robert and Janice Conrad and Odetta Eglin
Sutton, own the four parcels (17120831403-04, 17120831007, 17120814002) encompassed in
Answer No. 11 and located in the W1/2NE1/4SE1/4 and that part of the SE1/4NE1/4 lying south of
Old County Road in Section 8, T. 12 N., R. 17 E.W.M. See also DOE – 136, p. 12. Eglin, et al.
divert water to grow pasture. Volney G. Eglin participated in U.S. v. AID and filed Answer No. 11.
DOE – 136. Answer No. 11 is divided into two parcels: Parcel A consists of 20 acres in the
W1/2NE1/4SE1/4 of Section 8, while Parcel B consists of 33.26 acres in the SE1/4NE1/4 of Section

1 8. Odetta Eglin owns 33.26 acres. AID – 8. In 1957, Volney Eglin irrigated 17.8 acres; his
2 predecessors irrigated 10 acres in 1908. Id. Lands encompassed by Answer Number 11 are
3 therefore entitled to a senior right for a maximum of 10 acres, Ahtanum II, 330 F.2d at 917, if a
4 certificate supports the right and beneficial use continued.

5 AID – 8 shows that 50.26 acres are receiving water and Eglins et al. are assessed for 50
6 acres. US -- 126, based on 1977 aerial photography, indicates none of the land encompassed by
7 Answer No. 11 were irrigated with surface water and that the lands encompassed by Answer No. 11
8 have a state right for 20 acres. Certificate No. 195 is an 1871, Class 8 right issued to Clinton
9 Brosius and George Clark for the irrigation of 75 acres in SE1/4NE1/4 of Section 8 and the
10 SW1/4NE1/4 and S1/2NW1/4 of Section 9. Certificate No. 195 was the subject of a change in
11 place of use and point of diversion that involved land not at issue here. See Certificate of Change at
12 Vol. 1, page 114. The only land covered by Answer No. 11 that is within the place of use on
13 Certificate No. 195 is that portion of the SE1/4NE1/4 lying below the County Road in Section 8,
14 which according to SE – 2, Ecology’s map exhibit, is fairly small, perhaps around 10-13 acres.
Based on the parcel description for three of the properties, they do not appear to be in the SE1/4 or
the NE1/4 of Section 8. Further, the Court can find no other rights in Achepohl for the
W1/2NE1/4SE1/4 of Section 8.

15 The Court finds that Odetta Eglin Sutton owns the one parcel (17120814002) encompassed
16 by Answer No. 11 and entitled to use water from Ahtanum Creek for irrigation of 10 acres. US –
17 126; AID – 8. Pursuant to DOE – 136, the surface water right is appurtenant to 10 acres in that
18 portion of the SE1/4NE1/4 of Section 8 lying south of County Road, T. 12 N., R. 17 E.W.M. Use
19 of water in Section 8 is supported by Certificate No. 195. Therefore, the Court will confirm a right
20 to divert water for the irrigation of 10 acres with a date of priority of 1871. See DOE – 133 at 35.
21 The Court finds the other parcels that AID suggests lie within Answer No. 11 are not within the
22 legal description set forth in DOE – 136.¹³ See U.S. v. AID, Civil Cause No. 312, Findings of Fact
23 and Conclusions of Law.

24
25 ¹³ For example, in Claim No. 2081 submitted originally by Ms. Bessie Goldsmith, the place of use is described as a part
of the E1/2SW1/4 of Section 8, T. 12 N., R. 17 E.W.M. That description does not match any of the legal descriptions in
Answer No. 11.

1 The Court will confirm a right to divert 0.10 cfs, 17.23 acre-feet per year from April 15 to
2 July 10 for the 10 acres in Section 8. The point of diversion is in the NE1/4NE1/4SE1/4 of Section
3 8, T. 12N., R. 17 E.W.M. Certificate No. 195. The priority date shall be 1871. Certificate No. 195.

4 The Court cannot grant any junior rights for the property in question, even though AID
5 asserts that Ms. Eglin-Sutton is using water for irrigation of 20.9 acres. There is no evidence of a
6 certificate from Achepohl to support that use. AID should submit evidence regarding the applicable
7 legal support for use of water in excess of the amount confirmed in the Pope Decree. The right is
8 herein DENIED.

9 Vickie Smith; Steven M. Gerdes; Loren Gerdes; Jimmy Haedrick; Lester Johnson; Mike Ribail

10 According to AID – 8, the above named claimants (Answer 12 claimants) own the nine
11 parcels (17121013013, 17121013403-04, 17121013007, 17121014006, 17121014411,
12 17121014418, 17121014420-21) encompassed in Answer No. 12 and located in the S1/2S1/2NE1/4
13 of Section 10, T. 12 N., R. 17 E.W.M. See also DOE – 136, p. 13. Answer 12 Claimants divert
14 water to grow pasture. AID – 8. Alex Iriarte participated in U.S. v. AID and filed Answer No. 12
15 indicating that in 1957 he irrigated 37.4 acres and that his predecessors irrigated 31 acres in 1908.
16 Id. However, in Ahtanum II, the Ninth Circuit determined that Answer No. 12 lands were not
17 irrigated in 1908, Ahtanum II, 330 F.2d at 916, resulting in this land not having a senior water right.
18 The Court will examine the evidence to determine any junior right.

19 AID – 8 shows 25 acres are receiving water and Answer 12 claimants are assessed for the
20 same. US – 126, based on 1977 aerial photography, indicates 24.90 acres encompassed by Answer
21 No. 12 were irrigated with surface water and there is a state right for 40 acres. Certificate No. 104
22 is a class 5 right issued to Ellsworth Lamb and Carrol C. McCaw for irrigation of 40 acres in the
23 S1/2S1/2NE1/4 of Section 10. DOE – 133 at 9. That legal description matches exactly the legal
24 description set forth in Answer No. 12 and the Court finds that Certificate No. 104 applies to those
25 parcels.

There is no evidence before the Court indicating which 25 acres within the land described in
Answer No. 12 have been irrigated. The Ninth Circuit stated that water rights not used on the
parcels comprising the Answer Numbers would revert to reservation users. Ahtanum II at 911, 913.
As noted above, AID – 8 shows that 25 acres are receiving water. US -- 126, based on 1977 aerial
photography, indicates 24.90 acres encompassed by Answer No. 12 were irrigated with surface

1 water. Those quantities are both something less than the 31 acres of irrigated lands found in U.S. v.
2 Ahtanum Answer No. 12.

3 The Court confirms a junior right to Answer No. 12 claimants that may only be used when
4 the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including potential storage, are being
5 made of the excess by water right holders on the reservation are now entitled to use 25 acres. US –
6 126; AID -- 8. Based on US – 130, the surface water right is being used on nine parcels
7 (17121013013, 17121013403-04, 17121013007, 17121014006, 17121014411, 17121014418,
8 17121014420-21) in the S1/2S1/2NE1/4 of Section 10, T. 12 N., R. 17 E.W.M. Use of water in
9 Section 10 is supported by Certificate No. 104. Therefore, the Court will confirm a right to the
10 Answer 12 claimants to irrigate 25 acres with a date of priority of 1868 with the restrictions set
11 forth above regarding when the water may be used.

12 The Court will confirm a right to divert 0.25 cfs, 43.07 acre-feet per year from April 15 to
13 July 10 for the 25 acres. No claimant submitted specific information regarding which 25 acres out
14 of those specified in Answer No. 12 has the water right. Pursuant to US – 130, Certificate No. 104
15 and DOE -- 136, the water right is appurtenant to land in the S1/2S1/2NE1/4 of Section 10, T. 12 N.,
16 R. 17 E.W.M. The point of diversion, pursuant to Certificate No. 104 shall be the NE1/4SE1/4 of
17 Section 10, T. 12N., R. 17 E.W.M. AID – 8. The date of priority, to be used in conjunction with
18 other junior/excess water users shall be 1868. Certificate No. 104.

19 Holtzinger Ranches Inc.

20 According to AID – 8, one claimant, Holtzinger Ranches Inc., owns Parcel No.
21 17121041004 encompassed in Answer No. 13 and located in the W1/2NE1/4SE1/4 and
22 NW1/4SE1/4 of Section 10, T. 12 N., R. 17 E.W.M. See also DOE – 136, p. 13. Holtzinger
23 Ranches grow pasture. Harry Holtzinger participated in U.S. v. AID and filed Answer No. 13
24 indicating that in 1957, he irrigated 58.3 acres and his predecessors irrigated 45 acres in 1908. Id.
25 Lands encompassed by Answer Number 13 are therefore entitled to a senior right for a maximum of
45 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use
continued.

AID – 8 shows 47.9 acres are receiving water. US -- 126, based on 1977 aerial
photography, indicates 46.40 acres covered by Answer No. 13 were irrigated with surface water and
there is a state right for 57 acres. Certificate No. 106 confirmed a Class 5 right to L.L. Lowers for
irrigation of 57 acres in the NW1/4SE1/4 and W1/2NE1/4SE1/4 of Section 10. The Certificate No.

1 106 legal description matches the Answer No. 13 legal description and the Court finds the
2 certificate supports the claim. Pursuant to Answer No. 13, Mr. Holtzinger has a right to irrigate 45
3 acres. Holtzinger Ranches does not appear to have a groundwater right. US – 126. The surface
4 water right is being used on one parcel (17121041004) in the W1/2NE1/4SE1/4 and NW1/4SE1/4
5 of Section 10, T. 12 N., R. 17 E.W.M. The Court will confirm a senior right to Holtzinger Ranches
to divert water for irrigation of 45 acres with an 1868 date of priority.

6 The Court confirms a right to divert 0.45 cfs, 77.52 acre-feet per year from April 15 to July
7 10 for the irrigation of 45 acres. Pursuant to Certificate No. 106, the water right is appurtenant to
8 land in the W1/2NE1/4SE1/4 and NW1/4SE1/4 of Section 10, T. 12 N., R. 17 E.W.M. The point of
9 diversion, pursuant to Certificate No. 106 shall be points located in the NW1/4SW1/4,
NE1/4SW1/4, and the SW1/4SE1/4, all in Section 10, T. 12 N, R. 17 E.W.M.

10 Based on Certificate No. 95 and US – 126, the Court also confirms a junior right to
11 Holtzingers that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
12 including potential storage, are being made of the excess by water right holders on the reservation.
13 The only evidence on water use was provided in US – 126 and AID – 8. US – 126 indicates that
14 46.4 acres have been irrigated, while AID – 8 shows that 47.9 acres has been irrigated. The
15 certificate authorizes irrigation of up to 57 acres. The Court granted a right to 45 acres above. The
16 Court finds the junior right is appurtenant to 2.9 acres in the W1/2NE1/4SE1/4 and NW1/4SE1/4 of
17 Section 10, T. 12 N., R. 17 E.W.M. With the caveat set forth above, the period of use shall be April
18 15 – July 10. The maximum instantaneous diversion shall be .029 cfs with a maximum annual
19 diversion of 5 acre-feet. The point of diversion, pursuant to Certificate No. 106 shall be the
20 NW1/4SW1/4, NE1/4SW1/4, and the SW1/4SE1/4, all in Section 10, T. 12N, R. 17 E.W.M. The
Date of Priority, to be used in conjunction with other excess/junior water users, is 1868.

M. W. Melton & K. Crook

21 According to AID – 8, M. W. Melton and K. Crook grow pasture on four parcels
22 (16121713401-04) encompassed in Answer No. 14 and located in the SW1/4NE1/4 of Section 17,
23 T. 12 N., R. 16 E.W.M. See also DOE – 136, p. 13. Gerald R. Minion participated in U.S. v. AID
24 and filed Answer No. 14 setting forth that in 1957, he irrigated 15.3 acres and his predecessors
25 irrigated 20 acres in 1908. Id. Lands encompassed by Answer Number 14 are therefore entitled to
a senior right for a maximum of 15.3 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the
right and beneficial use continued.

1 AID – 8 shows 14.07 acres are receiving water and Answer 14 claimants are assessed for
2 approximately the same. US – 126, based on 1977 aerial photography, indicates 11.10 acres
3 encompassed by Answer No. 14 were irrigated with surface water and there is a state right for 17
4 acres. Certificate No. 256 confirmed a Class 12 right to Matthew Busey for irrigation of 17 acres
5 that included lands in the SW1/4NE1/4 of Section 10. See also DOE – 133 at 9. The Certificate No.
6 256 legal description matches the Answer No. 14 legal description and the Court finds the
7 certificate supports the claim.

8 No evidence before the Court shows which specific acres comprising Answer No. 14 have
9 been beneficially used. The Ninth Circuit stated that water rights not used on the parcels
10 comprising the Answer Numbers would revert to reservation users. Ahtanum II at 911, 913. As
11 noted above, AID – 8 shows that 14.07 acres are receiving water. US -- 126, based on 1977 aerial
12 photography, indicates 11.10 acres encompassed by Answer No. 14 were irrigated with surface
13 water. Those quantities are both less than the 15 acres of irrigated lands found in U.S. v. Ahtanum
14 for Answer No. 14.

15 The Court finds that the owner of lands encompassed by Answer No. 14 are now entitled to
16 use water from Ahtanum Creek for irrigation of 14.07 acres. US – 126; AID – 8. Thus, between
17 1957 and 1993, a portion of the water right on the parcel was either abandoned or relinquished. The
18 surface water right is being used on four parcels (16121713401-04) in the SW1/4NE1/4 of Section
19 17, T. 12 N., R. 16 E.W.M. Use of water in Section 17 is supported by Certificate No. 256,
20 therefore, the Court will confirm a right to Answer 14 claimants to divert water for irrigation of
21 14.07 acres with a date of priority of 1875.

22 The Court confirms a right to divert 0.141 cfs, 24.29 acre-feet per acre from April 15 to July
23 10 for the irrigation of 14.07 acres. Pursuant to Certificate No. 256, the water right is appurtenant to
24 land in the SW1/4NE1/4 of Section 17, T. 12 N., R. 16 E.W.M. The point of diversion, pursuant to
25 Certificate No. 256 is the Shaw-Knox Ditch located approximately 1250 feet north and 700 feet east
of the southwest corner of Section 7, within the SW1/4SW1/4 of Section 7, T. 12 N., R. 16 E.W.M.
The date of priority is 1875. Certificate No. 256.

Robert & Donna McInnis; Roger & Barbara Deaver

According to AID – 8, the McInnises and the Deavers own the five parcels (17120941007,
17120941404-07) encompassed in Answer No. 15 and located in the NE1/4SE1/4 of Section 9, T.
12 N., R. 17 E.W.M. See also DOE – 136, p. 13. These claimants grow hay and pasture on their

1 lands. Walter McInnis participated in U.S. v. AID and filed Answer No. 15 indicating that he
2 irrigated 24.7 acres in 1957 and his predecessors irrigated 20 acres in 1908. Id. Lands
3 encompassed by Answer Number 15 are therefore entitled to a senior right for a maximum of 20
4 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use continued.

5 AID – 8 shows that 42.75 acres are receiving water, although the Court notes that one entry
6 for 17.2 acres appears to be a misprinted reentry. According to AID – 8, Parcel Number
7 17120941407 has 17.2 irrigated acres;¹⁴ AID – 1 shows that parcel to be 2.95 units. If the apparent
8 misprinted entry for 17.2 acres is removed from AID – 8, and 2.95 is inserted, the Answer No. 15
9 claimants would be irrigating 29.50 acres. US -- 126, based on 1977 aerial photography, indicates
10 none of the acres covered by Answer No. 15 were irrigated with surface water but that those lands
11 have a state right for the irrigation of 30 acres. Certificate No. 78 is a Class II right that issued to
12 Clinton Brosius and George Clark for irrigation of 70 acres in the N1/2SE1/4 of Section 9. See also
13 DOE – 133 at p. 4. Certificate No. 78 was the subject of a change in place of use in 1931 pursuant
14 to a request by John Miller. According to Certificate of Change recorded in Vol. 1, page 113, 0.7
15 cfs was transferred from the N1/2SE1/4 to lands within the SW1/4NE1/4 and S1/2NW1/4 of
16 Section 9, leaving 0.7 cfs in the N1/2SE1/4 – an amount adequate to irrigate 35 acres. Additionally,
17 Mr. Miller also transferred 0.70 cfs of Class 8 water set forth in Certificate No. 195 from lands
18 within the SW1/4NE1/4 and the S1/2NW1/4 of Section 9 to lands within the N1/2SE1/4 of Section
19 9. See DOE – 8, Certificates of Change, Vol. 1, Page 114 dated April 25, 1931. Thus it seems
20 there was a swap. Apparently, Mr. Miller wanted a combination of Class 8 and Class 2 water rights
21 on the various parcels. Finally, Mr. McInnis changed the point of diversion from a point within the
22 NE1/4NE1/4SE1/4 of Section 8 to a point within the SE1/4NE1/4SW1/4 of Section 9. See DOE –
23 8, Vol. 1, page 216, dated April 26, 1945. Answer No. 15 claimants do not appear to have a
24 supplemental groundwater right. US – 126.

25 The Court finds that the owner of lands encompassed by Answer No. 15 are now entitled to
a senior right from Ahtanum Creek for irrigation of 20 acres. AID – 8; AID -- 1. Pursuant to DOE –
136 and AID – 8, the surface water right is appurtenant to 5 parcels (17120941007, 17120941404-
07) in the NE1/4SE1/4 of Section 9, T. 12 N., R. 17 E.W.M, except the south 330 feet of the east
330 feet. Use of water in Section 9 is supported by Certificate No. 78. See also DOE – 133 at 4.

¹⁴All information in AID – 8 regarding Parcel 17120941007 matches that submitted for Parcel 17120941407.

1 The Court will confirm a right to divert 0.20 cfs, 34.45 acre-feet for the irrigation of 20 acres
2 in Section 9. The period of use shall be from April 15-July 10. The right is appurtenant to 20 acres
3 in the NE1/4SE1/4 of Section 9, T. 12 N., R. 17 E.W.M, except the south 330 feet of the east 330
4 feet. AID shall also supply a legal description for the point of diversion. In light of the change by
5 Mr. McInnis in 1945, there is no way to determine which point of diversion serves the specific
6 lands. Lacking legal description, the Court is also unable to determine which certificate applies and
7 therefore the correct priority date. AID shall address this at the exceptions hearing.

8 Based on AID – 1, AID – 8 and DOE – 133, the Court also confirms a junior right to
9 Answer 15 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and
10 no uses, including potential storage, are being made of the excess by water right holders on the
11 reservation. The only evidence on water use was provided in U.S.--126 and AID – 8/AID -- 1. US
12 – 126 indicates that none of the land was irrigated in one year -- 1977. With the correction made by
13 the Court and noted above, AID – 8 and AID – 1 show that 29.5 acres has been irrigated. 24.7 acres
14 were irrigated in 1957 and 20 acres in 1908. The certificate authorizes irrigation of up to 70 acres
15 for the entire N1/2SE1/4 of Section 9; at issue here are only the lands in the NE1/4. The Court
16 granted a right to 20 acres above.

17 The Court finds the junior right is appurtenant to 4.7 acres in the NE1/4SE1/4 of Section 9,
18 T. 12 N., R. 17 E.W.M, except the south 330 feet of the east 330 feet. The amount diverted in 1908
19 or 1957 shall be the extent of the right. With the caveat set forth above, the period of use shall be
20 April 15 – July 10. The maximum instantaneous diversion shall be .047 cfs with a maximum
21 annual diversion of 8.1 acre-feet. Because no certificate was provided, the Court cannot identify a
22 point of diversion. AID shall also supply a legal description for the point of diversion. In light of
23 the change by Mr. McInnis in 1945, there is no way to determine which point of diversion serves
24 the specific lands. The purpose of use shall be irrigation of hay and pasture. AID – 8. An analysis
25 of the applicable certificate shall also be provided to allow the Court to determine the priority date.

Theodore Mellotte; Carl Euteneier; Roger & Karen Kroboth; Frank & Ruth Weed

According to AID – 8, the above-named parties own the 11 parcels (16121841402—04,
16121842005, 16121831404-05, 16121811406, 16121732401-04) encompassed in Answer No. 16
and located in Sections 17 and 18, T. 12 N., R. 16 E.W.M. See also DOE – 136, p. 14. Answer No.
16 claimants grow pasture and hay. William Mondor participated in U.S. v. AID and filed Answer
No. 16 showing that in 1957, he irrigated 99 acres and his predecessors irrigated 99 acres in 1908.

1 Id. Lands encompassed by Answer Number 16 are therefore entitled to a senior right for a
2 maximum of 99 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
3 use continued.

4 AID – 8 shows 62 acres are receiving water. US -- 126, based on 1977 aerial photography,
5 indicates 29.60 acres encompassed by Answer No. 16 were irrigated with surface water and there
6 are state rights for 131.4 acres from the Achepohl decree. Answer No. 16 lands are covered by a
7 Class 9 right awarded to Marlow Lesh for 70.5 acres in Lot 4 of Section 17 and the SE1/4NE1/4,
8 NW1/4SE1/4 and Lot 7 in Section 18 and described in Certificate No. 203. A Class 18 right was
9 confirmed to George and W. H. Hill Jr. for 29 acres in the NE1/4NE1/4, see Certificate No. 295,
10 which is one of the parcels set forth in Answer No. 16. See DOE – 133 at p. 56. In addition,
11 Certificate No. 205 issued to William Mondor for the irrigation of 33 acres in Lots 4 and 5 of
12 Section 18, which corresponds to Parcel 6 in Answer No. 16. DOE – 133 at p. 37; See DOE --136 at
13 p. 14. However, a typed notation for Parcel 6 indicates “Parcel 6 deraigns title from a non-signer.”

14 Id. The Court believes that notation indicates the owner of that parcel was not a signatory to the
15 Code Agreement and therefore the lands would be ineligible for a water right as established in U.S.
16 v. AID. AID – 8 also notes a Class 7 right for lands owned by Carl Euteneier, but the Court was
17 unable to find a corresponding Class 7 right in Achepohl that would apply to the parcel description.
18 Pursuant to Answer No. 16, William Mondor has a right for irrigation of 99 acres for the lands
19 noted above in Sections 17 and 18, T.12 N., R. 16 E.W.M. Other parcels of land were also
20 identified in Answer No. 16, such as Parcels 7 (E1/2NE1/4 and E1/2SE1/4 of Section 7, T. 12 N.,
21 R.16 E.W.M.) and 8 (That portion of the SE1/4SE1/4 of Section 13, T. 12 N., R. 15 E.W.M., lying
22 south of County Road), but AID has not correlated those parcels with any parcels in AID – 8. The
23 Court can only confirm rights for those parcels identified by AID as having a correlative Pope
24 Answer Number.

25 The Court finds that the owners of lands encompassed by Answer No. 16 are now entitled to
use water from Ahtanum Creek for irrigation of 62 acres on 10 parcels (16121841402—04,
16121831404-05, 16121811406, 16121732401-04). AID – 8. Thus between 1957 and 1993, a
portion of the water rights on the parcels were either abandoned or relinquished. Pursuant to DOE –
203 and 295, the surface water right is appurtenant to 62 acres in Lot 4 of Section 17 and the
SE1/4NE1/4, NE1/4NE1/4, NW1/4SE1/4 and Lot 7 in Section 18, all within T.12 N., R. 16 E.W.M.
AID did not present evidence indicating which specific acres were irrigated on a specific tract.

1 The Court will confirm a right to divert 0.62 cfs, 106.80 acre-feet per year from the April 15
2 to July 10 for the irrigation of 62 acres in Sections 17 and 18. Pursuant to Certificate No. 203, the
3 point of diversion shall be the NW1/4NW1/4; the NW1/4SE1/4; Lot 4 and Lot 7 all in Section 18,
4 T. 12N. R. 16 E.W.M. The date of priority shall be 1872. Certificate No. 203; DOE – 133 at p. 36.

5 The Court also refers AID to the analysis regarding Marc and Susan Martin below for a
6 determination as to whether their land is a part of Answer No. 16.

7 John P. Herke

8 According to AID – 8, Mr. Herke is the sole successor to lands in Answers 17, 18 and 21.
9 The Court will examine all three of those claims in this section.

10 Answer No. 17

11 According to AID – 8, Mr. Herke owns Parcel No. 16121413004 encompassed by Answer
12 No. 17 and located in:

13 That part of Lots 1 and 2 lying south of County Road; except beginning at a point on the
14 north line of North Creek and 100 feet east of the west line of Lot 2 to the true point of
15 beginning; thence north to County Highway right-of-way; thence east along the south line of
16 Highway right-of-way 300 feet; thence south to the north bank of North Creek; thence west
17 to the point of beginning. All in Section 14, T. 12N., R. 16 E.W.M. DOE – 136 at p. 15.

18 Mr. Herke irrigates pasture on these lands. AID – 8. J. A. Herke participated in the U.S. v.
19 AID proceeding and filed Answer No. 17, which shows that in 1957, Mr. Herke irrigated 29.8 acres
20 and his predecessors irrigated 18.8 acres in 1908. Id. Lands encompassed by Answer Number 17
21 are therefore entitled to a senior right for a maximum of 18.8 acres, Ahtanum II, 330 F.2d at 917, if
22 a certificate supports the right and beneficial use continued.

23 AID – 8 shows that 47.34 acres are receiving water. US -- 126, based on 1977 aerial
24 photography, indicates 51.50 acres encompassed by Answer No. 17 were irrigated with surface
25 water and there is a state right for 26 acres. There is a discrepancy between AID – 8 and AID – 1
regarding the water class for Answer No. 17 lands. AID – 1 indicates that it is a Class 8 right while
AID – 8 shows it to be a Class 28 right. The only Class 28 right was awarded to Gertrude Herke for
lands in Section 13. The Answer No. 17 lands are in Section 14. A Class 8 right was awarded to
Gertrude Herke in the Achepohl decree for the irrigation of 26 acres in Lots 1 and 2 of Section 14,
T. 12 N., R. 16 E.W.M. DOE – 133 at p. 35. However, no state certificate issued to Ms. Herke
apparently due to the required fees not being paid to Ecology's predecessor. AID – 8. Answer No.
17 claimants do not appear to have a supplemental groundwater right. US – 126.

1 The Court finds that Mr. Herke, upon payment of the fees for issuance of the Achepohl
2 certificate, is now entitled to a senior right from Ahtanum Creek for irrigation of 18.8 acres in:

3 That part of Lots 1 and 2 lying south of County Road; except beginning at a point on the
4 north line of North Creek and 100 feet east of the west line of Lot 2 to the true point of
5 beginning; thence north to County Highway right-of-way; thence east along the south line of
6 Highway right-of-way 300 feet; thence south to the north bank of North Creek; thence west
7 to the point of beginning. All in Section 14, T. 12 N., R. 16 E.W.M. DOE – 136 at p. 15.

8 Use of water in Section 14 is supported by the Class 8 right confirmed to Gertrude Herke in
9 Achepohl. DOE – 133 at 35. Therefore, the Court will provisionally confirm a right to Mr. Herke
10 with the understanding that the required fee must be paid and the certificates provided to the Court
11 by the date set for filing exceptions.

12 The Court will confirm an instantaneous right to 0.188 cfs, 32.39 acre-feet per year from
13 April 15 to July 10 for the irrigation of 18.8 acres. The Court presumes that the certificate will
14 provide the point of diversion, which will be carried forward to the right confirmed herein. The
15 date of priority shall be 1871. DE – 133 at 35.

16 Based on AID – 1, AID – 8 and DOE – 133, the Court also provisionally confirms a junior
17 right to Answer 17 claimant John Herke that may only be used when the flow in Ahtanum Creek
18 exceeds 62.59 cfs and no uses, including potential storage, are being made of the excess by water
19 right holders on the reservation. US – 126 indicates that 51.50 acres were irrigated in one year –
20 1977, and AID – 8 shows that 47.34 acres have been irrigated. The Achepohl right authorizes
21 irrigation of up to 26 acres for all of Lots 1 and 2 in Section 14. This Court cannot confirm a right
22 in excess of what the state right encompassed. RCW 90.03. Any right developed after 1917 would
23 require initiation of a new right and compliance with RCW 90.03. The Court granted a right to
24 irrigate 18.8 acres above.

25 The Court finds and provisionally confirms that the junior right is appurtenant to 7.2 acres in
Lots 1 and 2 in Section 14, T. 12 N., R. 16 E.W.M. so long as AID produces a certificate in support
of the right. With the caveat set forth above, the period of use shall be April 15 – July 10. The
maximum instantaneous diversion shall be .072 cfs with a maximum annual diversion of 12.40
acre-feet. Because no certificate was provided, the Court cannot identify a point of diversion. AID
shall provide evidence of a point of diversion by the date set for filing exceptions. The date of
priority, to be used in conjunction with other excess/junior water users, is 1871.

1 Answer No. 18

2 According to AID – 8, Mr. Herke owns the two parcels (16121323001-02) encompassed in
3 Answer No. 18 and located in Government Lots 2, 3 and 4, of Section 13, T. 12N., R. 16 E.W.M.
4 Mr. Herke grows pasture on those lands. J. P. Herke participated in U.S. v. AID and filed Answer
5 No. 18 indicating that in 1957, he irrigated 23.5 acres and his predecessors also irrigated 23.5 acres
6 in 1908. Id. Lands encompassed by Answer Number 18 are therefore entitled to a senior right for a
7 maximum of 23.5 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
8 beneficial use continued.

9 AID – 8 shows 59.2 acres are receiving water. US -- 126, based on 1977 aerial
10 photography, indicates 25.90 acres encompassed by Answer No. 18 were irrigated with surface
11 water and there is a state right for 35 acres. There is a discrepancy between AID – 8 and AID – 1
12 regarding the water class for this Answer Number. AID – 8 indicates that two parcels make up
13 Answer No. 18; Parcel No. 16121323001 (Class 18) and 16121323002 (Class 5). AID – 1 shows
14 that Parcel No. 16121323001 is a Class 28 and 16121323002 is a Class 18. There are no Class 18
15 or Class 5 rights with the same legal description set forth in Answer No. 18. The Class 28 right
16 from Achepohl was awarded to Gertrude Herke for the irrigation of 35 acres in Lot 2, Lot 3 and Lot
17 4 in Section 13 – which is the same legal description provided in Answer No. 18. It appears that
18 Answer No. 18 lands encompass Parcel No. 16121323001 only.¹⁵ That claim is supported by the
19 Class 28 right confirmed to Gertrude Herke with a priority date of 1900. However, no state
20 certificate issued to Ms. Herke, again presumably due to failure to pay the required fee. The lands
21 described in Answer No. 18 may have a supplemental groundwater right for 100 acres. US – 126.

22 The Court finds that John Herke is now entitled to a senior right from Ahtanum Creek for
23 irrigation of 23.5 acres. Pursuant to DOE – 136, the surface water right is appurtenant to one parcel
24 (16121323001) in Government Lots 2, 3 and 4 of Section 13, T. 12 N., R. 16 E.W.M. Use of water
25 in Section 13 is supported by the Class 28 right confirmed to Gertrude Herke in Achepohl. DOE –
133 at 66. Therefore, the Court will confirm a right to Answer No. 18 landowners for the irrigation
of 23.5 acres upon presentation of a certificate to be provided by the date set forth for filing
exceptions. See DOE – 133 at 35; DOE – 136 at 15; SE – 8. At that time, the Court will confirm a

¹⁵ For example, AID – 8 shows that the assessed acres are 30.4 acres which is the amount set forth in Answer No. 18.

1 right to divert 0.24 cfs, 41.34 acre-feet per year from April 15 to July 10 for the irrigation of 23.5
2 acres in Section 13. AID shall also supply a legal description for the point of diversion.

3 The Court is unable to award a junior right. As analyzed above, the maximum of the right is
4 that quantity irrigated in 1908 or 1957. The evidence shows that 23.5 acres was the land irrigated in
5 1908 and 1957 and the Court has confirmed a right for 23.5 acres above.

6 Answer No. 21

7 According to AID – 8, Mr. Herke grows pasture on Parcel No. 16121431003 encompassed
8 in Answer No. 21 and located in Government Lots 3 and 4, lying above the County Road in Section
9 14, T. 12 N., R. 16 E.W.M. Francis Herke, John A. Herke and Joseph Herke participated in the
10 U.S. v. AID proceeding and filed Answer No. 21, which indicated that in 1957, the Herkes irrigated
11 19.3 acres while in 1908 their predecessors irrigated 8.3 acres. Id. Lands encompassed by Answer
12 Number 21 are therefore entitled to a senior right for a maximum of 8.3 acres, Ahtanum II, 330 F.2d
13 at 917, if a certificate supports the right and beneficial use has continued.

14 AID – 8 shows 31.86 acres are receiving water. US -- 126, based on 1977 aerial
15 photography, indicates 17.60 acres encompassed by Answer No. 21 were irrigated with surface
16 water and there is a state right for irrigation of 24 acres. Certificate No. 198 is a Class 8 right with
17 an 1871 date of priority awarded to John A. Herke and Joseph P. Herke for irrigation of 24 acres in
18 Lots 3 and 4 of Section 14, T. 12 N., R. 16 E.W.M.

19 The Court finds that John P. Herke is now entitled to a senior right from Ahtanum Creek for
20 irrigation of 8.30 acres. Pursuant to DOE – 136, the surface water right is appurtenant to one parcel
21 (16121431001) constituting 8.30 acres in Government Lots 3 and 4 of Section 14, T. 12 N., R. 16
22 E.W.M. The Court will confirm a right to divert 0.083 cfs, 14.30 acre-feet per year from April 15 to
23 July 10 for the irrigation of 8.30 acres in Section 14. The point of diversion shall be in Lot 1 of
24 Section 15, T. 12 N., R. 16 E.W.M. Certificate No. 198. The date of priority shall be 1871.

25 Based on Answer No. 21 and Certificate No. 198, the Court also provisionally confirms a
junior right to John Herke that may only be used when the flow in Ahtanum Creek exceeds 62.59
cfs and no uses, including potential storage, are being made of the excess by water right holders on
the reservation. AID – 8 indicates that water is being used on 31.86 acres, while US – 126 shows
that 17.60 acres were irrigated in 1977. The Achepohl right authorizes irrigation of up to 24 acres
for all of Lots 3 and 4 of Section 14; however, in 1957 only 19.3 acres were being irrigated. This
Court cannot confirm a right in excess of what was historically irrigated. RCW 90.03. Any right

1 developed after 1917 would require initiation of a new right and compliance with RCW 90.03. The
2 Court granted a right above to irrigate 8.3 acres.

3 The Court finds the junior right is appurtenant to 11 acres in Lots 3 and 4 in Section 14, T.
4 12 N., R. 16 E.W.M. With the caveat set forth above, the period of use shall be April 15 – July 10.
5 The maximum instantaneous diversion shall be .11 cfs with a maximum annual diversion of 18.95
6 acre-feet. The point of diversion shall be in Lot 1 of Section 15, T. 12N., R. 16 E.W.M. Certificate
7 No. 198. The date of priority, to be used in conjunction with other excess/junior water right holders,
8 shall be 1871. Id.

9 Eugene Hoppis

10 According to AID – 8, Mr. Hoppis grows pasture on the five parcels (Parcel Nos.
11 17121014412 –16) encompassed in Answer No. 19 and located in the N1/2SE1/4NE1/4 of Section
12 10, T. 12 N., R. 17 E.W.M. See DOE – 136 at 15. Nathan Mayfield participated in U.S. v. AID and
13 filed Answer No. 19, which shows that in 1957, he irrigated 19.3 acres and his predecessors
14 irrigated 18.5 acres in 1908. Id. Lands encompassed by Answer Number 19 are therefore entitled
15 to a senior right for a maximum of 18.5 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports
16 the right and beneficial use has continued.

17 AID – 8 shows 8.0 acres within the Answer No. 19 area are receiving water. US -- 126,
18 based on 1977 aerial photography, indicates 5.30 acres encompassed by Answer No. 19 were
19 irrigated with surface water and there is a state right for 20 acres. According to DOE – 133 at 10
20 and Certificate No. 105, Mr. Hoppis is the successor to approximately half of a 40-acre right
21 confirmed to Ellsworth D. Lamb in the Achepohl adjudication. The legal description set forth in
22 Certificate No. 105, N1/2S1/2NE1/4 of Section 10, includes the Answer No. 19 lands. Answer No.
23 19 claimants appear to have no supplemental groundwater right. US – 126.

24 The Court finds that Mr. Hoppis is now entitled to use water from Ahtanum Creek for
25 irrigation of 8.00 acres as shown in AID -- 8. Thus between 1957 and 1993 a portion of the water
rights on the parcel were either abandoned or relinquished. Pursuant to DOE – 136 and AID -- 8,
the surface water right is appurtenant to 8.00 acres in five parcels (Parcel No. 17121014412 –16)
and located in N1/2SE1/4NE1/4 of Section 10, T. 12 N., R. 17 E.W.M. Use of water in Section 10
is supported by the Class 5 right confirmed to Ellsworth D. Lamb in Achepohl and set forth in
Certificate No. 105. DOE – 133 at 10.

1 The Court will confirm an instantaneous right to 0.08 cfs for the irrigation of 8.0 acres in
2 Section 10. The period of use shall be from April 15-July 10, a total of 87 days. A continuous
3 diversion of 0.08 cfs for 87 days would result in an annual diversion of 13.78 acre-feet. The point of
4 diversion shall be in the SE1/4NW1/4 of Section 10, T.12 N., R. 17 E.W.M. Certificate No. 105.
5 The date of priority shall be 1868. DOE – 133 at p. 10; Certificate No. 105.

6 Richard W. McGahan (Claim No. 1880)

7 According to AID – 8, Mr. McGahan grows pasture on Parcel No. 16121813013
8 encompassed in Answer No. 20 and located in N1/2SW1/4NE1/4 of Section 18, T. 12 N., R. 16
9 E.W.M. Mae Mondor participated in U.S. v. AID and filed Answer No. 20, which shows that in
10 1957, she irrigated 2 acres and her predecessors irrigated 10 acres in 1908. Id. Lands encompassed
11 by Answer Number 20 are therefore entitled to a senior right for a maximum of 2 acres, Ahtanum
12 II, 330 F.2d at 917, if a certificate supports the right and beneficial use has continued.

