

30

FILED

2011 AUG 11 AM 10:56

EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA, WASHINGTON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

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

[Signature]
~~[PROPOSED]~~ ORDER PENDENTE LITE
RE: LEASE OF LUND WATER RIGHT
FOR INSTREAM FLOW RE:
COURT CLAIM NO. 00456

STATE OF WASHINGTON DEPARTMENT OF
ECOLOGY,

SUBBASIN NO. 2 (EASTON)

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.

Defendants.

This matter having come before the Court on the petitioner Washington Water Project of Trout Unlimited's ("TU") Petition for Order Pendente Lite Re: Lease of Lund Water Right for Instream Flow Re: Court Claim No. 00456, the Court having heard from all interested parties and being fully advised;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED for the 2011 irrigation season, or until further order of the Court, as follows:

- 1. The Court recognizes the water right belonging to Dave and Marilyn Lund to have the same quantities, priorities, and season of use as confirmed for Claim No. 00456 in the Conditional Final Order for Subbasin No. 2 (Easton) issued February 13, 1997, but this

[PROPOSED] ORDER PENDENTE LITE RE:
LEASE OF LUND WATER RIGHT FOR INSTREAM FLOW
RE: COURT CLAIM NO. 00456

CASCADIA LAW GROUP PLLC
606 COLUMBIA ST. NW, SUITE 212
OLYMPIA, WASHINGTON 98501
(360) 786-5057

22,121

ORIGINAL

1 recognition does not stop Ecology from making a tentative determination of extent and validity
 2 pursuant to RCW 90.03.380 concerning the transfer of these rights. The Lund water right that is
 3 leased to TU and authorized for transfer to instream flow is summarized below:

4 **2011 – 2013**

5 NAME	6 LOCATION & COURT CLAIM NO.	CFS	AFY	ACRES	PRIORITY DATE	CONSUMPTIVE USE
Lund	Big Creek Claim No. 00456	0.029997 irrigation (Aug. 1 - Sept. 1) 0.022725 stock (Sept. 2 - Nov. 15) 0.029997 stock (Nov. 16 - Feb. 29)	1.9	N/A	6/30/1887	N/A

11 **2014 – 2016**

12 NAME	13 LOCATION & COURT CLAIM NO.	CFS	AFY	ACRES	PRIORITY DATE	CONSUMPTIVE USE
Lund	Big Creek Claim No. 00456	0.07272 irrigation (May. 1 - Sept. 1) 0.049995 stock (Sept. 2 - Nov. 15) 0.07272 stock (Nov. 16 - Feb. 29)	4.56	N/A	6/30/1887	N/A

19 2. The authorized point of diversion for the water right is:

20 Big Creek: 1100 feet north and 750 feet east from the south quarter corner of
 21 Section 29, being within the SW1/4SE1/4 of Section 29, T. 20 N., R. 14 E.W.M.

22 3. Lund will make this quantity of water available for instream flow by foregoing
 23 irrigation and stock watering each irrigation season (May 1 - September 1) from 2011 through
 24 2015, and for stock water from September 2 through February 29, 2016 each year from 2011
 25 through 2016. The water in trust will not cause a reduction in the amount of acres irrigated; but
 26 rather a reduction in the quantity of water applied on each acre.

1 4. The Court designates the place of use of the above-listed water right to be instream
2 flow in the primary reach only from the original point of diversion on Big Creek as confirmed in
3 the Conditional Final Order, downstream to its confluence with the Yakima River.

4 5. Any junior priority water users who divert water during the effective period of this
5 Order Pendente Lite, and who cause an impairment of one or both of these instream flow water
6 rights in the designated reach, will be identified through the procedures outlined in the Court's
7 September 15, 2005 Order Requiring Metering, Measuring, and Reporting Requirements, All
8 Subbasins (1-31) in Benton, Kittitas, and Yakima Counties. TU will request that Ecology file for
9 a temporary restraining order or other appropriate relief with the Court against any such
10 unauthorized water user. Ecology will carry the burden of showing that the junior priority
11 downstream water user's diversion is the cause for the instream flow level being below the proper
12 level.

