

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

3 IN THE MATTER OF THE DETERMINATION)
4 OF THE RIGHTS TO THE USE OF THE)
5 SURFACE WATERS OF THE YAKIMA RIVER)
6 DRAINAGE BASIN, IN ACCORDANCE WITH) No. 77-2-01484-5
7 THE PROVISIONS OF CHAPTER 90.03,)
8 REVISED CODE OF WASHINGTON,)
9) SECOND MEMORANDUM OPINION
10 STATE OF WASHINGTON,) AND ORDER RE:
11 DEPARTMENT OF ECOLOGY,)
12) CASCADE IRRIGATION DISTRICT
13) COURT CLAIM NOS. 0891 AND 2800
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Plaintiff,
vs.
JAMES J. ACQUAVELLA, ET AL.,
Defendants

11 **I. INTRODUCTION**

12 Cascade has been the subject of numerous hearings and reports which are recounted in
13 the December 22, 2005 *Memorandum Opinion and Order (Memorandum Opinion)*. That
14 decision was issued by the Court to resolve exceptions to the Supplemental Report Concerning
15 Cascade's Water Rights on July 15, 2004, (Supplemental Report). Exceptions to the
16 *Memorandum Opinion* were filed by Cascade, the United States, the Yakama Nation and
17 Ecology. The Court, being fully advised, provides the following analysis of those exceptions.

18 **II. ANALYSIS**

19 **a. Ownership of the 16,800 Ac-Ft Storage Right**

20 Cascade and the United States are both somewhat less than enthusiastic regarding the
21 Court's findings to date as to how to decree ownership of the 16,800 acre-feet right. The Court
22 acknowledges that the parties have made significant efforts to resolve this outside of the court
23 process. The Court also recognizes that the arguments of both parties are well-founded and have
24 a basis in the history of the operation of the project as well as this adjudication – histories which
25 will not be recounted here. Further, both entities filed RCW 90.14 claims in 1974 asserting
ownership of this late irrigation season right. See WRC 095317 (CID 30) and 064442 (CID 31).
Finally, the Court points to its Supplemental Report at pages 11-16 where the unique nature of
the arrangement between Cascade and the United States is fully analyzed.

1 As a result, the Court finds the best way to reflect the intention of the agreements
2 between the two parties (to the extent the Court can glean those intentions a century after the
3 fact) and the history that has evolved since is through the issuance of two separate, but
4 interrelated water rights. As a result, the Court will confirm the following two rights:

5 The Court confirms a March 5, 1902 water right to the United States, Department of the
6 Interior, Bureau of Reclamation to divert in and to store in Lake Kachess, consistent with its
7 other obligations and opportunities, and to deliver to Cascade Irrigation District up to 16,800
8 acre feet. The right to deliver shall only be exercised from July 21 through October 15 and in an
9 instantaneous amount not to exceed 150 cubic feet per second.

10 Limitation of Use: The United States right to deliver shall be consistent with the requests
11 of Cascade Irrigation District as authorized by a separate but related right to divert and
12 beneficially use water that is confirmed to Cascade.

13 The Court confirms a March 5, 1902 water right to the Cascade Irrigation District to
14 divert from the Yakima River and beneficially use 16,800 acre-feet from July 21 to October 15
15 and in an instantaneous amount not to exceed 150 cfs.

16 Limitation of Use: This water right shall not accord Cascade Irrigation District or its
17 water users any authority over the United States' operation of the Yakima Project except
18 to request the United States to deliver 16,800 acre-feet, consistent with its related storage
19 and delivery right, during the authorized season.

20 In light of the Court's decision to decree ownership in two separate but interrelated
21 rights, the Court will not address the "trustee" dispute that exists between the United States and
22 various water suppliers.

23 The Court recognizes this ruling may be considered a departure from its findings in the
24 *Memorandum Opinion*. See page 4, lines 4-6. However, the Court believes the result reached
25 herein does acknowledge the interconnected responsibilities of the two entities while providing
the United States the flexibility and necessary authority to store and deliver water in a manner
consistent with overall project needs. Although a signed Conditional Final Order will accompany
this opinion, because this ruling constitutes a significant change from the prior *Memorandum
Opinion*, the Court will consider CR 59 motions for reconsideration on this issue only.

b. Interpretation of RCW 90.14 Claims

Cascade claimed water rights to several creeks at the 1994 hearing. Cascade had not
historically measured its diversions from the creeks. Similarly, Cascade had not provided

1 evidence quantifying the impact of Yakima Project return flows on the district's diversions.
2 Lacking diversionary evidence to the contrary, the 90.14 amendment was taken at face value and
3 the Court ruled they would not be relied up for purpose of quantifying Cascade's claims to the
4 creeks. The Court also denied Cascade's claim to the use of return flows off of KRD citing to its
5 *Additional Order RE: Limiting Agreements (Cascade Irrigation District, Ellensburg Water*
6 *Company, and West Side Irrigating Company)*, ¶3-¶6. Cascade was instructed that its claim to
7 creeks would require evidence of quantity and a differentiation between natural and return flows.

8 Cascade took exception to the Court's rulings in the Report denying water rights to the
9 creeks. The Court then directed Cascade to measure and monitor its use of the creeks during the
10 2000 irrigation season and quantify the amount of natural flow and return flows in those creeks.
11 Cascade did so. After reviewing the testimony and evidence, the Court granted Cascade water
12 rights to several creeks. The awards were in excess of its original RCW 90.14 Water Right
13 Claims but within the quantities claimed by Cascade in its RCW 90.14 Claim Amendments. See
14 Supplemental Report at 56; 58-98. No exceptions were filed regarding those quantities. The
15 quantities awarded in the Supplemental Report were carried over into the Court's *Memorandum*
16 *Opinion* and into the proposed Conditional Final Order.

17 Ecology takes exception to the creek water rights arguing there is no language revoking
18 the Court's earlier ruling on the RCW 90.14 claim amendments and no basis for the Court to rely
19 on that Amendment. The U.S. supports Ecology's exceptions. Ecology also expressed concern
20 about dewatering the creeks. The United States objects to the Court granting a water right to
21 return flows. Cascade counters that Ecology has offered no legal authority that restricts the
22 Court from relying on the amended claims. Cascade also argues that it is well recognized that
23 there is an inherent difficulty in separating natural flow from return flows. RCW 90.14.065(1)
24 allows for amending quantity to fix errors. If the Court elects to reverse its decision in the
25 Supplemental Report, Cascade asks for an opportunity to again amend its RCW 90.14 claims.
Cascade also states it is not seeking a right to return flows.

