

008F00000009
**BEFORE THE HEARING OFFICER PANEL
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

WaterWatch of Oregon, Inc.; Klamath Tribes;
Horsefly Irrigation District; Langell Valley
Irrigation District; Medford Irrigation
District; Rogue River Valley Irrigation
District; David Cowan, successor in interest
to William J. & Ethel J. Rust; Leonard Baio;
Gary Strong; Robert Bartell; Margaret
Jacobs; Carolyn Obenchain; Rodney Z.
James; Newman Enterprise; Douglas
Newman; and Hilda Francis, Trustee Francis
Loving Trust, Contestants;

v.

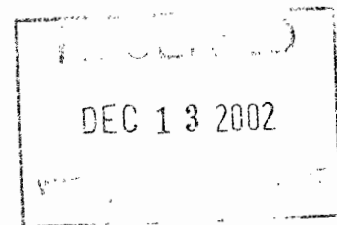
Pacific Power and Light Co. dba PacifiCorp;
Charles M. Cline; Kathleen Boivin, successor
in interest to South Valley Bank & Trust,
Trustee for the Harry D. Boivin Trust; David
A. Baltazor; Albert J. Conforti; Scott C.
Kellstrom; Conrad Caillouette and Tamara
Caillouette; Wilford A. Dunster; David C.
Elliott; Eloise J. Elliott; Michael J. Reynolds;
Pamela A. Traina; Mike Massoud; Beverly
Ghiassi; James Dillon; Debra Dillon; Daryl
Kollman; Marta Kollman; Klamath Crisis
Center; Steven Hess; City of Klamath Falls;
Herbert C. LeSueur; Mary C. LeSueur;
Jeanene M. Oatman; Terrel J. Wagstaff;
Michael J. Casey; Jess House; and Alice M.
Galloway, Claimants

PROPOSED ORDER

Hearing Officer Panel Case No. 008

Claim Nos. 145 through 159, 161, 162,
163, 165, 166, and 169

Contest Nos. Contests 16, 44, 45, 46,
280, 515, 985, 1220, 1454, 1803, 2054,
2055, 2255, 2490, 2852, 3139 through
3153, 3155 through 3157, 3159, 3160,
3163, 3376, and 4171¹



¹ On January 17, 2002 Contestants Langell Valley Irrigation District and Horsefly Irrigation District
withdrew from all contests filed in this case.

HISTORY OF THE CASE

THIS PROCEEDING under the provisions of ORS Ch. 539 is part of a general stream adjudication to determine the relative rights of the parties to waters of the various streams and reaches within the Klamath Basin. This contested case consolidates 21 claims and 37 contests in the adjudication.

The claims and contests in this case fall into two groups based on location. (Ref. No. 008F00002005, hereinafter *Clark testimony*, at 6 and 7). The first set of claims and associated contests concerns 10 properties along Conger Avenue in Klamath Falls, Oregon.² (See OWRD Exhibit 2, map of Conger Avenue claims, submitted with and attached to *Clark testimony*). One of these claims, Claim 165 filed by PacifiCorp, covers all 10 properties. Eight of the properties also are covered by eight individual claims, while two properties are covered only by PacifiCorp's Claim 165.

The second set of claims and associated contests follows a similar pattern for sixteen properties along Riverside Avenue in Klamath Falls, Oregon.³ (*Clark testimony* page 7). One of these claims, Claim 166 by PacifiCorp, covers all 16 properties. Twelve of the properties are also covered by eleven individual claims,⁴ while four of the properties are covered only by PacifiCorp's Claim 166. (See OWRD Exhibit 5, map of Riverside Avenue claims, submitted with and attached to *Clark testimony*). The specific claims and contests are set out below:

CLAIMS AND CONTESTS

CLAIM 145 - On December 7, 1990, David A. Baltazor filed Claim No. 145 for a total of 0.01 cubic feet per second (cfs) from one point of diversion located on Upper Klamath Lake, tributary to Klamath River, for irrigation of 0.10 acre with a claimed period of use from April through October of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed with a period of use from March 1 to October 31 of each year.

CONTEST 3139 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3139.⁵ The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

² The nine Conger Avenue claims are, in numerical order, Claims 146, 149, 152, 153, 155, 159, 162, 165, and 169.

³ The twelve Riverside Avenue claims are, in numerical order, Claims 145, 147, 148, 150, 151, 154, 156, 157, 158, 161, 163, and 166.

⁴ Claim 157 covers two properties on Riverside Avenue.

⁵ Although contestants Horsefly Irrigation District and Langell Valley Irrigation District filed contests in conjunction with Rogue River Valley Irrigation District and Medford Irrigation District, those Irrigation Districts have withdrawn from this contested case and the contests will be discussed as if filed only by the remaining Contestant Irrigation Districts.

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EXPT

CLAIM 146 - On January 30, 1991, Robert D. Boivin, attorney-in-fact for Harry D. Boivin, filed Claim No. 146 for a total of 0.02 cfs from one point of diversion located on the Link River, tributary to "Klamath Lake/Klamath River", for irrigation of 0.02 acres with a claimed period of use from April 1 through October 30 of each year and a claimed priority date of November 1, 1895. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation denying the claim because the record did not contain evidence that works were completed within a reasonable time after commencement of construction or use of water. By letter dated November 14, 2001, Kathleen Boivin informed OWRD that she is the current owner and claimant for this property.

CONTEST 3376 - On May 8, 2000 South Valley Bank & Trust, Trustee for the Harry D. Boivin Trust, filed Contest Number 3376 to the Preliminary Evaluation denying Claim Number 146. Claimant/Contestant contested the finding that the record did not include evidence that works had not been completed within a reasonable time after commencement of construction or use of water because the Preliminary Evaluation did not account for supplemental information filed by claimant on March 31, 2000, in support of claim 146.

CONTEST 3140 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3140. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 147 - On November 30, 1990, Charles M. Kline filed Claim No. 147 for a total of 0.01 cfs from one point of diversion located on Upper Klamath Lake "West Side irrigation from Link River," tributary to Lower Klamath Lake, for irrigation of 0.20 acre with a claimed period of use of April 1 through November 1 of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed with a period of use from March 1 to October 31 of each year.

CONTEST 3141 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3141. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 148 - On December 7, 1990, Albert J. Conforti filed Claim No. 148 for a total of 0.4 cfs from one point of diversion located on Upper Klamath Lake (Westside Irrigation from Link River), tributary to the Lower Klamath River, for irrigation of 0.15 acre with a claimed period of use from April 1 through October 31 and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim for less than the amount claimed (0.01 cfs) with a period of use from March 1 to October 31 of each year.

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CONTEST 3142 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3142. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

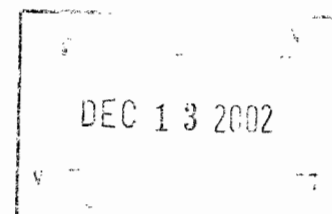
CLAIM 149 - On January 28, 1991, Claude W. Cross, predecessor-in-interest to Scott C. Kellstrom, filed Claim No. 149 for a total of 0.025 cfs from one point of diversion located on the Link River, tributary to "Upper Klamath Lake - Lake Ewauna" for irrigation of two acres with a claimed period of use from April through October of each year and a claimed priority date of 1880. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim with a period of use from March 1 to October 31 of each year, but for less acreage (0.5 acres) and for less water (0.01 cfs) than claimed.

CONTEST 3143 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3143. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 150 - On December 7, 1990, Gordon Douglas, predecessor-in-interest to Conrad Caillouette and Tamara Caillouette, filed Claim No. 150 for a total of 10 gallons per minute from one point of diversion located on Upper Klamath Lake (Westside irrigation from Link River), tributary to the Lower Klamath River, for irrigation of 0.4 acre with a claimed period of use of April 1 through October 31 and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim for period of use from March 1 to October 31 of each year, but for less water (0.01 cfs) than claimed.

CONTEST 3144 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3144. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 151 - On November 14, 1990, Wilford A. Dunster filed Claim No. 151 for a total of 0.0025 cfs from one point of diversion located on the Upper Klamath Lake "Westside Irrigation from Link River," a tributary to Lower Klamath Lake and Klamath River, for irrigation of 0.10 acre, with a claimed period of use from April 1 through October 31 of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim for period of use from March 1 to October 31 of each year in the amount of 0.01 cfs.



CONTEST 3145 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3145. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 152 - On January 30, 1991 David C. Elliott and Eloise J. Elliot filed Claim No. 152 for a total of 0.02 cfs from one point of diversion located on the Link River, tributary to "Klamath Lake/Klamath River", for irrigation of 0.1 acres with a claimed period of use from April 1 to October 30 of each year and a claimed priority date of November 1, 1895. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation denying the claim because the record did not contain evidence that works were completed within a reasonable time after commencement of construction or use of water.

CONTEST 3146 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3146. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 153 - On January 30, 1991, John L. Fletcher, predecessor-in-interest to Michael J. Reynolds and Pamela A. Traina, filed Claim No. 153 for an unspecified amount of water from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.4 acres with a claimed period of use from April 1 to October 30 of each year and a claimed priority date of November 1, 1895. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation denying the claim because the record did not contain evidence that works were completed within a reasonable time after commencement of construction or use of water.

