

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
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

United States of America; The Klamath Tribes; 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 Co.; 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 Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC; ~~Horsefly Irrigation District; Langell Valley Irrigation District;~~ Rogue River Valley Irrigation District; Medford Irrigation District;
Contestants

v.

Brian E. Allen, Sharon Allen; Edward Combs, Cindy Combs; L.A. Gienger; L.A. Gienger and Pauline H. Gienger, dba Gienger Investments; Gienger Enterprises, Inc.; Melinda Cauvin and Loren C. Walsh;
Claimants, and

ORDER GRANTING JOINT MOTION FOR RULING ON LEGAL ISSUES AND PROPOSED ORDER DENYING CLAIM NOS. 705 AND 706.

Consolidated Case: 209

Cases: 209, 62, 63, 51, 243, 244, 59, 69, 71, 250, 88, 252, 98, 269, 270

Claims: 84, 241, 243, 248, 250, 253, 260, 266, 269, 682, 688, 700, 702, 705, 706

Contests: 1724, 1725, 1729, 1737, 1742, 1744, 1759, 1769, 1770, 1771, 2839¹, 3260², 3261³, 3278, 3473⁴, ~~3528⁵~~, 3529, ~~3532⁶~~, 3534, 3542, ~~3547⁷~~, ~~3550⁸~~, 3565, ~~3569⁹~~, 3578, 3580, 3581, 3582, 3635, 3745, 3774, 3775, 3777, 3778, 4129, 4204, 4205, 4239, 4241

¹ WaterWatch of Oregon, Inc.'s Contest 2839 was dismissed. See ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTESTS, May 20, 2003.

² Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contest 3260. See, VOLUNTARY WITHDRAWAL OF CONTEST NOS. 3260 & 3261 BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS, dated April 22, 2005.

³ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contest 3260. See, VOLUNTARY WITHDRAWAL OF CONTEST NOS. 3260 & 3261 BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS, dated April 22, 2005.

⁴ Don Vincent voluntarily withdrew from Contests 3473, 3528, 3529, 3532, 3534, 3542, 3547, 3550, 3565, 3569, 3579, 3580, 3581, 3582, and 3635 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3473, 3528, 3529, 3532, 3534, 3542, 3547, 3550, 3565, 3569, 3579, 3580, 3581, 3582, and 3635 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contests 3473, 3528, 3529, 3532, 3534, 3542, 3547, 3550, 3565, 3569, 3579, 3580, 3581, 3582, and 3635 on January 15, 2004.

⁵ Klamath Project Water Users voluntarily withdrew Contest 3528 on September 16, 2003.

⁶ Klamath Project Water Users voluntarily withdrew Contest 3532 on April 7, 2005.

⁷ Klamath Project Water Users voluntarily withdrew Contest 3547 on April 7, 2005.

⁸ Klamath Project Water Users voluntarily withdrew Contest 3550 on April 7, 2005.

⁹ Klamath Project Water Users voluntarily withdrew Contest 3569 on April 7, 2005.

Consolidated Case No. 209 (Claim Nos. 705, 706)

Order Granting Joint Motion for Ruling on Legal Issues; Proposed Order Denying Claim Nos. 705 and 706.

Modoc Point Irrigation District; Estate of Maryetta Gentry; Lloyd Lee Hall, Bonnie Hall; Stephen Hess, Melissa Hess; Stephen Lang, Beverly Lang; Nancy Ridenour; Marilyn Sheppard; Harry Clarkson Estate; Mary Nan Reyes
Claimants/Contestants.

On December 28, 2005, Medford Irrigation District and Rogue River Irrigation District (hereafter the "Districts"), along with the Oregon Water Resources Department (OWRD), filed a Joint Motion for Ruling on Legal Issues for Claim Nos. 705 and 706 (hereafter Joint Motion) with attached Exhibits 1-7. No response was filed.

ISSUE

Whether Claim Nos. 705 and 706 are barred by ORS 539.210 because they were not timely filed by the original claimant, Mary Nan Reyes.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Motions for Summary Determination¹⁰ are governed by OAR 137-003-0580, which establishes standards for evaluating the motion and states in material part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party * * *.

FINDINGS OF FACT

(1) On September 7, 1990, OWRD sent written notice to property owners in the Klamath River Basin that they had until February 1, 1991, to file a water right claim or be forever barred from asserting a claim. The notice laid out the place and manner for proper claim submission. It also stated the consequences for failure to comply with the deadline.¹¹ (Joint Motion, Ex. 1.)