The Court did modify its original decision regarding the use of Cascade's RCW 90.14
amendment and did provide an explanation for revoking its ruling in the Report. An analysis of
the creek measurements and testimony is found in the Supplemental Report (pp. 51-99). The
evidence and testimony provided by Cascade at the 2002 hearing shows the quantities claimed in
the amendment, early in the irrigation season, are in fact, natural flows. As stated in the

1 amendment, the flow in the creeks after July 1st is predominately return flows. The data also
2 supported this fact. The confirmed water rights reflect this. *Id.* at 64-69; 74-76; 78-80; 82-83;
3 85-87; 89-90; 93-94; 96-98. The purpose for a supplemental hearing is to provide additional
4 evidence and testimony to support exceptions in an effort to persuade the Court to change its
5 original decision. Throughout this process, many of the elements of Cascade's water right have
6 been modified from that first Report based on additional evidence provided by Cascade: Annual
7 quantity, instantaneous quantity; priority date, season of use (Yakima River), and points of
8 diversion. There was a change in the manager of the district too.

9 If the Court elects to modify its decision, Cascade asks that the Conditional Final Order
10 not be entered so it can try to amend the quantities. RCW 90.14 provides a mechanism for
11 "amendment to such a statement of claim if the submitted amendment is based on:

12 (1) An error in estimation of the quantity of the applicant's water claim prescribed
13 in RCW 90.14.051 if the applicant provides reasons for the failure to claim such right in
14 the original claim;

15
16 The department shall accept any such submission and file the same in the registry
17 unless the department by written determination concludes that the requirements of
18 subsection (1), (2), or (3) of this section have not been satisfied." See RCW 90.14.065.

19 The Court believes this is unnecessary as those claims already exist in the form of CID
20 43. Cascade filed to amend those creek claims in 1987 (CID 43). Ecology accepted the
21 amendment (CID 44). A function of the Court in this adjudication is to determine, based on the
22 preponderance of the evidence, the historic water rights. Interpretation of the evidence is
23 necessary. Water right claims are but one piece of evidence. As previously held, "The Court
24 will continue to evaluate RCW 90.14 claims and give them an appropriate interpretation in
25 conjunction with other evidence submitted to support a claimed water right." See *Memorandum
Opinion RE: RCW 90.14 and Substantial Compliance*, February 10, 1995 at 9. That evidence
supported the Court's use of the 1987 Claim Amendments to provide the legal basis and support
for quantifying Cascade's water right. Supplemental Report at 56.

In light of the evidence in the record regarding creek flows and natural/return flows, the
Court finds Cascade's amendment substantially complies with RCW 90.14. See also *Ecology v.
Adsit*, 103 Wn.2d 698, 694 P.2d 1065 (1985); *Memorandum Opinion RE: RCW 90.14 and
Substantial Compliance*, February 10, 1995. Ecology requests that the Court include a

1 statement in the Conditional Final Order that Cascade has substantially complied with RCW
2 90.14. That statement is found herein and will not be included in the Conditional Final Order.

3 The U.S. further objects to the Court granting a right to use Yakima Project return flows
4 as it is contrary to the previous rulings by this Court and the Supreme Court. See *Additional*
5 *Order RE: Limiting Agreements (Cascade Irrigation District, Ellensburg Water Company, and*
6 *West Side Irrigating Company)*, ¶3-¶6 and *Ecology v. Bureau of Reclamation*, 118 Wn.2d 761,
7 827 P.2d 275 (1992). The U.S. argues that Court must adhere to those ruling or explain why it is
8 deviating from them. Failure to do so would be arbitrary and capricious. See *Motor Vehicles*
Mfts. Ass'n v. State Farm Mutual Auto Ins., 463 U.S. 29, 48 (1983).

9 The United States, apparently based on Cascade's RCW 90.14 claim filing (CID 43), is
10 under the false impression the Court awarded Cascade a water right to the use of project return
11 flows. The Court disagrees. The creek awards were based on the testimony of Richard C. Bain,
12 P.E., the analysis of the data collected by Cascade during 2000, and an interpretation of RCW
13 90.14. The creek rights confirmed to Cascade all specifically identify the source of water as
14 "natural flow". The Court included a provision on all of Cascade's creek rights that expressly
15 identifies the Court's ruling in *Additional Order RE: Limiting Agreements (Cascade Irrigation*
District, Ellensburg Water Company, and West Side Irrigating Company), April 1, 1994, ¶3-¶6.
16 The Court did not and does not grant a right to Cascade for use of return flows and the
Supplemental Report is clear on this issue.

17 Ecology also expressed concern about dewatering the creeks by awarding rights in these
18 amounts. The Subbasin Pathway contains a great deal of evidence that many of the creeks do go
19 dry before the end of the irrigations season. That is not a basis for denying a water right when
20 the evidence shows it was legally established. This adjudication is to determine historic and
21 valid water rights. However, there are stipulations in place which pertain to maintaining
22 naturally available flow in the creeks for non-diversionary stockwater and wildlife purposes.
23 See also *Second Amended Preface Report for the Major Claimant Pathway*, January 21, 1993.

24 Ecology's exception is DENIED.

25 **c. Non-Irrigation Season Stockwater**

The Court confirmed a right to Cascade to divert water from the Yakima River in the
amounts of 10 cfs and 250 acre-feet from October 16 through March 31 (the non-irrigation
season) for stockwater purposes. See Supplemental Report, pp. 27-35; *Memorandum Opinion*

1 *and Order* at 10. Cascade requests that the 250 acre-feet be identified as the consumptive
2 portion of the stock right. If this quantity were to be considered the diversionary amount,
3 Cascade would be limited to diverting for 13 days in reaching 250 acre-feet. Cascade is not
4 asking for a right greater than 10 cfs nor is it seeking quantification of conveyance water, only
5 that the consumptive use portion be identified.

6 Ecology and the Yakama Nation believe there is no evidence that Cascade diverts more
7 than 250 acre-feet, and for a number of reasons the canal has no conveyance losses. If the Court
8 grants Cascade's request, Ecology argues that metering would be difficult. Cascade may well
9 have to account for the number of stock in the service area to prove that it does not use more than
10 250 acre-feet. Ecology also argues that a continuous diversion of 10 cfs over the non-irrigation
11 season results in a diversion of 3,312 acre-feet to deliver 250 acre-feet which demonstrates an
12 inefficient use of water. The U.S. identified several issues regarding Cascade's change
13 application to move the right from the Yakima River to the creeks. Cascade counters that these
14 issues are outside of the Court's jurisdiction and the Court agrees. Although the U.S. has
15 identified several issues that may be relevant to the change application decision, these are not
16 issues which should be before this Court at this time. The Court is responsible for determining
17 Cascade's historic right to stockwater from the Yakima River. It is Ecology's responsibility to
18 consider these issues during the change process.