CONTEST 16 - Claimants/Contestants contested the finding that the record did not include evidence that works had been completed within a reasonable time after commencement of construction or use of water claim and submitting additional information.

CONTEST 3147 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3147. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 154 - On November 15, 1990, Alice M. Galloway filed Claim No. 154 for a total of 0.0025 cfs from one point of diversion located on Upper Klamath Lake "Westside irrigation from Link River," tributary to Lower Klamath Lake, for irrigation of 0.10 acre with a claimed period of use from April 1 through November 1 and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General

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Stream Adjudication, issued a Preliminary Evaluation allowing the claim with a period of use from March 1 to October 31 of each year in the amount of 0.01 cfs.

CONTESTS 46, 280, 515, 985, 1220, 1803, 1454, 2255 AND 2490 - On May 1, 2000 the following contests were filed against claim 154: Contest 46 filed by William J. and Ethel J. Rust; Contest 280 filed by Leonard Baio; Contest 515 filed by Gary Strong; and Contest 985 filed by Robert Bartell. On May 2, 2000, the following contests were filed against claim 154: Contest 1220 filed by Margaret Jacobs; and Contest 1454 filed by Carolyn Obenchain. On May 4, 2000, Contest 1803 filed by Rodney Z. James. On May 5, 2000, Newman Enterprise (Douglas Newman) filed contest 2255, and Francis Loving Trust, Hilda Francis Trustee, filed contest 2490. (Hereinafter this group of contestants is referred to as Baio, *et al.*) All contests filed by Baio, *et al.* identified the Oregon Department of Fish and Wildlife (ODFW) as the claimant.

In a letter addressed to Hearing Officer William D. Young, dated November 29, 2001, Ronald S. Yockim stated: "Please be advised that Baio, *et al.* are not challenging the claims of Alice Galloway, whether they are stated in Claim #154 or elsewhere; however, they are continuing their contests of PP&L claims." Upon inspection of the record, it does not appear that Baio *et al* filed any contests filed against either Claim 165 or 166 (claims filed by Pacific Power and Light d.b.a Pacificorp). The November 29, 2001, letter also states that "The attorney for Baio, *et al* claims is Carol Skerjanec." The letter further stated that all further correspondence should be directed to Ms. Skerjanec. Accordingly, the Hearing Officer Panel and all active participants, including the OWRD, provided notice of all contested case activities to Ms. Skerjanec. Baio *et al* did not appear at the July 8, 2002 hearing and filed no documentary evidence or direct testimony in this contested case. Further, on August 29, 2002, Ms. Skerjanec informed the Hearing Officer that she does not represent anyone in case 008. It appears that Baio, *et al* did not intend to contest claim 154.

CONTEST 3148 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3148. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 155 - On January 22, 1991, Mike Massoud and Beverly Ghiassi filed Claim No. 155 for a total of 0.01 cfs from one point of diversion located on the Link River, tributary to the Klamath River for irrigation of 0.4 acres with a claimed period of use from April 1 to October 15 and a claimed priority date of June 22, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed with a period of use from March 1 to October 31 of each year.

CONTEST 3149 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3149. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed

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in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 156 - On November 14, 1990, Fred L. Goeller, predecessor-in-interest to James Dillon and Debra Dillon, filed Claim No. 156 for a total of 0.0038 cfs from one point of diversion located on Upper Klamath Lake (Westside irrigation from Link River), tributary to the Lower Klamath River, for irrigation of 0.15 acre with a claimed period of use from April 1 through October 31 of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim in the amount of 0.01 cfs with a period of use from March 1 to October 31 of each year but for less acreage (0.1 acres) than claimed.

CONTEST 3150 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3150. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 157 - On December 3, 1990, Peter Green, predecessor-in-interest to Daryl Kollman and Marta Kollman, filed Claim No. 157 for a total of 0.0175 cfs from one point of diversion located on Upper Klamath Lake "Westside Irrigation from Link River," tributary to Lower Klamath Lake and Klamath River, for irrigation of 0.7 acre with a claimed period of use from April 1 through October 31 of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed in the amount of 0.02 cfs with a period of use from March 1 to October 31 of each year.

CONTEST 3151 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3151. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 158 - On December 6, 1990, Steven L. Hess filed Claim No. 158 for a total of 0.0025 cfs from one point of diversion located on West Side irrigation from Link River, tributary to Lower Klamath Lake and Lower Klamath River, for irrigation of 0.1 acre with a claimed period of use from April 1 through October 31 and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed in the amount of 0.01 cfs with a period of use from March 1 to October 31 of each year.

CONTEST 3152 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3152. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed

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in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 159 - On December 5, 1990, Jess House filed Claim No. 159 for a total of 0.01 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.4 acres with a claimed period of use from April 15 to November 1 and a claimed priority date of 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed with a period of use from March 1 to October 31 of each year.

CONTEST 3153 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3153. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 161 - On January 17, 1991, the City of Klamath Falls filed Claim No. 161 for a total of 0.01 cfs from one point of diversion located on Upper Klamath Lake, tributary to Lower Klamath River, for irrigation of 0.3 acre with a claimed period of use from April 1 through October 31 of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed with a period of use from March 1 to October 31 of each year.

CONTEST 3155 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3155. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 162 - On January 17, 1991, Herbert C. LeSueur and Mary-Louise LeSueur filed Claim No. 162 for 35 cfs from one point of diversion located on Upper Klamath Lake, tributary to Lake Ewauna, for irrigation of 1.9 acres with a claimed period of use from April 1 through October 15 of each year and a claimed priority date of June 29, 1880, June 22, 1905, and/or July 6, 1953. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation denying the claim because the record did not contain evidence that works were completed within a reasonable time after commencement of construction or use of water.

CONTEST 3156 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3156. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

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CONTEST 2852 - On May 8, 2000, WaterWatch of Oregon, Inc. (WaterWatch) filed contest 2852, contending that the claim should be denied because:

- The quantity of water claimed is wrong and both the rate and duty are excessive, wasteful, uneconomic, and unnecessary to support the beneficial use claimed.
- The irrigation season claimed should be limited to April 1 through October 1.
- Substantial headgates with measuring devices capable of measuring the rate and duty of water diverted and capable of being locked in place, should be required at all points of diversion.

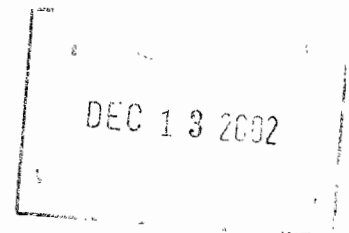
CONTEST 4171 - On May 8, 2000, Contestant Klamath Tribes filed Contest Number 4171, contending that the claim should be denied because the amount of water claimed exceeded a reasonable amount and because the acreage claimed exceeded the amount established in the claim.

CLAIM 163 - On January 30, 1991, Jeanene M. Oatman filed Claim No. 163 for a total of 0.0025 cfs from one point of diversion located on Westside irrigation from Link River, tributary to Lower Klamath Lake and the Klamath River, for irrigation of 0.10 acre, with a claimed period of use from April 1 through October 31 of each year and a claimed priority date of October 16, 1905. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim as filed in the amount of 0.01 cfs with a period of use from March 1 to October 31 of each year.

CONTEST 3157 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3157. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 165 - On January 31, 1991, Randy Landolt filed Claim No. 165 on behalf of Claimant PacifiCorp, doing business as Pacific Power and Light Co., for a total of 1.0 cfs from one point of diversion located on the Link River, tributary to the Klamath River for irrigation of 7.7 acres with a claimed period of use of April 1 through October 30 of each year and a claimed priority date of November 1, 1895. On August 28, 1998, Claimant filed additional information supporting claim 165. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation denying the claim because the record did not contain evidence that works were completed within a reasonable time after commencement of construction or use of water.

CONTEST 44 - On May 1, 2000, Terrel J. Wagstaff and Michael J. Casey filed contest 44 contesting the Adjudicator's Preliminary Evaluation and providing additional information supporting the claim.



CONTEST 2054 - On May 5, 2000, PacifiCorp filed contest 2054 to the Preliminary Evaluation denying Claim Number 165. Claimant/Contestant offered additional information regarding the development of diversion works and contested the finding that the record did not include evidence that works had not been completed within a reasonable time after commencement of construction or use of water.

CONTEST 3159 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3159. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 166 - On January 31, 1991, Randy Landolt filed Claim No. 166 on behalf of Claimant PacifiCorp, doing business as Pacific Power and Light Co., for a total of 0.5 cfs from one point of diversion located on the Link River, tributary to the Klamath River for irrigation of 6.6 acres with a claimed period of use of April 1 through October 30 of each year and a claimed priority date of December 11, 1891. On August 28, 1998, Claimant filed additional information supporting claim 166. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation allowing the claim with a period of use from March 1 to October 31 of each year but for less acreage (3.1 acres); less water (0.08 cfs); and with a later priority date (October 16, 1905).

CONTEST 2055 - On May 5, 2000 PacifiCorp filed Contest Number 2055 to the Preliminary Evaluation, contesting the reduction irrigated acreage, reduction in the rate and duty, and the establishment of a later priority date than claimed.

