




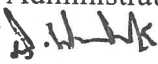
Oregon

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MEMORANDUM

TO: Water Resources Commission

FROM: Dwight French, Water Right Services Division Administrator
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SUBJECT: Agenda Item J, August 9, 2013
Water Resources Commission Meeting

Information Update: Klamath Basin Adjudication

I. Introduction

At the May 2013 Commission, meeting staff provided an update on the Klamath Adjudication. The Findings of Fact and Order of Determination (FFOD) had been recently filed with the Klamath County Circuit Court on March 7, 2013. After the briefing, the Commission asked for another update at the August Commission meeting.

This is an informational report, no Commission action is required.

II. Background

Oregon Revised Statutes Chapter 539 outlines the procedures for carrying out a general stream adjudication in Oregon. Once a FFOD is delivered to the County Court three things begin to take place:

- A. Regulation according to the rights recognized in the FFOD, along with other water rights that have been issued by the Department through the permit process since 1909, can begin as necessary.
- B. Petition for a Stay of the FFOD can be filed, to keep all or parts of the FFOD from being in effect.
- C. Parties to the Adjudication begin to review the FFOD to determine if they need to file exceptions to the FFOD.

We discuss each of these three items below and provide an update.

III. Discussion

A. Regulation Update

The Klamath Tribes hold several instream claims on those tributaries above Klamath Lake with a priority date of Time Immemorial. The U.S. Bureau of Reclamation and the Klamath Project irrigation districts downstream of the Tribe's instream claims have a right to natural inflow to the lake with a 1905 priority. On June 10, 2013, the Klamath Tribes, Reclamation, and several other entities called for regulation of upstream water rights to satisfy their senior rights.

The 2013 water year has been exceptionally dry in the Klamath Basin, resulting in a Governor's drought declaration in April. Tributary inflows to Klamath Lake have at times dropped to the 30th percentile of normal.

Regulation for senior rights began on June 12, 2013. Staff started in the upper tributaries and reaches of the Sprague River drainage to satisfy upper tributary instream rights. All rights, including the 1864 Allottee and Walton Rights¹, were regulated off to meet the instream flows. Regulation commenced through the lower Sprague River and Williamson River, again with all rights regulated off to meet downstream senior instream rights.

The lowermost instream right is located at the mouth of the Williamson River. That right continues to be deficient and, as a result, all junior rights upstream remain off. There are two exceptions to this: 1) water rights for stockwater and for human consumption of water are allowed to stay on; and 2) water rights above Kirk Reef were not turned off because regulating those uses would not benefit the senior rights downstream (a hydrologic barrier to flow separates the lower from the upper Williamson River).

Water rights in the Wood River Valley were regulated to satisfy the Tribal instream rights and to meet the call by the Klamath Project on inflows to the lake.

The Department conducted regulation by sending more than 500 letters to water users informing them that a call by senior rights had been made and regulation was commencing. Following this, six Watermaster staff, traveling in pairs, worked drainages going from door to door introducing themselves and explaining the regulation. This was necessary because regulation hadn't occurred in these river systems before. One primary goal is to collect contact information and establish a relationship with the water users such that notification of regulation can be conducted by phone in the future.

¹ Allottee claimants are members of the Klamath Tribes who received allotments of land within the boundaries of the former Klamath Indian Reservation. Walton claimants are non-Indian purchasers of Indian allotments.

There has been much media attention this year on water regulation in the Klamath Basin and its impact on irrigation, cattle grazing and tribal rights. Despite the elevated attention from the media, and new territory for water users, cooperation from the regulated community has been good.

B. Stay Update

Four different stay petitions were filed with the Klamath County Court. The intent of these petitions is to stay implementation of the FFOD until the circuit court confirms or revises it. There was a hearing before the Court on this issue on July 2 and 3, 2013. Following the hearing, the Court ruled largely against the petitioners.

Copies of the stay petitions can be viewed on the courts adjudication website:
<http://courts.oregon.gov/Klamath/pages/water.aspx>.

C. Exception Update

The Court set the deadline for filing exceptions to the adjudication as March 3, 2014. The Department will work with DOJ to craft responses to the various exceptions. The court has yet to set the deadline for filing of responses. The response filing date will likely be set after the volume of exceptions filed is known.

After responses and replies have been filed, it is expected that a number of hearings will be set. The Department cannot predict, at this point, how long this portion of the proceeding will take. The Court will eventually issue its final decision in a court Decree. The Department will adjust its regulatory stance, to be consistent with the Decree, as necessary. Certificates will be issued by the Department consistent with the Decree.

IV. Conclusion

The delivery of the FFOD to the Klamath County Circuit Court, combined with the extremely low water conditions this summer has posed significant challenges in the field with careful staff coordination and guidance from the Department of Justice. The Department is making progress in its first season of regulation in the Klamath Basin.

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