

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

20 JULY 1981
2 APRIL 1981

13 1. Identification of claimant (including spouse):

14 a. Name of individual or entity

The Mountaineers Inc

16 b. Mailing address

719 Pike Street

Seattle, WA 98101

19 c. Telephone number

(206) 623-2314

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

21 a. Name of water source(s); if unnamed, so state:

22 Un-named stream

23 tributary of _____

24 b. Legal doctrine(s) on which claim is based (e.g. riparian, appropriative):

26 Riparian

27 c. If claim is based on a court decree or finding, identify the court, case number, and date:

28 _____

FEB 26 1981
FEB 26 1981
BETTY MCGILLEN, County Clerk

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 D. May~~
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)
(name of claimant), claimant herein, and he is authorized
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

-13 | 2
-0 |

25

2040

1165

9

N

SURFACE WATER SOURCE
AT SNOQUALMIE LODGE
PROPERTY - MOUNTAINEERS

8-24-81 RMY

#25.00
no copy

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 OF)
4 THE RIGHTS TO THE USE OF THE SURFACE)
5 WATERS OF THE YAKIMA RIVER DRAINAGE)
6 BASIN, IN ACCORDANCE WITH THE PROVISIONS)
7 OF CHAPTER 90.03, REVISED CODE OF)
8 WASHINGTON,)
9)
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11)
12)
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32)
33)
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)
FILED
AUG 28 1981
BETTY MCGILLEN, County Clerk
RECEIVED
X-SUPERIOR COURT
YAKIMA, WASHINGTON
[B. 8.]

1. Identification of claimant (including spouse):

a. Name of individual or entity The Mountaineers Inc
b. Mailing address 719 Pike St
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:

STATEMENT OF CLAIM - Page 1
(6/79)

1714 Copy Recd
7-3-82
Ron Efford

- 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,
15 indicate this information under number 7.k., below.

4. a. Date of beginning of construction: _____

- b. Date of completion of construction: _____

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:

Name (if any) Capacity Dimensions

23 | Page

24 | Page

25 | Page

26 | Page

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

28

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

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

- 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 _____ to _____ of each year.
(day/month) (day/month)
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

- 1 e. Interest in land (e.g., owner; contract purchaser,
2 mortgagee, etc.):

3 Owner

- 4 f. If ditch diversion has been replaced by pump, state size
5 and capacity of pump, date installed and location.

- 6 g. State how title to lands described was first acquired from
7 the United States.

8 Purchased from Northern Pacific Railroad. Northern Pacific
9 acquired the land as a Land Grant from the Federal Government.

- 10 h. State to whom and when patent was issued for this land.

11 The Mountaineers, October 11, 1928

- 12 i. State when and how was the first step taken to obtain
13 title from the federal government.

- 14 j. State whether land is riparian to the water source.

15 yes

- 16 k. If type of use, place of use, or quantity of water used has
17 changed since the initial use or if construction of the
18 water system was conducted in more than one phase, describe
19 these changes or phases on a sheet attached to this form.

- 20 8. List below, or attach, any other information such as a map which
21 could contribute to defining and establishing this claim.

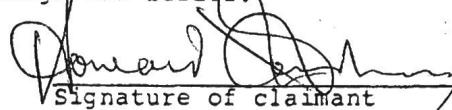
22 See attached Map "Mountaineers Meany Ski Hut Property"

23
24
25
26 VERIFICATION OF DEFENDANT:

27 STATE OF WASHINGTON)
28 COUNTY OF KING) ss.
29

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

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



Signature of claimant

6 Subscribed and sworn to before me this 24 day of August
7 1991.


DANIEL E. MCLEAN
NOTARY PUBLIC
EXPIRES 6-23-95
STATE OF WASHINGTON
residing at Seattle
(city)

12 VERIFICATION OF AUTHORIZED AGENT:

13 STATE OF _____)
14 COUNTY OF _____) ss.

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

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

25 Signature of agent for claimant

26 _____ (address)

28 _____ (city) _____ (state) _____ (zip code)