19 There are no Yakima River diversion records for the Cascade Canal during the non-
20 irrigation season. Thus, the Court relied on testimony and other evidence to quantify the right of
21 10 cfs and 250 acre-feet. The Court considered the following. CID 30 is Cascade's 1973 Water
22 Right Claim in which the district claims 30 cfs and 9,000 acre-feet for non-irrigation season
23 stockwater supply -- 9,000 acre-feet results from a continuous diversion of 30 cfs. CID 47 is
24 Richard Bain's engineering report for Cascade. Bain's estimated quantity of water for
25 stockwater purposes was 250 acre-feet. Bain arrived at this figure by relying on Ecology
guidelines of 1 acre-foot for a herd of 25-30 cattle. Testimony regarding the number of stock
within the Cascade service area was provided at the 1994 hearing by Bill Haberman and Kevin
Gibb, both long-time water users in Cascade. They estimated 5,000 to 10,000 head of stock were
in the district during the fall and winter. Using Ecology's figures regarding stock needs would
result in a consumptive use between 250 and 400 acre-feet for stockwater use during the non-
irrigation season. Jorge Rivera, a Cascade ditch rider who has monitored from Thorp to Kittitas

1 since 1979, testified at the 2002 hearing that Cascade diverted water from the Yakima River
2 from October into March for stockwater. Although Mr. Rivera did not know the amount
3 diverted, Cascade diverted water from the Yakima River every day during the duration of the
4 winter. Mr. Jantzer testified that he believed Cascade had not historically diverted the full 30 cfs
5 as allowed by its limiting agreement with the United States. Mr. Jantzer estimated 10-15 cfs had
6 been historically diverted from the Yakima River for stockwater during the non-irrigation
7 season. He also testified Cascade diverted about 2 cfs from each of the creeks. Neither
8 Mr. Jantzer nor Mr. Rivera testified that Cascade diverted water only 13 days, which would be
9 the result if the Court were to adopt Ecology and the Nation's position on this issue.

10 The Court believes this is not an issue of conveyance loss, but of the need to convey
11 water. Although there was testimony of the high ground water table infiltrating the canal, this
12 does not necessarily result in a sufficient flow capable of conveying water to the end of the canal.
13 It has been stated many times throughout this adjudication that it takes water to move water. As
14 a practical matter, in operating an irrigation system, water is diverted, conveyed, lost to the
15 system and returned to the river at the end of the canal.

16 Ecology claims it would create a great inefficiency to allow a diversion of 10 cfs on a
17 continuous basis. Cascade counters this issue is not a new one in this adjudication. Referee
18 Clausing, after considering this very issue in the Subbasin Pathway, deliberately declined to
19 recommend that the annual quantity be based on a continuous diversion of the instantaneous
20 amount. In the Supplemental Report for Subbasin No. 4 (Swauk) claimant Burkes expressed
21 what is turning into a valid concern that their stockwater right would be limited to the
22 consumptive portion only (8.5 acre-feet), when there was a non-quantified amount needed for the
23 carriage of that consumptive portion (106.5 acre-feet needed to convey the water). Although
24 Referee Clausing declined to recommend an annual amount for carriage, he did recognize the
25 need. The water right was quantified based on the consumptive use portion only (pp. 8-9). This
issue is addressed again in the Supplemental Report for Subbasin No. 2 (Easton), Volume 21A,
pp. 4-5. Referee Clausing recommended to Big Creek Water Users a right for stockwater based
on a similar principle. He recommended 2.6 cfs (September 2-November 15); 3.7 cfs
(November 16-February 29); and 2.6 cfs (March 1 to April), 15 acre-feet be confirmed during
non-irrigation season. A diversion of these quantities over the non-irrigation season results in a
total annual diversion of 1,480 acre-feet. See also Conditional Final Order for Subbasin 2,

1 February 13, 1997; Conditional Final Order for Subbasin 4, January 9, 2003. In Subbasin No.
2 11, Ecology and the Menastash Water Ditch Association stipulated, for stockwater purposes, to a
3 diversion of 13.98 cfs from November 1 through March 31 and an annual quantity of 118.2 acre-
4 feet per year (continuous). See Supplemental Report of Referee, Volume 17A, pp. 83-84. At a
5 continuous rate of diversion of 13.98 cfs over a 152 day season (non-irrigation season),
6 approximately 4,215 acre-feet is diverted. Recognizing the total stockwater award for the
7 company is 118.5 acre-feet (continuously), half of the authorized water or 59.25 acre-feet could
8 be diverted during the non-irrigation season. At a rate of 13.98 cfs it would take the company
9 two days to divert 59 acre-feet. Although the word “consumptive” is not in front of stockwater, it
10 is clearly meant to reflect just that for the company. There are other examples of this practice,
11 whereby the Referee based annual quantity on the number of stock on the property during the
12 non-irrigation season and the instantaneous quantity is based on a greater quantity to allow for
13 conveyance of this water.

12 This Court’s task is to determine historic water rights. It is the past practice in this
13 adjudication to allow such diversions, and Ecology has stipulated to this practice on at least one
14 occasion. Ecology has not offered any reasoning to explain why Cascade should be treated
15 differently than other claimants. Ecology may need to address conveyance for purposes of
16 processing the change application; however that process is outside the scope of this adjudication.
17 Whether that makes metering difficult remains to be seen, but it will be no more difficult than for
18 the above-discussed claimants (or any others, see Subbasin No. 19). The Court has ruled
19 Cascade will measure and monitor its use of water and has left it up to the parties to best
20 determine how that will occur. No annual quantity will be established for conveyance purposes.

19 Ecology has suggested Cascade count the number of stock within the service area, which
20 the Court will not require. Since the issue of conveyance water appears to be basin-wide,
21 Ecology may want to consider a basin-wide resolution to this issue, involving all the parties who
22 were granted water rights that lacked quantification of conveyance water. The Court DENIES the
23 exceptions of Ecology, the United States and the Yakama Nation.

