DEPARTMENT OF ECOLOGY
State of Washington

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

---DENIED---

DRAFT

PRIORITY DATE	WATER RIGHT NUMBER
July 22, 2014	G3-30717

NAME & ADDRESS
Aseret LLC
Cory and Teresa Jenkins
190 Graves Road
PO Box 74
Curlew, WA 99118

Quantity Authorized for Withdrawal

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
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Purpose

PURPOSE	DIVERSION RATE ADDITIVE	DIVERSION RATE UNITS	ANNUAL QUANTITY (AF/YR) ADDITIVE	ANNUAL QUANTITY (AF/YR) NON-ADDITIVE	PERIOD OF USE (mm/dd)
Domestic supply for 1 home and irrigation of 20 acres	---	---	---	---	

Source Limitations

SOURCE FACILITY/DEVICE	DIVERSION RATE	ANNUAL QUANTITY (AF/YR)	PERIOD OF USE (mm/dd)
A well	---	---	---

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
FERRY	GROUND WATER	COTTONWOOD CREEK	60 – KETTLE RIVER

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ	LATITUDE	LONGITUDE
WELL		40 N.	33 E.	34	SW¼SW¼		

Datum: WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE
N/A

Proposed Works

N/A

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
N/A	N/A	N/A

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is not available from the source in question; that there will be impairment of existing rights; and that there will be detriment to the public interest.

Therefore, I ORDER Ground Water Application No. G3-30717 be **DENIED**.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

DRAFT

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2015.

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Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov. To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser.

INVESTIGATOR'S REPORT

Application for Water Right – Aseret LLC
Water Right Control Number G3-30717
Gene Drury, Department of Ecology

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number G3-30717.

An application to appropriate public ground water was submitted by Aseret LLC (Cory and Teresa Jenkins) to the Department of Ecology on July 22, 2014. The application was accepted and assigned Ground Water Application No. G3-30717. The applicants propose to withdraw water from a well in the amount of 250 gallons per minute, continuously, for domestic supply of one home and seasonal irrigation of 20 acres.

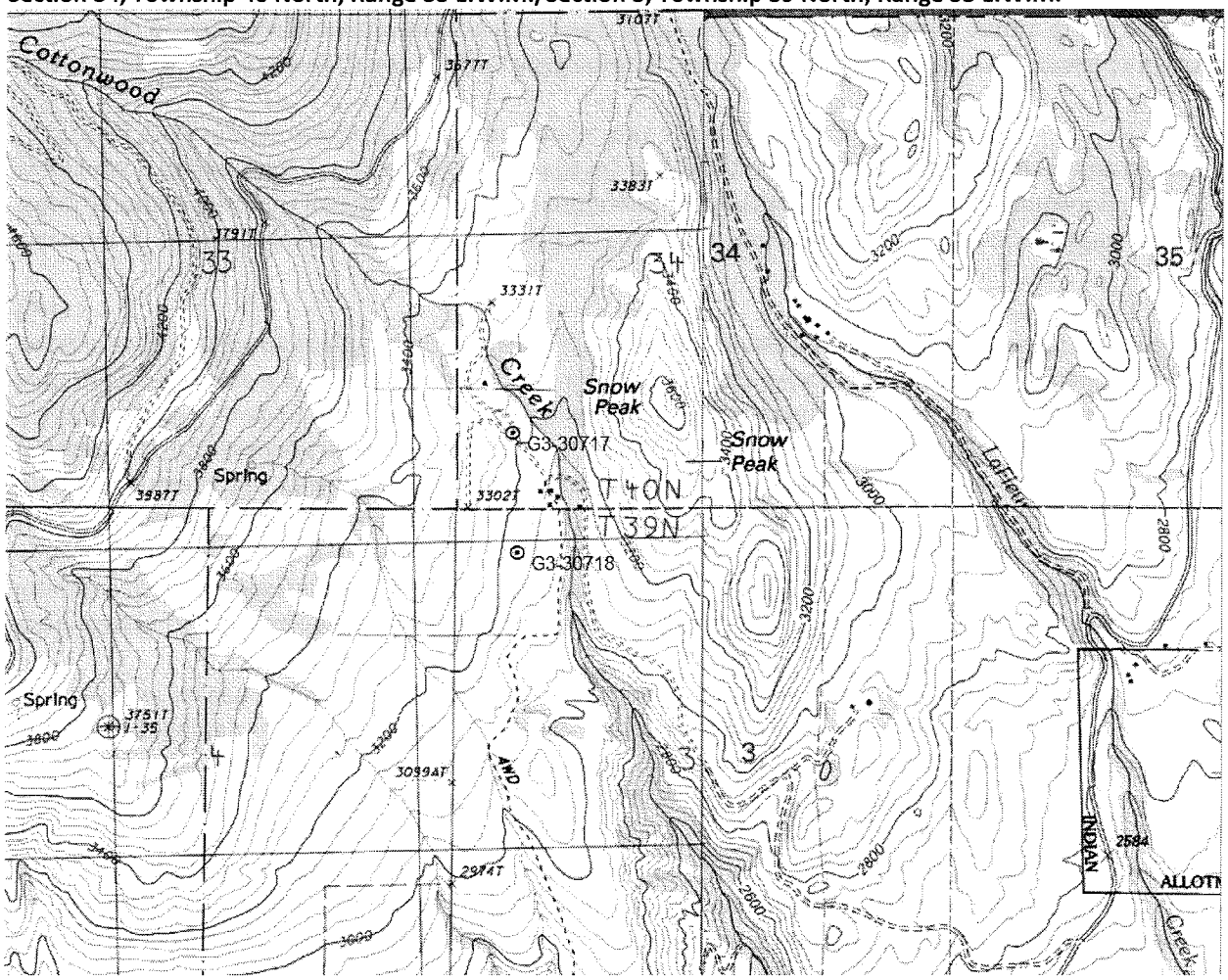
A notice of application was duly published in accordance with RCW 90.03.280 in the Ferry County View newspaper on August 27 and September 3, 2014. One protest against this application was received.

