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

1		
2		
3	IN THE MATTER OF THE DETERMINATION )	
4	OF THE RIGHTS TO THE USE OF THE )	NO. 77-2-01484-5
5	SURFACE WATERS OF THE YAKIMA RIVER )	
6	DRAINAGE BASIN, IN ACCORDANCE WITH )	
7	THE PROVISIONS OF CHAPTER 90.03, )	CONDITIONAL FINAL ORDER
8	REVISED CODE OF WASHINGTON )	AS A FINAL JUDGMENT
9	THE STATE OF WASHINGTON, )	PURSUANT TO CR 54(b)
10	DEPARTMENT OF ECOLOGY, )	AND RAP 2.2(d), AND
11		PRETRIAL ORDER NUMBER 8
12	Plaintiff, )	AS AMENDED
13		
14	v. )	
15		FOWLER DITCH
16		ASSOCIATION, COURT
17	JAMES J. ACQUAVELLA, et al., )	CLAIM NO. 1075;
18		UNION GAP IRRIGATION
19	Defendants. )	DISTRICT, COURT CLAIM
20		NO. 1512

THIS MATTER has come on regularly before the Court with the Fowler Ditch Association and Union Gap Irrigation District having had their evidentiary hearing on November 17, 1993. This Court filed its Report of the Court Concerning the Water Rights for the Fowler Ditch Association and Union Gap Irrigation District on December 18, 1996. Thereafter, this Court held the hearing on exceptions on May 8, 1997. James E. Davis, attorney, represented the defendant Fowler Ditch Association. Donald H. Bond and Lawrence E. Martin, attorneys, represented the defendant Union Gap Irrigation District. Jeffery R. Cutter, attorney, represented the defendant Morrier Ranches. Maria A. Iizuka, an attorney with the Department of Justice, represented the defendant United States, Bureau of Reclamation. Mary E. McCrea, Assistant Attorney General, represented the Plaintiff State of Washington, Department of Ecology.

The Court, after reviewing the exceptions and other

14.065

1 materials filed, and after having heard argument and being  
2 fully advised, filed its Supplemental Report of the Court  
3 Concerning the Water Rights for the Fowler Ditch Association  
4 and Union Gap Irrigation District, Volume 30A, on July 27,  
5 1999. The Court now enters this Conditional Final Order  
6 based upon said initial Report and Supplemental Report of the  
7 Court. This Conditional Final Order will ultimately be  
8 incorporated into a final decree that determines and  
9 integrates all of the rights of the parties in this  
10 adjudication, at which time it shall be forwarded to the  
11 Director of the Department of Ecology for issuance of  
12 Certificates of Adjudicated Water Right.

13 Based on the foregoing, IT IS:

14 ORDERED, ADJUDGED AND DECREED that the final decree  
15 shall include the following in regards to the Fowler Ditch  
16 Association, Court Claim No. 1075 and Union Gap Irrigation  
17 District, Court Claim No. 1512:

18 A. The Court confirms a total maximum quantity of  
19 23,400 acre-feet per year with the following schedule of  
20 diversion. This schedule is the sum of all water rights  
21 diverted into the Fowler Ditch and Union Gap canal:

22 In Cubic Feet Per Second  
23 

<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>
64.76	67.05	68.32	68.29	69.29	48.23	33.07

  
24 Flood water: 

<u>March</u>	<u>April/May</u>
37 cfs	13 cfs

26 1. The source for all water rights is the Yakima  
27 River.

28 2. The point of diversion for all water rights

1 confirmed is located approximately 400 feet north and 400  
2 feet west from the southeast corner of Section 7, being  
3 within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T. 13 N., R. 19 E.W.M.

4 3. The irrigation season for all rights  
5 confirmed shall be April 1 through October 31, unless  
6 otherwise specified.

7 4. In accordance with the terms of the attached  
8 stipulation, UGID shall comply with RCW 90.03.380 regarding  
9 the use of Fowler Ditch water within the place of use for  
10 Union Gap.