13 AID – 8 shows 1.46 acres within the Answer No. 20 area are receiving water. US -- 126,
14 based on 1977 aerial photography, indicates none of the land encompassed by Answer No. 20 were
15 irrigated with surface water, but that a state right for 8.80 acres is appurtenant to the land.
16 According to DOE – 133 at 60 and Certificate No. 306, Mr. McGahan is the successor to an 8.8-
17 acre right confirmed to Joseph Mondor in the Achepohl adjudication. Certificate No. 306 is a Class
18 19 right for the irrigation of 8.80 acres in the N1/2SW1/4NE1/4 of Section 18 – a legal description
19 identical to that set forth in Answer No. 20. Answer No. 20 claimants appear to have a five-acre
20 supplemental groundwater right. US – 126.

21 The Court finds that Richard W. McGahan now has a right to use water from Ahtanum
22 Creek for irrigation of 1.46 acres pursuant to AID -- 8. Thus between 1957 and 1993, a portion of
23 the water rights on the parcel were either abandoned or relinquished. Pursuant to DOE – 136 and
24 AID -- 8, the surface water right is appurtenant to 1.46 acres in one parcel (Parcel No.
25 16121813013) and located in N1/2SW1/4NE1/4 of Section 18, T. 12 N., R. 16 E.W.M. Use of
water in Section 18 is supported by the Class 19 right confirmed to Mae Mondor in Achepohl and
set forth in Certificate No. 306. See also DOE – 133 at 60. The Court will confirm an instantaneous
right to 0.015 cfs, 2.58 acre-feet per year from April 15 to July 10 for the irrigation of 1.46 acres in
Section 18. The point of diversion shall be in the NW1/4NW1/4 and the NW1/4NE1/4 of Section
18, T.12 N., R. 16 E.W.M. Certificate No. 306. The date of priority shall be 1883. Id.

1 John-Ken Inc.

2 According to AID – 8, John-Ken Inc. owns the four parcels (Parcel No. 16121824403,
3 16121823402-03, 16121831402) encompassed in Answer No. 22 and located in the SE1/4NW1/4,
4 S1/2SW1/4NE1/4, NE1/4SW1/4, and Government Lots 1, 2 and 3, except that part of Lot 3, and of
5 the NE1/4SW1/4 lying south of the County Road; all in Section 18, T. 12N., R. 16 E.W.M. DOE –
6 136 at 16. Pasture is grown on lands described in Answer No. 22. Frank A. and Sylvia Mondor,
7 William Mondor and the Estate of Joseph L. Mondor participated in U.S. v. AID and filed Answer
8 No. 22, which indicated that in 1957, the Mondors irrigated 48.1 acres while their predecessors
9 irrigated 70 acres in 1908. Id. Lands encompassed by Answer No. 22 are, therefore, entitled to a
10 senior right for 48.1 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
11 beneficial use continued.

12 AID – 8 shows 19.45 acres are within the Answer No. 22 area and receiving water. US --
13 126, based on 1977 aerial photography, indicates none of the land encompassed by Answer No. 22
14 were irrigated with surface water but that a state right for 76.90 acres is appurtenant to the land.
15 The Court does not reach the same conclusion. Certificate No. 305 is a Class 19 right that issued to
16 the Mondors for the irrigation of 68.4 acres in Lot 2 and 3, SE1/4NW1/4, S1/2SW1/4NE1/4 and the
17 NE1/4SW1/4 of Section 18. That description is nearly identical to that set forth in Answer No. 22,
18 with only Lot 1 in Section 18 not included in Certificate No. 305. The Court was unable to identify
19 any certificate that authorized the irrigation of Lot 1 in Section 18. Answer No. 22 claimants do not
20 have a supplemental groundwater right. US – 126.

21 The Court finds that the owner of lands encompassed by Answer No. 22 are now entitled to
22 use water from Ahtanum Creek for irrigation of 19.45 acres pursuant to AID -- 8. Thus between
23 1957 and 1993, a portion of the water rights on the parcel were either abandoned or relinquished, as
24 19.45 acres is considerably less acreage then was identified in U.S. v. AID. Pursuant to DOE – 136
25 and AID -- 8, the surface water right is appurtenant to 19.45 acres in four parcels (Parcel No.
16121824403, 16121823402, 16121831402, 16121823403) and located in Lots 2 and 3,
SE1/4NW1/4, S1/2SW1/4NE1/4, and the NE1/4SW1/4, except that part of Lot 3 and of the
NE1/4SW1/4 lying south of County Road; All in Section 18, T. 12N., R. 16 E.W.M. Use of water in
Section 18 is supported by the Class 19 right confirmed to Isidore Mondor, Mary A. Slavin, Louise
Mondor, Alphonse Mondor, F.A. Mondor and H. G. Mondor in Achepohl and set forth in
Certificate No. 305. See also DOE – 133 at 60. The Court will confirm a right to divert 0.195 cfs,

1 33.60 acre-feet per year from April 15 to July 10 for the irrigation of 19.45 acres in Section 18. The
2 point of diversion shall be in the NW1/4NW1/4 of Section 18 and the SE1/4NE1/4 of Section 12,
3 Both within T.12 N., R. 16 E.W.M. Certificate No. 305. The date of priority shall be 1883. Id.
4 Lester Roy (Court Claim No. 01020); Willis Mondor

5 According to AID – 8, Lester Roy and Willis Mondor (Answer 23 Claimants) own the three
6 parcels (Parcel Nos. 16121812001 and 16120743002-03) encompassed in Answer No. 23 and
7 located in the following areas:

8 The SW1/4SE1/4 lying south of the county road and the E1/2E1/2E1/2SE1/4 of Section 7,
9 T. 12 N., R. 16 E.W.M.; and

10 Beginning 94.4 feet west of the NE corner of NW1/4NE1/4 of Section 18; thence east 954.4
11 feet; thence south 210.5 feet; thence west 416.5 feet; thence north 68° 38' west 577.5 feet to
12 beginning, T. 12 N., R. 16 E.W.M. See also DOE – 136 at 16.

13 Answer 23 claimants grow pasture and hay on their lands. Willis S. Mondor participated in
14 U.S. v. AID and filed Answer No. 23, which shows that in 1957, he irrigated 9 acres within a 48.41-
15 acre area and his predecessors irrigated 25 acres in 1908. Id. Lands encompassed by Answer No.
16 23 are therefore entitled to a senior right for a maximum of 9 acres, Ahtanum II, 330 F.2d at 917, if
17 a certificate supports the right and beneficial use has continued.

18 AID – 8 shows 26.82 acres are within the Answer No. 23 area and receiving water. US --
19 126, based on 1977 aerial photography, indicates 13.30 acres encompassed by Answer No. 23 were
20 irrigated with surface water and a state right for 13.00 acres is appurtenant to the land. In Achepohl,
21 G. C. Mayfield and E. B. Mayfield were confirmed Class 10 rights for the irrigation of 90.2 acres
22 and Certificate No. 244 issued for that right. The legal description on Certificate No. 244 is the
23 SE1/4SW1/4 and SW1/4SE1/4 of Section 7; the NE1/4NW1/4 and NW1/4NE1/4 of Section 18, all
24 in T. 12 N., R. 16 E.W.M., which included the Answer No. 223 lands. In addition to the Answer
25 No. 23 lands, Certificate No. 244 is also appurtenant to lands described in Answer No. 28 and 29,
analyzed below. Answer No. 23 claimants appear to not have a supplemental groundwater right.
U.S. – 126.

The Court finds that the owners of lands encompassed by Answer No. 23 are now entitled to
use water from Ahtanum Creek for irrigation of 9 acres pursuant to AID -- 8. Pursuant to DOE –
136 and AID -- 8, the surface water right is appurtenant to 9 acres in three parcels (Parcel Nos.
16121812001, 16120743003, 16120743002) encompassed in Answer No. 23 and located in:

1 The SW1/4SE1/4 lying south of the County road of Section 7, T. 12 N., R. 16 E.W.M.;

2 Beginning 94.4 feet west of the NE corner of NW1/4NE1/4 of Section 18 thence east 954.4
3 feet; thence south 210.5 feet; thence west 416.5 feet; thence north 68° 38' west 577.5 feet to
4 beginning, T. 12 N., R. 16 E.W.M.

5 Use of water on this land is supported by the Class 10 right confirmed to G.C. and E.B.
6 Mayfield and set forth in Certificate No. 244. See also DOE – 133 at 45.

7 The Court will confirm an instantaneous right to 0.09 cfs, 15.50 acre-feet per year from
8 April 15 to July 10 for irrigation of the 9 acres in Section 7 and 18. The point of diversion shall be
9 in the SE1/4SW1/4, the SW1/4SW1/4 and the NE1/4SW1/4 of Section 7, T.12 N., R. 16 E.W.M.
10 Certificate No. 244. The Shaw-Knox Ditch diverts water from Ahtanum Creek in the SW1/4SW1/4
11 of Section 7, T. 12 N., R. 16 E.W.M. and based on the State's exhibit map, would be the logical
12 point of diversion. If this is not correct, Mr. Roy or Mr. Mondor should notify the Court by filing
13 an exception and providing the correct point of diversion location. The date of priority shall be
14 1873. Id.

15 The Court also confirms a junior right to Answer 23 claimants that may only be used when
16 the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including potential storage, are being
17 made of the excess by water right holders on the reservation. The only evidence on water use was
18 provided in US – 126 and AID – 8/AID – 1. US – 126 indicates that 13.30 acres were irrigated in
19 one year – 1977. AID – 8 shows that 26.82 acres have been irrigated. The Achepohl right
20 authorizes irrigation of up to 90.2 acres for the entire portions in Sections 7 and 18 and lands
21 encompassed in Answer No. 23 only constitute a portion of that right. Lands in other answer
22 numbers are also covered by the legal description set forth in Certificate No. 244. The Court granted
23 a right above to irrigate 9 acres.

24 The Court finds junior right is appurtenant to 14 acres in the following areas:

25 The SW1/4SE1/4 lying south of the County road of Section 7, T. 12N., R. 16 E.W.M.;

Beginning 94.4 feet west of the NE corner of NW1/4NE1/4 of Section 18 thence east 954.4
feet; thence south 210.5 feet; thence west 416.5 feet; thence north 68° 38' west 577.5 feet to
beginning, T. 12N., R. 16 E.W.M.

With the caveat set forth above, the period of use shall be April 15 – July 10. The maximum
instantaneous diversion shall be .14 cfs with a maximum annual diversion of 24.12 acre-feet. The
point of diversion shall be in the SE1/4SW1/, SW1/4SW1/4 and the NE1/4SW1/4 of Section 7, all

1 being within T.12 N., R. 16 E.W.M. Certificate No. 244. The date of priority, to be used in
2 conjunction with other excess/junior water users, is 1873. Id.

3 Shaun M. & Sharon Rehfield; Lester Johnson; Randall & Cheri Johnson; Brad Cunningham;
4 Michael Guillozet; Martin Valla; Gary Senter

5 According to AID – 8, the above-named claimants own the twelve parcels (Parcel No.
6 16121724404-06, 16121724408-11, 16121722402-03, 16121721401, 16121721403 and
7 16121721003) encompassed in Answer No. 26 and located in the following areas:

8 The east 21 acres of the SE1/4NW1/4 lying south of the County Road in Section 17;

9 and the remainder of the NW1/4 except that part of the west 495 feet lying south of County
10 Road and except the north 104 feet of the east 100 feet of the west 595 feet lying south of
11 the County Road; All in Section 17, T. 12 N., R. 16 E.W.M. See also DOE 136 at 17.

12 Answer No. 26 claimants grow pasture on their lands. Frank A. Mondor participated in U.S. v. AID
13 and filed Answer No. 26 indicating that in 1957 he irrigated 32.7 acres out of a total area of 141.45
14 acres located in two parcels; his predecessor irrigated 80 acres in 1908. Id. Lands encompassed by
15 Answer No. 26 are therefore entitled to a senior right for a maximum of 32.7 acres, Ahtanum II, 330
16 F.2d at 917, if a certificate supports the right and beneficial use has continued.

17 AID – 8 shows 53.1 acres are within the Answer No. 26 area and receiving water. US --
18 126, based on 1977 aerial photography, indicates 116.90 acres encompassed by Answer No. 26
19 were irrigated with surface water and have a state right for 92.30 acres that is appurtenant to the
20 land. Certificate No. 298 is a Class 18 right issued to F.A. Mondor for irrigation of 92.3 acres in the
21 NW1/4 of Section 17, T. 12 N., R. 16 E.W.M.¹⁶ Pursuant to Answer No. 26, F.A. Mondor has a
22 right for the irrigation of 32.7 acres. Answer No. 26 claimants appear to have a supplemental
23 groundwater right for 153 acres. US – 126.

24 The Court finds the owner of lands encompassed by Answer No. 26 are now entitled to use
25 water from Ahtanum Creek for irrigation of 32.7 acres. AID – 8 and DOE -- 136. Pursuant to DOE
– 136 and AID -- 8, the surface water right is appurtenant to 32.7 acres in twelve parcels (Parcel No.
16121724404-06, 16121724408-11, 16121722402-03, 16121721401, 16121721403 and
16121721003) encompassed in Answer No. 26 and located as follows:

¹⁶ Certificate No. 298 excepts out certain portions of land in the NW1/4 that are approximately the same as those
excepted out of Answer No. 26.

1 The east 21 acres of the SE1/4NW1/4 lying south of the County Road in Section 17;
2 and the remainder of the NW1/4 except that part of the west 495 feet lying south of County
3 Road and except the north 104 feet of the east 100 feet of the west 595 feet lying south of
4 the County Road; all in Section 17, T. 12 N., R. 16 E.W.M. See also DOE 136 at 17.

5 As noted above, Ahtanum Creek water users are limited to the quantities of water set forth in
6 Ahtanum II, 330 F.2d at 917.

7 The Court will confirm a right to divert 0.327 cfs, 56.33 acre-feet per year from April 15 to
8 July 10 for the irrigation of 32.7 acres in Section 17. The points of diversion shall be in the
9 NW1/4NE1/4 of Section 18 and the SE1/4NE1/4 of Section 12, both within T.12 N., R. 16 E.W.M.
10 Certificate No. 298. The date of priority shall be 1882. DOE – 133 at p. 57; Certificate No. 298.

11 Based on AID – 8 and DOE – 133, the Court also confirms a junior right to Answer No. 26
12 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
13 including potential storage, are being made of the excess by water right holders on the reservation.
14 The only evidence on water use was provided in US--126 and AID – 8/AID -- 1. US – 126
15 indicates that 116.90 acres were irrigated in one year – 1977. AID – 8 shows that 53.1 acres have
16 been irrigated. The Achepohl right authorizes irrigation of up to 92.3 acres for nearly the entire
17 portion of the NW1/4 of Section 17. The Court granted a right above to irrigate 32.7 acres.

18 The Court finds the junior right is appurtenant to 19.4 acres in twelve parcels (Parcel No.
19 16121724404-06, 16121724408-11, 16121722402-03, 16121721401, 16121721403 and
20 16121721003) encompassed in Answer No. 26 and located in:

21 The east 21 acres of the SE1/4NW1/4 lying south of the County Road in Section 17;
22 and the remainder of the NW1/4 except that part of the west 495 feet lying south of County
23 Road and except the north 104 feet of the east 100 feet of the west 595 feet lying south of
24 the County Road; All in Section 17, T. 12N., R. 16 E.W.M. See also DOE 136 at 17.

25 With the caveat set forth above, the period of use shall be April 15 – July 10. The maximum
instantaneous diversion shall be 0.194 cfs with a maximum annual diversion of 33.42 acre-feet. The
points of diversion shall be in the NW1/4NE1/4 of Section 18 and the SE1/4NE1/4 of Section 12,
both within T.12 N., R. 16 E.W.M. Certificate No. 298. The purpose of use shall be seasonal
irrigation. AID – 8. The date of priority to be used in conjunction with other excess/junior water
users, is 1882. Certificate No. 298.

1 Hiram E. White

2 According to AID – 8, Hiram E. White owns the four parcels (Parcel Nos. 16121523002-03,
3 16121614002-03) encompassed in Answer No. 27 and located in the SW1/4NW1/4 and a small
4 portion of Government Lot 4 in Section 15 and the SE1/4NE1/4 of Section 16, all in T. 12 N., R. 16
5 E.W.M. See also DOE 136 at 17. Mr. White also filed Court Claim No. 8454 for use of springs
6 and that claim is addressed later in this report. Mr. White grows pasture, hay and asparagus on his
7 lands. Mr. White also participated in U.S. v. AID and filed Answer No. 27, which shows that in
8 1957, he irrigated 50.3 acres within two parcels totaling 83.20 acres; his predecessors irrigated 55
9 acres in 1908. Id. However, the Ahtanum II court reduced that acreage being irrigated in 1908 to
10 35 acres, having found that 20 acres being irrigated in 1908 were in fact not owned by a 1908
11 signatory to the Code Agreement. See Ahtanum II, at 916. That reduction of 20 acres from the
12 1908 irrigated total would result in a finding of 35 acres being irrigated in 1908. However, the
13 Ninth Circuit then proceeded to reduce the right to 24.92 acres with no explanation. The Court
14 believes this was a calculation error by the Ninth Circuit and finds that lands encompassed by
15 Answer Number 27 are therefore entitled to a senior right for a maximum of 35 acres, Ahtanum II,
16 330 F.2d at 917, if a certificate supports the right and continued beneficial use has occurred. Based
17 on DOE – 136, p. 17, it appears to the Court that the 20 acres in Section 16 were those determined
18 by the Ninth Circuit to not have a right.

19 AID – 8 shows 64.4 acres are within the Answer No. 27 area and receiving water. US --
20 126, based on 1977 aerial photography, indicates 46.90 acres encompassed by Answer No. 27 were
21 irrigated with surface water and have a state right for 64.40 acres. Certificate No. 133 is a Class 6
22 right issued to Frank Eglin for irrigation of 36.6 acres in the SW1/4NW1/4 and part of Lot 4 in
23 Section 15 and the SE1/4NE1/4 of Section 16. Certificate No. 340 is a Class 30 right issued to
24 Frank Eglin for irrigation of 27.8 acres in the SE1/4NE1/4 of Section 16. Therefore, the Court finds
25 that Certificate 133 is appurtenant to the Section 15 lands within Answer No. 27 lands with 36.6
acres being identified as irrigated. As noted above, the Section 16 lands were not granted a right in
Ahtanum II. Certificate No. 340 is appurtenant to the Section 16 lands. Pursuant to Answer No. 27,
Mr. White has a right for irrigation of 24.9 acres. Mr. White appears to have a supplemental
groundwater right for 56 acres. US – 126.

Certificate No. 133 does not have a section in the point of diversion location. It gives the
location as the NW1/4SW1/4 of Lot 4, T. 12 N., R. 16 E.W.M. Certificate No. 340 does provide

1 the section in its point of diversion description: NW1/4SW1/4 of Lot 4, Section 16. Both
2 certificates issued to Frank Eglin for lands that include the SE1/4NE1/4 of Section 16. It is
3 reasonable to conclude that the diversion point for Certificate No. 133 should be the same as
4 Certificate No. 340, or in Section 16. That is how the right will issue. If any party believes this is
5 incorrect, they shall notify the Court by filing an exception to this report.

6 The Court finds Hiram White is now entitled to a senior right from Ahtanum Creek for the
7 irrigation of 35 acres pursuant to this Court's analysis of the Ninth Circuit's findings in Ahtanum II
8 at 916-918. The Court is not clear on how the Ninth Circuit arrived at that acreage. After analyzing
9 rights for all the claimants in Ahtanum, not to mention other areas in the Yakima Basin, the Court is
10 certainly aware that calculation errors are very easy to make. Absent evidence to the contrary, the
11 Court will modify the calculation made by the Ninth Circuit to reflect the evidence recited by that
12 court. Pursuant to a corrected finding in Ahtanum II and AID – 8, the surface water right is
13 appurtenant to 35 acres in 2 parcels (Parcel Nos. 16121523002-03) and located in the SW1/4NW1/4
14 of Section 15, T. 12 N., R. 16 E.W.M. except for county road and the following portion:

15 Beginning at the NW corner of Lot 4, then East 1352 Feet; then South 198 Feet; then North
16 76° 20' West 568 feet; then South 81° 45' West 353 feet; then North 81° 48' West 454 feet;
17 then North 50 feet to beginning, except County Road. DOE – 136 at 17.

18 The Court will confirm a right to divert 0.35 cfs, 60.29 acre-feet per year from April 15 to
19 July 10 for the irrigation of 35 acres in Section 15. The point of diversion shall be in the
20 NW1/4SW1/4 of Lot 4 of Section 16, T.12 N., R. 16 E.W.M. Certificate No. 133. The date of
21 priority shall be 1869. Id.

22 Based on AID – 8 and DOE – 133, the Court also confirms a junior right to Mr. White that
23 may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including
24 potential storage, are being made of the excess by water right holders on the reservation. The only
25 evidence on water use was provided in US--126 and AID – 8/AID -- 1. US – 126 indicates 46.90
acres were irrigated in one year – 1977. AID – 8 shows that 64.4 acres have been irrigated. The two
Achepohl rights authorize irrigation of up to 64.4 acres. The Court granted a right above to irrigate
35 acres. The record shows 55 acres were irrigated in 1908 although the owner of 20 of those acres
was not a signatory to the 1908 Agreement

The Court finds the junior right is appurtenant to 20 acres in 4 parcels (Parcel Nos.
16121523002, 16121523003, 16121614002, 16121614003) with 1.6 acres located in the

1 SW1/4NW1/4 of Section 15 and 18.4 acres located in the SE1/4NE1/4 of Section 16, all in T. 12 N.,
2 R. 16 E.W.M. With the caveat set forth above, the period of use shall be April 15 – July 10. The
3 maximum instantaneous diversion shall be 0.016 cfs for the Section 15 lands with a maximum
4 annual diversion of 2.76 acre-feet; 0.184 cfs for the 18.4 acres of Section 16 lands and a maximum
5 annual diversion of 31.7 acre-feet. The point of diversion shall be in the NW1/4SW1/4 of Lot 4,
6 Section 16, T.12 N., R. 16 E.W.M. Certificate No. 133. The date of priority, to be used in
7 conjunction with other excess/junior water users, shall be 1869 for 1.6 acres in Section 15 and 1903
8 for the 18.4 acres in Section 16. DOE – 133 at pp. 18, 66; Certificate Nos. 133, 340.

8 Michael J. Hager

9 According to AID – 8, Michael J. Hager owns one parcel (Parcel No. 16120734001)
10 encompassed in Answer No. 28 and located in the SE1/4SW1/4, except the
11 E1/2E1/2E1/2SE1/4SW1/4, all in Section 7, T. 12 N., R. 16 E.W.M. See also DOE 136 at 18. Mr.
12 Hager grows pasture and hay on his lands. Mr. Hager's predecessor, Jess E. White participated in
13 the U.S. v. AID proceeding and filed Answer No. 28 indicating that in 1957, Mr. White irrigated one
14 parcel totaling 15.3 acres; his predecessors irrigated 10 acres in 1908. Id. Lands encompassed by
15 Answer No. 28 are therefore entitled to a senior right for a maximum of 10 acres, Ahtanum II, 330
16 F.2d at 917, if a certificate supports the right and beneficial use has continued.

17 AID – 8 shows that approximately 19.6 acres are within the Answer No. 28 area and
18 receiving water. US -- 126, based on 1977 aerial photography, indicates 30.40 acres encompassed
19 by Answer No. 28 were irrigated with surface water and there is a state right for 30.40 acres. The
20 water right certificate applicable to the property in question is Certificate No. 244, which authorizes
21 irrigation of 90.2 acres and also supports the water right of Answer No. 23 claimants. The Court
22 confirmed a senior right for the irrigation of 9 acres and a junior right for the irrigation of 17.82
23 acres for Answer No. 23 lands in the SW1/4SE1/4 and NW1/4NE1/4 of Section 18, leaving a right
24 to irrigate an additional 63.38 acres in the remaining areas described in the certificate, including the
25 lands at issue here. Therefore, the Court finds that a portion of Certificate 244 applies to the
26 Section 7 lands irrigated by Mr. Hager. Pursuant to Answer No. 28, Mr. Hager has a senior right for
27 the irrigation of 10 acres. Mr. Hager does not have a groundwater right. US – 126.

28 The Court finds that Mr. Hager is now entitled to a senior right from Ahtanum Creek for
29 irrigation of 10 acres in 1 parcel (Parcel No. 16120734001) and located in the SE1/4SW1/4, except
30 the E1/2E1/2E1/2SE1/4SW1/4, all in Section 7, T. 12 N., R. 16 E.W.M. Use of water in this part of

1 Section 7 is supported by the Class 10 right confirmed to the Mayfields in Achepohl and set forth in
2 Certificate No. 244. See also DOE – 133 at 18. The Court confirms a right to 0.10 cfs, 17.23 acre-
3 feet per year from April 15 to July 10 for irrigation of 10 acres in Section 7. The points of diversion
4 shall be the SW1/4SW1/4, the SE1/4SW1/4 and the NE1/4SW1/4 all within Section 7, T. 12 N., R.
5 16 E.W.M. Certificate No. 244. The Shaw-Knox Ditch diverts water from Ahtanum Creek in the
6 SW1/4SW1/4 of Section 7, T. 12 N., R. 16 E.W.M. and based on the State's exhibit map, would be
7 the logical point of diversion. If this is not correct, Mr. Hager should notify the Court by filing an
8 exception and providing the correct point of diversion location. The date of priority shall be 1873.

Id.

9 Based on AID – 8 and DOE – 133, the Court also confirms a junior right to Mr. Hager that
10 may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including
11 potential storage, are being made of the excess by water right holders on the reservation. The only
12 evidence of water use was provided in US--126 and AID – 8/AID -- 1. US – 126 indicates that
13 34.40 acres were irrigated in one year – 1977. AID – 8 shows that 19.6 acres have been irrigated.
14 The Court granted a right above to irrigate 10 acres.

15 Therefore, the Court finds the junior right is appurtenant to 9.6 acres in Parcel No.
16 16120734001 located in the SE1/4SW1/4, except the E1/2E1/2SE1/4SW1/4, all in Section 7,
17 T. 12 N., R. 16 E.W.M. With the caveat set forth above, the period of use shall be April 15 – July
18 10. The maximum instantaneous diversion shall be 0.10 cfs for the Section 7 lands with a
19 maximum annual diversion of 17.23 acre-feet. The point of diversion shall be the SW1/4SW1/4, the
20 SE1/4SW1/4 and the NE1/4SW1/4 all within Section 7, T.12 N., R. 16 E.W.M. Certificate No. 244.
21 The priority date, to be used in conjunction with other excess/junior water users, shall be 1873. Id
22 Lester W. Roy – Claim No. 1020

23 Mr. Roy presented evidence on his own behalf. The Court will consider that evidence along
24 with the evidence submitted by AID on behalf of its patrons. According to AID – 8, Lester W. Roy
25 owns Parcel No. 16121812005 encompassed in Answer No. 29 and located in the NW1/4NE1/4 and
the NE1/4NW1/4 of Section 18, T. 12 N., R. 16 E.W.M. See also DOE 136 at 18. Mr. Roy grows
pasture on his lands. Mr. Roy's predecessor, Mary Garrison participated in U.S. v. AID and filed
Answer No. 29, showing that in 1957, Ms. Garrison irrigated one parcel totaling 43.9 acres; her
predecessors irrigated 30 acres in 1908. Id. Lands encompassed by Answer No. 28 are therefore

1 entitled to a senior right for a maximum of 30 acres, Ahtanum II, 330 F.2d at 917, if a certificate
2 supports the right and beneficial use continued.

3 AID – 8 shows 40.32 acres are within the Answer No. 29 area and receiving water. US --
4 126, based on 1977 aerial photography, indicates 33.60 acres encompassed by Answer No. 29 were
5 irrigated with surface water and there is a state right for 47.20 acres. The water right certificate
6 applicable to the property in question is Certificate No. 244, a Class 10 right with an 1873 priority
7 date that issued to G. C. and E. B. Mayfield for the irrigation of 90.2 acres in the SE1/4SW1/4,
8 SW1/4SE1/4 of Section 7 and the NW1/4NE1/4 and NE1/4NW1/4 of Section 18. That certificate
9 also supports the water right of Answer No. 23 claimants and Answer No. 28 claimants. However,
10 only a small portion of the lands described in Answer No. 23 and none of the Answer No. 28 acres
11 are in Section 18, but appear to be in Section 7. The Court has confirmed rights to the lands
12 described in Answers Nos. 23 and 28 authorizing the irrigation of a total of 46.42 acres, see analysis
13 above, leaving 43.78 acres for which additional rights could be confirmed for the Roy property.
14 Therefore, the Court finds that Certificate 244 applies to the Section 18 lands irrigated by Mr. Roy.
15 Pursuant to Answer No. 29, Ms. Garrison had a senior right for the irrigation of 30 acres. Mr. Roy
16 appears to have two groundwater rights that include the Answer No. 29 lands; a primary
17 groundwater right for 105 acres and a supplemental groundwater right for 198.8 acres. US – 126.

18 The Court finds the Answer No. 29 landowner is entitled to a senior right from Ahtanum
19 Creek for irrigation of 30 acres in Parcel No. 16121812005 located within the NW1/4NE1/4 and the
20 NE1/4NW1/4 of Section 18, T. 12 N., R. 16 E.W.M. with the following exception:

21 Except beginning 954.4 feet west of the Northeast corner of the NW1/4NE1/4; thence east
22 954.4 feet; thence south 210.5 feet; thence west 416.5 feet; thence north 68°38' west 577.5
23 feet to beginning. DOE – 136 at 18.

24 The Court will confirm a right to 0.30 cfs, 51.68 acre-feet per year from April 15 to July 10
25 for the irrigation of 30 acres in Section 18. The point of diversion shall be the SW1/4SW1/4, the
SE1/4SW1/4 and the NE1/4SW1/4 all in Section 7, T.12N., R. 16 E.W.M. Certificate No. 244. The
date of priority shall be 1873. Id.

Based on AID – 8 and DOE – 133, the Court also confirms a junior right to Mr. Roy that
may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including
potential storage, are being made of the excess by water right holders on the reservation. The only
evidence on water use was provided in US--126 and AID – 8/AID -- 1. US – 126 indicates that

1 33.60 acres were irrigated in one year – 1977. AID – 8 shows that 40.32 acres have been irrigated.
2 The Court has above granted a right to irrigate 30 acres. At this point, the Court has confirmed
3 rights that authorize the irrigation of 76.42 acres within the place of use described in Certificate No.
4 244. Certificate No. 244 authorized the irrigation of 90.20 acres, leaving 13.78 acres not allocated.

5 Therefore, the Court finds a junior right is appurtenant to 10.32 acres in Parcel No.
6 16121812005 and located in the NW1/4NE1/4 and the NE1/4NW1/4 of Section 18, T. 12N., R. 16
7 E.W.M. with the excepted parcel set forth above. With the caveat set forth above regarding when
8 water may be diverted, the period of use shall be April 15 – July 10. The maximum instantaneous
9 diversion shall be 0.103 cfs for the Section 18 lands with a maximum annual diversion of 17.74
10 acre-feet. The points of diversion shall be the SW1/4SW1/4, the SE1/4SW1/4 and the NE1/4SW1/4
11 all within Section 7, T.12 N., R. 16 E.W.M. Certificate No. 244. The date of priority, to be used in
12 conjunction with other excess/junior water users, shall be 1873. Id.

13 David and Ida Guillard

14 According to AID – 8, the Guillands own the eleven parcels (Parcel Nos. 161210733401-
15 33404, 161210731401-31407) encompassed in Answer No. 31 and located in Lots 3 and 4, the
16 NE1/4SW1/4 and the NW1/4SE1/4, all in Section 7, T. 12 N., R. 16 E.W.M. See also DOE 136 at
17 18. The Guillands grows pasture on their lands. The Guillard’s predecessor, Mary Slavin
18 participated in the U.S. v. AID proceeding and filed Answer No. 31 showing that in 1957, Ms.
19 Slavin owned 108.68 acres in the area described above and irrigated 28.4 acres; her predecessors
20 irrigated 50 acres in 1908. Id. Lands encompassed by Answer No. 31 are therefore entitled to a
21 senior right for a maximum of 28.4 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the
22 right and beneficial use has continued.

23 AID – 8 shows 31 acres are within the Answer No. 31 area and receiving water. US -- 126,
24 based on 1977 aerial photography, indicates 17.60 acres encompassed in Answer No. 31 were
25 irrigated with surface water and there is a state right for 40 acres. The water right certificates
applicable to the property in question are Certificate Nos. 250, 279 and 280, and authorize the
irrigation of a total of 40 acres. Certificate No. 250 is a Class 11 right issued to Alphonse Mondor
authorizing irrigation of 7.7 acres in Government Lot 4 of Section 7, T. 12 N., R. 16 E.W.M.
Certificate No. 279 is a Class 15 right issued to Alphonse Mondor for the irrigation of 25 acres in
Government Lot 3 of Section 7, T. 12 N., R. 16 E.W.M. Certificate No. 280 is a Class 15 right
issued to Alphonse Mondor for the irrigation of 7.3 acres in the NE1/4SW1/4 of Section 7, T. 12 N.,

1 R. 16 E.W.M. Those descriptions match the parcel descriptions set forth in Answer No. 31 and the
2 Court finds that Certificate Nos. 250, 279 and 280 are appurtenant to the Section 7 lands claimed by
3 the AID on behalf of the Guillands. Pursuant to Answer No. 31, Ms. Slavin had a right for
4 irrigation of 28.4 acres. The Guillands appear to have one groundwater right authorizing irrigation
5 of 30 acres within the Answer No. 31 lands. US – 126.

6 The Court finds that the owner of lands encompassed by Answer No. 31 are now entitled to
7 a senior right from Ahtanum Creek for irrigation of 28.4 acres in 11 parcels (Parcel Nos.
8 161210733401-33404, 161210731401-31407) encompassed in Answer No. 31 and located in Lots 3
9 and 4 and the NE1/4SW1/4, all in Section 7, T. 12 N., R. 16 E.W.M. However, in order to confirm
10 a right, the Court must know how many acres are irrigated in Lot 4 pursuant to Certificate No. 250
11 which is a Class 11 right and how many acres are irrigated elsewhere on the property pursuant to
12 Certificate Nos. 279 and 280. The priority date for the lands irrigated under Certificate No. 250 will
13 be different than that for the lands irrigated under Certificate Nos. 279 and 280.

14 If additional information is provided during the exception phase for this report, the Court is
15 prepared to confirm a right to divert a total of 0.284 cfs, 48.92 acre-feet per year from April 15 to
16 July 10 for the irrigation of 28.4 acres in Section 7. This confirmation cannot occur until sufficient
17 information is provided to allow the Court to determine how many acres are covered by Certificate
18 No. 250 with an 1877 priority date. The remaining land would have an 1879 priority date.

19 Based on AID – 8 and DOE – 133, the Court will also confirm a junior right to Mr. Guiland
20 that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including
21 potential storage, are being made of the excess by water right holders on the reservation.

22 Confirmation of this right will also not be made until the requested information is provided.

23 Gary & Ruth Hansen (Substituted for George J. and Maxine Loran – Claim Nos. 0133, 1082);
24 Russell G. Daniels

25 The Lorans submitted Court Claims Nos. 0133 and 01082. However, the Court was unable
to identify any evidence submitted directly by the Lorans and will analyze the claim with evidence
submitted by AID and the U.S.

According to AID – 8, the Lorans/Hansens and Russell Daniels own the two parcels
(16121731001, 16121724402) encompassed in Answer No. 32 and located in Government Lot 3
and the east 208.7 feet of the south 208.7 feet of the SE1/4NW1/4, all in Section 17, T. 12 N., R. 16
E.W.M. See also DOE 136 at 19. They grow hay and pasture on their lands. Roy E. Knox

1 participated in U.S. v. AID and filed Answer No. 32, which shows that in 1957, Mr. Knox owned
2 68.70 acres in the area described above and irrigated 22.9 acres; his predecessors irrigated 20 acres
3 in 1908. Id. In AID – 8, two parcels are identified as matching the legal description for Answer No.
4 32 lands -- a 68.70 acre tract belonging to George Loran and a 5-acre parcel belonging to Russell
5 Daniels. According to Answer No. 32, the parcel owned by Russell Daniels in the SE1/4NW1/4 is
6 entitled to a senior right for the irrigation of the 1 acre. Lands owned by George Loran that are
7 encompassed by Answer Number 32 are entitled to a senior right for 19 acres, Ahtanum II, 330 F.2d
at 917, if a certificate supports the right and beneficial use has continued.

8 AID – 8 shows 23.4 acres are within the Answer No. 32 area and receiving water. US --
9 126, based on 1977 aerial photography, indicates 22.40 acres encompassed in Answer No. 32 were
10 irrigated with surface water and there is a state right for 24.40 acres appurtenant to the lands. SE –
11 97, Ecology's Investigation Report for the Loran's property, shows that 19 acres are irrigated and
12 provides no analysis for the parcel owned by the Daniels. The water right certificates applicable to
13 the property in question are Certificate Nos. 254 and 303. Certificate No. 254 is a Class 12 right
14 issued to H. J. Knox authorizing the irrigation of 23.4 acres in Lot 3, Section 17, T. 12 N., R. 16
15 E.W.M. which is where the Loran property is located. Certificate No. 303 is a Class 18 right issued
16 to H. J. Knox authorizing irrigation of 1 acre in the SE1/4NW1/4 of Section 17, T. 12 N., R. 16
17 E.W.M. which is where the Daniels' property is located. Together, the two rights authorize the
18 irrigation of a total of 24.4 acres and the legal description are the same as the two parcels in Answer
No. 32. Pursuant to Answer No. 32, Mr. Knox had a right for irrigation of 20 acres. The Answer
No. 32 claimants do not appear to have any groundwater rights for irrigation of lands encompassed
by Answer No. 32. US – 126.

19 The Court finds Answer No. 32 landowners are now entitled to a senior right from Ahtanum
20 Creek for irrigation of 20 acres. 19 acres is appurtenant to the parcel now owned by the Hansens
21 (Parcel No. 161217331001) and located in that portion of Government Lot 3, Section 17, T. 12 N.,
22 R. 16 E.W.M. lying east of the North Fork Ahtanum Creek EXCEPT the north 745 feet thereof. SE
– 97. The Court also finds there is a surface water right for the irrigation of 1 acre in the east 208.7
23 feet of the south 208.7 feet of the SE1/4NW1/4, Section 17, T. 12 N., R. 16 E.W.M.