¹⁰ Prior to January 1, 2006, OAR 137-003-0580 was titled "Motions for Ruling on Legal Issues (Summary Judgment)."

¹¹ The notice stated in relevant part:

(2) On December 24, 1991, Dale T. White, attorney for Mary Reyes, sent letters to OWRD regarding Claim Nos. 705 and 706, acknowledging that “[these] claim[s] [are] being filed after the February 1, 1991 deadline.” (Joint Motion, Exs. 2, 3.)

(3) On December 27, 1991, OWRD received the Statement and Proof of Claim for Claim Nos. 705 and 706, filed by Mary Non Reyes. (Joint Motion, Exs. 5, 6.)

OPINION

The Districts and OWRD filed a Joint Motion for Ruling on Legal Issues for Claim Nos. 705 and 706 because Claimant, Mary Nan Reyes, did not file the Statement and Proof of Claim for Claim Nos. 705 and 706 within the time limit set by ORS 539.210 and OWRD’s Notice to File Claim dated September 7, 1990. Pursuant to OAR 137-003-0580(2), a party or agency may file a response to a motion within 14 calendar days. In the instant case, no response was filed.

Pursuant to OAR 137-003-0580(6), an administrative law judge shall grant the motion for a summary determination if the record shows that there is no genuine issue as to any material, relevant fact, and the party filing the motion is entitled to a favorable ruling as a matter of law.

It is undisputed that Claimant did not file the Statement and Proof of Claim for Claim Nos. 705 and 706 by February 1, 1991. Therefore, there is no genuine issue as to any material fact that is relevant to the resolution of the legal issue involved in this Joint Motion. The Districts and OWRD are entitled to a favorable ruling as a matter of law for the following reasons:

The Oregon water rights adjudication statute, ORS 539.210, prescribes when and how a water right claim must be filed in an adjudication of water rights and provides in relevant part:

You are hereby notified that the Water resources Director will begin taking Statements and Proofs of Claim of all parties claiming rights to the use of waters of the Klamath River or any of its tributaries as follows:

On Monday, October 15, 1990, until Friday December 7, 1990, in the offices located at 700 Main Street, Klamath Falls, Oregon ***;

And for a period beginning Monday, December 17, 1990 and ending Friday, February 1, 1991, at the office of the Water Resources Department, 3850 Portland Road N.E., Salem Oregon ***.

Statements and Proofs of Claim will be received on Mondays through Fridays from 8:00 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. of each day.

YOU MUST APPEAR at one of the times and places named above and submit proof of your claim. ***.

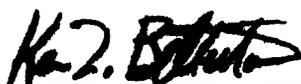
If you fail to appear and submit proof of your claim to said waters, default will be entered against you. You will be barred from later asserting any claim to the use of these waters and will have forfeited all right to the use of these waters that is not already documented in a water right permit, certificate or court decree with the State of Oregon.

Whenever proceedings are instituted for determination of rights to the use of any water, it shall be the duty of all claimants interested therein to appear and submit proof of their respective claims, at the time and in the manner required by law. Any claimant who fails to appear in the proceedings and submit proof of the claims of the claimant shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings, and shall be held to have forfeited all rights to the use of the water theretofore claimed by the claimant.

The OWRD "shall set a time certain for filing statements and proofs of claim and notify all registrants by certified return receipt mail when and how the statement and proof of claim shall be filed." OAR 690-028-0065(3) (1990). OWRD properly established February 1, 1991 as the deadline for filing Claim Nos. 705 and 706. OWRD Director William H. Young sent notice on September 7, 1990, to Claimant and other potential claimants, giving the time and manner for filing a statement and proof of claim. The notice required that property owners within the Klamath River Basin file their claims by February 1, 1991. Claimant's failure to file within this deadline bars Claim Nos. 705 and 706.

ORDER

The Joint Motion for Ruling on Legal Issues, filed December 28, 2005, is granted. Claim Nos. 705 and 706 are dismissed, pursuant to ORS 539.210.



Ken Betterton, Administrative Law Judge
Office of Administrative Hearings

Dated: April 18, 2006

NOTICE TO THE PARTIES: If you are not satisfied with this Proposed Order, please read the following.

