

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, REVISED CODE OF  
WASHINGTON,

No. 77-2-01484-5

THE STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

STATEMENT OF CLAIM OF  
The Mountaineers Inc  
(name of defendant)

BETTY MCGILLEN  
EX-OFFICIO CLERK  
OF SUPERIOR COURT  
YAKIMA, WASHINGTON

JUN 28 2 47 PM '81

1. Identification of claimant (including spouse):

- a. Name of individual or entity The Mountaineers Inc
- b. Mailing address 719 Pike Street  
Seattle, WA 98101
- c. Telephone number (206) 623-2314

2. Nature of right, or use, on which the claim is based:

- a. Name of water source(s); if unnamed, so state:  
Un-named stream  
tributary of \_\_\_\_\_
- b. Legal doctrine(s) on which claim is based (e.g. riparian, appropriative):  
Riparian
- c. If claim is based on a court decree or finding, identify the court, case number, and date:  
\_\_\_\_\_  
\_\_\_\_\_

**FILED**  
JUN 28 1981  
BETTY MCGILLEN, County Clerk

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

d. If a purpose is irrigation, describe the type and characteristics of the soil:

e. Maximum quantity of water used: \_\_\_\_\_ cubic feet per second from \_\_\_\_\_ to \_\_\_\_\_ of each year.  
(day/month) (day/month)

Acre-feet used per year: \_\_\_\_\_

See attached sheet

f. Other information relating to purpose and quantity of use:

See attached sheet

7. a. Legal description of land on which water is being put to beneficial use:

See attached sheet

(continue on separate sheet if necessary)

b. Legal description of land on which water has been put to beneficial use:

Same as above

(continue on separate sheet if necessary)

c. Legal description of land on which water may be put to beneficial use:

Same as above

(continue on separate sheet if necessary)

d. Location of point of diversion from the natural source:

\_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_  $\frac{1}{4}$  Sec. \_\_\_\_\_, T. \_\_\_\_\_ N., R. \_\_\_\_\_ E.W.M.

Location of point of diversion from ditch, flume, canal, etc.:

\_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_  $\frac{1}{4}$  Sec. \_\_\_\_\_, T. \_\_\_\_\_ N., R. \_\_\_\_\_ E.W.M.

See attached sheet

Statement of Claim and the information contained therein is true and accurate to the best of my knowledge and belief.

Howard [Signature]  
Signature of claimant

Subscribed and sworn to before me this 26th day of August 1981.

Dennis E. McLean  
Notary Public in and for the State of Washington residing at Seattle (city)



VERIFICATION OF AUTHORIZED AGENT:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

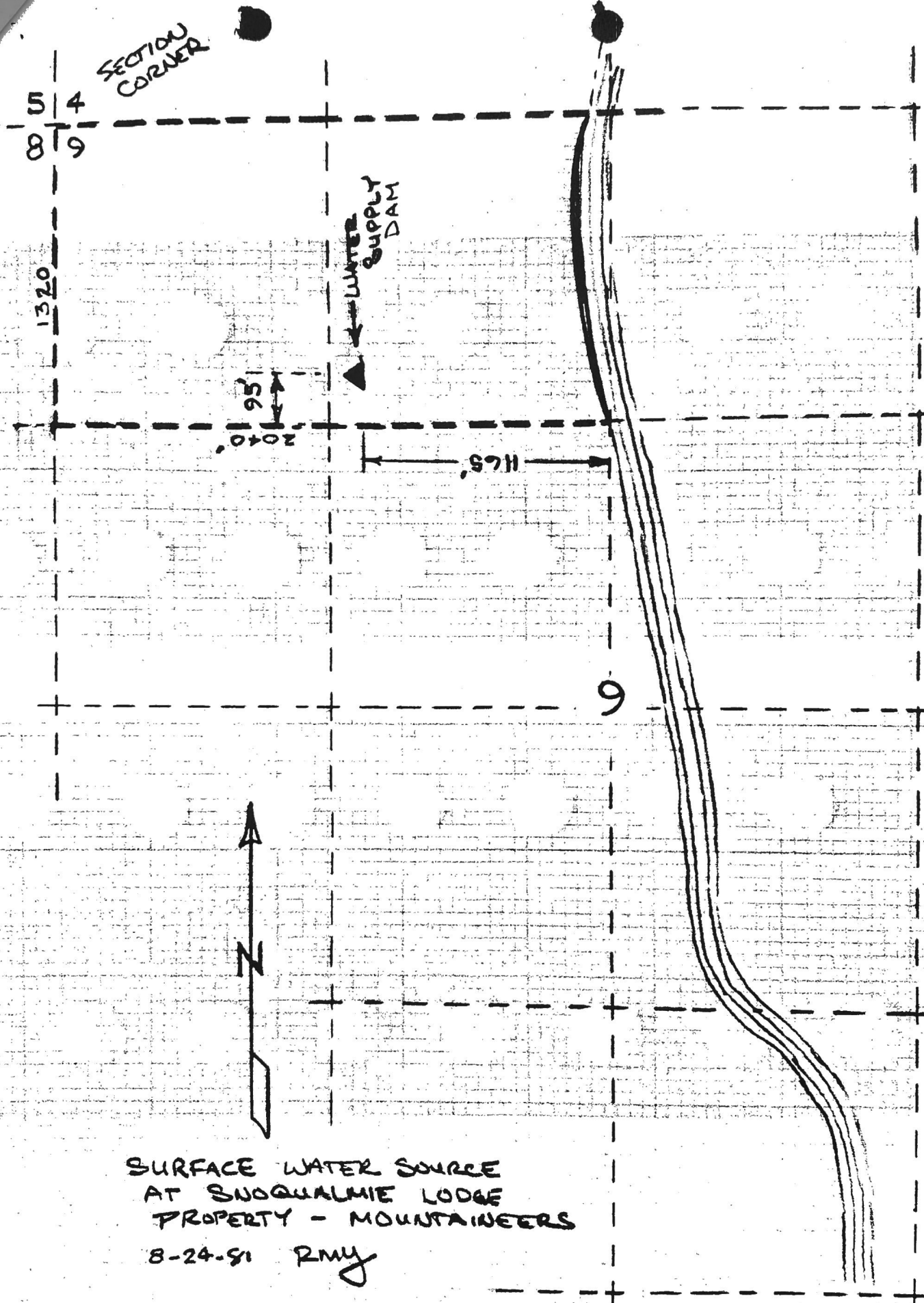
The undersigned, being first duly sworn upon oath, deposes and says:

That he is the \_\_\_\_\_ of \_\_\_\_\_ (title, e.g., attorney, agent), claimant herein, and he is authorized (name of claimant) to make and does make this verification on said claimant's behalf; that he has read the foregoing Statement of Claim, knows the contents thereof and believes the same to be true; and that he is authorized to accept all future service of pleadings and other papers filed in this case.

\_\_\_\_\_  
Signature of agent for claimant  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
(city) (state) (zip code)

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_ residing at \_\_\_\_\_ (city)



SECTION CORNER

5  
4  
8  
9

1320

WATER SUPPLY DAM

95'  
20'  
0'

1125'

9



SURFACE WATER SOURCE  
AT SNOQUALMIE LODGE  
PROPERTY - MOUNTAINEERS

8-24-51 RMY



# 25.00  
no copy

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

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, REVISED CODE OF )  
WASHINGTON, )

No. 77-2-01484-5

THE STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

STATEMENT OF CLAIM OF

Plaintiff,

The Mountaineers Inc  
(name of defendant)

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

FILED  
AUG 28 1981

BETTY MCGILLEN  
EX-OFFICIO CLERK  
SUPERIOR COURT  
YAKIMA, WASHINGTON

29 2 47 PM '81

BETTY MCGILLEN, County Clerk

1. Identification of claimant (including spouse):

- a. Name of individual or entity The Mountaineers Inc
- b. Mailing address 719 Pike St  
Seattle, Wa. 98101
- c. Telephone number 206-623-2314

2. Nature of right, or use, on which the claim is based:

- a. Name of water source(s); if unnamed, so state:  
Tombstone Creek (local nickname)  
tributary of Yakima River
- b. Legal doctrine(s) on which claim is based (e.g. riparian, appropriative):  
Riparian
- c. If claim is based on a court decree or finding, identify the court, case number, and date:  
\_\_\_\_\_  
\_\_\_\_\_

1714  
Copy Recd  
2-3-82  
Bon Effland

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

d. If claim is based on a certificate or permit issued by the Department of Ecology or predecessor agency, enter the number of the permit or certificate:

Permit No. \_\_\_\_\_ Certificate No. \_\_\_\_\_

e. If claim is based on recording of right with office of the County Auditor, state the county and volume and page number of the filing:

\_\_\_\_\_  
\_\_\_\_\_

f. Other information (other than information as to nature of the right or use requested below):

\_\_\_\_\_  
\_\_\_\_\_

3. a. Date of initiation of right: November 1928  
month day year

b. Date of commencement of use: November 1928  
month day year

If right claimed or use has changed since the date of first use, indicate this information under number 7.k., below.

4. a. Date of beginning of construction: \_\_\_\_\_  
month day year

b. Date of completion of construction: \_\_\_\_\_  
month day year

If construction was in more than one phase, give this information under question 7.k., below.

5. a. Enter the following information for each ditch existing at the present time:

<u>Name (if any)</u>	<u>Capacity</u>	<u>Dimensions</u>
----------------------	-----------------	-------------------

b. State the interest you have in each ditch listed above.

\_\_\_\_\_  
6. a. Purpose(s) of use: Domestic

b. If a purpose of use is irrigation, the maximum number of acres irrigated:

\_\_\_\_\_



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

c. If a purpose is irrigation, describe the type and acreage of crops grown.

See attached sheet

d. If a purpose is irrigation, describe the type and characteristics of the soil:

See attached sheet

e. Maximum quantity of water used: \_\_\_\_\_ cubic feet per second from \_\_\_\_\_ (day/month) to \_\_\_\_\_ (day/month) of each year. Acre-feet used per year: \_\_\_\_\_

f. Other information relating to purpose and quantity of use:

See attached sheet

7. a. Legal description of land on which water is being put to beneficial use:

See attached sheet

(continue on separate sheet if necessary)

b. Legal description of land on which water has been put to beneficial use:

Same as above

(continue on separate sheet if necessary)

c. Legal description of land on which water may be put to beneficial use:

Same as above

(continue on separate sheet if necessary)

d. Location of point of diversion from the natural source:

\_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_  $\frac{1}{4}$  Sec. \_\_\_\_\_, T. \_\_\_\_\_ N., R. \_\_\_\_\_ E.W.M.