11 5. Upon completion and filing of the Change of  
12 Place of Use Application with Ecology by UGID and FDA,  
13 Ecology shall expedite its review and processing of the  
14 change application, pursuant to RCW 90.03.380 and  
15 WAC 173-152-050(3)(c).

16 B. The water rights confirmed for the Fowler Ditch  
17 Association are:

<u>April 1 through August 31</u>	<u>September</u>	<u>October</u>
22.5 cfs	15.65 cfs	11.74 cfs

18  
19  
20 The Court confirms a total of 6,768 acre-feet for  
21 irrigation of 1,919.73 acres, other agricultural purposes and  
22 stock water.

23 The above quantities are subject to the following  
24 priority dates:

25 1. With a priority date of June 30, 1880, a right  
26 to divert a maximum of 15 cfs and 5,095 acre-feet per year is  
27 confirmed with the following schedule of diversion:  
28







1 which includes irrigation of lawns, gardens and landscaping,  
2 of 2,789.2 acres with the following schedule of diversion:

3	During April	534	acre-feet	9.0	cfs
4	" May	675	" "	11.0	cfs
5	" June	712	" "	12.0	cfs
6	" July	737	" "	12.0	cfs
7	" August	797	" "	13.0	cfs
8	" September	534	" "	9.0	cfs
9	" October	233	" "	3.8	cfs
10		<u>4,222</u>	acre-feet		

11 3. The service area maps for the Union Gap  
12 Irrigation District are UGID 5, Figures 1B and 1C. These  
13 maps shall be included as part of the place of use  
14 description for the flood water right and the 4,222 acre-feet  
15 of Warren Act Contract water right confirmed.

16 4. UGID 61 is the written legal description of  
17 the service area for Union Gap Irrigation District. It shall  
18 be included as part of the place of use description for the  
19 flood water right and the 4,222 acre-feet of Warren Act  
20 Contract water right confirmed.

21 5. 0.1 cfs and 30 acre-feet per year (Tuck  
22 Warren Act contract, now UGID) from April 1 through October  
23 15, inclusive for irrigation of 15 acres with the following  
24 schedule:

25	During April (9%)	2.7	acre-feet	0.05	cfs
26	" May (15%)	4.5	" "	0.07	cfs
27	" June (19%)	5.7	" "	0.10	cfs
28	" July (19%)	5.7	" "	0.09	cfs
29	" August (19%)	5.7	" "	0.09	cfs
30	" September (13%)	3.9	" "	0.06	cfs
31	" October (6%)	1.8	" "	0.03	cfs
32		<u>30.0</u>	acre-feet		

33 The place of use is:

34 A tract of land lying in the North Half of the  
35 Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section 21, Township 12  
36 N., R. 19 East W. M., described as follows:

Beginning at a point on the East line of the West Half of the Northeast Quarter of the Northwest Quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said Section 21, which point of beginning is 650 feet North of the Southeast corner of the said West Half of the Northeast Quarter of the Northwest Quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ); thence running North along the East line of the said West Half of the Northeast Quarter of the Northwest Quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ) to the North line of said Section 21; thence running West along the North line of said Section 21 to the Northwest corner thereof; thence South along the West line of said Section 21 to the North line of the right of way of Union Gap canal as now existing; thence following said right of way line in a Southeasterly direction to a point of said right of way line 420 feet North of the South line of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said Section 21; thence running in a Northeasterly direction in a straight line to the point of beginning; containing approximately 15 acres of irrigable land.

E. The following rights are confirmed to the United States, Bureau of Reclamation as trustee for the individual Warren Act contractees identified. The priority date shall be May 10, 1905.

