



Oregon

Kate Brown, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Ivan Gall, Field Services Division Administrator

SUBJECT: Agenda Item H, February 18, 2021
Water Resources Commission Meeting

Update on Activities in the Klamath Basin

I. Introduction

The Klamath Basin continues to pose challenging water management issues requiring significant engagement of Department staff in Klamath Falls, Bend, and Salem, in order to address regulatory activities, data collection, installation of water use measuring devices, and continued litigation. This informational report provides an overview and update on Klamath Basin activities for 2020 and early 2021.

II. Background

The Klamath Basin has a number of factors that contribute to the complexity of water management in the area. Two federally-listed endangered Sucker species in Upper Klamath Lake compete for water with the threatened Coho Salmon species in the Klamath River lower in the basin. Additionally, Indian Tribes residing in the Klamath Basin in California are asserting federal reserved treaty rights which include water for fish. In 1975, the Department began the Klamath Basin Adjudication to determine water rights which predate Oregon water law and federal reserved water rights. In 2013, the Department issued its Findings of Fact and Final Order of Determination (FFOD), referring the case to the Klamath County Circuit Court, signaling the end of the administrative phase and the beginning the judicial phase of the adjudication. Upon filing of the FFOD and pursuant to state law, the Department began management of the determined claims along with other water rights. Regulation to protect instream flows for the senior Tribal determined claims has significantly changed water use in the basin and has resulted in litigation. These factors, combined with consistent dry and drought conditions, have made the Klamath Basin the most complicated area for water management in Oregon.

On March 2, 2020, Governor Kate Brown signed an Executive Order declaring a severe, continuing drought emergency in Klamath County. This was the seventh drought declared for Klamath County in the last 11 years.

On March 3, 2020, the Klamath Tribes made a call for water for their senior instream determined claims. Pursuant to the authorities in ORS 540.045, Watermasters are to regulate and distribute the natural surface water and groundwater supply in accordance with the existing water rights of record. This is accomplished by the Watermaster investigating a call for water to determine if the water user making the call is prepared to use the water beneficially for the purpose authorized in their right and in the authorized location.

In the Klamath Basin, existing water rights of record include determined claims as described in the Amended and Corrected Findings of Fact and Order of Determination (“ACFFOD”) currently under review in the Klamath County Circuit Court as part of the Klamath Basin Adjudication.

Details of the call validation dates, and how regulation occurred during 2020 for the main streams in the basin, can be found at

https://apps.wrd.state.or.us/apps/misc/dsb_area_status/Default.aspx?wm_district=17.

Regulation of all surface water rights on the Williamson and Sprague River systems began in early March and continued through October 2020. Regulation on the Wood River and tributaries began in early April and continued through October 2020. The specific instream flow values of the determined claims vary by month, and the priority dates regulated varied over the season as water supplies changed. There were 395 water rights regulated off on the Williamson and Sprague River systems and 141 water rights regulated off on the Wood River system. No groundwater rights were regulated during the 2020 irrigation season.

Field staff are also responsible for inspection of 37 dams, measuring groundwater levels for 97 wells, and the operation and maintenance of 23 stream gaging stations in the basin. Gaging stations are critical for timely monitoring of streamflow in key streams in the basin. Field staff also read flowmeters on approximately 200 wells each year to track groundwater use in and around the U.S. Bureau of Reclamation Project area, where some areas have seen significant declines.

In order to assist with water regulation and distribution, the Klamath Basin Watermaster Office has worked with both groundwater and surface water users to get measuring devices installed on wells and points of diversion. In 2020, three groundwater users participated in the Department’s measuring device cost share program, and installed flowmeters on eight wells in the basin. The Department also mailed out four measuring device orders to Klamath Basin water users to require measuring devices on surface water points of diversion.

During 2020, Department staff processed 47 applications for emergency drought groundwater permits for landowners in the Klamath Basin. The Department issued 41 emergency drought permits, each limited to one acre-foot per acre for the seasonal duty, which covered a total of 17,487 acres.

III. 2020 Dispute between Klamath Irrigation District and U.S. Bureau of Reclamation

On April 3, 2020, the Klamath Irrigation District (KID) sent a letter to the Watermaster stating there is a dispute between KID and the U.S. Bureau of Reclamation (BOR) regarding distribution of water from Upper Klamath Lake. The letter requested that the Watermaster “immediately take charge of Upper Klamath Lake reservoir (UKL) and ensure that stored water is not released out of Upper Klamath Lake reservoir through the Link River Dam except to meet the needs of secondary water right holders calling upon the source” until the end of the irrigation season. The KID also filed a mandamus action in the Marion Circuit Court seeking the court to order the Department to immediately take charge of UKL to prohibit the release of “flushing flows” by BOR. The Department took charge of Upper Klamath Lake for the purpose of dividing or distributing the water from the reservoir in accordance with the respective and relative rights of the various users from the reservoir and began an investigation in aid of performing its duties.

On April 24, 2020 following a Department request, the Commission delegated its authority¹ so staff could gather information to determine the appropriate actions needed to investigate the dispute and to determine the costs associated with those actions. The Department evaluated information submitted from the KID, BOR, and PacifiCorp.

