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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR YAKIMA COUNTY

1995 MAY 22 PM 11 19

KIM M. EATON, YAKIMA COUNTY CLERK

NO. 77-2-01484-5

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,)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Memorandum Opinion Re:
Wenas Creek
Petition For Tenth Order
Pendente Lite; Clarifi-
cation Of Ninth Order
Pendente Lite; Amendment
Sixth Order Pendente Lite;
Exceptions To Report Of
Referee Subbasin No. 15.

Plaintiff,

vs.

JAMES J. ACQUAVELLA, et al.,

Defendants.

I. INTRODUCTION

During the Subbasin 15 Exceptions Hearing and the Hearing regarding the various pendente lite orders for Wenas Creek, a number of legal issues were presented which the Court will herein address. Further, the parties presented a number of equitable matters which this Court has also attempted to resolve. Certain rulings on the exceptions also bear on the outcome of the various pendente lite orders. Thus, the Court has chosen to combine the matters for resolution in this opinion.

II. OPINION

A. Stock Water Stipulation/ Amendment of Sixth Order Pendente Lite

John and Lynn Ashbaugh motioned this Court to amend the Sixth Order Pendente Lite. They request the Court to remove the 3 c.f.s. limitation in Paragraph 2 setting forth the procedures to be followed by the Wenas

Wenas Orders
Pendente Lite- 1

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1 Irrigation District (WID) during its storage season, which essentially
2 coincides with the non-irrigation season. WID responded, excepting to
3 the same Order and the provision requiring WID to release enough water
4 to maintain a live (flowing) stream in the North Channel of Wenas Creek
5 and a target flow of .25 c.f.s. at the property of Miles Yates. Based
6 on this exception, John S. Mayo and Douglas Mayo responded by asking
7 that the Sixth Order be modified to reduce the storage season ending
8 date from April 20 to April 1. As to the South Fork, Jerry, Dorothy and
9 Laura Longmire, as well as the Purdin Ditch Water Users, object to
10 maintenance of a minimum flow of .25 c.f.s. for non-diversionary
11 stockwater. They contend that to do so results in a tremendous waste of
12 otherwise storable water in light of the fact that both North and South
13 Forks have so-called "losing stretches."

14 The Referee determined that the right to non-diversionary stock
15 water predated any rights acquired by the WID. Report of Referee Re:
16 Subbasin 15. This finding was based on evidence in the subbasin record
17 and reflects the Referee's determination that although no provision was
18 made for non-diversionary stockwater in the certificates resulting from
19 the 1921 Wenas Creek adjudication, there must have been early stockwater
20 use by the landowners when they first settled the area riparian to the
21 Creek. It is also a matter of common knowledge, to which this Court
22 will take judicial notice, that animals were relied on to bring settlers
23 to the Wenas. See In re Marriage of Campbell, 37 Wn. App. 840, 683 P.2d
24 604 (1984) (Court can take judicial notice of facts generally known
25 within the territorial jurisdiction of the trial court). To find that
early riparian landowners would not have first used the Creek to water

1 stock, as opposed to any other endeavor, would be to literally place the
2 cart before the horse. Accordingly, the Court agrees with the Referee's
3 decision and incorporates that finding, found at pages 203-205 of the
4 Report of Referee Re: Subbasin No. 15, into this Memorandum Opinion.

5 Similarly, the Referee's Report contains a "non-diversionary" stock
6 watering use stipulation. Id. at 4. That stipulation requires that
7 water in natural watercourses be retained when naturally available, in
8 an amount not to exceed 0.25 c.f.s.. Id. Furthermore, such rights are
9 to be accorded senior priority. Id. Apparently, the parties, with the
10 exception of Purdin Ditch after the fact, agreed that stockwater should
11 receive the highest priority on the creek. The Court will give great
12 deference to such stipulations, and based on the findings in this
13 section, denies Purdin Ditch's exception as to the priority of the non-
14 diversionary stockwater.

15 Whether to modify the Sixth Order and allow additional releases or
16 "pass through" flows during the non-irrigation and early irrigation
17 season reduces to two issues: (1) Is off-season water naturally
18 available in both forks of the creek; (2) Does maintenance of a "live,
19 flowing stream" constitute waste? The Court will take these issues up
20 together.