1. 0.15 cfs and 54 acre-feet per year (Bradbury contract, now George Joseph, Gaylord Enbom, James F. Truesdell dba Jet Ranch) is confirmed for irrigation of 18 acres from April 1 through September 30, inclusive. A maximum of 10.8 acre-feet may be diverted in any given month, not to exceed a total of 54 acre-feet as follows:

During April	6.9	acre-feet
" May	8.8	" "
" June	10.0	" "
" July	10.7	" "
" August	10.7	" "
" September	6.9	" "
	<u>54.0</u>	acre-feet

The place of use is:

Beginning thirteen hundred ninety and four-tenths (1390.4) feet North and ten hundred forty-nine and seven-tenths (1049.7) feet west of the South quarter-corner; thence South 7° 30' East one hundred forty seven (147) feet; thence North 82° 30' East five hundred sixty three (563) feet; thence North 7° 30' West one thousand



sixty seven and nine-tenths (1067.9) feet; thence North 14° 9' West one hundred eleven (111) feet; thence North 0° 11' East five hundred and three-tenths (500.3) feet; thence West four hundred eighty two and one-tenth (482.1) feet; thence South 48° 3' West three hundred forty-four and five-tenths (344.5) feet; thence West three hundred (300) feet; thence South 12° 30' East thirteen hundred eighty six (1386) feet; thence East three hundred thirty two (332) feet more or less to the place of beginning, except the right of way of the Union Gap canal and private road, all in Section twenty-one (21), Township twelve (12) North, Range nineteen (19) East, W.M.

The right shall issue to the United States, Bureau of Reclamation as trustee for George Joseph, Gaylord Enbom, James F. Truesdell dba Jet Ranches.

2. 0.25 cfs and 76 acre-feet per year (Mead Warren Act contract now John McAllister) is confirmed for irrigation of 50 acres from April 1 through September 30, inclusive with the following schedule:

During April	9.7	acre-feet	0.16	cfs
" May	12.4	" "	0.20	cfs
" June	14.0	" "	0.24	cfs
" July	15.1	" "	0.25	cfs
" August	15.1	" "	0.25	cfs
" September	9.7	" "	0.16	cfs
	<u>76.0</u>	acre-feet		

The place of use is:

SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 36, T. 12 N., R. 19 E.W.M.

The right shall issue to the United States, Bureau of Reclamation as trustee for John McAllister.

3. 0.73 cfs and 230 acre-feet per year (Lombard-Horsley Warren Act contract, now Dave Carlson) from April 1 to October 15, inclusive for irrigation of 76.11 acres with the following schedule:

1	During April	20.7	acre-feet	0.35	cfs
	" May	34.5	" "	0.56	cfs
2	" June	43.7	" "	0.73	cfs
	" July	43.7	" "	0.71	cfs
3	" August	43.7	" "	0.71	cfs
	" September	29.9	" "	0.50	cfs
4	" October	13.8	" "	0.21	cfs
		<u>230.0</u>	acre-feet		

5  
6 The legal description is as follows:

7 A tract of land lying in Sec. 27, T. 12 N., R. 19  
E, described as follows:

8 Beginning at the NW corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of said  
9 Section 27, running thence S. 86-43' E. on the  
10 subdivision line 720 ft. thence S. 31-25' W. 230 ft.  
11 Thence South 300 ft. Thence S. 65-40' E. 100 ft.  
12 Thence S. 79-25' E. 100 ft. Thence N. 71-25' E. 300  
13 ft. Thence N. 80-05' E. 230 ft. Thence S. 1-40' W. 300  
14 ft. Thence S. 10-25' E. 115 ft. Thence S. 48-50' E. 20  
15 ft. to a point 155 ft. S. 0-19' W. of the NE corner of  
16 the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 27. Thence S. 71-10' E.  
17 100 ft. Thence N. 79-20' E. 100 ft. Thence S. 75-10'  
18 E. 200 ft. Thence S. 74-40' E. 100 ft. Thence S. 58-  
19 55' E. 100 ft. Thence S. 51-10' E. 100 ft. Thence S.  
20 66-10' E. 250 ft. Thence N. 75-20' E. 50 ft. Thence  
21 N. 39-15' E. 100 ft. Thence N. 24-20' E. 140 ft. N.  
22 55-35' E. 100 ft. Thence N. 37-13' E. 210 ft. Thence  
23 S. 86-43' E. 140 ft. to the NE corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$   
24 of said Section 27. Thence S. 86-43' E. 360 ft. Thence  
25 S. 71-03' E. 250 ft. Thence S. 51-30' E. 100 ft. Thence  
26 S. 79' E. 150 ft. Thence S. 63-30' E. 100 ft. Thence  
27 S. 48-10' E. 250 ft. Thence S. 32' E. 100 ft. Thence  
28 S. 27-30' E. to the East line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said  
Section 27. Thence S. 0-47' W. 600 ft. more or less to  
the center line of the Union Gap Canal. Thence  
following the center line of said canal in a Westerly  
and Northwesterly direction to the West line of said  
Section 27. Thence North on said section line 825 ft.,  
which is at the point of beginning, containing 56.46  
acres.

