

# Many Water Rights

Croisier, Sheila

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**From:** Atkins, Linda  
**Sent:** Tuesday, September 29, 2009 5:55 PM  
**To:** Dave Clar  
**Cc:** Croisier, Sheila  
**Subject:** Water rights claims adjudication, Acquavella v. Ecology case # 77-2-01484-5

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Attachments:** 00466.pdf; 00622.pdf; Ref excerpts report subbasin 2.PDF; Condl final order subbasin 2.PDF

Dave,

As we discussed last week, I have completed some research regarding the Ecology notice that appeared in the Yakima Herald-Republic on August 21, 2009. That notice is regarding a motion by the Dept. of Ecology for a default order against parties who at some point filed a water rights claim with Ecology, but who have not ever responded to the summons that Ecology filed for adjudication of those claims in the case of Ecology v. Acquavella, Yakima County Superior Court Cause No. 77-2-01484-5.

The Mountaineers are not included among the parties identified in the notice of default, because the Mountaineers claims have been adjudicated. As we discussed, the Mountaineers had filed two water rights claims (see the first two documents attached below) regarding Yakima basin water. Both of those claims were considered in the adjudication in the 1990's. Evidence regarding the two claims was presented to a court-appointed referee in 1989 and 1990. The referee reached a conclusion about the two claims, see the third document below. No objections were filed to the referee's conclusions, and so his decision was officially rendered and confirmed in the Conditional Final Order for Sub-basin 2, see the fourth document below.



00466.pdf (347 KB) 00622.pdf (492 KB) Ref excerpts report subbasin 2...



Condl final order subbasin 2.P...

This history was pretty accurately summarized for the Mountaineers board in 1997 in a memo prepared by Brooke Drury.

The findings and conclusions of the Conditional Final Order were not appealed when the order was issued. The order clearly states that it is a final order for purposes of appeal.

We discussed that the facts concerning the water rights claims may not have been fully or altogether accurately presented to the referee. It appears that the Mountaineers appeared *pro se* in the adjudication. The evidentiary presentation for a water rights claim is technical, and the executive director at the time may not have known what to emphasize. It would not be surprising if some relevant facts were not brought to the referee's attention.

The order was entered in February 1997. Because so much time has passed since then, it does not seem likely that there is a good opportunity to correct the record now. There is a court rule that allows an order to be reopened for mistake, or newly discovered evidence, but typically such an action has to be brought within a year of entry of the order. We are well past that window now.

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 \_\_\_\_\_

29 \_\_\_\_\_

FILED  
JULY 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)

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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,

No. 77-2-01484-5

9 )  
10 THE STATE OF WASHINGTON, )  
11 DEPARTMENT OF ECOLOGY, )  
12 Plaintiff, )  
13 v.  
14 JAMES J. ACQUAVELLA, et al., )  
15 Defendants.

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

FILED  
AUG 28 1981

BETTY MCGILLEN  
CLERK  
SUPERIOR COURT  
YAKIMA, WASHINGTON  
18, 1981

16 1. Identification of claimant (including spouse):

- 17 a. Name of individual                   The Mountaineers Inc  
18 b. Mailing address                       719 Pike St  
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   Tombstone Creek (local nickname)  
23   tributary of Yakima River  
24 b. Legal doctrine(s) on which claim is based (e.g. riparian,  
25   appropriative):  
26   Riparian  
27 c. If claim is based on a court decree or finding, identify  
28   the court, case number, and date:  
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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:

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

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100

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: \_\_\_\_\_

- 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 | P a g e

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

28 | Page

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

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

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

3                   See attached sheet

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

6                   See attached sheet

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

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

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

12                   See attached sheet

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

15                   See attached sheet

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- 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.

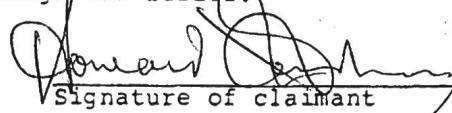
22 See attached Map "Mountaineers Meany Ski Hut Property"

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:

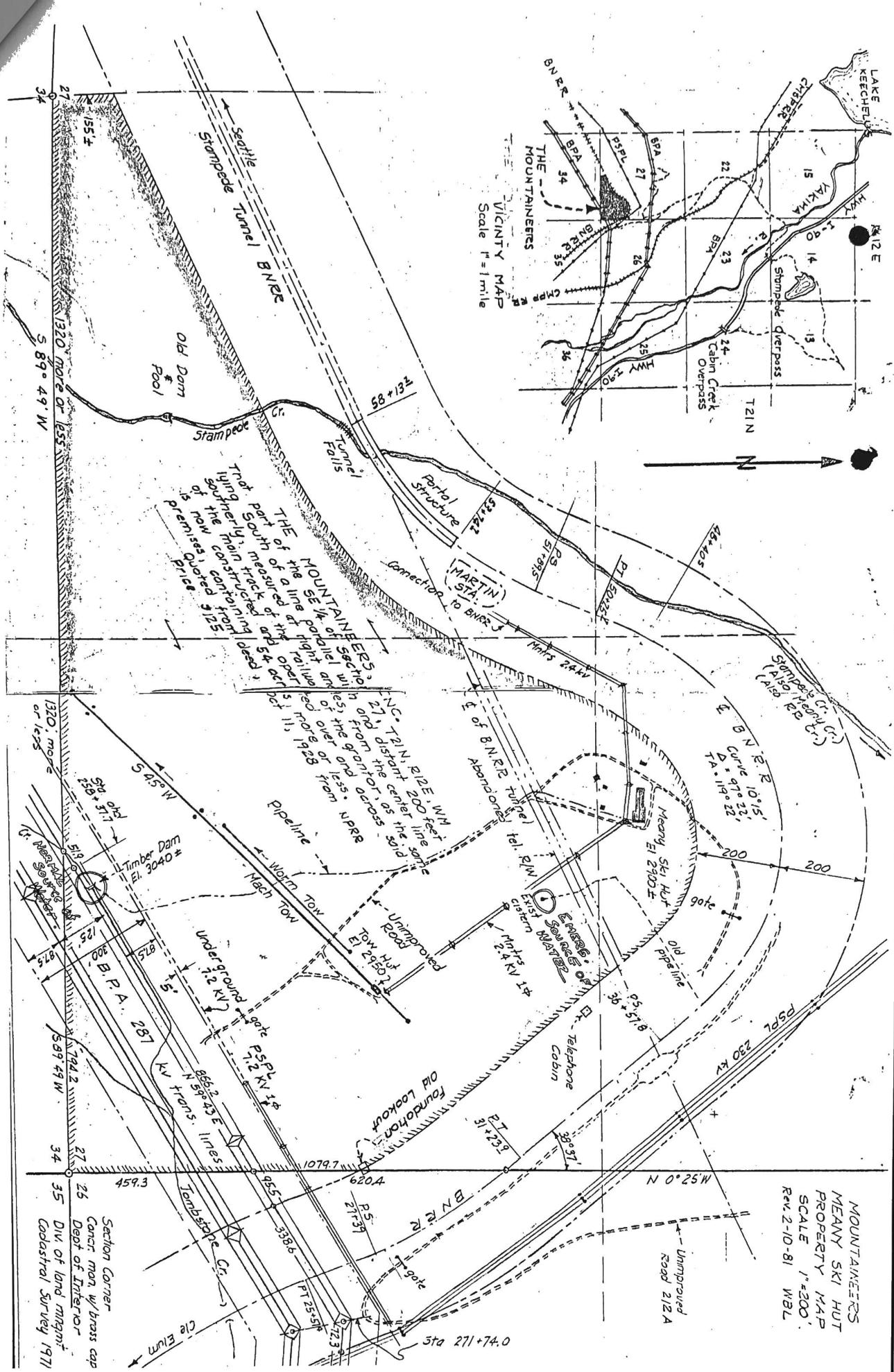
That part of the SE 1/4 of Section 27, T 21 N, R 12 E.W.M. lying south of a line parallel with and distant 200 feet southerly, measured at right angles from the center line of the main track of the railway of the grantor (now Burlington Northern RR), as the same is now constructed and operated over and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

28

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.

26                  |  
27                  |  
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

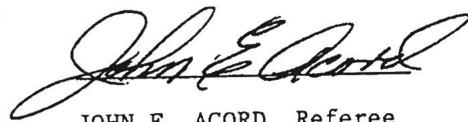
26          |  
27          REPORT OF REFEREE  
28          Re: Subbasin No. 2

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 20<sup>th</sup> day of June, 1994.

13   
14 JOHN E. ACORD

15 JOHN E. ACORD, Referee  
16  
17  
18  
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29

REPORT OF REFEREE  
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       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,  
18 00339 - asking that the word consumptive be added to the annual  
19 quantities of water confirmed for winter stock watering so it is  
clear that quantity does not reflect the total amount of water that  
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.

21 3. Earl E. Gentry, Claim No. 00755 - to a right not being  
22 confirmed for 18 acres within the W½NE&NW¼ 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.

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 13<sup>th</sup> day of February, 1997.

16       Walter Stauffacher  
17       JUDGE WALTER A. STAUFFACHER

18       bj