CONTEST 3160 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3160. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

CLAIM 169 - On November 30, 1990, Terrel Wagstaff filed Claim No. 169 for a total of 0.08 cfs from one point of diversion located on "power flume from Link River dam," tributary to Lake Ewauna, for irrigation of 0.2 acres with a claimed period of use from April 1 through October 15 of each year and a claimed priority date of 1895, 1905, and/or 1925. On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Stream Adjudication, issued a Preliminary Evaluation denying the claim because the record did not contain evidence that works were completed within a reasonable time after commencement of construction or use of water.

CONTEST 45 - On May 1, 2000 Claimant Terrell Wagstaff filed contest 45 to the Preliminary Evaluation, contesting the finding that the record did not include evidence that works had not been completed within a reasonable time after commencement of construction or use of water and providing additional information in support of the claim.

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CONTEST 3163 - On May 8, 2000, Rogue River Valley Irrigation District and Medford Irrigation District, as trustees for their affected water right patrons, filed contest 3163. The issue raised by Rogue River Valley and Medford Irrigation Districts was whether water listed in water rights permits held by Rogue River Valley and Medford Irrigation Districts is "water available" for appropriation under the Klamath Adjudication.

PROCEDURAL MATTERS

A prehearing conference was held on November 21, 2001, at which the participants agreed upon a schedule to assure the resolution of legal matters before the hearing and for the orderly exchange of exhibits, including pre-filed written direct testimony. On January 18, 2002, Claimant/Contestant PacifiCorp filed a Motion for Ruling on Legal Issues which sought to have Contests 3159 and 3160 dismissed on the ground that the contestants are not proper parties to the Adjudication. The motion also presented PacifiCorp's argument that any water right certificate issued as a result of this contested case be awarded jointly with PacifiCorp and the individual property owners on Conger Avenue and Riverside Avenue. That motion was denied on April 3, 2002.

Pursuant to a Notice of Hearing mailed to all participants by certified mail on May 23, 2002, a hearing was held on July 8, 2002, for the purpose of admitting evidence into the record and cross-examining witnesses whose direct testimony had previously been filed. William D. Young, Administrative Law Judge, presided. Claimant/Contestant Terrell J. Wagstaff appeared for the hearing. Claimant/Contestant PacifiCorp appeared by its attorneys, Greg D. Corbin and Jenny L. Bricker. No other claimants appeared at the hearing. Contestants Rogue River Irrigation District and Medford Irrigation District appeared by their attorney, Laura A. Schroeder. Contestant Klamath Tribes appeared by their attorneys, Carl Ullman and Shayleen Allen. No other contestants appeared at the hearing. The Oregon Water Resources Department (OWRD) appeared through its authorized agency representatives, Renee Moulun and Kimberly Grigsby.

The hearing record was held open to allow the participants opportunities to file Closing Arguments. The OWRD also requested an opportunity to file a summary analysis regarding claims for which the claimants had not appeared or participated in the contested case process. That request was allowed. Claimant PacifiCorp filed its Closing Argument on August 23, 2002. The OWRD filed its Summary Analysis on August 19, 2002.

The record remained open to allow Contestant Irrigation Districts and the OWRD an opportunity to file written responses to Claimant PacifiCorp's Closing Argument, and for PacifiCorp's Reply Memorandum. The OWRD filed its response on September 6, 2002. Medford Irrigation District and Rogue River Valley Irrigation District also filed their response on September 6, 2002. The record closed on September 20, 2002, after receipt of Claimant Pacificorp's Reply Memorandum and the Oregon Water Resources Department's Reply.

EVIDENTIARY RULINGS

All evidence previously submitted was admitted into the record. OWRD's Affidavit and Testimony of Gerald E. Clark (Ref. No. 0080020005) and Exhibit 1 (Ref. No. 008E0020001) was admitted without objection. The Direct Testimony of Richard W. Barney with attachments (Ref. No. 008E00080001) was admitted without objection. Medford and Rogue River Valley Irrigation Districts' Response Klamath Tribes' Request for Interrogatories and Production of Documents (Ref. No. 008F00060003) was admitted without objection, as was the Irrigation Districts' Amended Response (Ref. No. 008F00060006). Medford and Rogue River Valley Irrigation Districts' Response to PacifiCorp's Interrogatory (008F006008).

Before the hearing, the Irrigation Districts had moved to strike from the hearing record documents submitted by the Klamath Tribes (Ref. No. 008E00070001 and 008E00070002). That motion had been denied. At the hearing the Irrigation Districts withdrew any previous objection to the documents, stipulating with the Klamath Tribes and agreeing with the Hearing Officer's ruling that although the documents were titled as "written testimony," they were more appropriately characterized as written argument supporting their contest than as testimony. No other participant objected to the documents and the exhibits were admitted.

The Direct Testimony of Carol Bradford - Witness for Medford and Rogue River Valley Irrigation Districts and Concurrence of Testimony by Jeff Eicher, Jim Pendleton and Ralph Kime (Ref. No. 008F00060004) was admitted, the Hearing Officer overruling Claimant/Contestant PacifiCorp's objection that the proffered evidence was irrelevant and immaterial to the claim. ORS 539.100 states that "Any person owning any irrigation works, or claiming any interest in the stream involved in the determination shall be a party to, and bound by, the adjudication * * *." Contestants claim an interest in waters from which the stream involved in the determination may flow. The proffered testimony and exhibits are relevant to their contest and to their standing to participate in the hearing. It may also be relevant to the issue of whether Claimant and its predecessors in interest actually applied the waters claimed to beneficial use or engaged in good faith in the construction of works for the application of water to a beneficial use within a reasonable time.

There were no other objections to any of the evidence and that participants did not cross-examine the witnesses available at the hearing.

ISSUES

Claim 145

1. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 146

2. Were the Oregon Water Resources Department's findings in the Preliminary Evaluation incorrect or incomplete because they did not take into account supplemental information filed in support of the claim?

3. Were the required pre-1909 elements established and, if so, what is the correct priority date for claim 146?

4. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claims 147-152

5. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 153

6. Were the required pre-1909 elements established for claim 153 and did completion of irrigation works occur within a reasonable time after commencement of construction or use of water?

7. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 154

8. Were the required pre-1909 elements established for claim 154 and did completion of storage and irrigation works occur within a reasonable time after commencement of construction or use of water?

9. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claims 155-159 and Claim 161

10. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 162

11. Were the required pre-1909 elements established for claim 162 and did completion of diversion and delivery works occur within a reasonable time after commencement of construction or use of water?

12. Do claimants Herbert C. LeSueur and Mary C. LeSueur have a right to water in excess of the diversion rate generally established in the Klamath Basin?

13. Is claimants Herbert C. LeSueur and Mary C. LeSueur right to irrigate 1.9 more or less acres supported by the evidence?

14. Have claimants Herbert C. LeSueur and Mary C. LeSueur provided sufficient information to allow determination of the amount of water they need for beneficial use without waste?

15. Have claimants Herbert C. LeSueur and Mary C. LeSueur provided sufficient information to allow determination of the initiation date of the claimed water right?

16. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 163

17. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 165

18. Were the required pre-1909 elements established for claim 165 and did completion of works occur within a reasonable time after commencement of construction or use of water?

19. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 166

20. What is the correct priority date for claim 166?

21. Is PacifiCorp's right to irrigate 6.6 acres supported by the evidence?

22. Has PacifiCorp provided the OWRD with sufficient evidence to support the claimed rate of 0.5 cfs?

23. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Claim 169

24. Were the required pre-1909 elements established for this claim and did completion of

works occur within a reasonable time after commencement of construction or use of water?

25. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

FINDINGS OF FACT

All Claims:

(1) OWRD staff based at the Klamath Falls Field Office performed field inspections of water uses for which the landowners had filed claims at issue in this contested case. These field inspections, based on photographs, interviews, on-site inspection and measurement of diversion and distribution works, resulted in data necessary to determine the extent of current and historic of water uses. (*Clark testimony*, pgs. 4-6).

(2) Either Claim 165 or Claim 166 covers all the properties involved in the claims filed in this contested case. Pacificorp diverts and delivers the water to individual lots and the owners of those properties use the water for irrigation of lawns and gardens. (*Barney testimony* at 2-3; *Clark testimony* at 8).

Conger Avenue Claims:

(3) A total of nine claims were filed for irrigation of residential property located on the east side of the Link River along Conger Avenue, Klamath Falls, in the SW ¼ NW ¼, Section 32, Township 38 South, Range 9 East, W.M. Claim No. 165 overlaps claims for irrigation of residential properties ranging in size from 0.1 acre to 1.0 acre in size, the owners of which have also filed claims in Claim Nos. 146, 149, 152, 153, 155, 159, 162, and 169. Pacificorp filed claim 165 to cover this entire area. Two properties totaling 0.9 acres were included in claim 165 but the owners of these properties did not file individual claims. (*Clark testimony*; *OWRD Exhibit 1*).

(4) The Link River, which is about one mile in length and entirely within the city limits of Klamath Falls, heads in Upper Klamath Lake and flows into Lake Ewauna. In 1868 George Nurse and Joseph Conger built a ditch on the east side of the Link River to irrigate gardens and orchards. The ditch, expanded and improved over the years, later became part of what is now known as the Ankeny Canal. (*Barney testimony*).