23 Also a tract of land lying in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of  
24 Section 28, township 12 N, R. 19 E. W. M. described as  
follows:

25 Beginning at a point 470 feet South of the NW  
26 corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of said Section 28, running thence  
27 South 72° East 50 feet; thence North 82°30' East 100  
28 feet; thence North 66°02' East 98.8 feet; thence North  
49° East 50 feet; thence North 23° East 100 feet; thence  
North 54°15' East 100 feet; thence North 83°30' East 100  
feet; thence South 67° East 200 feet; thence South  
75°50' East 100 feet; thence North 76°58' East 141.3

feet; thence North 60°25' East 100 feet; thence North 39°40' East 100 feet; thence North 27°13' East 45.9 feet; thence N 7°10' East 120 feet to the North line of the SE¼NE¼ of said section 28; thence South 88°53' East 220 feet to the NE corner of the SE¼NE¼ of said Section 28; thence South on the Section line 825 to the center line of the Union Gap canal; thence following the center line of the Union Gap Canal the following courses and distances: South 66°20' West 31.6 feet; thence South 77°19' West, 161.5 feet; thence South 88°39' West 345.4 feet; thence South 74°48' West 193 feet; thence North 55°55' West 165.2 feet; thence South 56°15' West 236.3 feet; thence South 82°12' West 124.1 feet; thence North 88°55' West 155.4 feet more or less to the West line of the SE¼NE¼ of Said Section 28; thence North of this subdivision line 545 feet to the point of beginning, subject to the right of way for the Union Gap Canal 25 feet northerly from the center line of the canal, containing 19.65 acres exclusive of canal right of way.

The right shall issue to the United States, Bureau of Reclamation as trustee for Dave Carlson.

4. 0.1 cfs and 30 acre-feet per year (Vincent Warren Act contract, now Frank Gangle Sr.) for irrigation of 15 acres from April 1 through October 15 with the following schedule.

During April	2.7	acre-feet	0.05	cfs
" May	4.5	" "	0.07	cfs
" June	5.7	" "	0.1	cfs
" July	5.7	" "	0.09	cfs
" August	5.7	" "	0.09	cfs
" September	3.9	" "	0.06	cfs
" October	1.8	" "	0.03	cfs
	<u>30.0</u>	acre-feet		

The place of use is:

Commencing at a point which is 1394.4 feet West and 141 feet North of the center of said Section 21; thence North 41¼° West 469 feet; thence North 26½° West 418.8 feet to the point of beginning of the first tract of land herein to be described; thence North 69° East 919.3 feet; thence North 74°18' East 392.6 feet to the South line of the North Half of the Northwest Quarter (N½NW¼) of said Section 21; thence West along said subdivision line to its intersection with the Easterly right of way line of State Highway No. 3; thence Southeasterly along said Easterly right of way line to the point of beginning; containing five acres more or less; excepting therefrom the right of way of the so-

1 called Union Gap canal and also excepting therefrom the  
2 right of way of a private road twenty (20) feet wide;  
3 also