Location of point of diversion from ditch, flume, canal, etc.:

\_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_  $\frac{1}{4}$  Sec. \_\_\_\_\_, T. \_\_\_\_\_ N., R. \_\_\_\_\_ E.W.M.

See attached sheet

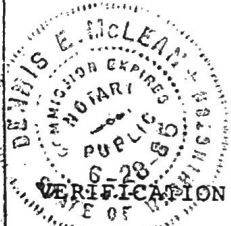


Business Manager of the  
That I am the claimant herein; that I have read the foregoing  
Statement of Claim and the information contained therein is true and  
accurate to the best of my knowledge and belief.

*Donald [Signature]*  
Signature of claimant

Subscribed and sworn to before me this 21<sup>st</sup> day of August  
1941.

*Dennis E. McLean*  
Notary Public in and for the  
State of Washington  
residing at Seattle  
(city)



VERIFICATION OF AUTHORIZED AGENT:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

The undersigned, being first duly sworn upon oath, deposes and  
says:

That he is the \_\_\_\_\_ of  
(title, e.g., attorney, agent)  
\_\_\_\_\_, claimant herein, and he is authorized  
(name of claimant)  
to make and does make this verification on said claimant's behalf;  
that he has read the foregoing Statement of Claim, knows the contents  
thereof and believes the same to be true; and that he is authorized  
to accept all future service of pleadings and other papers filed in  
this case.

\_\_\_\_\_  
Signature of agent for claimant  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
(city) (state) (zip code)

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_  
residing at \_\_\_\_\_  
(city)

ATTACHMENT TO STATEMENT OF CLAIM

6. e. Maximum quantity of water used:

November through June: 16 gpm  
July through October: 2 gpm  
Total quantity: 18 ac-ft/year

- f. This surface water from Tombstone Creek is the normal source for domestic use. Ground water from an existing concrete cistern is the emergency source when the normal source is unavailable. Annual quantity claimed for emergency use is 4.3 ac-ft/year.

7. a. Legal description of land on which water is being put to beneficial use:

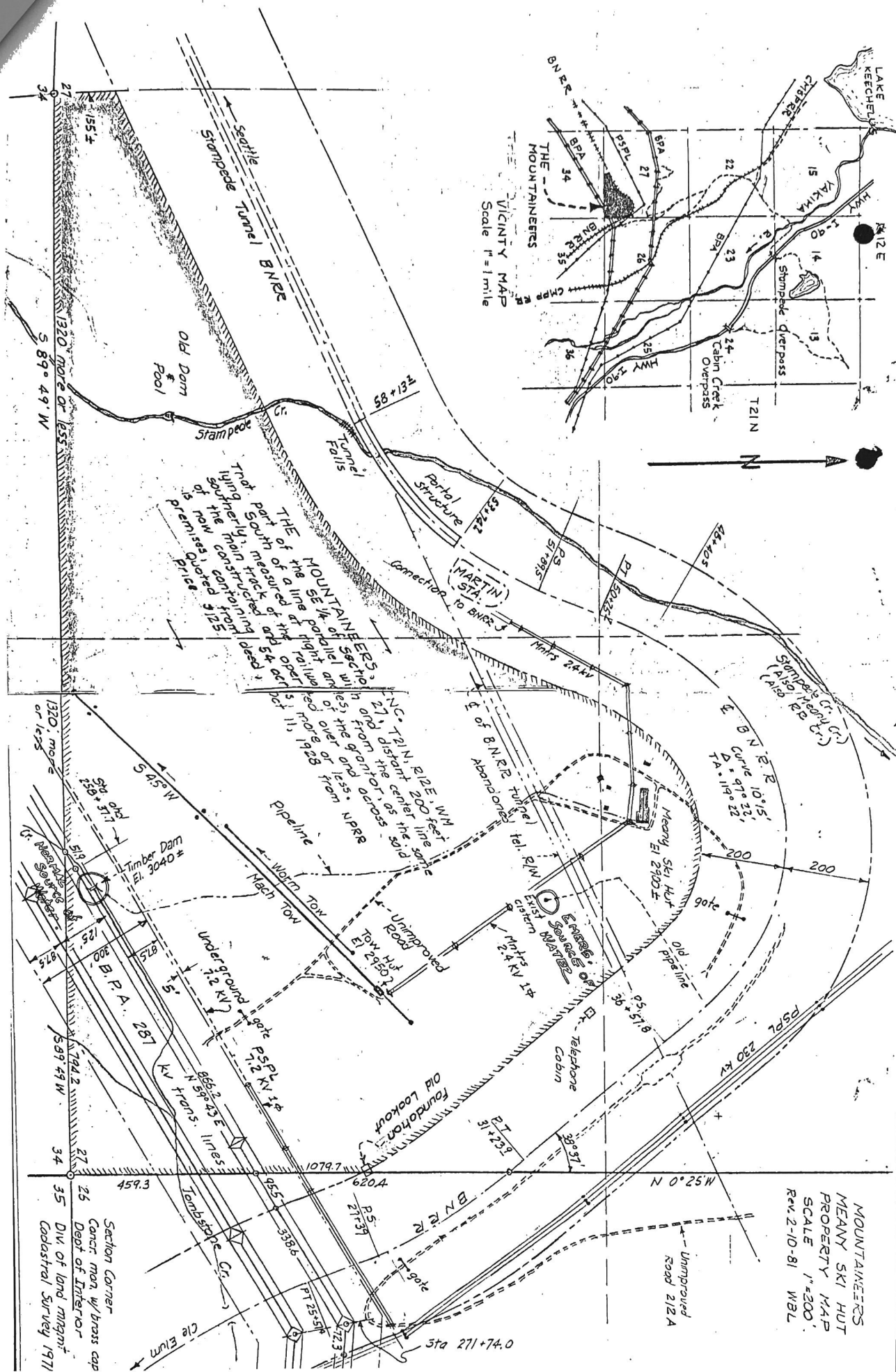
That part of the SE 1/4 of Section 27, T 21 N, R 12 E.W.M. lying south of a line parallel with and distant 200 feet southerly, measured at right angles from the center line of the main track of the railway of the grantor (now Burlington Northern RR), as the same is now constructed and operated over and across said premises, as per deed of October 11, 1928. Kittitas County