(5) In 1895, the Klamath Falls Light and Power Company was formed and it constructed the first Eastside Power Plant on the Link River in that year. The Eastside Plant took water from Link River via the Ankeny Canal, and began generating electricity on November 1, 1895, the claimed priority date for Claim No. 165. The Ankeny Canal appears to have been the conveyance for irrigation water to what is now Conger Avenue until 1924, when the third and current Eastside Power Plant was built and a pipeline installed along Conger Avenue that has since supplied the water covered by Claim 165. (*Barney testimony*).

(6) In 1905 and 1906 the Klamath Falls Light and Power Company constructed a second Eastside Power Plant. By 1911, the Klamath Falls Light and Power Company had become the Klamath Power Company, which the California-Oregon Power Company (Copco), PacifiCorp's direct predecessor, purchased in 1912. In 1917, Copco signed a contract with the United States setting forth the construction and operational details for the Link River Dam, construction of which included installation of a wooden flowline, steel penstock, and a surge tank that still supply the present-day Eastside Power Plant. The Eastside Plant, which began operation on August 22, 1924, was the third plant constructed on the east bank of the Link River. (*Barney testimony*).

(7) In 1923 the United States sold Copco rights to the Ankeny Canal and other property associated with the Eastside Power Plant. In 1925 Copco entered into a contract with the Conger Avenue property owners in which the company agreed to install a pipeline and to deliver irrigation water through the pipeline to the owners' property, in exchange for certain easement rights. Since that time the pipeline has been used to deliver irrigation water formerly conveyed via the Ankeny Canal. (*Barney testimony*).

(8) The same diversion and water conveyance system used to bring water to the Eastside Power Plant has been in use continuously to deliver water to the Conger Avenue residences since construction of the Eastside Power Plant. Water is diverted from the Link River in the NW ¼ SE ¼, Section 30, Township 38 South, Range 9 East, W.M. and is then carried through PacifiCorp's⁶ Eastside Power Canal and pipeline to a 6" steel pipe which connects to the penstock at PacifiCorp's East Side Power Plant. Water then flows through a common distribution system (pipeline) which serves the properties. (*Barney and Clark testimony*).

(9) Water serving the Conger Avenue properties flows through a common distribution system (pipeline) from a diversion point at Link River Dam through Pacificorp's flowline and penstock to the individual properties. Landowners of the Conger Avenue properties take the water from the pipeline by means of individual tap lines and use this water for irrigation of lawns and gardens on their properties. (*Barney testimony*).

Riverside Drive Claims:

(10) A total of twelve claims were filed for irrigation of property located on the west side of the Link River along Riverside Drive, Klamath Falls, in Lot 12 (NE ¼ SW ¼) and Lot 11 (SE ¼ SW ¼), Section 32, Township 38 South, Range 9 East, W.M. Pacificorp filed claim 166 to cover all the property in this area. Eleven property owners within this area also filed individual claims (claims 145, 147, 148, 150, 151, 154, 156, 157, 161, 158 and 163). Four properties, totaling 0.6 acres, were included in claim 166 but were not covered by individual claims. (*Clark testimony; OWRD Exhibit 1*).

(11) A series of canals, first constructed in 1877 and later combined to form the Keno Canal, were constructed along the west side of Link River to supply water to a saw mill

⁶ PacifiCorp, which was then Pacific Power & Light Company, a Maine corporation, merged with Copco in 1962.

and for irrigation. The Keno Canal was the conveyance for irrigation water on Riverside Avenue until 1923, when PacifiCorp's predecessor acquired from the United States rights to the Keno Canal that were expressly subject to an obligation to deliver water to "certain lots on the west side of Link River." On December 11, 1891, the West Side Canal Company filed a notice of appropriation for water and irrigation, begun at about the same time through the same delivery system. (*Barney testimony*).

(12) Water is diverted from the Link River in the NW ¼ SE ¼, Section 30, Township 38 South, Range 9 East, W.M. and is carried through PacifiCorp's Westside Power Canal to a 6" steel pipe, which connects to PacifiCorp's penstock. (*See OWRD Exhibit 7*) Water then flows through a common distribution system (6" pipeline) which serves the properties. The individual landowners of the Riverside Drive properties take the water from the 6" pipeline by means of individual tap lines and use this water for irrigation of lawns and gardens on their properties. (*Barney testimony at 3; Clark testimony*).

Water Rights in Four Mile Lake and Fish Lake:

(13) Contestant Irrigation Districts hold established water rights to water in Four Mile Lake and Fish Lake with a priority date of March 31, 1910.

Findings Related to Specific Claims:

(14) Claim 145 uses a total of 0.01 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.10 acre with a period of use from April 1 through October 31 of each year and a priority date of December 11, 1891.

(15) Claim 146 uses a total of 0.02 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.02 acre with a period of use from April 1 through October 30 of each year and a priority date of November 1, 1895

(16) Claim 147 uses a total of 0.01 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.20 acre with a period of use from April 1 through October 31 of each year and a priority date of December 11, 1891.

(17) Claim 148 uses a total of 0.01 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.30 acre with a period of use from April 1 through October 30 of each year and a priority date of December 11, 1891.

(18) Claim 154 uses a total of 0.01 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.10 acre with a period of use from April 1 through October 30 of each year and a priority date of December 11, 1891.

(19) William J. and Ethel J. Rust, Leonard Baio, Gary Strong, Robert Bartell, Margaret Jacob, Carolyn Obenchain, Rodney Z. James, Newman Enterprise (Douglas

Newman), Francis Loving Trust, Hilda Francis Trustee, did not contest claim 154 filed by Alice Galloway.

(20) Claim 162 uses a total of 0.02 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.9 acre with a period of use from April 1 through October 30 of each year and a priority date of November 1, 1895.

(21) WaterWatch of Oregon (as represented by Robert B. Hunter) was served noticed on all documents pertaining to this contested case, including the Notice of Hearing issued on May 23, 2002. Except for filing its initial contest and prehearing statement regarding its contest to Claim 162, WaterWatch of Oregon did not file any pleadings or testimony in this case and did not appear at the July 8, 2002, contested case hearing.

(22) Claim 165 uses a total of 0.1 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 4.0 acres with a period of use from April 1 through October 30 of each year and a priority date of November 1, 1895.

(23) Claim 166 uses a total of 0.08 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 3.1 acres with a period of use from April 1 through October 30 of each year and a priority date of December 11, 1891.

(24) Claim 169 uses a total of 0.01 cfs from one point of diversion located on the Link River, tributary to Klamath River, for irrigation of 0.2 acre with a period of use from April 1 through October 30 of each year and a priority date of November 1, 1895.

CONCLUSIONS OF LAW

(1) PacifiCorp has established the elements of pre-1909 claims for Claims 165 and 166 which affect all claims filed in this contested case and properties for which the owners did not file individual claims. In either case, Pacificorp's pre-1909 water rights in Claims 165 and 166 are in conjunction with and not in addition to rights to which the individual property owners are entitled.

(2) The evidence does not establish whether water from the Klamath Basin, described by water rights held by certain Contestants, is "water available" for appropriation in the Klamath Adjudication. Even if it were "unavailable," Contestant Irrigation Districts are not entitled to the relief they seek in this contested case proceeding.

OPINION

To establish a claim in the Klamath Basin General Stream Adjudication, a claimant must prove by a preponderance of the evidence the following elements: (1) a *bona fide* intent prior to February 24, 1909 to apply the water to a currently existing or currently contemplated future beneficial use; (2) a diversion; and (3) an application to a beneficial use within a reasonable time. ORS 183.450(5); 539.010(4); *see also In re Water Rights of Silvies River*, 115 Or 27 (1925). Analysis of the claims in this case is complicated by the interrelationship

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of the claims and the failure of some potential claimants to file claims regarding pre-1909 water rights to which they may have been entitled.

One set of claims (Claims 149, 153, 155, 159, 162, 165, and 169) is for the irrigation of residential properties (ranging from 0.1 acre to 1.0 acre in size) located on the East side of the Link River along Conger Avenue, Klamath Falls, in the SW ¼ NW¼, Section 32, Township 38 South, Range 9 East, W.M. PacifiCorp filed claim 165 to cover the property in this area. (See OWRD Exhibit 1 pages 1377-1378.) Eight property owners within this area also filed individual claims. (See OWRD Exhibits 2 and 3.) Two properties totaling 0.9 acres were included in Claim 165 but were not also covered by individual claims.

A second set of claims (Claims 145, 147, 148, 150, 151, 156, 157, 158, 161, 163, and 166) covers properties located on the West side of the Link River along Riverside Drive, Klamath Falls, in LOT 12 (NE ¼ SW ¼) & LOT 11 (SE ¼ SW ¼), Section 32 Township 38 South, Range 9 East, W.M. PacifiCorp filed claim 166 to cover the property in this area. (See OWRD Exhibit 1 pages 1475-1477) Twelve property owners within this area also filed individual claims. (See OWRD Exhibits 4 and 5) Four properties, totaling 0.6 acres, were included in Claim 166 but were not also covered by individual claims. (See OWRD Exhibits 4 and 5.)