In May and June 2020, the Department mailed requests for information about measuring and control devices, the nature of each POD, and diversion rates and volumes to water users with points of diversion around Upper Klamath Lake and below Link River Dam.

The services requested by KID require a substantial commitment of Department staff time and resources to continue a timely investigation in aid of taking charge of the UKL reservoir to fully understand the water budget and use of water pursuant to water rights of record. On August 27, the Department reported to the Commission on several steps taken to aid in the investigation to provide the basis for Department actions to fairly regulate and distribute water and monitor changing conditions. The Department also requested the Commission to delegate its authority² to allow the Department to implement rule provisions³ and require payment in advance for the services requested by the KID to distribute water from the UKL reservoir in accordance with the water users’ relative rights.

Enough information was gathered by fall 2020 to determine that reasonable steps should be taken to quantify the inflows to UKL and to measure all the diversions from UKL. On November 5, 2020 the Department ordered the BOR to install and maintain measuring devices on inflow streams to Upper Klamath Lake, including Sevenmile Creek, Thomason Creek, Fourmile Creek, and Crystal Creek by April 1, 2021. Department staff have been in communication with the BOR and with the U.S. Geological Survey. The Department assisted with site surveys in the fall to assess the viability and options for gaging the inflow streams to Upper Klamath Lake. The Bureau submitted a request for reconsideration of the Department’s November 5 order. In the request, the Bureau requested to meet with the Department to further discuss measuring sites and timing for installation.

¹ ORS 536.026

² ORS 536.025(2) and ORS 540.220(1)

³ OAR 690-250-0160

On November 5, 2020 the Department also mailed a letter to KID indicating that the regulation of Upper Klamath Lake will likely require three phases. Phase 1 of the investigation includes work done to date, as well as a survey of available measuring devices, installation of measuring devices at points of diversion (PODs) where needed, and a determination of which POD serves which water right(s) and determined claim(s). Phase 2 will involve working with the BOR to improve inflow measurement to Upper Klamath Lake. Phase 3 will include regulation and distribution as needed, and year-round monitoring. The letter to the KID also requested \$41,988 for costs necessary to perform the services requested, primarily hiring of Assistant Watermaster staff to engage with water users around UKL and below Link River Dam to ensure all diversions of water will be measured and accounted. The KID submitted the funds in mid-November 2020.

The Department began a recruitment process for an Assistant Watermaster in December 2020, and as of February 9, 2020 one Assistant Watermaster has been hired. Department staff have continued to gather water right-related information on rights and determined claims around UKL and below Link River Dam. Staff are working internally to build data collection forms that will streamline field work, communication with landowners, and future water use data analyses. Staff are also working on property access agreement forms which will be mailed out to each water user.

IV. Serious Water Management Plan Area Rule Consideration

There are 30 points of diversion around UKL and another 85 points of diversion from the Klamath River below Link River Dam. The Department is beginning the process to inventory all the points of diversions and will work with landowners to install measuring devices as needed. The Department believes that the most efficient approach to ensuring installation of water use measuring devices is by rule adoption to create a Serious Water Management Problem Area (SWMPA) as provided for in Oregon Revised Statute (ORS) 540.435. The Department is currently working on scheduling and staffing of this effort, evaluating the scope and timelines, and will continue to brief the Commission on progress.

V. Update on Klamath River Dam Removal

PacifiCorp owns four hydroelectric dams on the Klamath River, one in Oregon, and three in California. PacifiCorp initiated the hydroelectric re-licensing process on these four dams in 2004, prior to license expiration in 2006. Operation is continuing under annual authorizations. PacifiCorp joined discussion with the states of California and Oregon to address re-licensing issues. These discussions resulted in the adoption of the Klamath Hydroelectric Settlement Agreement (KHSA) in 2010. This agreement called for the removal of the four dams. The parties came together and negotiated an amendment to the KHSA, adopted in 2016 after termination of the Klamath Basin Settlement Agreement. The parties are continuing to implement the provisions of the Amended KHSA.

Recently the states of California and Oregon, the Yurok Tribe, the Karuk Tribe, PacifiCorp, and the Klamath River Renewal Corporation (KRRC) signed a Memorandum of Agreement which describes how the parties will implement the 2016 amended KHSA .

The KHSA sets the terms for the removal of the four Klamath River dams. The parties to the Memorandum of Agreement are committed to dam removal. According to the agreement they will jointly ask the Federal Energy Regulatory Commission (FERC) to remove PacifiCorp from the license for the project, and add California, Oregon, and KRRC as co-licensees for carrying out dam removal. Adding the states as co-licensees provides assurances that the project will have sufficient financial backing, while honoring settlement terms that stipulate PacifiCorp would not be a co-licensee for removal.

KRRC will remain the dam removal entity for the project. They will continue to navigate the remaining regulatory approvals necessary to allow dam removal to take place in 2023. Site remediation and restoration will continue beyond 2023.

VI. Summary

The Klamath Basin continues to have water management challenges that demand a significant amount of attention from Department staff from many sections and divisions. The Department continues to work to staff these efforts, while trying to minimize the impacts on services to other parts of the state.

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