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 participants 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

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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
Klamath Basin Adjudication
Oregon Water Resources Dept
725 Summer Street N.E., Suite "A"
Salem OR 97301

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2006, I mailed a true copy of the following: **ORDER GRANTING JOINT MOTION FOR RULING ON LEGAL ISSUES AND PROPOSED ORDER DENYING CLAIM NOS. 705 AND 706**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Dwight W. French / Teri Hranac
Oregon Water Resources Dept.
725 Summer Street N.E., Suite "A"
Salem, OR 97301
Phone: 503-986-0826
Fax: 503-986-0901
dwight.w.french@wrđ.state.or.us
teri.k.hranac@wrđ.state.or.us

William M. Ganong
Attorney at Law
514 Walnut Street
Klamath Falls, OR 97601
Phone: 541-882-7228
Fax: 541-883-1923
wganong@aol.com

Christopher B. Leahy
Fredereick; Pelcyger & Hester, LLC
1900 Plaza Drive
Louisville, CO 80027
Phone: (303) 601-0852
Fax: (303) 673-9155
Cleahy@fphw.com

Jesse D. Ratckiffe / Walter Perry III
Oregon Dept. of Justice
1162 Court St NE
Salem, OR 97310
Phone: 503-947-4500
Fax: 503-378-3802
jesse.d.ratcliffe@doj.state.or.us
walter.perry@doj.state.or.us

Paul S. Simmons/Andrew M. Hitchings
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
Phone: 916-446-7979
Fax: 916-446-8199
psimmons@lawssd.com
ahitchings@lawssd.com

David W. Harder / Vanessa Boyd Willard
United States Department of Justice
Indian Resources Section
Suite 945, North Tower
999 18th Street
Denver, CO 80202
Phone: 303-312-7328
Fax: 303-312-7379
David.Harder@usdoj.gov
Vanessa.boydwillard@usdoj.gov

Carl V. Ullman
Water Adjudication Project
The Klamath Tribes
PO Box 957
Chiloquin, OR 97624
Phone: 541-783-3081
Fax: 541-783-2698
bullman@cđsnet.net

Richard M. Glick / Nanci Klinger
Davis, Wright, tremaine
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
rickglick@dwt.com
nanciklinger@dwt.com

Douglas MacDougal
Timothy M. Sullivan
Schwabe Williamson & Wyatt, PC
1211 SW 5th Ave, Ste 1600-1900
Portland, OR 97204
dmacdougal@schwabe.com
tsullivan@schwabe.com

BJ Matzen
Attorney at Law
435 Oak Ave
Klamath Falls, OR 97601
bjmatzen@msn.com

Michael Ratliff
Ratliff & Whitney-Smith
905 Main Street, Ste 200
Klamath Falls, OR 97301
dmratlif@aol.com

Brian E & Sharon Allen
37291 Agency Lake Loop Road
Chiloquin, OR 97624

Edward & Cindy Coombs
27245 Modoc Point Road
Chiloquin, OR 97624

Melinda Cauvin / Loren C. Walsh
4745 Fern Valley Road
Medford, OR 97504

Modoc Point Irrigation District
Roy Gienger, Chairman
24444 Modoc Point Road
Chiloquin, OR 97624

Robert Wigington
The Nature Conservancy
206 Broadway, Suite 230
Boulder, CO 80302

The Nature Conservancy
821 SE 14th Avenue
Portland, OR 97214

Laura A. Schroeder
Schroeder Law Office
PO Box 12527
Portland, OR 97212
counsel@water-law.com

James R. Uerlings
Boivin, Uerlings & Dilaconi, PC
803 Main Street, Suite 201
Klamath Falls, OR 97601
jruelin@cadsnet.net

Michael P. Rudd
Brandsness, Brandness & Rudd, PC
411 Pine Street
Klamath Falls, OR 97601
mike@brandnessrudd.com

Ronald S. Yockim
Attorney at Law
430 Main Street
PO Box 2456
Roseburg, OR 97470

Cary and Marlys Havird
PO Box 498
Chiloquin, OR 97624

L.A. and Pauline Gienger
Gienger Investments, Inc.
Gienger Enterprises
25050 Modoc Point Rd.
Chiloquin, OR 97624

Steven L. Shropshire
Jordan Schrader PC
PO Box 230669
Portland, OR 97281

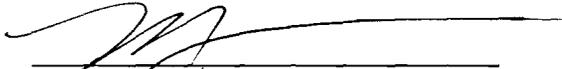
William Ganong
Attorney At Law
514 Walnut Street
Klamath Falls, OR 97601

Claim 705 & 706

Mary Nan Reyes
5689 Sprague River Highway
Chiloquin, OR 97624

Claim 243

Lloyd Lee Hall/Bonnie Hall
PO Box 687
Chiloquin, OR 97624



Misty Fragua
Administrative Assistant