- d. Location of point of diversion from the natural source:

700 feet west/70 feet north from the southeast corner of section 27 being within SE 1/4 of section 27, T 21 N, R 12 E.W.M.

Location of emergency source:

1180 feet north and 670 feet west from the southeast corner of section 27 being within SE 1/4 of section 27, T 21 N, R 12 E.W.M.

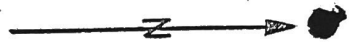


THE MOUNTAINEERS, INC. T21 N. R22 E. W4 NW 1/4, 2nd dist. 200 feet from the center line of the old N.P.R.R. line, as shown on the plat of 11/11/28, more or less, over or from N.P.R.R. premises. The part of a line parallel and further south of the old N.P.R.R. line, as shown on the plat of 11/11/28, more or less, over or from N.P.R.R. premises. The part of a line parallel and further south of the old N.P.R.R. line, as shown on the plat of 11/11/28, more or less, over or from N.P.R.R. premises. The part of a line parallel and further south of the old N.P.R.R. line, as shown on the plat of 11/11/28, more or less, over or from N.P.R.R. premises.

Section Corner  
 Brass cap  
 Dept. of Interior  
 Div. of Land Management  
 Cadastral Survey 1971

MOUNTAINEERS  
 MEANY SKI HILL  
 PROPERTY MAP  
 SCALE 1"=200'  
 Rev. 2-10-81 WBL

THE MOUNTAINEERS  
 VICINITY MAP  
 Scale 1"=1 mile





**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 REFEREE**

**RE: SUBBASIN NO. 2  
(EASTON)**

Submitted to:  
The Honorable Walter A. Stauffacher  
Yakima County Superior Court

REPORT OF REFEREE - VOLUME 21

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 )  
7 THE PROVISIONS OF CHAPTER 90.03, )

No. 77-2-01484-5

8 THE STATE OF WASHINGTON, )  
9 DEPARTMENT OF ECOLOGY, )

REPORT OF REFEREE  
Re: Subbasin No. 2  
(Easton)

10 Plaintiff, )

11 v. )

12 James J. Acquavella, et al., )

13 Defendants. )  
14

15 To the Honorable Judge of the above-entitled Court, the following report is  
16 respectfully submitted:  
17

18 I. BACKGROUND

19 This report concerns the determination of the surface water rights of the  
20 Yakima River basin, specifically those rights located within Subbasin No. 2, the  
21 Easton drainage basin. The criteria consisting of applicable law and bases for  
22 water right determinations used by the Referee in the evaluation of claims can be  
23 found in the Report of the Referee to the Court, Preface to Subbasin and Major  
24 Category Reports, Volume 2, dated May 18, 1988.

25 The Referee conducted evidentiary hearings on May 31, June 1, June 5, June 7,  
26 June 14, 1989, and July 31, 1990.  
27

28 REPORT OF REFEREE  
29 Re: Subbasin No. 2

1 related to a claim filed by Robert and Adele Monahan and Gerald and Marie Monahan,  
2 there was no testimony concerning Claim No. 01533. Therefore, the Referee cannot  
3 recommend that a right be confirmed.

4 COURT CLAIM NO. 01714 -- The Mountaineers, Inc.

5 The Mountaineers, Inc. submitted the above Claim to the Court for the use of  
6 an unnamed creek, locally known as Tombstone Creek, for continuous domestic supply.  
7 Virginia Felton, Executive Director of The Mountaineers, Inc., testified at the  
8 evidentiary hearing.

9 According to the testimony and evidence, The Mountaineers, Inc. acquired the  
10 property described in the Court claim from the Northern Pacific Railway Company on  
11 October 11, 1928. Shortly thereafter, the Mountaineers built a lodge and a water  
12 system to serve the lodge. The system consists of a dam to divert the water from  
13 the creek and a two inch pipeline to the lodge. The lodge is primarily used during  
14 the winter months as a ski lodge with minimal use outside the ski season. There  
15 was no testimony concerning the size of the lodge or how many people can be housed  
16 there at one time.

17 The claimant is asserting a right to use 16 gallons per minute or 0.04 cubic  
18 foot per second and 18 acre-feet per year for domestic supply. However 18  
19 acre-feet per year seems excessive for a lodge that is primarily only used on  
20 weekends during the winter months.

