

ORDER

REVOKING ORDER TEMPORARILY DELEGATING AUTHORITY TO ADJUDICATE THE WATERS OF THE KLAMATH RIVER AND ITS TRIBUTARIES AND DELEGATING AUTHORITY TO ADJUDICATE THE WATERS OF THE KLAMATH RIVER AND ITS TRIBUTARIES

Introduction

The Water Resources Department (Department) is engaged in the adjudication of pre-1909 and federal reserved water right claims in the Klamath Basin. By Order dated July 14, 1998 (July 14, 1998 Delegation Order), the Director of the Department delegated to the Department's Water Rights Division Administrator, Richard D. Bailey, all powers, duties, and functions necessary to accomplish the adjudication of the relative rights to surface water in the Klamath Basin pursuant to ORS 539.010 through ORS 539.220.

By Order dated February 18, 2005 (February 18, 2005 Temporary Delegation Order), the Director of the Department temporarily delegated to Department employee, Dwight French, all powers, duties, and functions necessary to accomplish the adjudication of the relative rights to surface water in the Klamath Basin pursuant to ORS 539.010 through ORS 539.220, as previously delegated to Richard D. Bailey under the July 14, 1998 Delegation Order. The February 18, 2005 Temporary Delegation Order provided that upon revocation of the February 18, 2005 Temporary Delegation Order by the Department's Director, the July 14, 1998 Delegation Order would be in full force and effect.

Subsequent to the issuance of the February 18, 2005 Temporary Delegation Order, Richard D. Bailey permanently departed from his position as Water Rights Division Administrator, and on August 8, 2005, Dwight French was appointed Water Rights and Adjudications Division Administrator. This delegation order delegates to Dwight French all powers, duties, and functions necessary to accomplish the adjudication of the relative rights to surface water in the Klamath Basin pursuant to ORS 539.010 through ORS 539.220, as previously delegated to Richard D. Bailey under the July 14, 1998 Delegation Order.

Qualification of Adjudicator

The July 14, 1998 Delegation Order was issued to "insure the integrity of the adjudication record and to address any perception of bias or undue influence in the Adjudication" that might result from the Director's involvement in the alternative dispute resolution process (ADR) and subsequent participation in the Adjudication as decision maker. July 14, 1998 Delegation Order at 1 (true copy attached hereto as Exhibit A).

Water Rights and Adjudications Division Administrator, Dwight French, has executed an Affidavit, attached hereto as Exhibit B, establishing that he has not formed any opinion with respect to the ultimate outcome of any claim or contest filed in the Adjudication.

Revocation of Temporary Delegation Order and Portion of Delegation Order

I, Phillip C. Ward, Director of the Water Resources Department, hereby revoke the February 18, 2005 Temporary Delegation Order, and that paragraph of the July 14, 1998 Delegation Order titled "Delegation Order", delegating to Richard D. Bailey the authority to adjudicate the water rights of the Klamath Basin. All other terms and provisions of the July 14, 1998 Delegation Order shall remain in full force and effect.

Delegation Order

I Phillip C. Ward, Director of the Water Resources Department, hereby delegate to Dwight French, subject to the terms and conditions of the July 14, 1998 Delegation Order (a true copy of which is attached as Exhibit A, and incorporated by reference), the authority to adjudicate the waters rights of the Klamath Basin, including all the powers, duties, and functions necessary to accomplish the adjudication of the relative rights to surface water in the Basin pursuant to ORS 539.010 through 539.220. Dwight French's official acts shall be considered to be official acts of the office of the Director.

Dated: August 16, 2005.



Phillip C. Ward, Director
Water Resources Department

ORDER

DELEGATING AUTHORITY TO ADJUDICATE THE WATERS OF THE KLAMATH RIVER AND ITS TRIBUTARIES

Introduction

The Water Resources Department (Department) is currently engaged in the adjudication of the pre-1909 and federal reserved water rights in the Klamath Basin. To seek resolution of adjudication controversies and other water allocation issues, the Director of the Water Resources Department will lead a voluntary alternative dispute resolution process (ADR).

To ensure the integrity of the adjudication record and to address any perception of bias or undue influence in the Adjudication, the Director will delegate all the powers, duties and functions necessary to accomplish the Klamath Basin Adjudication to the Department's Water Rights Division Administrator. Under this delegation, the Water Rights Division Administrator will be the Adjudicator of the Klamath Basin Adjudication (Adjudication).

This Delegation Order authorizes the Water Rights Division Administrator to carry out all functions necessary to complete the Adjudication and establishes a process for ensuring appropriate procedural coordination between the Adjudication and the ADR.

Authority for Delegation of Adjudication

Pursuant to ORS 539.010 through 539.220, the Director is authorized to initiate and to conduct the administrative phases of general stream adjudications in Oregon. Pursuant to ORS 536.037(3), the Director may delegate to any employee of the Department any power, duty or function vested in or imposed by law upon the Director. Such delegation will vest in such employee all responsibility and authority held by the Director under ORS 539.010 through 539.220.