ISSUES AFFECTING ALL CLAIMS

Irrigation District Contests. Contestant Irrigation Districts filed contests in each claim questioning whether water claimed by the various claimants was "water available" for appropriation in this adjudication. In a number of claims, the only contest filed was filed by Contestant Irrigation Districts, which filed these contests "to preserve their status as an interested party" in these claims. The bases of their contests lay entirely in their contentions that water claimed in this proceeding is not "water available" from Fish Lake and Four Mile Lake, bodies of water in which the Irrigation Districts claim an interest (See e.g., *Statement of Contest*, OWRD Exhibit 1, pgs. 1521-1524.)

ORS 539.100 requires contestants to state "with reasonable certainty the grounds of the proposed contest" ORS 539.110, in addition to placing the burden of establishing the claim upon the claimant whose claim is contested, states that "The evidence in the proceedings shall be confined to the subjects enumerated in the notice of contest." Rules of the OWRD set out in OAR Ch. 690, Div. 28 govern and explain the adjudication process for making final determinations of pre-1909 water rights. OAR 690-028-0075 details the potential bases for filing contests. That rule states, in pertinent part:

- (3) Contestants shall state with reasonable certainty the ground for the contest. Reasons for contest include, but are not limited to:
- (a) Claiming a wrong priority date;
 - (b) Claiming a wrong quantity of water;
 - (c) Claiming a wrong area of use;
 - (d) Claiming a use started after February 24, 1909, except on federal reserved rights or spring registration;

- (e) Claiming a use that had been forfeited by five or more consecutive years of non-use less than fifteen years previously; and
- (f) Claiming a use that has been intentionally abandoned.

* * *

Although the list of potential grounds for contest in OAR 690-018-0075(3) is not exclusive, it shows that the Irrigation Districts' claim of abandonment or non-use could and should have been raised when the contest was filed. PacifiCorp correctly pointed out that ORS 539.100, 539.110, and OAR 690-018-0075 prevent the Irrigation Districts from contesting the claims except on grounds stated in the formal contests filed against these claims. Issues of abandonment and forfeiture will not be considered.

Contestant Irrigation Districts did not dispute the claimed priority date of any claim. Rather, they contended that the claimants failed to perfect Four Mile Lake and its tributaries and Fish Lake and its tributaries as sources of appropriation for the waters claimed. *Medford and Rogue River Valley Irrigation Districts' Response to Claimant's Discovery Request* (Ref. No. 008F00060008). They also contended that claimants have never "called" for water from these sources and have failed to divert waters from those sources. Despite their admission that claimants have made no claim for an appropriation from Four Mile and Fish Lakes or their tributaries, the Irrigation Districts seek to prevent claimants from placing a future "call" on waters of Four Mile Lake, Fish Lake, and their tributaries and ask that the Adjudicator place a specific condition or an addendum on the various claimants' water right preventing such a "call."

The greater weight of the evidence does not support Contestant Irrigation Districts' contention that waters of Four Mile Lake, Fish Lake, and their tributaries are potential sources of waters claimed in Claim 167. Also, I do not find Contestant Irrigation Districts' legal arguments regarding the issues raised by their contest persuasive and rely upon and adopt, in large part, the arguments made by OWRD.

The Findings of Fact do not include a finding regarding the ultimate sources of waters affected by these claims. This is so because the evidence is, at best, in equipoise. The only evidence supporting such a finding is in Carol Bradford's testimony (Ref. No. 008F00060001), which focused on the acquisition of water rights held by Contestant Irrigation Districts, the historical background regarding establishment of those rights, and the works created for the use of the waters of Fish Lake and Four Mile Lake. Testimony regarding the relationship between the waters claimed in the Claims in this contested case and the sources of the water rights for which they seek protection is scanty:

* * * * *

6. The sources claimed by Pacificorp in the claims referenced in this case are unclear. They claim water from Link River, a tributary to the Klamath River. Klamath Lake is a tributary to the Link River and many sources of water supply Klamath Lake, including waters from Four Mile Lake.

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7. As evidenced by the geography of the area, Four Mile Lake can be considered a source of water for Klamath Lake. See attached map section at Exhibit 3.

* * * * *

35. The tributaries and waters of Fish Lake lie in the Rogue Valley Basin and have never been considered a source of water for the Klamath Basin.

36. From before 1898, the waters of Four Mile Lake and Fish Lake were not considered a source of water for the Klamath Lake in the Klamath Basin.

37. To my knowledge, there has never been a call made on the waters of Four Mile Lake and Fish Lake, or any of their tributaries, to benefit water users in the Klamath Basin or to supply water for any water rights or rights of use other than those held by [Contestant Irrigation Districts] and their predecessors in interest.

(Bradford testimony at pages 2 and 7).

Ms. Bradford's testimony, though unrepudiated, is internally inconsistent (compare paragraphs 5 and 6 with paragraphs 35 and 36) and is insufficient to establish by a preponderance of the evidence that waters of Four Mile Lake, Fish Lake, or their tributaries flow or have flowed to Klamath Lake at present or in the past. On this record, there is insufficient evidence to determine whether water from Four Mile Lake or Fish Lake flows into Klamath Lake, so there is no evidentiary basis for imposing the condition sought by Contestant Irrigation Districts.

Contestant Irrigation Districts fare no better on the legal issues. Even if the evidence had established that the waters of Fish Lake or Four Mile Lake were an ultimate source of waters affected by claimants' claims, the relief they seek is one of regulation and is not appropriate to this proceeding, which is to determine the relative water rights of the parties, not regulate actual water use.

Like most western states Oregon follows the "prior appropriation" doctrine, which addresses which water rights are honored in times of shortage. Under the prior appropriation doctrine, "a person may acquire an appropriative right on a 'first come, first served' basis by diverting water and applying it to a beneficial use." *Teel Irrigation District v. Water Resources Dept.*, 323 Or 663, 667 (1996). The prior appropriation doctrine governs distribution of water as well as the allocation of water and in times of shortage addresses which holder of water rights can receive water. Water rights holders with a later (junior) priority date are not entitled to use water if their use would interfere with the rights of those who have earlier (senior) priority dates. Thus a water right is not an absolute right to use water, but a relative right that may only be exercised within the priority system. ORS 537.120 (subject to existing rights, and other exceptions not pertinent here "waters within the state may be appropriated for beneficial use"); ORS 540.045 (describing watermaster duties to "distribute water among the various users * * * in accordance with the users' existing water rights of record").

Contestant Irrigation Districts seek to prevent claimants from placing a "call" on waters to which the Irrigation Districts have established water rights by conditioning each of the claimant's water rights to prevent such a "call." Strictly speaking, water users do not place a "call" on other users' water rights. Rather, a water user places a "call" on the stream, river, or other source that supplies its right by demanding that the watermaster distribute water among the various users according to their water rights of record. ORS 540.045. It is then the watermaster's duty to determine how that "call" shall be enforced. *Id.* The watermaster is empowered to enforce a "call" by directly regulating a water user's diversion. ORS 540.045(c). The condition that Contestant Irrigation Districts seek, therefore, is one pertaining to regulation of water rights, not to the rights themselves.

The purpose of this proceeding is to identify and determine the relative rights of individuals and entities who began using water before February 24, 1909. ORS 539.010; 539.021. Only after identification, quantification and determination of those relative rights has been completed can there be meaningful discussion regarding regulation of those rights. ORS 540.045 (watermasters regulate in accordance with "rights of record"); ORS 540.145 (the Water Resources Commission may adopt rules pertaining to distribution of water pursuant to, among other things, rights established by "an order of the * * * Director in proceedings for the determination of relative rights to the use of water."). Thus, if a "call" or complaint is placed with the watermaster, he or she will then regulate in accordance with "rights of record" and other applicable law. *Id.*; see OAR 690-250-0020 (distribution of surface waters). Neither general principals of the prior appropriation doctrine nor the applicable statutes entitle contestant Irrigation Districts to the regulatory condition they seek to impose on claimants in any of the claims in this contested case.

Neither the greater weight of the evidence nor the statutes and rules that govern this adjudication allow a condition on water rights for an action that may never occur and for which a regulatory remedy already exists. Accordingly, it is inappropriate for the Adjudicator to condition claimants' water rights in the manner that these Contestants seek. Nonetheless Contestant Irrigation Districts have standing in this matter and by filing contests hold the claimants to their burden of proving their claims. ORS 539.110.

Priority Dates. Many of the claims asserted a priority date of 1905, the year a transfer of water rights was effected and documented. In many of those cases the OWRD preliminarily approved the priority dates of 1905, consistent with those claims. The greater weight of the persuasive evidence regarding the Conger Avenue claims established that the correct priority date should be November 1, 1895, the date claimed by PacifiCorp in its Claim No. 165. (OWRD Exhibit 1, p. 0010;⁷ *Barney Testimony*). Likewise, the greater weight of the persuasive evidence regarding the Riverside Drive claims established that the correct priority

⁷ "On June 22, 1905, C. S. Moore and R. S. Moore, now owners of the properties of the West Side Canal Co., obtained a water right for 205 second feet on the West side of Link River to use for power, domestic irrigation and industrial purposes. Evidence of the Moore right was obtained in contracts with the United States Government dated October 16, 1905, when the Moore brothers proceeded with building a powerhouse." John C. Boyle, *50 Years on the Klamath River*, pg. 26 (1976).

date should be December 11, 1891, the date claimed by PacifiCorp in its Claim No. 166. (*Barney testimony; Clark testimony*).