21 Water Right Claim No. 098246 was filed by The Mountaineers, Inc. pursuant to  
22 the requirements of RCW 90.14 claiming a right to use Tombstone Creek for domestic  
23 supply.

24 Tombstone Creek is riparian to the claimant's property. Based on the  
25 testimony and evidence it is apparent that a right was established under the  
26

27 REPORT OF REFEREE  
28 Re: Subbasin No. 2

1 Riparian Doctrine for the use of waters from Tombstone Creek for domestic supply.  
2 The specific date that the land severed from Federal ownership is not in the  
3 record. However, the evidence does reflect that by 1889 the land was owned by  
4 Northern Pacific Railway. Therefore the Referee recommends that a right be  
5 confirmed with a June 30, 1889, date of priority to The Mountaineers for the use of  
6 0.04 cubic foot per second, 2 acre-feet per year from Tombstone Creek for  
7 continuous community domestic supply. Although the claimant is asserting a right  
8 to use 18 acre-feet per year, it is recommended that the right be confirmed for 2  
9 acre-feet per year without testimony to establish a need for such a large annual  
10 quantity of water.

11 COURT CLAIM NO. 01714A -- The Mountaineers, Inc.

12 The Mountaineers, Inc., submitted the above Claim to the Court for the use of  
13 an unnamed stream for domestic supply. Virginia Felton, Executive Director of The  
14 Mountaineers, Inc. testified at the evidentiary hearing.

15 The Mountaineers, Inc., own property near the summit of Snoqualmie Pass on  
16 which a lodge has been constructed. The property was acquired on October 10, 1945,  
17 from Northern Pacific Railroad Company, and subsequently a lodge was constructed  
18 and water system developed to serve the lodge. Ms. Felton had no knowledge of any  
19 structure or water system prior to 1945. The stream is currently utilized only as  
20 a backup domestic supply and occasionally is used for nonpotable purposes in the  
21 summer. The primary source of supply is the Snoqualmie Pass water system operated  
22 by Kittitas County Sewer District Number 1.

23 Water Right Claim No. 098243 was filed by The Mountaineers, Inc. in compliance  
24 with the requirements of RCW 90.14. There is nothing in the record to show that  
25

26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 2

1 the claimants obtained a water right permit pursuant to the requirements of RCW  
2 90.03.

3 No evidence was presented to establish that water was first used prior to the  
4 significant dates of June 6, 1917, and December 31, 1932, for establishing a water  
5 right under the Prior Appropriation or Riparian Doctrines. In fact the evidence  
6 shows that the water use was initiated no earlier than 1945, at a time when  
7 compliance with the procedures of RCW 90.03 would have been necessary. Therefore,  
8 the Referee recommends that a water right be denied under Court Claim No. 1714A.

9  
10 COURT CLAIM NO. 02362 -- Vincent H. Nelson  
11 & A. Marion Nelson

12 A Statement of Claim was filed with the Court by Vincent H. Nelson and A.  
13 Marion Nelson for the use of the waters from the Yakima River for domestic use.  
14 Mr. Nelson testified at the evidentiary hearing.

15 The Nelsons bought their property, located in the SE $\frac{1}{4}$  of Section 22, T. 20 N.,  
16 R. 14 E.W.M. in 1966. At that time the land was undeveloped and there was no water  
17 system. They began pumping out of the Yakima River for their personal use and this  
18 practice continued until 1974 or 1975 when the Elk Meadows community water system  
19 was installed. The Nelsons would like to have the right to pump from the river  
20 because water restrictions are sometimes necessary under the community system.

21 The Nelsons filed Water Right Claim No. 159882 pursuant to the requirements of  
22 RCW 90.14 for their use of waters from the Yakima River. The filing of a water  
23 right claim only serves to protect a water right that was established under either  
24 the Prior Appropriation or Riparian Doctrines. In order to have a right under  
25 these doctrines, water had to be put to use by June 6, 1917, (Prior Appropriation)  
26 or December 31, 1932 (Riparian Doctrine).

27 REPORT OF REFEREE  
28 Re: Subbasin No. 2

1 Wallace L. Enger and Geraldine J. Enger  
Aydrey Irene Evans  
2 Milton M. Femrite and Tracy S. Femrite  
Francis E. Fennerty and Phyllis C. Fennerty  
3 Les S. Knudsen and Barbara J. Knudsen  
Carl A. Magno and Patricia Rafter  
4 Jill Perry  
Ben Root  
5 C. William Ross  
John E. Rothlisberger  
6 Jess Schober and Barbara Schober  
Schober Brothers  
7 Jay Sprouse and Betty Sprouse

8  
9  
10 VIII. FINDINGS OF FACT

11 I, JOHN E. ACORD, as Referee in this proceeding, having carefully examined  
12 the testimony and evidence and having investigated Subbasin No. 2, do hereby make  
13 the following Findings of Fact:

14 1. That the waters of Subbasin No. 2 and lands irrigated or waters  
15 otherwise utilized therefrom are situated in Kittitas County.