4 Beginning at the Southeast corner of the West Half  
5 of the Northeast Quarter of the Northwest Quarter  
6 (W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said Section 21; thence North along the  
7 East line of said subdivision a distance of 650 feet to  
8 a point; thence running in a Southwesterly direction in  
9 a straight line to the East line of the right of way of  
10 the Union Gap canal at a point on said right of way  
11 line 420 feet North of the South line of the Northwest  
12 Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of said  
13 Section 21; thence following said right of way line in  
14 a general Southerly direction to an intersection with  
15 the South line of the Northwest Quarter of the  
16 Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ); thence East along the South  
17 line of said subdivision to the point of beginning;  
18 containing approximately ten acres of irrigable land.

19 The right shall issue to the United States, Bureau  
20 of Reclamation as trustee for Frank Gangle, Sr.

21 F. Attachment A is the monthly tabulation of the  
22 instantaneous quantities, and total annual quantities  
23 confirmed to FDC, UGID and the U.S., and of the annual  
24 quantities confirmed under the Warren Act contracts.

25 G. Attachment B is the stipulation and agreement  
26 between Fowler Ditch Association and Union Gap Irrigation  
27 District.

28 H. In accordance with RCW 90.03.240, Certificates of  
Adjudicated Water Right shall be issued as quantified and  
described above.

This Conditional Final Order, relating to the  
confirmation of water rights to the Fowler Ditch Association,  
the Union Gap Irrigation District and the United States,  
Bureau of Reclamation constitutes a final order for purposes  
of appeal [see RAP 2.2(d)], except for purposes of final  
integration of all confirmed rights as provided in Section  
XII of Pretrial Order No. 8, procedures for Claim Evaluation,

1 dated March 3, 1989, of this Court.

2  
3 DATED this 16 day of September, 1999.

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6 F. JAMES GAVIN, JUDGE  
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Fowler Ditch Company

	<u>April through August</u>	<u>September</u>	<u>October</u>	<u>Total</u>
June 30, 1880	15.0 cfs	10.5 cfs	7.8 cfs	5,095 ac-ft
September 15, 1886 (Cheney)	2.5 cfs	1.65 cfs	1.34 cfs	837 ac-ft
August 29, 1892	<u>5.0 cfs</u>	<u>3.5 cfs</u>	<u>2.6 cfs</u>	<u>1,673 ac-ft</u>
	22.5 cfs	15.65 cfs	11.74 cfs	7,605 ac-ft

Union Gap Irrigation District

	<u>April through August</u>	<u>September</u>	<u>October</u>	<u>Total</u>
September 1, 1880 (White)	2.0 cfs	1.3 cfs	1.0 cfs	597 ac-ft
June 5, 1886 (Taylor)	1.0 cfs	1.0 cfs	1.0 cfs	299 ac-ft
June 22, 1889 (Ellison)	1.0 cfs	1.0 cfs	1.0 cfs	299 ac-ft
August 29, 1892 (FDC to UGID)	0.5 cfs	0.35 cfs	0.26 cfs	149 ac-ft
March 31, 1905	<u>28.0 cfs</u>	<u>19.0 cfs</u>	<u>14.0 cfs</u>	<u>8,609 ac-ft</u>
	32.5 cfs	22.65 cfs	17.26 cfs	9,953 ac-ft

United States as Trustee for the  
Union Gap Irrigation District or the Individual Contractee

UGID (flood waters)	<u>March</u>	<u>April/May</u>	<u>Total Annual Quantity</u>
	37.0 cfs	13.0 cfs	1,200 acre-feet