23 Past practice in this adjudication, along with the evidence, support the Court granting
24 Cascade’s claim that 250 acre-feet is the consumptive portion of the stockwater right. Cascade
25 has historically diverted water continuously throughout the non-irrigation season. The right will

1 be confirmed for 10 cfs, 250 acre-feet (consumptive portion) from the Yakima River for
2 stockwater from October 15th to March 31st. All other parameters of the right remain unchanged.

3 **d. Gravity Flow Point of Diversion**

4 At the November 18, 2004 hearing, Cascade asked the Court to authorize use of its old
5 gravity flow point of diversion yet indicated it was no longer in use. Cascade claims it did not
6 abandon the point and wants the flexibility to again use it "if need be." Lacking argument, the
7 Court interpreted as a request the gravity flow point be considered a standby or reserve point of
8 diversion. RCW 90.14.140(2)(b) allows a point to be maintained on a water right:

9 If such right is used for a standby, or reserve water supply to be used in time of drought
10 or other low flow period so long as withdrawal or diversion facilities are maintained in
11 good operating condition for the use of reserve of standby water supply.

12 The Court found "diversion facilities" would include point of diversion and associated
13 infrastructure. It was not clear water could be diverted/conveyed at the existing structure or
14 whether the headworks and/or the conveyance facilities were in good operating condition.

15 Cascade took exception to the Court's rulings and offered the Declaration of Anthony
16 Jantzer RE: Clarification of Condition of the Original Headgates (Jantzer Declaration) along with
17 color photos of the headworks and upper ditch (#19,312). According to Cascade, this gravity
18 flow point of diversion is still used to divert fish bypass flows and it is Cascade's intent to use
19 this point once funding can be obtained to repair the canal. Cascade disagrees with the Court's
20 definition of "diversion facilities." Cascade argues the condition of the diversion works is a
21 criteria of RCW 90.14.140(2)(b), not the condition of the canal. Cascade's gravity flow diversion
22 is in good operating condition. Cascade also points to Ecology's 2003 change approval.

23 Ecology does not believe there is a sufficient cause under RCW 90.14.140(2)(b) for this
24 point of diversion as there is no viable means of delivery of any water diverted. Also, if Cascade
25 wishes to include this point on its water right, Ecology invites it to file an application for change
pursuant to RCW 90.03.380. The U.S. concurs with the Court's ruling and believes there is no
water right that attaches to this point of diversion.

The exceptions led the Court to reassess RCW 90.14.140(2)(b) as a basis for Cascade's
claim to the gravity flow diversion point. RCW 90.14.160 addresses relinquishment with RCW
90.14.140 allowing sufficient causes to explain relinquishment. Cascade's water right is not
currently subject to a relinquishment analysis. Although Cascade originally claimed it would use

1 this point “as needed,” that is not the same as a claim for standby or reserve water supply.
2 Cascade is entitled to its full supply from other authorized points of diversion. This water is not
3 “to be used in time of drought or other low flow period.” Cascade has been awarded its full
4 entitlement to the Yakima River/creeks and simply asks that this point be included on its water
rights for use when needed. The analysis in the *Memorandum Opinion* at 10-11 is withdrawn.

5 In determining whether the point should be included with Cascade’s Yakima River water
6 right, the Court must analyze the same issue -- are the diversion facilities maintained in good
7 operating condition? To establish that the headworks and at least a portion of the canal are in
8 working order, Cascade offered the Declaration of Anthony Jantzer with an attached color photo
9 of the headworks and upper canal. The color photos provided by Cascade show water is being
10 diverted through the headworks and into the canal. There is native vegetation in the canal which
11 would restrict the flow. This vegetation may be beneficial for fish purposes. In 2004 Cascade
12 was diverting 10 cfs through the gravity flow point. Mr. Jantzer states he conducted a site visit
13 in 2003 and the headworks were in operating order. In 1992, Cascade and the Department of
14 Fish and Wildlife entered into an agreement to use this diversion point for fish passage. Water
15 has been diverted for this purpose since 1992. Thus, water has continued to be diverted through
16 the headworks and upper portion of the canal and the structure continuously used. It appears
neither Cascade nor WDFW obtained authorization to divert water for a fish bypass purpose.
The parties should contact Ecology to see if an application is necessary for this purpose.

17 How much of the canal must be in working order to include the gravity flow point of
18 diversion on Cascade’s water rights? Ecology and the United States provide no legal authority to
19 assist in this determination. Cascade acknowledges a portion of the canal is in need of repair. It
20 will be incumbent upon Cascade to expend the resources to make necessary repairs. Cascade has
21 stated it will rebuild the canal if funding is available. However, based on the evidence, water is
diverted through the headworks and the upper portion is still in operating condition.

22 Ecology suggests Cascade file a change application so Ecology can determine if it can be
23 included in its water rights. Cascade filed two change applications to add points of diversion to
24 its RCW 90.14 claim and to its Court claim. The applications were assigned numbers CS4-
25 WRC095317 and CS4-CTCL0891 respectively. In 2003 Ecology issued decisions on the

1 applications.¹ Those decisions reflect Cascade's intent as set forth in the applications for change.
2 Cascade sought to "add" diversion points to existing rights. Ecology's decisions authorized and
3 included the gravity flow point of diversion. The operating condition of this part of the Cascade
4 system has not significantly changed since 2003. The Court must conclude Ecology had the
5 facts to support the approval and has therefore made its tentative decision regarding this point of
6 diversion. The Court finds no further compliance with RCW 90.03.380 is required regarding the
7 gravity flow point. While not controlling, Ecology's conclusions 'are entitled to "great weight"'.
8 *Neubert v. Yakima-Tieton Irrigation District*, 117 Wn.2d 232, 239, 814 P.2d 199, citing *Bennett*
9 *v. Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990). Additionally, in November 1994,
10 Ecology and Cascade entered into a stipulation regarding its water rights. The gravity flow point
11 of diversion was included. The Court considers this stipulation to be binding.

12 Accordingly, the Court GRANTS Cascade's exception and DENIES Ecology and the
13 United States' exception. The gravity flow diversion point is located about 250 feet south and
14 785 feet east from the northwest corner of Section 28, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section
15 28, T. 19 N., R. 17 E.W.M. and shall be included on Cascade's Yakima River water right.