24 The Court will confirm a right for the diversion of 0.19 cfs, 32.73 acre-feet per year for the
25 irrigation of 19 acres owned by Gary and Ruth Hansen and .01 cfs, 1.72 acre-feet per year for the
one acre owned by the Daniels. The period of use shall be from April 15-July 10. The point of

1 diversion shall be 700 feet south and 1200 feet east from the west quarter corner of Section 17 and a
2 point about 200 feet from east line between Lots 3 and 4, being within Government Lot 4, Section
3 17, T. 12 N., R. 16 E.W.M. SE - 97; Certificate Nos. 254 and 303. The date of priority shall be
4 1875 for the 19 acres owned by the Lorans and 1882 for the 1 acre owned by Daniels. Certificate
5 Nos. 254 and 303.

6 Based on AID - 8 and DOE - 133, the Court also confirms a junior right to the Hansens¹⁷
7 that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including
8 potential storage, are being made of the excess by water right holders on the reservation. The only
9 evidence on water use was provided in U.S.—126, AID - 8 and SE -- 97. US - 126 indicates that
10 22.60 acres were irrigated in one year - 1977. AID - 8 shows that 23.4 acres have been irrigated.
11 SE - 97 indicates that 19 acres were irrigated. The right awarded to H. J. Knox in the Achepohl
12 decree totals 24.4 acres. The Court granted a total right above to irrigate 20 acres.

13 Therefore, the Court finds the junior right is appurtenant to 4.4 acres in 1 parcel
14 (161217331001) and located in that portion of Government Lot 3 of Section 17, T. 12 N., R. 16
15 E.W.M. lying east of the North Fork Ahtanum Creek EXCEPT the north 745 feet thereof. SE - 97.
16 With the caveat set forth above, the period of use shall be April 15 - July 10. The maximum
17 instantaneous diversion shall be 0.044 cfs for the Section 17 lands with a maximum annual
18 diversion of 7.58 acre-feet. The point of diversion shall be 700 feet south and 1200 feet east from
19 the west quarter corner of Section 17, being within Government Lot 4, Section 17, T. 12 N., R. 16
20 E.W.M. SE - 97; see also Certificate Nos. 254 and 303. The purpose of use shall be irrigation.
21 AID - 8. The date of priority, to be used in conjunction with other excess/junior water users, shall
22 be 1875. Certificate No. 254.

23 Charles and Nancy Jacobs

24 According to AID - 8, the Jacobs own the one parcel (16121741001) encompassed in
25 Answer No. 33 and located in Lot 1, Section 17, T. 12 N., R. 16 E.W.M. See also DOE 136 at 19.
They grow pasture on their lands. Charles E. Taylor participated in U.S. v. AID and filed Answer
No. 33 showing that in 1957, Mr. Taylor irrigated 15.4 acres; his predecessors irrigated 15 acres in
1908. Id. Therefore, lands owned by the Jacobs encompassed by Answer Number 33 are entitled to

¹⁷ A junior right cannot be confirmed to the Daniels because Certificate No. 303 only authorizes irrigation of 1 acre. The Achepohl adjudication involved all rights to use Ahtanum Creek flows and the rightholders are limited to the quantities set forth in the certificates.

1 a senior right for a maximum of 15 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the
2 right and beneficial use has continued.

3 AID – 8 shows 27 acres are within the Answer No. 33 area and receiving water. US -- 126,
4 based on 1977 aerial photography, indicates none of the land described in Answer No. 33 were
5 irrigated with surface water, but that there is a state right for 27 acres. The Court was unable to
6 identify any water right certificates applicable to the Answer No. 33 property. However, an 1875,
7 Class 12 right awarded to Frank Loker for 27 acres in Achepohl describes the same property owned
8 by the Jacobs. SE – 8 shows that Certificate No. 255 was never issued because the necessary fees
9 were not paid to Ecology's predecessor. Pursuant to Answer No. 33, Mr. Taylor had a right for
10 irrigation of 15 acres. The Jacobs appear to have a supplemental groundwater right for irrigation of
11 27 acres encompassed by Answer No. 33. US – 126.

12 The Court finds that the owner of lands encompassed by Answer No. 33 are now entitled to
13 a senior right from Ahtanum Creek for irrigation of 15 acres in the parcel (No. 16121741001)
14 encompassed in Answer No. 33 and located in that portion of Government Lot 1 of Section 17, T.
15 12 N., R. 16 E.W.M. DOE – 136 at 19. However, they have not supported that right with a 1925
16 Adjudicated Water Right Certificate. The Jacobs are successors to a right awarded to Frank Loker
17 in Achepohl and SE – 8 indicates the fees were not paid. Therefore, the Court believes that a right
18 exists and will provisionally confirm a right to the Jacobs to irrigate 15 acres with a date of priority
19 of 1875, with the understanding that certificates shall be provided to the Court by the date set for
20 filing exceptions.

21 The Court will confirm a right to divert 0.15 cfs, 25.84 acre-feet per year from April 15
22 through July 10 for irrigation of the 15 acres in Section 17. Since no certificate has been issued, the
23 record contains no point of diversion information. AID shall supply that to the Court by date set for
24 filing exceptions. The date of priority shall be 1875. DOE 133 at p. 47.

25 Based on AID – 8 and DOE – 133, the Court also confirms a junior right to the Jacobs that
may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses, including
potential storage, are being made of the excess by water right holders on the reservation. The only
evidence on water use was provided in US -- 126 and AID – 8. US – 126 indicates that the land
was not irrigated in one year – 1977. AID – 8 shows that 27 acres have been irrigated. The right
awarded to Frank Loker in the Achepohl decree totals 27 acres. The Court granted a right above to
irrigate 15 acres with 15.4 acres being the amount of land irrigated in 1957.

1 Therefore, the Court finds the junior right is appurtenant to 0.4 acres located in Government
2 Lot 1 of Section 17, T. 12 N., R. 16 E.W.M. (Parcel No. 16121741001). With the caveat set forth
3 above, the period of use shall be April 15 – July 10. The maximum instantaneous diversion shall be
4 0.004 cfs for the Section 17 lands with a maximum annual diversion of 0.69 acre-feet. Point of
5 diversion information shall be provided. The purpose of use shall be irrigation of pasture. AID – 8.
6 The date of priority, to be used in conjunction with other excess/junior water users, shall be 1875.
7 DOE – 133 at p. 47. The Court is unable to confirm a point of diversion as the certificate was not
8 issued. The Jacobs or AID shall provide that certificate by the date for filing exceptions.

Robert Schuller; William and C. George Camden

9 According to AID – 8, the above named claimants own the two parcels (Parcel Nos.
10 16121742401 and 16121742404) encompassed in Answer No. 34 and located in Government Lot 2
11 of Section 17, T. 12 N., R. 16 E.W.M. See also DOE 136 at 19. The Answer No. 34 claimants grow
12 hay and pasture on their lands. Nick Schuller participated in U.S. v. AID and filed Answer No. 34
13 showing that in 1957, he owned 54.30 acres in the area described above and irrigated 20.3 acres; his
14 predecessors irrigated 20 acres in 1908. Id. Therefore, owners of land encompassed by Answer
15 No. 32 are entitled to a senior right for a maximum of 20 acres, Ahtanum II, 330 F.2d at 917, if a
16 certificate supports the right and beneficial use continued.

17 AID – 8 shows 53.35 acres are within the Answer No. 34 area and receiving water. US --
18 126, based on 1977 aerial photography, indicates 35.80 acres encompassed in Answer No. 34 were
19 irrigated with surface water and there is a state right for 26 acres. The water right certificate
20 applicable to the property in question is Certificate No. 253. Certificate No. 253 is a Class 12 right
21 that issued to Guy Anderson authorizing the irrigation of 26 acres in Lot 2, Section 17, T. 12 N., R.
22 16 E.W.M. That description matches the parcel description set forth in Answer No. 34. Pursuant to
23 Answer No. 34, Mr. Schuller had a right for the irrigation of 20 acres. Answer No. 34 claimants
24 have a groundwater right for irrigation of 54 acres encompassed by Answer No. 34. US – 126.

25 The Court finds the owner of lands encompassed by Answer No. 34 are now entitled to a
senior right from Ahtanum Creek for irrigation of 20 acres in 2 parcels (16121742401 and
16121742404) and located in Government Lot 2 of Section 17, T. 12 N., R. 16 E.W.M. See DOE
136 at 19. Use of water in Section 17 is supported by the Class 12 right confirmed to Guy
Anderson in Achepohl and set forth in Certificate No. 253. See also DOE – 133 at 46. The Court
will confirm a senior right to divert 0.20 cfs, 34.45 acre-feet per year from April 15 to July 10 for

1 the irrigation of 20 acres in Section 17. The point of diversion shall be within Government Lot 4,
2 Section 17, T. 12 N., R. 16 E.W.M. Certificate No. 253. The date of priority shall be 1875. Id.

3 Based on AID – 8 and DOE – 133, the Court also confirms a junior right to the Answer No.
4 34 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no
5 uses, including potential storage, are being made of the excess by water right holders on the
6 reservation. The only evidence on water use was provided in US—126 and AID – 8. US – 126
7 indicates 35.80 acres were irrigated in one year – 1977. AID – 8 shows 53.35 acres have been
8 irrigated, however, the right awarded to H. J. Knox in the Achepohl decree is only for the irrigation
9 of 26 acres. This Court cannot confirm a right in excess of what was confirmed in the Achepohl
10 adjudication as expressed in the water right certificates resulting therefrom. RCW 90.03. Any right
11 developed after 1917 would require initiation of a new right and compliance with RCW 90.03. The
12 Court granted a right to irrigate 20 acres. The maximum irrigated in 1908 or 1957 was 20.3 acres.

13 Therefore, the Court finds and confirms that the junior right is appurtenant to 0.3 acres in 2
14 parcels (Parcel Nos. 16121742401 and 16121742404) and located in Lot 2, Section 17, T. 12 N., R.
15 16 E.W.M. See DOE 136 at 19. With the caveat set forth above, the period of use shall be April 15
16 – July 10. The maximum instantaneous diversion shall be 0.003 cfs for the Section 17 lands with a
17 maximum annual diversion of 0.52 acre-feet. The point of diversion shall be within Government
18 Lot 4, Section 17, T. 12 N., R. 16 E.W.M. Certificate Nos. 253. The date of priority, to be used in
19 conjunction with other excess/junior water users, shall be 1875. Id.

20 Robert W. Meyers

21 According to AID – 8, Robert Meyers owns the two parcels (Parcel No. 16121811403 and
22 16121811407) encompassed in Answer No. 35 and located in that part of the NE1/4NE1/4 of
23 Section 18, T. 12 N., R. 16 E.W.M., lying west of the North and South Forks of Tampico Road,
24 EXCEPT the south 150 feet. See also DOE 136 at 19. Mr. Meyers grows pasture on his lands.
25 Mr. Meyer's predecessor, W. H. Hill participated in U.S. v. AID and filed Answer No. 35, which
shows that in 1957, Mr. Hill owned one parcel totaling 3.57 acres in the area described above and
irrigated 2.5 acres; Mr. Hill or his relatives appear to have owned the land in 1908 and irrigated 3
acres at that time. Id. Lands encompassed by Answer Number 35 are therefore entitled to a senior
right for a maximum of 2.5 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
beneficial use continued.

1 AID – 8 shows that approximately 0.40 acres are within the Answer No. 35 area and
2 receiving water. US -- 126, based on 1977 aerial photography, indicates none of the land
3 encompassed by Answer No. 35 were irrigated with surface water but that a state right exists for
4 irrigation of 29 acres. The water right certificate applicable to the property in question is Certificate
5 No. 295. Certificate No. 295 is a Class 18 right issued to George A. and W. H. Hill for the
6 irrigation of 29 acres in the SE1/4SE1/4, the NE1/4SE1/4, the SE1/4NE1/4 and NE1/4NE1/4 of
7 Section 7 as well as lands in the NE1/4NE1/4 of Section 18. The Court finds that a portion of
8 Certificate 295 is appurtenant to the small portion of Section 18 lands irrigated by Mr. Meyers.
9 Pursuant to Answer No. 35, Mr. Hill had a right for irrigation of 2.5 acres. No groundwater rights
10 are appurtenant to the Answer No. 35 lands. US – 126.

11 Mr. Meyers is irrigating somewhat less land then was established in U.S. v. Ahtanum for
12 Answer No. 35. There is no evidence before the Court indicating which specific acres comprising
13 Answer No. 35 have been beneficially used. The Ninth Circuit stated that water rights not used on
14 the parcels comprising the Answer Numbers would revert to reservation users. Ahtanum II at 911,
15 913. Although the state certificate authorizes use of water for irrigation of some portion of 29 acres,
16 as noted above, AID – 8 shows that 0.4 acres are receiving water. US – 126, based on 1977 aerial
17 photography, indicates none of the land encompassed by Answer No. 35 were irrigated with surface
18 water.

19 The Court finds that the owner of lands encompassed by Answer No. 35 are now entitled to
20 use water from Ahtanum Creek for irrigation of 0.40 acres in 2 parcels (Parcel No. 16121811403
21 and 16121811407) and located in that part of the NE1/4NE1/4 of Section 18, T. 12 N., R. 16
22 E.W.M., lying west of the North and South Forks of Tampico Road, EXCEPT the south 150 feet.
23 See AID -- 8. Between 1957 and 1993, a portion of the water rights on the parcel were abandoned
24 or relinquished. Use of water in Section 18 is supported by the Class 18 right confirmed to the Hills
25 in Achepohl and set forth in Certificate No. 295. See also DOE – 133 at 56. The Court will
confirm a right to divert 0.004 cfs, 0.68 acre-feet per year from April 15 to July 10 for the irrigation
of 0.40 acres in Section 18. The point of diversion shall be in Section 7, T.12 N., R. 16 E.W.M.
Certificate No. 295. AID shall provide a more specific point of diversion. The date of priority shall
be 1882. Id.

1 George H. Grissom; Allen W. Grissom; Rhomas D. Richardson; Steven J. Morkert

2 According to AID – 8, the above-named claimants own the seven parcels (Parcel Nos.
3 17120934401-02, 17120844401, 17120844404, 17120841406-08) encompassed in Answer No. 36
4 and located in the SE1/4SW1/4 of Section 9, E1/2SE1/4SE1/4 and E1/2NE1/4SE1/4 of Section 8,
5 all within T. 12 N., R. 17 E.W.M. See also DOE 136 at 20. Answer No. 36 claimants grow hay and
6 pasture on their lands. Allen Grissom participated in U.S. v. AID and filed Answer No. 36
7 indicating that in 1957, he owned three parcels consisting of 80 acres in the area described above
8 and irrigated 57.5 acres; his predecessors irrigated 20 acres in Section 8 and 20 acres in Section 9 in
9 1908. Id. Therefore, lands owned by Answer No. 36 claimants that are encompassed by Answer
10 No. 36 are entitled to a senior right for a maximum of 40 acres, Ahtanum II, 330 F.2d at 917, if a
11 certificate supports the right and beneficial use continued.

12 AID – 8 shows 48.56 acres are within the Answer No. 36 area and receiving water – 33.75
13 acres in Section 9 and 14.81 acres in Section 8. US -- 126, based on 1977 aerial photography,
14 indicates 69.50 acres encompassed in Answer No. 36 were irrigated with surface water and there are
15 state rights for the irrigation of 80 acres. The water right certificate applicable to the property in
16 question is Certificate No. 80, a Class 3 right, issued to Clinton Brosius and George Clark for
17 irrigation of 135 acres in the SW1/4 of Section 9. The land owned by Answer No. 36 claimants in
18 Section 9 lie solely within the SE1/4SW1/4. A review of the findings set forth in Achepohl reveals a
19 Class 7 right confirmed to J. H. Morrison for the Section 8 lands described in Answer No. 36.
20 Certificate No. 141 was issued in accordance with that finding for the irrigation of 40 acres, but in
21 1985 part of that right was formally relinquished. SE – 8; See Partial Relinquishment Volume 1161
22 at 628. According to that document, Steve Morkert relinquished 0.1 cfs for 5 acres in the
23 W1/2SE1/4NE1/4SE1/4 leaving 0.7 cfs for irrigation of 35 acres within the NE1/4NE1/4SE1/4, the
24 E1/2SE1/4NE1/4SE1/4 and the E1/2SE1/4SE1/4 of Section 8. The Court finds that the remainder
25 of Certificate No. 141 applies to the lands in Answer No. 36. The Answer No. 36 claimants have a
primary groundwater right for irrigation of 40 acres encompassed by Answer No. 36. US – 126.

26 The Court finds that the owner of lands encompassed by Answer No. 36, excluding Steve
27 Morkert who relinquished his interest in Certificate No. 141, are now entitled to a senior right from
28 Ahtanum Creek for the irrigation of 34.81 acres in 2 parcels in Section 9 (Parcel Nos.
29 17120934401-02) and 14.81 acres in 5 parcels in Section 8 (17120844401, 17120844404,
30 17120841406-08). See also AID – 8. Pursuant to SE – 8 and the Partial Relinquishment set forth as

1 Volume 1161, page 628, part of the water right in Section 8 was relinquished in 1985. Use of water
2 in Section 9 is supported by the Class 3 right confirmed to Clinton Brosius and George Clark (set
3 forth in Certificate No. 80) and Section 8 rights are supported by the Class 7 right confirmed to J.H.
4 Morrison (set forth in the remainder of Certificate No. 141). See also DOE – 133 at 5 and 20. The
5 Court will confirm a right to the Answer No. 36 claimants for irrigation of 14.81 acres in Section 8.

6 The Court will confirm a right to divert 0.20 cfs, 34.45 acre-feet per year for the irrigation of
7 20 acres in the SE1/4SW1/4 of Section 9 and 0.148 cfs, 25.51 acre-feet per year for the irrigation of
8 14.81 acres in the E1/2SE1/4NE1/4SE1/4, NE1/4NE1/4SE1/4 and E1/2SE1/4SE1/4 of Section 8, T.
9 12 N., R. 17E.W.M. The period of use for both rights shall be from April 15-July 10, a total of 87
10 days. The point of diversion for the Section 9 lands shall be the SE1/4SE1/4SE1/4 of Section 8, T.
11 12 N., R. 17E.W.M. Certificate No. 80. The point of diversion for the Section 8 lands shall be the
12 NE1/4SE1/4 of Section 8 and the NE1/4NE1/4 of Section 17, all within T. 12 N., R. 17 E.W.M.
13 Certificate No. 141. The date of priority shall be 1866 for the Section 9 lands, Certificate No. 80,
14 and 1870 for the Section 8 lands. DOE – 133, p. 20.

15 Based on AID – 8 and DOE – 133, the Court also confirms a junior right to the Grissoms for
16 irrigation of Section 9 lands that may only be used when the flow in Ahtanum Creek exceeds 62.59
17 cfs and no uses, including potential storage, are being made of the excess by water right holders on
18 the reservation. The only evidence on water use in Section 9 was provided in US – 126 and AID –
19 8. US – 126 indicates that 69.5 acres were irrigated on all the lands encompassed in Answer No.
20 36 in one year – 1977. AID – 8 shows that 33.75 acres have been irrigated. The Court granted a
21 right above for irrigation of 20 acres in Section 9.

22 Therefore, the Court finds and confirms that the junior right is appurtenant to 13.75 acres in
23 1 parcel (Parcel No. 17120934402) and located in SE1/4SW1/4 of Section 9, T. 12 N., R. 17
24 E.W.M. With the caveat set forth above, the period of use shall be April 15 – July 10. The
25 maximum instantaneous diversion shall be 0.138 cfs for the Section 9 lands with a maximum annual
diversion of 23.77 acre-feet. The point of diversion for the Section 9 lands shall be the
SE1/4SE1/4SE1/4 of Section 8, T. 12 N., R. 17 E.W.M. Certificate No. 80. The date of priority, to
be used in conjunction with other excess/junior water users, shall be 1866. Id.

Roger and Edna Meusborn; Wayne and Frances Gohl; Lewis Thomason

According to AID – 8, the above-named claimants own the five parcels (Parcel Nos.
17120744001, 17120833001, 17120832005, 17120832007-08) encompassed in Answer No. 37 and

1 located in the E1/2SE1/4SE1/4 of Section 7 and that part of the W1/2SW1/4 of Section 8 lying
2 southerly of Ahtanum Creek and northerly of county road, all within T. 12 N., R. 17 E.W.M. See
3 also DOE 136 at 20. Answer No. 37 claimants grow apples, hay and pasture on their lands. Albert
4 Stephenson participated in U.S. v. AID and filed Answer No. 37, indicating that, in 1957, he owned
5 three parcels consisting of 86 acres in the area described above and irrigated 66 acres; his
6 predecessors irrigated 57 acres in Section 7 and 8 in 1908. Id. Therefore, lands owned by Answer
7 No. 37 claimants that are encompassed by Answer No. 37 are entitled to a senior right to irrigate 57
8 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and continued beneficial use.

9 AID – 8 shows that 67.9 acres are within the Answer No. 37 area and receiving water. US --
10 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 37
11 was irrigated with surface water, but that a state right for 62.00 acres is appurtenant to the land. The
12 water right certificate applicable to the property in question is Certificate No. 192, a Class 8 right
13 issued to Benjamin Eschbach authorizing the irrigation of 62 acres in the E1/2SE1/4SE1/4 of
14 Section 7 and W1/2SW1/4 of Section 8. The land owned by Answer No. 37 claimants in Section 7
15 and 8 lie solely within that property description. Therefore, the Court finds that Certificate No. 192
16 applies to the Section 7 and 8 lands irrigated by the Answer No. 37 claimants and authorize a
17 maximum use of 62 acres. There are two groundwater rights for lands encompassed by Answer No.
18 37 – a primary right for irrigation of 3 acres and a supplemental right for irrigation of 109.50 acres.
19 US – 126.

20 The Court finds the owners of land encompassed by Answer No. 37 are now entitled to a
21 senior right from Ahtanum Creek for irrigation of 57 acres in 5 parcels (Parcel Nos. 17120744001,
22 17120833001, 17120832005, 17120832007-08) and located in the E1/2SE1/4SE1/4 of Section 7
23 and W1/2SW1/4 in Section 8, Except that portion lying southerly of Ahtanum Creek and northerly
24 of county road, all within T. 12 N., R. 17 E.W.M. See also DOE 136 at 20. Use of water in Sections
25 7 and 8 is supported by the Class 8 right confirmed to Benjamin Eschbach (Certificate No. 192).

The Court will confirm a right to divert 0.57 cfs, 98.19 acre-feet per year from April 15 to
July 10 for irrigation of the 57 acres in Section 7 and 8. The points of diversion shall be the
NE1/4NW1/4 and the NE1/4NE1/4 of Section 18, T. 12 N., R. 17 E.W.M. Certificate No. 192. The
date of priority shall be 1871. Id.

Based on AID – 8 and DOE – 133, the Court also confirms a junior right to Answer No. 37
claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,

1 including potential storage, are being made of the excess by water right holders on the reservation.
2 The only evidence on water use for lands encompassed in Answer No. 37 was provided in US—126
3 and AID – 8. US – 126 indicates that none of the land encompassed in Answer No. 36 was
4 irrigated in one year – 1977. AID – 8 shows that 67.9 acres have been irrigated. The Achepohl right
5 authorizes irrigation of up to 62 acres. Certificate No. 192. This Court cannot confirm a right in
6 excess of what the state right encompassed. RCW 90.03. Any right developed after 1917 would
7 require initiation of a new right and compliance with RCW 90.03. The Court granted a right above
8 for irrigation of 57 acres.

9 Therefore, the Court finds the junior right is appurtenant to 5 acres – the difference between
10 the 62 acres authorized by the Certificate No. 192 and the amount awarded in Ahtanum II. Based
11 on AID – 8, the additional water appears to have been used on 1 parcel (Parcel No. 17120833001)
12 in the W1/2SW1/4 of Section 8, T. 12 N., R. 17 E.W.M. The remaining parcels appear to be
13 receiving quantities of water consistent with the right confirmed in Ahtanum II. With the caveat set
14 forth above, the period of use shall be April 15 – July 10. The maximum instantaneous diversion
15 shall be 0.05 cfs for the Section 8 lands with a maximum annual diversion of 8.61 acre-feet. The
16 points of diversion shall be the NE1/4NW1/4 and the NE1/4NE1/4 of Section 18, T. 12 N., R. 17
17 E.W.M. Certificate No. 192. The Date of Priority, to be used in conjunction with other excess/junior
18 water users, shall be 1871. Id.

19 Joe Wiley; Brian Helle; Charles and Nan Eaton; James and Jacquleen Mackie

20 According to AID – 8, the above-named claimants own the seven parcels (Parcel Nos.
21 17121522401, 17121612401, 17121612403-05, 17121611401, and 17121611403) encompassed in
22 Answer No. 38 and located in the N1/2NW1/4 and Government Lots 1 and 2 of Section 15 and the
23 N1/2NE1/4 and Government Lots 3 and 4 of Section 16, all within T. 12 N., R. 17 E.W.M. See also
24 DOE 136 at 21. Answer No. 38 claimants grow apples, hay and pasture on their lands. The Court's
25 review of AID – 8 shows that document to be inconsistent with AID – 1, the Assessment Role. The
Court will follow AID – 8 as it was the evidence that linked use of water with Answer Numbers
from the U.S. v. AID. The Court was unable to read DOE – 136 to identify the owner of lands who
participated in the U.S. v. AID proceeding and filed Answer No. 38 although the name appears to
be Robert Wiley. DOE – 136 at 21. In 1957, the owner of Answer No. 38 lands owned two parcels
consisting of 257.75 acres in the area described above and irrigated 204.1 acres; his predecessors
irrigated 75 acres in 1908. Id. Therefore, lands owned by Answer No. 38 claimants encompassed

1 by Answer No. 38 are entitled to a senior right for a maximum of 75 acres, Ahtanum II, 330 F.2d at
2 917, if a certificate supports the right and beneficial use continued.

3 AID – 8 shows 70.38 acres are within the Answer No. 38 area and receiving water, with
4 about 62 acres irrigated in Section 16 and 8.39 irrigated acres in Section 15. US -- 126, based on
5 1977 aerial photography, indicates 239. 30 acres encompassed in Answer No. 38 were irrigated
6 with surface water and state rights for a total of 232.35 acres were appurtenant to the land. The
7 water right certificates applicable to the Section 15 parcels are Certificate Nos. 97 and 98, Class 5
8 rights that issued to Felicia and Anna Stanton for the irrigation of 123.25 acres in the N1/2NW1/4
9 and Lots 1 and 2 in Section 15. See also DOE – 133 at 8.

10 Certificate No. 329 is a Class 22 right that issued to Wallace Wiley for the irrigation of
11 109.1 acres in the N1/2NE1/4 and Lots 3 and 4 in Section 16. See DOE – 133 at 82. However,
12 Certificate No. 329 was the subject of a partial relinquishment May 16, 1988. See Vol. 1239, p.
13 1553. Pursuant to that partial relinquishment, James and Jacquleen Mackie relinquished their right
14 to irrigate 10 acres in the N1/2NE1/4 described more specifically as Parcel Nos. 171216-11401 and
15 171216-12404. Water rights for those parcels have been claimed in this adjudication by AID. See
16 AID – 8. The Court finds that any water rights that may have existed for those two parcels were
17 relinquished in 1988. Answer No. 38 claimants have a primary groundwater right for irrigation of
18 14.50 acres and a supplemental groundwater right for irrigation of 502 acres. US – 126.

19 There is no evidence before the Court indicating which specific acres in Section 15
20 encompassed by Answer No. 36 have been irrigated. The Ninth Circuit stated that water rights not
21 used on the parcels comprising the Answer Numbers would revert to reservation users. Ahtanum II
22 at 911, 913. As noted above, AID – 8 shows that 70.38 acres are receiving water. That quantity is
23 less than the quantity of irrigated lands (75 acres) found in U.S. v. Ahtanum.

24 The Court finds the owners of lands encompassed by Answer No. 38 now have a senior right
25 from Ahtanum Creek for the irrigation of 62.38 acres as follows: 8.39 acres in Section 15 and 54
acres in Section 16 all being on 5 parcels (Parcel Nos. 17121522401, 17121612401, 17121612403,
17121612405, and 17121611403) and located in the N1/2NW1/4, Lots 1 and 2, Section 15 and the
N1/2NE1/4 and Lots 3 and 4, Section 16, all within T. 12 N., R. 17 E.W.M. See also DOE 136 at
21. Thus, in 1988 water rights for 10 acres (8 of which were claimed by AID) were specifically
relinquished by the Mackies, see Vol. 1239 page 1553, and between 1957 and 1993 additional water
rights in the certificated place of use were either abandoned or relinquished. Use of water in Section

1 15 are supported by the Class 5 right confirmed to Felicia Stanton and Anna Stanton (Certificate
2 Nos. 97 and 98). See also DOE – 133 at 8 and 82. Use of water in Section 16 is supported by the
3 remainder of the Class 22 right confirmed to Wallace Wiley (Certificate No. 329).

4 The Court will confirm a right to divert 0.084 cfs, 14.47 acre-feet per year for the irrigation
5 of 8.39 acres in Section 15 and 0.54 cfs, 93 acre-feet per year for the irrigation of 54 acres in
6 Section 16. The period of use shall be from April 15-July 10. The point of diversion for the Section
7 15 lands shall be 500 feet north and 400 feet west from the east quarter corner of Section 16, being
8 within the SE1/4NE1/4 of Section 16, the NE1/4NW1/4 of Section 15 and the SE1/4SE1/4 of
9 Section 8, all within T. 12 N., R. 17 E.W.M. Certificate Nos. 97 and 98. The points of diversion for
10 the Section 16 lands shall be the NE1/4NE1/4 and Lot 3 of Section 17 and Lot 2 of Section 16, all
11 within T. 12 N., R. 17 E.W.M. Certificate No. 329. The date of priority shall be 1868 for Section 15
12 lands and 1888 for Section 16 lands. Certificate No. 97, 98 and 329.

11 R. E. Cornelius

12 Mr. Cornelius owns land within two answer numbers – 39 and 42, to be analyzed herein.

13 *Answer No. 39*

14 According to AID – 8, Mr. Cornelius owns 2 parcels (Parcel Nos. 17121721001,
15 17121722001) encompassed in Answer No. 39 and located in the N1/2NW1/4 of Section 17, T. 12
16 N., R. 17 E.W.M. See also DOE 136 at 21. Mr. Cornelius raises orchard on his lands. Carl M.
17 Sheneberger participated in U.S. v. AID and filed Answer No. 39 indicating that in 1957, he owned
18 one parcel consisting of 78.78 acres in the area described above and irrigated 31.7 acres; his
19 predecessors irrigated 45 acres in Section 17. Id. Therefore, lands owned by Mr. Cornelius that are
20 encompassed by Answer No. 39 are entitled to a senior right for a maximum of 31.7 acres in
21 Section 17, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use
22 continued.

23 AID – 8 shows 58 acres are within the Answer No. 38 area and receiving water. US -- 126,
24 based on 1977 aerial photography, indicates none of the acres encompassed in Answer No. 39 was
25 being irrigated with surface water and that there are state rights for 65 acres. The water right
certificate applicable to the Section 17 parcel is Certificate No. 299. Certificate No. 299 is a Class
18 right issued to John Shenneberger for the irrigation of 65 acres in the N1/2NW1/4 of Section 17.
Mr. Cornelius has a supplemental groundwater right to irrigate 50 acres. US – 126.

1 The Court finds Mr. Cornelius is now entitled to a senior right from Ahtanum Creek for
2 irrigation of 31.70 acres on 2 parcels in Section 17 (17121721001 and 17121722001). Use of water
3 in Section 17 is supported by the Class 18 right confirmed to John Shenneberger (Certificate No.
4 299). See also DOE – 133 at 58. The Court will confirm a right to divert 0.317 cfs, 54.60 acre-feet
5 per year from April 15 to July 10 for irrigation of the 31.7 acres in Section 17. The points of
6 diversion for the Section 17 lands shall be the NE1/4NE1/4 of Section 18 and the NE1/4NW1/4 of
7 Section 17 on either side of the creek, all within T. 12 N., R. 17 E.W.M. Certificate No. 299. The
8 date of priority shall be 1882. Id.

9 Based on AID – 8 and Certificate No. 299, the Court also confirms a junior right to
10 Mr. Cornelius for Section 17 lands that may only be used when the flow in Ahtanum Creek exceeds
11 62.59 cfs and no uses, including potential storage, are being made of the excess by water right
12 holders on the reservation. The only evidence on water use in for lands encompassed in Answer
13 No. 39 was provided in US—126 and AID – 8. US – 126 indicates that none of the lands were
14 irrigated during 1977. AID – 8 shows that 58 acres have been irrigated. The Achepohl right
15 authorizes irrigation of up to 65 acres. Certificate No. 299; DOE 133 at 58. The maximum used in
16 1957 or 1908 is 13.3 acres. Therefore, the Court finds that the junior right is appurtenant to 13.3
17 acres. Based on AID – 8, the additional water is used on 2 parcels (17121721001 and
18 17121722001) and located in the N1/2NW1/4 of Section 17, all within T. 12 N., R. 17 E.W.M. See
19 also DOE 136 at 21. With the caveat set forth above, the period of use shall be April 15 – July 10.
20 The maximum diversion shall be 0.133 cfs for the Section 17 lands with a maximum annual
21 diversion of 22.91 acre-feet. The points of diversion for the Section 17 lands shall be the
22 NE1/4NE1/4 of Section 18 and the NE1/4NW1/4 of Section 17 on either side of the creek, all
23 within T. 12 N., R. 17 E.W.M. The date of priority, to be used in conjunction with other
24 excess/junior water users, shall be 1882.

25 *Answer No. 42*

According to AID – 8, Mr. Cornelius owns 2 parcels (17121712001, 17121713001)
encompassed in Answer No. 42 and located in the NW1/4NE1/4 and Lot 3 of Section 17, T. 12 N.,
R. 17 E.W.M. See also DOE 136 at 22. Mr. Cornelius grows orchard on this land also. L.R.
Goldsmith participated in U.S. v. AID and filed Answer No. 42 indicating that in 1957, the Answer
No. 42 lands were two parcels consisting of 52.17 acres in the area described above and 33.7 acres
were irrigated; his predecessors irrigated 33 acres in 1908. Id. Therefore, lands owned by Mr.

1 Cornelius that are encompassed by Answer No. 42 are entitled to a senior right for a maximum of
2 33 acres in Section 17, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
3 use continued.

4 AID – 8 shows 49.7 acres are within the Answer No. 42 area and receiving water. US --
5 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 42
6 was irrigated with surface water but a state right existed for 56 acres. In Achepohl, E. R. Long was
7 granted a right to irrigate 72 acres in the place of use described in Answer No. 42. Mr. Long was
8 ultimately awarded a certificate that was split into the following two adjudicated water right
9 certificates – Nos. 174 and 174A. Certificate Nos. 174 (for 50 acres) and 174A (22 acres) total 72
10 acres, which is consistent with the findings in Achepohl. However, Certificate No. 174A underwent
11 a change in place of use from the NW1/4NE1/4 and Lot 3 to Lot 4 of Section 17. See Certificate of
12 Change in Place of Use, Vol. 1, Page 73 dated October 27, 1928. SE – 8, Volume 2. Thus, the
13 remaining water right certificate applicable to the Answer No. 42 lands is Certificate No.174, which
14 encompasses the NW1/4NE1/4, and Lot 3 and Lot 4 of Section 17 and authorizes the irrigation of
15 50 acres. Therefore, the Court finds that Certificate No. 174 applies to the Section 17 lands irrigated
16 by Mr. Cornelius and authorize a maximum use for 50 acres. He also has a supplemental
17 groundwater right for irrigation of 51 acres. US – 126.

18 The Court finds Mr. Cornelius is entitled to a senior right from Ahtanum Creek for irrigation
19 of 33 acres in 2 parcels in Section 17 (17121712001 and 17121713001) and located in the
20 NW1/4NE1/4 of Section 17, T. 12 N., R. 17 E.W.M. excepting therefrom the following:

21 Except beginning at the northeast corner, thence west 208 feet, thence south 314.15 feet,
22 thence east 80.5 feet; thence southeasterly 255 feet to a point 16.5 feet west and 545.13 feet
23 south of the northeast corner of the NW1/4NE1/4, thence south to a point on the south line
24 of the NW1/4NE1/4, thence east 16.5 feet, thence north to beginning.

25 And except the west 50 feet of the east 258 feet of the north 194 feet. And except the west
26 20 feet for county road. And except the west 260 feet of the east 518 feet of the north 164
27 feet.

28 And in Government Lot 3 of Section 17, T. 12 N., R. 17 E.W.M. excepting therefrom the following:

29 The east 16.5 feet of the north 756 feet. Except the west 20 feet for county road And except
30 that part of Government Lot 3 lying south of a line 2003.5 feet south of the north line of the
31 NW1/4NE1/4.

1 Use of water in Section 17 is supported by the Class 7 right confirmed to E.R. Long
2 (Certificate No. 174). See also DOE – 133 at 28.

3 The Court will confirm a right to divert 0.33 cfs, 56.85 acre-feet per year from April 15 to
4 July 10 for the irrigation of 33 acres in Section 17. The points of diversion for the Section 17 lands
5 shall be the NW1/4NW1/4 and the SE1/4NW1/4 (Lot 2) of Section 17, all within T. 12 N., R. 17
6 E.W.M. Certificate No. 174. The date of priority shall be 1870. Id.

7 Based on AID – 8 and Certificate No. 299, the Court also confirms a junior right to Mr.
8 Cornelius for Section 17 lands that may only be used when the flow in Ahtanum Creek exceeds
9 62.59 cfs and no uses, including potential storage, are being made of the excess by water right
10 holders on the reservation. The only evidence on water use in for lands encompassed in Answer
11 No. 42 was provided in US—126 and AID – 8. US – 126 indicates the land described in Answer
12 No. 42 was not being irrigated in 1977. AID – 8 shows 49.7 acres have been irrigated. The
13 Achepohl right authorizes irrigation of up to 50 acres. Certificate No. 174. The maximum land
14 irrigated in 1908 or 1957 was 33.7 acres. The Court granted a right to irrigate 33 acres above.