13 6. The Court hereby authorizes the transfer of the above-listed water rights to the
14 State Trust Water Rights Program, to be used for instream flow purposes from the original points
15 of diversion downstream to the confluence of Big Creek with the Yakima River. The subject
16 water rights will become part of the Yakima Basin Total Water Supply Available (TWSA) for
17 instream flow.

18 7. This approval applies to each irrigation season (May 1 - September 1) from 2011
19 through 2015, and for stock water from September 2 through February 29, 2016 each year from
20 2011 through 2016, or for the pendency of the Adjudication, whichever is the shorter time period.
21 This approval does not set a precedent for water transfers in future years or on any issue,
22 including, but not limited to, the validity and extent of the water right at issue. Approval shall not
23 be used as evidence of, nor waive any argument concerning, future proposed permanent or
24

24

25

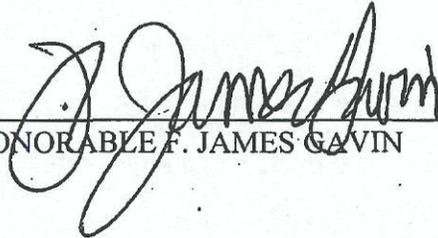
26 ///

27 ///

1 temporary transfers under either applicable federal law or contract or state law, including RCW
2 90.03.380.

3 ENTERED this 11 day of August 2011.

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


HONORABLE F. JAMES GAVIN

Presented by:

CASCADIA LAW GROUP PLLC

By: Tom McDonald
Tom McDonald, WSBA #17549

Attorneys for Washington Water Project
of Trout Unlimited



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

August, 26, 2011

Aaron Penvose, Trout Unlimited
Washington Water Project
103 Palouse Street, Suite 14
Wenatchee WA 98801-2251

Re: Water Right Change Application Nos. CS4-00353sb2@1 and CS4-00456sb2@1

Dear Mr. Penvose:

We have received your water right change applications and have assigned them the numbers shown above. Please use these numbers in future communications with our office.

If you have any questions, please contact Teresa Mitchell at 509-575-2597.