Joint Water Certificates. PacifiCorp's Closing Argument suggested that because the individual property owners' claims concern the same water claimed in PacifiCorp's Claim 165 and Claim 166, it would not be appropriate for the Director to award separate certificates to PacifiCorp as well as to each irrigator. Instead, PacifiCorp suggested that the Director issue separate certificates for each parcel of property covered by Claims 165 and 166, jointly in the name of the property owner and PacifiCorp.

Jointly held certificates are consistent with Oregon water law. In Oregon, the right to use water for irrigation belongs to an appropriator, and appropriation of water requires both diversion of the water from its public source, and application of that water to a beneficial use. See ORS 537.120; ORS 539.010. Both PacifiCorp and the individual irrigators perform one requirement of appropriation, as did their predecessors: PacifiCorp diverts the water; the irrigators apply the water to beneficial use. Each therefore relies on the action of the other to maintain a vested water right. See, e.g., *Prosole v. Steamboat Canal Co.*, 140 P 720, 722 (Nev 1914) ("The one cannot exist without the performance of the other * * * [W]hen the act of diversion is coupled with the act of application to beneficial purpose, the appropriation is accomplished."); *Combs v. Farmers' High Line Canal & Reservoir Co.*, 88 P 396, 399 (Colo 1907) ("[W]here the diversion is made by a carrier, and the successful application is made by another who is the consumer, a completed appropriation is the result of their combined acts."); *Farmers' Co-operative Ditch Co. v. Riverside Irrigation Dist.*, 94 P 761, 763 (Idaho 1908) ("[I]t takes the water user applying the water to a beneficial purpose to enable a ditch company that has appropriated waters for sale, rental, or distribution to continue the diversion of the water.").

It is, however, premature to determine in what form the water certificates should issue. Decisions regarding who should receive a water right ultimately will be made by the Circuit Court when it issues a decree, ORS 539.150, and the Director of OWRD, who will issue the certificates, ORS 539.140.

SPECIFIC CLAIMS

Claims 148-152, 155-159, 161 and 163

The only contest regarding these claims were filed by the Irrigation Districts. No other issues were raised regarding these claims.

Question. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 145

Question 1. What is the correct priority date for this claim?

Answer: December 11, 1891. See the general discussion of this issue above

Question 2. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 146

Question 1. Were the Oregon Water Resources Department's findings in the Preliminary Evaluation incorrect or incomplete because they did not take into account supplemental information filed in support of the claim?

Answer: YES.

Discussion. OAR 690-030-0085 provides that "any new matter which the claimant may wish to set forth shall be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Water Resources Director prior to the close of the period of open inspection." The term "new matter" includes information that does not amend a claim as to enlarge its terms, but provides evidentiary information that supplements and supports the claim as originally filed.

New matter submitted to OWRD by claimant was set forth in an affidavit regularly verified before a proper officer. (OWRD Exhibit 1 page 66). The new matter submitted to OWRD by claimant was timely filed with OWRD on March 31, 2000, before the close of the open inspection period assigned to Salem, Oregon.⁸ This information is part of the record in case 008. (OWRD Exhibit 1 pages 65-341) and is part of the evidentiary basis for the findings in this claim.

Question 2. Were the required pre-1909 elements established and, if so, what is the priority date for claim 146?

Answer: YES - November 1, 1895.

Discussion. Based upon a review of the supplemental information submitted by Claimant and by PacifiCorp, with other evidence in this contested case file, Claimant has met her burden of proving the required elements of a pre-1909 claim. (OWRD Exhibit 1 pages 65-341; *see Clark testimony*, Exhibit 3). The greater weight of the persuasive evidence in this claim established

⁸ In Salem, Oregon, open inspection began on November 15, 1999 and was scheduled to end on January 14, 2000. This deadline was extended by the Adjudicator to March 31, 2000. (January 10, 2000 Notice of Extension of Period for Open Inspection of Claims).

that the correct priority date should be November 1, 1895. This conclusion is in accordance with the conclusion reached by the OWRD after its review of the supplemental information submitted by Claimant. (See Summary Analysis Regarding Claims in Case 008 for claim 146 filed by OWRD on August 23, 2002).

Question 3. What is the appropriate rate of water for this claim?

Answer: 0.02 cfs.

Discussion. The claim was filed for 0.02 cfs. An examination of the OWRD's file shows only that the property is watered by four ½" pipes with faucets and a worksheet that contains information consistent with the claim. (OWRD Exhibit 1, pages 00342 and 00343). There is no other evidence regarding the rate of water consumption. Believing the worksheet accurately reflects the findings of the Department, I have found that amount of water to which this claim is entitled to be the amount claimed.

Question 4. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 147

Question 1. What is the correct priority date for this claim?

Answer: December 11, 1891. See the general discussion of this issue above.

Question 2. What is the appropriate period of use for this claim?

Discussion. Claimant claimed a period of use from April 1 through November 1. The OWRD has established a standard period for irrigation from March 1 through October 31. (OWRD Exhibit 1, pages 01595-1597, "Appendix A"). The evidence in this record does not support a period extending beyond the standard period.

Question 3. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 153

Question 1. Were the required pre-1909 elements are established for claim 153 and did completion of irrigation works occur within a reasonable time after commencement of construction or use of water?

DEC 16 2012

Answer: YES.

Discussion: When Claimants Michael J. Reynolds and Pamela A. Traina filed contest 16, contesting the preliminary denial of the claim, they submitted additional information. (OWRD Exhibit 1 pages 777-785). That additional information is properly part of the hearing record (*see* Question 1 in Claim 146) and part of the evidentiary basis for the findings in this claim. A preponderance of the evidence now supports a conclusion that Claim No. 153 met all the required pre-1909 elements with a priority date of November 1, 1895, as claimed.

Question 2. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 154

Question 1. Were the required pre-1909 elements established for claim 154 and did completion of storage and irrigation works occur within a reasonable time after commencement of construction or use of water?

It appears that the Contestants who raised this issue regarding Claim 154 did not intend to contest this Claim. None of the contestants in Contests 46, 280, 515, 985, 1220, 1803, 1454, 1803, 2255 and 2490 participated in the contested case and all reported that they did not contest claim 154 filed by Alice Galloway.

Question 2. Is water listed in water rights permits held by Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 162

Question 1. Were the required pre-1909 elements established for claim 162 and did completion of diversion and delivery works occur within a reasonable time after commencement of construction or use of water?

Answer. YES.

Discussion: The greater weight of the persuasive evidence established a pre-1909 water right for this Conger Avenue property with a priority date of November 1, 1895. See the general discussion of this issue above.

Question 2. Do claimants Herbert C. LeSueur and Mary C. LeSueur have a right to water in excess of the diversion rate generally established in the Klamath Basin?

Answer: NO.

Discussion: Claimants claimed a rate of 35 cfs to irrigate 1.9 acres. They presented no evidence in this contested case and other evidence in the record does not show entitlement to a rate approximating the rate originally claimed. After considerable correspondence with Mr. LeSueur and attempts by him to measure the water actually used, the OWRD employee assigned to determine the water actually used in irrigation determined that these claimants use 0.02 cfs to irrigate their property. (OWRD Exhibit 1, pg. 1245). The evidence supports no greater rate. (See Appendix A, OWRD Exhibit 1, pgs. 1595-1597).

Question 3. Is claimants Herbert C. LeSueur and Mary C. LeSueur right to irrigate 1.9 more or less acres supported by the evidence?

Answer: No.

Discussion: During a January 22, 1991, conversation with an OWRD employee Mrs. LeSueur agreed that the amount of land she and her husband irrigate is closer to 1.0 acres than the 1.9 claimed. (OWRD Exhibit 1, pgs. 1219 and 1220). In May 1998, Mr. LeSueur agreed that the 1.0 acres for irrigation was a more appropriate claim than the 1.9 acres claimed (OWRD Exhibit 1, pg. 1234). Additionally, maps submitted regarding this claim show that the acreage actually irrigated closely approximates the 1.0 acres to which the LeSueurs agreed. (See OWRD Exhibit 1 pgs. 1216, 1220 and 1221). Most recently, in response to interrogatories posed by the Klamath Tribes, Mr. and Mrs. LeSueur agreed that the property actually irrigated is approximately 0.9 acre and that the 1.9 acre originally claimed probably resulted from a typographical error made at the time of filing. (Exhibit Ref. No. 008E007002).

Question 4. Have claimants Herbert C. LeSueur and Mary C. LeSueur provided sufficient information to allow determination of the amount of water they need for beneficial use without waste?

Answer: Yes. See discussion in question 2, above.

Question 5. Have claimants Herbert C. LeSueur and Mary C. LeSueur provided sufficient information to allow determination of the initiation date of the claimed water right?

Answer: Yes. See discussion in question 1, above.

Question 6. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 165⁹

Question 1. Were the required pre-1909 elements established for claim 165 and did completion of works occur within a reasonable time after commencement of construction or use of water?

Answer: Yes.