INVESTIGATION

A site visit was conducted by Gene Drury on April 28, 2015 with Teresa Jenkins. The project site is located approximately 4 miles north of Curlew, Washington at 190 Graves Road. The property is located within the Cottonwood Creek drainage, just west of Snow Peak in Ferry County.

PROJECT LOCATION

Section 34, Township 40 North, Range 33 E.W.M./Section 3, Township 39 North, Range 33 E.W.M.



USGS 7.5 Minute (Topographic Map) - "Vulcan Mtn/Curlew"

PROJECT DESCRIPTION

Application No. G3-30717 proposes construction of a 300 foot well to be located on the applicant's property (Ferry County Parcel No. 3403433000100) and within the Cottonwood Creek drainage. The application proposes to serve one home and irrigate 20 acres. The well and place of use would be within the SW¼SW¼ of Sec. 34, T. 40 N., R. 33 E.W.M. On the day of the site visit Cottonwood Creek was flowing an estimated 0.50 cubic foot per second or less in this area. The applicants filed for a 2nd well under Application No. G3-30718. The Jenkins do have an existing "groundwater exempt" well for domestic supply.

Water Availability - Hydrologic/Hydrogeologic Evaluation

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well. The hydrogeologic analysis for this application was provided by John Covert, hydrogeologist for Ecology's Water Resources Program. The applicant proposes to drill two 6" by 300' deep wells, one in the SW¼SW¼ of Section 34, T40NR33E (G3-30717) and the other in the NW¼NW¼ of Section 3, T39NR33E (G3-30718). These applications are each requesting 250 gpm for the irrigation of 20 acres and domestic uses (total of 500 gpm, 40 acres of irrigation between the two applications).

The applicant's property is adjacent to Cottonwood Creek, a small tributary (drainage area = 3.4 square miles) of the Kettle River. Cottonwood Creek is an ephemeral creek that often goes dry in the summer months (at least at the location where Ecology staff have historically measured the flow, about 2.0 miles downstream from where Cottonwood Creek crosses the applicant's property).

The applicant drilled a 206' domestic well (tag BHU891) in the SW¼SW¼ of Section 34, T40NR33E in 2014. The well was completed in cemented gravels with a static water level at 190'. The well yielded 15 gpm with 5' of drawdown after two hours. A 141' domestic well (tag AKW838) was drilled in the SW¼SE¼ of Section 34, T40NR33E in 2003. This well was completed in granite with a static water level at land surface. This well yielded 15 gpm. As these two nearby wells demonstrate, wells in this area are completed in either a water table aquifer, which consists of unconsolidated sands and gravels or in bedrock aquifers if the shallow aquifer is not present. The applicant's proposed 300' wells suggests they expect to drill into a bedrock aquifer. The applicant's existing domestic well (tag BHU891) is completed in an unconfined aquifer which is tributary to Cottonwood Creek. Groundwater moving through the sediment would discharge to Cottonwood Creek at locations where the aquifer intersects the creek bed. The unconsolidated sediments that make up the water table aquifer have a very limited aquifer extent as the higher elevations within the drainage are mapped as exposed bedrock on the surface.