16 **e. Authorized Points of Diversion**

17 Cascade requested all the pumps installed on the Yakima River and listed in Ecology's
18 Report of Examination dated February 3, 2003, be included in its water rights. The Court
19 GRANTS Cascade's exception and confirms the following points of diversion:

- 20 1. 1980 feet south and 660 feet east from the northwest corner of Section 18, being within
21 the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T. 18 N., R. 18 E.W.M. (McManamy POD).
- 22 2. 1980 feet south and 1980 feet east of the northwest corner of Section 11, being within
23 the SE $\frac{1}{4}$ NW $\frac{1}{4}$ corner of Section 11, T. 20 N., R. 13 E.W.M. (Lake Easton/KRD
24 POD).
- 25 3. 2333 feet south and 491 feet west of the northeast corner of Section 34, being within
the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T. 19 N., R. 17 E.W.M. (Strawberry Flats POD).
4. SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T. 19 N., R. 17 E.W.M. (Clark Flats POD).
5. 250 feet south and 785 feet east from the northwest corner of Section 28, being within
the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, T. 19 N., R. 17 E.W.M. (Gravity Flow POD).

¹ Cascade filed an appeal of those decisions, but only to the quantity of water.

1
2 **f. Change Applications**

3 In its *Memorandum Opinion* at 12, the Court requested an update on the two applications
4 filed by Cascade. One application was to add the Buck point of diversion and the other was to
5 transfer Cascade's Yakima River non-diversionary stockwater right to several creeks.

6 1. *Stockwater Application for Change.*

7 There have been a number of issues identified with regards to these change applications.
8 As such, Ecology has not yet made a decision on this application.

9 2. *Cecelia Buck Application for Change.*

10 Ecology notified the Court that Cascade filed a change application for the Buck point of
11 diversion. See Notice of Applications to Change Water Rights Subject to Pre-Trial Order 12,
12 April 19, 2006 (#19,475).

13 Ecology in its exceptions pointed out that a portion of the Buck land, 0.63 acre in size
14 (Parcel No. 191734020-0007), was not included in Cascade's claim amendment. It is not known
15 if this 0.63 acre is part of the irrigated land. However, the Court has consistently held that the
16 Buck land is entitled to a portion of the right of Cascade. The Court directed Cascade to amend
17 its RCW 90.14 claim and file applications for change to include the Buck land on its water rights
18 which Cascade has now done. The Court believes Cascade has substantially complied with
19 RCW 90.14.065 for all of the Buck (and Clark Flats) land (see *Ecology v. Adsit*, 103 Wn.2d 698,
20 694 P.2d 1065 (1985)). The Bucks are entitled to a right for 0.05 cfs and 8 acre-feet for irrigation
21 of 2 acres within their 3.67 acre tract of land.

22 The Court requests that Cascade provide a copy of Ecology's decision as soon as it's
23 issued. Depending on when Ecology completes this process and the appeal period has expired,
24 the CFO may have issued. If so, the Court asks that Ecology comply with the procedures found
25 in Pre-Trial Order No. 17.

g. Notice of Appeal of Ecology's 2003 Decision

26 The Court requested an update on Cascade's appeal of Ecology's Report of Examination
27 (ROE). *Memorandum Opinion* at 7. The parties have an agreement in principle. Ecology awaits
28 the Conditional Final Order to incorporate the quantities confirmed. This is so noted. The Court
29 requests that a copy of the Revised ROE be provided at the time of issuance.

1 **h. Clark Flats**

2 To reserve its right to appeal, Cascade continues to assert its position that the owners of
3 these lands have their own claims and have established their own water rights. This includes the
4 Buck lands. Ecology concurs with the Court's ruling. The United States' position is that
5 Cascade's claim to separate water rights would conflict with Ecology's approval to include these
6 lands in Cascade's service area and that multiple water right cannot be confirmed.

7 All parties recognize that the Court has ruled on the issue of lands within Clark Flats and
8 Cascade proceeded accordingly. The Court will not alter that ruling. See *Memorandum Opinion
and Order* at 5-6; Supplemental Report at 35-51; Report at 26-28.

9 **i. Coleman Creek**

10 There is an error in the described point of diversion for Coleman Creek. See
11 Supplemental Report at 85, 88. When Cascade amended its RCW 90.14 claim filings for the
12 creeks, it described the point of diversion from Coleman Creek as 1,320 feet north and 754 feet
13 west from the *southwest* corner of Section 33, being within the *Southwest* corner of Section 33,
14 T. 18 N., R. 19 E.W.M. (CID 43). This location is in error. The original Water Right Claim No.
15 095324 (CID 38) gives the location as 1,320 feet north and 754 feet west from the *Southeast*
16 corner of Section 33, being within the Southeast corner of Section 33, T. 18 N., R. 19 E.W.M.
17 CID 38 appears to contain the correctly described location and will it be used by the Court.

18 **III. SUMMARY OF WATER RIGHTS**

19 **a. Quantity from All Sources**

20 Cascade is entitled to divert water for irrigation and stockwater from the Yakima River
21 and the natural flow in the authorized tributaries. These diversions shall not exceed:

22	Yakima River:	150.0 cfs	49,825.0 acre-feet per year
23	Currier Creek:	7.05 cfs,	641.0 acre-feet per year
24	Lyle Creek:	10.0 cfs,	1,137.0 acre-feet per year
25	Naneum Creek:	17.52 cfs,	917.0 acre-feet per year
	Coleman Creek:	25.0 cfs,	2,002.0 acre-feet per year
	Caribou Creek:	30.0 cfs,	1,271.0 acre-feet per year
	Parke Creek:	7.87 cfs,	353.0 acre-feet per year
	Badger Creek:	15.6 cfs,	<u>1,552.0</u> acre-feet per year
			7,873.0 acre-feet per year

1 The following provisions will be included in the above listed water rights confirmed.
2 These provisions have been slightly modified from the 2004 Supplemental Report:

3 Cascade Irrigation District is confirmed a right to divert a combined maximum of 150 cfs
4 and 49,825 acre-feet per year from the Yakima River, and the natural flow of
5 Currier/Reecer Creek, Lyle Creek, Naneum Creek, Coleman Creek, Caribou Creek, Parke
6 Creek and Badger Creek. Cascade shall not exceed these quantities during the irrigation
7 season.

8 Cascade Irrigation District is also bound by its 1906 storage agreement with the United
9 States (CID 16). From July 21 through October 15, Cascade shall not divert water in
10 excess of 150 cfs and 16,800 acre-feet per year from the Yakima River and the natural
11 flow of Currier/Reecer Creek, Lyle Creek, Naneum Creek, Coleman Creek, Caribou
12 Creek, Parke Creek and Badger Creek.