15 Therefore, the Court finds the junior right is appurtenant to 0.7 acres. Based on AID – 8, the
16 water is used on 2 parcels (17121712001 and 17121713001) and located in the NW1/4NE1/4 of
17 Section 17, T. 12 N., R. 17 E.W.M. excepting therefrom the following:

18 Except beginning at the northeast corner, thence west 208 feet, thence south 314.15 feet,
19 thence east 80.5 feet; thence southeasterly 255 feet to a point 16.5 feet west and 545.13 feet
20 south of the northeast corner of the NW1/4NE1/4, thence south to a point on the south line
21 of the NW1/4NE1/4, thence east 16.5 feet, thence north to beginning.

22 And except the west 50 feet of the east 258 feet of the north 194 feet, the west 20 feet for
23 county road, and the west 260 feet of the east 518 feet of the north 164 feet.

24 And in Government Lot 3 of Section 17, T. 12 N., R. 17 E.W.M. excepting therefrom the following:

25 The east 16.5 feet of the north 756 feet. Except the west 20 feet for county road And except
that part of Government Lot 3 lying south of a line 2003.5 feet south of the north line of the
NW1/4NE1/4.

With the caveat set forth above, the period of use shall be April 15 – July 10. The maximum
instantaneous diversion shall be 0.007 cfs with a maximum annual diversion of 1.2 acre-feet. The
points of diversion for the Section 17 lands shall be the NW1/4NW1/4 and the SE1/4NW1/4 (Lot 2)
of Section 17, all within T. 12 N., R. 17 E.W.M. The date of priority, to be used in conjunction with
other excess/junior water users, shall be 1870.

1 Roger A. & T. Hutchinson

2 According to AID – 8, the Hutchinsons own the parcel (Parcel No. 17120744404
3 encompassed in Answer No. 40 and located in the W1/2SE1/4SE1/4 of Section 7, T. 12 N., R. 17
4 E.W.M. See also DOE 136 at 21. The Hutchinsons grow pasture on their lands. Joseph Hennessy
5 participated in U.S. v. AID and filed Answer No. 40 showing that in 1957, he owned one parcel
6 consisting of 20 acres in the area described above and irrigated 10.5 acres; his predecessors irrigated
7 18 acres in 1908. Id. Therefore, lands owned by the Hutchinsons that are encompassed by Answer
8 No. 40 are entitled to a senior right for a maximum of 10.5 acres, Ahtanum II, 330 F.2d at 917, if a
9 certificate supports the right and beneficial use continued.

10 AID – 8 shows 6.47 acres are within the Answer No. 40 area and receiving water. US –
11 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 40
12 was irrigated with surface water but there is a state right for 19 acres. Certificate No. 191 is a Class
13 8 right issued to E. E. Crosno for the irrigation of 19 acres in the W1/2SE1/4SE1/4 of Section 7 and
14 is, therefore, appurtenant to the Hutchinson land. See also DOE – 133 at 34. The Hutchinsons also
15 have a supplemental groundwater right for irrigation of 19 acres. US – 126.

16 There is no evidence indicating which specific acres in the W1/2SE1/4SE1/4 of Section 15
17 encompassed by Answer No. 40 have been beneficially used. The Ninth Circuit stated water rights
18 not used on the parcels comprising the Answer Numbers would revert to reservation users.
19 Ahtanum II at 911, 913. As noted above, AID – 8 shows that 6.49 acres are receiving water. That
20 quantity is less than the quantity of irrigated lands (10.5 acres) found in U.S. v. Ahtanum.

21 The Court finds the Hutchinsons are now entitled to a senior right from Ahtanum Creek for
22 irrigation of 6.47 acres in 1 parcel in the W1/2SE1/4SE1/4 of Section 7 (Parcel No. 17120744404).
23 Thus, between 1957 and 1993, a portion of the water rights on the parcel were either abandoned or
24 relinquished. Use of water in Section 7 is supported by the Class 8 right confirmed to E. E. Crosno
25 (Certificate No. 191). See also DOE – 133 at 34.

The Court will confirm a right to divert 0.065 cfs, 11.15 acre-feet per year from April 15 to
July 10 for the irrigation of 6.47 acres in the W1/2SE1/4SE1/4 of Section 7. The points of diversion
for the Section 7 lands shall be in the NE1/4NW1/4 and the NE1/4NE1/4 of Section 17, T. 12 N., R.
17 E.W.M. Certificate No. 191. The date of priority shall be 1871. Id.

1 Russell & Cathy Wilkinson; Kenneth P. Bates, Jr.; Cliff Dovel; Dennis E. & Carloy Herron; Lloyd
2 E. Dovel (Joined by Robert & Veronica Flake) (Court Claim No. 1903)

3 According to AID – 8, the above named claimants own the 10 parcels (Parcel Nos.
4 17121831001, 17121841001, 17121813001-02, 17121812002-05, 17121843004 -05) encompassed
5 in Answer No. 41 and located in Government Lots 3, 4 and 5 and the W1/2NE1/4 of Section 18 and
6 that part of the SW1/4SE1/4 of Section 7 lying south of County Road, All being within T. 12 N., R.
7 17 E.W.M. See also DOE 136 at 21. Answer No. 41 claimants grow hay and pasture on their
8 lands. Thomas E. Bates participated in U.S. v. AID and filed Answer No. 41, showing that in 1957,
9 he owned two parcels consisting of 129 acres in Section 18 and 25 acres in Section 7 (as more
10 specifically described above) and irrigated 90.2 acres; his predecessors irrigated 92 acres in 1908.
11 Id. Therefore, lands owned by the Answer No. 41 claimants that are encompassed by Answer No.
41 are entitled to a senior right for a maximum of 90.2 acres in Sections 7 and 18, Ahtanum II, 330
F.2d at 917, if a certificate supports the right and beneficial use continued.

12 AID – 8 shows 115.73 acres are within the Answer No. 41 area and receiving water. US --
13 126, based on 1977 aerial photography, indicates 108.5 acres encompassed in Answer No. 41 were
14 irrigated with surface water and there is a state right for 130 acres. Certificate No. 270, a Class 14
15 right, issued to the Lynch family for irrigation of 130 acres in the SW1/4SE1/4 of Section 7, the
16 W1/2NE1/4 and Lots 3, 4 and 5 of Section 18, which includes all the land described in Answer No.
17 41. Answer No. 41 claimants also have a supplemental groundwater right for irrigation of 155 acres.
US – 126.

18 The Court finds that the Answer No. 41 claimants are now entitled a senior right from
19 Ahtanum Creek for irrigation of 90.2 acres in 10 parcels (Parcel Nos. 17121831001, 17121841001,
20 17121813001-02, 17121812002-05, 17121843004 -05) and located in Lots 3, 4 and 5 and the
21 W1/2NE1/4 of Section 18 and that part of the SW1/4SE1/4 of Section 7 lying south of County
22 Road, All being within T. 12 N., R. 17 E.W.M. See also Certificate No. 270. Use of water in
Sections 7 and 18 is supported by the Class 14 right confirmed to the Lynchs (Certificate No. 270).
See also DOE – 133 at 50.

23 The Court will confirm a right to divert 0.902 cfs, 155.38 acre-feet per year from April 15 to
24 July 10 for the irrigation of 90.2 acres in those parts of Sections 18 and 7 described in Answer No.
25 41. The points of diversion for the right shall be in the NW1/4NW1/4, NE1/4NW1/4, SE1/4NW1/4,

1 SW1/4SW1/4, Lot 2 and Lot 4 of Section 18, all within T. 12 N., R. 17 E.W.M. Certificate No. 270.
2 The date of priority shall be 1878. Id.

3 Based on AID – 8 and Certificate No. 270, the Court also confirms a junior right to Answer
4 No. 41 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no
5 uses, including potential storage, are being made of the excess by water right holders on the
6 reservation. The only evidence on water use in for lands encompassed in Answer No. 41 was
7 provided in US—126 and AID – 8. US – 126 indicates that 108.50 acres were irrigated on all the
8 lands encompassed in Answer No. 41 in one year – 1977. AID – 8 shows that 115.73 acres have
9 been irrigated. The Achepohl right authorizes irrigation of up to 130 acres. The maximum acres
10 irrigated in 1908 or 1957 was 92. The Court granted a right for irrigation of 90.2 acres above.

11 Therefore, the Court finds the junior right is appurtenant to 1.8 acres. Based on AID – 8, the
12 additional water is used on 10 parcels (Parcel Nos. 17121831001, 17121841001, 17121813002,
13 17121813001, 17121812002-05, 17121843004 –05) and located in Lots 3, 4 and 5 and the
14 W1/2NE1/4 of Section 18 and that part of the SW1/4SE1/4 lying south of County Road, all being
15 within T. 12 N., R. 17 E.W.M. With the caveat set forth above, the period of use shall be April 15 –
16 July 10. The maximum instantaneous diversion shall be 0.018 cfs for the Answer No. 41 lands with
17 a maximum annual diversion of 3.1 acre-feet. The points of diversion for the Answer No. 41 lands
18 shall be the NW1/4NW1/4, NE1/4NW1/4, SE1/4NW1/4, SW1/4SW1/4, Lot 2 and Lot 4 of Section
19 18, all within T. 12 N., R. 17 E.W.M. The date of priority, to be used in conjunction with other
20 excess/junior water users, shall be 1878.

21 Stanley & Linda Emerick; Michael & Sherry Drury; Roger Meusborn

22 According to AID – 8, the above-named claimants own the four parcels (Parcel Nos.
23 17120834002-05) encompassed in Answer No. 43 and located in the E1/2SW1/4 of Section 8, T. 12
24 N., R. 17 E.W.M., except the south 20 feet for County Road. See also DOE 136 at 22. However,
25 AID-8 shows the parcels to be located in the SE1/4SW1/4 of Section 8 and no claims have been
asserted for land in the NE1/4SW1/4 of Section 8. See AID – 8. Answer No. 43 claimants grow
hay and pasture on those lands. R. R. Goldsmith participated in U.S. v. AID and filed Answer No.
43 showing that in 1957, Mr. Goldsmith owned one parcel consisting of 79.90 acres in the
E1/2SW1/4 of Section 8 and irrigated 68.1 acres; his predecessors irrigated 73 acres in 1908. Id.
Therefore, lands owned by Answer No. 43 claimants within Answer No. 43 are entitled to a senior

1 right to irrigate a maximum of 68.1 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the
2 right and beneficial use continued.

3 AID – 8 shows 22.79 acres are within the Answer No. 43 area and receiving water. US --
4 126, based on 1977 aerial photography, indicates 18.52 acres encompassed in Answer No. 43 were
5 irrigated with surface water and there is a total state right for 78 acres. The water right certificate
6 appurtenant to the property in question is Certificate No. 193, which is a Class 8 right that
7 authorizes the irrigation of 78 acres in the E1/2SW1/4 of Section 8. The land owned by Answer
8 No. 43 claimants in Section 8 lies solely within the E1/2SW1/4. Therefore, the Court finds that
9 Certificate No. 193 applies to the land irrigated by the Answer No. 43 claimants in the SE1/2SW1/4
10 of Section 8. The Answer No. 43 claimants have a primary groundwater right for irrigation of 24
11 acres and a supplemental right for 18 acres encompassed by Answer No. 36. US – 126.

12 There is no evidence before the Court indicating which specific acres in the SE1/4SW1/4 of
13 Section 8 encompassed by Answer No. 43 have been irrigated. The Ninth Circuit stated plainly that
14 water rights not used on the parcels comprising the Answer Numbers would revert to reservation
15 users. Ahtanum II at 911, 913. As noted above, AID – 8 shows that 22.79 acres are receiving water.
16 That quantity is less than the quantity of irrigated lands found in U.S. v. Ahtanum (68.1).

17 The Court finds the owner of lands encompassed by Answer No. 43 are now entitled to a
18 senior right from Ahtanum Creek for irrigation of 22.79 acres in 4 parcels in Section 8 (Parcel Nos.
19 17120834002-05). Thus, between 1957 and 1993, a portion of the water rights on the Section 8
20 parcels were either abandoned or relinquished. Use of water in Section 8 is supported by the Class
21 8 right confirmed to Peter Eschbach (Certificate No. 193). See also DOE – 133 at 34.

22 The Court will confirm a right to divert 0.228 cfs, 39.26 acre-feet per year from April 15
23 through July 10 for the irrigation of 22.79 acres in Section 8. The points of diversion for the right
24 shall be the NW1/4NW1/4 of Section 17 and two in the NW1/4SW1/4 of Section 8, all within T. 12
25 N., R. 17 E.W.M. Certificate No. 193. The purpose of use shall be irrigation of hay and pasture.
AID – 8. The date of priority shall be 1871. Id.

Orville & Gwene Seward; Bradley Vetsch; Charles & Sharon Vetsch

According to AID – 8, the above-named claimants own four parcels (17121621401,
17121621403, and 17121624400-01) encompassed in Answer No. 44 and located in the
NE1/4NW1/4 and Lot 2 in Section 16, T. 12 N., R. 17 E.W.M. See also DOE 136 at 22. Answer
No. 44 claimants grow pasture on their lands. Mary Greenwalt participated in U.S. v. AID and filed

1 Answer No. 44 showing that in 1957, Ms. Greenwalt owned one parcel consisting of 75.50 acres in
2 the area described above and irrigated 45.9 acres; her predecessors irrigated 40 acres in Section 16
3 in 1908. Id. Therefore, lands owned by Answer No. 43 claimants that are encompassed by Answer
4 No. 43 are entitled to a senior right for a maximum of 40 acres, Ahtanum II, 330 F.2d at 917, if a
certificate supports the right and beneficial use continued.

5 AID – 8 shows 21.95 acres are within the Answer No. 44 area and receiving water. US --
6 126, based on 1977 aerial photography, indicates 34.20 acres encompassed in Answer No. 44 were
7 irrigated with surface water and that there is a state right for 40 acres appurtenant to the land. The
8 water right certificate applicable to the property in question is Certificate No. 332, a Class 25 right
9 that issued to Mary Greenwalt and authorized irrigation of 40 acres in the NE1/4NW1/4 and Lot 2
10 of Section 16. The Court finds Certificate No. 332 applies to the Section 16 lands irrigated by
11 Answer No. 44 claimants and authorizes irrigation of 40 acres. The Answer No. 44 claimants have a
supplemental groundwater right to irrigate 18 acres. US – 126.

12 There is no evidence indicating which specific acres in the NE1/4NW1/4 and Lot 2 of
13 Section 16 encompassed by Answer No. 44 have been beneficially used. The Ninth Circuit stated
14 water rights not used on the parcels comprising the Answer Numbers would revert to reservation
15 users. Ahtanum II at 911, 913. As noted above, AID – 8 shows 21.95 acres are receiving water.
That quantity is less than the quantity of irrigated lands found in U.S. v. Ahtanum.

16 The Court finds that the owner of lands encompassed by Answer No. 44 are now entitled to
17 a senior right from Ahtanum Creek for irrigation of 21.95 acres in 4 parcels in Section 16 (Parcel
18 Nos. 17121621401, 17121621403, 17121624400 and 17121624401) and located in the
19 NE1/4NW1/4 and Lot 2 in Section 16, T. 12 N., R. 17 E.W.M. See also DOE 136 at 22. Thus,
20 between 1957 and 1993, a portion of water rights on the Section 16 parcels were either abandoned
21 or relinquished. Use of water in Section 16 is supported by the Class 25 right confirmed to Mary
22 Greenwalt (Certificate No. 332). See also DOE – 133 at 65. The Court will confirm a right to divert
23 0.22 cfs, 37.90 acre-feet per year from April 15 through July 10 for the irrigation of 21.95 acres in
24 the NE1/4NW1/4 and Lot 2 of Section 16. The points of diversion for the Answer No. 44 lands
25 shall be the NE1/4NW1/4 of Section 16 and Lot 3 and the NE1/4NE1/4 of Section 17, All within T.
12 N., R. 17 E.W.M. Certificate No. 332. The date of priority shall be 1891. Id.

1 Vernon Carson (Court Claim No. 370); Laddy Vibbert; Loren Wiley; Joe Wiley

2 Vernon Carson filed Court Claim No. 0370 in this proceeding. He did not appear at the
3 evidentiary hearing to represent the claim, relying on AID. According to AID – 8, the above named
4 claimants own the 7 parcels (17120842002, 17120842006, 17120843401-02, 17120843404,
5 17120843001-02) encompassed in Answer No. 45 and located in the W1/2SE1/4 of Section 8, T. 12
6 N., R. 17 E.W.M. See also DOE 136 at 23. Answer No. 45 claimants grow hay and pasture on the
7 lands. Etta Carson participated in U.S. v. AID and filed Answer No. 45 showing that in 1957, she
8 owned one 80-acre parcel in the W1/2SE1/4 of Section 8 and irrigated 72.4 acres; her predecessors
9 irrigated 70 acres in 1908. Id. Therefore, lands owned by the Answer No. 45 claimants
10 encompassed by Answer No. 45 are entitled to a senior right for a maximum of 70 acres in the
11 W1/2SE1/4 of Section 8, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
12 beneficial use continued.

13 AID – 8 shows 73.53 acres are within the Answer No. 45 area and receiving water. US --
14 126, based on 1977 aerial photography, indicates 46 acres encompassed in Answer No. 45 were
15 irrigated with surface water and there is a state right for 80 acres appurtenant to the land. The water
16 right certificate applicable to the Answer No. 45 lands is Certificate No. 137. Certificate No. 137 is
17 a Class 7 right that issued to Albert Mallon authorizing the irrigation of 80 acres in the W1/2SE1/4
18 of Section 8, T. 12 N., R. 17 E.W.M. Therefore, the Court finds Certificate No. 137 applies to the
19 lands encompassed by Answer No. 45 and authorizes a maximum use for the irrigation of 80 acres.
20 Answer No. 45 claimants have no groundwater rights. US – 126.

21 The Court finds that the Answer No. 45 claimants are now entitled to a senior right from
22 Ahtanum Creek for irrigation of 70 acres in 7 parcels (Parcel Nos. 17120842002, 17120842006,
23 17120843401-02, 17120843404, 17120843001-02) and located in the W1/2SE1/4 of Section 8, T.
24 12 N., R. 17 E.W.M. See also DOE 136 at 23. Use of water in Section 8 is supported by the Class 7
25 right confirmed to the Albert Mallon (set forth in Certificate No. 137). See also DOE – 133 at 19.

The Court confirms a right to irrigate 0.70 cfs, 120.58 acre-feet per year from April 15 to
July 10 for the irrigation of 70 acres in the W1/2SE1/4 of Section 8. The points of diversion shall be
in the NE1/4NE1/4, NW1/4NW1/4 of Section 17, the NE1/4SW1/4 and a point located
approximately 300 feet east and 200 feet south of the center of Section 8, being within the
NW1/4SE1/4 of Section 8, all within T. 12 N., R. 17 E.W.M. Bachelor Creek flows through these
areas. Certificate No. 137. The date of priority shall be 1870. Id.

1 Based on AID – 8 and Certificate No. 137, the Court also confirms a junior right to Answer
2 No. 45 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no
3 uses, including potential storage, are being made of the excess by water right holders on the
4 reservation. The only evidence on water use in for lands encompassed in Answer No. 45 was
5 provided in US—126 and AID – 8. US – 126 indicates that 46 acres were irrigated in one year –
6 1977, while AID – 8 shows that 73.53 acres have been irrigated. The Achepohl right authorizes
7 irrigation of up to 80 acres. Certificate No. 137. The maximum irrigated in 1908 or 1957 was 72.4
8 acres. The Court granted a senior right for irrigation of 70 acres.

9 Therefore, the Court finds that the junior right is appurtenant to 2.4 acres. Based on AID –
10 8, the additional water is used on 7 parcels (Parcel Nos. 17120842002, 17120842006,
11 17120843401-02, 17120843404, 17120843001-02) and located in the W1/2SE1/4 of Section 8, T.
12 12 N., R. 17 E.W.M. See also DOE 136 at 23. With the caveat set forth above regarding the
13 conditions when this right may be used, the period of use shall be April 15 – July 10. The
14 maximum instantaneous diversion shall be 0.024 cfs with a maximum annual diversion of 4.13
15 acre-feet. The points of diversion for the right shall be the NE1/4NE1/4, NW1/4NW1/4 of Section
16 17, the NE1/4SW1/4 and NW1/4SE1/4 of Section 8, all within T. 12 N., R. 17 E.W.M. The date of
17 priority, to be used in conjunction with other excess/junior water users, shall be 1870.

18 Chancery; Dwinell's Central Neon Co. (Claim No. 2308)

19 Although Dwinells filed Court Claim No. 2308, they chose to have AID represent their
20 interest in this proceeding. According to AID – 8, the above named claimants own the 2 parcels
21 (17121821004, 17121821402) encompassed in Answer No. 46 and located in the E1/2NW1/4 and
22 Lots 1 and 2 in Section 18, T. 12 N., R. 17 E.W.M. See also DOE 136 at 23. Answer No. 46
23 claimants grow hay and pasture on the lands. Albert Hague participated in U.S. v. AID and filed
24 Answer No. 46 showing that in 1957, he owned one parcel consisting of 169.4 acres in Section 18
25 (more specifically described above) and irrigated 110.6 acres; his predecessors irrigated 60 acres in
1908. Id. Therefore, lands encompassed by Answer No. 46 are entitled to a senior right for the
irrigation of a maximum of 60 acres in Section 8, Ahtanum II, 330 F.2d at 917, if a certificate
supports the right and beneficial use continued.

AID – 8 shows 60.15 acres are within the Answer No. 46 area and receiving water. US --
126, based on 1977 aerial photography, indicates 82.70 acres encompassed in Answer No. 46 were
irrigated with surface water and there is a state right for the irrigation of 141.50 acres. The water

1 right certificate applicable to the Answer No. 46 lands is Certificate No. 328, a Class 22 right issued
2 to Andrew Hague authorizing the irrigation of 141.5 acres in Lots 1 and 2 and the E1/2NW1/4 of
3 Section 18, T. 12 N., R. 17 E.W.M. That certificate matches the legal description for the property
4 set forth in Answer No. 46. See also DOE – 133 at 82. Therefore, the Court finds that Certificate
5 No. 328 applies to the lands encompassed by Answer No. 46 and authorizes the irrigation of a
6 maximum of 141.50 acres. Answer No. 46 claimants have a supplemental groundwater right for 40
acres. US – 126.

7 The Court finds that the Answer No. 46 claimants are now entitled to a senior right from
8 Ahtanum Creek for irrigation of 60 acres in 2 parcels (Parcel Nos. 17121821004, 17121821402)
9 and located in the E1/2NW1/4 and Lots 1 and 2 in Section 18, T. 12 N., R. 17 E.W.M. See also
10 DOE 136 at 23. Use of the water is supported by the Class 22 right confirmed to Andrew Hague
(set forth in Certificate No. 328). See also DOE – 133 at 82.

11 The Court will confirm a right to divert 0.60 cfs, 103.36 acre-feet per year from April 15 to
12 July 10 for the irrigation of 60 acres in Section 18. The date of priority shall be 1888. Certificate
13 328. The points of diversion for the right shall be, based upon Certificate No. 328:

- 14 1. The SW1/4NE1/4 of Section 13, T. 12 N., R. 16 E.W.M.
- 15 2. Lot 1 of Section 18, T. 12 N., R. 17 E.W.M.
- 16 3. Lot 2 of Section 18, T. 12 N., R. 17 E.W.M.
- 17 4. E1/2NW1/4 of Section 18, T. 12 N., R. 17 E.W.M.
- 18 5. Lot 4 of Section 13, T. 12 N., R. 16 E.W.M.

19 Based on AID – 8 and Certificate No. 328, the Court also confirms a junior right to Answer
20 No. 46 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no
21 uses, including potential storage, are being made of the excess by water right holders on the
22 reservation. The only evidence on water use in for lands encompassed in Answer No. 46 was
provided in US—126 and AID – 8. US – 126 indicates that 82.70 acres were irrigated on all the
lands encompassed in Answer No. 46 in one year – 1977. AID – 8 shows that 60.15 acres have
been irrigated. The Achepohl right authorizes irrigation of up to 141.50 acres. Certificate No. 328.
The Court granted a senior right for irrigation of 60 acres.

23 Therefore, the Court finds the junior right is appurtenant to 0.15 acres. Based on AID – 8,
24 the water is used on 2 parcels (Parcel Nos. 17121821004, 17121821402) and located in the
25 E1/2NW1/4 and Lots 1 and 2 in Section 18, T. 12 N., R. 17 E.W.M. See also DOE 136 at 23. With
the caveat set forth above regarding the conditions when this right may be used, the period of use

1 shall be April 15 – July 10. The maximum instantaneous diversion shall be 0.0015 cfs with a
2 maximum annual diversion of 0.26 acre-feet. The date of priority, to be used in conjunction with
3 other junior/excess water users, shall be 1888. The points of diversion for the right shall be:

- 4 1. The SW1/4NE1/4 of Section 13, T. 12 N., R. 16 E.W.M.
- 5 2. Lot 1 of Section 18, T. 12 N., R. 17 E.W.M.
- 6 3. Lot 2 of Section 18, T. 12 N., R. 17 E.W.M.
- 7 4. E1/2NW1/4 of Section 18, T. 12 N., R. 17 E.W.M.
- 8 5. Lot 4 of Section 13, T. 12 N., R. 16 E.W.M.

9 Robert S. Anderson

10 According to AID – 8, Robert S. Anderson owns 2 parcels (Parcel Nos. 16121532001,
11 16121631002) encompassed in Answer No. 47 and located in Government Lot 4 of Section 15 and
12 Government Lots 1, 2, 3 and 4 in Section 16, all being within T. 12 N., R. 16 E.W.M. See also
13 DOE 136 at 23. Mr. Anderson grows hay and pasture on his lands. Hugh and James Wiley
14 participated in U.S. v. AID and filed Answer No. 47 showing that in 1957, the Wileys owned two
15 parcels consisting of approximately 200 acres in Sections 15 and 16 (more specifically described
16 above) and irrigated 101.1 acres; their predecessors irrigated 100 acres in 1908. Id. Therefore,
17 lands owned by Mr. Anderson that are encompassed in Answer No. 47 are entitled to a senior right
18 for a maximum of 100 acres in Sections 15 and 16, Ahtanum II, 330 F.2d at 917, if a certificate
19 supports the right and beneficial use continued.

20 AID also filed a claim for use of “Wiley Springs” and represent that these springs are
21 located in Section 16, T. 12 N., R. 15 E.W.M.¹⁸ See Claim filed October 13, 1994. AID indicates
22 that the spring water, with a continuous flow of approximately 3 cfs is largely used on the land
23 owned by Robert Anderson although a small unused portion of the spring does flow into Ahtanum.
24 Id. AID further indicates that approximately 155.83 acres of hay and pasture are irrigated from this
25 spring. Id. AID asserts these springs have a Class 6 right and date back to 1869 and are covered
under Pope Decree Answer No. 47. The water is principally used after July 10th for irrigation and
year around for stock water. Therefore rights to Wiley Springs will be included in this analysis.

AID – 8 shows 155.83 acres are within the Answer No. 47 area and receiving water. US --
126, based on 1977 aerial photography, indicates 91.70 acres encompassed in Answer No. 47 were
irrigated with surface water and that there are state rights for the irrigation of 170.95 acres. The

¹⁸ The Court is unaware of whether specific evidence was submitted in regard to this claim.

1 water right certificates applicable to the Answer No. 47 lands are Certificate Nos. 125 and 339.
2 Certificate No. 125 is a Class 6 right issued to Wallace Wiley confirming a right to irrigate 150.95
3 acres in Lot 4 of Section 15 (less 4.25 acres) and Lots 1, 2, and 3 in Section 16, all within T. 12 N.,
4 R. 16 E.W.M. Certificate No. 339 is a Class 29 right issued to Wallace Wiley confirming a right to
5 irrigate 20 acres in Lot 4 of Section 16, T. 12 N., R. 16 E.W.M. The legal descriptions set forth in
6 the certificates match those in U.S. v. Ahtanum for Answer No. 47. Therefore, the Court finds that
7 Certificate Nos. 125 and 339 apply to the lands encompassed by Answer No. 47 and authorize a
8 maximum use for the irrigation of 170.95 acres. Mr. Anderson does not appear to have any
9 groundwater rights for the Answer No. 47 lands. US – 126.

10 The Court finds that Robert Anderson is now entitled to a senior right from Ahtanum Creek
11 for irrigation of 100 acres in 2 parcels (Parcel Nos. 16121532001, 16121631002) and located in:

12 Lot 4; except beginning at the northwest corner; thence east 1352 feet; thence south 198
13 feet; thence north 76°20' west 568 feet; thence south 81°45' west 353-feet; thence north
14 81°48' west 454 feet; thence north 50 feet to beginning; all in Section 15, and:

15 Lots 1, 2, 3 and 4 in Section 16, Except County Road

16 All being within T. 12 N., R. 16 E.W.M. See also DOE 136 at 23.

17 Use of water in Sections 15 and 16 is supported by the Class 6 and 29 rights confirmed to
18 Wallace Wiley (Certificate Nos. 125 and 339). See also DOE – 133 at 15 and 66. The Court will
19 require that additional evidence be presented to determine which acres within the two parcels are
20 actually irrigated. Without such evidence, the Court is unable to determine if the water rights used
21 on the 100 acres are Class 6 or 29. If part of the 100 acres includes lands in Lot 4, Section 16 then
22 those lands carry a different priority date then the remainder of the land within the described place
23 of use.

24 Upon the presentation of additional evidence showing the location of the irrigated lands, the
25 Court will confirm a right to divert 1.00 cfs, 172.26 acre-feet per year from April 15 to July 10 for
the irrigation of 100 acres in Sections 15 and 16. The points of diversion are Lots 2 and 3, Section
16, T. 12 N., R. 17 E.W.M. and the NE1/4NE1/4 and NE1/4SE1/4 of Section 17, T. 12 N., R. 16
E.W.M. The date of priority shall be 1869 for lands in Lot 4 of Section 15 and Lots 1, 2 and 3 in
Section 16 and 1902 for lands in Lot 4 of Section 16, T. 12 N., R. 16 E.W.M.

Upon submittal of the additional evidence requested, the Court will also confirm a junior
right to Mr. Anderson that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs

1 and no uses, including potential storage, are being made of the excess by water right holders on the
2 reservation. The only evidence on water use in for lands encompassed in Answer No. 47 was
3 provided in US—126 and AID – 8. US – 126 indicates that 91.70 acres were irrigated on all the
4 lands encompassed in Answer No. 47 in one year – 1977, however AID – 8 shows that 155.83 acres
5 have been irrigated. The Achepohl right authorizes irrigation of up to 170.95 acres. Certificate Nos.
6 125 and 339. The maximum acreage irrigated in 1908 or 1957 was 101.1 acres. The Court granted
a right to irrigate 100 acres above.

7 Therefore, the Court finds the junior right is appurtenant to 1.1 acres. Based on AID – 8, the
8 additional water is used on 2 parcels (Parcel Nos. 16121532001, 16121631002) located in Lot 4 of
9 Section 15 and Lots 1,2,3 and 4 in Section 16, all being within T. 12 N., R. 16 E.W.M. See also
10 DOE 136 at 23. Accordingly, the Court will be unable to determine points of diversion or priority.
11 With the caveat set forth above, the period of use shall be April 15 – July 10. The maximum
instantaneous diversion shall be 0.011 cfs and a maximum annual diversion of 1.9 acre-feet.

12 At this point, the Court is not clear whether a right exists for Wiley Springs. First, no
13 evidence was submitted concerning use of the spring, only the assertions of AID's counsel in a
14 claim which is not evidence. Second, for a right to be confirmed for the springs pursuant to a
15 certificate of water right, such a certificate must show that the springs are a point of diversion. The
16 Court notes that Certificate No. 339 does show a point of diversion in Lot 2 of Section 16, T. 12 N.,
17 R. 17¹⁹ E.W.M. which is approximately the NW1/4SE1/4 of Section 16 which is the location of the
18 spring supplied by AID in their claim. According to SE – 2, there is a point of diversion on
19 Ahtanum Creek in Lot 2, so it is not clear whether the point of diversion would apply to the springs
20 or the creek. AID suggests the springs have a Class 6 right, and Certificate No. 125, which is the
21 Class 6 right, does not authorize a diversion in the NW1/4SE1/4 (or Lot 2) of Section 16. The
22 Court will need further evidence to determine if the spring has been historically used and determine
23 whether a water right was established for use of the spring. The claim to Wiley Springs is herein
24 DENIED.

25 ¹⁹ The Court believes this Range description for the point of diversion to be in error in light of the fact that the place of
use is in Range 16. Range 17 is downstream from Range 16. SE – 2. There is no reasonable hydrologic explanation
how water can be diverted several miles downstream for use upstream. Therefore, the Range description for Certificate
No. 339 point of diversion shall be read as Range 16.

1 Harry A. Sodeman, Jr.

2 According to AID – 8, Mr. Sodeman owns Parcel No. 17121713005 encompassed in
3 Answer No. 49 and located in that part of Government Lot 3 lying south of a line 2003.5 feet south
4 of the north line of the NW1/4NE1/4 of Section 17, T. 12 N., R. 17 E.W.M. See also DOE 136 at
5 23. He grows hay and pasture on those lands. George Bak participated in U.S. v. AID and filed
6 Answer No. 49, showing that in 1957, he owned one parcel consisting of 27 acres in Section 17
7 (more specifically described above) and irrigated 17.9 acres; his predecessors irrigated 5 acres in
8 1908. Id. Therefore, lands owned by Mr. Sodeman that are encompassed by Answer No. 45 are
entitled to a senior right for 5 acres in Section 17, Ahtanum II, 330 F.2d at 917, if a certificate
supports the right and beneficial use continued.

9 AID – 8 shows 17.4 acres are within the Answer No. 49 area and receiving water. US --
10 126; based on 1977 aerial photography, indicates 15.90 acres encompassed in Answer No. 49 were
11 irrigated with surface water and there is a state right for 16 acres. The water right certificate
12 applicable to the Answer No. 49 lands is Certificate No.174, which authorizes the irrigation of 50
13 acres in the NW1/4NE1/4 and Lot 3 of Sect of Section 17. However certificate of Change in Place
14 of Use, recorded at Volume 1, page 93 on October 27, 1928, changed the place of use to Lot 4,
15 Section 17, T. 12 N., R. 17 E.W.M. There is no indication whether the property irrigated by
16 Mr. Sodeman is the land to which the right was transferred (Lot 4) or the land to which the right
17 was originally appurtenant (Lot 3 and NW1/4NE1/4). The Court cannot confirm a right for the
lands described in Answer No. 49 because the only certificate that has been brought to the Court's
attention no longer authorizes irrigation of the Answer No. 49 lands. This claim is herein DENIED.

18 Leo Richardson (Claim No. 2094); Leanne & Amber George; Gary & Dixie Senter

19 Mr. Richardson filed his own claim as noted above. However, the record reflects that Mr.
20 Richardson made no appearance at the hearing and will rely on evidence submitted by AID. The
21 Court will analyze his claim with other Answer No. 50 claimants. A portion of the Richardson land
is also within the lands covered by Answer No. 217 and that portion will be analyzed there.

22 According to AID – 8 the above named claimants own 15 parcels covered by Answer No. 50
23 and located in the SW1/4SW1/4 of Section 11, the W1/2 of Government Lot 1, the West 18 feet of
24 the E1/2 of Lot 1 in Section 14, Government Lots 3 and 4 in Section 15, all being in T. 12 N., R. 17
25 E.W.M. Arthur Hanses participated in U.S. v. AID and filed Answer No. 50, stating that in 1957 he
owned four parcels totaling 75 acres in the area described above. He also stated he owned 35 acres

1 in Lot 3 of Section 15, T. 12 N., R. 16 E.W.M. Of the 110.7 acres owned by Mr. Hanses in 1957,
2 he irrigated 56.5 acres and his predecessors irrigated 70 acres in 1908. The Court notes AID – 8
3 does not include the land in Lot 3 of Section 15, T. 12 N., R. 17 E.W.M. as being within Answer
4 No. 50, leading the Court to conclude no claim is being made for a water right for that land. This is
5 in contrast to AID –1, which shows AID assesses William Evans for 19 acres in Parcel No.
6 1612151101, which the Court believes is within Lot 3 of Section 15, T. 12 N., R. 16 E.W.M. AID
7 may want to review its records to determine whether the Evans’ parcel is part of Answer No. 50.

8 AID – 8 shows 68.97 acres are within the Answer No. 50 area and receiving water for
9 growing hay and pasture. Four of those parcels, located in Section 15, are owned by Leo
10 Richardson and demarcated as Class 7 in AID – 8. US – 126, based on 1977 aerial photography,
11 indicates 22.60 acres encompassed in Answer No. 50 were irrigated with surface water and the land
12 has a total state right for the irrigation of 99 acres. The water right certificate applicable to the
13 Answer No. 50 lands is Certificate No. 199,²⁰ which includes in its place of use all of the legal
14 description for the property, set forth above for Sections 11, 14 and 15. See also DOE – 133 at 35.
15 Certificate No. 199 is a Class 8 right that authorizes the irrigation of 80 acres. Therefore, the Court
16 finds that Certificate No. 199 is appurtenant to the lands encompassed by Answer No. 50 and
17 authorizes the irrigation of a maximum of 80 acres.

18 How the parcels set forth in AID – 8 match up with Certificate No. 199 is a complicated
19 issue. First, the Court notes that Certificate No. 199 is a Class 8 right. DOE – 133 at 35. AID – 8
20 indicates that four parcels in Section 15 are Class 7 rights, while another, 1712152400 has a similar
21 parcel number but is listed as a Class 8 right. The only Class 7 right that describes land in Section
22 15 covers the lands set forth in Answer No. 217 (N1/2NE1/4). Without specific legal descriptions,
23 the Court cannot identify exactly where the four Class 7 parcels and Class 8 parcels within Section
24 15 are located. The Court is inclined to believe that the eight parcels are in Lots 3 and 4 of Section
25 15 and would therefore be entitled to maximum right for 12 acres. See Answer No. 50, DOE – 136
at 24. Perhaps AID is in error in its presentation that some of the Answer No. 50 parcels are Class
7. This issue should be clarified.

Therefore, the Court finds that Certificate No. 199 applies to eight parcels (17121511402-
404, 17121512400-04) in Section 15 along with the other parcels in Section 11 and 14. Certificate

1 No. 199 confirmed a right to irrigate 80 acres. Answer No. 50 lands do not appear to have any
2 groundwater rights. US – 126.