Discussion: The Adjudicator preliminarily denied Claim 165 for lack of evidence that the works were completed within a reasonable time after commencement of construction or use of water. PacifiCorp's evidence for Claims 165 and 166, with the exception of application of the water to irrigation instead of power generation, is consistent with findings set out in the Findings of Fact in Proposed Orders previously published in Cases 014 and 015 of this Adjudication. While those cases are not final and may not be considered precedent for this decision, PacifiCorp cited them to ensure, to the extent possible, similar interpretation of similar facts.

Cases 014 and 015 concerned PacifiCorp's Claims 167 and 168 for its Eastside and Westside Power Plants on Link River. The proposed orders for Cases 014 and 015 include findings and conclusions that PacifiCorp established the elements of a pre-1909 water right for hydroelectric use at the Eastside and Westside Power Plants.¹⁰ The diversions and water conveyance systems for the power plants also supply irrigation water to the Conger Avenue and Riverside Avenue properties that are subjects of this contested case. (*Barney Testimony* at 2-3).

Particularly with regard to Claim 165, the same diversion and water conveyance system used to bring water to the Eastside Power Plant has been and currently is used to deliver water to the Conger Avenue residences. (*Barney Testimony* at 4-5). This diversion was first accomplished through the Ankeny Canal, which was constructed along the east side of Link River to supply irrigation water to local farmlands sometime before 1895. *Barney Testimony*, Exhibit 4 at 23-24. The Ankeny Canal was the conveyance for irrigation water to what is now Conger Avenue until 1924, when PacifiCorp's predecessor built the third and current Eastside Power Plant and at the same time installed a pipeline along Conger Avenue that has since supplied the water covered by Claim 165. (*Id.* at 26). I am convinced by a preponderance of the evidence in this record, including the *Barney Testimony* and attachments, that works for Claim 165 were completed within a reasonable time.

Pacificorp claimed a pre-1909 water right for irrigation of 7.7 acres. PacifiCorp concedes that it does not own the properties on which the water is applied and does not use

⁹ There no longer is any dispute between PacifiCorp and OWRD with respect to PacifiCorp's claims and contests. OWRD is satisfied that PacifiCorp has established the elements of a pre-1909 water right for each claim, and PacifiCorp agreed that OWRD's acreage and rate calculations for the individual properties covered by the claims may be correct. Although it would seem likely that Contestant Wagstaff would have joined in a stipulation to this agreement, the agreement of the Contestant was not obtained so the issues must be discussed.

¹⁰ Copies of the Proposed Orders in Case 014 and in Case 015 are made part of this record by attachment as Appendix A and Appendix B, respectively, to PacifiCorp's Closing Argument.

the water for irrigation on the properties. Therefore, PacifiCorp does not have first-hand knowledge of the actual acreage irrigated on each property. After filing Claim 165, PacifiCorp provided additional information to OWRD indicating that the total acreage for the Conger Avenue properties covered by Claim 165 is 5.58 acres. OWRD performed a field inspection of the Conger Avenue and Riverside Avenue properties and determined that only 4.0 acres on Conger Avenue are irrigated. (*Clark Testimony* at 13). The maximum rate for the Klamath Adjudication (Appendix A, OWRD Exhibit 1, pgs. 1595-1597), for irrigation of 4.0 acres is 0.1 cfs.

Question 2. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 166

Question 1. What is the correct priority date for claim 166?

Answer: December 11, 1891.

Discussion: The Adjudicator preliminarily approved Claim 166 with a later priority date than claimed. The direct testimony of Richard W. Barney and exhibits attached thereto detailed the development of the water rights claimed in Claim 166, and established the existence of a *bona fide* intent prior to February 24, 1909 to apply the water to a then currently existing beneficial use, a diversion, and application to a beneficial use within a reasonable time.

Mr. Barney's testimony also explained that the same diversion and water conveyance system used to bring water to the Westside Power Plant has been and currently is used to deliver water to the Riverside Avenue residences. (*Barney Testimony* at 6-8). A series of canals, first constructed in 1877 and later combined to form the Keno Canal, were constructed along the west side of Link River to supply water to a saw mill and for irrigation. (*Barney Testimony* at 7). Although the evidence suggests that some diversion for irrigation of these properties may have occurred before 1891, the December 11, 1891 is the most reliable as it is the date upon which the Westside Canal Company filed a notice of appropriation for the water right claimed. (*Barney testimony* at 6).

Question 2. Is PacifiCorp's right to irrigate 6.6 acres is supported by the evidence?

Answer: No.

Discussion: As discussed in regard to Claim 165, PacifiCorp does not have first-hand knowledge of the actual acreage irrigated on each property. After filing Claim 166, PacifiCorp provided additional information to OWRD indicating that the total acreage for the Riverside Avenue properties covered by Claim 166 is 3.25 acres. OWRD's field inspection of the Riverside Avenue properties found that only 3.1 acres on Riverside Avenue are irrigated.

(Clark Testimony at 16).

Question 3. Has PacifiCorp provided the OWRD with sufficient evidence to support the claimed rate of 0.5 cfs?

Answer: No

Discussion: The maximum rate for the Klamath Adjudication (Appendix A, OWRD Exhibit 1, pgs. 1158 and 1595-1597), for irrigation of 3.1 acres is 0.1 cfs.

Question 4. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

Claim 169

Question 1. Were the required pre-1909 elements are established for this claim and did completion of works occur within a reasonable time after commencement of construction or use of water?

Answer: Yes. When Claimant/Contestant Wagstaff filed her contest to the preliminary evaluation, she provided additional information in support of the claim. (OWRD Exhibit 1 pages 1563-1586) This additional information, as part of the contest, was included in OWRD's Exhibit 1 and is properly a part of the record in this case. Based on review of the information in the record, she has met her burden of proving that the required elements of a pre-1909 claim with a priority date of November 1, 1895. (See Clark testimony).

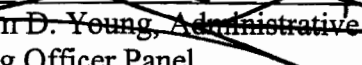
Claimant/Contestant Wagstaff's claim identified the irrigated property as being 0.2 acre and claimed a rate of .08 cfs. (OWRD Exhibit 1, pgs 1530-1531). The maximum rate for irrigation of 0.2 acre is 0.01 cfs. (Appendix A, OWRD Exhibit 1, pgs. 1595-1597).

Question 2. Is water listed in the water rights for Rogue River Valley Irrigation District and Medford Irrigation District "water available" for appropriation under the Klamath Adjudication?

Answer: NO. See the general discussion of this issue above.

ORDER

I recommend that the Adjudicator for the Klamath Basin General Stream Adjudication enter a Final Order consistent with the Findings of Fact and Conclusions of Law stated herein, and as specifically set out in Appendix A, Summary Analysis attached hereto.


~~William D. Young, Administrative Law Judge~~
Hearing Officer Panel

Dated: December 12, 2002

NOTICE TO THE PARTIES: If you are not satisfied with this Order you may:

EXCEPTIONS: Parties may file exceptions to this Order with the Adjudicator within 30 days of service of this Order. OAR 137-003-0650.

Exceptions may be made to any proposed finding of fact, conclusions of law, summary of evidence, or recommendations of the Hearing Officer. A copy of the exceptions shall also be delivered or mailed to all participants in this contested case.

Exceptions must be in writing and must clearly and concisely identify the portions of this Order excepted to and cite to appropriate portions of the record to which modifications are sought. Parties opposing these exceptions may file written arguments in opposition to the exceptions within 45 days of service of the Proposed Order. Any exceptions or arguments in opposition must be filed with the Adjudicator at the following address:

Dick Bailey
Klamath Basin Adjudication
Oregon Water Resources Dept
158 12th Street NE
Salem OR 97301

Claim No. 145

Claimant's Name and Address:

David A. Baltazar
318 Riverside Dr.
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NESW	

Total Acres: 0.1

Period Of Use: April 1 through October 31 of each year

Rate: 0.01 cfs

DEC 13 2012

Claim No. 146

Claimant's Name and Address:

Kathleen Boivin
110 North 6th Street
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	

Total Acres: 0.2

Period Of Use: April 1 through October 30 of each year

Rate: 0.02 cfs

DEC 18 2002

Claim No. 147

Claimant's Name and Address:

Charles M. Cline
2237 California
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NESW	12

Total Acres: 0.2

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

DEC 18 2012

Claim No. 148

Claimant's Name and Address:

Albert Conforti
204 S Riverside
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NESW	12

Total Acres: 0.3

Period Of Use: April 1 through October 30 of each year.

Rate: 0.01 cfs

DEC 18 2012

Claim No. 149

Claimant's Name and Address:

Scott C. Kellstrom
622 Conger Avenue
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	8

Total Acres: 0.5

Period Of Use: April 1 through October 31 of each year.