Klamath Basin Adjudication

The Department initiated the Klamath Basin Adjudication in 1975. This Adjudication is an Oregon general stream adjudication conducted under the provisions of ORS 539.010 through 539.220. The final Adjudication decree will be issued by the Klamath County Circuit Court. All persons claiming a federal reserved water right or a right to water the use of which began before February 24, 1909, were required to file proofs of claim with the Department during the 1990-91 private claiming period or the 1996-97 federal claiming period.

Adjudication staff are currently processing the Adjudication claims and preparing a data base of claim information. The claim data base will allow publication of reports summarizing select elements of each claim (e.g., name, use, priority date, source, amount of water claimed, point of diversion, place of use, etc.). During the claim processing, adjudication staff will review each claim for completeness,

will evaluate each claim pursuant to the standards set forth in OAR 690-28-040 and will issue a summary pursuant to OAR 690-28-070.

When the claim review and summary are completed, the Adjudicator will hold an open inspection pursuant to ORS 539.090. Following the open inspection period, any party may file a statement of contests with the Adjudicator. The term "party" in this context means all claimants and all holders of permitted, certificated or decreed water rights on a stream subject to the Adjudication. (See ORS 539.100 and OAR 690-28-010(15).)

The Adjudicator will offer a contest hearing for any contests not resolved through negotiations by the parties. Following resolution of the contests, the Adjudicator will prepare proposed findings of fact and order of determination to be presented to the Klamath County Circuit Court. The finding and determination will describe the geography and hydrology of the Basin, set out parameters of water use of the claimants and the order of priority of all the pre-1909 and federal reserved water rights in the Adjudication.

Klamath Basin Alternative Dispute Resolution (ADR)

The ADR is intended to provide a voluntary process for resolution of Adjudication issues and contests as well as a forum for evaluation of the full range of water allocation and management issues in the Basin. The Director of the Department will act as the ADR leader. A neutral mediator from outside the Department will facilitate the ADR meetings.

Participation in the ADR is voluntary, and Adjudication claimants will not lose any of their rights in the Adjudication by not participating in the ADR. Discussion sessions will be organized so as to provide an accessible and convenient forum for exchange of information and resolution of issues and controversies. The proposed discussion schedule will include both regularly scheduled basin-wide sessions and local, subbasin meetings as needed.

The ADR Process will be conducted in two phases to coordinate with the Adjudication schedule. The phases will be identified as Phase I and Phase II. Phase I of the ADR Process will be conducted before the Adjudication open inspection and the contest filing periods. During Phase I participants will attempt to reach agreements to be incorporated into the Adjudicator's summary of claims for the open inspection. Phase II of the ADR Process will be conducted after the contest filing period, and will serve as a dispute resolution forum for settlement of contests.

Both phases may include discussions of opportunities for water supply augmentation (i.e., storage, groundwater development, conservation and watershed and riparian restoration), as well as other opportunities for meeting long-term water management needs.

Procedural Coordination

A proposed Adjudication schedule along with a proposed ADR process time-line has been developed. The Adjudicator and Director will conduct their respective programs with the objective of meeting the draft schedule and proposed time-line. The Adjudicator and Director will hold regularly scheduled meetings to review progress and ensure appropriate procedural coordination of the two processes. To ensure the integrity of the Adjudication record, the meetings will not include the substance of any claims or the negotiations. Summaries will be maintained to document the meetings.

The Director and WRD staff assisting with the ADR Process shall refrain from contact with the Adjudicator on substantive matters related to the ADR, settlement of claims or contests, and adjudication of individual water rights. The Director and WRD staff assisting with the ADR Process shall also refrain from contact with the Adjudication staff on substantive matters related to the ADR, settlement of claims or contests, and adjudication of individual water rights, but may contact the Adjudication staff regarding technical information contained in the Adjudication record. With consent of the affected participants, ADR staff may provide technical information to the Adjudication staff for inclusion in the Adjudication record.

Participants in the ADR will negotiate claims and other issues in accordance with the ADR Operating Principles adopted by the ADR participants on July 14, 1998. Under the Operating Principles, the term "ADR Agreement" is defined as an agreement among the signatories with which the Director concurs. The process for negotiating such ADR Agreements and for obtaining the Director's concurrence, including provisions for public review and comment, are described in the Operating Principles. Phase I ADR Agreements shall be submitted to the Adjudicator prior to the open inspection period. The Adjudicator's summary of the affected claims for open inspection shall be consistent with and shall incorporate Phase I ADR Agreements.

Following the contest period, if a claimant whose claim is contested and the contestant elect to engage in negotiations to settle the contest, the Adjudicator shall refer such contest to the Director for Phase II negotiations. The Adjudicator, or his hearings officer, will allow a reasonable time for the contest parties to reach settlement through the ADR process; however, the Adjudicator or his hearings officer may set a deadline(s) for completion of a settlement of the contest. If an ADR Agreement is reached during Phase II, the negotiating parties may submit the ADR Agreement to the Adjudicator. The Adjudicator's findings and determination for the affected claims shall be consistent with and shall incorporate Phase II ADR Agreements.