21 Throughout the hearing there was consistent testimony by all
22 parties regarding substantial "losing stretches" on both forks of the
23 Creek. In passing through a sufficient amount of water to keep these
24 stretches "wet", does that constitute a waste of water during the non
25 and early irrigation seasons? In 1977, in the Yakima County case of
Nesland v. Hallauer, Cause No. 77-2-000625-7, Judge Loy considered

1 nearly the identical issue, and determined the answer was yes. However,
2 the testimony before this Court leads to a different conclusion.

3 The interrelationship between off-season storage and the ability of
4 downstream users to receive stockwater and early irrigation water is
5 more complex than simply saving water that would otherwise flow out to
6 the Yakima River. Failure to consistently and continuously recharge the
7 streambed during the winter resulted in the Mayo's inability to receive
8 their class water in mid-April, 1994. Once the streambed went dry, the
9 ability to push water down the South Channel to the Mayos in April
10 required incredible volumes of water. Hence, what seemed to be a waste
11 of water at that point in time really was the result of a problem that
12 had built up over the winter-- a problem that was brought to this
13 Court's attention by the Ashbaughs in regard to the North channel. In
14 essence, the water can be discharged a portion at a time over the
15 storage season, or tremendous volumes can be released in the spring.
16 When other requirements are examined, it can be seen that the former is
17 more in line with proper river management.

18 For example, the Sixth Order Pendente Lite at paragraph 1 contains
19 the following language:

20 "The Wenas Irrigation District is authorized to extend the time
21 line for storage of water in its reservoir to April 20, 1992. The
22 storage of water during the above period is subject to all other
23 conditions found in Reservoir Certificates No. 2054 and No. R4-
24 26435C and Certificate of Change Vol. 1, p. 112, attached as
25 exhibit A. Pursuant to Exhibit A, all senior water rights,
including irrigation water rights after April 1, must be fully
satisfied prior to storage being authorized." (Emphasis added.)

As important and efficient as storage is, there is a potential downside
often unaccounted for in the distribution of water. Retention of the

1 water in the reservoir caused a dewatering of the stream channel that
2 required a very substantial delivery of irrigation water in the early
3 part of the season to make up for the deficit. Accordingly, the prior
4 rights for stockwater and the irrigation rights of the Mayos in late
5 March/early April are interrelated and must be taken into account and
6 satisfied.

7 Furthermore, the Court is unaware of any appellate decision which
8 defines distribution of water to diverters, by way of a porous natural
9 channel, as "waste." Cf. United States v. Ahtanum Irrigation Dist., 330
10 F.2d 897, 912-13 (1964) (Court upheld finding of master that excessive
11 water losses caused by delivery through creek's high water channels did
12 not constitute waste and did not require improvements in light of
13 uncertainty of water right). Typically, "waste" is defined as "the
14 amount of flow diverted in excess of reasonable needs under customary
15 irrigation practices." Shupe, Waste in Western Water Law: A Blueprint
16 for Change, 61 Or. L. Rev. 483, 486-495 (emphasis added); see also
17 Ecology v. Grimes, 121 Wn.2d 459, 471 (1993). Although employees of DOE
18 speculated that one of the channels (probably the north) might be only
19 a high-water natural channel, the record is too sparse in that regard
20 for this Court to so conclude.

21 Based on the above, this Court will modify the Sixth Order to
22 require the Wenas Irrigation District to pass a portion of water
23 necessary to maintain a live, "flowing" stream (approximately 0.25 cfs)
24 at the measuring devices of the North and South Channels. Pursuant to
25 the request of Ecology, the Court shall require this amount of water to
be determined by the stream patrolman in consultation with the

1 Department of Ecology. Specifically, the Sixth Order shall read at
2 paragraph 2:

3 a. Wenas Irrigation District is never required to release
4 more water than what is measured at the inflow into the
reservoir (the natural flow).