3 The Court finds the Answer No. 50 claimants are now entitled to a senior right from
4 Ahtanum Creek for irrigation of 56.5 acres in 15 parcels (Parcel Nos. 17121133401-02,
5 17121133404-08, 17121511402-04, 17121512400-04) and located in the SW1/4SW1/4 of Section
6 11, W1/2 and the west 18 feet of the E1/2 of Lot 1 of Section 14, and Lots 3 and 4 of Section 15,
7 All being within T. 12 N., R. 17 E.W.M. See also DOE 136 at 24. Use of water in Sections 11, 14
8 and 15 are supported by the Class 8 right confirmed to Mary Simpson (Certificate No.199). See
9 also DOE – 133 at 35. How this claim is divided could change depending on AID’s findings as to
10 whether land owned by William Evans should be included.

11 At this time, the Court will confirm a right to divert 0.565 cfs, 97.33 acre-feet per year from
12 April 15 to July 10 for the irrigation of 56.5 acres in portions of Sections 11, 14 and 15. The point
13 of diversion shall be the NE1/4NW1/4 and Lot 2, Section 15, T. 12 N., R. 17 E.W.M. Certificate
14 No. 199. Contrary to the information listed in AID – 8, the totality of the water right appears to be
15 Class 8 with a priority date of 1871.

16 Based on AID – 8 and Certificate No. 199, the Court also confirms a junior right to the
17 Answer No. 50 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs
18 and no uses, including potential storage, are being made of the excess by water right holders on the
19 reservation. The only evidence on water use in for lands encompassed in Answer No. 50 was
20 provided in US—126 and AID – 8. US – 126 indicates that 22.60 acres were irrigated on all the
21 lands encompassed in Answer No. 50 in one year – 1977. AID – 8 shows that 68.97 acres have
22 been irrigated. The Achepohl right authorizes irrigation of up to 80 acres. Certificate No. 199; AID
23 -- 8. The Court confirmed a right to 56.5 acres above.

24 Therefore, the Court finds that the junior right is appurtenant to 12.47 acres. Based on AID
25 – 8, the additional water is used on 15 parcels (Parcel Nos. 17121133401-02, 17121133404-08,
17121512400-04, 171211511402-04) and located in SW1/4SW1/4 of Section 11, W1/2 and the
west 18 feet of the E1/2 of Lot 1 of Section 14, and Lots 3 and 4 of Section 15, All being within T.
12 N., R. 17 E.W.M. See also DOE 136 at 24. The maximum instantaneous diversion shall be

²⁰Certificate No. 297 may also apply if the lands owned by William Evans in Section 15, T. 12 N., R. 16 E.W.M. and assessed by AID include Lot 3 and therefore belong in the Answer No. 50 claim.

1 0.125 cfs and the maximum annual diversion shall be 21.53 acre-feet. With the caveat set forth
2 above, the period of use shall be April 15 – July 10. The point of diversion shall be the
3 NE1/4NW1/4 and Lot 2 of Section 15, T. 12 N., R. 17 E.W.M. Certificate No. 199. Contrary to the
4 information listed in AID – 8, the totality of the water right appears to be Class 8 with a priority
5 date of 1871, to be used in conjunction with other excess/junior water users. Id.

Eugene Carpenter; Carl Brown; John & Judy Record

6 According to AID – 8, the above named claimants own the 3 parcels (Parcel Nos.
7 17120932001, 17120933001 and 17120933003) encompassed in Answer No. 51 and located in the
8 SW1/4SW1/4 and the S1/2NW1/4SW1/4 of Section 9, T. 12 N., R. 17 E.W.M. See also DOE 136
9 at 24. Answer No. 51 claimants grow orchard, hay and pasture on their lands. Edith Rutherford, et
10 al., participated in U.S. v. AID and filed Answer No. 51 showing that in 1957, they owned two
11 parcels consisting of approximately 60 acres in Section 9 and irrigated 32.3 acres; their predecessors
12 irrigated 24 acres in 1908. Id. Therefore, lands owned by the Answer No. 51 claimants that are
13 encompassed in Answer No. 51 are entitled to a senior right for a maximum of 24 acres in Section
14 9, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use continued.

15 AID – 8 shows 51.67 acres are within the Answer No. 51 area and receiving water. US --
16 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 51
17 was irrigated with surface water but that there is state right for 19 acres applicable to those lands.
18 Certificate No. 80, a Class 3 right awarded to Clinton Brosius and George Clark, applies to the
19 SW1/4 of Section 9. The Court is not clear why Parcels 17120933001 and 17120933003 are
20 demarcated by AID as having a Class 7 right when the Class 3 right awarded to Brosius and Clark
21 covers the entirety of the SW1/4 and there is no Class 7 right for that land. Therefore, the Court
22 finds that Certificate No. 80 applies to all the lands encompassed by Answer No. 51 and authorizes
23 the irrigation of a maximum of 135 acres. Answer No. 51 claimants have a supplemental
24 groundwater right for 63 acres that includes the Answer No. 51 lands. US – 126.

25 The Court finds that the Answer No. 51 claimants are now entitled to a senior right from
Ahtanum Creek for irrigation of 24 acres in 3 parcels (Parcel Nos. 17120932001, 17120933001 and
17120933003) and located in the SW1/4SW1/4 and the S1/2NW1/4SW1/4, T. 12 N., R. 17 E.W.M.
See also DOE 136 at 24. Use of water in Section 9 is supported by the Class 3 right confirmed to
Clinton Brosius and George Clark (Certificate No. 80). See also DOE – 133 at 5. The Court will
confirm a right to divert 0.24 cfs, 41.34 acre-feet per year from April 15 to July 10 for the irrigation

1 of 24 acres described above in Section 9. The point of diversion shall be the SE1/4SE1/4SE1/4 of
2 Section 8, T. 12 N., R. 17 E.W.M. The date of priority shall be 1866. Certificate No. 80.

3 Based on AID – 8 and Certificate No. 80, the Court also confirms a junior right to the
4 Answer No. 51 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs
5 and no uses, including potential storage, are being made of the excess by water right holders on the
6 reservation. The only evidence on water use in for lands encompassed in Answer No. 51 was
7 provided in US—126 and AID – 8. US – 126 indicates none of the land was irrigated in one year –
8 1977. AID – 8 shows that 51.67 acres have been irrigated. The Achepohl right authorizes irrigation
9 of up to a proportional share of 135 acres for the 55 + acres encompassed in the parcel ownership.
10 Certificate No. 80; AID -- 8.

11 Therefore, the Court finds that the junior right is appurtenant to 8.30 acres. Based on AID –
12 8, the additional water is used on 3 parcels (Parcel Nos. 17120932001, 17120933001 and
13 17120933003) and located in the SW1/4SW1/4 and the S1/2NW1/4SW1/4 of Section 9, T. 12 N.,
14 R. 17 E.W.M. See also DOE 136 at 24. Use of water in Section 9 is supported by the Class 3 rights
15 confirmed to Brosius and Clark (Certificate No. 80). See also DOE – 133 at 5. The maximum
16 instantaneous diversion shall be 0.083 cfs, with a maximum annual diversion of 14.30 acre-feet.
17 With the caveat set forth above, the period of use shall be April 15 – July 10. The point of diversion
18 shall be the SE1/4SE1/4SE1/4 of Section 8, T. 12 N., R. 17 E.W.M. The date of priority, to be used
19 in conjunction with other excess/junior water users, shall be 1866. Certificate No. 80.

20 Carl Brown

21 In addition to owning lands that are a part of Answer No. 51 (analyzed above), Mr. Brown
22 also owns the parcels that make up Answer Nos. 52 and 53. The Court will analyze both in this
23 section due to the fact that it appears to the Court that the parcels have been reconfigured with
24 pieces of Answer No. 52 being combined with pieces of Answer No. 53. Further, the state
25 certificates and rights that support the claim are complex and intertwined.

According to AID – 8, Carl Brown owns 2 parcels (Parcel Nos. 17120931001 and
17120913002) encompassed in Answer Nos. 52 and 53 and located in the NE1/4SW1/4,
NW1/4SE1/4, SW1/4NE1/4 and SE1/4NW1/4 of Section 9, T. 12 N., R. 17 E.W.M. See also DOE
136 at 24 –24. Mr. Brown grows hay and pasture on his lands. John Rutherford participated in
U.S. v. AID and filed Answer No. 52 individually and Answer No. 53 with Edith Rutherford. DOE
– 136 at 24-25. In 1957, the Rutherfords owned four parcels consisting of approximately 128 acres

1 in Section 9 (more specifically described above) and irrigated 100.6 acres; their predecessors
2 irrigated 20 acres in the Answer No. 52 area and 32 acres²¹ in the Answer No. 53 area in 1908. Id.
3 Therefore, lands owned by Carl Brown that are encompassed in Answer Nos. 52 and 53 are entitled
4 to a senior right for a maximum of 52 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports
5 the right and beneficial use continued.

6 AID – 8 shows 48.4 acres are within the Answer Nos. 52 and 53 area and receiving water.
7 US -- 126, based on 1977 aerial photography, indicates 46.50 acres encompassed in Answer No. 52
8 and 36.50 acres in Answer No. 53 for a total of 83 acres were irrigated with surface water and there
9 is a state right for a total of 121 acres.

10 How the Achepohl rights apply to the lands that make up the two answers is a complicated
11 story. What is not complicated is the fact that Clinton Brosius and George Clark were the owners of
12 all the Answer Nos. 52 and 53 properties when the Achepohl rights were awarded. Certificate No.
13 195, a Class 8 right, was originally issued to Clinton Brosius and George Clark and authorized the
14 irrigation of 75 acres in the SE1/4NE1/4 of Section 8, the SW1/4NE1/4 and S1/2NW1/4 of Section
15 9, T. 12 N., R. 17 E.W.M. Certificate No. 195 is, therefore, applicable to the lands in the
16 SE1/4NW1/4 (Answer No. 52 lands) and the SW1/4NE1/4 (Answer No. 53 lands). See also DOE –
17 133 at 35. Certificate No. 78, a Class 2 right, was also issued to Brosius and Clark and authorized
18 irrigation of 70 acres in the N1/2SE1/4 of Section 9. Certificate No. 78 applies to the Answer No.
19 53 lands in the NW1/4SE1/4 of Section 9. See also DOE – 133 at 4. However, Certificate Nos. 78
20 and 195 have been modified by certificates of change – two certificate dated April 25, 1931
21 (Volume 1, pages 113 and 114 Records of Change in Place of Use) exchanged 0.7 cfs of the Class 2
22 irrigation right appurtenant to N1/2SE1/4 of Section 9 with 0.7 cfs of the Class 8 irrigation rights
23 appurtenant to lands within the SW1/4NE1/4 and the S1/2NW1/4 of Section 9. SE – 8. Secondly,
24 the point of diversion was changed on April 26, 1945. SE – 8 (Volume 1, page 216). Therefore, the
25 Court finds that Certificate No. 78, as changed in 1931, applies to the SW1/4NE1/4 and the
SE1/4NW1/4 of Section 9. Certificate No. 195 applies to the NW1/4SE1/4 of Section 9. In
addition, Certificate No. 80, a Class 3 right, issued to Brosius and Clark and authorizes the
irrigation of 135 acres in the SW1/4 of Section 9. Certificate No. 80 therefore encompasses one of

²¹ The Ninth Circuit reduced the District Court's irrigated acreage finding for Answer No. 53 in light of testimony that only half of each of the two parcels were irrigated in 1908. 330 F.2d at 916. The total amount of land owned in Answer No. 53 was 64 acres as the SW1/4NE1/4 parcel was 26 acres and not a full forty acre quarter-quarter.

1 the Answer No. 52 parcels (NE1/4SW1/4). Mr. Brown has a supplemental groundwater right for
2 179 acres that may include the Answer Nos. 52 and/or 53 lands. U.S. – 126.

3 There is no evidence indicating which specific acres in Section 9 encompassed by Answer
4 Nos. 52 and 53 have been beneficially used. The Ninth Circuit stated that water rights not used on
5 the parcels comprising the Answer Numbers would revert to reservation users. Ahtanum II at 911,
6 913. As noted above, AID – 8 shows 48.4 acres are receiving water. That quantity is less than the
7 quantity of irrigated lands (52 acres) found in U.S. v. Ahtanum.

8 The Court finds that Carl Brown is now entitled to a senior right from Ahtanum Creek for
9 irrigation of 48.4 acres in 2 parcel (Parcel No. 17120931001 and 17120913002) and located in the
10 NE1/4SW1/4, NW1/4SE1/4, SW1/4NE1/4 and the SE1/4NW1/4, T. 12 N., R. 17 E.W.M. See also
11 DOE 136 at 24-25. Thus, between 1957 and 1993, portions of the water rights on the Section 9
12 parcels were either abandoned or relinquished. Use of water in Section 9 is supported by the Class 2
13 right (Certificate No. 78 as changed), the Class 3 right (Certificate No. 80) and Class 8 right
14 (Certificate No. 195 as changed) confirmed to Clinton Brosius and George Clark. See also DOE –
15 133 at 4, 5, 35.

16 The Court will confirm a right to divert 0.484 cfs, 83.37 acre-feet per year from April 15 to
17 July 10 for the irrigation of 48.4 acres in Section 9 described above. The point of diversion shall be
18 the SE1/4NE1/4SW1/4 of Section 9 and the NE1/4NE1/4SE1/4 and SE1/4SE1/4SE1/4 of Section 8,
19 T. 12 N., R. 17 E.W.M. Certificate of Change, Volume 1, page 216; Certificate Nos. 78, 80, 195.
20 There are three certificates with 3 different priority dates appurtenant to the land. Prior to
21 confirming rights, the Court must know how many acres are irrigated within area described on each
22 right. The Court requests that AID present evidence as to which specific acres totaling 48.4 are
23 irrigated to determine the appropriate priority dates.

24 Doug Clausing; Gemella Clausing; John Clark

25 According to AID – 8, the above named claimants own the 4 parcels (Parcel Nos.
17121144001-02, 17121411001-02) encompassed in Answer No. 60 and located approximately in
the SE1/4SE1/4 of Section 11 and Lot 4 of Section 14, T. 12 N., R. 17 E.W.M. See also DOE 136
at 25. Answer No. 60 claimants irrigate nursery plants, hay and pasture on their lands. Mabel Scott
participated in U.S. v. AID and filed Answer No. 60 showing that in 1957, she owned two parcels
consisting of approximately 71 acres in Sections 11 and 14 (more specifically described above) and
irrigated 68.9 acres; her predecessors irrigated 65 acres in 1908. Id. Therefore, lands owned by the

1 Answer No. 60 claimants that are encompassed in Answer No. 60 are entitled to a senior right for a
2 maximum of 65 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
3 use continued.

4 AID – 8 shows 67.64 acres are within the Answer No. 60 area and receiving water. US --
5 126, based on 1977 aerial photography, indicates 63.70 acres encompassed in Answer No. 60 were
6 irrigated with surface water and there is a state right for irrigation of 62 acres. The water right
7 certificate applicable to the Answer No. 60 lands appears to be Certificate No. 155, a Class 7 right
8 that issued to Asa Scott which encompasses all of the legal description for the property set forth in
9 Sections 11 and 14 above. See also DOE – 133 at 22. Certificate No. 155 was the subject of a
10 change in point of diversion on May 19, 1981. Volume 1-4, Page 188. Therefore, the Court finds
11 that Certificate No. 155, as amended, applies to all the lands encompassed by Answer No. 60 and
12 authorizes the irrigation of a maximum of 62 acres. Answer No. 60 claimants have a supplemental
13 groundwater right for 69 acres. US – 126.

14 The Court finds that the Answer No. 60 claimants are now entitled to a senior right from
15 Ahtanum Creek for irrigation of 62 in 4 parcels (Parcel Nos. 17121144001-02, 17121411001-02)
16 encompassed in Answer No. 60 and located in the following place of use:

17 a). SE1/4SE1/4 of Section 11, T. 12 N., R. 17 E.W.M., less the east 25 feet for county road
18 and except beginning at the center of the inter-section of Rutherford and So. Wiley Road;
19 thence west 331.9 feet; thence south 6°47' east 176.5 feet; thence east 311.2 feet; thence
20 north 166 feet to the point of beginning.

21 b). Lot 4 of Section 14, T. 12 N., R. 17 E.W.M., except the east 25 feet for county road and
22 except beginning at the northeast corner of said section; thence south 89°53' west 331.9 feet;
23 thence south 6°47' east 176.5 feet; thence north 88°21' east 311.2 feet; thence north 166 feet
24 to the point of beginning.

25 Use of water in Sections 11 and 14 is supported, and because the use of water exceeds the
amount decreed in Achepohl, the right is also limited by the Class 7 right confirmed to Asa Scott.
Certificate No. 155; See also DOE – 133 at 22. Certificate No. 155 authorizes irrigation of up to 62
acres. Answer No. 60 claimants are irrigating over five acres more than authorized by Certificate
No. 155 and two acres above that allowed in the Pope Decree. This Court cannot confirm a right in
excess of what the state right encompassed and that is the basis for the Court's reduction. RCW
90.03. Any right developed after 1917 would require initiation of a new right and compliance with

1 RCW 90.03. The Court will confirm a right to divert 0.62 cfs, 106.80 acre-feet per year from April
2 15 to July 10 for irrigation of the 62 acres in Sections 11 and 14. The points of diversion shall be:

- 3 a). a point 50 feet north and 660 feet west of the southeast corner of Section 11 within the
SE1/4SE1/4 of said section
 - 4 b). a point 1000 feet south and 660 feet west from the northeast corner of Section 14 within
Government Lot 4
 - 5 c). a point 1860 feet south and 500 feet west from the northeast corner of Section 16 within
the SE1/4NE1/4 of Section 16,
- 6 All being within T. 12 N., R. 17 E.W.M. Certificate of Change Vol. 1-4, page 188.

7 The date of priority shall be 1870. Certificate No. 155.

8 *Answer No. 63*

9 AID – 8 does not show any water use on land within Answer No. 63, nor does AID – 1 show
10 that any one is assessed for that land. The District Court in U.S. v. Ahtanum quantified a small
11 water right for the irrigation of 2 acres for John Torson in the SW1/4SW1/4 of Section 10, T. 12 N.,
12 R. 17 E.W.M. The Ninth Circuit upheld that decision. Ahtanum II, 330 F.2d at 918. US – 126
13 indicates that 2.60 acres have been irrigated on the parcel in the past. That document also shows
14 that there is no state right under the Achepohl decree to support that use. Therefore, the Court finds
15 that the right, if any, appurtenant to the property that makes up Answer No. 63 has been abandoned
16 or relinquished. RCW 90.14.160.

17 Erma Swalley (Claim No. 0569); Leland & Marie Torzon; Donald & Deborah Wetzel; William &
18 Idel Strader; Randy & Dee Fleming

19 According to AID – 8, the above named claimants own 8 parcels (Parcel Nos. 17121033404,
20 17121033010, 17121033012-13, 17121034402-03, 17121034001-02) encompassed in Answer No.
21 64 and located approximately in the S1/2SW1/4 of Section 10, T. 12 N., R. 17 E.W.M. See also
22 DOE 136 at 26. Answer No. 64 claimants irrigate hay and pasture on their lands. Leland Torson
23 participated in U.S. v. AID and filed Answer No. 64 showing that in 1957, he owned one parcel
24 encompassed by Answer No. 64 consisting of approximately 65.33 acres in Section 10 and
25 irrigated, illogically, 70.4 acres; his predecessors irrigated 35 acres in 1908. Id. Therefore, lands
owned by the Answer No. 64 claimants that are encompassed in Answer No. 64 are entitled to a
senior right for a maximum of 35 acres in Section 10, Ahtanum II, 330 F.2d at 917, if a certificate
supports the right and beneficial use continued.

AID – 8 shows 47.93 acres are within the Answer No. 64 area and receiving water. US –
126, based on 1977 aerial photography, indicates 44.70 acres encompassed in Answer No. 64 were

1 irrigated with surface water and there is a state right for 73.90 acres. The water right certificate
2 applicable to the Answer No. 64 lands appears to be Certificate No. 201 – A, a Class 8 right issued
3 to Ida Grams for the irrigation of 73 acres in the S1/2 of Section 10, T. 12 N., R. 17 E.W.M. The
4 place of use described in Certificate No. 201-A matches that in DOE – 136. Therefore, the Court
5 finds that Certificate No. 201 – A applies to the SW1/4 in Section 10 and authorizes the irrigation of
6 a maximum use for 72 acres. Answer No. 64 claimants have a primary groundwater right for 10
acres. US – 126.

7 The Court finds that the Answer No. 64 claimants are now entitled to a senior right from
8 Ahtanum Creek for irrigation of 35 acres in 8 parcels (Parcel Nos. 17121033404, 17121033010,
9 17121033012-13, 17121034402-03, 17121034001-02) and located approximately in the S1/2SW1/4
of Section 10, T. 12 N., R. 17 E.W.M. with following exceptions:

- 10 Except the north 416 feet of the west 1040 feet; and except the south 238 feet of the north
11 654 feet of the west 475 feet;
12 And except the south 170 feet of the west 150 feet of the SW1/4SW1/4;
13 And except the west 312 feet of the south 150 feet of the north 804 feet of the SW1/4SW1/4;
14 and that part of the SW1/4SE1/4 of Section 10, lying west of the County Road;
15 And except beginning on the west line of the County Road and the north line of said
16 subdivision; thence west 162 feet; thence south at right angles to the county road 253 feet;
17 thence east 162 feet; thence north 255 feet to the point of beginning.

18 See also DOE 136 at 26. Use of water in Section 10 is supported by the Class 8 right
19 confirmed to Ida Grams (Certificate No. 201 –A). See also DOE – 133 at 36.

20 The Court confirms a right to divert 0.35 cfs, 60.29 acre-feet per year from April 15 to July
21 10 for the irrigation of 35 acres in Section 10. The point of diversion shall be the NE1/4NE1/4 of
22 Section 17, T. 12N., R. 17 E.W.M. Certificate No. 201 – A. The date of priority shall be 1871. Id.

23 Based on AID – 8 and Certificate No. 201 – A, the Court also confirms a junior right to the
24 Answer No. 64 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs
25 and no uses, including potential storage, are being made of the excess by water right holders on the
reservation. The only evidence on water use in for lands encompassed in Answer No. 64 was
provided in US—126 and AID – 8. US – 126 indicates that 44.70 acres were irrigated on all the
lands encompassed in Answer No. 47 in one year – 1977, while AID – 8 shows that 47.93 acres
have been irrigated. The Achepohl right authorizes irrigation of up to 73 acres. Certificate No. 201
– A.

1 Therefore, the Court finds that the junior right is appurtenant to 12.93 acres. Based on AID
2 – 8, the additional water is used on 8 parcels (Parcel Nos. 17121033404, 17121033010,
3 17121033012-13, 17121034402-03, 17121034001-02) and located approximately in the S1/2SW1/4
4 of Section 10, T. 12 N., R. 17 E.W.M. with the exceptions set forth above. See also DOE 136 at 26.
5 Use of water in Section 9 is supported by the Class 8 rights confirmed to Ida Grams (set forth in
6 Certificate No. 201 – A). See also DOE – 133 at 36. The maximum instantaneous diversion shall be
7 0.13 cfs with a maximum annual diversion of 22.40 acre-feet. With the caveat set forth above, the
8 period of use shall be April 15 – July 10. The point of diversion shall be the NE1/4NE1/4 of Section
9 17, T. 12N., R. 17 E.W.M. The date of priority, to be used in conjunction with other excess/junior
10 water users, shall be 1871. Certificate No. 201 – A.

11 L. A. Dixon, Jerry Davis (Claim 0925); Jerry Purdom (Claim 0999); John Jr. & Patricia Reese

12 Jerry Purdom and L. A. Dixon both filed claims in this adjudication and testified at the
13 February 11, 1994 hearing before the Referee. Therefore, the Court will use the evidence submitted
14 by the two claimants along with that provided by Ecology, the U.S. and AID to quantify their rights.
15 On October 17, 1995 Jerry Davis was substituted for L.A. Dixon.

16 According to AID – 8, the above named claimants own the 4 parcels (Parcel Nos.
17 17121041009, 17121041010, 17121041013, 17121041403) encompassed in Answer No. 65 and
18 located approximately in the E1/2NE1/4SE1/4 of Section 10, T. 12 N., R. 17 E.W.M. See also
19 DOE 136 at 26. In addition, John and Patricia Reese are shown on AID – 8 as owning a parcel
20 within Answer No. 66. However, the Court believes it to be more likely, based on a review of the
21 parcel description, that the parcel is within Answer No. 65. Accordingly, Parcel No. 171210410404
22 shall be included in the Court's analysis of Answer No. 65. The Answer No. 65 claimants irrigate
23 hay and pasture. Purdy B. Crosno participated in U.S. v. AID and filed Answer No. 65 indicating
24 that in 1957, he owned one parcel encompassed by Answer No. 65 consisting of approximately 20
25 acres in Section 10 (more specifically described above) and irrigated 7.5 acres; Purdy Crosno's
predecessors irrigated 13 acres in 1908. Id. Therefore, lands owned by the Answer No. 65
claimants that are encompassed in Answer No. 65 are entitled to a senior right for a maximum of
7.5 acres in Section 10, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
use continued.

AID – 8 shows 10.67 acres are within the Answer No. 65 area and receiving water,
including property owned by the Reeses. Mr. Purdom testified that he irrigates approximately 3.5

1 acres which is approximately 0.5 acres less than what is indicated by AID. L. A. Dixon indicated
2 that he irrigated approximately 1.5 acres of his two-acre parcel, which is also approximately one-
3 half acre less than the figure set forth in AID -- 8. The Reeses are shown on AID -- 8 as irrigating
4 4.65 acres. US -- 126, based on 1977 aerial photography, indicates 1.20 acres encompassed in
5 Answer No. 65 were irrigated with surface water and there is a state right for 15 acres. The water
6 right certificate applicable to the Answer No. 65 lands appears to be Certificate No. 107, a Class 5
7 right with an 1868 priority that issued to Mary Crosno and encompasses all of the legal description
8 for the property set forth in Section 10 above. See also DOE -- 133 at 10. Mr. Purdom testified at
9 the hearing that his right was derivative of the original Crosno homestead. Therefore, the Court
10 finds that Certificate No. 107 applies to the E1/2NE1/4SE1/4 in Section 10 and authorizes the
11 irrigation of a maximum of 15 acres. The Court is unclear why AID -- 8 lists the right as being Class
12 8 when the right stems from the Class 5 right issued to May Crosno. The Court is also unclear why
13 an additional parcel owned by John and Patricia Reese (Parcel No. 17121041404) is not included
14 with Answer No. 65 rather than Answer No. 66. Based on the Court's review of the parcel
15 description, that parcel will be included with Answer No. 65 rather than Answer No. 66 below.
16 Answer No. 65 claimants have no groundwater rights for Answer No. 65 lands. US -- 126.

17 The Court finds that the Answer No. 65 claimants are now entitled to a senior right from
18 Ahtanum Creek for irrigation of 7.5 acres, see Ahtanum II, in 5 parcels (Parcel Nos. 17121041009,
19 17121041010, 17121041013, 17121041403-04) and located approximately in the E1/2NE1/4SE1/4
20 of Section 10, T. 12 N., R. 17 E.W.M. See also DOE 136 at 26. Use of water in Section 10 is
21 supported by the Class 5 right confirmed to May Crosno (Certificate No. 107). See also DOE -- 133
22 at 10. The Court will confirm a right to divert 0.075 cfs, 12.20 acre-feet per year from April 15 to
23 July 10 for the irrigation of 7.5 acres in Section 10. The point of diversion shall be the SW1/4SE1/4,
24 W1/2NE1/4SE1/4 of Section 10, T. 12 N., R. 17 E.W.M. Certificate No. 107. The date of priority
25 shall be 1868. Id.

Based on AID -- 8 and Certificate No. 107, the Court also confirms a junior right to the
Answer No. 65 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs
and no uses, including potential storage, are being made of the excess by water right holders on the
reservation. The only evidence on water use in for lands encompassed in Answer No. 65 was
provided in US--126, AID -- 8 and the February 11, 1994 testimony of Jerry Purdom and L. A.
Dixon. US -- 126 indicates that 1.20 acres were irrigated on all the lands encompassed in Answer

1 No. 65 in one year – 1977. AID – 8 shows that 9 acres have been irrigated. Mr. Dixon and
2 Mr. Purdom testified that they were each using approximately 0.5 less acres than what AID – 8
3 depicts. The Court has also determined that an additional parcel represented by AID – 8 to be
4 located within Answer No. 66 belongs with Answer No. 65. That parcel, (17121041404) adds an
5 additional 1.68 acres. Thus starting with 9 acres from AID – 8 and adding the additional parcel
6 owned by the Reeses and subtracting the amount not used by Purdoms and Dixon/Davis, the Court
7 finds that 9.5 acres of land encompassed in Answer No. 65 have been irrigated. Certificate No. 107
8 authorizes irrigation of up to 15 acres.. The maximum irrigated in 1908 or 1957 is 13 acres.

9 The Court determined a valid Pope decree right exists for 7.5 acres. Ahtanum II. Therefore,
10 the Court finds the junior right is appurtenant to 2 acres. Based on AID – 8, the additional water is
11 used on 5 parcels (Parcel Nos. 17121041009, 17121041010, 17121041013, 17121041403-04) and
12 located approximately in the E1/2NE1/4SE1/4 of Section 10, T. 12 N., R. 17 E.W.M. See also DOE
13 136 at 26. Use of water in Section 10 is supported by the Class 5 right confirmed to Ida Grams
14 (Certificate No. 107). See also DOE – 133 at 10. The maximum instantaneous diversion shall be
15 0.02 cfs for the Answer No. 65 lands with a maximum annual diversion of 3.44 acre-feet for the
16 irrigation of 2 acres. With the caveat set forth above, the period of use shall be April 15 – July 10.
17 The point of diversion shall be the SW1/4SE1/4, W1/2NE1/4SE1/4 of Section 10, T. 12N., R. 17
18 E.W.M. The date of priority, to be used in conjunction with other excess/junior water users, shall be
19 1868.

20 Norman Cornelius; Jill Rogers; Gail Woodhouse; Clarence Knoblick; Daryl Hill (Claim No. 0489);
21 Rulon Linton

22 Daryl Hill filed Court Claim No. 0489, but did not appear at the evidentiary hearing,
23 apparently relying on the evidence presented by AID on behalf of its patrons.

24 According to AID – 8, the above named claimants own 9 parcels (Parcel Nos. 17121032001,
25 17121032003-04, 17121032006, 17121043002, 17121043008-10, 17121043403) encompassed in
26 Answer No. 66 and located approximately in the NW1/4SW1/4, S1/2NW1/4SW1/4 and that part of
27 the SW1/4SE1/4 lying south and easterly of County Road, Except the north 208.7 feet of the east
28 208.7 feet, All within Section 10, T. 12 N., R. 17 E.W.M. See also DOE 136 at 27. Answer No. 66
29 claimants irrigate hay and pasture on their lands. Clark Woodhouse (the last name is not legible on
30 the copy in evidence) participated in U.S. v. AID and filed Answer No. 66 showing that in 1957, he
31 owned three parcels encompassed by Answer No. 66 consisting of 70 acres in Section 10 (more

1 specifically described above) and irrigated 57.8 acres; his predecessors irrigated 47 acres in 1908
2 (32 acres in NW1/4SW1/4 and 15 acres in SW1/4SE1/4). Id. Therefore, lands owned by the
3 Answer No. 66 claimants that are encompassed in Answer No. 66 are entitled to a senior right for a
4 maximum of 47 acres in Section 10, Ahtanum II, 330 F.2d at 917, if a certificate supports the right
and beneficial use continued.

5 AID – 8 shows approximately 57.52 acres are within the Answer No. 66 area and receiving
6 water – 39.24 acres in the NW1/4SW1/4 and 18.28 acres in the SW1/4SE1/4. Norman Cornelius
7 and Jill Rogers are the owners of the property in the NW1/4SW1/4 of Section 10.²² Gail
8 Woodhouse, Clarence Knoblick, Daryl Hill and Rulon Linton appear to own the land in the
9 SW1/4SE1/4 of Section 10. AID – 8. US – 126, based on 1977 aerial photography, breaks Answer
10 No. 66 into two components and indicates 33.60 acres are irrigated in the NW1/4SW1/4 of Section
11 10 and 16.20 acres in the SW1/4SE1/4 of Section 10. US – 126 also indicates that the lands
12 encompassed by Answer No. 66 have a total state right for 80 acres. The water right certificates
13 applicable to the Answer No. 66 lands appear to be Certificate No. 96 which is a Class 5 right that
14 encompasses all of the NW1/4SW1/4 in Section 10 and authorizes irrigation of 40 acres and
15 Certificate No. 176 – A, a Class 7 right which encompasses the SW1/4SE1/4 of Section 10 and
16 authorizes irrigation of 40 acres. See also DOE – 133 at 8, 29. Certificate No. 176 – A has been the
17 subject of two changes in point of diversion, which will be addressed below. See Volume 1-4, page
213-214. Therefore, the Court finds that Certificate Nos. 96 and 176 – A apply to the NW1/4SW1/4
and SW1/4SE1/4 in Section 10 and authorize a maximum use for 80 acres. Answer No. 66
claimants in the SW1/4SE1/4 have a supplemental groundwater right for 17 acres. US – 126 at 74.

18 The Court finds that the Answer No. 66 claimants are now entitled to a senior right from
19 Ahtanum Creek for irrigation of 47 acres as follows: 32 acres are in 4 parcels (Parcel Nos.
20 17121032001, 17121032003-04 and 17121032006) and located approximately in the NW1/4SW1/4
21 of Section 10, T. 12 N., R. 17 E.W.M. with a priority date of 1868. In addition, a surface water right
22 derivative of Answer No. 66 is appurtenant to 15 acres on 5 parcels (Parcel Nos. 17121043002,
23 17121043008-09 and 17121043010) and located in that part of the SW1/4SE1/4 of Section 10, T.
24 12 N., R. 17 E.W.M. lying south and easterly of Rutherford Road, except the north 208.7 feet of the

25 ²² AID – 8 indicates that the parcel owned by Jill Rogers has a Class 7 right. The parcel number however indicates that
the property is located in the vicinity of Mr. Cornelius and should therefore be included in Class 5 as being derivative of
the right awarded to Alva Morris in Achepohl. See DOE 133 at 8; Certificate No. 96.

1 east 208.7 feet. That portion carries a priority date of 1870. See also DOE 136 at 27. Use of water
2 in Section 10 is supported by the Class 5 right confirmed to Alva Morris (Certificate No. 96) and
3 the Class 7 right confirmed to Myrtle Marks (Certificate No. 176-A). See also DOE – 133 at 36.

4 The Court will confirm a right to divert 0.32 cfs, 55.12 acre-feet per year for the irrigation of
5 32 acres in the NW1/4SW1/4 of Section 10 and 0.15 cfs, 25.84 acre-feet per year for the irrigation
6 of 15 acres in the SW1/4SE1/4 of Section 10. The period of use shall be from April 15-July 10, a
7 total of 87 days. The point of diversion for irrigation of lands in the NW1/4SW1/4 of Section 10
8 shall be within the NE1/4SE1/4 of Section 9, T. 12N., R. 17 E.W.M. Certificate No. 96. The point
9 of diversion for irrigation of lands in the SW1/4SE1/4 of Section 10 shall be a point 1800 feet south
10 and 500 feet west from the northeast corner of Section 16, T. 12N., R. 17 E.W.M. Certificate of
11 Change, Volume 1-4, page 213-214. The date of priority for the NW1/4SW1/4 lands shall be 1868
12 and 1870 for the SW1/4SE1/4 lands. Certificate Nos. 96 and 176 - A.

13 Based on AID – 8 and Certificate Nos. 96/176 - A, the Court also confirms a junior right to
14 the Answer No. 66 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59
15 cfs and no uses, including potential storage, are being made of the excess by water right holders on
16 the reservation. The only evidence on water use in for lands encompassed in Answer No. 66 was
17 provided in US—126 and AID – 8. US – 126 indicates that 49.80 acres (16.20 acres in the
18 SW1/4SE1/4 and 33.60 acres in the NW1/4SW1/4) were irrigated on all the lands encompassed in
19 Answer No. 66 in one year – 1977. AID – 8 shows that approximately 57.52 acres are within the
20 Answer No. 66 area and receiving water – 39.24 acres in the NW1/4SW1/4 and 18.28 acres in the
21 SW1/4SE1/4. The Court confirmed a senior right to irrigate 47 acres.

22 Therefore, the Court finds that the junior right is appurtenant to 7.24 acres in the
23 NW1/4SW1/4 and 3.28 acres in the SW1/4SE1/4, all in Section 10. Based on AID – 8, water is
24 used on 7.24 acres in 4 parcels (Parcel Nos. 17121032001, 17121032003-04 and 17121032006) and
25 located approximately in the NW1/4SW1/4 of Section 10, T. 12 N., R. 17 E.W.M. with a priority
date of 1868. In addition, the junior surface water right derivative of Answer No. 66 is appurtenant
to 3.28 acres on 5 parcels (Parcel Nos. 17121043002, 17121043008-09 and 17121043010) and
located in that part of the SW1/4SE1/4 of Section 10, T. 12N., R. 17 E.W.M. lying south and
easterly of Rutherford Road and except the north 208.7 feet of the east 208.7 feet with a priority
date of 1870. See also DOE 136 at 27. Use of water in Section 10 is supported by the Class 5 right
confirmed to Alva Morris (Certificate No. 96) and the Class 7 right confirmed to Myrtle Marks

1 (Certificate No. 176-A). See also DOE – 133 at 8 and 36. The maximum rate of diversion shall be
2 0.072 cfs and 12.40 acre-feet per year for the lands in the NW1/4SW1/4 and 0.033 cfs, 5.65 acre-
3 feet per year for the lands in the SW1/4SE1/4. With the caveat set forth above, the period of use
4 shall be April 15 – July 10. The point of diversion for irrigation of lands in the SW1/4SE1/4 shall be
5 a point 1800 feet south and 500 feet west from the northeast corner of Section 16, T. 12N., R. 17
6 E.W.M. Certificate of Change Volume 1-4, page 213-314. The point of diversion for irrigation of
7 lands in the NW1/4SW1/4 shall be a point within the NE1/4SE1/4 of Section 9, T. 12 N., R. 17
8 E.W.M. Certificate No. 96. The date of priority, to be used in conjunction with other excess/junior
9 water users shall be 1868 for the NW1/4SW1/4 lands and 1870 for the SW1/4SE1/4 lands.