Sincerely,

Robert F. Barwin
Acting Section Manager
Water Resources Program

RFB:hd
110817

cc: Dave & Marilyn Lund

App-expedited.doc



FILE COPY

parcel_id
066334
016334

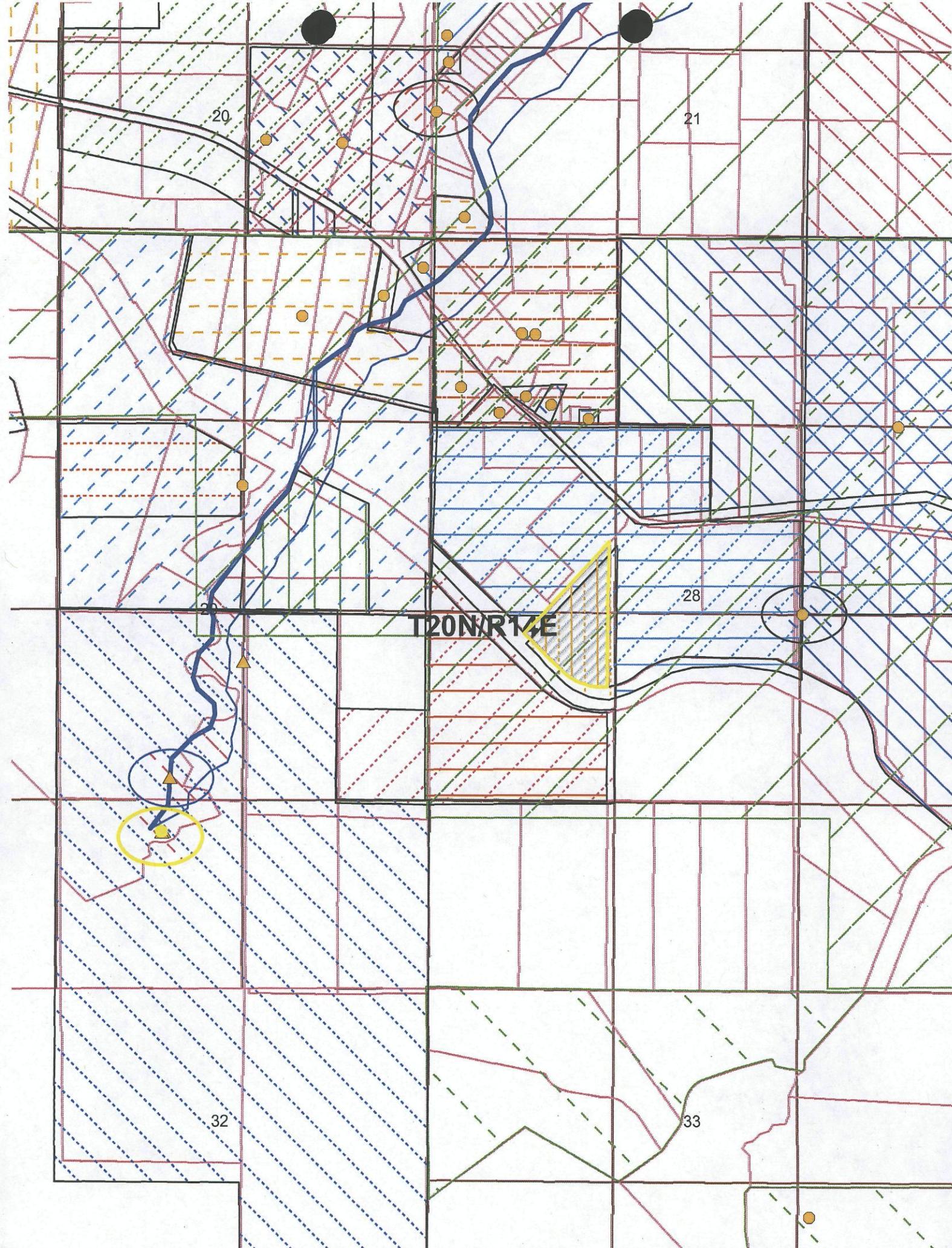
Owner_Name
LUND, DAVID L. ETUX
LUND, DAVID L. ETUX

Owner_Addr

Owner_Ad_1
210 LUND LN
210 LUND LN

Owner_Ad_2
CLE ELUM WA
CLE ELUM WA

City



20

21

28

T20N/R14E

32

33

CLAIMANT NAME:

**David L. Lund
& Marilyn E. Lund**

COURT CLAIM NO. 00456

Certificate Number:

S4-83026-J

Subbasin:

02 Easton

Source:

Big Creek

Use:

Irrigation of 8 acres and stock water

Period of Use:

May 1 through September 1 for irrigation; continuous for stock water

Quantity:

0.16 cfs; 38.4 acre-feet per year for irrigation and 0.90 acre-foot per year for stock water, 0.01 cfs from May 1 through September 1, 0.078 cfs from September 2 through November 15, 0.111 cfs from November 16 through February 29, 0.078 cfs from March 1 through April 30 for consumptive stock water

Priority Date:

June 30, 1887

Point of Diversion:

1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW¹/₄SE¹/₄ of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use:

Those portions of the SE¹/₄SW¹/₄NW¹/₄ and the NE¹/₄NW¹/₄SW¹/₄ of Section 28, T. 20 N., R. 14 E.W.M. lying north of the Kittitas Reclamation District Canal and southeast of the private road connecting the Kittitas Reclamation District bridge crossing with the Nelson Siding Road.

Limitations of Use:

When there is a surplus of water in the creek and all existing rights are being satisfied, up to 0.32 cfs and an additional 19 acre-feet per year may be diverted, provided no more than 6.8 cfs is being diverted into the Lund Ditch by the Big Creek Water Users. The instantaneous quantity authorized for stock water from May 1 to September 1 is not in addition to that authorized for irrigation.