5 b. Subject to (a) above, Wenas Irrigation District shall
6 release the amount of water necessary to maintain a live
("flowing") stream in the North and South Channel (estimated
7 to be 1-3 cfs., but limited only by (a) above) and to be
determined by the Court-appointed stream patrolman in
8 consultation with the Department of Ecology. Wenas Irrigation
District shall attempt to maintain the "target flow". "Target
9 flow" is defined as 0.25 cfs. as measured by the stream
patrolman at a location to be determined on the North and
10 South Channel of Wenas Creek by the Department of Ecology;

11 As to the storage rights of WID after April 1, the Referee found no
12 basis for this right as written in the Sixth Order Pendente Lite. The
13 Court agrees and accordingly makes the following change to paragraph 1
14 of the Sixth Order whereby the ending date of storage is reduced from
15 April 20 to April 1. Certificate No. R4-26435C allows storage only
16 until April 1 of each year if water is available. This Court has no
17 authority to run counter to the explicit provisions of a water right
18 certificate granted by the DOE. RCW 90.03.245 sets forth the
19 jurisdiction and authority of the Court in a general adjudication. That
20 section states flatly:

21 "Nothing in this section may be construed as establishing or
22 creating any new rights to the use of water. This section
relates exclusively to the confirmation of water rights
23 established or created under provisions of state law or under
federal laws." Emphasis added.

24 Procurement of a water right pursuant to the permit/certification
25 scheme in RCW 90.03.250-.340 is such a state law. Only the DOE can
modify or change a water right certificate to authorize future uses or

1 seasonal changes.

2 The Court emphasizes that "first in time, first in right" is, and
3 has been, the law in this state. RCW 90.03.010. Wenas Irrigation
4 District constructed their reservoir with this knowledge and given their
5 junior water right, must operate accordingly.

6 The Court also notes the cross-examination of John and Doug Mayo by
7 Purdin Ditch Waterusers. Therein it was established that the Mayo lands
8 with the earliest priority date actually have a diversion point
9 downstream of where the North and South Channels of Wenas rejoin.
10 Although the Mayos divert at a different point on the South Channel
11 pursuant to seasonal permits from the DOE, only after they receive a
12 permanent certificate from DOE authorizing this change will they be able
13 to require continued diversions down the South Channel. Should DOE not
14 grant such a change on a permanent or temporary basis, then it would
15 appear that no rights to irrigation water exist for them or anyone else
16 on the South Fork.

17 **III. MOTION FOR CLARIFICATION OF NINTH ORDER PENDENTE LITE**

18 The Ninth Order Pendente Lite requires installation of measuring
19 devices. The Mayos request clarification by the Court as to whether
20 these shall be permanent structures or temporary structures. Secondly,
21 they ask the Order be modified to spread the costs between all natural
22 flow users, below and above Fletcher Lane, rather than first priority
23 waters users only.

24 In light of the continued antagonism and mistrust between water
25 users who utilize Wenas Creek, this Court has ordered installation of
measuring devices on the Creek itself. In this Opinion, the Court

1 reaffirms the Ninth Order as to the necessity for the measuring devices.
2 Thus, the only consideration here is what type, what location and who
3 will pay the costs.

4 The Department of Ecology requests that permanent structures be
5 installed on both forks, but of a type that can accommodate seasonal
6 fluctuations. They offer assistance in selecting an appropriate
7 location on both forks, taking into account testimony and evidence that
8 was presented in the March 14-17, 1995, hearing. Water users above and
9 below Fletcher Lane as well as WID appear content with the temporary
10 devices. Additionally, witnesses testified to various locations that
11 would serve as good sites for the measuring devices. However, in light
12 of the acrimony that prevails on Wenas Creek, accuracy and certainty is
13 of a premium. To achieve those goals, the Court will defer to the
14 expertise of the DOE. The Court hereby orders that the appropriate
15 permanent measuring devices and structures which will ensure a high
16 level of accuracy, as determined by the DOE, be installed near or at
17 Fletcher Lane at a location to be determined by the DOE. All parties
18 shall assist the DOE in any fashion the DOE requires.

19 As to costs, the Mayos contend placing the entire burden on the
20 first priority users, set forth at page 2 of the Ninth Order, unfairly
21 benefits other water users and WID who do not have to pay. Additionally,
22 but for the existence of the dam, there would be no need for a midway
23 measuring device. Although the Court recognizes a certain amount of
24 significance in those arguments, they must be weighed against the
25 competing concerns. For example, it cannot be ignored that the first
priority users below Fletcher Lane receive a substantial benefit from

1 the presence of the Dam in regard to late season water availability-- a
2 benefit for which they make no payments. Secondly, it is the Mayos and
3 others below Fletcher Lane who are complaining about other water user's
4 veracity in regard to water uses, natural flow and storage, within the
5 WID. However, the evidence presented at the hearing did not sustain
6 those allegations.