10 Certificate Nos. 96 and 176 - A.

11 Answer Nos. 68-69

12 Ahtanum Irrigation District presented no evidence in support of water rights for lands
13 encompassed by Answer Nos. 68-69. Therefore, the Court finds that rights for those parcels have
14 been abandoned or relinquished. Based on SE —2, a map submitted by Ecology depicting water use
15 and ownership in the Ahtanum subbasin, the Court notes that claimants Catherine A. Hardison and
16 Karen B. Stiles filed Court Claim No. 2118 and Erma A. Swalley filed Court Claim No. 0569 and
17 (A)6123 for lands that appear to be encompassed in these two Answer Numbers. There was no
18 appearance at the evidentiary hearing in support of these claims, although a representative of AID
19 did indicate that the district would represent these claimants.

20 Russell Carlson

21 According to AID – 8, Russell Carlson owns Parcel No. 17121024001 encompassed in
22 Answer No. 70 and located in the SE1/4NW1/4 of Section 10, T. 12 N., R. 17 E.W.M. See also
23 DOE 136 at 28. Mr. Carlson grows grain on his lands. M. E. Greenwalt (the name is difficult to
24 read and it may be something different although the Achepohl right was in the name of Mary E.
25 Greenwalt) participated in U.S. v. AID and filed Answer No. 70, indicating that in 1957, one parcel
consisting of approximately 40 acres in the SE1/4NE1/4 of Section 10 was owned and 30.5 acres
irrigated; Ms. Greenwalt's predecessors irrigated 32 acres in 1908. Id. Therefore, lands owned by
Carlson that are encompassed in Answer No. 70 are entitled to a senior right for a maximum of 30.5
acres in Section 10, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
use continued.

1 AID – 8 shows 35 acres are within the Answer No. 70 area and receiving water. US – 126,
2 based on 1977 aerial photography, indicates 27.50 acres encompassed in Answer No. 70 were
3 irrigated with surface water and these lands have a state right for 35 acres. Certificate No. 93 is
4 applicable to Answer No. 70 lands, a Class 5 right that issued to Mary E. Greenwalt confirming a
5 right for the irrigation of 35 in acres in the SE1/4NW1/4 of Section 10. Certificate No. 93's place
6 of use is identical to that set forth in Answer No. 70. The Court finds that Certificate No. 93 applies
7 to the lands encompassed by Answer No. 70 and authorizes a maximum use for 35 acres. No
groundwater rights exist for the Answer No. 70 lands. US – 126 at 77.

8 The Court finds that the Answer No. 70 claimants are now entitled to use water from
9 Ahtanum Creek for irrigation of 30.5 acres in 1 parcel (Parcel No. 17121024001) and located in the
10 SE1/4NW1/4 of Section 10. See also DOE 136 at 28. Use of water in Section 10 is supported by
11 the Class 5 rights confirmed to Mary Greenwalt. Certificate No. 93. The Court will confirm a right
12 to divert 0.31 cfs, 53.40 acre-feet per year from April 15 to July 10 for the irrigation of 30.5 acres in
13 Section 10. The point of diversion shall be the SW1/4NW1/4 and the NW1/4SW1/4 of Section 10,
14 T. 12N., R. 17 E.W.M. Id. The priority date shall be 1868. Id.

15 Based on AID – 8 and Certificate No. 93, the Court also confirms a junior right to Mr.
16 Carlson that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
17 including potential storage, are being made of the excess by water right holders on the reservation.
18 The only evidence on water use in for lands encompassed in Answer No. 70 was provided in US—
19 126 and AID – 8. US – 126 indicates that 27.50 acres were irrigated on all the lands encompassed
20 in Answer No. 70 in one year – 1977, while AID – 8 shows that 35 acres have been irrigated. The
21 Achepohl right authorizes irrigation of up to 35 acres; however, Answer No. 70 indicates 32 acres is
22 the maximum land irrigated by 1957. The Court granted a right to irrigate 30.5 acres above.

23 Therefore, the Court finds the junior right is appurtenant to 1.5 acres. Based on AID – 8, the
24 additional water is used on 1 parcel (Parcel No. 17121024001) and located the SE1/4NW1/4, T. 12
25 N., R. 17 E.W.M. See also DOE 136 at 28. Use of water in Section 10 is supported by the Class 5
rights confirmed to Mary E. Greenwalt (set forth in Certificate No. 93). See also DOE – 133 at 7.
With the caveat set forth above regarding when the right can be used, the period of use shall be
April 15 – July 10. The maximum diversion shall be 0.015 cfs, 2.58 acre-feet. The point of
diversion shall be the SW1/4NW1/4 and the NW1/4SW1/4 of Section 10, T. 12 N., R. 17 E.W.M.
The priority date, to be used in conjunction with other excess/junior water right users shall be 1868.

1 Hull Ranches, Inc.; Jess Bowden

2 According to AID – 8, the above-named claimants own 2 parcels (Parcel No. 17121421001,
3 17121422002) encompassed in Answer No. 72 and located in Lot 2 and the E1/2 of Lot 1, except
4 the west 18 feet, Section 14, T. 12 N., R. 17 E.W.M. See also DOE 136 at 28. Answer No. 72
5 claimants grow seed and pasture. Frances E. Lindsey participated in U.S. v. AID and filed Answer
6 No. 72, stating that in 1957, Lindsey owned one parcel consisting of 79 acres in Lots 1 and 2 of
7 Section 14 and irrigated 49.6 acres; Lindsey’s predecessors irrigated 60 acres in 1908. Id.
8 Therefore, lands owned by the above named claimants that are encompassed in Answer No. 72 are
9 entitled to a senior right for a maximum of 49.6 acres in Section 14, Ahtanum II, 330 F.2d at 917, if
10 a certificate supports the right and beneficial use continued.

11 AID – 8 shows 62.4 acres are within the Answer No. 72 area and receiving water. US –
12 126, based on 1977 aerial photography, indicates 64 acres encompassed in Answer No. 72 were
13 irrigated with surface water and have a state right for 60 acres. The water right certificate
14 applicable to the Answer No. 72 lands is Certificate No. 200, a Class 8 right that issued to Alice
15 Simpson Anglea confirming a right to irrigate 60 acres in the E1/2 of Lot 1 and Lot 2 of Section 14.
16 See also DOE – 133 at 36. That place of use matches the parcel description for Answer No. 72. The
17 Court finds that Certificate No. 200 applies to the lands covered by Answer No. 72 and authorizes a
18 maximum use for 60 acres. Certificate No. 200 was the subject of a change in point of diversion to
19 be analyzed below. Volume 1-4, page 177 of Certificate of Change, December 11, 1980. Answer
20 No. 72 lands are a portion of a 172-acre groundwater right. US – 126 at 78.

21 The Court finds that the Answer No. 72 claimants are now entitled to a senior right from
22 Ahtanum Creek for irrigation of 49.6 acres in 2 parcels (Parcel Nos. 17121421001, 17121422002)
23 and located in Lot 2 and the E1/2 of Lot 1, except the west 18 feet, Section 14, T. 12 N., R. 17
24 E.W.M. DOE 136 at 28. Use of water in Section 14 is supported by the Class 8 right confirmed to
25 Alice Simpson Anglea (Certificate No. 200). See also DOE – 133 at 36. The Court confirms a right
to divert 0.50 cfs, 86.13 acre-feet per year from April 15 to July 10 for the irrigation of 49.6 acres in
Section 14. The points of diversion shall be a point approximately 1800 feet south and 500 feet west
from the northeast corner of Section 16, T. 12 N., R. 17 E.W.M and a secondary point of diversion
in the W1/2SW1/4SE1/4 of Section 11, T. 12 N., R. 17 E.W.M. Certificate of Change, Vol. No. 1-4,
page 177 dated December 11, 1980. The priority date shall be 1871. Certificate No. 200.

1 Based on AID – 8 and Certificate No. 200, the Court also confirms a junior right to the
2 Answer No. 72 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs
3 and no uses, including potential storage, are being made of the excess by water right holders on the
4 reservation. The only evidence on water use in for lands encompassed in Answer No. 72 was
5 provided in US—126 and AID – 8. US – 126 indicates that 64 acres were irrigated on all the lands
6 encompassed in Answer No. 72 in one year – 1977, while AID – 8 shows that 62.4 acres have been
7 irrigated. The Achepohl right authorizes irrigation of up to 60 acres in Lot 2 and the E1/2 of Lot 2
8 of Section 14. Certificate No. 200. This Court cannot confirm a right in excess of what the state
9 right encompassed. RCW 90.03. Any right developed after 1917 would require initiation of a new
10 right and compliance with RCW 90.03. The Court confirmed a right to irrigate 49.6 acres above.

11 The Court finds the junior right is appurtenant to 10.4 acres. Based on AID – 8, the water is
12 used on 2 parcel (Parcel No. 17121421001 and 17121422002) and located in Lot 2 and the E1/2 of
13 Lot 1, except the west 18 feet, Section 14, T. 12 N., R. 17 E.W.M. See also DOE 136 at 28. Use of
14 water in Section 14 is supported by the Class 8 right confirmed to Alice Simpson Anglea
15 (Certificate No. 200). See also DOE – 133 at 36. With the caveat set forth above, the period of use
16 shall be April 15 – July 10. The maximum instantaneous diversion shall be 0.10 cfs, 17.23 acre-feet
17 per year. The points of diversion shall be a point approximately 1800 feet south and 500 feet west
18 from the northeast corner of Section 16, within the SE1/4NE1/4 of Section 16, T. 12 N., R. 17
19 E.W.M and a secondary point of diversion in the W1/2SW1/4SE1/4 of Section 11, T. 12 N., R. 17
20 E.W.M. Certificate of Change, Vol. No. 1-4, page 177 dated December 11, 1980. The priority date,
21 to be used in conjunction with other excess/junior water users shall be 1871.

22 Jerry Ribail

23 According to AID – 8, Mr. Ribail owns Parcel No. 17121232005 encompassed in Answer
24 No. 73 and located in the N1/2NW1/4SW1/4 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE
25 136 at 28. Mr. Ribail grows pasture on lands demarcated as Class 7 in AID – 8. Eva Robert
participated in U.S. v. AID and filed Answer No. 73, stating that in 1957, Ms. Robert owned one
parcel consisting of 20 acres in the area described above and irrigated 18.9 acres; her predecessors
irrigated 19 acres in 1908. Therefore, lands owned by Ribail encompassed by Answer No. 73 are
entitled to a senior right for a maximum of 18.9 acres, Ahtanum II, 330 F.2d at 917, if a certificate
supports the right and beneficial use continued.

1 AID – 8 shows 17.05 acres are within the Answer No. 73 area and receiving water. US –
2 126, based on 1977 aerial photography, indicates 16.20 acres encompassed in Answer No. 73 were
3 irrigated with surface water and have a state right for 12 acres. Certificate No.157 is a Class 7 right
4 for the N1/2NW1/4SW1/4 of Section 12 and authorized the irrigation of 12 acres. The Court was
5 unable to identify any other water rights emanating from Achepohl that would apply to the Answer
6 No. 73 lands. Therefore, the Court finds that Certificate No. 157 applies to the Section 12 lands
7 irrigated by Mr. Ribail and authorizes the irrigation of a maximum of 12 acres. Mr. Ribail does not
8 have a groundwater right for irrigation of Answer No. 73 lands. US – 126.

8 The Court finds that Mr. Ribail is now entitled to a senior right from Ahtanum Creek for
9 irrigation of 12 acres in 1 parcel (Parcel No. 17121232005) and located in the N1/2NW1/4SW1/4 of
10 Section 12, T. 12 N., R. 17 E.W.M. Use of water in the N1/2NW1/4SW1/4 of Section 12 is
11 supported and limited by the Class 7 right set forth in Certificate No. 157. See also DOE – 133 at
12 23. Thus, after the Achepohl adjudication in 1925, water rights on the parcel were expanded without
13 compliance with RCW 90.03 for initiation of new rights. RCW 90.03.010. That the Pope Decree
14 shows 19 acres were irrigated in 1908 is of no avail because whatever rights might have existed
15 prior to the Achepohl adjudication had to be confirmed in that process or were extinguished. See
16 McCleary v. Dep't of Game, 91 Wn.2d, 647, 591 P.2d 778 (1979). This Court cannot confirm a
17 right in excess of that which was established during the Achepohl proceeding, without evidence of a
18 new right being granted by Ecology, as a general adjudication establishes the extent of the rights to
19 a specific body of water at the time the decree is entered. See, e.g. Ecology v. Acquavella, 131
20 Wn.2d 746, 935 P.2d 595 (1997). The Court will confirm a right to divert 0.12 cfs, 20.67 acre-feet
21 per year from April 15 to July 10 for the irrigation of 12 acres in Section 12. The point of diversion
22 for the Section 12 lands shall be a point near the northeast corner of the NE1/4SE1/4 of Section 11,
23 T. 12 N., R. 17 E.W.M. Certificate No. 157. The date of priority shall be 1870. Id.
24 Frederic Hatfield; Elizabeth Bray (2198)

25 Although Elizabeth Bray filed Court Claim No. 2198, she did not appear to testify at the
evidentiary hearing, apparently choosing to rely on the evidence presented by AID.

According to AID – 8, the above named claimants own the 7 parcels (Parcel No.
17121214401-04, 17121214406-08) encompassed in Answer No. 74 and located in the
E1/2SE1/4NE1/4 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 28. The Answer No.
74 claimants grow pasture and hay on their lands. William Worrell participated in U.S. v. AID and

1 filed Answer No. 74, indicating that in 1957, he owned one parcel consisting of 20 acres in the area
2 described above and irrigated 13.6 acres; his predecessors irrigated 19 acres in 1908. Id. Therefore,
3 lands owned by Hatfield and Bray encompassed by Answer No. 74 are entitled to a senior right for
4 a maximum of 13.6 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
beneficial use continued.

5 AID – 8 shows 13 acres are within the Answer No. 74 area and receiving water. US – 126,
6 based on 1977 aerial photography, indicates 2.90 acres encompassed in Answer No. 74 were
7 irrigated with surface water and there is a state right for 15 acres. The certificate applicable to the
8 Section 12 parcel is Certificate No. 225, a Class 9 right that issued to Joseph and W. A. Worrell for
9 irrigation of 15 acres in the E1/2SE1/4NE1/4 of Section 12. The Certificate No. 225 place of use
10 description matches the description set forth in Answer No. 74. The Court finds Certificate No. 225
11 applies to the Section 12 lands irrigated by the Hatfields and Brays and authorizes a maximum use
12 for 15 acres. They also have a supplemental groundwater right for irrigation of 13.60 acres and a
primary groundwater right for 9.50 acres. US – 126.

13 There is no evidence indicating which specific acres in Section 12 encompassed by Answer
14 No. 74 have been beneficially used. The Ninth Circuit stated that water rights not used on the
15 parcels comprising the Answer Numbers revert to reservation users. Ahtanum II at 911, 913. As
16 noted above, AID – 8 shows 13 acres are receiving water. That quantity is less than the quantity of
irrigated lands (13.6 acres) found in U.S. v. Ahtanum.

17 The Court finds that Hatfield and Bray are now entitled to a senior right from Ahtanum
18 Creek for irrigation of 13 acres in 7 parcels in Section 12 (Parcel Nos. 17121214401-04,
19 17121214406-08) and located in the E1/2SE1/4NE1/4 of Section 12, T. 12 N., R. 17 E.W.M. See
20 also DOE 136 at 28. Thus, between 1957 and 1993, a portion of the water right on the parcel were
21 either abandoned or relinquished. Use of water in Section 12 is supported by the Class 9 right
22 confirmed to Joseph and W.A. Worrell (Certificate No. 225). See also DOE – 133 at 41. The Court
23 will confirm a right to divert 0.13 cfs, 22.40 acre-feet per year from April 15 to July 10 for the
24 irrigation of 13 acres in Section 12. The point of diversion shall be the E1/2NE1/4NW1/4 of
Section 12, T. 12 N., R. 17 E.W.M. Certificate No. 225. The date of priority shall be 1872. Id.
Peggy Madson, et al.

25 According to AID – 8, Peggy Madson, et al., own Parcel No. 17121214005 encompassed in
Answer No. 75 and located in the W1/2SE1/4NE1/4 of Section 12, T. 12 N., R. 17 E.W.M. See

1 also DOE 136 at 29. Ms. Madson grows hay on her lands. Harry Brownlee and Ray Brownlee
2 participated in U.S. v. AID and filed Answer No. 75 showing that in 1957, they owned one parcel
3 consisting of 20 acres in the W1/2SE1/4NE1/4 of Section 12 and irrigated 18.5 acres; the
4 Brownlees' predecessors irrigated 18 acres in 1908. Id. Therefore, lands owned by Ms. Madson
5 that are encompassed in Answer No. 75 are entitled to a senior right for a maximum of 18 acres in
6 the W1/2SE1/4NE1/4 of Section 12, Ahtanum II, 330 F.2d at 917, if a certificate supports the right
and beneficial use continued.

7 AID – 8 shows 20 acres are within the Answer No. 75 area and receiving water. US – 126,
8 based on 1977 aerial photography, indicates 18.10 acres encompassed in Answer No. 75 were
9 irrigated with surface water and there is a state right for 19 acres. The water right certificate
10 applicable to the Answer No. 75 lands is Certificate No. 224, a Class 9 right that issued to H.M.
11 Brownlee, and encompasses all of the W1/2SE1/4NE1/4 of Section 12 and authorizes the irrigation
12 of 19 acres. See also DOE – 133 at 41. The place of use description in Certificate No. 224 matches
13 the description set forth in Answer No. 75. However, the Certificate authorizes a Class 9 right
14 rather than a Class 7 right as depicted on AID – 8. The Court believes AID – 8 to be in error in that
15 regard. Nonetheless, the Court finds Certificate No. 224 applies to the lands encompassed by
16 Answer No. 75 and authorizes a maximum use for 19 acres. Answer No. 75 lands also have a 20-
17 acre supplemental groundwater right. US – 126 at 82.

18 The Court finds the Answer No. 75 claimants are now entitled to a senior right from
19 Ahtanum Creek for irrigation of 18 acres in 1 parcel (Parcel Nos. 17121214005) and located in the
20 W1/2SE1/4NE1/4 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 29. Use of water in
21 Section 12 is supported by the Class 9 right confirmed to H.M. Brownlee (Certificate No. 224). See
22 also DOE – 133 at 41. The Court will confirm a right to divert 0.18 cfs, 31 acre-feet per year from
23 April 15 to July 10 for the irrigation of 18 acres in the W1/2SE1/4NE1/4 of Section 12. The points
24 of diversion shall be a point in the SW1/4NW1/4 and the SE1/4NW1/4 of Section 12, T. 12 N., R.
25 17 E.W.M. Certificate No. 224. The priority date shall be 1872. Id.

Based on historic use prior to 1957, the Court also confirms a junior right to the Answer No.
75 claimants that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no
uses, including potential storage, are being made of the excess by water right holders on the
reservation. The maximum number of acres historically irrigated based on Answer No. 75 is 18.5
acres. The Achepohl right authorizes irrigation of up to 19 acres in the W1/2SE1/4NE1/4 of

1 Section 12. Certificate No. 224. This Court cannot confirm a right in excess of what the state right
2 encompassed. RCW 90.03. Any right developed after 1917 would require initiation of a new right
3 and compliance with RCW 90.03. The Court confirmed a right to irrigate 18 acres above.

4 Therefore, the Court finds the junior right is appurtenant to 0.5 acre. Based on AID – 8, the
5 additional water is used on 1 parcel (Parcel No. 17121214005) and located in the W1/2SE1/4NE1/4
6 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 29. Use of water in Section 12 is
7 supported by the Class 9 rights confirmed to H.M. Brownlee (Certificate No. 224). See also DOE –
8 133 at 41. With the caveat set forth above regarding the circumstances under which water can be
9 used, the period of use shall be April 15 – July 10. The maximum quantity of water shall be 0.005
10 cfs, 0.85 acre-feet per year. AID – 8. The points of diversion shall be a point in the SW1/4NW1/4
11 and the SE1/4NW1/4 of Section 12, T. 12 N., R. 17 E.W.M. The priority date, to be used in
12 conjunction with other junior/excess water users shall be 1872.

11 Fred Trupp

12 According to AID – 8, Fred Trupp owns the 2 parcels (17121241001, 18120732002)
13 encompassed in Answer No. 76 and located in the West 24.36 acres of Government Lots 3 and 4 of
14 Section 7, T. 12 N., R. 18 E.W.M. and Lot 4 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE
15 136 at 29. Mr. Trupp grows hay and pasture on his lands. Wayne Fields participated in U.S. v. AID
16 and filed Answer No. 76 showing that in 1957, Mr. Fields owned two parcels consisting of 78.36
17 acres in the area described above and irrigated 71 acres; his predecessors irrigated 75 acres in 1908.
18 Id. Thus, the lands owned by Mr. Trupp that are encompassed in Answer No. 76 are entitled to a
19 senior right for a maximum of 71 acres in Section 12, Ahtanum II, 330 F.2d at 917, if a certificate
20 supports the right and beneficial use continued.

21 AID – 8 shows 78 acres are within the Answer No. 76 area and receiving water. US – 126,
22 based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 76 were
23 irrigated with surface water but a state right for 73.36 acres is appurtenant to the land. The water
24 right certificate applicable to the Answer No. 76 lands is Certificate No. 190, a Class 7 right that
25 issued to Joseph Snyder confirming a right to irrigate 73.36 acres in the west 24.36 acres of the
NE1/4SW1/4 of Section 7 in T. 12 N., R. 18 E.W.M. (which is approximately identical to Lots 3
and 4) and Lot 4, Section 12, T. 12 N., R. 17 E.W.M. That place of use description closely
approximates the parcel description in Answer No. 76. Therefore, the Court finds that Certificate
No. 190 applies to the lands encompassed by Answer No. 76 and authorizes a maximum use for

1 73.36 acres. Answer No. 76 lands also have a 17-acre primary groundwater right and are a portion
2 of a 125-acre supplemental supply groundwater right. US – 126 at 83.

3 The Court finds that the Answer No. 76 claimants are now entitled to a senior right from
4 Ahtanum Creek for irrigation of 71 acres in 2 parcels (Parcel Nos. 17121241001, 18120732002)
5 and located in the West 24.36 acres of Government Lots 3 and 4 of Section 7, T. 12 N., R. 18
6 E.W.M. and Lot 4 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 29. Use of water is
7 supported by the Class 7 right confirmed to Joseph Snyder (Certificate No. 190). See also DOE –
8 133 at 34. The Court will confirm a right to divert 0.71 cfs, 122.30 acre-feet per year from April 15
9 to July 10 for the irrigation of 71 acres confirmed to Mr. Trupp. The points of diversion shall be a
10 point on the SW corner of Lot 4 and a point on the south line of E1/2SE1/4NW1/4, all in Section
11 12, T. 12 N., R. 17 E.W.M. Certificate No. 190. The priority date shall be 1870. Id.

12 Based on AID – 8 and Certificate No. 190, the Court also confirms a junior right to Mr.
13 Trupp that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
14 including potential storage, are being made of the excess by water right holders on the reservation.
15 The only evidence on water use in for lands encompassed in Answer No. 76 was provided in US—
16 126 and AID – 8. US – 126 indicates that none of the land was irrigated during one year – 1977,
17 while AID – 8 shows that 78 acres have been irrigated. The Achepohl right authorizes irrigation of
18 up to 73.36 acres in the NW1/4SW1/4 of Section 7, T. 12 N., R. 18 E.W.M. and Lot 4 in Section 12,
19 T. 12N., R. 17 E.W.M. This Court cannot confirm a right in excess of what the state right
20 encompassed. RCW 90.03. Any right developed after 1917 would require initiation of a new right
21 and compliance with RCW 90.03. The Court confirmed a right to irrigate 71 acres above.

22 Therefore, the Court finds the junior right is appurtenant to 2.36 acres. Based on AID – 8,
23 the additional water is used on 2 parcels (Parcel Nos. 17121241001, 18120732002) and located in
24 the West 24.36 acres of Government Lots 3 and 4 of Section 7, T. 12 N., R. 18 E.W.M. and Lot 4 of
25 Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 34. Use of water is supported by the Class
7 right confirmed to Joseph Snyder (Certificate No. 190). With the caveat set forth above, the period
of use shall be April 15 – July 10. The maximum diversion shall be 0.024 cfs, 4.12 acre-feet per
year. AID – 8. The points of diversion shall be a point on the SW corner of Lot 4 and a point on the
south line of E1/2SE1/4NW1/4, all in Section 12, T. 12 N., R. 17 E.W.M. The priority date, to be
used in conjunction with other excess/junior water users shall be 1870.

1 Enis Shockley; Jean Shockley; Charlie E. & Sharon Vetsch; Marcelle Laramore (Claim No. 1157);
2 Darrel Sanger; Francis Davis; Tim Martin; Lawrence Carver; Kenneth Beck

3 Marcelle Laramore filed Claim No. 1137. However, she did not appear at the hearing,
4 instead relying on the evidence submitted by AID.

5 According to AID – 8, the above named claimants own the 8 parcels (Parcel Nos.
6 17121231004-05, 17121242401-04, 17121211003 and 17121211005) that is part of the land
7 described in Answer No. 77. Six of those parcels (Parcel Nos. 17121231004-05, 17121242401-04)
8 are located in the NE1/4SW1/4, Lots 2 and 3, and the NW1/4SE1/4, in Section 12. See also DOE
9 136 at 29. The other parcels (17121211003 and 17121211005) are located in the NE1/4NE1/4 of
10 Section 12, all in T. 12 N., R. 17 E.W.M. In addition, Answer No. 77 includes lands in the N1/2 of
11 Lot 7, T. 12 N., R. 18 E.W.M.²³ The Answer No. 77 claimants grow pasture and hay. AID – 8.
12 E.J.M. Shockley participated in U.S. v. AID and filed Answer No. 77 showing that in 1957, the
13 Shockleys owned three parcels consisting of approximately 202 acres and irrigated 169.4 acres in
14 the area described above; their predecessors irrigated 164 acres in 1908. Id. Therefore, lands
15 owned by Answer No. 77 claimants encompassed by Answer No. 77 are entitled to a senior right for
16 a maximum of 164 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
17 beneficial use continued.

18 AID – 8 shows 144.70 acres are within the Answer No. 77 area and receiving water; 6
19 parcels (Parcel Nos. 17121231004-05, 17121242401-04) total 129.40 acres and 2 parcels
20 (17121211003 and 17121211005) total 15.30 acres. US -- 126, based on 1977 aerial photography,
21 indicates 146.30 acres encompassed in Answer No. 77 were irrigated with surface water. Parcel
22 Nos. 17121231004-05 and 17121242401-04 constitute a total of 114.30 irrigated acres,
23 17121211003 and 17121211005 include 17.40 acres and Parcel Nos. 18120633401-03, 06 include
24 14.60 irrigated acres. US – 126 at 84-87. US – 126 also indicates that the lands encompassed by
25 Answer No. 77 have three applicable state rights totaling 172.50 acres. Id. at 84-87. Certificate No.
126 is appurtenant to a portion of the Section 12 land. It is a Class 6 right which authorizes the
irrigation of 120.50 acres in the NE1/4SW1/4, Lots 2 and 3, and the NW1/4SE1/4, of Section 12, T.
12 N., R. 17 E.W.M. See also DOE – 133 at 15. Also applicable to the Section 12 lands is

²³AID – 8 lists no parcels for Answer No. 77 as being located in Range 18. US – 126 does include analysis of water use on those parcels and will be used by the Court to quantify water rights for Answer No. 77. According to AID – 1, those parcels appear to be owned by Francis & Rennie Davis, Tim Martin, Lawrence Carver and Kenneth Beck.

1 Certificate No. 102, a Class 5 right that is appurtenant to the NE1/4NE1/4 of Section 12 and
2 authorizes irrigation of 40 acres. See also DOE – 133 at 9. The third certificate, No. 148, applies to
3 lands in the N1/2SW1/4SW1/4 of Section 6, T. 12 N., R. 18 E.W.M. issued to E.J.M. Shockley for
4 irrigation of 12 acres. The Court finds that Certificate No. 126 applies to the Section 12 lands
5 owned by the Shockleys and Charlie Vetsch, Certificate No. 102 applies to the lands owned by
6 Sanger and Laramore, and Certificate No. 148 applies to lands owned by Francis Davis, Tim
7 Martin, Lawrence Carver and Kenneth Beck. AID – 1; AID – 8. Together the three certificates
8 authorize a total use for 172.5 acres. A supplemental groundwater right for 30 acres may apply to
9 some of the Answer No. 77 lands. US – 126.

10 There is no evidence indicating which specific acres in Section 12, T. 12 N., R. 17 E.W.M.
11 and Section 6, T. 12 N., R. 18 E.W.M. encompassed by Answer No. 77 have been irrigated. The
12 Ninth Circuit stated plainly that water rights not used on the parcels comprising the Answer
13 Numbers would revert to reservation users. Ahtanum II at 911, 913. As noted above, AID – 8
14 shows that 144.7 acres are receiving water. That quantity is something less than the quantity of
15 irrigated lands (164 acres) found in U.S. v. Ahtanum.

16 The Court finds that the Shockleys and Charlie Vetch are now entitled to a senior right from
17 Ahtanum Creek for irrigation of 120.5 acres in 6 parcels in Section 12 (Parcel Nos. 17121231004-
18 05, 17121242401-04) are located in the NE1/4SW1/4, Lots 2 and 3, and the NW1/4SE1/4, All in
19 Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 29. Use of water in Section 12 on those
20 parcels is supported by the Class 6 right confirmed to Helen Wiley Stuhmiller in Achepohl
21 (Certificate No. 126) for a maximum use of 120.50 acres. According to AID – 8, 129.40 acres
22 within those parcels are irrigated at this time. The Court will confirm a right to divert 1.205 cfs for
23 the 120.50 acres on six parcels belonging to the Shockleys and Charlie Vetsch in Section 12. The
24 period of use shall be from April 15-July 10, a total of 87 days. A continuous diversion of 1.205 cfs
25 for 87 days would result in an annual diversion of 207.57 acre-feet.

The Court concludes that after the Achepohl adjudication in 1925, use of water was
expanded without compliance with RCW 90.03 for initiation of new rights. RCW 90.03.010. That
the Pope Decree shows that 125 acres were irrigated in 1908 is of no avail because whatever rights
that might have existed prior to the Achepohl adjudication had to be confirmed in that process or
were extinguished. See McCleary v. Dep't of Game, 91 Wn.2d, 647, 591 P.2d 778 (1979). This
Court cannot confirm a right in excess of that which was established during the Achepohl

1 proceeding, without evidence of a new right being granted by Ecology, as a general adjudication
2 establishes the extent of the rights to a specific body of water at the time the decree is entered. See
3 Ecology v. Acquavella, 131 Wn.2d 746, 935 P.2d 595 (1997).

4 The Court further finds that Laramore and Sanger are entitled to a senior right for irrigation
5 of 15.30 acres on two parcels in Section 12 (Parcel Nos. 17121211003 and 17121211005) and
6 located in the NE1/4NE1/4, Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at 29. Use of
7 water in Section 12 on those parcels is supported by the Class 5 right confirmed to Beatrice Britton,
8 et al. in Achepohl (Certificate No. 102) for a maximum use of 40 acres. The Court also finds that
9 Davis, Martin, Carver and Beck are entitled to use water for irrigation of 12 acres as follows.
10 Pursuant to Ahtanum II, US – 126 and AID – 1, the surface water right is appurtenant to 12 acres on
11 four parcels in Section 6 (Parcel Nos. 18120633401-03, 06) and located in the N1/2 of Lot 7,
12 Section 6, T. 12 N., R. 18 E.W.M., except the south 10 feet. See also DOE 136 at 29. Use of water
13 on those parcels is supported by the Class 5 right confirmed to E.J.M. Shockley in Achepohl (set
14 forth in Certificate No. 148) for a maximum use of 12 acres. Although US – 126 indicates that
15 water is used on 14.60 acre, the Court cannot confirm a right in excess of what the state right
16 encompasses. RCW 90.03. Any right developed after 1917 would require initiation of a new right
17 and compliance with RCW 90.03.

18 Although the use of water on specific parcels has exceeded what the state right allows, in
19 terms of overall use on an Answer Number basis, the use of water is actually less than what the
20 Pope Decree allows. The Court has concluded that, according to the Pope Decree, 164 acres were
21 authorized to be irrigated and only 147.80 acres are legally being irrigated at this time. US – 126;
22 AID – 8. Therefore, between 1957 and 1993, water rights on the parcels that make up Answer No.
23 77 were either abandoned or relinquished. RCW 90.14.130.

24 The Court will confirm an instantaneous right to 0.157 cfs for the two parcels owned by
25 Laramore and Sanger in Section 12. A continuous diversion of 0.157 cfs for 87 days would result in
an annual diversion of 27.04 acre-feet. The Court also confirms an instantaneous right to Davis,
Martin, Carver, and Beck for 0.12 cfs for the irrigation of 12 acres. A continuous diversion of 0.12
cfs for 87 days would result in an annual diversion of 20.67 acres. The points of diversion shall be
the E1/2SE1/4 of Section 11, and a point near the west line of Lot 2 of Section 12, All in T. 12 N.,
R. 17 E.W.M. for the 120.5 acre right. For the 15.7 acre right, the points are located approximately
1500 feet west and 200 feet south from the northeast corner of Section 12, being within the

1 NW1/4NE1/4 of Section 12, and within the SE1/4NW1/4 of Section 12, all in T. 12 N., R. 17
2 E.W.M.. Certificate Nos. 102, 126. For the 12 acres in Range 18, the point of diversion shall be the
3 SE1/4SE1/4 of Section 1, T. 12N., R. 17 E.W.M. The date of priority shall be 1868 for the 15.70
4 acres, 1869 for the 120.5 acres and 1870 for the 12 acres in Section 6, T. 12 N., R. 18 E.W.M.
Certificate Nos. 102,126 and 148.

5 Bob Bohannon, Linda Kay Poteet; Donald Rennie; Malsena Wiley; Rosemary Wiley; Douglas
6 Wiley; Clifford Wiley; Bill Eaton²⁴ (5064)

7 According to AID – 8, the above named claimants own the 13 parcels (Parcel Nos.
8 17120143001, 17121212401, 17121213001, 17121213003- 04, 17121222420-23, 17121221419-20,
9 17121221422, and 17121222104) encompassed in Answer No. 78. One of those parcels (Parcel No.
10 17120143001), belonging to Bob Bohannon, is located in the SW1/4SE1/4 of Section 1, T. 12 N.,
11 R. 17 E.W.M. See also DOE 136 at 30. The other twelve parcels are located in the NW1/4NW1/4,
12 the W1/2E1/2NW1/4 and a small parcel in the NE1/4NE1/4NW1/4 of Section 12, T. 12 N., R. 17
13 E.W.M. The Answer No. 78 claimants grow pasture and hay. AID – 8. Malcolm Wiley and J.
14 Gordon Wiley participated in U.S. v. AID and filed Answer No. 78, which showed that in 1957, the
15 Wileys owned five parcels consisting of approximately 184.50 acres in the area described above and
16 irrigated 140.6 acres; their predecessors irrigated 150 acres in 1908. Id. Therefore, lands owned by
17 Answer No. 78 claimants encompassed by Answer No. 78 are entitled to a senior right for a
18 maximum of 140.60 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
19 beneficial use continued.

20 AID – 8 shows 126 acres are within the Answer No. 78 area and receiving water. US -- 126,
21 based on 1977 aerial photography, indicates 121.50 acres encompassed in Answer No. 78 were
22 irrigated with surface water and that there are state rights totaling 190 acres. The water right
23 certificate applicable to some of the Section 12 parcels and the Section 1 parcel is Certificate No.
24 100, a Class 5 right which encompasses all of the NE1/4 of Section 12 and SW1/4SE1/4 of Section
25 1, All in T. 12 N., R. 17 E.W.M. and authorizes the irrigation of 115 acres. See also DOE – 133 at

²⁴ AID – 8 shows John & Sharon Kritcheimer as being the owner of Parcel No. 17121222104 within Answer No. 78. However, AID – 1 shows that Parcel No. 17121221004 is owned by John & Shawn Kretchmer. The Kretchmers filed Court Claim No. 5064 and Bill Eaton has been substituted as the owner. Mr. Eaton also was substituted as the owner for the two parcels encompassed by Answer No. 80 which AID – 1 and AID – 8 show as belonging to Shawn Morigeau & J. Ketch. The Court believes all parcels, when correctly identified, now belong to Bill Eaton. AID or the claimants should notify the Court if this analysis is incorrect.

1 15. That place of use is identical to Parcels 1 and 2 in Answer No. 78. DOE – 136 at 30. Also
2 applicable to the Section 12 lands is Certificate No. 99, a Class five right that is appurtenant to the
3 NW1/4NW1/4 and W1/2E1/2NW1/4 of Section 12 and authorizes irrigation of 71 acres. See also
4 DOE – 133 at 8. That place of use is identical to Parcels 3 and 4 in Answer No. 78. Therefore, the
5 Court finds that Certificate Nos. 99 and 100 apply to the Section 1 and 12 lands and together the
6 two certificates authorize a total use for 186 acres. No groundwater rights apply to the Answer No.
7 78 lands. US – 126.

7 There is no evidence indicating which specific acres in Section 12 encompassed by Answer
8 No. 78 have been beneficially used (although AID – 8 does disclose that 39.06 acres are irrigated in
9 Section 1 which is approximately 0.36 acres more than is authorized by Answer No. 78). The Ninth
10 Circuit stated plainly that water rights not used on the parcels comprising the Answer Numbers
11 would revert to reservation users. Ahtanum II at 911, 913. As noted above, AID – 8 shows that
12 126 acres are receiving water. That quantity is less than the number of irrigated lands (140.6 acres)
13 found in U.S. v. Ahtanum.