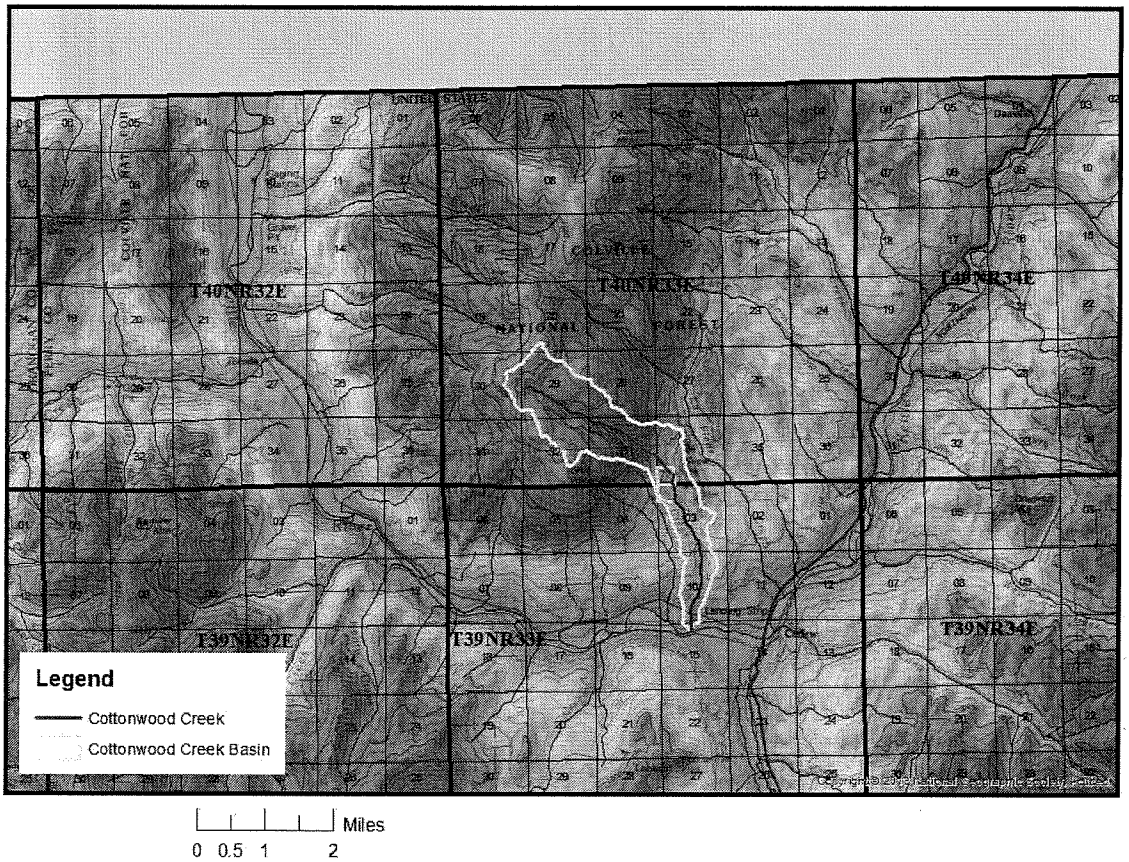
Examination of the Washington Department of Natural Resources 100K geologic maps for the area indicates that bedrock material is exposed at land surface on land that is immediately adjacent to the applicant's property (see map on page 3). If the applicant's new wells are completed within the fractured bedrock, the static water level is likely to be shallow, as seen in the nearby bedrock well mentioned above (tag AKW838). With these high heads, the fractured bedrock wells would still be tributary to Cottonwood Creek as the land surface elevation on the applicant's property will be in the 3,160 to 3,280' elevation range (depending on which well site). The confluence of Cottonwood Creek with the Kettle River is at approximately 1,800' elevation. Groundwater moving through the fractured bedrock would likely discharge to Cottonwood Creek before it reaches its confluence with the Kettle River.

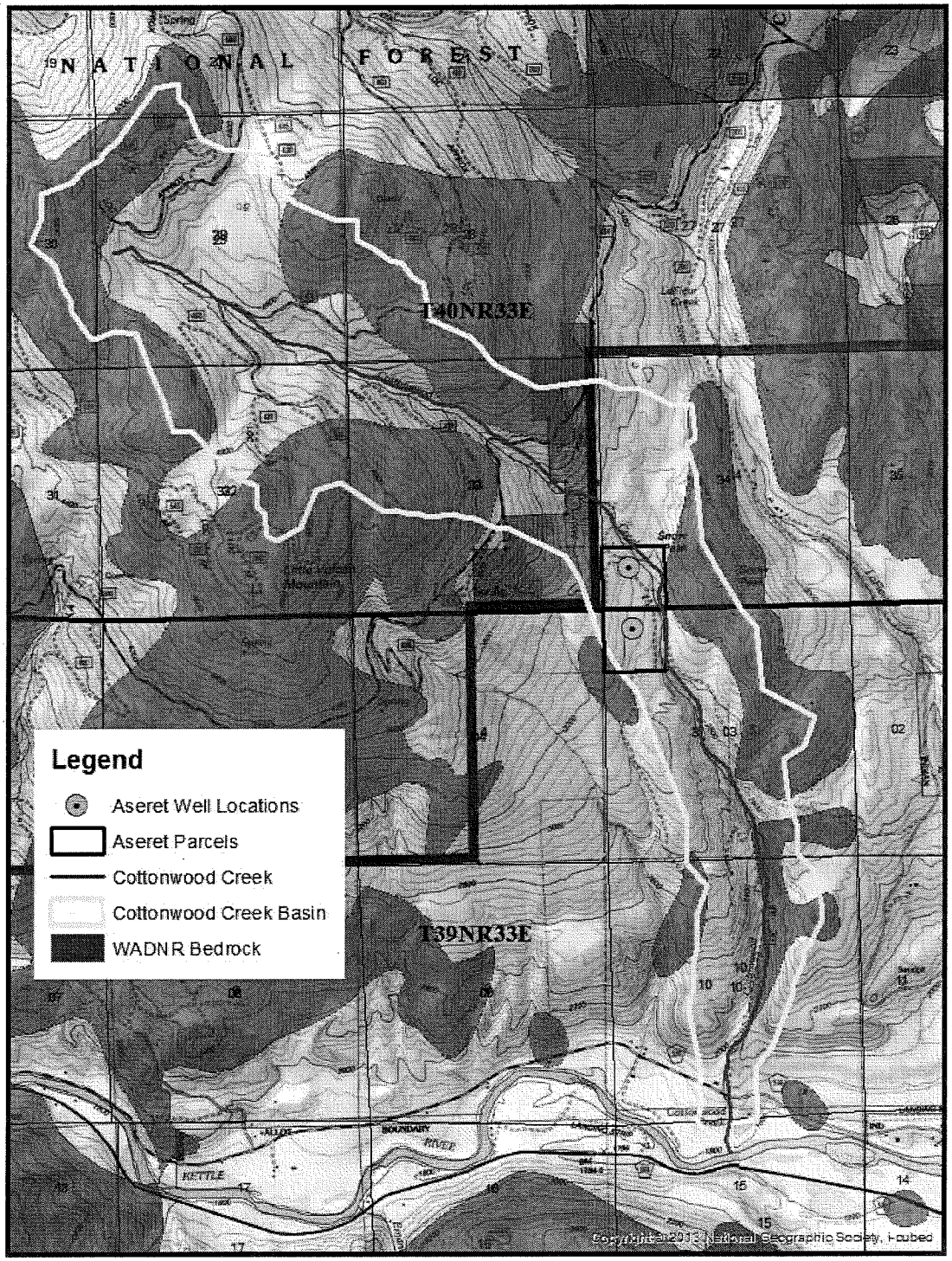
Whether the proposed wells are completed within the water table aquifer or a bedrock aquifer, the water pumped from this location would have otherwise discharged to baseflow in Cottonwood Creek. Washington Department of Fish and Wildlife (WDFW) has recommended that this application be denied to protect the fisheries resources in Cottonwood Creek as per RCW 77.57.020.

One protest was filed on each application. Both objected to the diminished flows in Cottonwood Creek that would occur if this groundwater use is allowed. Both stressed the ephemeral nature of the creek.

These concerns expressed by the protestant are legitimate. Hydraulically, the aquifer utilized for this application would be tributary to Cottonwood Creek. Pumping this aquifer would either diminish baseflow discharge to the creek, or induce recharge to the aquifer (by capturing surface water destined for Cottonwood Creek) and would impair the instream resources and senior water rights.