7 The Court determines that a measuring device near Fletcher Lane
8 benefits all users on the entire Wenas Creek. Perhaps more importantly,
9 it would serve as a barometer of trust and hopefully will lead to peace.
10 Therefore, all natural flow users in Wenas Creek shall be responsible
11 for payment of 25% of the cost, on a proportionate basis determined on
12 acreage and frequency of use. However, the Court also finds the First
13 Priority Water Users primarily benefit from installation of the
14 measuring devices. Accordingly, the Court requires the First Priority
15 Users to be the primary funding source for the installation and
16 operation of the measuring device- 50% of the cost. The Court further
17 finds that installation, expansion and operation of the Dam has
18 contributed to the necessity of the measuring device, but that
19 contribution must be weighed against the benefit received by downstream
20 users of the dam's presence. Based on these considerations, the Court
21 determines WID shall pay 25% of the installation and operation fees.
22 The Court requests Ecology to make these assessments and submit a
23 schedule for the Court's approval.

24 The permanent measuring devices shall be installed and operational
25 by April 1, 1996. Temporary measuring devices, as approved by the DOE,
shall be utilized until that date.

1 **IV. STREAM PATROLMAN/PROPOSED TENTH ORDER PENDENTE LITE**

2 The Mayos request that Mr. Warren Dickman be named watermaster to
3 oversee distribution of water within the basin. They do not specifically
4 set forth what Mr. Dickman's responsibilities would be, nor do they
5 indicate who will actually make the measurements below Fletcher Lane.
6 WID counters, stating that Mr. Ray Day has served satisfactorily for
7 many years as stream patrolman for the District and they intend to keep
8 him in place. They suggest expanding his jurisdiction to patrol below
9 Fletcher Lane. Purdin Ditch water users complain that the fees for a
10 water master such as Mr. Dickman are too high and should not be born by
11 them. Although the Court will take up the remainder of the Tenth Order
12 Pendente Lite below, it makes the following findings regarding the
13 appointment of a stream patrolman for Wenas Creek.

14 Ecology suggests the best case scenario would be to appoint one
15 stream patrolman for the entire watershed; above the dam, within the
16 District boundaries and below Fletcher Lane. The Court agrees.
17 Coordinated management within the basin will ensure that the right hand
18 works with, rather than against, the left. The testimony of Douglas
19 Mayo indicates that the Creek has rather erratic flow patterns which is
20 likely attributable to uncoordinated management. Additionally, with
21 coordinated management, individuals can be assured of accurate and
22 equitable diversions by neighbors, which will remove some of the
23 paranoia regarding who is diverting what. Doing so will also provide a
24 record of exactly what is going on rather than assumptions and
25 generalizations.

Ecology suggests there need not be a level of administration

1 between the stream patrolman and Ecology itself. This Court agrees with
2 this conclusion as well. To do so only incurs unnecessary costs when an
3 agency, like Ecology, is ready, willing and capable to serve as an
4 overseer of the distribution of water. Nothing in the record persuades
5 the Court that Ecology is unable to fill this role.

6 That brings the Court to the central decision as to who will
7 fulfill this role. Most of the complaints regarding water distribution
8 concerned decisions made during the storage season. In fact, most of
9 the disputes during the irrigation season were between the users below
10 Fletcher Lane, rather than disputes between the District and users below
11 Fletcher Lane. Indeed, counsel for the Purdin Ditch water users
12 suggests that if any oversight was necessary, it would most likely be
13 during the storage season. This Court agrees and makes the following
14 finding regarding identity of the stream patrolman.

15 From November 1, each year, or at the point where releases for
16 irrigation cease and storage commences, which ever is earlier, Mr.
17 Warren Dickman shall serve as stream patrolman for the entire basin. He
18 shall serve until approximately April 1 of the following year, or when
19 water storage ceases, which ever comes later. Should Mr. Dickman choose
20 not to accept this responsibility, then Ecology shall appoint a
21 replacement after consultation with water users of Wenas Creek.