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>
UGID	9.0 cfs	11.0 cfs	12.0 cfs	12.0 cfs	13.0 cfs	9.0 cfs	3.8 cfs
UGID (Tuck)	.05 cfs	0.07 cfs	0.1 cfs	0.09 cfs	0.09 cfs	0.06 cfs	0.03 cfs
Bradbury	0.15 cfs	0.15 cfs	0.15 cfs	0.15 cfs	0.15 cfs	0.15 cfs	-----
Mead	0.16 cfs	0.20 cfs	0.24 cfs	0.25 cfs	0.25 cfs	0.16 cfs	-----
LHIC	0.35 cfs	0.56 cfs	0.73 cfs	0.71 cfs	0.71 cfs	0.50 cfs	0.21 cfs
Vincent	<u>0.05 cfs</u>	<u>0.07 cfs</u>	<u>0.10 cfs</u>	<u>0.09 cfs</u>	<u>0.09 cfs</u>	<u>0.06 cfs</u>	<u>0.03 cfs</u>
	9.76 cfs	12.05 cfs	13.32 cfs	13.29 cfs	14.29 cfs	9.93 cfs	4.07 cfs

Annual Quantities Confirmed--Warren Act Contracts

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Total</u>
UGID	534.0	675.0	712.0	737.0	797.0	534.0	233.0	4,222.0 ac-ft
UGID (Tuck)	2.7	4.5	5.7	5.7	5.7	3.9	1.8	30.0 ac-ft
Bradbury	6.9	8.8	10.0	10.7	10.7	6.9	---	54.0 ac-ft
Mead	9.7	12.4	14.0	15.1	15.1	9.7	---	76.0 ac-ft
LHIC	20.7	34.5	43.7	43.7	43.7	29.9	13.8	230.0 ac-ft
Vincent	<u>2.7</u>	<u>4.5</u>	<u>5.7</u>	<u>5.7</u>	<u>5.7</u>	<u>3.9</u>	<u>1.8</u>	<u>30.0 ac-ft</u>
	576.7	739.7	791.1	817.9	877.9	588.3	250.4	4,642.0 ac-ft

**"ATTACHMENT B"**

RECEIVED

'97 DEC 16 PM 3 42

KIM M. EATON  
EX OFFICIO CLERK OF  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
YAKIMA, WASHINGTON IN AND FOR YAKIMA COUNTY

IN THE MATTER OF THE DETERMINATION	)
OF THE RIGHTS TO THE USE OF THE	)
SURFACE WATERS OF THE YAKIMA	)
DRAINAGE BASIN, IN ACCORDANCE WITH	) NO. 77-2-01484-5
THE PROVISION OF CHAPTER 90.03	)
REVISED CODE OF WASHINGTON,	) STIPULATION AND
	) AGREEMENT BY FOWLER
THE STATE OF WASHINGTON,	) DITCH COMPANY AND UNION
DEPARTMENT OF ECOLOGY,	) GAP IRRIGATION DISTRICT
	) RE: TRANSFERRED SHARES
	)
Plaintiff,	)
	)
v.	)
	)
JAMES J. ACQUAVELLA, et al,	)
	)
Defendants.	)

**FILED**  
DEC 16 1997

KIM M. EATON, YAKIMA COUNTY CLERK

Fowler Ditch Company and Union Gap Irrigation District hereby enter into the following stipulation and agreement:

**RECITALS:**

1. Fowler Ditch Company and Union Gap Irrigation District are major claimants in the above-entitled water rights adjudication. Their claims were heard together by the Court at an evidentiary hearing November 17, 1993. On December 18, 1996, the Court issued its Report Concerning the Water Rights for Fowler Ditch Company, Court Claim No. 1075, and Union Gap Irrigation District, Court Claim No. 1512.

