

BEFORE THE OREGON 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.

Horsefly Irrigation District; Langell Valley Irrigation District; Medford Irrigation District; Rogue River Irrigation District; Contestants,

STIPULATION TO DISMISS CONTEST No. 2053

Case No. 13

v.

Claim No. 164

PacifiCorp, Claimants and Contestants

Contests No. 2053, No. 3158

The Oregon Water Resources Department (“OWRD”) and PacifiCorp do hereby agree and stipulate as follows:

Stipulated Facts

- I. On January 31, 1991, PacifiCorp, doing business as Pacific Power and Light Co., (“Claimant”) submitted a statement and proof of claim (No. 164) to the OWRD for 0.02 cubic feet per second (“cfs”) from one point of diversion located on the Link River, a tributary of the Klamath River, for irrigation of 0.4 acres. The claimed period of use is April 1 through October 30 of each year, and the claimed priority date is December 11, 1891.
- II. On October 4, 1999, the Adjudicator issued his preliminary evaluation of claim No. 164, and found that the record did not establish that the claimed application or use of water occurred prior to February 24, 1909.
- III. On May 4, 2000, Claimant filed contest No. 2053 to the preliminary evaluation of claim No. 164 contesting the Adjudicator’s finding and providing additional support for its claim. Claimant restated the claimed amounts and requested a contested case hearing.
- IV. On December 18, 2001, Claimant met with the OWRD and discussed settlement of contest No. 2053. Claimant provided additional evidence that the claimed application or use of water occurred prior to February 24, 1909. See Affidavit of Greg D. Corbin attached and hereby incorporated. Claimant and the OWRD agree that the issues raised in the contest are resolved solely according to the terms outlined below.

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Terms of the Agreement

1. Claimant and OWRD agree that the terms of claim No. 164 and any water right that may be derived therefrom are as follows:
 - a) Point of diversion location: NW ¼ SE ¼ , Sec. 30, T 38S, R 9E, W.M.
 - b) Source: Link River, tributary of the Klamath River.
 - c) Use: Irrigation of 0.4 acres.
 - d) Amount beneficially used: 0.01 cubic feet per second, measured at the point of diversion and further limited to a diversion not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
 - e) Period of Use: April 1 – October 30 of each year.
 - f) Priority Date: December 11, 1891
 - g) Place of Use:

Lot 1, NW1/4 SW1/4, Sec. 32, T 38S, R 9E, W.M.

2. The Claimant agrees that according to the terms of this agreement its contest No. 2053 to the preliminary evaluation of claim No. 164 described in paragraph I has been satisfactorily resolved and agrees that a hearing on contest No. 2053 before the Hearing Officer is not required.
3. The OWRD staff agree to recommend to the Chief Adjudicator the terms of claim No. 164 as described above in paragraph 1.
4. If the Findings of Fact and Order of Determination issued by the Adjudicator for claim No. 164 do not accord with the terms listed in paragraph 1 above, PacifiCorp reserves the right to file exceptions to the Findings of Fact and Order of Determination as to claim No. 164 in the Klamath County Circuit Court.


On Behalf of Pacific Power and Light Co.

6-7-02
Date


On Behalf of the Oregon Water Resources Dept.

6-11-02
Date

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

Horsefly Irrigation District; Langell Valley
Irrigation District; Medford Irrigation District;
Rogue River Irrigation District,
Contestants,

AFFIDAVIT OF GREG D. CORBIN

Case No. 013

Claim No. 164

Contest Nos. 2053, 3158

vs.

Pacificorp,
Claimant

STATE OF OREGON)
) ss
County of Multnomah_____)

Greg D. Corbin, being duly sworn, deposes and states as follows:

1. I am one of the attorneys for PacifiCorp, an Oregon Corporation doing business
as Pacific Power and Light Company, in the Klamath Basin Adjudication.

2. On December 18, 2001, I and Jennie Bricker, another of PacifiCorp's attorneys,
met with staff of the Oregon Water Resources Department ("OWRD") and provided them with
additional historical and documentary evidence that the claimed application of water use in the
above referenced claim occurred prior to February 24, 1909.

3. The historical and documentary evidence provided to OWRD staff was a true
and accurate copy of pages 25-26 of John C. Boyle, *Fifty Years on the Klamath* (1976), in
which the author states that on December 11, 1891, the claimed priority date for Claim No.
164, the West Side Canal Co. (PacifiCorp's indirect predecessor) filed a notice of
appropriation for 10,000 inches of water from the Link River, in compliance with Section 6533
of the Irrigation Law of 1891. A true and accurate copy of these pages is attached hereto as
Exhibit 1 for inclusion in the record.

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[Handwritten Signature]

Greg D. Corbin, Stoel Rives LLP
OSB No. 00033

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Sworn to and subscribed before me this 7th day of June, 2002.