22 Beginning April 1 of each year, or whenever storage ceases
23 thereafter, Mr. Ray Day shall assume responsibility as stream patrolman
24 for the entire Wenas Creek basin. Although objections were raised
25 regarding Mr. Day's conflict of interest as property owner within WID
and WID board member, it was not established at hearing that Mr. Day was

1 actually biased and incapable of carrying out impartially the duties of
2 stream patrolman. The one incident cited to by the Mayos regarding
3 early April releases would be resolved by this Court's designation of
4 Mr. Dickman. Additionally, even in that instance it cannot be said that
5 Mr. Day acted maliciously and with no concern for downstream users. He
6 contacted the DOE to seek their counsel on the matter and stood ready to
7 abide by their neutral decision. Such is all that can be expected in
8 "no win" situations. Additionally, Mr. Day has undertaken this
9 responsibility before and is knowledgeable of the system. Additionally,
10 Mr. Day could provide for coordinated management between natural flow
11 users and storage diversions. His duties will continue until October 31
12 each year or until releases cease for irrigation purposes and storage
13 commences, whichever is earliest.

14 Should Mr. Day choose not to accept this designation, then an
15 irrigation season stream patrolman shall be appointed by Ecology after
16 consultation with natural flow users and the Wenas Irrigation District.
17 Of course, WID can hire another ditch rider for water distribution
18 within their boundaries. However such decisions, to the extent they
19 affect delivery of natural flows, will be subject to the oversight of
20 the appointed stream patrolman. The irrigation season stream patrolman
21 shall regulate diversions pursuant to the 1921 Wenas Decree until a
22 Conditional Final Order for Wenas Creek is entered in this adjudication.
23 The irrigation stream patrolman shall ensure that all First Priority
24 water rights, Class 1, 2 and 3, are satisfied before any junior natural
25 flow users divert water.

Assessments to fund payment of Mr. Dickman's salary shall be paid

1 by the natural flow users in Wenas Creek on a per acre basis. An exact
2 schedule shall be drawn up by Ecology in consultation with natural flow
3 users on Wenas Creek and presented to this Court for approval. Mr.
4 Day's salary shall be split evenly: 50% to be paid by WID and 50% to be
5 paid by all natural flow users. The 50% allocation to natural flow
6 users will be paid primarily by senior irrigators on a per acre basis.
7 A schedule shall be drawn up by Ecology in consultation with WID and
8 natural flow users and presented to the Court for approval. All parties
9 shall work cooperatively and amicably with Ecology in achieving these
10 assessments.

11 Although the Court could invalidate the other Orders Pendente Lite
12 that have been implemented for the benefit of Wenas Creek water users
13 and start fresh with a new Tenth Order, the Court chooses not to do so.
14 Residents have become familiar with the current Orders and with the
15 modifications set forth in this Opinion and subsequent Order, they
16 should be more fine-tuned and workable. Therefore, in all other
17 respects the Petition for Tenth Order Pendente Lite is denied, including
18 assessments for performance of hydrological studies.

19 **V. RIGHTS TO RETURN FLOWS**

20 WID requests this Court to make a ruling regarding return flows
21 that run off the lands within the District boundaries. They maintain
22 the Court has already decided return flow issues in other venues and
23 those decisions are applicable to this subbasin. WID is correct.

24 The Court first analyzed return flows and rights thereto in the
25 Memorandum Opinion Re: Motion for Reconsideration of Limiting
Agreements, where it held the United States retained rights in water it

1 once diverted and could make additional uses of that water. In a
2 Memorandum Opinion Re: Subbasin 8 Exceptions, the Court analyzed return
3 flows once more and extended the Limiting Agreement holding to include
4 all distributing entities. See also DOE v. BOR, 118 Wn.2d 761, 827 P.2d
5 275 (1992) (The appropriator's rights in the particular molecules of
6 diverted water do not necessarily end when the water has been used once
7 for irrigation. An appropriator has a right to recapture used water,
8 even, under certain circumstances, when the water has left the
9 appropriator's land and entered a natural watercourse.) The Court also
10 determined that an appropriator may obtain a right to return flow
11 provided that flow naturally originated from and returned to a water
12 course within the same watershed. Mem. Op. Subbasin 8 at 3. However,
13 such rights are, of course, subject to the availability of the water
14 based on the first appropriator's right to make further uses of the
15 water on the lands to which the right is appurtenant. Id. at 3-4.
16 Applied to the Wenas dispute, the Court determines that once the water
17 leaves the District boundaries, the water is subject to allocation based
18 on seniority and prior rights. However, those senior right holders
19 cannot compel continued flows that emanate from storage water and the
20 District may make further uses of that water as it sees fit. Obviously,
21 District patrons may only divert storage waters unless those patrons
22 also have a senior right to any remaining natural flows. Natural flows
23 not used to satisfy natural flow senior rights must pass through the
24 District boundaries and be made available for diversion by senior water
25 right holders below Fletcher Lane.