STIPULATION & AGREEMENT BY -1-  
FOWLER DITCH & UGID

LAW OFFICES OF  
HALVERSON & APPLIGATE, PS.  
311 NORTH FOURTH STREET - P. O. Box 22730  
YAKIMA, WASHINGTON 98907-2715  
PHONE 575-6611

2765

1           2.     Fowler Ditch Company has issued 335 of its shares to Union Gap Irrigation  
2 District. The place of use of the water represented by these shares is now and for many  
3 years past has been on 307.9 irrigated acres within the boundaries of Union Gap  
4 Irrigation District.  
5

6           3.     The Court has found in its report that this change in place of use leaves  
7 1,611.73 acres actually irrigated within the Fowler Ditch Company service area. (Report  
8 p. 40)  
9

10          4.     The court has held that for a change in place of use there must be compliance  
11 with RCW 90.03.380, and that Fowler Ditch Company and Union Gap Irrigation District  
12 are to be required to comply with that statute to continue use of the waters represented  
13 by the 335 shares within the Union Gap Irrigation District service area. (Report pp. 40-  
14 41)  
15

16          5.     The Court confirmed to Fowler Ditch Company a right to irrigate 1,919.63  
17 acres within its service area. This, it concluded, would allow Fowler Ditch Company  
18 and/or Union Gap Irrigation District an opportunity to comply with RCW 90.03.380.  
19 (Report p. 42) It ordered Fowler Ditch Company and Fowler Ditch Company to comply  
20 with RCW 90.03.380 regarding use of the water represented by the 335 shares within the  
21 place of use for Union Gap Irrigation District. (Report p. 44)  
22

23          6.     On or about January 21, 1997, Union Gap Irrigation District served and filed  
24 its Motion to Reconsider the Report of the Court. In that motion, among other things, it  
25 asked the Court to reconsider and change its report to provide that:  
26

27                 . . . because of the transfer of 335 shares of Fowler Ditch  
28 Company stock to Union Gap Irrigation District, and upon the  
29 approval of that transfer by the Washington Department of  
30 Ecology, the water right of Fowler Ditch Company be reduced  
31 as follows:

32                 Instantaneous flow:

33                     April through August to 17.87 c.f.s.

34                     September to 12.41 c.f.s.

                    October to 9.29 c.f.s.



1 Annual quantity to 6,047.3 acre-feet.  
2

3 Further, the following be added to the Union Gap Irrigation District rights:  
4

5 Instantaneous flow:

6 April through August -- 2.13 c.f.s.  
7 September -- 1.49 c.f.s.  
8 October -- 1.11 c.f.s.

9 Annual quantity be increased by 720.7 acre-feet.

10 Instantaneous flow by 2.13 c.f.s. to 17.87 c.f.s. and  
11

12 Annual quantity by 720.7 to 6,047.3 acre feet per year.

13 (Motion p. 2)

14 Further, Union Gap Irrigation District recognized its obligations under the report to:  
15

16 . . . [w]ith Fowler Ditch Company, to apply to Department of  
17 Ecology for a change of place of use of the 335 shares of Fowler  
18 Ditch Company water from the Fowler Ditch Company to the  
19 Union Gap Irrigation District service area.

20 (Motion p. 3)

21 7. On or about March 20, 1997, Fowler Ditch Company served and filed its

22 Exceptions to the Report of the Court and, among other things, stated therein:

23 The portion of the gross amount to be awarded to the Fowler  
24 Ditch Company which is subject to transfer to Union Gap  
25 Irrigation District is the result of the ratio of the Union Gap  
26 shares to the total Fowler Ditch Company shares. There are  
27 3,146 Fowler Ditch Company shares. Of that total, 335 are  
28 owned by Union Gap Irrigation District. Three hundred thirty  
29 five (335) shares equal 10.6% of the 3,146 total FDC shares.  
30 Therefore, 10.6% of the total annual quantity awarded to lands  
31 represented by all FDC shares is subject to transfer to Union  
32 Gap Irrigation District.