Nancy Hawkins
Notary Public for Oregon

My Commission Expires: 3/4/05

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LINK RIVER

Link River, which is about one mile in length, heads in Upper Klamath Lake and flows into Lake Ewauna. It is entirely within the city limits of Klamath Falls. The headwater originally flowed over a natural reef (approximately 4137.8 feet above sea level) into a slack water extending about 3000 feet downstream to a second reef. The intake to the Government Irrigation Canal A is located on the east side of Link River, between the two reefs, and the Link River Dam is located on the lower reef, thereby holding back river discharges for prior use in the Government A Canal.

The intakes for the west side canal (Keno) and the Ankeny Ditch located on the east side, were at the lower reef. The rapid flow of water over the lower reef may have been the "falls" responsible for the name of the City of Klamath Falls. In any event, the requirements for the Canal A were 1200 second feet for June, July, and August and 1000 second feet in other months. These requirements require that the Upper Klamath Lake must not drop to an elevation below 4137 feet during June, July and August.

In February 1919, surveys of properties along Link River were started for the purpose of the purchase of lands and to prepare estimates of the cost of building a temporary dam.

The building of a temporary dam was authorized early in March of 1919. Work was started immediately and by May 5, 1919, the final cribs were in place and enough flashboards installed to start regulating the outflow of Upper Klamath Lake and to store water for the coming season. Studies were made daily to see what effect this regulation would have on riparian properties bordering Upper Klamath Lake.

KENO CANAL

In 1877, William S. Moore constructed a ditch and flume 6½ feet wide, 4 feet deep and 950 feet long near the head of the rapids or lower reef, on the west side of Link River. These carried about 100 second feet of water used to furnish power for the operation of a sawmill. He obtained the first navigation and booming rights at the head of Link River.

On December 11, 1891, the West Side Canal Co. filed notice of appropriation of 10,000 inches of water from Link River.

In 1892 Charles and Rufus Moore built another canal heading at the same point and took over the properties of the West Side Canal Co. This latter canal was 3750 feet long and 9 feet wide on the bottom and had a grade of 3 feet to the mile. Its carrying capacity was 15 second feet, part being used for power for a flour mill and the remainder for irrigation of lots and orchards in West Klamath Falls.

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*from 50 Years on the Klamath
by John C. Boyle*

available in volume 1 of 2

EXHIBIT 1

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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 rights was obtained in contracts with the United States Government dated October 16, 1905 when the Moore brothers proceeded with building a powerhouse.

It would have been impossible for the Reclamation Service to construct a proposed canal from Link River to the vicinity of Keno without acquiring the Moore brothers interests. As a result of negotiations, the Government purchased the Moore canals and riparian and vested rights to waters of Link River, with the stipulation that 205 second feet be delivered to Moore Bros. powerhouse from the proposed canal to Keno by October 1, 1907. Construction difficulties for 5500 feet of canal delayed completion until October 1908.

The United States Government spent about \$104,500.00 to enlarge the canal from the dam to the Moore power plant and assumed a maintenance cost of about \$5,000.00 annually.

The headworks of the canal constructed by the United States is still in existence, but the canal was extended upstream to new gates in the Link River dam when it was constructed in 1921. It was permissible for Moore to carry additional water above 205 second feet if the condition of the canal made this possible. The reconstruction of the canal by the U. S. Government was for carrying 635 second feet and besides the headgates, a new saw-tooth spillway with a concrete lined chute to the river was built. The unique wood flume spillway which discharged surplus water over the top of the powerhouse was eliminated.

	205 second feet for Moore powerhouse
	35 second feet for town lots below the powerhouse
	400 second feet for irrigation at Keno and vicinity
Total	635 second feet

The Moore powerhouse built in 1907-8 contained one 1050 HP Pelton Frances turbine, 300 RPM, 48 foot head, and one Westinghouse 600 KVA, 2300 Volt generator, 300 RPM, together with governor, switchboard and associated equipment, substation and switchyard.

The Moore interests, in negotiating with the Government over water rights and the west side canal, reserved the right to utilize Link River Canyon for bringing logs from Upper Klamath Lake to Lake Ewauna, and specified that the government should provide some satisfactory means of passing logs through the structure if it built a dam at the head of Link River Canyon. Copco acquired these rights held by Moore interests and others. The use of the Keno canal for passing logs was feasible with certain restrictions.

Weyerhaeuser owned large tracts of timber on the west side of Upper Klamath Lake and had in mind the use of Link River to bring logs to its mill site below Lake Ewauna.

During the railroad expansion days in the middle '20s the use of the west side of Link River for logging was reviewed by Weyerhaeuser, and the Great Northern Railroad made a railroad location survey. The survey indicated a railroad would take practically all of the land owned by Copco on the west side of Link River including the powerhouse, Keno Canal and Transmission No. 11. A valuation was made of these findings and the railroad abandoned this plan in favor of a location on the lower end of Lake Ewauna.

When Copco took over the Keno Canal, the cost of maintenance was excessive due to the fact that the canal was built about one-half on cut and one-half on fill. All extra excavation

EXHIBIT 1

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