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

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

YAKAMA NATION'S  
MEMORANDUM RE: CLAIMS TO  
SPRINGS AND BURDEN OF  
PROOF

THE STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY

SUBBASIN 23 (AHTANUM)

Plaintiff,

v.

JAMES J. ACQUAVELLA, et. al.

Defendants .

The Court at the November status conference asked the Yakama Nation to  
provide information as to how the Court's Memorandum Opinion re: Ahtanum Creek

YAKAMA NATION'S MEMO RE:  
BURDEN OF PROOF

-1-

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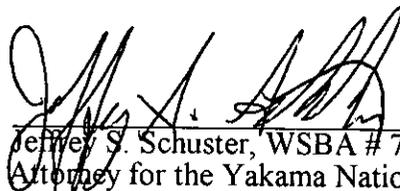
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1 Threshold Issues (Oct. 8, 2003) had affected the burden of proof for certain claimants to  
2 springs which might be at issue in the January exceptions hearing. <sup>1</sup>

3 The Court issued a legal ruling agreeing with the Yakama Nation's analysis of  
4 the law concerning the rights of north side parties at least as to a diversionary surface  
5 right from springs. Threshold Issues Opinion, supra, Issue No. 8. Under that ruling  
6 the burden of proof is on the claimants to show that their springs are not tributary,  
7 pursuant to earlier orders of the Court, to Ahtanum Creek. Id. at 28. The following  
8 claimants, identified in three of the Yakama Nation Exceptions, who have claims for  
9 diversionary rights and are still in dispute under the Court's Opinion on this issue, have  
10 that burden: Yakama Nation Exception No. 49 (Cl. 0133 & 01082 ); Exception No.50  
11 (Cl. 542-545); Exception No. 54 ( Cl. 08454).

12 This burden is in addition to the Court's identification of the burden of proof for  
13 other claimants and other issues in the Court's Opinion and earlier Report. E.g. Threshold  
14 Issues Opinion, supra, at pp. 3-6.

15 Respectfully submitted this 7<sup>th</sup> day of December 2003.

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19   
20 Jeffrey S. Schuster, WSBA # 7398  
Attorney for the Yakama Nation

21  
22 <sup>1</sup>The Yakama Nation reserves its arguments concerning and its right to appeal the Memorandum  
23 Opinion at the appropriate time as to issues addressed therein, including but not limited to claims to non-  
24 diversionary stock rights, but addresses here the application of that Opinion on springs to the exception  
25 hearing.

26 YAKAMA NATION'S MEMO RE:  
27 BURDEN OF PROOF

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