Rate: 0.02 cfs

DEC 18 2012

Description Of Water Right Claim Case No. 008

Claim No. 150

Claimant's Name and Address:

Tamara Caillouette
Conrad Caillouette
234 Riverside
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	1/4,1/4 section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	1/4,1/4 section	Lot
38S	9E	32	NESW	12

Total Acres: 0.4

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 151

Claimant's Name and Address:

Wilford A. Dunster
346 Riverside
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SESW	11

Total Acres: 0.1

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 152

Claimant's Name and Address:

Eloise J. Elliott
David C. Elliot
200 Macklyn Cove Dr. #11
Brookings, OR 97415

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	

Total Acres: 0.1

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

DEC 10 2002

Description Of Water Right Claim Case No. 008

Claim No. 153

Claimant's Name and Address:

Pamela A. Traina
Michael J. Reynolds
702 Conger Avenue
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	

Total Acres: 0.3

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 154

Claimant's Name and Address:

Alice M. Galloway
324 Riverside Drive
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	1/4,1/4 section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	1/4,1/4 section	Lot
38S	9E	32	SESW	11

Total Acres: 0.1

Period Of Use: April 1 through October 30 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 155

Claimant's Name and Address:

Beverly Ghiassi
Massoid (Mike Ghiassi)
3390 Kallin Ave
Long Beach, CA 90808

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	8

Total Acres: 0.4

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

DEC 18 2012

Description Of Water Right Claim Case No. 008

Claim No. 157

Claimant's Name and Address:

Marta Kollman
Daryl Kollman
532 Riverside
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Places of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NESW	12
38S	9E	32	SESW	11

Total Acres: 0.7

Period Of Use: March 1 through October 31 of each year.

Rate: 0.02 cfs

Description Of Water Right Claim Case No. 008

Claim No. 158

Claimant's Name and Address:

Steven L. Hess
446 Riverside Dr.
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SESW	11

Total Acres: 0.1

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 159

Claimant's Name and Address:

Jess House
706 Conger Avenue
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	8

Total Acres: 0.4

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

DEC 10 2002

Description Of Water Right Claim Case No. 008

Claim No. 161

Claimant's Name and Address:

City of Klamath Falls
PO Box 237
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NESW	12

Total Acres: 0.3

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 162

Claimant's Name and Address:

Mary-Louise LeSueur
Herbert C. LeSueur
572 Conger Avenue
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	

Total Acres: 0.9

Period Of Use: April 1 through October 30 of each year.

Rate: 0.02 cfs

Description Of Water Right Claim Case No. 008

Claim No. 163

Claimant's Name and Address:

Jeanene M. Oatman
430 Riverside Dr.
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	1/4, 1/4 section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Place of Use:

Township	Range	Section	1/4, 1/4 section	Lot
38S	9E	32	SESW	11

Total Acres: 0.1

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs

Description Of Water Right Claim Case No. 008

Claim No. 165

Claimant's Name and Address:

PacifiCorp, dba Pacific Power and Light Co.
625 NE Multnomah #1700
Portland, OR 97232

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	

Total Acres: 4.0

Period Of Use: April 1 through October 30 of each year.

Rate: 0.1 cfs

Description Of Water Right Claim Case No. 008

Claim No. 166

Claimant's Name and Address:

PacifiCorp, dba Pacific Power and Light Co.
625 NE Multnomah #1700
Portland, OR 97232

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion at Link River Dam through Westside (Keno) Power Canal.

Priority Date: December 11, 1891

Use: Irrigation

Places of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NESW	12
38S	9E	32	SESW	11

Total Acres: 3.1

Period Of Use: April 1 through October 31 of each year.

Rate: 0.08 cfs

DEC 11 2002

Description Of Water Right Claim Case No. 008

Claim No. 169

Claimant's Name and Address:

Terrel J. Wagstaff
680 Conger Avenue
Klamath Falls, OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38 S	9E	30	NWSE	4

Diversion from the link River through Eastside Power Canal and pipeline.

Priority Date: November 1, 1895

Use: Irrigation

Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SWNW	

Total Acres: 0.2

Period Of Use: April 1 through October 30 of each year.

Rate: 0.01 cfs

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2002, I mailed a true copy of the following: **PROPOSED ORDER**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

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gdcorbin@stoel.com

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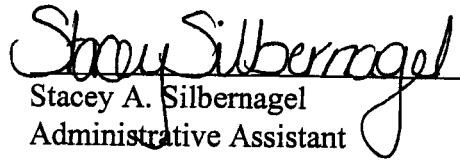
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Terrel Wagstaff
Michael Casey
680 Conger Ave.

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Alice M. Galloway
324 Riverside Dr.
Klamath Falls, OR 97601


Stacey A. Silbermagel
Administrative Assistant

Case 008 – Certificate of Service

DEC 18 2012

008F00000010
**BEFORE THE HEARING OFFICER PANEL
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

WaterWatch Inc.; Klamath Tribes; Horsefly
Irrigation District; Langell Valley Irrigation
District; Medford Irrigation District; Rogue
River Valley Irrigation District; David
Cowan, successor in interest to William J. &
Ethel J. Rust; Leonard Baio; Gary Strong;
Robert Bartell; Margaret Jacobs; Carolyn
Obenchain; Rodney Z. James; Newman
Enterprise; Douglas Newman; and Hilda
Francis, Trustee Francis Loving Trust,
Contestants;

v.

Pacific Power and Light Co. dba Pacificorp;
Charles M. Cline; Kathleen Boivin, successor
in interest to South Valley Bank & Trust,
Trustee for the Harry D. Boivin Trust; David
A. Baltazor; Albert J. Conforti; Scott C.
Kellstrom; Conrad Caillouette and Tamara
Caillouette; Wilford A. Dunster; David C.
Elliott; Eloise J. Elliott; Michael J. Reynolds;
Pamela A. Traina; Mike Massoud; Beverly
Ghiassi; James Dillon; Debra Dillon; Daryl
Kollman; Marta Kollman; Klamath Crisis
Center; Steven Hess; City of Klamath Falls;
Herbert C. LeSueur; Mary C. LeSueur;
Jeanene M. Oatman; Terrel J. Wagstaff;
Michael J. Casey; Jess House; and Alice M.
Galloway, Claimants

**ADDENDUM TO PROPOSED
ORDER**

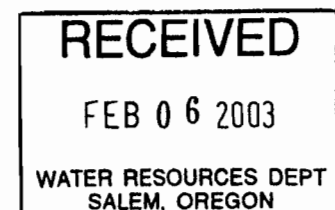
Hearing Officer Panel Case No. 008

Claim Nos. 145 through 159, 161, 162,
163, 165, 166, and 169

Contest Nos. Contests 16, 44, 45, 280,
515, 985, 1220, 1454, 1803, 2054, 2055,
2255, 2490, 2852, 3139 through 3153,
3155 through 3157, 3159, 3160, 3163,
3376, and 4171¹

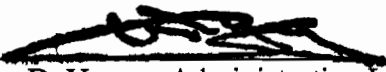
On December 12, 2002, the Hearing Officer Panel published Proposed Order in this
contested case, including an appendix summarizing the relative water rights of the parties.

¹ On January 25, 2002 Langell Valley Irrigation District and Horsefly Irrigation District withdrew from
all contests filed in this case.

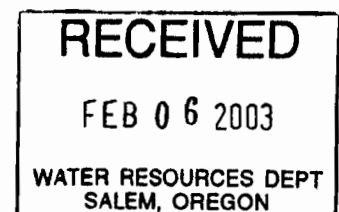


Although the relative water rights of the claimants and contestants to Claim 156 was discussed in the proposed order, the summary of the claim was not included in that appendix.

IT IS HEREBY ORDERED that the summary attached hereto be appended to and included in the appendix to the Proposed Order as if fully set out in the appendix to the Proposed Order published on December 12, 2002.



William D. Young, Administrative Law Judge
Hearing Officer Panel



Description Of Water Right Claim Case No. 008

Claim No. 156

Claimant's Name and Address:

James Dillon
Debra Dillon
406 Riverside Dr.
Klamath Falls OR 97601

Basis of Claim: Pre-1909 Water right.

Source: Link River, tributary to the Klamath River

Point of Diversion:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	NWSE	4

Diversion at Link River Dam through "Westside Canal" (Keno Canal).

Priority Date: December 11, 1891

Use: Irrigation

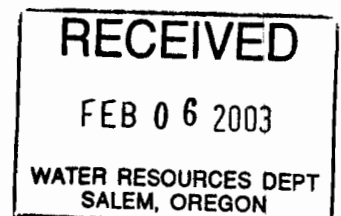
Place of Use:

Township	Range	Section	¼,¼ section	Lot
38S	9E	32	SESW	11

Total Acres: 0.1

Period Of Use: April 1 through October 31 of each year.

Rate: 0.01 cfs



CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2003, I mailed a true copy of the following: **ADDENDUM TO PROPOSED ORDER**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

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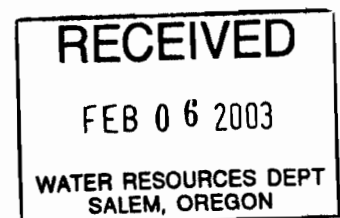
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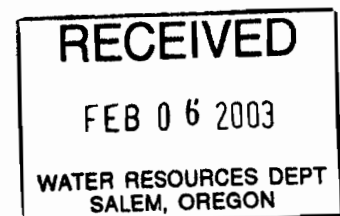
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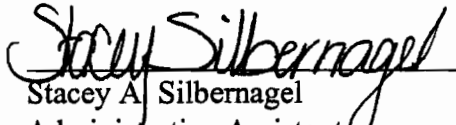
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Case 008 – Certificate of Service



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Case 008 – Certificate of Service