13 The Court finds that the Answer No. 78 claimants are now entitled to use water from
14 Ahtanum Creek for irrigation of 125.61 acres in 13 parcels (Parcel Nos. 17120143001,
15 17121212401, 17121213001, 17121213003- 04, 17121222420-23, 17121221419-20, 17121221422,
16 and 17121222104). One of those parcels (Parcel No. 17120143001), belonging to Bob Bohannon, is
17 located in the SW1/4SE1/4 of Section 1, T. 12 N., R. 17 E.W.M. and has a maximum right of 38.7
18 acres pursuant to the findings for Answer No.78. DOE 136 at 30. The Court has reduced the overall
19 quantity for Answer No. 78 claimants by 0.36 to reflect that AID – 8 represents that Mr. Bohannon
20 has used water on 39.06 acres. That parcel is demarcated as Class 7 in AID – 8 although it should
21 be Class 5 pursuant to Certificate No. 100. An additional 86.91 acres are in twelve parcels
22 (17121212401, 17121213001, 17121213003- 04, 17121222420-23, 17121221419-20,
23 17121221422, and 17121222104) and located in the NW1/4NW1/4, the W1/2E1/2NW1/4 and a
24 small parcel in the NE1/4NE1/4NW1/4 of Section 12, T. 12 N., R. 17 E.W.M. AID – 8. Use of
25 water in Section 1 and 12 on those parcels is supported by the Class 5 right confirmed to James. J.
Wiley in Achepohl (set forth in Certificate Nos. 99 and 100) for a maximum use of 186 acres.
According to AID – 8, as slightly modified by the Court, 125.61 acres are encompassed by those
parcels and are being irrigated at this time. 140.6 acres were authorized for irrigation pursuant to

1 the Pope Decree. See Ahtanum II, 330 F.2d at 918. Thus, between 1957 and 1993, a portion of the
2 water rights were either abandoned or relinquished. RCW 90.14.130.

3 The Court confirms a right to divert 1.26 cfs, 216.38 acre-feet per year from April 15 to July
4 10 for the irrigation of 125.61 acres in Section 12. The points of diversion are the NW1/4NW1/4,
5 SW1/4NE1/4, NW1/4NE1/4 and the SW1/4NW1/4 of Section 12; the S1/2NE1/4 of Section 11; the
6 SW1/4SE1/4 of Section 1, all in T. 12 N., R. 17 E.W.M. Certificate Nos. 99, 100. The priority date
shall be 1868. Id.

7 Chuck Vetsch

8 According to AID – 8, Mr. Vetsch owns Parcel No. 17121223402 encompassed in Answer
9 No. 79 and located in the SW1/4NW1/4 of Section 12, T. 12 N., R. 17 E.W.M. See also DOE 136 at
10 30. Mr. Vetsch grows pasture on his lands. Otis Goode participated in U.S. v. AID and filed Answer
11 No. 79 showing that in 1957, he owned one parcel consisting of approximately 40 acres in the area
12 described above and irrigated 30 acres²⁵; his predecessors irrigated 35 acres in 1908. Id. Therefore,
13 lands owned by Answer No. 79 claimants encompassed by Answer No. 79 are entitled to a senior
right for a maximum of 30 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and
beneficial use continued.

14 AID – 8 shows 2 acres are within the Answer No. 79 area and receiving water. US – 126,
15 based on 1977 aerial photography, indicates 4.30 acres encompassed in Answer No. 79 were
16 irrigated with surface water and that there is a state right for 40 acres. Certificate No. 120 is a Class
17 5 right, that authorized the irrigation of 40 acres in the SW1/4NW1/4 of Section 12, T. 12 N., R. 17
18 E.W.M. See also DOE – 133 at 14. Therefore, the Court finds that Certificate No. 120 applies to the
19 Section 12 lands and the certificate authorizes the irrigation of a maximum of 40 acres. No
groundwater rights apply to the Answer No. 79 lands. US – 126.

20 There is no evidence indicating which specific acres in Section 12 encompassed by Answer
21 No. 79 have been irrigated. The Ninth Circuit stated plainly that water rights not used on the parcels
22 comprising the Answer Numbers would revert to reservation users. Ahtanum II at 911, 913. As
23 noted above, AID – 8 shows 2 acres are receiving water. That quantity is less than the quantity of
24 irrigated lands (30 acres) found in Ahtanum II, p. 918.

25 _____
²⁵ The District Court found the 1957 irrigated acreage to be 32 acres but the Ninth Circuit indicated that the witness
changed his testimony from 35 to 30 acres. Ahtanum II at 916.

1 The Court finds that Mr. Vetch is now entitled to use water from Ahtanum Creek for
2 irrigation of 2 acres in one parcel (Parcel Nos. 17121223402) and located in the SW1/4NW1/4 of
3 Section 12, T. 12 N., R. 17 E.W.M. Use of water on that parcel is supported by the Class 5 right
4 confirmed to D. D. Reynolds in Achepohl (Certificate No. 120) for the irrigation of a maximum of
5 40 acres. According to AID – 8, 2 acres are being irrigated at this time – 32 acres were authorized
6 for irrigation pursuant to the Pope Decree. See Ahtanum II, 330 F.2d at 918. Between 1957 and
7 1993, a portion of the water rights on the parcel were either abandoned or relinquished. RCW
8 90.14.130. The Court will confirm a right to divert 0.02 cfs, 3.45 acre-feet per year from April 15 to
9 July 10 for the irrigation of 2 acres in Section 12. The point of diversion shall be the NE1/4SE1/4 of
10 Section 12, T. 12 N., R. 17 E.W.M. Certificate No. 120. The priority date shall be 1868. Id.
11 Bill Eaton (Claim No. 5064)

12 According to AID – 8, Morigeau and Ketch (Kretchmer) (substituted by Eaton) own the land
13 consisting of 2 parcels (Parcel Nos. 17121221405 and 17121221002) encompassed in Answer No.
14 80 and located approximately in the E1/2E1/2NW1/4 of Section 12, T. 12 N., R. 17 E.W.M. See
15 also DOE 136 at 31. Morigeau grows pasture and grain on their lands. The Court was unable to
16 read the name of the individual who participated in U.S. v. AID and filed Answer No. 80. DOE –
17 136 at 31. In 1957, that person owned two parcels consisting of approximately 39.25 acres in the
18 E1/2E1/2NW1/4 and the south 390.5 feet of the north 440 feet of the west 111.5 feet of the
19 E1/2NE1/4NW1/4 All being within Section 12 and irrigated 8.4 acres; his predecessors irrigated 38
20 acres in 1908. Id. Therefore, lands owned by Answer No. 80 claimants encompassed by Answer
21 No. 80 are entitled to a senior right for a maximum of 8.4 acres, Ahtanum II, 330 F.2d at 917, if a
22 certificate supports the right and beneficial use continued.

23 AID – 8 shows 4 acres are within the Answer No. 80 area and receiving water. US – 126,
24 based on 1977 aerial photography, indicates 7.60 acres encompassed in Answer No. 80 were
25 irrigated with surface water and there is a state right for 38.25 acres. The water right applicable to
the Answer No. 80 parcels is Certificate No. 119, a Class 5 right that issued to Marion Mahan and
authorizes the irrigation of 38.25 acres. See also DOE – 133 at 13. That place of use is similar to
Parcels 1 and 2 in Answer No. 80. DOE – 136 at 31. Therefore, the Court finds that Certificate No.
119 applies to the Section 12 lands and the certificate authorizes a total use for 38.25 acres. A
primary groundwater right for 2.50 acres applies to the Answer No. 80 lands. US – 126.

1 There is no evidence before the Court indicating which specific acres in Section 12
2 encompassed by Answer No. 80 have been beneficially used. The Ninth Circuit stated plainly that
3 water rights not used on the parcels comprising the Answer Numbers would revert to reservation
4 users. Ahtanum II at 911, 913. As noted above, AID – 8 shows that 4 acres are receiving water.
5 That quantity is less than the quantity of irrigated lands (8.4 acres) found in U.S. v. Ahtanum.

6 The Court finds that the Answer No. 80 claimants are now entitled to a senior right from
7 Ahtanum Creek for irrigation of 4 acres in 2 parcels (Parcel Nos. 17121221405 and 17121221002)
8 and located approximately in the E1/2E1/2NW1/4 of Section 12, T. 12 N., R. 17 E.W.M. See also
9 DOE 136 at 31. Use of water in Section 12 on those parcels is supported by the Class 5 right
10 confirmed to Marion Mahan in Achepohl (Certificate No. 119) for a maximum use of 38.25 acres.
11 According to AID – 8, 4 acres are being irrigated at this time – 8.4 acres were authorized for
12 irrigation pursuant to the Pope Decree. See Ahtanum II, 330 F.2d at 918. Thus, between 1957 and
13 1993, a portion of the water rights were either abandoned or relinquished. RCW 90.14.130.

14 The Court will confirm a right to the current owner, Bill Evans, divert 0.04 cfs, 6.90 acre-
15 feet per year from April 15 to July 10 for the irrigation of 4 acres in Section 12. The point of
16 diversion shall be a point near the west line of the NW1/4NW1/4 and also a point in the
17 SW1/4NW1/4 about 500 feet west of the east line said SW1/4NW1/4, All being within Section 12,
18 T. 12 N., R. 17 E.W.M. Certificate No. 119. The date of priority shall be 1868. Id.
19 Anna Marie & Paul Morton (Claim No. 0863)

20 The Court analyzed the on-reservation water rights of the Mortons in the applicable section
21 above. The Mortons have presented evidence on their own behalf in support of their claim for lands
22 that lie within the Ahtanum Irrigation District and are also relying on AID for representation for that
23 land. Verbatim Report of Proceedings dated February 9, 1994 at p. 205. That evidence will be used
24 in conjunction with evidence submitted by AID for Answer No. 90, the United States and Ecology.
25 The Court also notes that the Mortons own land that is a part of Answer No. 220. Those claims will
be addressed in the section that considers all Answer No. 220 claimants. Finally, besides the land
owned by the Mortons, Answer No. 90 includes a parcel description lying within Section 5, T. 12
N., R. 17 E.W.M. AID has asserted no right for Section 5 lands.

According to AID – 8, the Mortons own the 4 parcels (Parcel Nos. 18120812008-09,
18120812006 and 18120812012) encompassed in Answer No. 90 and located in Government Lots 2
and 3 of Section 8, T. 12 N., R. 18 E.W.M. See also DOE 136 at 31. The Mortons grow grain and

1 pasture on their lands. Lawrence Wilcox participated in U.S. v. AID and filed Answer No. 90,
2 showing that in 1957, he owned two parcels consisting of 97.35 acres in the area described above
3 and irrigated 14.3 acres; Mr. Wilcox's predecessors irrigated 60 acres in 1908. Id. Therefore, lands
4 owned by the Mortons that are encompassed in Answer No. 90 are entitled to a senior right for a
5 maximum of 14.3 acres in Section 8, Ahtanum II, 330 F.2d at 917, if a certificate supports the right
and beneficial use continued.

6 AID – 8 shows 18.62 acres are within the Answer No. 90 area and receiving water. US --
7 126, based on 1977 aerial photography, indicates 52.80 acres encompassed in Answer No. 90 were
8 irrigated with surface water and there is a state right for 33 acres. The water right certificate
9 applicable to the Answer No. 90 lands is Certificate No. 92, a Class 5 right issued to Selim Wilcox,
10 and authorizes the irrigation of 48 acres in total, a part of which is appurtenant to lands owned by
11 the Mortons. See also DOE – 133 at 7. The place of use in Certificate No. 92 includes Lots 2 and 3
12 in Section 8 and is similar to the parcel description set forth in Answer No. 90. The Court notes that
13 Certificate No. 92 and Answer No. 90 include parcel descriptions in the SE1/4SW1/4 of Section 5,
14 T. 12 N., R. 18 E.W.M. However, AID has put forth no claim for rights in Section 5. Therefore, the
15 Court finds that Certificate No. 92 applies to the lands encompassed by Answer No. 90 in Lots 2
and 3 and authorizes a maximum use for a proportionate share of 48 acres. Answer No. 90 lands
also have an appurtenant 60-acre primary groundwater right. US – 126 at 83.

16 The Court finds that the Answer No. 90 claimants are now entitled to use water from
17 Ahtanum Creek for irrigation of 14.3 acres as follows. Pursuant to Ahtanum II and AID -- 8, the
18 surface water right is appurtenant to 14.3 acres in 4 parcels (Parcel Nos. 18120812008-09,
19 18120812006 and 18120812012) encompassed in Answer No. 90 and located in Government Lots 2
and 3 of Section 8, T. 12 N., R. 18 E.W.M. with the following exceptions:

20 Except beginning at the northwest corner of Lot 3, thence south 430 feet; thence east
21 37 feet; thence north 2° 10' west 430 feet; thence west 21.83 feet to beginning. Except 40
feet for county road; Except that portion of Lot 2 lying north of Ahtanum Creek and east of
County Road;

22 And except a tract of land in the northeasterly portion of Lot 2, described as follows:
23 Beginning at the northeast corner of the above described subdivision as marked by a
24 government rock monument with chiseled cross thereon; thence west along the section line
25 65 feet; thence south 13°28' west 675.6 feet to an iron pin which is the true point of
beginning; thence south 51°32' west 194.5 feet to an iron pin; thence south 63°49' west
139.7 feet to an iron pin; thence north 15°43' west 257.2 feet to an iron pin on the north
bank of Middle Creek; thence northeasterly along the center of Middle Creek some 367 feet

1 to an iron pin which north 2°34' east 157.9 feet from point of beginning; thence south 2°34'
2 west 157.9 feet to the true point of beginning.

3 Excepting an overlapping of Yakima Road right of way along the eastern side. See
4 also DOE 136 at 31.

5 Use of water in Government Lots 2 and 3 of Section 8 is supported by the Class 8 right
6 confirmed to Selim Wilcox (Certificate No. 92). See also DOE – 133 at 34. The Court notes that
7 both Certificate No. 92 and Answer No. 90 include lands in Section 5. AID has put forth no claim
8 for rights in Section 5. Although part of the 14.3 acres awarded in U.S. v. Ahtanum may have
9 included Section 5 acreage, the Court has no evidence as to which specific lands were actually
10 irrigated in Sections 5 or 8 as confirmed by the federal court. Therefore, the Court will confirm the
11 right to the Section 8 lands. The Court finds that there is a right to divert 0.143 cfs, 24.63 acre-feet
12 per year from April 15 to July 10 for the irrigation of 14.3 acres confirmed to the Mortons. The
13 point of diversion shall be a point on the NW1/4NW1/4 of Section 8, T. 12 N., R. 18 E.W.M.
14 Certificate No. 92. The priority date shall be 1868. Id.

15 Based on AID – 8 and Certificate No. 92, the Court also confirms a junior right to the
16 Mortons that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
17 including potential storage, are being made of the excess by water right holders on the reservation.
18 The only evidence on water use in for lands encompassed in Answer No. 90 was provided in US—
19 126 and AID – 8. US – 126 indicates that 52.80 acres were irrigated on all the lands encompassed
20 in Answer No. 75 in one year – 1977, however, AID – 8 shows that 18.62 acres have been irrigated.
21 The Achepohl right authorizes irrigation of up to a portion of 48 acres in Government Lots 2 and 3
22 of Section 8, T. 12 N., R. 18 E.W.M. The Court granted a right to 14.3 acres above

23 Therefore, the Court finds that the junior right is appurtenant to 4.32 acres. Based on AID –
24 8, the additional water is used on 4.32 acres within 4 parcels (Parcel Nos. 18120812008-09,
25 18120812006 and 18120812012) encompassed in Answer No. 90 and located in Government Lots 2
and 3 of Section 8, T. 12 N., R. 18 E.W.M. with the exceptions set forth above. Use of water is
supported by the Class 5 right confirmed to Selim Wilcox (Certificate No. 92). See also DOE – 133
at 7. With the caveat set forth above regarding the circumstances under which water can be used,
the period of use shall be April 15 – July 10. The maximum diversion shall be 0.0432 cfs, 7.44
acre-feet per year. AID – 8. The point of diversion shall be a point on the NW1/4NW1/4 of Section
8, T. 12 N., R. 18 E.W.M. The priority date, to be used in conjunction with other junior/excess
water users, shall be 1868.

1 George Hammermeister, Jr.; Jacob & Clara Wolff (0737); Robert Gimlin

2 Both the Wolfs and Robert Gimlin filed claims with the Court but did not appear at the
3 evidentiary hearing, apparently relying on representation from AID.

4 According to AID – 8, the above named claimants own the 4 parcels (Parcel Nos.
5 17120141012, 17120141400 and 17120144003-04) encompassed in Answer No. 96 and located
6 approximately in the E1/2SE1/4 of Section 1, T. 12 N., R. 17 E.W.M. See also DOE 136 at 32.
7 They grow hay and pasture on the lands. George Hammermeister participated in U.S. v. AID and
8 filed Answer No. 96, showing that in 1957, he owned one parcel consisting of approximately 80
9 acres in the E1/2SE1/4 of Section 1 and irrigated 57 acres; his predecessors irrigated 70 acres in
10 1908. Id. Therefore, lands owned by Answer No. 96 claimants encompassed by Answer No. 96 are
entitled to a senior right for a maximum of 57 acres, Ahtanum II, 330 F.2d at 917, if a certificate
supports the right and beneficial use continued.

11 AID – 8 shows 45.38 acres are within the Answer No. 96 area and receiving water. US --
12 126, based on 1977 aerial photography, indicates 10 parcels constituting 47.90 acres are
13 encompassed in Answer No. 96 and were irrigated with surface water and there is a state right for
14 79 acres. Certificate No. 146, a Class 7 right that issued to Theodore Larence confirming a right for
15 the irrigation of 79 acres in the E1/2SE1/4 of Section 1, T. 12 N., R. 17 E.W.M. is applicable. See
16 also DOE – 133 at 13. That place of use is similar to the parcel description in Answer No. 96. DOE
17 – 136 at 32. Therefore, the Court finds that Certificate No. 146 applies to the Answer No. 96 lands
18 and authorizes a total use for 79 acres. A primary groundwater right for 10 acres and a supplemental
groundwater right for 11 acres apply to the Answer No. 96 lands. US – 126.

19 There is no evidence before the Court indicating which specific acres in Section 1
20 encompassed by Answer No. 96 have been beneficially used. The Ninth Circuit stated plainly that
21 water rights not used on the parcels comprising the Answer Numbers would revert to reservation
22 users. Ahtanum II at 911, 913. As noted above, AID – 8 shows that 45.38 acres are receiving
water. That quantity is less than the quantity of irrigated lands (57 acres) found in U.S. v. Ahtanum.

23 The Court finds Answer No. 96 claimants are now entitled to a senior right from Ahtanum
24 Creek for irrigation of 45.38 acres in 4 parcels (Parcel Nos. 17120141012, 17120141400 and
25 17120144003-04) and located approximately in the E1/2SE1/4 of Section 1, T. 12 N., R. 17 E.W.M.
with exceptions for rights of ways and county roads, etc. set forth in Answer No. 96 as described in
DOE – 136 at p. 32-33. Use of water on those parcels is supported by the Class 7 right confirmed to

1 Theodore Lawrence in Achepohl (Certificate No. 146) for the irrigation of a maximum of 79 acres.
2 According to AID – 8, 45.38 acres are being irrigated at this time – 57 acres were authorized for
3 irrigation pursuant to the Pope Decree. See Ahtanum II, 330 F.2d at 918. Thus, between 1957 and
4 1993, a portion of the water right on the parcel was either abandoned or relinquished. RCW
5 90.14.130.

6 The Court will confirm a right to divert 0.454 cfs, 78.20 acre-feet per year from April 15 to
7 July 10 for the irrigation of 45.38 acres in the E1/2 SE1/4 of Section 1. The point of diversion shall
8 be a point near the southwest corner of the E1/2SE1/4 of Section 1, T. 12 N., R. 17 E.W.M.
9 Certificate No. 146. The date of priority shall be 1870. Id
10 Russell Bohannon; John Bohannon; Robert Bohannon

11 According to AID – 8, the Bohannons own the 3 parcels (Parcel Nos. 17120131005-06,
12 17120134001) encompassed in Answer No. 98 and located in the E1/2SW1/4, lying south of the
13 county road and the E1/2SW1/4SW1/4 less a right of way of Union Pacific Railroad, All in Section
14 1, T. 12 N., R. 17 E.W.M. See also DOE 136 at 33. The Bohannons grow hay on their lands.
15 Robert Bohannon participated in U.S. v. AID and filed Answer No. 98, showing that in 1957, he
16 owned one parcel consisting of 87.60 acres in the area described above and irrigated 81.4 acres; Mr.
17 Bohannon's predecessors irrigated 70 acres in 1908. Id. Therefore, the lands owned by the
18 Bohannons that are encompassed in Answer No. 98 are entitled to a senior right for a maximum of
19 70 acres in Section 1, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial
20 use continued.

21 AID – 8 shows 74.6 acres are within the Answer No. 98 area and receiving water. US –
22 126, based on 1977 aerial photography, indicates 76.20 acres encompassed in Answer No. 98 were
23 irrigated with surface water and there is a state right for 78 acres. The water right certificate
24 applicable to the Answer No. 98 lands is Certificate No. 136, a Class 7 right that issued to Fannie
25 Griffiths, confirming a right to the irrigation of 84 acres in the E1/2SW1/4SW1/4 and E1/2SW1/4
of Section 1, T. 12 N., R. 17 E.W.M. See also DOE – 133 at 19. The Certificate includes a place of
use nearly identical to that set forth in Answer No. 98. Therefore, the Court finds that Certificate
No. 136 applies to the lands encompassed by Answer No. 98 and authorizes the irrigation of a
maximum of 84 acres. Answer No. 98 lands also have an appurtenant 44-acre primary groundwater
right and an 84-acre supplemental right. US – 126 at 99.

1 The Court finds that the Answer No. 98 claimants are now entitled to a senior right from
2 Ahtanum Creek for the irrigation of 70 acres in 3 parcels (Parcel Nos. 17120131005-06,
3 17120134001) and located in the E1/2SW1/4, lying south of the county road and the
4 E1/2SW1/4SW1/4 less a right of way of Union Pacific Railroad, All in Section 1, T. 12 N., R. 17
5 E.W.M. See also DOE 136 at 33. Use of water in Section 1 is supported by the Class 7 right
6 confirmed to Fannie Griffiths (Certificate No. 136). See also DOE – 133 at 19. The Court will
7 confirm a right to divert 0.70 cfs, 120.58 acre-feet per year from April 15 to July 10 for the
8 irrigation of 70 acres. The point of diversion from the North Fork of Ahtanum Creek shall be a point
9 750 feet north and 430 feet west of the center of Section 10, T. 12 N., R. 17 E.W.M. Certificate No.
10 136. The priority date shall be 1870. Id.

11 Based on AID – 8 and Certificate No. 136, the Court also confirms a junior right to the
12 Bohannons that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
13 including potential storage, are being made of the excess by water right holders on the reservation.
14 The only evidence on water use in for lands encompassed in Answer No. 98 was provided in US—
15 126 and AID – 8. US – 126 indicates that 76.20 acres were irrigated on all the lands encompassed
16 in Answer No. 75 in one year – 1977, however AID – 8 shows that 74.6 acres have been irrigated.
17 The Achepohl right authorizes irrigation of up to 84 acres in the E1/2SW1/4SW1/4 and E1/2SW1/4
18 of Section 1, T. 12 N., R. 17 E.W.M. The Court granted a right to 70 acres above

19 Therefore, the Court finds that the junior right is appurtenant to 4.60 acres. Based on AID –
20 8, the additional water is used on 3 parcels (Parcel Nos. 17120131005-06, 17120134001) and
21 located in the E1/2SW1/4, lying south of the county road and the E1/2SW1/4SW1/4 less a right of
22 way of Union Pacific Railroad, All in Section 1, T. 12 N., R. 17 E.W.M. See also DOE 136 at 33.
23 With the caveat set forth above, the period of use shall be April 15 – July 10. The maximum
24 diversion shall be 0.046 cfs, 7.92 acre-feet per year. AID – 8. The point of diversion shall be a point
25 750 feet north and 430 feet west of the center of Section 10, being within the SE1/4NW1/4 of
Section 10, T. 12 N., R. 17 E.W.M. Certificate No. 136. The priority date, to be used in conjunction
with other excess/junior water users shall be 1870. Id.

Kenneth and Gina Marquis (0417)

The Marquis filed Court Claim No. 0417, but did not appear at the evidentiary hearing,
relying on AID's representation.

1 According to AID – 8, the Marquis own Parcel No. 18120723004 encompassed in Answer
2 No. 106, located in Government Lot 2, Section 7, T. 12 N., R. 18 E.W.M. See also DOE 136 at 33.
3 They grow pasture on their lands. Eugene Carlson participated in U.S. v. AID and filed Answer No.
4 106 stating that in 1957, he owned the 40-acre parcel in Government Lot 2, Section 7 and irrigated
5 34.8 acres; his predecessors irrigated 39 acres in 1908. Id. Therefore, lands owned by Answer No.
6 106 claimants encompassed by Answer No. 106 are entitled to a senior right for a maximum of 34.8
7 acres, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use continued.

8 AID – 8 shows 0.9 acres are within the Answer No. 106 area and receiving water. US –
9 126, based on 1977 aerial photography, indicates none of the land in Answer No. 106 was irrigated
10 with surface water, but that the land had a state right for 39 acres. The Court was unable to locate a
11 water right certificate for Government Lot 2 of Section 7. However, the Court has identified
12 through DOE – 133, p. 20, that J.M. Snyder was awarded a right for 39 acres in Government Lot 2,
13 Section 7, T. 12 N., R. 18 E.W.M. in the Achepohl decree. According to SE – 8, Section V, no fees
14 were paid for the certificate that should have issued for that right. Therefore, the Court finds that the
15 Class 7 right confirmed to J.M. Snyder is appurtenant to the land in Government Lot 2 of Section 7
16 set forth in Answer No. 106 and authorizes the irrigation of 39 acres. In order to confirm a right, the
17 necessary fees must be paid and the certificate issued to support the right. A primary groundwater
18 right for 39 acres applies to the Answer No. 106 lands. US – 126.

19 There is no evidence before the Court indicating which specific acres in Government Lot 2,
20 Section 7 encompassed by Answer No. 106 have been irrigated. The Ninth Circuit stated plainly
21 that water rights not used on the parcels comprising the Answer Numbers would revert to
22 reservation users. Ahtanum II at 911, 913. As noted above, AID – 8 shows that 0.9 acres are
23 receiving water. That quantity is less than the 34.8 acres found in U.S. v. Ahtanum.

24 The Court finds that the Answer No. 106 claimants are now entitled to a senior right from
25 Ahtanum Creek for irrigation of 0.9 acres in 1 parcel (Parcel No. 18120723004) and located
approximately in Government Lot 2 of Section 7, T. 12 N., R. 18 E.W.M. Use of water on this
parcel in Section 7 is supported by the Class 7 right confirmed to J.M. Snyder in Achepohl for the
irrigation of a maximum of 39 acres. AID – 8 shows 0.9 acres are being irrigated at this time – 34.8
acres were authorized pursuant to the Pope Decree. See Ahtanum II, 330 F.2d at 918. Thus,
between 1957 and 1993, a portion of the water rights on the parcel were either abandoned or
relinquished. RCW 90.14.130.

1 Upon payment of the fees and issuance of a certificate, the Court will confirm a right to
2 divert 0.009 cfs, 1.55 acre-feet from April 15 to July 10 for the irrigation of 0.9 acres in Section 7.
3 Along with providing a copy of the certificate, AID must also provide the Court with a legal
4 description for the 0.9 acre that is irrigated. Because no certificate was identified the Court is unable
5 to identify a point of diversion. The date of priority shall be 1870. DOE – 133 at p. 20.

6 Harris Farms, Inc.

7 According to AID – 8, Harris Farms owns Parcel No. 18120731001 encompassed in Answer
8 No. 107, located in the NE1/4SW1/4 and Government Lots 3, 4, and 5, all in Section 7, T. 12 N., R.
9 18 E.W.M. with the following exceptions:

10 Except beginning at the intersection of the east line of the west 24.36 acres and the south
11 line of County road thence east 395 feet to the true point of beginning; thence west 395 feet;
12 thence south 189 feet; thence northeasterly 392 feet to a point 162 feet southwesterly of the
13 point of beginning; thence northeasterly 162 feet to the true point of beginning.

14 And except the west 24.36 acres of Lots 3 and 4. See also DOE 136 at 33.

15 Harris Farms grows hay on its lands. The Estate of Barbara Coupal participated in U.S. v.
16 AID and filed Answer No. 107, indicating that in 1957, the estate owned one 80-acre parcel and
17 irrigated 48.7 acres; Ms. Coupal's predecessors irrigated 75 acres in 1908. Id. Therefore, lands
18 owned by Harris Farms that are encompassed in Answer No. 107 are entitled to a senior right for a
19 maximum of 48.7 acres in Section 7, Ahtanum II, 330 F.2d at 917, if a certificate supports the right
20 and beneficial use continued.

21 AID – 8 shows that 70.2 acres are within the Answer No. 107 area and receiving water. US
22 -- 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No.
23 107 was being irrigated with surface water, but that the lands have a state right for the irrigation of
24 78.35 acres. Certificate No. 189, a Class 7 right that issued to Gus Johnson, is appurtenant to the
25 Answer No. 107 lands. It authorized the irrigation of 78.35 acres in Lots 3, 4, 5 and the
NE1/4SW1/4 of Section 7 in T. 12N., R. 18 E.W.M. Therefore, the Court finds that Certificate No.
189 applies to the lands encompassed by Answer No. 107 and authorizes a maximum use of 78.35
acres. Answer No. 107 lands also have an appurtenant 12-acre primary groundwater right. US –
126 at 101.

1 The Court finds the Answer No. 107 claimants are entitled to a senior right from Ahtanum
2 Creek for irrigation of 48.7 acres in 1 parcel (Parcel Nos. 18120731001) and located in Lots 3, 4, 5
3 and the NE1/4SW1/4 of Section 7 in T. 12 N., R. 18 E.W.M., with the following exceptions:

4 Except beginning at the intersection of the east line of the west 24.36 acres and the
5 south line of County road thence east 395 feet to the true point of beginning; thence west
6 395 feet; thence south 189 feet; thence northeasterly 392 feet to a point 162 feet
7 southwesterly of the point of beginning; thence northeasterly 162 feet to the true point of
8 beginning.

9 Except the west 24.36 acres of Lots 3 and 4. See also DOE -136 at p. 33.

10 Use of water in Section 7 is supported by the Class 7 right confirmed to Gus Johnson
11 (Certificate No. 189). See also DOE - 133 at 34. The Court will confirm a right to divert 0.487 cfs,
12 83.39 acre-feet per year from April 15 to July 10 for the irrigation of 48.7 acres. The point of
13 diversion shall be a point located in Lot 4, Section 12, T. 12 N., R. 17 E.W.M. Certificate No. 189.
14 The priority date shall be 1870. Id.

15 Based on AID - 8 and Certificate No. 136, the Court also confirms a junior right to Harris
16 Farms that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
17 including potential storage, are being made of the excess by water right holders on the reservation.
18 The only evidence on water use in for lands encompassed in Answer No. 107 was provided in US—
19 126 and AID - 8. US - 126 indicates that none of the land was irrigated during one year - 1977,
20 however, AID - 8 shows that 70.2 acres have been irrigated. The Achepohl right authorizes
21 irrigation of up to 78.35 acres in Lots 3, 4, 5 and the NE1/4SW1/4 of Section 7 in T. 12N., R. 18
22 E.W.M. The Court granted a right to 48.7 acres above.

23 Therefore, the Court finds that the junior right is appurtenant to 21.50 acres. Based on AID
24 - 8, the additional water is used on one parcel (Parcel No. 18120731001) and located in Lots 3, 4, 5
25 and the NE1/4SW1/4 of Section 7 in T. 12N., R. 18 E.W.M. with the exceptions set forth above.
See also DOE 136 at 33. With the caveat set forth above regarding the conditions under which
water may be used, the period of use shall be April 15 - July 10. The maximum instantaneous
diversion shall be 0.215 cfs, 37.04 acre-feet per year. AID - 8. The point of diversion shall be a
point in Lot 4 of Section 12, T. 12 N., R. 17 E.W.M. Certificate No. 189. The priority date, to be
used in conjunction with other excess/junior water users shall be 1870. Id.

1 Wayne Gohl

2 According to AID – 8, Wayne Gohl owns the 3 parcels (Parcel Nos. 18120724400-02)
3 encompassed in Answer No. 108 and located approximately in the SE1/4NW1/4 of Section 7, T. 12
4 N., R. 18 E.W.M., except the south 253 feet of the west 720 feet, and except a road on the south
5 border. See also DOE 136 at 34. Wayne Gohl grows hay and pasture on his lands. Fred Gohl
6 participated in U.S. v. AID and filed Answer No. 108, showing that in 1957, Mr. Gohl owned one
7 parcel consisting of approximately 35.81 acres in the area described above and irrigated 33.4 acres;
8 his predecessors irrigated 39²⁶ acres in 1908. Id. Therefore, lands owned by Wayne Gohl that are
9 encompassed in Answer No. 108 are entitled to a senior right for a maximum of 33.4 acres in
10 Section 7, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use
11 continued.

12 AID – 8 shows 56.33 acres are within the Answer No. 108 area and receiving water. US –
13 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 108
14 was being irrigated with surface water and that the lands have a state right for 40 acres. The Court
15 was not able to identify a water right certificate appurtenant to the Answer No. 108 lands.
16 However, a Class 7 right was confirmed to O. H. Paschke in Achepohl for the same tract of land
17 that Mr. Gohl now owns. DOE – 133 at 20. According to SE – 8, the fees were not paid to the state
18 for the issuance of the certificate to Mr. Paschke. The Court requests that the fees be paid and the
19 certificate provided to the Court by the date for filing exceptions for Subbasin 23. The Court finds
20 that the Class 7 right awarded to O. H. Paschke applies to the lands encompassed by Answer No.
21 108 and authorizes a right to irrigate a maximum of 40 acres. Answer No. 108 lands also have a 33-
22 acre supplemental groundwater right. US – 126 at 102.

23 The Court finds that Mr. Gohl is now entitled to a senior right from Ahtanum Creek for
24 irrigation of 33.4 acres as follows. Pursuant to Ahtanum II and AID -- 8, the surface water right is
25 appurtenant to land located approximately in the SE1/4NW1/4 of Section 7, T. 12 N., R. 18
E.W.M., except the south 253 feet of the west 720 feet, and except a road on the south border. See
also DOE 136 at 34. Use of water in Section 7 is supported by the Class 7 right confirmed to O. H.
Paschke (but lacking a state certificate). See also DOE – 133 at 20. However, the Court is unable
to determine the precise parcel numbers because AID has supplied three that total in excess of 56

²⁶ No explanation was provided as to why Mr. Gohl owned less land in 1957 than was irrigated in 1957.

1 acres which is clearly erroneous given that the legal description is for a 40-acre quarter-quarter.
2 The Court requests that the correct parcel numbers be provided at the date for filing exceptions. For
3 the same reasons, the Court is unable to confirm a junior/excess water right until it knows more
4 precisely the lands on which the water right is used.

5 Leta Gibson, Dennis Baker, Russell Wells, Rodney & Gloria Ross, Steven & Lynette Hixon, Mary
6 Gaines, William Sizemore (Claim No. 0047); Raymond Decoto

7 In AID – 8, AID asserted a claim to water rights for certain parties that are no longer active
8 in the Acquavella proceeding. Court records show that Dennis Baker was substituted for Dennis
9 Yount and Mary Gaines was substituted for Troy & Virginia Wadsacdk. None of the parties
10 appeared at the hearing, apparently relying on AID for representation. AID should review its
11 records to ensure the accuracy of the Court’s findings.

12 According to AID – 8, the above named claimants own the 8 parcels (Parcel Nos.
13 18120722008-09, 18120722403-05, 18120722408-10) encompassed in Answer No. 112 and located
14 approximately in Government Lot 1, Section 7, T. 12 N., R. 18 E.W.M. See also DOE 136 at 34.
15 They grow hay and pasture on their lands. AID – 8. Walter Gano participated in U.S. v. AID and
16 filed Answer No. 112 showing that in 1957, he owned one parcel consisting of approximately 40
17 acres in Government Lot 1, Section 7 and irrigated 35.9 acres; his predecessors irrigated 39 acres in
18 1908. Id. Therefore, lands owned by Answer No. 112 claimants encompassed by Answer No. 112
19 are entitled to a senior right for a maximum of 35.9 acres, Ahtanum II, 330 F.2d at 917, if a
20 certificate supports the right and beneficial use continued.

21 AID – 8 shows 27.26 acres are within the Answer No. 112 area and receiving water. US –
22 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 112
23 was being irrigated with surface water, but that there is a state right totaling 30 acres. Certificate
24 No. 142 is a Class 7 right issued to Ira Gano and confirming a right for the irrigation of 30 acres in
25 Government Lot 1, Section 7. See also DOE 133 at p. 20. That legal description is identical to that
set forth in Answer No. 112. DOE – 136 at 34. Therefore, the Court finds that the Class 7 right
confirmed to Ira Gano applies to the land in Government Lot 1 of Section 7 and authorizes the
irrigation of a total of 30 acres. A primary groundwater right for 29.70 acres applies to the Answer
No. 106 lands. US – 126.

There is no evidence indicating which exact acres encompassed by Answer No. 112 have
been irrigated. The Ninth Circuit stated that water rights not used on the parcels comprising the

1 Answer Numbers would revert to reservation users. Ahtanum II at 911, 913. As noted above, AID
2 – 8 shows that 27.26 acres are receiving water. That quantity is less than the 35.9 acres found in
3 U.S. v. Ahtanum and also less than is authorized by Certificate No. 142.

4 The Court finds that the Answer No. 112 claimants are now entitled to a senior right from
5 Ahtanum Creek for irrigation of 27.26 acres on 8 parcels (Parcel Nos. 18120722008-09,
6 18120722403-05, 18120722408-10) and located in Government Lot 1, Section 7, T. 12 N., R. 18
7 E.W.M. See also DOE 136 at 34. Use of water in Section 7 on these parcels is supported by the
8 Class 7 right confirmed to Ira Gano in Achepohl for a maximum use of 30 acres. According to
9 AID – 8, 27.26 acres are being irrigated at this time – 35.9 acres were authorized for irrigation
10 pursuant to the Pope Decree and 30 acres pursuant to Certificate No. 142. See Ahtanum II, 330 F.2d
11 at 918. Thus, between 1957 and 1993, a portion of the water rights on the parcel were either
12 abandoned or relinquished. RCW 90.14.130. The Court will confirm a right to divert 0.273 cfs, 47
13 acre-feet per year from April 15 to July 10 for the irrigation of 27.26 acres in Government Lot 1 of
14 Section 7. The point of diversion shall be a point in the SE1/4NE1/4 of Section 12, T. 12 N., R. 17
15 E.W.M. Certificate No. 142. The date of priority shall be 1870. Id.