16 2. That the claims to any diversionary or withdrawal rights within Subbasin  
17 No. 2 of the following named claimants are denied in their entirety for reason set  
18 forth in the body of this report:

19 John O. Ahrnsbrak and Donna E. Ahrnsbrak  
Keith Anderson, et al.  
20 Dimitri Bader and Lenora Bader  
Richard P. Bailes  
Oscar L. Berger and Beverly J. Berger  
21 Edward J. Bogachus and Marcia J. Bogachus  
Dona Lee Bogan and James Harris Dobbs  
22 Stillman D. Brooks  
Warren G. Bungler and Sharon I. Bungler (01068)  
23 Dennis Burchak and Diana Burchak (00890)  
Estate of Michael Burchak and Marie Burchak (00890)  
24 Pat Burke and Mary Burke  
Burlington Northern Railroad Co. (00103, 00104, 02396)  
25 Selma M. Burzenski  
Camp Koinonia (02163 & 02164)

26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 2

- 1 Estate of Robley P. Carr and Dorothy H. Carr
- 2 Estate of John Caveglia
- 3 Paul L. Charlton and Norma N. Charlton
- 4 DeGramps Enterprises, Inc.
- 5 James A. Douvier and Norma L. Douvier
- 6 Rodney T. Dunn and Marianne Dunn
- 7 Merritt D. Dupuis
- 8 Wallace Enger
- 9 Audrey Irene Evans
- 10 Milton M. Femrite and Tracy S. Femrite
- 11 Frank Fennerty
- 12 Thomas L. Ferguson, Jr. and Sandra J. Ferguson
- 13 Jack Floyd and Shawn Floyd
- 14 Wayne Graber and Margo Graber
- 15 Thomas Greiner and Theresa Greiner
- 16 Kathleen Lynette Griffin
- 17 Gerald J. Griffith
- 18 Estate of Gary G. Guzzie and Clyde Parlova (01274 & 01275)
- 19 Robert H. Humber and Dorothy R. Humber
- 20 Ray Johnson
- 21 Kenneth Kent
- 22 Raymond H. Kirlin
- 23 Les S. Knudsen and Barbara J. Knudsen
- 24 Jacob Korfus and Mildred Korfus
- 25 C. Ronald Lamb and Judy I. Lamb
- 26 Theodore L. Leavitt
- 27 Carolyn Watts Madden
- 28 Carl A. Magno
- 29 Raymond Markley and Vicki Markley
- Joseph Maybo and Cecelia Maybo
- William E. McCormick
- Francis W. McIntosh and Marlys McIntosh
- Thomas McTighe and Judith McTighe
- Arthur C. Mills, Sr. and Wanda Lea Mills
- Gerald L. Monahan and Marie C. Monahan (02185 & 02188)
- Matthew H. Monahan and Mary Alice Monahan
- Robert E. Monahan and Adele F. Monahan (01532)
- Adele F. Monahan, Trustee
- The Mountaineers, Inc. (01714A)
- Michael R. Myers and Kathleen B. Myers
- Vincent H. Nelson and A. Marion Nelson
- Matt Ozbolt and Florence Ozbolt
- Jill M. Perry
- Jeannette Austin Peterson
- Michael L. Peterson
- Arthur G. Pieters and Helen P. Pieters
- James C. Prichard and Margaret R. Prichard
- Patricia A. Rafter
- Charles Ross Randall and Doris Randall
- Othel R. Reeves and Lynora E. Reeves

27 REPORT OF REFEREE

28 Re: Subbasin No. 2



1 CLAIMANT NAME:

Earl E. Gentry  
& Valerie K. Gentry  
Ray Johnson  
Gerald J. Griffith

COURT CLAIM NO. 00756

2 Source:

Big Creek

3 Use:

Irrigation of 17 acres

4 Period of Use:

May 1 to September 1

5 Quantity:

0.34 cubic foot per second, 81.60 acre-feet per year

6 Priority Date:

June 30, 1889

7 Point of Diversion:

1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$  Section 29, T. 20 N., R. 14 E.W.M.

8 Place of Use:

That part of the S $\frac{1}{2}$ NE $\frac{1}{4}$  Section 29, T. 20 N., R. 14 E.W.M. lying south of the Kittitas Reclamation District Canal and easterly of Big Creek, EXCEPT the east 400 feet thereof.

9 Limitations of Use:

When there is a surplus of water in the creek and all existing rights are being satisfied, up to 0.68 cubic foot per second may be diverted.

10 CLAIMANT NAME:

The Mountaineers, Inc.

COURT CLAIM NO. 01714

11 Source:

Tombstone Creek

12 Use:

Continuous community domestic supply for a lodge.

13 Period of Use:

Continuous

14 Quantity:

0.04 cubic foot per second, 2 acre-feet per year

15 Priority Date:

June 30, 1889

16 Point of Diversion:

70 feet north and 700 feet west from the southeast corner of Section 27, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 27, T. 21 N., R. 12 E.W.M.

17 Place of Use:

That part of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 27, T. 21 N., R. 12 E.W.M. lying south of the abandoned Burlington Northern Railroad Stampede Tunnel route.

18 REPORT OF REFEREE

19 Re: Subbasin No. 2

1                    Surface Water Certificates Issued to Major Claimants

2                    The following surface water certificates have issued to the United States, a  
3                    Major Claimant in this proceedings, whose water rights will be addressed  
4                    through the Major Claimant Pathway identified in Pretrial Order No. 8 issued  
5                    by this Court. The disposition of these certificates will be addressed  
6                    through that pathway.