13 Cascade Irrigation District shall continue to measure and monitor its use of the Yakima
14 River and those tributaries to which it is confirmed water rights. Cascade shall make the
15 data available upon request and within a reasonable time for review by the United States
16 Bureau of Reclamation and the Department of Ecology.

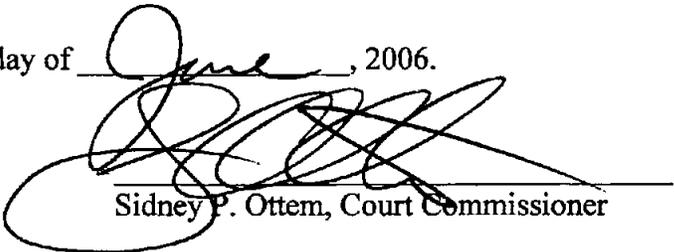
17 The parties are bound by this Court's rulings in Additional Order RE: Limiting
18 Agreements (Cascade Irrigation District, Ellensburg Water Company, and West Side
19 Irrigating Company), May 12, 1994 (Doc. #9238); Memorandum Opinion RE: Motion
20 for Reconsideration of Limiting Agreements, April 1, 1994 (#9092).

21 The Court also directs Ecology to include the place of use descriptions provided in
22 Jantzer's Declaration (Doc. 18,145) in the appropriate water right for each creek.

23 Cascade is also authorized to divert 10 cfs, and 250 acre-feet per year (consumptive
24 portion) from the Yakima River from October 16 through March 31 (non-irrigation season) for
25 stockwater. This water right shall include the last two provisions identified above.

Included with this *Second Memorandum Opinion and Order* is a signed Conditional Final
Order.

Dated this 6th day of June, 2006.


Sidney P. Ottem, Court Commissioner

Attachments: A-Jantzer Declaration/Creeks (Doc. #18,145)
B-Legal Description of CID (From CID 129)

On this day the undersigned in Yakima, Washington, sent to the attorneys of record for plaintiff and for the United States and the Yakama Nation, a copy of this document by U.S. mail, postage prepaid.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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[Signature]
Date Signed

RECEIVED
AUG 31 PM 4 04
CLERK OF
SUPERIOR COURT
YAKIMA WASHINGTON

FILED
AUG 31 2004
KIM M. EATON
YAKIMA COUNTY CLERK

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

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IN THE MATTER OF THE DETER-)
MINATION OF THE RIGHTS TO)
THE USE OF THE SURFACE WATERS)
OF THE YAKIMA DRAINAGE BASIN,)
IN ACCORDANCE WITH THE)
PROVISION OF CHAPTER 90.03)
REVISED CODE OF WASHINGTON,)

THE STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Plaintiff,)

v.)

JAMES J. ACQUAVELLA, et al,)

Defendants.)

NO. 77-2-01484-5
DECLARATION OF TONY JANTZER REGARDING REPORT OF COURT RE: LANDS SERVICED BY SPECIFIC CREEKS
CASCADE IRRIGATION DISTRICT
CLAIM NO. 0891 & 2800

TONY JANTZER deposes and says:

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1. I have been the manager of the District since March of 1996. As part of my duties, I am the custodian of Cascade's records and documents, including contracts, maps, diversion records and other data kept in the regular course of business. I have researched the historic and current records regarding water use by the District and submit this declaration based on my review of the records and documents and my own training, experience, and

1 personal knowledge. The purpose of this declaration is to provide additional
2 evidence and testimony regarding the service area of particular Creeks used by
3 Cascade Irrigation District, as requested by the Court in its Supplemental
4 Report.
5

6 2. The waters diverted out of BADGER CREEK serve the portions of
7 the following listed sections and parts of sections that lie within the Cascade
8 Irrigation District, comprising of approximately 1,125 acres:

9 South ½ of the Southwest ¼ and the Southeast ¼ of Section 29; South
10 ½ of the Southwest ¼ and South ½ of the Southeast ¼ of Section 28;
11 North ½ of Section 33; South ½ of Section 27; North ½ of Section 34;
12 South ½ of Section 26; North ½ of Section 35; and those portions of the
13 Northwest ¼, North ½ of the Southwest ¼, the Southwest ¼ of the
14 Northeast ¼, and Southeast ¼ of Section 36 situated South of Badger
15 Creek, All within Township 17 North, Range 19 E.W.M.. AND the
16 Southwest ¼ of Section 31, All within Township 17 North, Range 20
17 E.W.M., including the track of land to the North of Badger Creek.

18 3. The waters diverted out of PARKE CREEK serve all of the lands
19 above-mentioned under Badger Creek, plus the portions of the following listed
20 sections and parts of sections that lie within the Cascade Irrigation District
21 comprising of approximately 4,477 acres of land:

22 West ½ of Section 31; Northwest ¼ and Northeast ¼ and Southeast ¼
23 and Northwest ¼ of the Southeast ¼ of Section 30; West ½ of the
24 Northwest ¼ and the South ½ of the Southwest ¼ of Section 18; the
25 Southwest ¼ of Sec. 20; and all of Sec. 19; ALL within Township 17
26 North, Range 20 E.W.M. AND the Southwest ¼ of Section 36; Section
27 25; the East ½ of the Southeast ¼ and the Southeast ¼ of the
28 Northeast ¼ of Section 26; Section 24; Section 13, including the land
29 lying North of Parke Creek; the East ½ of Section 14, including the
30 land lying North of Parke Creek; the Northeast ¼ of Section 23; ALL
31 within Township 17 North, Range 19 E.W.M.

32 4. The waters diverted out of CARIBOU CREEK serve all of the
33 lands listed under Parke Creek, plus the portions of the following listed
34 sections and parts of sections that lie within the Cascade Irrigation District,
comprising of approximately 5,242 acres of land:

HALLVERSON APPELLATE, P.S.

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YAKIMA, WASHINGTON 98907-2715
PHONE (509) 575-6611

1 Northwest ¼ of Section 14; the South ½ of Section 11; Section 12; ALL
2 within Township 17 North, Range 19 E.W.M.

3 5. The waters diverted out of COLEMAN CREEK serve all of the
4 lands listed under Caribou Creek plus the portions of the following listed
5 sections and parts of sections that lie within the Cascade Irrigation District
6 comprising of approximately 6,846 acres of land:
7

8 North ½ of Section 11; the Northwest ¼ and Southwest ¼ and
9 Southeast ¼ of Section 2; the Northwest ¼ and Northeast ¼ and
10 Southeast ¼ of Section 10; the Northeast ¼ of the Northwest ¼ and
11 the Northeast ¼ of Section 9; Section 3; the East ½ of Section 4; ALL
12 within Township 17 North, Range 19 E.W.M. AND the South ½ of
13 Section 34; the Southeast ¼ of the Southeast ¼ of Section 33; ALL
14 within Township 18 North, Range 19 E.W.M.