33 The same percentage, of course, applies to the division of the  
34 instantaneous flow awarded to Fowler Ditch Company net of  
the Cheney water. Using the instantaneous flow figures

1 confirmed by the Court for Fowler Ditch Company, net of the  
2 Cheney water, the result is as follows:

3  
4 APRIL-AUGUST 20 x .106 2.12  
5 SEPTEMBER 14 x .106 1.48  
6 OCTOBER 10.4 x .106 1.10

7 The same calculations using the remaining 89.4% result in  
8 instantaneous flow quantities for Fowler Ditch Company net of  
9 the Cheney water as follows:

10 APRIL-AUGUST 20 x .894 17.88  
11 SEPTEMBER 14 x .894 12.52  
12 OCTOBER 10.4 x .894 9.3

13 (Exceptions pp. 6-7)

14  
15 8. On or about April 21, 1997, Union Gap Irrigation District served and filed  
16 its Response to Exceptions by Department of Ecology and Fowler Ditch Company. Among  
17 other things Union Gap Irrigation District states:

18 Fowler Ditch Company adjusts instantaneous flows between  
19 itself and Fowler Ditch Company in light of the 335 shares  
20 transferred to Fowler Ditch Company with one-hundredth  
21 (0.01) cfs more for itself than computed by Fowler Ditch  
22 Company. Union Gap Irrigation District does not challenge  
23 that difference.

24 The Court should be aware that Fowler Ditch Company and  
25 Union Gap Irrigation District have agreed to the adjustment of  
26 their respective water rights under the 335 share transfer from  
27 Fowler Ditch Company to Union Gap Irrigation District. It is  
28 believed that these parties will present a stipulation to that  
29 effect at the time of the hearing on the report of the court for  
30 their combined rights. (Response p. 5)

31 The stipulation was and is conditioned upon the agreement made by Union Gap  
32 Irrigation District not to require Fowler Ditch Company in response to discovery by Union  
33 Gap Irrigation District to copy documents identified by counsel for Union Gap Irrigation  
34 District in a letter to counsel for Fowler Ditch Company dated March 13, 1997.

STIPULATION & AGREEMENT BY -4-  
FOWLER DITCH & UGID

LAW OFFICES OF  
HALVERSON & APPLGATE, P.S.  
311 NORTH FOURTH STREET - P. O. Box 22730  
YAKIMA, WASHINGTON 98907-2715  
PHONE 573-6611

1 9. Fowler Ditch Company and Union Gap Irrigation District did not present  
2 their stipulation at the time of the hearing on the report of the Court, but do so at this  
3 time.  
4

5  
6 **Therefore, IT IS STIPULATED AND AGREED AS FOLLOWS:**

7 10. Fowler Ditch Company does not challenge Union Gap Irrigation District's  
8 exceptions, nor the Report of the Court relating to the transfer of 335 shares of Fowler  
9 Ditch Company to Union Gap Irrigation District described in Paragraph 6 above, except  
10 as indicated to the contrary below in this stipulation.  
11

12 11. The quantity of instantaneous flows transferred with the 335 Fowler Ditch  
13 Company shares to Union Gap Irrigation District is:

14 April - August	2.12 cfs
15 September	1.48 cfs
16 October	1.10 cfs

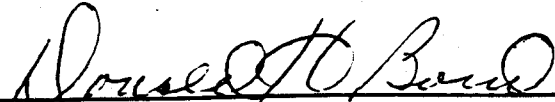
17  
18 The quantity of instantaneous flows remaining with Fowler Ditch Company after the 335  
19 shares are transferred to Union Gap Irrigation District is:


20 April - August	17.88 cfs
21 September	12.52 cfs
22 October	9.3 cfs

23  
24 The instantaneous quantities stated above in this paragraph are net of Cheney water  
25 rights.

26 12. Union Gap Irrigation District will be responsible to prepare all documenta-  
27 tion needed to apply for and receive authority from the Washington Department of  
28 Ecology for change of place of use of water associated with the 335 shares of Fowler Ditch  
29 Company from the Fowler Ditch Company to the Union Gap Irrigation District service  
30 area. Fowler Ditch Company will cooperate with Union Gap Irrigation District, sign all  
31 papers and do all things reasonably necessary to support the transfer of place of use from  
32 the Fowler Ditch Company to the Union Gap Irrigation District service area.  
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DATED this 6<sup>th</sup> day of November, 1997.

  
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