7                    00967                    01808  
8                    01367                    08810  
9                    01807                    08811  
10                    04498 and Certificate of Change recorded in Volume 1-3, Page 3

11                    In conformance with RCW 90.03.240, Certificates of Adjudicated Water Right  
12                    will be issued to those parties for whom rights were confirmed through this  
13                    proceeding.

14                    IX. CONCLUSIONS OF LAW

15                    Confirmation of Rights

16                    The priority date, source, point of diversion, location, maximum  
17                    instantaneous diversion rate, annual quantity, period of use, nature of beneficial  
18                    use, and place of use which are shown in the foregoing Findings of Fact for each  
19                    claimant therein referred are recommended to be confirmed as water rights of those  
20                    claimants.

21                    Duty of Water

22                    Unless otherwise specified, the diversion of water from sources of water  
23                    contained within Subbasin No. 2 for irrigation purposes shall be limited, at a  
24                    maximum, to 1.0 cubic-foot per second for each 50 acres irrigated, not to exceed  
25                    during each irrigation season a maximum of 5 acre-feet per acre.

26  
27                    REPORT OF REFEREE  
28                    Re: Subbasin No. 2

1 Irrigation Season

2 Unless otherwise identified within a specific water right, the irrigation  
3 season shall be defined as that period from April 15 to and including October 15 of  
4 each year. The Referee recognizes that extraordinary circumstances may dictate the  
5 application of water prior to or subsequent to the defined irrigation season, and,  
6 in that event, express approval from the Department of Ecology must be obtained  
7 annually prior to such deviation.

8  
9 Certificates of Adjudicated Water Right

10 Upon entry of the final decree in this action, and upon payment of the  
11 statutory fee prescribed in RCW 90.03.470(11), together with the appropriate county  
12 auditor recording fee, the Director of the Department of Ecology is required to  
13 issue Certificates of Adjudicated Water Right in accordance with the provisions of  
14 RCW 90.03.240.

15  
16 Administration of Water

17 The use of Subbasin No. 2 waters should be regulated by the Department of  
18 Ecology on the basis of Certificates of Adjudicated Water Rights issued as a result  
19 of this proceeding, and on the basis of any permits and certificates that may have  
20 issued outside of this proceeding under appropriation procedures of Chapter 90.03  
21 RCW. When available water in Subbasin No. 2 is insufficient to supply all rights,  
22 and upon a finding that regulation is required, the Department may regulate junior  
23 water rights in the interest of satisfying senior water rights.

24 Whenever regulation of junior water rights is necessary, the Department may  
25 enter at reasonable times upon the lands of any and all parties having rights and  
26

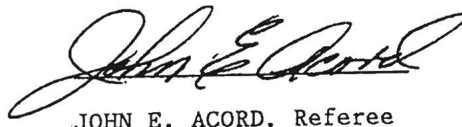
27 REPORT OF REFEREE  
28 Re: Subbasin No. 2

1 shall regulate diversion facilities so as to apportion the waters as herein  
2 adjudicated.

3 Confirmation of a water right does not guarantee nor imply that right-of-way  
4 or trespass rights exist upon private or public lands for the diversion and/or  
5 distribution system of that water.

6 As provided by Chapter 90.03.360 RCW and Chapter 508-64 WAC, any person  
7 authorized to use surface water from Subbasin No. 2 may be required to provide and  
8 maintain, at the water user's expense, proper diversion works and/or measuring  
9 devices. Design, installation, maintenance, and operation of such works and  
10 measuring devices will be as prescribed by the Department.

11 SIGNED and DATED at Yakima  
12 this 20th day of June, 1994.

13  
14 

15 JOHN E. ACORD, Referee

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 REPORT OF REFEREE  
28 Re: Subbasin No. 2

1  
2  
3  
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
5 IN AND FOR THE COUNTY OF YAKIMA  
6

7 IN THE MATTER OF THE DETERMINATION )  
8 OF THE RIGHTS TO THE USE OF THE )  
9 SURFACE WATERS OF THE YAKIMA RIVER )  
10 DRAINAGE BASIN, IN ACCORDANCE WITH )  
11 THE PROVISIONS OF CHAPTER 90.03, )  
12 REVISED CODE OF WASHINGTON )

NO. 77-2-01484-5

13 THE STATE OF WASHINGTON, )  
14 DEPARTMENT OF ECOLOGY, )  
15 Plaintiff, )

CONDITIONAL FINAL ORDER  
SUBBASIN NO. 2  
(EASTON)

v. )

16 JAMES J. ACQUAVELLA, et al., )  
17 Defendants. )  
18

I.

19 On June 20, 1994, the Referee, John E. Acord, filed with the Court a  
20 "Report of Referee Re: Subbasin No. 2 (Easton). Thereafter this Court set  
21 January 11, 1995, for a hearing on exceptions to this report. Pursuant to  
22 the direction of the Court, the Referee then served a notice (together with  
23 a copy of the report) upon all parties setting a time period for filing any  
24 exceptions to the report and for the aforementioned hearing on exceptions.

II.

25 On January 11, 1995, the Court held a hearing on exceptions to the  
26 Report of Referee. The Court, after reviewing the exceptions and other  
27

1 materials filed and being fully advised, filed its Order on Exceptions;  
2 Subbasin No. 2 (Easton) on October 12, 1995, which, among other matters,  
3 ordered that the Referee schedule a remand hearing to further consider  
4 certain claims as specified in the order.