29 Subscribed and sworn to before me this _____ day of _____, 19 _____.
30

31 Notary Public in and for the
32 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:

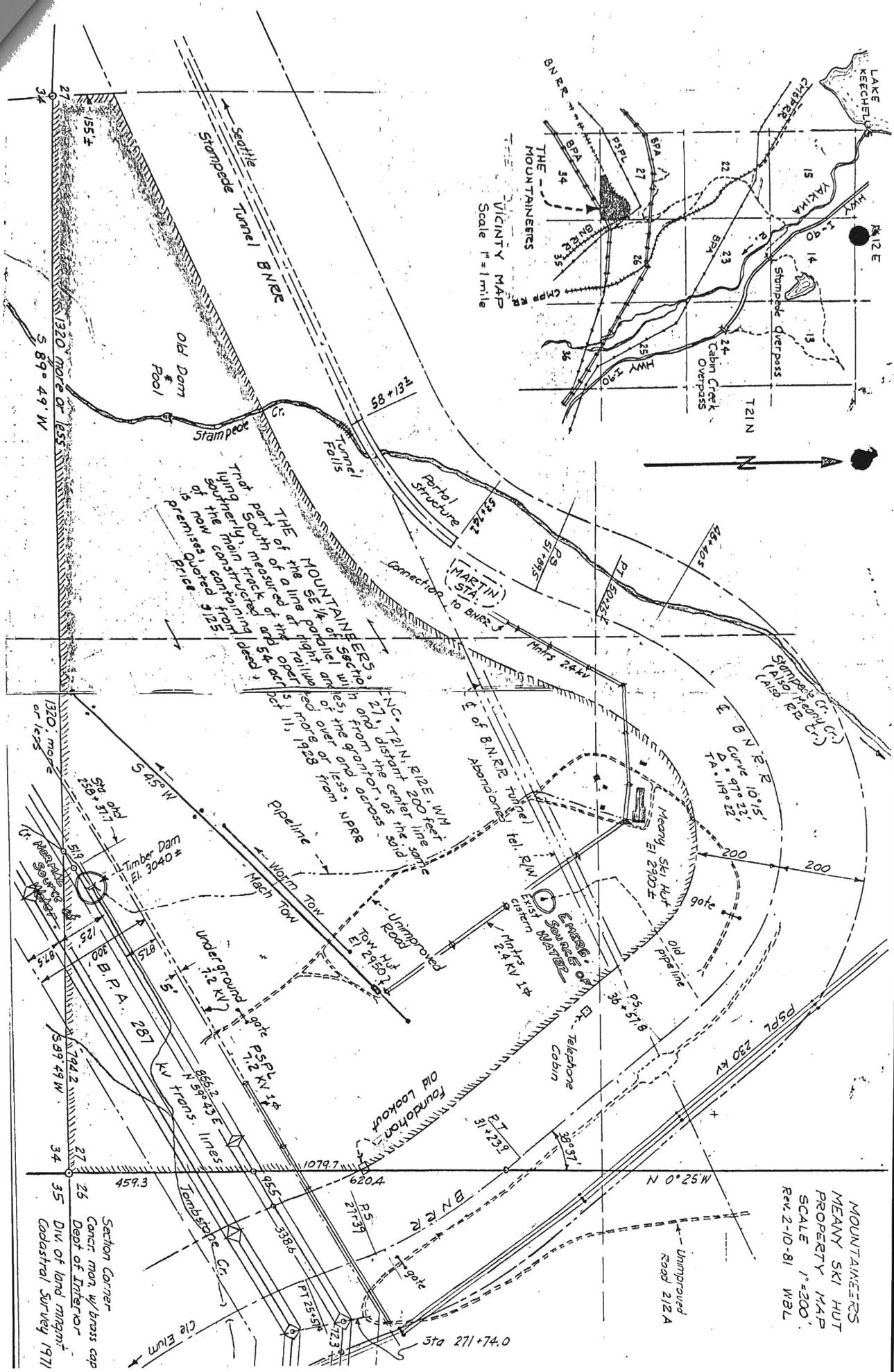
That part of the SE 1/4 of Section 27, T 21 N, R 12 E.W.M. lying south of a line parallel with and distant 200 feet southerly, measured at right angles from the center line of the main track of the railway of the grantor (now Burlington Northern RR), as the same is now constructed and operated over and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



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,)
8 No. 77-2-01484-5
9 THE STATE OF WASHINGTON,)
10 DEPARTMENT OF ECOLOGY,)
11 Plaintiff,)
12 v.)
13 James J. Acquavella, et al.,)
14 Defendants.)
15)

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

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 REPORT OF REFEREE
28 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

27 REPORT OF REFEREE
28 Re: Subbasin No. 2

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

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

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

The Nelsons bought their property, located in the SE⁴ of Section 22, T. 20 N., R. 14 E.W.M. in 1966. At that time the land was undeveloped and there was no water system. They began pumping out of the Yakima River for their personal use and this practice continued until 1974 or 1975 when the Elk Meadows community water system was installed. The Nelsons would like to have the right to pump from the river because water restrictions are sometimes necessary under the community system.

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

REPORT OF REFEREE
Re: Subbasin No. 2

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

8

9 VIII. FINDINGS OF FACT

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

- 13 1. That the waters of Subbasin No. 2 and lands irrigated or waters
14 otherwise utilized therefrom are situated in Kittitas County.
15 2. That the claims to any diversionary or withdrawal rights within Subbasin
16 No. 2 of the following named claimants are denied in their entirety for reason set
17 forth in the body of this report:

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

REPORT OF REFEREE
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

3

4 Source: Big Creek

5 Use: Irrigation of 17 acres

6 Period of Use: May 1 to September 1

7 Quantity: 0.34 cubic foot per second, 81.60 acre-feet per year

8 Priority Date: June 30, 1889

9 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.

10

11 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.

12

13 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.

14

15 CLAIMANT NAME: The Mountaineers, Inc. COURT CLAIM NO. 01714

16

17 Source: Tombstone Creek

18 Use: Continuous community domestic supply for a lodge.

19 Period of Use: Continuous

20 Quantity: 0.04 cubic foot per second, 2 acre-feet per year

21 Priority Date: June 30, 1889

22 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.

