

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

John M. Mosby; Marilyn Mosby; Boyd P. Braren;
Boyd P. Braren Trust; Roger Nicholson; Richard
Nicholson; Agri Water, LLC; Maxine Kizer;
Ambrose McAuliffe; Susan McAuliffe; Kenneth L.
Tuttle and Karen L. Tuttle dba Double K Ranch;
~~Dave Wood; Kenneth Zamzow; Nicholson~~
Investments, LLC; ~~Anita Nicholson;~~ William S.
Nicholson; John B. Owens; Kenneth Owens; William
L. Brewer; Mary Jane Danforth; ~~Jane M. Barnes;~~
~~Franklin Lockwood Barnes, Jr.; Jacob D. Wood;~~
Elmore E. Nicholson; Mary Ann Nicholson; Gerald
H. Hawkins; Hawkins Cattle Co.; Owens & Hawkins;
Harlow Ranch; Terry M. Bengard; Tom Bengard;
Robinson Best, LLC.; ~~Dwight T. Mebane; Helen~~

AMENDED PROPOSED ORDER

Case No. 275

Claims: 318, 319 and 320

Contests: ~~2877, 2878, 2879~~¹, 3233,
3234, 3235, 3236², 3307,
3308, 3309³, 3641, 3642,
3643⁴, 3999, 4000, ~~4231,~~
~~4232, and 4233~~⁵

¹ WaterWatch of Oregon, Inc.'s Contests 2877, 2878, and 2879 were dismissed. See ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTESTS, May 20, 2003.

² Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contests 3233, 3234, 3235, and 3236 on March 3, 2003. Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contests 3233, 3234, 3235, and 3236 on April 22, 2005.

³ Dave Wood voluntarily withdrew from Contests 3307-3309 on October 26, 2004. Change of Title Interest for Contests 3307-3309 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3307-3309 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3307-3309 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3307-3309 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contests 3307-3309 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3307-3309 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3307-3309 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3307-3309 on September 2, 2005. William Knudtsen voluntarily withdrew from Contests 3307-3309 on September 13, 2005. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3307-3309 on March 1, 2007. Jane M. Barnes and Franklin Lockwood Barnes, Jr. voluntarily withdrew from Contests 3307-3309 on April 6, 2007. Change of Title Interest for Contests 3307-3309 from Robert Bartell to Michael LaGrande (1/9/09). Jacob D. Wood voluntarily withdrew from Contests 3307-3309 (Claims 318-320) on January 15, 2010. Change of Title Interest for Contests 3307-3309 from Dwight & Helen Mebane to Farm Credit West, PCA (7/20/2011), and from Farm Credit West, PCA to PCA Acquired Properties, LLC (7/20/2011), and from PCA Acquired Properties, LLC to Robinson Best, LLC (7/20/2011).

⁴ Don Vincent voluntarily withdrew from Contests 3641, 3642, and 3643 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3641, 3642, and 3643 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3641, 3642, and 3643 on January 16, 2004.

⁵ The Klamath Tribes voluntarily withdrew Contests 4231, 4232, and 4233 on February 13, 2003.

~~Mebane; Sevenmile Creek Ranch, LLC; James G. Wayne, Jr.; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams, River Springs Ranch, Pierra A. Kern Trust, William V. Hill, Lillian M. Hill, Carolyn Obenchain; Lon Brooks; Newman Enterprise; William C. Knudtson; Wayne Jacobs; Margaret Jacobs; Michael LaGrande; Robert Bartell; Rodney Z. James; Hilda Francis for Francis Loving Trust; David M. Cowan; James R. Goold for Tillie Goold Trust; Duane F. Martin; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement Company; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC;~~

Contestant(s),

vs.

United States Department of Interior, Fish and
Wildlife Service,
Claimant/Contestant.

This AMENDED PROPOSED ORDER is issued pursuant to OAR 137-003-0655(3), and is not a final order subject to judicial review pursuant to ORS 183.480 or ORS 539.130. OAR 137-003-0655(3) requires an agency to issue an amended proposed order if the agency intends to reject a recommendation from an administrative law judge that adversely affects a party, and the changes to the proposed order are not within the scope of exceptions to which there was an opportunity to respond.

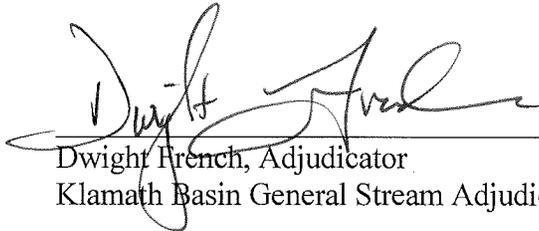
This AMENDED PROPOSED ORDER reduces the place of use for Claim 320 recommended by the administrative law judge in CASE 275, ATTACHMENT 1, PART C of his Proposed Order issued on March 14, 2007. This issue was not raised by any of the parties in exceptions. The Proposed Order recommended the place of use as claimed for the portion of Tule Lake National Wildlife Refuge enlarged under the authority of Executive Order No. 7341 dated April 10, 1936. The following places of use claimed are not included in the described lands in the executive order, and therefore should be excluded from the place of use approved for Claim 320:

| Twp | Rng | Mer | Sec | GLot |
|------|-----|-----|-----|------|
| 46 N | 4 E | MDM | 11 | 15 |
| 46 N | 4 E | MDM | 15 | 17 |
| 46 N | 4 E | MDM | 15 | 18 |
| 46 N | 4 E | MDM | 15 | 20 |
| 46 N | 4 E | MDM | 15 | 22 |
| 46 N | 4 E | MDM | 15 | 23 |
| 46 N | 4 E | MDM | 15 | 24 |
| 46 N | 4 E | MDM | 15 | 25 |
| 46 N | 4 E | MDM | 16 | 25 |
| 46 N | 4 E | MDM | 16 | 26 |
| 46 N | 4 E | MDM | 21 | 6 |
| 46 N | 4 E | MDM | 21 | 7 |
| 46 N | 4 E | MDM | 21 | 8 |
| 47 N | 4 E | MDM | 6 | 8 |

This AMENDED PROPOSED ORDER incorporates the Proposed Order issued by the Office of Administrative Hearings on March 14, 2007, except to the extent that it is modified as described above. The Oregon Water Resources Department (“OWRD”) may make additional modifications to the Amended Proposed Order when OWRD’s Adjudicator issues the final order in the Klamath Basin Adjudication.

IT IS SO ORDERED.

Dated at Salem, Oregon on September 4, 2012.



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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 Administrative Law Judge. A copy of the exceptions shall also be delivered or mailed to all parties 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:

Dwight W. French, Adjudicator
Klamath Basin Adjudication
Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, Oregon 97301

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, a true and correct copy of the **AMENDED PROPOSED ORDER (Claims 318, 319, 320)** was served by email (where e-mail address is listed) and by depositing the same in the U.S. Post Office, Salem, Oregon 97301, with first class postage prepaid thereon, and addressed to:

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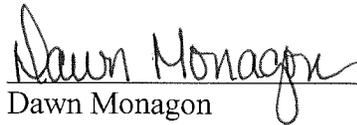
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Legal Secretary
Oregon Water Resources Department