15 6. The waters diverted out of NANEUM CREEK serve all of the
16 lands listed under Coleman Creek, plus the portions of the following listed
17 sections and parts of sections that lie within the Cascade Irrigation District,
18 comprising approximately of 7,103 acres of land:

19 West ½ of Section 4 within Township 17 North, Range 19 E.W.M.
20 AND the South ½ of Section 33, within Township 18 North, Range 19
21 E.W.M.

22 7. The waters diverted out of LYLE CREEK serve all of the lands
23 listed under Naneum Creek plus the portions of the following listed sections
24 and parts of sections that lie within the Cascade Irrigation District, comprising
25 of approximately 8,575 acres of land:
26

27 Section 5; the North ½ of Section 6; ALL within Township 17 North,
28 Range 19 E.W.M. AND the South ½ of Section 32; the South ½ and
29 Northeast ¼ of Section 31; ALL within Township 18 North, Range 19
30 E.W.M.

31 8. The waters diverted out of CURRIER CREEK serve all of the
32 lands listed under Lyle Creek, plus the portions of the following listed sections
33
34

HALVERSON APPELLATE, P.S.

311 NORTH FOURTH STREET - P.O. BOX 22730
YAKIMA, WASHINGTON 98907-2715
PHONE (509) 575-6611

1 and parts of sections that lie within the Cascade Irrigation District comprising
2 of approximately 10,769 acres of land:

3 North ½ of Section 31, within Township 18 North, Range 19 E.W.M.
4 AND Section 36; the South ½ and the South ½ of the Northwest ¼ of
5 Section 25; Section 26; the North ½ of Section 35; the East ½ of Section
6 15; Section 22 EXCEPT for the Northwest ¼ of the Northwest ¼ ; the
7 East ½ of the Northwest ¼, the Northeast ¼, and the Southeast ¼ of
8 Sec. 27; ALL within Township 18 North, Range 18 E.W.M.

9 DATED: Aug 30 2004

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16 TONY JANTZER
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HALVERSON APPLGATE, P.S.
311 NORTH FOURTH STREET - P.O. BOX 22780
YAKIMA, WASHINGTON 98907-2715
PHONE (509) 575-6611

ATTACHMENT B

All lands located within the Cascade Irrigation District Boundaries as set forth on Exhibit "A" attached to the Notice, and a portion of the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Sec. 33, T. 19 N., R. 17 E.W.M.; a portion of the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ and a portion of the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 33, T. 19 N., R. 17 E.W.M., and a portion of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ and a portion of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Sec. 34, T. 19 N., R. 17 E.W.M.; a portion of the Southwest $\frac{1}{4}$ and a portion of the Southeast $\frac{1}{4}$ of Section 8, Township 18 North, Range 18 E.W.M., all of which are serviced by Cascade Irrigation District.

EXHIBIT ^A

Beginning at a point on the east boundary line of Section Thirty-four (34) in Township Nineteen (19) north, Range Seventeen (17) east of the Willamette Meridian where the same is intersected by a line running parallel with and twenty-five (25) feet from the center and on the north side of the canal of the Cascade Canal Company and thence running south on said east boundary line of Section Thirty-four (34) and the east boundary line of Section Three (3) Township Eighteen (18) North, of Range Seventeen (17) East of the Willamette Meridian, to the north and east bank of the Yakima River, thence running southeasterly on the east bank of said river to the intake of the canal of the Ellensburg Water Company; thence running easterly and on a line parallel with and fifty (50) feet north of the center of said canal of the Ellensburg Water Company and following said canal easterly, southerly and westerly, parallel with and fifty (50) feet from the center and on the upper side of said canal throughout its entire course from its said intake to its termination at a point in the southeast quarter of Section Twenty-eight (28) Township Seventeen (17) north, Range nineteen (19) east of the Willamette Meridian which is one thousand three hundred and fifty-two (1352) feet north and seven hundred (700) feet west of the corner common to Sections Twenty-seven (27), Twenty-eight (28), Thirty-three (33) and Thirty-four (34) in Township Seventeen (17) north, range nineteen (19) East of the Willamette Meridian; thence running south at right angle to the 1/16 section line a distance of three hundred (300) feet; thence south 66°44' east, one thousand one hundred and forty-eight (1148) feet to the section line between sections twenty-eight (28) and thirty-three (33) township seventeen (17) north, Range Nineteen (19) East of the Willamette Meridian; thence east along said section line two hundred and forty-six (246) feet to the section corner common to sections twenty-seven (27), Twenty-eight (28), thirty-three (33) and thirty-four (34) in township seventeen (17) north, range nineteen (19) East of the Willamette Meridian; thence south along the section line

between said Sections thirty-three (33) and thirty-four (34) a distance of ten hundred and nineteen (1019) feet; thence to the right at an angle of $90^{\circ}38'$ thirteen hundred and twenty (1320) feet to the $1/16$ section line; thence north on the $1/16$ section line four hundred and fifty-six (456) feet; thence at an angle of 20° to the left a distance of ninety (90) feet; thence with an angle of 11° to the left one hundred and seventeen (117) feet; thence with an angle of $5^{\circ}47'$ to the right one hundred and twenty-five (125) feet; thence with an angle of $23^{\circ}10'$ to the left ninety (90) feet; thence with an angle of $32^{\circ}13'$ to the right, eighty-five (85) feet; thence with an angle of $28^{\circ}6'$ to the left one hundred and sixty-five (165) feet; thence with an angle of $9^{\circ}6'$ to the right one hundred and ninety (190) feet; thence with an angle of $16^{\circ}26'$ to the right one hundred and thirty-five (135) feet; thence with an angle of $21^{\circ}37'$ to the left two hundred and seventy-seven (277) feet; thence with an angle of $21^{\circ}50'$ to the left, sixty-five (65) feet; thence with an angle of $7^{\circ}6'$ to the right, three hundred and sixty (360) feet; thence with an angle of $47^{\circ}42'$ to the left two hundred fifteen and $5/10$ (215.5) feet; thence with an angle of 15° to the right nine hundred and thirteen (913) feet; thence north with an angle of $76^{\circ}4'$ west, four hundred and fifteen (415) feet; thence south on the $1/16$ section line eight hundred and sixty-nine (869) feet; thence at an angle of $90^{\circ}16'$ to the right, five hundred and two (502) feet; thence at an angle of $89^{\circ}40'$ to the right, one thousand six hundred and eighty-nine and $5/10$ (1689.5) feet to the $1/16$ section line; thence west along the $1/16$ section line one thousand two hundred and sixty-five (1265) feet; thence with an angle of 37° to the left seven hundred (700) feet; thence with an angle of 25° to the right one thousand eight hundred and thirty-five (1835) feet; thence with an angle of 42° to the left a distance of four hundred and eighty (480) feet, being a point on the section.

township seventeen (17) north, range nineteen (19) which point is three thousand one hundred and ninety (3190) feet west of the corner common to sections twenty-eight (28), twenty-nine (29), thirty-two (32) and thirty-three (33) township seventeen (17) north, range nineteen (19) East of the Willamette Meridian, thence running east to said common section corner; thence south to the present terminus of the canal of the Cascade Canal Company on the east boundary line of said section thirty-two (32); thence running southerly twenty-five (25) feet; thence running easterly and afterwards northerly and westerly on a line parallel with and twenty-five (25) feet from and on the upper side of the present canal of the Cascade Canal Company to the place of beginning.

Excepting from the foregoing body of land the right of way of the Chicago, Milwaukee & Puget Sound Railway Company and the land embraced in the plat of the Town of Kittitas;

Also excepting and excluding from the boundaries of said district the following described lands:

The certain lands which were heretofore platted and known as Shoudy's Third Addition, Shoudy's Second Addition, Nob Hill Addition, Mick's Addition and Michal's First Addition, to the City of Ellensburg, there being included in the excepted portions all portions of said additions which have been vacated since the original platting thereof; and Blocks 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17 and 18 of State Land Commissioner's plat of Section Thirty-six (36) Township Eighteen (18) North, Range Eighteen (18) East of the Willamette Meridian.

All that part or portion of the northeast quarter of section eleven (11) in township seventeen (17) north, range nineteen (19) East of Willamette Meridian lying southerly of a line forming the southern boundary of the right of way and way of the Chicago, Milwaukee & Puget Sound Railway Company, as now located and established on, over and across said quarter section. Said

Beginning on the east boundary of Section 11 at a point ninety feet south of the intersection of said boundary with the center line of the main track of the railway of said company, as now located and established over and across said section; and running thence southwesterly on a curve to the ~~left~~ left and a radius of five hundred and twenty-three and seven-tenths feet, the tangent to said curve making an angle approximately 84° with said east boundary of said section, a distance of six hundred and twenty-nine and five tenths feet, said curve being fifty feet easterly from and parallel to the center line of the east leg of said wye as there now located; thence southerly along a curve to the left having a radius of thirteen hundred and nine and one-tenth feet, a distance of seven thousand six hundred and eighty-one feet, said curve being fifty feet easterly from and parallel to said center line of the east leg of said wye as now located; thence southerly along a straight line parallel to and fifty feet easterly from the center line of the tail track of said wye, a distance of two hundred forty-one and four-tenths feet; thence at right angles westerly, a distance of one hundred feet; thence at right angles northerly, in a straight line parallel to and fifty feet westerly from the center of the tail track of said wye, a distance of two hundred forty-one and four-tenths feet; thence northerly deflecting to the left along a curve having a radius of thirteen hundred and nine and one-tenths feet; a distance of seventy-six and eight tenths feet, said curve being parallel to and fifty feet westerly from the center line of the west leg of said wye; thence northwesterly deflecting to the left along a curve having a radius of five hundred twenty-three and seven-tenths feet a distance of four hundred and thirteen feet, said curve being fifty feet westerly from and parallel to the center line of the west leg of said wye; thence westerly in a straight line parallel to and two hundred feet southerly from the

Puget Sound Railway Company, a distance of two thousand one hundred and twenty four feet to the north and south center line of said section eleven.

All of that portion of the southeast quarter of the southeast quarter of section two, township seventeen north, range nineteen E. W. M. lying south of the Cascade Canal, comprising about 10 acres.

All of that portion of the northwest quarter of the northeast quarter of section eleven in township seventeen north, range nineteen E. W. M. bounded on the north by Fourth Avenue of the town of Kittitas; on the east by King Street of the town of Kittitas on the south by the right of way of the Chicago Milwaukee & Puget Sound Railway Company and on the west by the section line of said section, comprising 18.96 acres.

All of that portion of the southwest quarter of section eight township eighteen north, range eighteen lying south of the canal of the Cascade Canal Company, comprising about ten acres;

All of that portion of the southwest quarter of the southeast quarter of section two, township seventeen north, range nineteen E. W. M. lying east of the west line of King Street of the town of Kittitas extended due north to the junction with the right of way of the Cascade canal and lying between the Cascade canal on the north and the County road on the south.

All of that portion of the southeast quarter of section twenty-six township seventeen, north, range nineteen E. W. M. lying east and south of the right of way of the canal of the Ellensburg Water Company.

The southeast quarter of the northwest quarter of section thirteen, township seventeen north, range nineteen E. W. M.

The east half of the northwest quarter; the southwest quarter of the northwest quarter; and the northwest quarter of the southwest quarter; of section four, township seventeen north, range nineteen E. W. M., and all those portions of the northeast quarter of the southeast quarter and the northwest quarter of the southeast quarter

of section four township seventeen north, range nineteen E.W.M. lying north of the right of way of the Chicago, Milwaukee & Puget Sound Railway Company.

All of that portion of the northwest quarter of the southwest quarter of section ~~twenty-five~~, township seventeen north, range nineteen E, W, N, bounded by a line commencing at the intersection of the north boundary line of the right of way of the Ellensburg Water Company's irrigation canal with the western boundary of said quarter of quarter section; thence running north on the east boundary of the county road two hundred ninety-eight and eighty-eight one-hundredths feet; thence running east five hundred and forty; thence running south three hundred and forty-nine feet to a point one hundred and fifty feet north of the right of way of said irrigation canal; thence running southeasterly on a line parallel with and one hundred and fifty feet distant from said north boundary of said irrigation canal a distance of seven hundred and eighty feet; thence running south one hundred and fifty feet to the north boundary of said irrigation canal; thence running westerly on said north boundary of said irrigation canal to the place of beginning.