23

24 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.

25

26

27 REPORT OF REFEREE
Re: Subbasin No. 2

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29

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.

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28 REPORT OF REFEREE
29 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

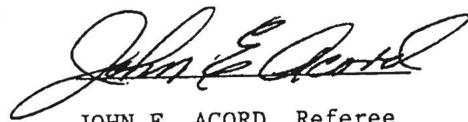
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2

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 JOHN E. ACORD
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27 REPORT OF REFEREE
28 Re: Subbasin No. 2
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3
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
5 IN AND FOR THE COUNTY OF YAKIMA

6 IN THE MATTER OF THE DETERMINATION)
7 OF THE RIGHTS TO THE USE OF THE)
8 SURFACE WATERS OF THE YAKIMA RIVER)
9 DRAINAGE BASIN, IN ACCORDANCE WITH)
10 THE PROVISIONS OF CHAPTER 90.03,) NO. 77-2-01484-5
11 REVISED CODE OF WASHINGTON)
12)
13 THE STATE OF WASHINGTON,) CONDITIONAL FINAL ORDER
14 DEPARTMENT OF ECOLOGY,) SUBBASIN NO. 2
15) (EASTON)
16 Plaintiff,)
17)
18 v.)
19)
20 JAMES J. ACQUAVELLA, et al.,)
21)
22 Defendants.)
23

24 I.

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

29 II.

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

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

7 On January 31, February 1, 2 and March 14, 1996, Referee Douglas
8 Clausing conducted a remand hearing as directed by the Court. On May 23,
9 1996, the Referee filed the Supplemental Report of Referee Re: Subbasin
10 No. 2 (Easton). This Court set November 14, 1996, for a hearing on
11 exceptions to the supplemental report. Pursuant to direction of the court,
12 the Referee then served notice (together with a copy of the report) upon
13 all parties setting a time period for filing any exceptions to the
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,
00339 - asking that the word consumptive be added to the annual
18 quantities of water confirmed for winter stock watering so it is
clear that quantity does not reflect the total amount of water that
19 can be diverted. Ecology, in its reply to this exception, asked that
the period when water could be diverted for winter stock watering be
reduced.

20 3. Earl E. Gentry, Claim No. 00755 - to a right not being
confirmed for 18 acres within the W½NE&NW¼ of Section 28, T. 20 N.,
R. 14 E.W.M.

21 4. Theodore L. Leavitt, Claim No. 06322 - to a right not being
confirmed for use of a spring.

22 5. Dorothy R. and Robert H. Humber, Claim No. 01327 - asking that
they be allowed an opportunity to present evidence about their use of
creek water.

The Court held the exception hearing on November 14, 1996. The
exception of Big Creek Water Users, Claim No. 00353, 00456, 00756, 00755
and 00339 was granted by the Court and Ecology's exception was denied. The
supplemental report is modified as follows: The word "consumptive is added
before the words "stock water" on page 56, line 9½; page 57, line 9¾; page
58, line 11; page 59 line 8½; page 60 line 9.

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

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

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

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

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

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

Page 128, line 11 add:

CLAIMANT NAME:	Arthur & Helen Pieters	COURT CLAIM NO. 01068 (A)05149
Source:	An unnamed spring	
Use:	In-house single domestic supply	
Period of Use:	Continuously	
Quantity:	0.02 cubic foot per second, 1 acre-foot per year	
Priority Date:	September 30, 1915	
Point of Diversion:	1150 feet south and 1250 feet west from the center of Section 2, being within the NE¼SW¼ of Section 2, T. 19 N., R. 14 E.W.M.	
Place of Use:	That portion of the NW¼SW¼ of Section 2, T. 19 N., R. 14 E.W.M. described as follows: Commencing at the west quarter corner of said section; thence east 850 feet; thence south 550 feet to the true point of beginning; thence east 522 feet; thence south 417 feet; thence west 522 feet; thence north 417 feet to the true point of beginning.	

VI.

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

1 1. The "Report of Referee Re: Subbasin No. 2 (Easton) filed with
2 the Court on June 20, 1994, as amended by the "Supplemental Report of
3 Referee Re: Subbasin No. 2 (Easton) filed with the Court on May 23, 1996,
4 as further amended herein are entered as a Conditional Final Order
5 confirming the rights recommended for confirmation in said reports and
6 order as existing rights.

7 2. All claims to water rights before the Referee pertaining to
8 Subbasin No. 2 not so confirmed, are denied.

9 3. This Conditional Final Order, relating to the confirmation of
10 rights and denial of claims of water rights, constitutes a final order for
11 purposes of appeal (see RAP 2.2(d)), except for purposes of final
12 integration of all confirmed rights as provided in Section XII of Pretrial
13 Order No. 8 (Procedures for Claim Evaluation, dated March 3, 1989) of this

14 Court.

15 DATED this 13th day of February, 1997.

16 Walter Stauffacher
17 JUDGE WALTER A. STAUFFACHER

18 bj