# Analysis of Dr. Thomas Hardy Flow Studies PH 1 and PH 2 being utilized as the "best available science" for flows in the Klamath River to protect the threatened Southern Oregon Northern California Coast coho salmon.

Timeline (1 of 2)

1992 Drought Conditions in Upper Basin not seen since the 1930s

1994 March - William Trush with Institute for River Ecosystems, Fisheries Department, Humbolt State University publishes a paper focusing on the geomorphic perspective to anadromous fish restoration in the Klamath Basin. Received by the Yurok Tribe on 1 January 1995.

- 5 Principles (don't establish minimum flow requirements - use natural conditions)

1994 Drought Conditions in Upper Basin similar to the 1930s

1994 August - Donald Anglin publishes USFWS / BIA "Lower Klamath River Instream Flow Study" under interagency agreement AG1J5200003 at the behest of Yurok Tribe.

- Numerous shortfalls in data. No known relationship between flows and fish habitat issues

1994 Fall - Vogel Environmental Report

- Critical of flow demands by Yurok

1995 January - "Tribes are mad" - hand written note on Klamath River Flow Study Scoping Meeting

1995/1996 - DoJ establishes interagency agreement with BIA AG6K000029 to support claims for Yurok "potential legal proceedings which affect their fishery and associated water rights...with regard to the development and implementation of the Klamath Project Operations Plan...to assure that future use and development of tribal fishery."

1996, November 29 - Scott Bergstrom (Attorney for Division of Indian Affairs) provides a statement of work to Dr. Hardy's Watershed Systems Group, Inc to :investigate, evaluate, and analyze [tribal] fishery needs. The investigation of the water supply is necessary for the purpose of determining the source, quantity, and variability of the water resource on the Indian Trust land related to the Klamath Project Operations Plan."

1996, December 31st - \$25,000 to Dr. Hardy for expert testimony for U.S. in Klamath Tribes vs U.S. No 96-381

1997, February 10 - Dr. Hardy review of the Klamath River Basin Fisheries is discussed in Task 1 "Develop Water Quantity Model Objectives", Task 2 "Water Quantity Study Design, Task 5 "Develop a Water Quantity Model for the Klamath River"

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1997, February 12 - Allegations the Klamath River Flow Study was a tribal trust responsibility of USFWS

1997, April 23-24 - Klamath River Basin Fisheries Task Force meets with Hardy. <u>Initiates flow study for</u> \$50,000

1997, May 6 Coho listed as threatened

1997, September - Hardy provided testimony for DOJ in Klamath Tribes vs US NO 96-381

1997, September - \$15,608 to Hardy for Expert Testimony in Klamath Basin Adjudication for BIA 1997 -

Hardy preparing PH I report for Klamath River Basin Fisheries Task Force

1998, August 19 - \$79,997 to Hardy for Klamath Basin Adjudication on behalf of BIA

1998, October 15 - Bob Anderson (DOI Solicitor) and Dr. Hardy provide interaction with BIA activity

with Klamath River Basin Fisheries Task Force. Anderson communication with OWRD.

1999, February 3 - \$550,860 to Hardy for Klamath Basin Adjudication on behalf of BIA

1999, August 5 - Hardy PH 1 Study Published for Klamath River Basin Fisheries Task Force

1999, September 13 - \$115,000 to Hardy for Klamath Basin Adjudication on behalf of BIA

2000, February 3 - Scott Bergstrom (now DOI solicitor) requests payment to Hardy to continue BIA work

2000, February 18 - \$550,860 to Hardy for Klamath Basin Adjudication on behalf of BIA

2000, October 1 - Upper Klamath Lake above average lake level

2000, October 29 - \$286,694 to Hardy for Klamath Basin Adjudication on behalf of BIA

2000, October 29 - \$5,200 to Hardy to Expert Testimony to curtail Klamath Project Water for DOJ 2001,

April - Upper Klamath Lake at almost full pool (no additional storage available)

2001, April - Klamath Project Curtailed (no water to farmers)

2001, October - Draft Hardy PH II circulated

2001-2011 - Sever Criticism of Hardy Flow Studies by National Academy of Sciences and others

2013 - ACFFOD Published

2013 May - Richard Whitman (Oregon State appointee under Kitzhaber) and Tom Paul (OWRD)

negotiate a MOU with the Yurok to not enforce the ACFFOD

2021/2022 - Yurok - Hardy Studies are the "best available science"

## INTER-AGENCY AGREEMENT

#### BETWEEN

### SPECIAL LITIGATION COUNSEL

# UNITED STATES DEPARTMENT OF JUSTICE

#### AND

#### BUREAU OF INDIAN AFFAIRS

# UNITED STATES DEPARTMENT OF THE INTERIOR

#### **PARTIES:**

United States Department of Justice, Special Litigation Counsel (Justice Department), 601 Pennsylvania Avenue N.W., Washington, D.C. 20004 and United States Department of the Interior, Bureau of Indian Affairs (BIA), Director, Trust Responsibilities, 1849 C Street, MS-4559-MIB, Washington, D.C. 20240

#### **PURPOSE**

The material and testimony developed under this Inter-Agency Agreement (Agreement) will be used to support United States claims for water on behalf of the Hoopa Valley, Klamath and Yurok Tribes (Tribes) in administrative and potential legal proceedings which affect their fishery and associated water rights in the Klamath Basin, California and/or Oregon with regard to the development and implementation of the Klamath Project Operations Plan (KPOP). In order to assure that future use and development of tribal fishery and associated water rights are possible, non-Indian irrigation practices, as well as other water uses in the Klamath Basin, must be examined.

# RECITALS

This Agreement is being entered into under the authority of 31 USC Section 1535 to inventory and evaluate previously conducted technical studies and to recommend additional studies to support water rights claims for the above referenced Tribes. The Justice Department will select a contractor or contractors who will provide the services described in the Scope of Work.

The Justice Department, the Department of the Interior Solicitor's Office (Solicitor's Office) and the BIA Central Office will monitor the work of the contractor or contractors to assure that all material and work is technically and legally acceptable.

BIA INTERAGENCY AGREEMENT NO: AG6K000029 MOD #1

1. Description of Division (Explain details of service to be performed) Allach additional information if space is	insufficient)
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5. Government Attorney: For payment, in accordance with internal procedure (Name/Address of Attorney or Admin/Fiscal Office)
US DOJ/ENRD Expert Witness Unit send invoice and Original of this form to: (Check one) P.O. Box 685, Ben Franklin Station ( ) or [] P.O. Box 50814
Weinington, D.C. 20004-0814 DOMEDSS/EXPERT Washington, D.C. 20044 6. Name Title of Government Attorney Fred Disheroon 4. Signature (Witness/ADK Neutral/Lilipative Committant) 7. Name/Title of Witness/ADR Neutra/Litigative Consultant Dr. Thomas B. Hardy 1-29-97 All payments relating to this agreement shall be in accordance with the Printing Payment Act. to perform the above services ess on behalf of the government FORM OBD-47

# Final Klamath River Basin Fisheries Task Force Minutes

23-24 April 1997 Eureka, California

#### 1. Convene, review agenda, opening remarks.

Bingham: Good Morning. (A quorum was present, Attachment 1). Tom Hardy will be our facilitator for this meeting and once I take care of some routine business, I will be turning over the conduct of this meeting to him.

The topic of this two day session will be to consider the whole issue of in-stream flow studies. This has been a troubling issue for the Task Force (TF); it=s one we basically had before us from the very beginning of our restoration program. What I hope we=1l be able to do over the next two days is set aside our own agendas. Our basic mission is to restore the anadromus fisheries of the Klamath River Basin. Let=s try to collectively come to grips with that so we can move forward with the studies in such a way that people don=t feel like any in particular element is aiming right at them. To set the stage for that it=s appropriate to hear what it is that our Long Range Plan (LRP) says to this effect.

Fletcher: Objective 2.E.1.C. states that we need to evaluate the in-stream flow needs using state of the art methods of each salmon and steelhead run and life stage affected by flows released from Iron Gate Dam (IGD). 2.E.2.B. and C states that we need to identify and implement methods to rectify habitat problems identified in #1 above including the following: water quality above and below IGD, in-stream flow and habitat below IGD. It goes on at 2.E.7 to say we need to require water flows adequate to achieve optimal productivity of the basin. 2.E.8. says seek the establishment of law that mandates minimum stream flow standards.



#### 2. Business

Bingham: Thank you. Does anyone have any additions to make to the agenda?

- \*\*Motion\*\* (Wilkinson) Approve the agenda.
- \*\*Second\*\* (Bulfinch)
- \*\*Motion carries\*\*

Iverson: Mr. Chairman, those minutes [of the meeting of February 20-21, 1997] are drafted but I=m doing a little bit of editing [These minutes were mailed to the TF on May 6, 1997].

\*\*Motion\*\* (Bulfinch) Mr. Chairman, I move that we defer the approval of the February 20-21, 1997 minutes June meeting.

- \*\*Second\*\* (Smith)
- \*\*Motion carries\*\*

#### 3. Brief review of last meeting actions/general correspondence

Hamilton: Theres correspondence in the package but rather than drawing from your focus here, I suggest that everybody read them (Attachment 3, Informational Handouts) on their own. The handout that is going around contains all the motions that were aware of that the TF has passed related to a flow study and should help you understand why we are where we are today with the flow study (Handout A). If anybody is aware of any we missed, let us know.

#### 4. Introduction of Facilitator (Dr. Thomas Hardy, Utah State University)

Hardy: Good Morning. I=d like to take a few minutes to give you some background on who I am for those who don=t know me, then deal with some issues about definitions and concepts that became evident from the list of questions that was attached to the announcement of the meeting. (Handout B) I hope to address many of those questions, and then once that=s set up we=1 begin to move forward I hope in a progressive manner.

I=ve been involved with in-stream flow research and application since 1977. I=m a fisheries biologist by training. I also have a degree in Environmental Engineering. Much of my efforts at Utah State University in my institute are on the development, testing and real world applications of multi-disciplinary assessment methods primarily working at the issue of what happens when you modify habitat or modify flows in a river. I=m very active internationally, I=m the president of the

#### INTER-AGENCY AGREEMENT

#### **BETWEEN**

#### INDIAN RESOURCES SECTION

#### UNITED STATES DEPARTMENT OF JUSTICE

#### AND

#### **BUREAU OF INDIAN AFFAIRS**

#### UNITED STATES DEPARTMENT OF THE INTERIOR

#### **PARTIES**

United States Department of Justice, Environment and Natural Resources Division, Indian Resources Section (Justice Department), P.O. Box 44378, L'Enfant Plaza Station, Washington, D.C. 20026-4378 and United States Department of the Interior, Bureau of Indian Affairs (BIA), Director, Office of Trust Responsibilities, 1849 C Street, MS-4559-MIB, Washington, D.C. 20240.

#### **PURPOSE**

The material and testimony developed under this Inter-Agency Agreement (Agreement) will be used to support United States' claims for or positions concerning water on behalf of the Klamath Basin Tribes (including the Hoopa Valley, Klamath, and Yurok Tribes) (Tribes) in administrative, legal, and other proceedings which may affect their fishing rights and associated water rights, or other trust resources in the Klamath Basin, California and Oregon. In order to assure that future use and development of tribal fishing rights and associated water rights are possible, water-related habitat requirements of the tribal trust fish species and non-Indian irrigation practices, as well as other water uses or issues in the Klamath Basin, must be examined and, if necessary, contested in administrative, legal, or other proceedings. This Agreement, however, does not encompass efforts directed solely toward the Klamath River Basin general stream adjudication in Oregon.

#### RECITALS

This Agreement is being entered into under the authority of 31 USC Section 1535 to inventory and evaluate previously conducted technical studies, as needed, and to recommend and, upon approval by the parties to this Agreement, perform additional studies to support water rights claims for or positions to be taken on behalf of the Klamath Basin Tribes. The Justice Department, in consultation with the

BIA INTERAGENCY AGREEMENT NO: AG6K000029 MOD #2

# U.S. Department of Justice

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10. Name, Address, TIN or SSN, and Phone Number of Witness. ADR Neutral, or Litigative Consultant Dr. Thomas B. Handy  Watershed Systems Group, Inc. P. O. Box 3352  12. Expense Detail (Estimated Expenses)  a. Examination of Case b. Preparation: Check if included in fee { } Court Testimony c. Court Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Preparation of Testimony that or days x \$ = 5 D. Testimony that or days	• • • •		<del></del>	_	
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# United States Department of the Interior

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U.S. GEOLOGICAL SURVEY Midcontinent Ecological Science Center 4512 McMurry Avenue Fort Collins, CO 80525-3400

In Reply Refer To: BRD/MESC/82020 November 10, 1997

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To:

Technical Work Group Members of the Klamath River Fishery Task Force and Water

Quantity Model Partners

From: Dr. Marshall Flug, Hydrologist and Leader, Western Riverine Ecosystems Research Team

Subject: Task 11: Final Completion Report on Water Quantity Model Development

The attached subject report, Task 11, is provided in accordance with contract requirements of the FY '97 Interagency Agreement for the Development of a Water Quantity Model. This report is revised from the Draft Task 10 report, which was distributed on August 8, 1997, and comments on that Draft were due back to the USGS by September 12, 1997.

This Task 11 report contains an extensive Appendix of printed data files, as well as a computer disk that contains the data files for eight runs using the MODSIM Water Quantity Model. These runs include the Calibration and Validation runs, and six other alternative water management simulations which were provided by the Technical Work Group.

If you have any questions or feedback, please do not hesitate to contact Marshall Flug at (970)226-9391 Voice; (970)226-9230 FAX; or EMAIL: Marshall Flug@usgs.gov.

Attachment

Doug Ringle, Contract Specialist

Bitts: I have a letter to pass out (Handout G). [Reads letter] This is from Jimmy Smith one of the prime movers on restoration in Humboldt County, if not the north coast. If I could add a comment on the status of the fishery, whenever the projected population of Klamath chinook is enough to get us off the floor (where we are not managing for the 35k escapement as the objective for that year), the ocean share is about a 20 percent harvest of the age four Klamath Fish. More years than not we get to manage for about 9%, meaning we are about half way. Despite the best efforts of this program and others there are not many Klamath Fish making it to the ocean. The situation is not improving.

Fletcher: It is important to look back to the intent of the Act. Not only are fall chinook populations low, but coho, steelhead, spring chinook, sturgeon populations are also low. They may go extinct but not due to sport, tribal, or commercial harvest. It is important that we look at habitat issues hard.

Wilkinson: Oregon put a supplementation proposal on the table in terms of fall chinook harvest several years ago; that proposal has never even been responded to. It is interesting to me to see the letters from the Klamath Guides association and Jimmy Smith-s letter suggesting some specific steps that might be taken. We really have not followed up on the intent of the Act. I can-t help but wonder had we embarked on any of these efforts offered then, where would we be now? Hopefully no worse.

Barry: What action you want to entertain or is it mostly for information?

Bitts: It is mostly for information. There are some specific suggestions in the last part of the letter that could in the short term increase populations of fish for harvest. I would also direct your attention to the language about lethal water conditions becoming a recurrent problem. Dissolved oxygen in the summer at night is a serious problem. If the Klamath River is killing its children, then whatever else is being done won=t matter; we won=t get results.

Smith: There has been exponential growth in the number of marine mammals at the mouth of the river; that-s an issue that we have not addressed.

Orcutt: There has been discussion on having a joint KC/TF meeting. On agenda should be the question of AWhat are the management objectives for fall chinook in the Klamath?® There are a lot of misconceptions. The fish managers and habitat people each have their own perceptions. It would be good to air this question; it would speak to some issues including supplementation. Klamath stocks are managed for the wild fish component. They are managed for some harvest rate to see what the productivity is. There are overlaps between the KC and TF missions.

Bulfinch: California Department of Fish and Game (CDFG) is forbidden to run a supplementation hatchery and Pacific Power will only pay for mitigation for the loss of habitat due to the dam under the Federal Energy Regulatory Commission (FERC) license. Supplementation needs to be done which is closer to the ocean so that wildstocks are not impacted by straying. We might need to give thought to two separate objectives: sustainability of present fisheries and restoration in the future.

Barry: How is this addressed in LRP?

Bulfinch: Very vaguely.

14. <u>Status of DOI-s flow study report and recommendations (Robert Anderson, Counselor to Secretary, DOI and Dr. Thom Hardy, Utah State University)</u>

Barry: I would like to introduce Counsel to the Secretary of the DOI, Bob Anderson, and we will hear from Dr. Thom Hardy.

Bob Anderson: Thanks Cindy and TF members. I want to put into perspective what I am doing on the Klamath Adjudication and the associated alternative dispute resolution (ADR). Its a project that is very important to the Secretary-s Office and to the DOI as a whole. Generally when we are involved in is state water adjudications, like the Oregon case, we have a policy (that Secretary Babbitt has carried forward from Secretary Lujan in the Bush Administration) to try to settle these disputes rather than litigating them. We have about 19 of these cases going on throughout the west and there is a procedure in setting up Federal negotiating teams to try and facilitate settlements rather than litigating the issues. Typically, what comes out of these settlements is a definition of relative water rights of the parties that are involved: Indian Tribes, non-Indian irrigation districts, private water users that are not associated with irrigation districts, and any other water right claimants involved in the

adjudication which by law has to have every affected user included in these adjudications. Thats what we are facing up in Oregon. The case has been in litigation for about 15 or 16 years. Now we are finally down to the point where claims have been filed by the United States and by all the private interests involved in the case. There are several types of claims. Claims that the United States has are made on behalf of Tribes are two different types: one, instream flow claims that are largely above Upper Klamath Lake (UKL) to maintain fisheries habitat in Sprague, Williamson and other rivers.

Secondly, claims have been made to waters and certain lake levels in UKL in order to preserve habitat for the fish that are also listed under the Endangered Species Act. There is also a biological opinion by the FWS that addresses the minimum lake level for Klamath lake.

Thirdly, the United States filed claims on behalf of the Klamath Project the irrigation district claiming water for irrigation purposes. There are other claimants that are not associated with the irrigation district. They are also before the court and they are also part of this alternative dispute resolution process that Martha Pagel and the State of Oregon are spearheading. That process is set up by the State and has a three year time frame. They are very firm in terms of adhering to this three year time frame. Its parallel to the actual litigation and adjudication time frame that-s being conducted before the Oregon Department of Water Resources. The litigation is ongoing, but most of the energy is being devoted to the actual negotiation in an attempt to resolve the issue by consensus. The problem we face is that one year from now the State of Oregon is obligated to report to an administrative judge here as to what its views are with respect to water rights claimed by the United States, the Tribes, and every other claimant involved in the adjudication. As part of the process, we are hopeful we-ll have a settlement proposal to offer to the administrative law judge, in lieu of litigating the claims. Such a proposal would lay out first what the stream flows are that can be agreed on in the rivers above UKL. Then secondly, on the lake level and how the irrigation district would be dealt with as well as the other water users. In order to do that, we are going to need to study and obtain funding for water supply augmentation projects. There is a study group considering those alternatives. We have picked seven to eight of those out of that process and are trying to move those along on an accelerated basis.

There is a pretty good consensus between the irrigators and the Tribes of the United States and other affected users in the State of Oregon that certain projects such as raising UKL merit a hard look sooner rather than later. We are trying to get the BOR to study those projects. The problem is that the State of Oregon and the water users want to know that if we reach a settlement on the Oregon side of the border there are assurances that someone is not going to come back in six months, in a year, or in five years and say that more water is needed for tribal claims or require more water under the Endangered Species Act (ESA) for species proposed for listing. That is a reasonable question raised by the Oregon side. My response is to talk with folks within the DOI and get Thom Hardy on board to look at ideas that are already circulating as a result of your work and as a result of work done by the Tribes to provide an initial estimate of what Oregon contribution to the mainstem should be. I would like to be in a position in about a year to propose a figure that could provide some level of certainty. We are not going to be able to write that in stone in one year, but I would like to be able to move a settlement forward on the Oregon side in two years and say what we expect your contribution to be and have a number based on Thom-s work with you.

The Tribes have ideas about habitat improvement along the Sprague and Williamson rivers that will improve water quality flowing into Klamath Lake which will reduce the need to have a higher lake level. The FWS is interested in filling out the boundaries of the wildlife refuges particularly upstream of Klamath Lake. If we can acquire those properties, as anticipated, that will have a beneficial effect on water quality flowing into Klamath Lake as well. With all these water rights settlements that have gone before (there has been about 12 or 13 of them since the early 80's involving Indian water rights, BOR projects, and other interests) there is always an off-ramp. If we get to a point where some unforseen circumstances arise and we need more water from Oregon, we are going to have to build in a mechanism that all bets are off and go back to court to adjudicate. In order to compensate for the lack of absolute certainty, we are going to have to build some flexibility into the number and the assurances so that Thom can get us a figure in two years, then as the work is going on, we can refine and make adjustments. If the State of Oregon comes back, or the private water users, or the Tribes say that is not enough and they want absolute certainty, then it will have to be resolved through litigation. In contrast to litigation, settlement possibilities will move along water augmentation and this would result in money to accomplish the projects.

Dr. Thomas Hardy (Utah State University): There is some confusion why the Department of Justice (DOJ) is involved. I was already under contract with DOJ, they used an existing contract. But I work for Mr. Anderson and the Bureau of Indian Affairs (BIA). The work needs to occur in two phases. Phase I is in the next few months. We are going to look at the historical context of flow in the basin. We can then make some flow recommendations that can be used within this year for water planning and give it to Mr. Anderson. First, we need to do a study to meet Mr. Anderson-s needs under Oregon Alternative Dispute

Resolution (ADR) process. Secondly, we need to meet the ongoing annual needs relative to KPOP. Third, we need to be compatible with the efforts of the TF, U.S. Geological Survey (USGS), and Tribal programs. There is no secret conspiracy.

In Phase II, we need to get in the mainstem, the Scott, and Shasta Rivers to know what flows out of Oregon need to be to ensure runs. I cannot do it without the information on the tributaries. We=Il begin with the federal family, BOR and TWG to find out how we can do it in two years and also meet the strategic objective of the TF. The data collection would meet the needs of BOR, KPOP, Tribal programs, and USGS in light of what they have brought to the TF regarding salmon and IFIM. I have talked on the phone with CDFG and Gary Smith on the Habitat Suitability Curves (HSC).

Smith: I have the minutes from the TF meeting in June 97 where the TF approved the \$50,000 for the mainstem. At that time, there was no knowledge of another study. I understand it now to include Shasta and Scott. When did the TF get piggy backed into working in the Tributaries? Where do the other funds come from? Have you expanded the study? Who owns the data?

Hardy: A little foundation on this. Over one year ago at a TWG meeting, we were asked to give technical opinions. This was the first time we discussed airborne remote sensing. Those discussions went before the TF. Some time later the study expanded and the National Marine Fisheries Service (NMFS) and BIA felt that would be an opportunity to do more. They both provided pots of money to be used to fund the Tributary work.

Smith: The first time I met you was in Eureka. We discussed a flow study in the Klamath. Part of the problem is that we only agreed to Iron Gate Dam (IGD) to the mouth. The people of Siskiyou County thought the study was from the IGD to the mouth. It has gotten away from this. You know how critical this is. These are critical issues to me. I have worked hard and long to develop trust with landowners. How can I trust what you are saying now? I want to know if this is part of a lawsuit on behalf of the Tribes.

Anderson: There is no reason why this information is not made available to everyone in this room. This data was to be use to facilitate a settlement; we will make it available to you and vice versa. We are not contemplating a lawsuit again anyone in California. The data are for the ADR. If they can be used to accomplish longer term goals, that will be another effort.

Barry: Is the issue that the \$50,000 was used in way TF did not intend?

Smith: I want it in writing that what we decided here will not come back to bite us. I do not want to hurt people that I represent. You make me real nervous.

Anderson: Oregon started a lawsuit and dragged us in. As far as I am concerned the information should be available to TF, citizens, you, the constituents, and irrigation districts. However, if someone takes the information and uses it for lawsuit, I cannot control that. I represent the DOI. I am here for two more years. We have support from the Tribes and Kitzhaber.

Smith: What does that have to do with tributaries in the Scott and Shasta?

(Anderson to Hardy). Hardy: FWS says that we need that information. Folks in Oregon say we should not be taking the hit for all of California ourselves.

Smith: There is one more issue. At the ground truthing workshop where CRMPs were called in, they were led to believe that this is a TF project. This has been misrepresented to local volunteer groups.

Hardy: I will take responsibility for any misrepresentation. The only part of digital imagery being paid for by the TF is the mainstem. Decisions on spending TF money elsewhere will come back to the TF. But we also have an opportunity on the tributaries. We are not trying to do anything to destroy trust. My understanding is that the TF approved USGS plan. I have been trying to get the information that achieves the strategic plan of USGS.

Fletcher: We never decided to limit the study to the mainstem. This body has known that and will address issues related to fish basin wide. Our position is that we are charged with restoration of anadromous fish.

Russell: For Hardy, you mentioned that you would review data on historic flows, how far back and on what tributaries?

**f** Justice Request, Authorization and Agreement for Fees and Expenses of managed iternaic Dispute Resolution Neu and Litigative Experts 4 2000 0028 LIM 13 Part I - Request for Services file of Requesting Official la. Signature 2. Date 2a. DJ File Number 90-6-2-70 RESOURCES SECTION e of Person to be Contacted 4. Telephone No. Case Name, Court and Court Docket Number KLAMATH BASIN ADJUDICATION DAVID HARDER (303) 312-7328 8. Request (circle one) IF SUPPLEMENTAL, ENTER 6. Legal Division or USAO 7. Mailing Address (Exec/Admin/Budget Officer) ORIGINAL YREGDOC Original) Supplemental **ENRD/IRS** DENVER, CO Speciality of Expert Witness, ADR Neutral, or Litigative Expert: CIVIL ENGINEER REASON FOR REQUEST (Check below and explain in Block 13) [X] a. Expert testimony required on behalf of U.S. b. Medical Examination of Plaintiff/Witness/Defendant in Contemplation of Testimony on Behalf of Examination Under 18 USC§4241, Mental Competency to Stand Trial only d. Dual Purpose Psychiatric Examination (Time of Offense & Competency to Stand Trial) on the under Criminal Justice Act YES[] NO[] ] e. Deposition of other party's expert witness [ ] f. Unusual Fact Witness Expense [ ] g. Alternate Dispute Resolution (ADR) Neutral Expense 87-6000528 TIN: 1h. Alternate Dispute Resolution (ADR) Witness Expense (435)797 - 3127PHONE: [ ] i. Litigative Expert 10. Name, Address, TIN or SSN and Phone Number of Witness, Anticipated start and ending Dates of Service (enter MO/DA/YR) (in conjunction with Block 12) ADR Neutral, or Litigative Expert Dr. Thomas Hardy, Utah State University, Contracts and Grants a. Examination of Case 1415 Old Main Hill b. Prep of Testimony Logan, UT 84322-1415 c. Court Testimony d. Neutral/Lit. Expert Services 12. Expense Detail (Estimated Expenses) (Other Expenses, Cont'd) a. Examination Transportation: Check if included in fee ]

Common Carrier at Coach Class: (GTA Used ] Yes [ ] No) \$

REMINDER: Witnesses are not entitled to Advance Payments

\$550,086

Miles @ \$0.

\*(This cost shall not exceed cost by common carrier)
f. Miscellaneous Expenses (printing, exhibits, etc.)

on actual cost basis: (Itemize on separate page)

Taxi To/From Terminal:

g. Total Estimated Cost

of Case:

days x \$

b. Preparation of

his or days x \$82 c. Commony

hrs or days x \$

d. Neutral / Lit. Expert Services:

hrs or

per day = \$ OR days x \$

days x \$ e. Other Expenses: Per Diem - Check if included in fee []

13. Explanation and Justification (Attach additional information if space is insufficient) (For Neutral, attach Preliminary Agreement)

INTERAGENCY AGREEMENT #AG6K0000029 BUREAU OF INDIAN AFFAIRS.

PURTUAND, OR

(Mana/Address of Attorney or Admin/Fiscal Office)	appropriate person within your office for processing.
US/DOJ/ENRD/EXPERT WITNESS UNIT	
P.O. BOX 685/BEN FRANKLIN STATION	
WASHINGTON, DC 20044-0685	

6. Name/Title of Government Official (Print or Type) DAVID HARDER, TRIAL ATTORNEY 7. Name/Title of Witness/ADR Neutral/Lit. Expert al/Litigative Expert)

2. Witness/Neutral/Litigative Expert: Submit Invoice to:

DR. THOMAS B. HARDY, CIVIL ENGINEER All payments relating to this agreement shall be in acco

I agree to perform the above services and appear as a witness on behalf of the Government, act as an ADR Neutral, or Litigative Expert. Prompt Payment Act. Form OBD 47 Previous Editions are Obsolete

Doug Ringle, Contract Administrator

Revised Mar 1996



# United States Department of the Interior

OFFICE OF THE SOLICITOR
Division of Indian Affairs
1849 C Street N.W., Mail Stop 6456
Washington, D.C. 20240

Phone

202 208-6967

-Fax

202 208-3490

Internet

Scott Bergstrom@ios.doi.gov

February 3, 2000

NOTE

To: Jim Clear, DOJ Indian Resources

Bob Bruffy (or DOJ Executive Officer)

From: Scott Bergstrom, DOI Solicitor's Office

Re: Klamath Interagency Agreement Modification

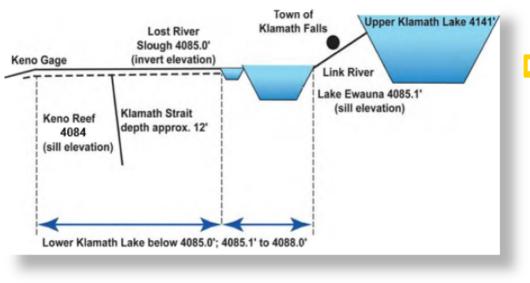
Please find enclosed five (5) original modifications to the existing Interagency Agreement between the Bureau of Indian Affairs and DOJ for Klamath River instream flow work. The modification adds funding to the existing Agreement. Jim - I understand from David Harder that you should have his okay via fax this morning (if not already).

Please expedite - the contractor has stopped work vitally needed to address scientific issues in the coming months pending completion of this Agreement, and David and I have Bob Anderson and other DOI types hounding us to get this through asap. If at all possible, please call myself or our secretaries for pick-up, today hopefully, after signing all five originals. Once the BIA contracting officer signs (which he insists must be after DOI "accepts" the IA), I'll return an original to each of you (or, Jim, to David Harder). Please call my direct line - 208 5928 - if any questions. Thank you!

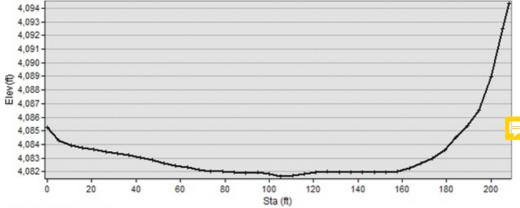
ENRD Request, Authorization and Agreement for Fees and Expenses of Witnesses

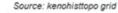
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Title of Recomme	1a. Signature			2. Date			
James Clear Electronically James Clear			signed by Be	everly Schutte for	02/18	3/2000	
3. Person to be contacted		4. Case Name : K	Klamath River Basin Adjudication				
a. Name : David Harde	er	5. DJ File Number					
b. Telephone : (303) 3"	12-7328	6. District : Ore	egon 7. Docket Number :				
8. Section 9. Attorney Location  IRS Denver, CO			10. Contract	Гуре	Original		
11. Reason for Request			12. Funding Sc	ource			
Expert Testimony req	uired on bei	nalf of U.S.	Rei Client Agency	imbursable : DOI BIA	Debtor Code: 0028 City: Washington,	DC	
13. Expert Name	14. Expertise		15. Rates	16a. Preparation	16b. Testimony		
Thomas B. Hardy	Hydrology	Engineer	Per Hour	\$60.00	20	,	
17. Mailing Address			18. Tax Inform	nation		4	
Dr. Thomas B. Hardy Utah State University Contracts and Grant	y		Tax Identificat	tion Number : 87-60	00528		
2400 Old Main Hall Logan, UT 84322-24	100		19. Phone : (4	435) 797-3127	20. Fax : 1-435-7	97-3102	
21. Anticipated Trial Date			22. Total Estin	nated S.O.W. Cost:	\$550,086.00	Full Funding	
			Reminder : Expert Witnesses are not entitled to advance payments				
23. Additional Information	/ Comments (S	tatement of Work	attached, includ	es expense detail)		n 1000 1000	
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signatures is maintain						ā g	
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1. Date : 02/18/2000			6. OBL Month	: 0002			
2. Authorized Amount : \$	550,086.0	00	7. SOC : 2599				
3. YREGDOC : 2000 - 01			8 . Approved by : Electronically signed by Frits Geurtsen				
4. Cost Center: 0B1595	5. F	Y : 2000	9. Approved on: 02/18/2000				
		Part II	I - Witness A		****		
1. Witness Submit invoice to USDOJ/ENRD Exper	t Witness U		2. Auditors : (to be completed by Expert) a) None :				
P.O. Box 685, Ben I		tion	b) Govt :				
Washington, DC 200	2000		e, City, State) :		*		
	d by Beverly d Harder	Schutte for	(C)	of Government Attorn d Harder, Field O	=	Date 02/18/2000	
5. Signature (Expert Witnes	is)		6. Name/Title	of Expert Witness		Date	
The She	uila		Thomas B. Hardy MARCH 7, 2000				
The Expert Witness(as) agre services and appear as a wi the Government			All payments relating to this agreement shall be in accordance with the Prompt Payment Act.				
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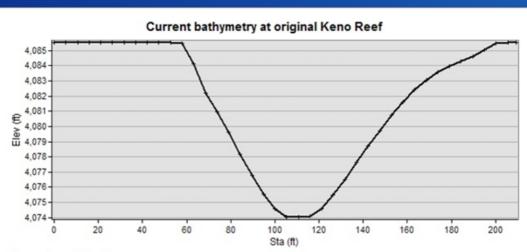
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1. Name/Title of Recommending Official 1a. Signature			2. Date			1900		
James Clea	r .	Electronically James Clear	y signed by Kevin Kidwell for 10/29/2000					
3. Person to be contacted					Adjudication System			
a, Name : Judith Rabin	nowitz	5. DJ File Numbe	ber : 90-6-2-00815					
b. Telephone : (415) 74	14-6486	6. District : Ore	gon 7.	Docket Number :	<i>W</i>			
8. Section 9. Attorney Location San Francisco, CA			10. Contract T	ype	Original			
11. Reason for Request			12. Funding So	urce				
Expert Testimony requ	uired on beh	nalf of U.S.	Rei	mbursable : DOI BIA	Debtor Code: 0028 City: Washington,	DC		
13. Expert Name	14. Expertise		15. Rates	16a. Preparation	16b. Testimony			
Thomas B. Hardy	Hydrology	Engineer	Per Hour	\$44.79				
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17. Mailing Address	4		18. Tax Inform	ation				
Dr. Thomas B. Hardy	200 1917	8	Tay Identificati	on Number : 87-60	000528			
Utah State University	/		Tax identificati	on Number : 07-00	00526			
4110 Old Main Hill Logan, UT 84322-41	110		19. Phone : (4	35) 797-3127	20. Fax : 8-435-79	97-3102		
21. Anticipated Trial Date		320	22. Total Estin	nated S.O.W. Cost:	\$286,694.37			
ğ ::		•5	l			Full Funding		
22 Additional Information	/ Comments (6	Statement of Morl	Reminder: Expert Witnesses are not entitled to advance payments ork attached, includes expense detail)					
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2. Authorized Amount : \$	¥	37)	7. SOC: 2599  8. Approved by: Electronically signed by Debra Richardson					
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- Cost Center : UD 1030	, 5. F		III - Witness A					
1. Witness Submit invoice t	· · · · · · · · · · · · · · · · · · ·	rait		o be completed by E	xpert)			
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P.O. Box 685, Ben 8								
Washington, DC 20044			b) Govt :	187 E				
			c) Other (Name	, City, State):	412	3		
3. Signature (Government Attorney)				of Government Attor	•	Date		
Electronically signed by Kevin Kidwell for			J	udith Rabinowitz	z, Attorney	10/29/2000		
	Rabinowitz					Date:		
5. Signature (Expert Witnes	s)	(4)	6. Name/Title	of Expert Witness  Thomas B. I	Hardy	Date		
Thom	-8		, ·	THUINES D. I	i ioi u y	14		
The Expert Witness(es) agrees services and appear as a withe Government		All payments relating to this agreement shall be in accordance with the Prompt Payment Act.						
	211		1	Y MARKE SHOW	March 199	8 Form ENRD-236		



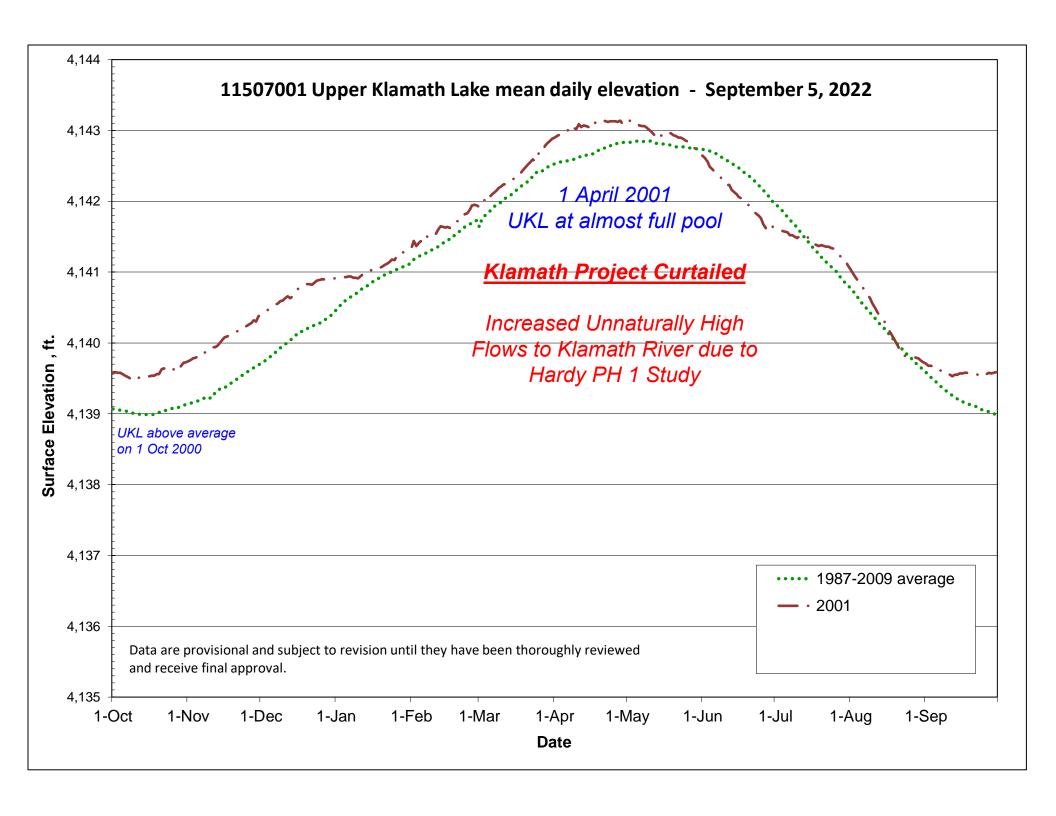








Source: keno\_bath grid



Surplus (+)/Shortage (-) Relative to Conservation Levels (TAF)												
	OCT	NOV	DEC	JAN	FEB	MAR	JUN	JUN	JUL	AUG	SEP	
	15	30	31	31	28	31	15	30	15	15	15	
	(TAF)	(TAF	(TAF)	(TAF	(TAF)	(TAF	(TAF)	(TAF	(TAF)	(TAF	(TAF)	
1981	-9.32	-96.15	-56.28	18.94	8.98	-35.39	-86.78	-31.35	-12.35	24.44	66.85	
1982	61.36	45.51	85.51	97.18	49.62	-14.55	-18.18	37.88	88.87	109.73	152.35	
1983	157.65	92.77	97.18	97.18	8.98	0.00	0.00	70.49	112.42	152.88	234.67	
1984	241.00	138.44	97.18	97.18	8.98	0.00	0.00	71.40	97.90	139.35	223.83	
1985	256.36	138.44	97.18	97.18	8.98	-92.17	-37.19	3.58	13.31	57.60	135.71	
1986	158.53	93.66	97.18	97.18	36.98	-2.73	-51.66	-12.56	-2.65	24.44	66.06	
1987	106.65	23.60	59.53	97.18	8.08	-63.40	-70.62	9.88	41.08	134.84	195.97	
1988	194.17	102.58	97.18	97.18	8.98	-42.61	-37.19	39.69	56.34	80.40	122.73	
1989	113.40	68.07	88.20	97.18	8.98	0.00	-39.90	-13.46	-5.29	2.39	40.47	
1990	49.68	-38.94	-25.92	62.21	8.98	-0.91	0.00	70.49	96.99	145.66	214.81	
1991	208.52	126.78	97.18	97.18	8.98	-5.46	-8.18	55.96	88.87	134.84	193.27	
1992	174.49	105.26	97.18	97.18	8.98	-51.66	-100.23	-41.13	0.00	50.67	98.31	
1993	77.17	10.45	25.93	89.99	8.98	0.00	0.00	51.43	59.04	73.34	120.19	
1994	105.80	-7.14	7.68	63.99	8.98	-52.56	-49.85	11.68	32.99	70.70	117.64	
1995	96.65	30.28	37.36	97.18	8.98	-0.91	-38.09	27.03	45.55	65.44	86.82	
1996	64.49	-25.91	33.83	97.18	15.29	-15.45	-17.27	19.80	36.59	58.47	99.97	
1997	94.19	33.65	84.62	97.18	8.98	-107.39	-115.42	-84.80	-71.10	-38.18	16.29	
1998	24.55	-38.18	-6.77	97.18	8.98	-0.91	0.00	66.85	92.47	112.42	147.07	
1999	139.19	128.57	97.18	97.18	8.98	0.00	0.00	68.67	93.37	138.44	211.21	
2000	212.11	136.64	97.18	97.18	8.98	-67.01	-35.39	6.27	22.24	54.99	117.64	
2001	131.36	51.54	75.64	97.18	8.98	-47.14	-70.62	-8.97	25.82	75.98	121.88	
2002	117.64	51.54	81.92	97.18	8.98	-117.20	-188.93	-140.56	-119.95	-79.29	-31.60	
2003	-41.27	-112.11	-99.11	3.40	8.98	-37.19	-53.47	-17.04	-3.53	27.77	80.35	
2004	63.71	-18.15	18.07	95.37	8.98	-64.30	-99.34	-39.36	-7.06	40.42	98.31	
2005	86.01	2.39	16.33	72.95	8.08	-85.88	-11.82	37.88	56.34	80.40	107.49	
2006	97.47	65.44	97.18	97.18	8.98	-93.06	-23.62	13.48	37.48	54.99	88.45	
2007	77.17	11.26	43.54	97.18	8.98	-2.73	-34.49	21.61	50.93	111.53	175.38	
2008	178.06	99.01	97.18	97.18	8.98	-39.90	-0.91	54.15	77.11	120.50	164.71	
2009	157.65	85.69	91.78	97.18	8.98	-40.80	-40.80	20.70	39.28	80.40	126.18	
2010	106.65	26.10	28.56	97.18	8.98	-114.53	-168.75	-112.47	-91.16	-54.83	-9.32	
2011	-21.87	-101.02	-40.47	71.16	7.18	-12.73	-2.73	51.43	78.92	103.47	128.77	
2012	115.09	31.96	40.01	97.18	8.98	0.00	-25.44	19.80	48.24	84.81	124.46	
2013	99.14	21.10	60.42	97.18	8.98	-96.65	-121.65	-71.87	-40.14	12.08	75.57	
2014	72.39	-48.80	-61.75	-18.50	-16.15	-20.90	-28.16	33.36	68.07	130.36	190.58	
2015	174.49	100.79	97.18	97.18	8.08	-29.97	-71.52	-37.58	-13.23	30.28	73.18	
2016	48.91	-49.56	-11.83	77.43	8.98	-1.82	-98.44	-56.13	-40.99	-13.45	24.55	
2017	7.34	-78.56	-58.63	21.55	8.98	0.00	-50.75	-12.56	-9.71	13.71	63.71	
2018	50.46	-25.91	-16.00	44.42	5.37	-13.64	-26.34	26.12	49.14	101.69	156.77	
2019	140.93	37.87	55.07	97.18	8.98	-93.96	-52.56	-24.20	-6.18	30.28	77.96	

10 m	- N		Part 1 Requ	Jest			
1. Name/Title of Recomme	ending Official	1a. Signature			2. Date		
James Clea	r	Electronically James Clear	signed by Kevin Kidwell for 10/29/2000				
3. Person to be contacted		4. Case Name : N	fatter Klan	nath Project Curtail	ment of Water	1	
a. Name : Judith Rabir	nowitz	5. DJ File Number	: 90-1-2-100	086/1			
b. Telephone : (415) 74	14-6486	6. District : Ore	gon 7.	Docket Number :		11200	
8. Section	9. Attorney L		10. Contract 7	Гуре	J		
İRS	San Franci	sco, CA			Original	Tallian Transport Management of	
11. Reason for Request			12. Funding Sc		7.5 10 400		
Expert Testimony req			361	FEW			
13. Expert Name	14. Expertise	se 15. Rates 16a. Preparation 16b. Testimony					
Thomas Hardy	Hydrology		Per Hour	\$130.00			
8 m							
17 Mailian Addesse	<u> </u>		18. Tax Inform	<u> </u>	J		
17. Mailing Address  Dr. Thomas Hardy		9	16, Tax intorn	nation			
Watershed Systems	Group inc		Tax Identificat	ion Number : 87-056	0247		
1656 University Driv	•						
Logan, UT 84341		N 11 12 12 12 12 12 12 12 12 12 12 12 12	19. Phone : (4	135) 797-3127	20. Fax : 8-435-79	97-1185	
21 Anticipated Trial Date			22. Total Estin	nated S.O.W. Cost:	\$5,200.00		
8	- F				40	Full Funding	
E 2	*		Reminder : Ext	nert Witnesses are not	entitled to advance paym	•	
23. Additional Information	23. Additional Information / Comments (Statement of Work attached, includes expense detail)						
The discontinued forn signatures is maintain The authorized funder	ed in the DO	OJ official control	act file. Item 2, shall	NOT be exceeded	without	ų.	
authorization and writ	ten modifica	ation of the Cor	itract by the	Government.	ORIGII	VΔI	
, Ki	Bon of	Part II	- Witness Au	uthorization		*/	
1. Date : 09/29/2000	35		6. OBL Month	: 0009			
2. Authorized Amount : \$	5,200.00		7. SOC : <b>115</b>	7			
3. YREGDOC : 2000 - 01	- 40218		8 . Approved by : Electronically signed by Terri Cahill				
4. Cost Center: 036196	0413	5. FY : 2000	9. Approved on: 09/29/2000				
Misnone Cuberita invai		Part I	II - Witness A		net)		
<ol> <li>Witness Submit invoice USDOJ/ENRD Exper</li> </ol>	-	init		to be completed by Exp	eru		
P.O. Box 685, Ben			a) None :	22			
Washington, DC 20		don	b) Govt :			S .	
c) Other (Name, City, State):							
3. Signature (Government A	Attorney)		4. Name/Title	of Government Attorne	:Y	Date	
. Electronically sign		Kidwell for	Judith Rabinowitz, Attorney 10/29/200				
. Signature (Expert Witnes			6. Name/Title	of Expert Witness		Date	
The four	4	<b>3</b>		Thomas Har	dy	6/4/200	
The Expert Witness(es) agreervices and appear as a with Government			All payments r Payment Act.	elating to this agreeme	nt shall be in accordance	with the Prompt	
March 1998 Form ENRD-23						98 Form ENRD-236	