VI. PURDIN DITCH

1 Purdin Ditch has requested that they receive at least .25 cfs for
2 purposes of diversionary stockwater. Testimony was offered by Jerry
3 Longmire that stockwater has historically been used from the Purdin
4 Ditch. Non-irrigation season, diversionary stockwater rights for Purdin
5 Ditch were not confirmed in the Referee's Report for Subbasin 15. Nor
6 were they specifically confirmed a right in the 1921 adjudication. They
7 do not have a certificated right to stockwater. Absent such a
8 certificate, this Court has no basis for granting a diversionary, winter
9 time stockwater right. However, Purdin Ditch could argue at the Remand
10 Hearing before the Referee that the riparian stockwater right that
11 attached to the lands of Jerry Longmire were transferred to the Purdin
12 Ditch together with the irrigation right. Because the Court does not
13 have any evidence before it in that regard, such a decision cannot be
14 made at this time, but may be made subsequent to the Remand hearing.

15 **VII. MEASURING DEVICES AND REPORTING REQUIREMENTS**

16 In addition to the measuring devices discussed above, Ecology has
17 also requested installation of measuring devices at the individual
18 turnouts that meet the standards of Ecology. Testimony was presented by
19 Ray Day that all the diversions have some type of measuring device or a
20 facsimile thereof, although many are in a state of disrepair.
21 Additionally, Ecology requests that any change of diversion of 0.5 cfs
22 be reported to the stream patrolman.

23 Measuring devices and reporting are presently being installed
24 throughout much of the Yakima River basin. See Court's Order of March
25 9, 1995. The Court anticipates further tightening down by Ecology in
regard to measuring devices and reporting requirements pursuant to their

1 statutory authority. See RCW 90.03.360. The Court has already
2 discussed the rationale and desired objectives of measuring devices and
3 incorporates that discussion into this section. The stream patrolman
4 shall report to Ecology of any failures to comply with the metering or
5 reporting requirements. Ecology may then proceed with its enforcement
6 actions, including issuance of cease and desist orders, that it deems
7 appropriate.

8 Ecology has requested that Purdin Ditch and WID repair and clean
9 debris away from their measuring and diversion facilities. Both
10 entities have acknowledged this duty and appear ready to address it.
11 The Court concurs with Ecology and orders that the repair of the upper
12 weir of the reservoir be completed in a timely manner after receipt of
13 the appropriate permit. Additionally, Purdin Ditch shall repair, at its
14 own expense, their diversion headworks where the Ditch takes off from
15 the South Fork of Wenas Creek. This work shall be accomplished in a
16 timely manner but in no case later than April 1, 1996.

17 VIII. CONCLUSION

18 This Court, during the course of the Yakima River Basin General
19 Adjudication, has listened and devoted far more time to the problems and
20 concerns of Wenas Creek water users than any other subbasin (or any
21 other issue for that matter). Ironically, most of the issues are not
22 specific water right problems. It has been expensive, contentious and
23 time consuming. What it has not been is productive. It is the Court's
24 sincere hope that this Opinion will provide some guidance to management
25 and distribution of Wenas Creek waters. There are no black-and-white,
bright-lined answers to many of the problems that lie at the heart of

1 these disputes. In essence, the only thing that seems clear is just how
2 unclear the Wenas Creek operates.

3 Although the Court anticipates some discussion regarding the entry
4 of an order, which it requests Ecology to prepare, it hopes this Opinion
5 will deter further demands on the Court's time. The Remand Hearing, to
6 be held by the Referee, will take place in the near future and that is
7 the appropriate venue for presentation of any matters that were excepted
8 to and remanded by the Court from the initial Report of Referee.
9 Ultimately, that process will produce a Conditional Final Decree that
10 will more definitively establish rights and responsibilities than the
11 1921 Decree currently in operation. However, the Court cautions
12 residents from assuming that such a Decree will provide a magic formula.
13 A Decree aids in establishing rights and duties, but it is only as
14 effective and successful as the individuals who operate by its terms.

15 Dated this 22nd day of May, 1995.

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17 Walter A. Stauffacher
18 Judge Walter A. Stauffacher
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