5 III.

6 On January 31, February 1, 2 and March 14, 1996, Referee Douglas  
7 Clausing conducted a remand hearing as directed by the Court. On May 23,  
8 1996, the Referee filed the Supplemental Report of Referee Re: Subbasin  
9 No. 2 (Easton). This Court set November 14, 1996, for a hearing on  
10 exceptions to the supplemental report. Pursuant to direction of the court,  
11 the Referee then served notice (together with a copy of the report) upon  
12 all parties setting a time period for filing any exceptions to the  
13 supplemental report and for the aforementioned hearing on exceptions.

14 The following exceptions were timely filed:

- 15 1. Dona L. Bogan, Claim No. 06044 - to the Referee not  
16 recommending that a right be confirmed, asking for the opportunity to  
submit notarized statements concerning use of the water in the 1960's  
and reason for lack of a RCW 90.14 claim.
- 17 2. Big Creek Waterusers, Claim No. 00353, 00456, 00756, 00755,  
18 00339 - asking that the word consumptive be added to the annual  
quantities of water confirmed for winter stock watering so it is  
19 clear that quantity does not reflect the total amount of water that  
can be diverted. Ecology, in its reply to this exception, asked that  
20 the period when water could be diverted for winter stock watering be  
reduced.
- 21 3. Earl E. Gentry, Claim No. 00755 - to a right not being  
22 confirmed for 18 acres within the W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 28, T. 20 N.,  
R. 14 E.W.M.
- 23 4. Theodore L. Leavitt, Claim No. 06322 - to a right not being  
24 confirmed for use of a spring.
- 25 5. Dorothy R. and Robert H. Humber, Claim No. 01327 - asking that  
26 they be allowed an opportunity to present evidence about their use of  
creek water.

1 The Court held the exception hearing on November 14, 1996. The  
2 exception of Big Creek Water Users, Claim No. 00353, 00456, 00756, 00755  
3 and 00339 was granted by the Court and Ecology's exception was denied. The  
4 supplemental report is modified as follows: The word "consumptive is added  
5 before the words "stock water" on page 56, line 9½; page 57, line 9½; page  
6 58, line 11; page 59 line 8½; page 60 line 9.

7 The exception of Earl E. Gentry, Claim No. 00755, was granted by the  
8 Court. The supplemental report is modified as follows: Page 56, line 4½,  
9 142 acres is changed to 160 acres; line 7, 2.84 cubic feet per second,  
10 681.6 acre-feet per year is changed to 3.0 cubic feet per second, 768 acre-  
11 feet per year; line 14.5 the words "except the ~~NW¼NE¼NW¼~~" are removed, and  
12 lines 18 and 18½ are changed to read "rights to the creek are being fully  
13 satisfied, up to 6.0 cubic feet per second and an additional 166 acre-  
14 feet".

15 The exceptions of Dona Bogan, Theodore L. Leavitt and Dorothy R. and  
16 Robert H. Humber are denied. Mr. Leavitt is advised to continue with his  
17 attempts to obtain a water right through the procedures of RCW 90.03 and  
18 Ms. Bogan and the Humber are advised to contact Ecology about the  
19 possibility of obtaining a water right permit for their water use.

20 Ecology brought to the Court's attention that three of the Referee's  
21 recommendations in the narrative portion of the Supplemental Report of  
22 Referee were not carried forward into the Findings of Fact. In the  
23 Supplemental Report of Referee, the Referee modified several of the  
24 original recommendations in the 1994 Report of Referee for Subbasin No. 2.  
25 The Court modifies the Supplemental Report of Referee for Subbasin No. 2,  
26 dated May 23, 1996, as follows:



1 On page 52, add to the list at line 18 the following:

2 Page 124, line 12, change Place of Use: The west 700 feet of  
3 Government Lot 3 and all of the east 356.16 feet lying south of  
4 the north 417.42 feet in Government Lot 4, all in Section 2,  
5 T. 19 N., R. 14 E.W.M.

6 On page 59 of the Supplemental Report of Referee, line 13½, delete  
7 the words "and the SE¼NE¼SE¼ of Section 29".

8 On page 62 of the Supplemental Report of Referee include the  
9 following:

10 Page 128, line 11 add:

11 CLAIMANT NAME:	Arthur & Helen Pieters	COURT CLAIM NO. 01068 (A)05149
12 Source:	An unnamed spring	
13 Use:	In-house single domestic supply	
14 Period of Use:	Continuously	
15 Quantity:	0.02 cubic foot per second, 1 acre-foot per year	
16 Priority Date:	September 30, 1915	
17 Point of Diversion:	1150 feet south and 1250 feet west from the center 18 of Section 2, being within the NE¼SW¼ of Section 2, 19 T. 19 N., R. 14 E.W.M.	
20 Place of Use:	That portion of the N¼SW¼ of Section 2, T. 19 N., 21 R. 14 E.W.M. described as follows: Commencing at 22 the west quarter corner of said section; thence 23 east 850 feet; thence south 550 feet to the true 24 point of beginning; thence east 522 feet; thence 25 south 417 feet; thence west 522 feet; thence north 26 417 feet to the true point of beginning.	

27 VI.

28 The Court, having reviewed the filings, testimony, and Reports of  
Referee, and having heard argument and otherwise being fully advised,  
orders as follows:

