

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
WATER RESOURCES DEPARTMENT

In the Matter of the Determination of the Relative Rights of the Waters of the
Klamath River, a Tributary of the Pacific Ocean

~~Pacificorp; WaterWatch of Oregon, Inc.; Horsefly Irrigation District; Langell Valley Irrigation District; Medford Irrigation District; Rogue River Valley Irrigation District; Roger Nicholson; Richard Nicholson; Agri Water LLC; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood; Kenneth Zamzow; Nicholson Investments, LLC; William S. Nicholson; John B. Owens; Kenneth Owens; William L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins; Hawkins Cattle Co.; Owens & Hawkins; Harlow Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane; Helen Mebane; Sevenmile Creek Ranch, LLC; James G. Wayne, Jr.; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill; Lillian M. Hill; Carolyn Obenchain; Lon Brooks; Newman Enterprise; William C. Knudtson; Wayne Jacobs; Margaret Jacobs; Robert Bartell; Rodney Z. James; Hilda Francis for Francis Loving Trust; David Cowan; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District; Thomas Stephens; Peggy Marengo; Jerry L. and Linda R. Neff; Tom Bentley; Peter Bourdet; John Briggs; William Bryant; Vincent Briggs; J.T. Ranch Co.; Klamath~~

**[PROPOSED] ORDER ON
KLAMATH TRIBES, UNITED
STATES, AND KLAMATH
PROJECT WATER USERS'
STIPULATION OF
CONDITIONAL WITHDRAWAL
OF KPWU CONTESTS TO
CLAIMS 671, 672, 673, AND
THAT PORTION OF CLAIM 612
PERTAINING TO THE
KLAMATH RIVER AND
CONDITIONAL AND INTERIM
NO-CALL PROVISIONS BY THE
UNITED STATES AND
KLAMATH TRIBES**

Case No. 282

Claim No. 671, 672, 673, and that
Portion of Claim 612 pertaining to the
Klamath River

Contest Nos. 2062, 2064, 2065, 2066,
~~3016, 3070, 3071, 3072~~¹, 3249, 3257,
3258, 3259², 3314³, 3373, 3374,

¹ WaterWatch of Oregon, Inc.'s Contests 3016, 3070, 3071 and 3072 were dismissed. Order Dismissing WaterWatch of Oregon, Inc.'s Contests, May 20, 2003.

² Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contests 3249, 3257, 3258 and 3259 and 3254 on October 16, 2003.

³ On October 31, 2003, William Bryant voluntarily withdrew from Contest 3314. On October 26, 2004, Dave Wood voluntarily withdrew from Contests 3314 and 3373-3375. Change of Title Interest for Contests 3314 and 3373-3375 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3314 and 3373-3375 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3314 and 3373-3375 from Kenneth Hufford, Leslie Hufford, and Hart Estate Investments to Jerry and Linda Neff (2/11/05). Change of Title Interest for Contests 3314 and 3373-3375 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3314 and 3373-3375 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contests 3314 and 3373-3375 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3314 and 3373-3375 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3314 and 3373-3375 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3314, 3373-3375 on September 2,

CASE 282: [PROPOSED] ORDER ON KLAMATH TRIBES, UNITED STATES, AND KLAMATH PROJECT WATER USERS' STIPULATION OF CONDITIONAL WITHDRAWAL OF KPWU CONTESTS TO CLAIMS 671, 672, 673, AND THAT PORTION OF CLAIM 612 PERTAINING TO THE KLAMATH RIVER AND CONDITIONAL AND INTERIM NO-CALL PROVISIONS BY THE UNITED STATES AND KLAMATH TRIBES

Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Co.; Plevna District Improvement Company; Collins Products, LLC,

Contestants,

vs.

United States, Bureau of Indian Affairs, as Trustee on behalf of the Klamath Tribes;

Claimant/Contestant and

The Klamath Tribes;

Claimant/Contestant.

3375⁴, 3644, 3657, 3658, 3659, 3932, 3933, 3934, 4002, 4061, 4062, 4063

1. The “Stipulation of Conditional Withdrawal of KPWU Contests to Claims 671, 672, 673, and that Portion of Claim 612 Pertaining to the Klamath River and Conditional and Interim No-Call Provisions by the United States and Klamath Tribes” (“Stipulation”) is hereby approved and the Parties to the Stipulation (Klamath Project Water Users, Klamath Tribes, United States, Bureau of Indian Affairs) and Oregon Water Resources Department (“OWRD”) shall comply with its terms. To the extent KPWU have any obligation to exhaust administrative remedies before OWRD, remedies have been exhausted, consistent with Section E.4 of the Stipulation. As used in this Order, the term “Claim 612” refers to Claim 612 insofar as it adopts and incorporates by reference Claims 671, 672 and 673.

2005. William Knudtsen voluntarily withdrew from Contests 3314, 3373-3375 on September 13, 2005. Franklin Lockwood Barnes, Jr. and Jane M. Barnes voluntarily served a Notice of Withdrawal of Contests on April 7, 2007.
⁴ Don Vincent voluntarily withdrew from Contests 3644, 3657, 3658 and 3659 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3644, 3657, 3658 and 3659 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3644, 3657, 3658 and 3659 on January 15, 2004.

2. Regarding contests 3657, 3658, 3659, and 3644 filed by Klamath Project Water Users (KPWU),⁵ the following terms are a part of this Order and shall be included in the Proposed Order issued under ORS 183.464(1) and OAR 137-003-0645 and any other Order or Judgment determining these contests.

a. If the Klamath River Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities (“Restoration Agreement”) becomes effective and the Secretary of the Interior publishes both notices described in Section B.2 of the Stipulation (Sections 1.5.2 and 15.3.4 of the Restoration Agreement, attached as Attachment 1 to the Stipulation), the conditional withdrawal by KPWU of their Contests 3657, 3658, 3659, and 3644 of Claims 671, 672, 673, and 612 shall become permanent and no longer conditional.

b. If the Restoration Agreement does not become effective or the Secretary does not publish both, or either of, the notices described in paragraph B.2 of the Stipulation, the conditional withdrawal by KPWU of their Contests in Case 282 shall no longer be in effect. Thereafter, the Parties shall be entitled to fully litigate KPWU’s exceptions, and KPWU shall be entitled to fully litigate the exceptions of the Klamath Tribes and United States or any other party, to any Findings of Fact and Order of Determination on Claims 671, 672, 673, and 612 before the State of Oregon Circuit Court. KPWU shall file any exceptions to the Findings of Fact and Order of

⁵ For purposes of this Order, Klamath Project Water Users include Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland Improvement District, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Modoc Lumber Co., Bradley S. Luscombe, Randy Walthall and Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Collins Products LLC and Plevna District Improvement Company

Determination on Claims 671, 672, 673, and 612 as required by ORS 539.130 and ORS 539.150. KPWU shall provide notice to the Court and parties in the Circuit Court by January 31, 2013, of the previously filed exceptions to the Findings of Fact and Order of Determination on Claims 671, 672, 673, and 612 that they wish to pursue; or, if the deadline for filing such exceptions in Circuit Court has not passed before January 31, 2013, KPWU may file their exceptions on or before the due date. Nothing in this Order shall limit the exceptions which the Parties may pursue in the Circuit Court, or the utilization they may make of the Findings of Fact and Order of Determination on Claims 671, 672, 673, and 612 in the Circuit Court, under the circumstances of the first sentence of this paragraph. KPWU's right to fully litigate shall include all sufficient time to prepare and present and defend in the case and discovery opportunities equivalent to those of other parties; and all other parties to the case shall have equivalent opportunities to litigate against KPWU's exceptions.

c. The Parties have no further discovery obligations regarding each other during the contested case process before the Office of Administrative Hearings or OWRD.

3. Regarding Claims 671, 672, 673, and 612, the following terms are a part of this Order and shall be included in the Proposed Order on Claims 671, 672, 673, and 612 issued under ORS 183.464(1) and OAR 137-003-0645 and any other Order or Judgment determining these water rights claims.

a. If the Restoration Agreement becomes effective and the Secretary publishes both notices described in Sections 1.5.2 and 15.3.4 of the Restoration

Agreement, the following limitations to water rights determined under Claims 671, 672, 673, and 612 shall apply:

i. from the time the Stipulation was filed until the date selected by the Klamath Water and Power Agency under Section 15.3.9.A of the Restoration Agreement, including any extension of that date as provided in Section 15.3.9.B of the Restoration Agreement, any exercise of the water rights determined for Claims 671, 672, 673, and 612 shall not result in regulation curtailing use of water under any water rights having a priority date before August 9, 1908;

ii. after the date selected by the Klamath Water and Power Agency under Section 15.3.9.A of the Restoration Agreement, including any extension of that date under the circumstances provided in Section 15.3.9.B of the Restoration Agreement, or, if no such date is timely selected, then after December 1, 2017, any exercise of the water rights determined for Claims 671, 672, 673, and 612 shall not result in regulation curtailing use of water under any water rights having a priority date before August 9, 1908, except to the extent that diversion under any such rights is precluded by the limitations on diversion of water in Appendix E-1 of the Restoration Agreement, attached hereto.

b. If the Restoration Agreement does not become effective or the Secretary does not publish both, or either of, the two notices described in paragraph B.2 of the Stipulation, the following limitation shall apply: any exercise of the water rights determined for Claims 671, 672, 673, and 612 in the Findings of Facts and Order of Determination issued under ORS 539.130(1) shall not result in regulation curtailing use

of water under any water rights having a priority date before August 9, 1908; Provided, that this limitation shall not apply to any judgment of the Circuit Court issued under ORS 539.150.

4. Nothing in the Stipulation or this Order shall diminish or affect in any way: a) the rights of Contestants other than KPWU to contest or oppose Claims 671, 672, 673, and 612 or any other claims, or b) any contests other than Contests 3657, 3658, 3659, and 3644.

Administrative Law Judge

Date _____