Water Year	Hardy et al (2006) Estimated Annual Flow Changes to the Klamath River due to Klamath Irrigation Project operations predicted by KPOPSIM (Table 3) in 1,000/af1	Actual Historical Klamath Irrigation Project Diversion <sup>2</sup> (Includes Lost River diversions which are not natural to the Klamath River) in 1,000/af	Lost River Diversion Channel Additions to Klamath River and Klamath Irrigation Project <sup>3</sup> in 1,000/af	Estimated Annual Klamath Irrigation Project Returns to Klamath River from Klamath Straights Drain <sup>4</sup> in 1,000/af	Estimated Annual Evaporation from Lower Klamath Lake Historically Lost to Klamath River below Keno and added to Klamath River Availability <sup>5</sup> in 1,000/af	Hardy Model Over Estimation Error in 1,000/af
1981	-323.2	-392	+38	+79	+100	72
1982	-555.5	-343	+127	+149	+79	313
1983	-399.2	-346	+143	+138	+82	130
1984	-363.5	-373	+142	+151	+99	98
1985	-344.4	-408	+84	+110	+98	60
1986	-430.7	-405	+89	+125	+97	158
1987	-395.5	-424	+46	+100	+99	124
1988	-426.2	-429	+42	+100	+99	154
1989	-504.1	-385	+67	+110	+97	259
1990	-380.5	-422	+46	+100	+96	108
1991	-450.9	-422	+22	+79	+97	182
1992	-417.1	-380	+11	+2	+96	124
1993	-533.4	-350	+56	+83	+95	305
1994	-311.2	-419	+19	+49	+100	22
1995	-534.3	-354	+66	+75	+100	289
1996	-393.3	-395	+107	+127	+95	113
1997	-522.6	-417	+91	+100	+99	213
_					l	1 400

**Average** 

Interior. P. 32

e=qd&pcode=qi

-398.3

-392

<sup>2</sup> KBPM Simulation Viewer 071421 provided by MBK Engineering.

#27. Klamath County, Oregon and Siskiyou County, California.

#33. Klamath County, Oregon and Siskiyou County, California.

<sup>3</sup> Data extracted from <a href="https://www.usbr.gov/pn-">https://www.usbr.gov/pn-</a>

+70

<sup>1</sup> Hardy, Thomas B, R. Craig Addley, and Ekaterina Saraeva. 31 July 2006. Evaluation of Instream Flow Needs in the Lower Klamath River. Phase II. Final Report. Prepared for the U.S. Department of the

bin/daily.pl?station=lrd&format=html&year=1980&month=10&day=1&year=1997&month=9&day=30&pcod

<sup>4</sup> Davids Engineering Inc. October 1998. Klamath Project Historical Water Use Analysis. Briefing Chart

<sup>5</sup> Davids Engineering Inc. October 1998. Klamath Project Historical Water Use Analysis. Briefing Chart

+99

+96

From: Tom Paul

Sent: Sunday, June 16, 2013 8:31 PM
To: WHITMAN Richard M \* GOV

Cc: RATCLIFFE Jesse D; WARD Phillip C; PAUL Thomas J

**Subject:** Re: Dispute Resolution - Yurok

Richard, the document looks fine to me. Phil, Jesse and I will need to discuss WRD's requirements under #2. The flows will only change when the BOR notifies the Watermaster that their releases from Link River dam change.

Tom

Sent from my iPhone

On Jun 16, 2013, at 6:12 PM, "WHITMAN Richard M \* GOV" < richard.m.whitman@state.or.us > wrote:

Please take a quick look and let me know if this looks ok. I'd like to send it to Troy on Monday morning.

Richard Whitman Governor Kitzhaber's Natural Resources Advisor (503)881-7093 (cell) richard.m.whitman@state.or.us

Begin forwarded message:

From: Richard Whitman < <a href="mailto:rmwpdx@msn.com">rmwpdx@msn.com</a>>

**Date:** June 16, 2013, 6:02:06 PM PDT **To:** Work < <u>richard.m.whitman@state.or.us</u>>

< Yurok Dispute Resolution Notice 6-15-2013.docx>

#### **DISPUTE RESOLUTION NOTICE - DRAFT Background**

Pursuant to Section 6.5.1 of the Klamath Basin Restoration Agreement ("KBRA"), on May 14, 2013, the Yurok Tribe provided a Dispute Initiation Notice to the Oregon Water Resources Department ("OWRD") (collectively, the "Parties"). In the KBRA, a Dispute Initiation Notice provides an opportunity for KBRA parties to collaboratively resolve issues that may arise in the course of the implementation of the KBRA. The Parties have followed the dispute resolution procedures set forth in the KBRA and successfully resolved the issues raised in the Dispute Initiation Notice. Pursuant to KBRA Section 6.5.5, this Dispute Resolution Notice: (i) restates the disputed matter as described in the Dispute Resolution Notice, (ii) describes the terms of the resolution of the dispute, and (iii) describes any alternatives considered for resolution.

# **Summary of Dispute Resolution Notice**

The Dispute Initiation Notice states that OWRD does not recognize flows that the U.S. Bureau of Reclamation ("BOR") is required to release downstream in the Klamath River under applicable federal law as an authorized use of water, and that OWRD will require the BOR to cease releasing these flows under certain circumstances. The Dispute Initiation Notice also asserts that OWRD has insufficiently engaged the Yurok Tribe in addressing Klamath River flows.

#### **Terms of Resolution**

To resolve the dispute described above, OWRD makes and the Yurok Tribe acknowledges the following statements. These statements do not require a final agency action by OWRD, and do not constitute such an action.

- 1. OWRD has recognized and continues to recognize that the BOR must comply with its obligations under federal law concerning flows in the Klamath River. OWRD is not interfering with BOR's obligations under the Biological Opinion for the Klamath Irrigation Project, and does not intend do so, unless otherwise directed to do so by order of a court with proper jurisdiction. Finally, OWRD acknowledges that various parties may have differences of opinion concerning a range of legal issues pertaining to BOR's release of water in order to comply with the Biological Opinion for the Klamath Irrigation Project. This paragraph reflects OWRD's position only.
- 2. OWRD confirms its intent to communicate with the Yurok Tribe on issues pertaining to flows in the Klamath River as they relate to implementation of the KBRA. OWRD and the Yurok Tribe will notify each other of substantive communications with other KBRA parties regarding Klamath River flows as they relate to implementation of the KBRA. OWRD and the Yurok Tribe acknowledge that a range of factors may bear on the precise timing and nature of these communications.

#### Alternatives Considered

By relying on the dispute resolution procedures set forth in the KBRA, the Parties swiftly and successfully resolved the issues raised by the Yurok Tribe, consistent with terms of the KBRA and applicable law. The Parties did not find it necessary to present or consider alternatives to the Terms of Resolution set forth above.