16 Thomas Worrell

17 According to AID – 8, Thomas Worrell owns the 2 parcels (Parcel Nos. 18120341004,
18 18120344002) encompassed in Answer No. 122 and located in the W1/2 of Government Lot 8 and
19 W1/2NE1/4SE1/4 of Section 3, T. 12 N., R. 18 E.W.M. See also DOE 136 at 34. Mr. Worrell
20 grows pasture on his lands. Mr. Worrell also participated in U.S. v. AID and filed Answer No. 122
21 stating that in 1957, he owned one parcel consisting of approximately 37.5 acres in the area
22 described above and irrigated 30.4 acres; his predecessors irrigated 20 acres in 1908. Id. Therefore,
23 lands owned by Mr. Worrell that are encompassed in Answer No. 122 are entitled to a senior right
24 for a maximum of 20 acres in Section 7, Ahtanum II, 330 F.2d at 917, if a certificate supports the
25 right and beneficial use continued.

AID – 8 shows 34.9 acres are within the Answer No. 122 area and receiving water. US –
126, based on 1977 aerial photography, indicates 15.20 acres encompassed in Answer No. 122 were
irrigated with surface water and there is a state right for 33 acres. The water right certificate
applicable to the Answer No. 122 lands is Certificate No. 230, a Class 9 right that issued to John
Purviance and authorized the irrigation of 33 acres in the W1/2 of Government Lot 8 and
W1/2NE1/4SE1/4 of Section 3, T. 12 N., R. 18 E.W.M. The certificate indicates that 17 of the 33

1 acres are located in Lot 8. See also DOE – 133 at 42. Therefore, the Court finds that Certificate No.
2 230 applies to the lands encompassed by Answer No. 122 and authorizes a maximum use of 33
3 acres. Answer No. 122 lands have no appurtenant groundwater right. US – 126 at 105.

4 The Court finds that the Answer No. 122 claimants are now entitled to a senior right from
5 Ahtanum Creek for irrigation of 20 acres in 2 parcels (Parcel Nos. 18120341004 and 18120344002)
6 and located in the W1/2 of Government Lot 8 and W1/2NE1/4SE1/4 of Section 3, T. 12 N., R. 18
7 E.W.M. Use of water in Section 3 is supported by the Class 9 right confirmed to John Purviance
(Certificate No. 230). See also DOE – 133 at 42.

8 The Court will confirm a right to divert 0.2 cfs, 34.45 acre-feet per year from April 15 to
9 July 10 for the irrigation of 20 acres in the W1/2 of Government Lot 8 and the W1/2NE1/4SE1/4 of
10 Section 3. The point of diversion shall be a point located on the west boundary of Lot 8, Section 4,
11 T. 12 N., R. 18 E.W.M. and also a point near the SW corner of the SE1/4NW1/4 of Section 5, T. 12
N., R 18 E.W.M. Certificate No. 230. The priority date shall be 1872. Id.

12 Based on AID – 8 and Certificate No. 136, the Court also confirms a junior right to Thomas
13 Worrell that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
14 including potential storage, are being made of the excess by water right holders on the reservation.
15 The only evidence on water use in for lands encompassed in Answer No. 122 was provided in US—
16 126 and AID – 8. US – 126 indicates that none of the land was irrigated in 1977 while AID – 8
17 shows that 34.9 acres have been irrigated. The Achepohl right authorizes irrigation of 33 acres in
18 the W1/2 of Lot 8 and the W1/2NE1/4SE1/4 of Section 3, T. 12 N., R. 18 E.W.M. The Court
19 confirmed a right to irrigate 20 acres above

20 Therefore, the Court finds the junior right is appurtenant to 10.4 acres. Based on historic
21 use, the additional water is used on 2 parcels (Parcel No. 18120341004 and 18120344002) and
22 located in the W1/2 of Government Lot 8 and W1/2NE1/4SE1/4 of Section 3, T. 12 N., R. 18
23 E.W.M. See also DOE 136 at 34. With the caveat set forth above regarding restrictions on when the
24 water can be used, the period of use shall be April 15 – July 10. The maximum diversion shall be
25 0.10 cfs, 17.89 acre-feet per year. AID – 8. The point of diversion shall be a point located on the
west boundary of Lot 8, Section 4, T. 12 N., R. 18 E.W.M. and also a point near the SW corner of
the SE1/4NW1/4 of Section 5, T. 12 N., R 18 E.W.M. The priority date, to be used in conjunction
with other junior/excess water users, shall be 1872.

1 Answer Nos. 124 and 125

2 The Court notes that no claims were submitted by AID for lands that were described in
3 Answer Nos. 124 and 125 in the Pope Decree. The Court finds that any such claims are hereby
4 relinquished or abandoned pursuant to RCW 90.14.

5 Alvin Woolem; Bob Bohannon

6 According to AID – 8, the above named claimants own the 3 parcels (Parcel Nos.
7 18120341002-03, 18120344001) encompassed in Answer No. 126 and located approximately in the
8 E1/2NE1/4SE1/4 and the E1/2 of Government Lot 8, all in Section 3, T. 12 N., R. 18 E.W.M. See
9 also DOE 136 at 35. They grow hay and pasture on their lands. Curt Heath participated in U.S. v.
10 AID and filed Answer No. 126 showing that in 1957, he owned two parcels consisting of
11 approximately 36.75 acres in Section 3 and irrigated 21.1 acres; his predecessors irrigated 20 acres
12 in 1908. Id. Therefore, lands owned by Answer No. 126 claimants encompassed in Answer No.
13 126 are entitled to a senior right for a maximum of 20 acres, Ahtanum II, 330 F.2d at 917, if a
14 certificate supports the right and beneficial use continued.

15 AID – 8 shows 19.6 acres are within the Answer No. 126 area and receiving water. US –
16 126, based on 1977 aerial photography, indicates 34.70 acres are encompassed in Answer No. 126
17 and irrigated with surface water and there is a state right for irrigation of 20 acres. Certificate No.
18 231, a Class 9 right, issued to Eugene Banks for the irrigation of 20 acres in the E1/2NE1/4SE1/4
19 and E1/2 of Lot 8, Section 3. See also DOE 133 at p. 42. That legal description is identical to that
20 set forth in U.S. v. Ahtanum, DOE – 136 at 35. Therefore, the Court finds that the Class 9 right
21 confirmed to Eugene Banks applies to the Section 3 lands and authorizes a total use for 20 acres. A
22 primary groundwater right for 34 acres applies to the Answer No. 126 lands. US – 126.

23 There is no evidence before the Court indicating which acres in Section 7 encompassed by
24 Answer No. 126 have been beneficially used. The Ninth Circuit stated plainly that water rights not
25 used on the parcels comprising the Answer Numbers would revert to reservation users. Ahtanum II
at 911, 913. AID – 8 shows that 19.6 acres are receiving water. That quantity is less than the 20
acres found in U.S. v. Ahtanum and also less than is authorized by Certificate No. 231.

 The Court finds that the Answer No. 126 lands are now entitled to a senior right from
Ahtanum Creek for irrigation of 19.6 acres in 3 parcels (Parcel Nos. 18120341002-03,
18120344001) and located approximately in the E1/2NE1/4SE1/4 and the E1/2 of Government Lot
8, all in Section 3, T. 12 N., R. 18 E.W.M. See also DOE 136 at 35. Use of water in Section 3 on

1 this parcel is supported by the Class 9 right confirmed to Eugene Banks in Achepohl for a
2 maximum use of 20 acres. According to AID – 8, 19.6 acres are being irrigated at this time – 20
3 acres were authorized for irrigation pursuant to the Pope Decree and 20 acres pursuant to Certificate
4 No. 231. See Ahtanum II, 330 F.2d at 918. Thus, between 1957 and 1993, a small portion of the
5 water rights on the parcel were either abandoned or relinquished. RCW 90.14.130.

6 The Court confirms a right to divert 0.196 cfs, 33.76 acre-feet per year from April 15 to July
7 10 for the irrigation of 19.6 acres in E1/2NE1/4SE1/4 and E1/2 of Government Lot 8 in Section 3.
8 The point of diversion shall be a point in Lot 8 of Section 4 and a point near the SE1/4NW1/4 of
9 Section 3, T. 12 N., R. 18 E.W.M. Certificate No. 231. The date of priority shall be 1872. Id.
10 James D. Forsythe (Claim No. 00026)

11 James Forsythe filed Court Claim No. 00026 but did not appear at the hearing. According to
12 AID – 8, he owns the 9 parcels (Parcel Nos. 18120342001, 18120343401-08) encompassed in
13 Answer No. 127 and located approximately in the NW1/4SE1/4, except the west 594 feet, and the
14 east 16 acres of Government Lot 7; All being within Section 3, T. 12 N., R. 18 E.W.M. See also
15 DOE 136 at 35. Mr. Forsythe grows pasture on these lands. Mr. Arthur Davis participated in U.S.
16 v. AID and filed Answer No. 127, stating that in 1957 he owned three parcels consisting of
17 approximately 38 acres in the area described above and irrigated 25.1 acres; his predecessors
18 irrigated 15 acres in 1908. Id. Therefore, lands owned by Mr. Forsythe that are encompassed in
19 Answer No. 127 are entitled to a senior right for the irrigation of a maximum of 15 acres in Section
20 3, Ahtanum II, 330 F.2d at 917, if a certificate supports the right and beneficial use continued.

21 AID – 8 shows 35 acres are within the Answer No. 127 area and receiving water. US – 126,
22 based on 1977 aerial photography, indicates 4.80 acres encompassed in Answer No. 127 were
23 irrigated with surface water and there is a state right for 35 acres. The water right certificates
24 applicable to the Answer No. 127 lands are Certificate Nos. 229 and 91. Certificate No. 229 is a
25 Class 9 right issued to Arthur Davis confirming a right to irrigate 22 acres in the NW1/4SE1/4 of
Section 3, T. 12 N., R. 18 E.W.M., except the west 594 feet. Certificate No. 91 is a Class 5 right
issued to C. E. Fineberg and authorized the irrigation of 13 acres in the east 16.5 acres of Lot 7 in
Section 3. See also DOE 133 at 7, 41. Those places of use match the parcel description set forth in
Answer No. 127. Therefore, the Court finds the Class 9 right confirmed to Arthur Davis and the
Class 5 right confirmed to C. E. Fineberg apply to the Answer No. 127 lands and authorizes a total
use of 35 acres. No groundwater rights apply to the Answer No. 127 lands. US – 126.

1 The Court finds the Answer No. 127 claimants are now entitled to a senior right from
2 Ahtanum Creek for irrigation of 15 acres. No specific evidence was presented indicating which 15
3 acres out of the 35 irrigated the senior right is appurtenant to. The Court recommends the right be
4 divided as follows. Pursuant to Ahtanum II and AID – 8, a surface water right is appurtenant to 13
5 acres in 8 parcels (Parcel Nos. 18120343401-08) located in the east 16 acres of Government Lot 7
6 of Section 3, T. 12 N., R. 18 E.W.M., based on the Class 5 right for the irrigation of 13 acres that
7 issued to C. E. Fineberg (Certificate No. 91). DOE – 133 at 42. The Court also finds that a surface
8 water right is appurtenant to 2 acres in 1 parcel (18120342001) and located in the NW1/4SE1/4,
except the west 594 feet, all being within Section 3, T. 12 N., R. 18 E.W.M. DOE 136 at 35.

9 The Court will confirm a right to divert 0.13 cfs, 22.42 acre-feet per year from April 15 to
10 July 10 for the irrigation of 13 acres in the east 16 acres of Government Lot 7 of Section 3 and a
11 right with a priority date of 1872 for the diversion of 0.02 cfs, 3.45 acre-feet per year from April 15
12 through July 10 for the irrigation of 2 acres in the NW1/4SE1/4 of Section 3. The point of diversion
13 shall be a point located in the SE1/4SE1/4 or near the southeast corner of Lot 8, Section 4, T. 12 N.,
R. 18 E.W.M. and also a point near the SW corner of the SE1/4NW1/4 of Section 3, T. 12 N., R 18
E.W.M. Certificate Nos. 91 and 229.

14 Based on AID – 8 and Certificate No. 136, the Court also confirms a junior right to James
15 Forsythe that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
16 including potential storage, are being made of the excess by water right holders on the reservation.
17 The only evidence on water use in for lands encompassed in Answer No. 127 was provided in US—
18 126 and AID – 8. US – 126 indicates that 4.80 acres were irrigated on all the lands encompassed in
19 Answer No. 127 in one year – 1977 while AID – 8 shows that approximately 35 acres have been
20 irrigated. The Achepohl rights authorize irrigation of up to 35 acres in Lot 7 and NW1/4SE1/4 of
Section 3, T. 12N., R. 18 E.W.M. The Court granted a right to 15 acres above.

21 Therefore, the Court finds that the junior right is appurtenant to 10.1 acres based on historic
22 water use. AID – 8 shows the additional water is used on 1 parcel (Parcel No. 18120342001) and
23 located in the NW1/4SE1/4, except the west 594 feet; All being within Section 3, T. 12 N., R. 18
24 E.W.M. See also DOE 136 at 35. With the caveat set forth above, the period of use shall be April
25 15 – July 10. The maximum diversion shall be 0.101 cfs, 17.37 acre-feet per year. AID – 8. The
point of diversion shall be a point located near the SE corner of Lot 8, Section 4, and a point near

1 the SW corner of the SE1/4NW1/4 of Section 3, all within T. 12 N., R 18 E.W.M. The priority date,
2 to be used in conjunction with other junior/excess water users, shall be 1872.

3 Lawrance & Shirley Riegel

4 According to AID – 8, the Riegels own one parcel (Parcel No. 18120331422) encompassed
5 in Answer No. 128 and located in the NE1/4SW1/4, Section 3, T. 12 N., R. 18 E.W.M., except the
6 east 25 feet for road usage. See also DOE 136 at 36. The Riegels grow pasture on their lands.
7 Mr. William Fetzer participated in U.S. v. AID and filed Answer No. 128 stating in 1957, he owned
8 one parcel consisting of 40 acres in the area described above and irrigated 33.3 acres; his
9 predecessors irrigated 0.5²⁷ acre in 1908. Id. Thus, lands owned by the Riegels encompassed in
10 Answer No. 128 are entitled to a senior right for a maximum of 0.5 acres in Section 3, Ahtanum II,
11 330 F.2d at 919, if a certificate supports the right and beneficial use continued.

12 AID – 8 shows 2 acres are within the Answer No. 128 area and receiving water. US – 126,
13 based on 1977 aerial photography, indicates 20.80 acres encompassed in Answer No. 128 were
14 irrigated with surface water and there is a state right for 40 acres. The certificate applicable to the
15 Answer No. 128 lands is Certificate No. 89, a Class 5 right issued to Daniel Goodman and
16 authorizing the irrigation of 77 acres in the NE1/4SW1/4, Lot 6 and the West 8.75 acres of Lot 7
17 within Section 3. The parcel description in the certificate matches that set forth in Answer No. 128
18 for lands in the NE1/4SW1/4 of Section 3. Therefore, the Court finds that the Class 5 right
19 confirmed to Daniel Goodman applies to the Section 3 lands and authorizes irrigation in the
20 NE1/4SW1/4 of Section 3. No groundwater rights apply to the Answer No. 128 lands. US – 126.

21 The Court finds the Answer No. 128 claimants are now entitled to a senior right from
22 Ahtanum Creek for irrigation of 0.5 acres in one parcel (Parcel No 18120331422) and located in the
23 NE1/4SW1/4 of Section 3, T. 12 N., R. 18 E.W.M. except the east 25 feet for road. Use of water in
24 Section 3 is supported by the Class 5 right confirmed to Daniel Goodman (set forth in Certificate
25 No. 89). See also DOE – 133 at 6. The Court will confirm a right to divert 0.005 cfs, 0.86 acre-feet
per year from April 15 to July 10. The point of diversion shall be a point located in Lot 8, Section 4,
T. 12 N., R. 18 E.W.M. Certificate No. 89. The priority date shall be 1868. Id.

Based on AID – 8 and Certificate No. 136, the Court also confirms a junior right to the

²⁷ The Ninth Circuit reduced the 1908 acreage based on testimony that the acreage was subirrigated and in order to establish a water right, a diversion is required. Ahtanum II 330 F.2d at 916.

1 Riegels that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
2 including potential storage, are being made of the excess by water right holders on the reservation.
3 The only evidence on water use in for lands encompassed in Answer No. 128 was provided in US—
4 126 and AID – 8. US – 126 indicates that 20.80 acres were irrigated on all the lands encompassed
5 in Answer No. 128 in one year – 1977. AID – 8 shows that approximately 2 acres have been
6 irrigated. The Achepohl right authorizes irrigation of up to 40 acres in the NE1/4SW1/4 of Section
3, T. 12 N., R. 18 E.W.M. The Court granted a right to 0.5 acres above

7 Therefore, the Court finds that the junior right is appurtenant to 1.5 acres. Based on AID –
8 8, the additional water is used on one parcel (Parcel No. 18120331422) and located in the
9 NE1/4SW1/4, Section 3, T. 12 N., R. 18 E.W.M., except the east 25 feet for road. See also DOE
10 136 at 36. With the caveat set forth above, the period of use shall be April 15 – July 10. The
11 diversion shall be 0.015 cfs, 2.58 acre-feet per year. AID – 8. The point of diversion shall be a point
12 located in Lot 8, Section 4, T. 12 N., R. 18 E.W.M. Certificate No. 89. The priority date, to be used
in conjunction with other junior/excess water users, shall be 1868. Id.

13 Answer No. 129

14 The Court notes that no claims were submitted by AID for lands that were confirmed rights
15 under Answer No. 129 in the Pope Decree. The Court finds that any such claims are hereby
relinquished or abandoned pursuant to RCW 90.14 and 90.03.

16 Elmer Rhodes (Claim No. 01729); J. H. Brummett

17 Elmer Rhodes filed Claim No. 01729. On July 15, 1993, Mr. Rhodes withdrew his court
18 claim. On September 28, 1993, the Court dismissed Mr. Rhodes court claim. Mr. Rhodes did not
appear at the hearing, instead relying on the evidence submitted by AID.

19 According to AID – 8, the above named claimants own the 2 parcels (Parcel Nos.
20 18120332002, 18120332006) encompassed in Answer No. 130 and located in the east 990 feet of
21 the north 660 feet of the NW1/4SW1/4, Section 3, T. 12 N., R. 18 E.W.M., except a right of way on
22 the north part of the parcel for road usage. See also DOE 136 at 36. Answer No. 130 claimants
23 grow pasture on their lands. AID – 8. A. R. Stephenson and L.H. Rhodes participated in U.S. v.
24 AID and filed Answer No. 130 showing that in 1957, they owned one parcel consisting of
25 approximately 15 acres in the area described above and irrigated 13.7 acres; their predecessors

1 irrigated 8 acres in 1908. Id. Therefore, lands owned by the claimants encompassed in Answer No.
2 130 are entitled to a senior right for a maximum of 8 acres in Section 3, Ahtanum II, 330 F.2d at
3 919, if a certificate supports the right and beneficial use continued.

4 AID – 8 shows 9.50 acres are within the Answer No. 130 area and receiving water. US –
5 126, based on 1977 aerial photography, states 11.10 acres within Answer No. 130 were irrigated
6 with surface water and there is a state right for 15 acres. The water right certificate applicable to the
7 Answer No. 130 lands is Certificate No. 88, a Class 5 right issued to Joseph Vance confirming a
8 right for the irrigation of 38 acres in the NW1/4SW1/4 of Section 3. See also DOE 133 at 6.
9 Answer No. 130 only covers a 15-acre portion of the quarter-quarter section²⁸ described in
10 Certificate No. 88. No groundwater rights apply to the Answer No. 130 lands. US – 126.

11 The Court finds the Answer No. 130 claimants are now entitled to a senior right from
12 Ahtanum Creek for irrigation of 8 acres in 2 parcels (Parcel No 18120332002 and 18120332006)
13 and located in the east 990 feet of the north 660 feet of the NW1/4SW1/4 of Section 3, T. 12 N., R.
14 18 E.W.M. Use of water in Section 3 is supported by the Class 5 right confirmed to Joseph Vance
15 (set forth in Certificate No. 88). See also DOE – 133 at 6. The Court will confirm a right to divert
16 0.08 cfs, 13.78 acre-feet per year from April 15 to July 10 for the 8 acres. No point of diversion is
17 listed in Certificate No. 88, therefore, the Court requests one be supplied by the date for filing
18 exceptions. The priority date shall be 1868. Certificate No. 88.

19 Based on AID – 8 and Certificate No. 88, the Court also confirms a junior right to the
20 Riegels that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
21 including potential storage, are being made of the excess by water right holders on the reservation.
22 The only evidence on water use in for lands encompassed in Answer No. 128 was provided in US—
23 126 and AID – 8. US – 126 indicates that 11.10 acres were irrigated on all the lands encompassed
24 in Answer No. 128 in one year – 1977, and AID – 8 shows that approximately 9.50 acres have been
25 irrigated. The Achepohl right authorizes irrigation of up to 38 acres in the NW1/4SW1/4 of Section
3, T. 12 N., R. 18 E.W.M. The Court granted a right to 8 acres above

Therefore, the Court finds the junior right is appurtenant to 1.5 acres. Based on AID – 8, the
water is used on 2 parcels (Parcel Nos. 18120332002 and 18120332006) and located in the east 990
feet of the north 660 feet of the NW1/4SW1/4 of Section 3, T. 12 N., R. 18 E.W.M. With the caveat

²⁸ The Court notes Answer No. 129 and Answer No. 131 include the lands that constitute the rest of Answer No. 88.

1 set forth above regarding restrictions on when the right may be used, the period of use shall be April
2 15 – July 10. The maximum diversion shall be 0.015 cfs, 2.58 acre-feet per year. AID – 8. A point
3 of diversion location shall be supplied by the date for filing exceptions. The priority date, to be used
4 in conjunction with other junior/excess water users, shall be 1868.

5 Answer No. 131

6 The Court notes that no claims were submitted by AID for lands that were confirmed rights
7 under Answer No. 131 in the Pope Decree. The Court finds that any such claims are hereby
8 relinquished or abandoned pursuant to RCW 90.14/90.03.

9 Carl Brown; R. E. Cornelius

10 According to AID – 8, Carl Brown and R. E. Cornelius own the 3 parcels (Parcel Nos.
11 17121711001, 17121714001 and 17121712006) encompassed in Answer No. 132 and located
12 approximately in the NE1/4NE1/4, Lot 4 and two small parcels totaling 2.62 acres in the
13 NW1/4NE1/4 (more specifically described below), All being within Section 17, T. 12 N., R. 17
14 E.W.M. See also DOE 136 at 37. The two claimants grow apples, hay and pasture on their lands.
15 Edith Rutherford participated in U.S. v. AID and filed Answer No. 132 stating that in 1957, she
16 owned five parcels consisting of approximately 95 acres in the area described above and irrigated
17 88 acres; her predecessors irrigated 50 acres in 1908. Id. Therefore, lands owned by Carl Brown
18 and R. E. Cornelius that are encompassed in Answer No. 132 are entitled to a senior right for a
19 maximum of 50 acres in Section 17, Ahtanum II, 330 F.2d at 919, if a certificate supports the right
20 and beneficial use continued.

21 AID – 8 shows 63.80 acres are within the Answer No. 132 area and receiving water. US –
22 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 132
23 was irrigated with surface water but have a total state right for 97.50 acres. The certificates
24 applicable to the Answer No. 132 lands are: 1) Certificate No. 175, a Class 7 right issued to J.H.
25 Rutherford for the irrigation of 81.5 acres, originally encompassing the NE1/4NE1/4, Lot 4 and a
small tract of land in the NW1/4NE1/4, Section 17, T. 12 N., R. 17 E.W.M. 2) Certificate No. 80, a
Class 3 right, issued to Clinton Brosius and George Clark, authorizing the irrigation of 135 acres in
the SW1/4 of Section 9, T. 12 N., R. 17 E.W.M. Those rights were the subject of two change
certificates recorded at Vol. 1, page 148-49. Those change certificates swapped the points of

1 diversion and the place of use of 0.32 cfs and 16 acres²⁹ in the N1/2NE1/4NE1/4 of Section 17
2 (authorized by Certificate No. 175) with 0.32 cfs and 16 acres in the S1/2SW1/4SW1/4 (authorized
3 by Certificate No. 80). That change explains why a portion of the right claimed by AID within
4 Section 17 is Class 3 and a portion Class 7. The descriptions in Answer No. 132 match the parcel
5 descriptions in Certificate Nos. 80 and 175 as amended by Change Certificates recorded in Vol. 1,
6 pages 148-49. The Court therefore finds the Class 7 right confirmed to J.H. Rutherford and the
7 Class 3 right confirmed to Clinton Brosius/George Clark apply to the Section 17 lands and authorize
8 a total use for 81.5 acres in the area described above of Section 17. A supplemental groundwater
9 right for 122 acres applies to the Answer No. 132 lands. US – 126.

10 The Court finds the Answer No. 132 claimants are now entitled to use water from Ahtanum
11 Creek for irrigation of 50 acres in 3 parcels (Parcel Nos. 17121711001, 17121714001 and
12 17121712006) and located approximately in the NE1/4NE1/4, the north 22.40 acres of Lot 4 and
13 one 2.50 acre parcel described as follows:

14 Beginning at the northeast corner of the NW1/4NE1/4, thence west 208 feet; thence south
15 314.13 feet; thence east 80.5 feet; thence southeasterly 255 feet to a point 16.5 feet west and
16 545.13 feet south of the northeast corner of the NW1/4NE1/4; thence south to a point 756
17 feet south of the north line of Lot 3; thence east 16.5 feet; thence north to beginning.

18 All being within Section 17, T. 12 N., R. 17 E.W.M. See also DOE 136 at 37.

19 Use of water in Section 17 is supported by a portion of the Class 7 right confirmed to J.H.
20 Rutherford (Certificate No. 175) and the Class 3 right confirmed to Clinton Brosius and George
21 Clark (Certificate No. 80) and as modified by Change Certificates at Vol. 1, Page 148-49 Records
22 of Change of Point of Diversion & Point of Use, SE – 8. However, the Court does not agree with
23 AID's assertion that all of Parcel No. 17121711001 enjoys a Class 3 right. Only the
24 N1/2NE1/4NE1/4 received a Class 3 right as authorized by Change Certificate on page 148 of the
25 Records of Change, which is 16 irrigated acres – less than half of the claim asserted by AID.

The Court will confirm a right to 0.16 cfs, 27.56 acre-feet per year for the 16 acres located in
the N1/2NE1/4NE1/4 (part of Parcel No. 17121711001) with an 1866 date of priority and a second
right for 0.34 cfs, 58.57 acre-feet per year for 34 acres in the S1/2NE1/4NE1/4, the north 22.40
acres of Lot 4 and the 2.50 acre parcel in the NW1/4NE1/4 described above. The period of use

²⁹ The change certificates do not denote a number of acres. However, the certificates are based on a water duty of .02 cfs per acre which is how the Court arrived at 16 acres.

1 shall be from April 15-July 10. The points of diversion shall be within the NW1/4NE1/4 of Section
2 17, the NW1/4NW1/4 of Section 18, and Lot 3 of Section 17, all within T. 12 N., R. 17 E.W.M. The
3 priority date shall be 1866 for lands in the N1/2NE1/4NE1/4 and 1870 for the remainder of the
4 lands making up Answer No. 132. Certificate Nos. 80 and 175.

5 Based on AID – 8 and Certificate No. 175, the Court also confirms a junior right to the
6 Brown and Cornelius that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs
7 and no uses, including potential storage, are being made of the excess by water right holders on the
8 reservation. The only evidence on water use in for lands encompassed in Answer No. 132 was
9 provided in US—126 and AID – 8. US – 126 indicates that none of the land was irrigated in one
10 year – 1977. AID – 8 shows that approximately 63.8 acres have been irrigated. The Achepohl right
11 authorizes irrigation of up to 81.5 acres in the areas described above of Section 17, T. 12 N., R. 18
12 E.W.M. The Court granted a right to 50 acres above.

13 The Court finds the junior right is appurtenant to 13.8 acres. Based on AID – 8, the water is
14 used on 3 parcels (Parcel Nos. 17121711001, 17121714001 and 17121712006) and located
15 approximately in the S1/2NE1/4NE1/4, the North 22.40 acres of Lot 4 and a 2.50-acre parcel in the
16 NW1/4NE1/4 described as follows:

17 Beginning at the northeast corner of the NW1/4NE1/4, thence west 208 feet; thence south
18 314.13 feet; thence east 80.5 feet; thence southeasterly 255 feet to a point 16.5 feet west and
19 545.13 feet south of the northeast corner of the NW1/4NE1/4; thence south to a point 756
20 feet south of the north line of Lot 3; thence east 16.5 feet; thence north to beginning.

21 All being within Section 17, T. 12 N., R. 17 E.W.M. See also DOE 136 at 37.

22 With the caveat set forth above regarding the restrictions when water may be used, the
23 period of use shall be April 15 – July 10. The maximum instantaneous diversion shall be 0.138 cfs
24 for the Answer No. 132 lands with a maximum annual diversion of 23.77 acre-feet. AID – 8. The
25 points of diversion shall be within the NW1/4NE1/4 of Section 17, the NW1/4NW1/4 of Section 18,
and Lot 3 of Section 17, all within T. 12 N., R. 17 E.W.M. The priority date shall be 1870 for the
remainder of the lands making up Answer No. 132, to be used in conjunction with other
excess/junior water users.

Lynn Tobin and Eugene Carpenter

According to AID – 8, the above named claimants own the 2 parcels (Parcel Nos.
17120923001-02,) encompassed in Answer No. 133 and located approximately in the
N1/2NW1/4SW1/4 and that part of the SW1/4NW1/4 lying south of the County Road, all in Section

1 9, T. 12 N., R. 17 E.W.M. See also DOE 136 at 37. The two claimants grow apples and pasture.
2 AID – 8. Dean Rutherford participated in U.S. v. AID and filed Answer No. 133 stating that in
3 1957, he owned one parcel consisting of approximately 39 acres in the area described above and
4 irrigated 28 acres; his predecessors irrigated 16 acres in 1908. Id. Therefore, lands owned by Lynn
5 Tobin and Eugene Carpenter that are encompassed in Answer No. 133 are entitled to a senior right
6 for a maximum of 16 acres in Section 17, Ahtanum II, 330 F.2d at 919, if a certificate supports the
7 right and beneficial use continued.

8 AID – 8 shows 36.41 acres are within the Answer No. 133 area and receiving water. US –
9 126, based on 1977 aerial photography, indicates none of the land encompassed in Answer No. 133
10 was irrigated with surface water but there is a state right for 39 acres. Certificate No. 78 is
11 applicable to the Answer No. 133 lands, a Class 2 right issued to Clinton Brosius and George Clark.
12 That right authorized the irrigation of 70 acres in the N1/2SE1/4 of Section 9 but the place of use
13 was changed to the SW1/4NE1/4 and S1/2NW1/4 of Section 9, T. 12 N., R. 17 E.W.M. Certificate
14 of Change recorded in Volume 1, Page 113. The Court finds a portion of Certificate No. 78 as
15 changed applies to the Answer No. 133 lands lying in that portion of the SW1/4NW1/4 of Section 9
16 lying south of the county road. A supplemental groundwater right for 63 acres applies to some of
17 the Answer No. 133 lands. US – 126. The Court was not able to identify any other right awarded in
18 the Achepohl decree appurtenant to the Answer No. 133 land.

19 The Court finds the Answer No. 133 claimants are now entitled to a senior right from
20 Ahtanum Creek for irrigation of 16 acres in Parcel Nos. 17120923001-02 and located in that portion
21 of the SW1/4NW1/4 of Section 9, T. 12 N., R. 17 E.W.M lying south of the county road. Use of
22 water in Section 9 is supported by a portion of the Class 2 right confirmed to Clinton Brosius and
23 George Clark (Certificate No. 78 as amended by Certificate of Change, Vol. 1, p. 113). See also
24 DOE 133 at 4. The Court will confirm a right to divert 0.16 cfs, 27.56 acre-feet per year from April
25 15 to July 10 for the irrigation of 16 acres. The point of diversion was also changed in Vol. 1, Page
216 for approximately one-half of Certificate No. 78. The change certificate does not indicate
which lands the changed point of diversion serves. Therefore, the Court has no evidence to
determine if the lands for which a right be confirmed are served by the original point of diversion or
the changed point of diversion set forth in Vol. 1, Page 216. AID will need to provide such
evidence by the date set for filing exceptions. The priority date shall be 1865. Certificate No. 78.

1 The Court is unable to confirm any junior/excess water rights based on the evidence
2 supplied. The Court identified only one pertinent water right certificate and it applied only to the
3 lands in the S1/2NW1/4 of Section 9. The Court confirmed rights for lands in the SW1/4NW1/4
4 which are part of Answer No. 133 as submitted in AID – 88. The remaining lands in AID – 8
5 appear to be in the N1/2NW1/4SW1/4 of Section 9. Certificate No. 78 does not apply to those
6 lands. This Court can only confirm water rights for lands with an existing water right certificate.
7 Therefore, AID must prove that a water right certificate applies to lands in the N1/2NW1/4SW1/4.

8 Answer No. 134

9 No claims were submitted by AID for lands that were confirmed rights under Answer No.
10 134 in the Pope Decree. The Court finds that any such claims are hereby relinquished or abandoned
11 pursuant to RCW 90.14/90.03.

12 Russell Bohannon

13 According to AID – 8, Russell Bohannon owns the 3 parcels (Parcel Nos. 18120314411-12,
14 18120314414) encompassed in Answer No. 135 and located approximately in the west 524.4 feet of
15 the east 1024.4 feet of Lot 1, and of the SE1/4NE1/4, except beginning at the northeast corner of
16 said tract; thence south 922.5 feet, thence west 80°30' west 530.5 feet; thence north to the north line
17 of said section; thence east to beginning, All being within Section 3, T. 12 N., R. 18 E.W.M. See
18 also DOE 136 at 38. The claimant grows pasture on his lands. Raymond Decoto participated in
19 U.S. v. AID and filed Answer No. 135 asserting that in 1957, he owned one parcel consisting of
20 approximately 14.16 acres in the area described above and irrigated 10.6 acres; his predecessors
21 irrigated 16 acres in 1908. Id. Therefore, lands owned by Russell Bohannon that are encompassed
22 in Answer No. 135 are entitled to a senior right for the irrigation of 10.6 acres in a portion of Lot 1
23 and the SE1/4NE1/4 of Section 3, Ahtanum II, 330 F.2d at 919, if a certificate supports the right
24 and beneficial use continued.

25 AID – 8 shows 12.2 acres are within the Answer No. 135 area and receiving water. US –
126, based on 1977 aerial photography, indicates 4.10 acres within Answer No. 135 were irrigated
with surface water and there is a state right for 25.07 acres. The certificate applicable to the Answer
No. 135 lands is Certificate No. 110, a Class 5 right issued to William Bohlin for the irrigation of
25.07 acres in Section 3 with a legal description similar to that set forth for Answer No. 135. See
also DOE – 133 at 11. Therefore, the Court finds the Class 5 right confirmed to William Bohlin

1 applies to the Section 3 lands and authorizes a total use for 25.07 acres in the area described above.
2 No groundwater right applies to the Answer No. 135 lands. US – 126.

3 The Court finds Russell Bohannon is now entitled to a senior right from Ahtanum Creek for
4 irrigation of 10.6 acres in 3 parcels (Parcel Nos. 18120314411-12, 18120314414) encompassed in
5 Answer No. 135 and located approximately in the west 524.4 feet of the east 1024.4 feet of Lot 1,
6 and of the SE1/4NE1/4, except beginning at the northeast corner of said tract; thence south 922.5
7 feet, thence north 80°30' west 530.5 feet; thence north to the north line of said section; thence east
8 to beginning, All being within Section 3, T. 12 N., R. 18 E.W.M. See also DOE 136 at 37. Use of
9 water in Section 3 is supported by the Class 5 right issued to William Bohlin in Achepohl.
10 Certificate No. 110. The Court will confirm a right to divert 0.106 cfs, 18.26 acre-feet per year from
11 April 15 to July 10 for 10.6 acres. The points of diversion shall be within the SW1/4SE1/4SW1/4 of
12 Section 3, T. 12 N., R. 18 E.W.M. The priority date shall be 1868. Id.

13 Based on AID – 8 and Certificate No. 110, the Court also confirms a junior right to the
14 Bohannons that may only be used when the flow in Ahtanum Creek exceeds 62.59 cfs and no uses,
15 including potential storage, are being made of the excess by water right holders on the reservation.
16 The only evidence of water use for lands encompassed in Answer No. 135 was provided in US—
17 126 and AID – 8. US – 126 indicates that 4.10 acres were irrigated on all the lands encompassed in
18 Answer No. 135 in one year – 1977 while AID – 8 shows 12.2 acres have been irrigated. The
19 Achepohl right authorizes irrigation of up to 25.07 acres in the areas described above of Section 3,
20 T. 12 N., R. 18 E.W.M. The Court granted a right to 10.6 acres above.

21 Therefore, the Court finds that the junior right is appurtenant to 1.6 acres. Based on AID –
22 8, the additional water is used on 3 parcels (Parcel Nos. 18120314411-12, 18120314414) and
23 located approximately in the west 524.4 feet of the east 1024.4 feet of Lot 1, and the SE1/4NE1/4,
24 except beginning at the northeast corner of said tract; thence south 922.5 feet, thence north 80°30'
25 west 530.5 feet; thence north to the north line of said section; thence east to beginning, all being
within Section 3, T. 12 N., R. 18 E.W.M. See also DOE 136 at 37. With the caveat set forth above
regarding restrictions as to when water can be used, the period of use shall be April 15 – July 10.
The maximum diversion shall be 0.016 cfs, 2.76 acre-feet per year. AID – 8. The point of diversion
shall be within the SW1/4SE1/4SW1/4 of Section 3, T. 12 N., R. 18 E.W.M. The priority date, to be
used in conjunction with other excess/junior water users, shall be 1868.