Neither the Director nor the Adjudicator may prevent individual parties from negotiating proposed settlement agreements outside the ADR process. Agreements reached outside the ADR Process may be proposed to the Adjudicator for incorporation into the Adjudicator's summary of claims for the open inspection or findings and determination. For an agreement submitted to the Adjudicator which is reached outside the ADR Process during Phase I, the Adjudicator may elect to incorporate such agreement into the summary of claims for the open inspection as he deems appropriate and in accordance with applicable law. For an agreement submitted to the Adjudicator which is reached outside the ADR Process during Phase II, the Adjudicator may refer such agreement to a contest

hearing or he may elect to incorporate the agreement into the findings and determination as he deems appropriate and in accordance with applicable law. However, if such agreement does not include all of the parties to the contest, the Adjudicator shall refer the contest to hearing in accordance with ORS 539.110 and OAR 690, Division 30.

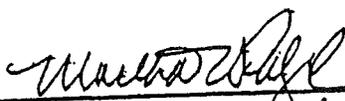
Regardless of the Adjudicator's decision concerning incorporation of an ADR Agreement or an agreement reached outside the ADR process into his findings and determination, the Adjudication record shall include notice that such agreement was presented to the Adjudicator, a summary of the agreement and a description of the Adjudicator's action on the agreement.

Notwithstanding participation in the ADR process or in any negotiating group which develops a proposed ADR Agreement, all Adjudication parties retain all rights and remedies which are available in the Adjudication, including the right to contest any claims before the Adjudicator pursuant to ORS 539.100 and the right to file exceptions to the Adjudicator's findings and determination in the Klamath County Circuit Court pursuant to ORS 539.150(I). Unless the claimant expressly agrees to a claim amendment, an ADR Agreement or an agreement reached outside the ADR Process shall not be deemed to amend a claim or affect a claimant's ability to have its underlying claim adjudicated until final judicial disposition of the claim.

Delegation Order

Pursuant to ORS 536.037(3), I hereby delegate to Richard D. Bailey, subject to the terms and conditions of this Delegation Order, the authority to adjudicate the water rights of the Klamath Basin, including all the powers, duties and functions necessary to accomplish the adjudication of the relative rights to surface water in the Basin pursuant to ORS 539.010 through 539.220. Richard D. Bailey's official acts shall be considered to be the official acts of the office of the Director.

Dated: July 14, 1998.



Martha O. Pagel, Director
Water Resources Department

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AFFIDAVIT OF DWIGHT FRENCH

I, Dwight French, being first duly sworn, depose and say:

1. I am over 18 years of age, and am competent to make this Affidavit. The statements contained herein are based on personal, first-hand knowledge. If called upon to testify to the facts in this Affidavit, I could and would testify thereto.
2. Since May, 1990, I have been and am currently employed by the Oregon Water Resources Department (Department). I am currently the Department's Administrator for the Water Rights and Adjudications Division. Prior to becoming the Administrator for the Water Rights and Adjudications Division, my position with the Department was as the Acting Administrator for the Water Rights and Adjudications Division, and prior to that my position with the Department was as the Water Rights Section Manager.
3. I worked in the Adjudication Section from October of 1990 until May of 1993. During this period I was involved in receiving claims in the Klamath Basin Adjudication. I did not evaluate any of these claims on their merits. I have not held any position that has required me to become knowledgeable about the alternative dispute resolution process (ADR). While have general knowledge of the ADR and Adjudication processes, I have not formed any opinion with respect to the ultimate outcome of any such claims or contests.
4. I understand that one important purpose of the July 14, 1998 Delegation Order is to "insure the integrity of the adjudication record and to address any perception of bias or undue influence in the Adjudication" that might result from the Director's involvement in the ADR process and the Adjudication itself. July 14, 1998 Delegation Order at 1. Consequently, I agree, upon issuance of the delegation order this Affidavit supports, to be

bound by, and to comply with all aspects of the July 14, 1998 Delegation Order that remain in full force and effect, including, but not limited to the following provision:

The Director and WRD staff assisting with the ADR process shall refrain from contact with the Adjudicator on substantive matters related to the ADR, settlement of claims or contests, and adjudication of individual water rights. The Director and WRD staff assisting with the ADR Process shall also refrain from contact with the Adjudication staff on substantive matters related to the ADR, settlement of claims or contests, and adjudication of individual water rights, but may contact the Adjudication staff regarding technical information contained in the Adjudication record. With consent of the affected participants, ADR staff may provide technical information to the Adjudication staff for inclusion in the Adjudication record. (July 14, 1998 Delegation Order at 3).

DATED this 16 day of August 2005.

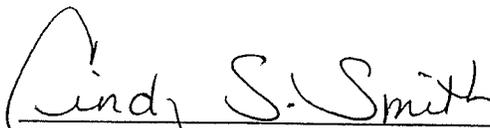


Dwight French

State of Oregon)
)ss.
County of Marion)

The foregoing instrument was acknowledged before me this 16th day of August 2005, by Dwight French.





NOTARY PUBLIC FOR OREGON
My Commission Expires: 12/5/2008