



# Oregon

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## Water Resources Department

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### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Tom Paul, Deputy Director  
Doug Woodcock, Field Services Administrator  
Dwight French, Water Right Services Administrator

**SUBJECT:** Agenda Item I, November 14, 2013  
Water Resources Commission Meeting

#### **Information Update: Klamath Basin**

#### **I. Introduction**

At the August 2013 Water Resources Commission meeting, staff provided an update on the Klamath Adjudication and the ongoing regulation of surface water in the basin. After the briefing, the Commission asked for another update in November. This is an informational report, no Commission action is required.

#### **II. Background**

The Findings of Fact and Order of Determination (FFOD) in the Klamath Basin Adjudication were filed with the Klamath County Circuit Court on March 7, 2013. Four petitions were filed to stay the FFOD, three of which were denied by the Circuit Court.

On June 10, 2013, the Klamath Tribes made calls on instream rights above Klamath Lake dating back to time immemorial. Klamath Project irrigation districts and the U. S. Bureau of Reclamation made a coordinated call on inflow water to the lake with a priority date of 1905. After validating the calls, the Watermaster and assistants began regulation of surface water on June 12, 2013.

#### **III. Discussion**

##### **A. Adjudication Proceedings Update**

Stays: As of the August meeting, three of the four stays that had been filed with the Court had been denied. Soon after the August meeting, the remaining stay was withdrawn. Additional petitions for stay can still be filed in the future; however, the correct size of the bond has not been determined by the court.

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

**Typographical Errors:** In the September 27, 2013 Case Management Order # 3, the Court directed the parties to engage in a process to identify typographical errors in the FFOD. OWRD will review those submissions, as well as errors identified by OWRD staff, to determine if the Department agrees that the items are clerical or typographical mistakes, and assemble a list of proposed corrections. Together with that motion, OWRD will submit a copy of the amended and corrected final order and serve a copy to those on the Court's current service list.

**Exception Filing:** The final date by which parties may file exceptions to the FFOD with the Court is March 3, 2014. The Department will work with DOJ to craft responses to the 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. The Court will also set hearing dates to hear the exceptions.

The Department cannot predict, at this point, how long this portion of the adjudication proceeding will take. The Court will eventually issue its final decision in a decree. The parties will have the option of appealing that decree to a higher court. Certificates will be issued by the Department consistent with the decree.

#### B. Regulation Update

The extremely dry year in the Klamath Basin resulted in streamflows in the 30<sup>th</sup> – 50<sup>th</sup> percentiles of normal. In times of water shortage, a call by a senior water right holder results in the Watermaster validating the call and then regulating off upstream junior water users. In the Upper Klamath Basin, the senior most water right holders are the Klamath Tribes who hold determined claims for instream flows with a priority date of *time immemorial*.

Due to very low surface water flows, almost all water diversions above the mouth of the Williamson River, including the Sprague and Sycan rivers, were regulated off to meet the instream flows. Water in the Klamath Basin used for stock and human consumption were prioritized by the Commission in July 2013 and these uses were allowed to be exercised. Since the instream right was not met, water uses remained off through the viable irrigation season. Cold weather and rain in the latter half of September diminished demand for diverting water and essentially ended the irrigation season.

In the Wood River drainage, which includes Crooked, Fort, Annie, and Sun Creeks, only Crooked Creek had flows sufficient to meet the called instream right. Therefore, Crooked Creek was regulated to 1905 to meet the call on inflows to the Klamath Lake by the Klamath Project (Project) irrigation districts. The Wood River and its other tributaries were all regulated off to meet the call by the Klamath Tribes for instream flows dated time immemorial.

Other tributaries to the lake, such as Sevenmile Creek, do not have Tribal instream water rights, but were regulated for the 1905 Project call.

On September 25, 2013, the Klamath Project inflows exceeded the water demand by the Project users. The Watermaster sent out notices that regulation for the 1905 call was lifted. This had small benefit, however, as the weather had reduced demand and, further, the Wood River Decree defines the irrigation season as ending October 1.

Regulation in the Klamath Basin during the 2013 irrigation season was a challenge, as this was the first regulation after delivery of the FFOD, which was further compounded by drought conditions. The irrigator's cooperation with the regulation orders generally made for a calm and composed process; there were few overt hostilities aimed at the Watermaster. The irrigators' willingness to work with the Watermaster was greatly appreciated this year.

Department staff are working on the next water management challenge in the basin: how a call for regulation of surface water affects existing groundwater uses. Oregon is a conjunctive management state and groundwater is managed for the protection of the resource and senior rights, be they groundwater or surface water. There is much local interest in the regulation of groundwater in the Klamath Basin, with voices expressed both for and against.

#### **IV. Settlement Update**

A Klamath Basin Task Force was formed following a congressional hearing conducted by Senator Ron Wyden on June 20, 2013. The purpose of the Task Force is to develop a list of issues facing the Klamath Basin and a settlement proposal. The Task Force created three subgroups to address funding, power and water. Reports with recommendations have been presented to the full Task Force from the Funding and Power Subgroups. The Water Subgroup continues to meet.

The settlement efforts are being viewed as a national model for solving complex water issues. The goal is to maintain a sustainable agricultural base while delivering treaty rights associated with hunting, fishing and gathering. This effort is further complicated by challenging environmental issues associated with the Endangered Species Act.

The full Task Force will be meeting one more time to receive recommendations from the Water Subgroup. The Water Subgroup is working on an agreement in principle, which will address both a long-term agreement and interim measures.

#### **IV. Conclusion**

In mid-June the Watermaster and staff responded to Tribal calls for water to meet instream water rights above Klamath Lake, and Klamath Project calls for inflows to the lake. Due to drought conditions, regulation resulted in almost all irrigation uses in large portions of the upper basin being curtailed for the duration of the season. This first year of regulation was conducted with a high degree of compliance from the irrigators.

The Department will continue to update the Commission on the progress of the adjudication proceedings and settlement efforts in the future.

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