Cottonwood Creek's headwaters are at a topographic and hydraulic divide. Land surface slopes away to the west, south and east in this area. The groundwater aquifers present would have very limited catchment areas to augment recharge. New water use associated with these applications, if approved, would impair flows in Cottonwood Creek and therefore, it is not in the public interest to issue these rights.




NATIONAL FOREST
T40NR33E
T39NR33E
Legend
Aseret Well Locations
Aseret Parcels
Cottonwood Creek
Cottonwood Creek Basin
WADNR Bedrock
Copyright © 2013 National Geographic Society, i-cubed

0 0.5 1 2 Miles

Impairment Considerations

Groundwater withdrawn at this location would contribute to stream flow of Cottonwood Creek. Sandy Dotts, a Habitat Biologist with WDFW has investigated complaints on Cottonwood Creek for the past two years. She has viewed the creek conditions in the summer and is familiar with the area. The creek normally goes dry in the summer but did flow year round in 2013 and 2014 according to WDFW. During the WDFW investigations, it was noted that fish were present in Cottonwood Creek. Rainbow and Eastern Brook trout were both found in an electrofishing survey conducted by WDFW on May 30, 2014. On the day of the 2015 Ecology site visit to Cottonwood Creek, the creek was flowing but only an estimated 0.50 cubic foot per second or less at the applicant's culvert/driveway crossing.

Miscellaneous stream flow measurements were made by Ecology on the lower end of Cottonwood Creek at the road crossing in the S½S½ of Sec. 10, T. 39 N., R.33 E.W.M. in the summers of 1987 to 1991. That data is as follows:

Cottonwood Creek stream flow (S½¼S½ Sec. 10, T. 39 N., R. 33 E.W.M.)

DATE	FLOW (CFS)
07/07/87	DRY
08/11/87	DRY
06/04/88	DRY
06/21/88	DRY
07/19/88	DRY
08/09/88	DRY
06/20/89	0.09
07/19/89	DRY
08/22/89	DRY
06/28/90	0.92
07/17/90	0.07
08/28/90	DRY
06/27/91	1.33
07/30/91	0.006
08/29/91	0.01

A review of Ecology records was conducted for existing water rights, permits, and claims on or near the applicant's project and downstream on Cottonwood Creek. The search found two records on Cottonwood Creek. They are recorded under the following:

- **Surface Water Certificate No. S3-26790C** (Beener/Mathews), priority date of January 27, 1981. 0.04 cubic foot per second, 6.3 acre-feet per year for domestic supply, stockwater and irrigation of 2 acres. Point of diversion within the SW¼NE¼, Sec. 10, T. 39 N., R. 33 E.W.M.

- **Surface Water Claim No. 129445** (Utter), claimed priority date of 1910. 50 gallons per minute (0.11 cubic foot per second) for domestic and stockwater. Claimed point of diversion within S½NE¼ and N½SE¼, Sec. 3, T. 39 N. R. 33 E.W.M.

The withdrawal of groundwater at this location would impair flows in Cottonwood Creek and existing rights.

Public Interest Considerations

WDFW comments were received and recommended denial of the application, pursuant to Chapter 77.57.020 RCW. The recommendations were based on impacts to fish and/or wildlife habitat due to the ground water hydraulic continuity with Cottonwood Creek. WDFW did not object to in-house domestic use. The applicant is allowed under RCW 90.44.050 to construct an exempt ground water well for this purpose. One protest against this application was also received. The protestant was concerned about the impacts to the flows of Cottonwood Creek and downstream water users. New water use associated with this application, if approved, would impair flows in Cottonwood Creek and therefore, it is not in the public interest to issue this right.

Consideration of Protests and Comments

One protest against this application was as follows:

Les Wilson of Moses Lake, WA. (letter received October 1, 2014)

Mr. Wilson owns 479.3 acres of land south of the proposed points of withdrawal for Aseret LLC. He has owned the property for 51 years and is concerned about the flows of Cottonwood Creek which crosses 80 acres of his property. He believes that the water withdrawn from the groundwater wells at this location would have a direct impact on the surface water flows to his land.

Conclusions

Under Chapter 90.03.290 RCW, an application for permit may only be approved if water is available for appropriation, and the proposed use would be a beneficial use, would not impair existing water rights, and would not be detrimental to the public welfare.

It is the conclusion of this examiner that although the proposed use is a beneficial use, water is not legally and physically available for further appropriation. The proposed new appropriation within this area will cause impairment to existing rights. This appropriation would be detrimental to the public welfare.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be **DENIED**.

Gene Drury, Report Writer *Date*

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