



# Oregon

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## Water Resources Department

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## The Oregon Water Resources Department Completes Klamath River Basin Adjudication (1975-2013)

Today, the Oregon Water Resources Department (“the Department”) delivered an historic document to the Klamath County Circuit Court. With this delivery, the Department has completed Phase One of the Klamath River Basin Adjudication.

### Phase One

The Final Order of Determination in the Klamath River Basin Adjudication, delivered to the Klamath County Circuit Court on March 7, 2013, represents the culmination of 38 years of work to determine the validity of 730 claims to the use of surface water in the Klamath River Basin. Since 1975, the Department has systematically reviewed and determined these claims. The Department also received and resolved 5,660 contests to these claims.

During this phase, administrative law judges from Oregon’s Office of Administrative Hearings issued proposed orders for certain contested claims, making recommendations about the validity of these claims. With the Department’s issuance of the Final Order of Determination, the administrative phase of the Klamath River Basin Adjudication is now complete.

### Phase Two

Today marks the beginning of the second phase in the Klamath River Basin Adjudication. Adjudication claimants or contestants who dispute the Department’s determinations will have an opportunity to file exceptions with the Klamath County Circuit Court. The Court will review those exceptions, and issue a water rights decree, either affirming or modifying the Final Order of Determination.

### Key Findings

Most of the active Klamath River Basin Adjudication claims—those not voluntarily withdrawn—were recognized, at least in part. Forty of the original 730 claims were completely denied. One hundred sixty-eight of the original 730 claims were voluntarily withdrawn.

The most senior determined claims in the Klamath River Basin Adjudication are claims held by the United States in trust for the Klamath Tribes. These claims carry a priority date of “time immemorial.” The tribal claims were recognized for certain reaches of the major tributaries to Upper Klamath Lake, and for Upper Klamath Lake itself. Other tribal claims were denied for streams outside the boundaries of the former Klamath Indian Reservation. For example, the Klamath Tribes’ claim for portions of the Klamath River was denied.

In general, the recognized claims with the next most senior priority dates are “allottee” claims and “Walton” claims. Both types of claims are for land within the boundaries of the former Klamath Indian Reservation. They are based on the 1864 Klamath Treaty and carry an 1864 priority date. 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.

The Final Order of Determination includes a review of both proposed settlements and proposed orders, and either affirms or modifies them. The Final Order of Determination contains numerous modifications to the previously-issued proposed orders; three of the most significant modifications are as follows:

- (1) While the proposed orders for the Klamath Tribes’ instream claims allowed water rights for off-reservation stream reaches, the Final Order of Determination denies these claims.
- (2) Although the proposed order for the Klamath Reclamation Project<sup>1</sup> claims determined that the United States was the owner of the water rights for the Project, the Final Order of Determination concludes that the beneficial users of the Project water hold the Project water rights for the purpose of beneficial use.
- (3) The proposed orders for the Walton claims limited the scope of those claims. The Final Order of Determination modifies the proposed orders, resulting in an increase in the number of acres for which Walton rights are recognized.

### **Next Steps: A New Management System**

Oregon follows the “prior appropriation” doctrine of water use, like most western states. When there is not enough water to satisfy all the water rights, water users with senior priority dates will receive water, while water users with relatively junior rights will not. Simply stated, water users who are “first in time” are “first in right.”

The completion of the Final Order of Determination means that the recognized claims are now a part of Oregon’s “first in time, first in right” prior appropriation system. Water users with recognized claims may now make calls for regulation of junior water users if doing so will result in additional water being available to the senior user.

One practical effect of the Adjudication is that some water users who have regularly been able to make use of the full amount of water under their claims, water right certificates, or water use permits may no

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<sup>1</sup> The Klamath Reclamation Project provides water for roughly 200,000 acres of agricultural land south of Klamath Falls on both sides of the Oregon – California border. The Project was jointly developed by the United State Bureau of Reclamation, irrigation districts, and water users.

longer be able to in certain years, while some water users who have not always been able to make use of the full amount water under their claims may now be able to. Regulation of water rights is normal practice in most other basins in Oregon. Water management in the Klamath River Basin will now operate in the same manner as most other parts of the state.

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If you would like more information about this topic, or to schedule an interview, please call Brenda Bateman at 503-986-0879 or e-mail [Brenda.O.Bateman@state.or.us](mailto:Brenda.O.Bateman@state.or.us).