

**BEFORE THE DIRECTOR  
OF THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON**

**KLAMATH BASIN GENERAL STREAM ADJUDICATION**

In the Matter of the Claim of the KLAMATH TRIBES	)	CORRECTED PARTIAL ORDER OF DETERMINATION
	)	
_____	)	Water Right Claim 613

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT**

1. On April 29, 1997, the Klamath Tribes timely submitted a Statement and Proof of Claim (Claim 613) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
2. On April 30, 1997, the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely submitted, in part, five Statement and Proof of Claims (Claim 617, 618, 619, 620, and 621) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
3. Claim 613 is a composite claim incorporating by reference BIA Claims 617, 618, 619, 620, 621, 729<sup>1</sup>, and 730<sup>2</sup>.

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<sup>1</sup> On October 10, 2003, Claim 83 was bifurcated, and Claim 729 was assigned to the portion of Claim 83 appurtenant to lands acquired by the Klamath Tribes on September 5, 1995. *See* STIPULATION TO BIFURCATE CLAIM 83, ASSIGN CLAIM 729 TO ONE PORTION OF BIFURCATED CLAIM 83 (Oct. 10, 2003). On October 16, 2003, Claim 729 was consolidated into Case 283 into which Claims 613, 617 – 621 of the Klamath Tribes and the BIA had already been consolidated. *See* ORDER ON MOTION TO CONSOLIDATE (Oct. 16, 2003).

<sup>2</sup> On February 24, 2005, the portion of Claim 83 remaining after the first bifurcation on October 10, 2003, was again bifurcated, and Claim 730 was assigned to appurtenant to lands acquired by the Klamath Tribes on September 8, 2004. Claim 730 was consolidated into Case 283 into which Claims 613, 617 – 621 of the Klamath Tribes and the BIA had already been consolidated. *See* STIPULATION TO BIFURCATE CLAIM 83, AND ASSIGN CLAIM 730 TO A PORTION OF BIFURCATED CLAIM 83, AND TO CONSOLIDATE CLAIM NO. 730 INTO CASE 283. (Feb. 24, 2005).

4. On October 1, 1999, the Klamath Tribes timely amended Claim 613. This amendment “adopts and incorporates by reference,” the amended claims of the BIA designated KL-2 (Claim 617), KL-3 (Claim 618), KL-5 (Claim 619), KL-8 (Claim 620), and KL-15 (Claim 621). (Note: the BIA only amended Claims 618 and 621 – April 16, 1999).
5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating “[s]ee claims 622-673 filed by the United States Bureau of Indian Affairs as trustee on behalf of the Klamath Tribes.”
6. On May 5, 2000, PacifiCorp timely filed Contest 2062 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.
7. On May 8, 2000, the Klamath Tribes timely filed Contest 4003 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.
8. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 3017 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.
9. On May 8, 2000, John M. Mosby, Marilyn Mosby, Boyd P. Braren and Boyd P. Braren Trust<sup>3</sup>, timely filed Contest 3120 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.
10. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District timely filed Contest 3250 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613.
11. On May 8, 2000, the following parties, hereinafter collectively referred to as “Nicholson *et al.*,” filed Contest 3315 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613: Roger Nicholson; Roger Nicholson Cattle Co.<sup>4</sup>; Lloyd Nicholson Trust<sup>5</sup>; Dorothy Nicholson Trust<sup>6</sup>; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches<sup>7</sup>; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company<sup>8</sup>; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood<sup>9</sup>;

<sup>3</sup> TPC, LLC and Robert Cook, successors in interest to Boyd P. Braren and Boyd P. Braren Trust

<sup>4</sup> Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

<sup>5</sup> Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

<sup>6</sup> Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

<sup>7</sup> Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Jim McAuliffe and McAuliffe Ranches

<sup>8</sup> Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Joe McAuliffe Company

<sup>9</sup> On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3315. See VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

Kenneth Zamzow<sup>10</sup>; Anita Nicholson<sup>11</sup>; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood<sup>12</sup>; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane<sup>13</sup>; Walter Seput<sup>14</sup>; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill<sup>15</sup>; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen<sup>16</sup>; Wayne Jacobs; Margaret Jacobs; Robert Bartell<sup>17</sup>; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust<sup>18</sup>; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District<sup>19</sup>; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm Bryant<sup>20</sup>; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford<sup>21</sup>; and Hart Estate Investment Company<sup>22</sup>.

12. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3645 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 613: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.<sup>23</sup>, 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, Modoc Lumber Co., Bradley S. Luscombe, Berlva Pritchard<sup>24</sup>, Don

<sup>10</sup> On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

<sup>11</sup> Nicholson Investments, LLC, successor in interest to Anita Nicholson

<sup>12</sup> On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

<sup>13</sup> Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

<sup>14</sup> James G. Wayne, Jr., successor in interest to Walter Seput

<sup>15</sup> Lillian Hill, successor in interest to William V. Hill

<sup>16</sup> On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

<sup>17</sup> Michael LaGrande, successor in interest to Robert Bartell

<sup>18</sup> Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

<sup>19</sup> On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

<sup>20</sup> On October 31, 2003, William Bryant voluntarily withdrew from Contest 3315. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

<sup>21</sup> Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

<sup>22</sup> Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

<sup>23</sup> Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3645 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

<sup>24</sup> Berlva Pritchard voluntarily withdrew from Contest 3645 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

Vincent<sup>25</sup>, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

13. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters and other like claims of the Klamath Tribes and the BIA as Case 283.
14. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3645. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002).
15. On May 20, 2003, the WaterWatch's Contest 3017 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS (May 20, 2003).
16. On July 22, 2003, John M. Mosby and Marilyn Mosby voluntarily withdrew from Contest 3120. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY JOHN M. MOSBY (July 22, 2003).
17. On August 6, 2003, Medford Irrigation District voluntarily withdrew from Contest 3250. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD IRRIGATION DISTRICT (Aug. 6, 2003).
18. On August 15, 2003 Rogue River Valley Irrigation District voluntarily withdrew from Contest 3250. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY ROGUE RIVER VALLEY IRRIGATION DISTRICT (Aug. 15, 2003).
19. On March 16, 2005, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3250. *See* VOLUNTARY WITHDRAWAL OF CONTEST NO. 3250 BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS (March 16, 2005).
20. On December 1, 2006 the Klamath Tribes timely submitted an amendment to Claim 613 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).
21. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson *et al.*, PacifiCorp, and TPC, LLC and Robert Cook) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (Contests 2062, 3315, and 4003).
22. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

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<sup>25</sup> Don Vincent voluntarily withdrew from Contest 3645 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

23. No contests or claims of injury were filed to the Claimants' December 1, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.
24. The claim amendment requirements under OAR 690-030-0085 have been met.

## B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, and the Contestants is adopted and incorporated as if set forth fully herein.
2. The Claimant's December 1, 2006 amendment pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimants' claim.
3. Both the United States and the Klamath Tribes filed consumptive use claims. The Klamath Tribes' Claim 613 incorporates the United States' Claims 617-621, and 729-730 by reference. The Klamath Tribes' claim is duplicative of the United States' claims, not additive. The United States holds the rights recognized herein in trust for the Klamath Tribes. *Colorado River Water Conservation Dist. v. United States*, 424 US 800, 810 (1976). United States' Claims 617-621, and 729-730 are determined in separate Partial Orders of Determination for each of those claims. Claim 613 is denied in this Partial Order of Determination for Claim 613.
4. Based on the file and record herein, IT IS ORDERED that Claim 613 is denied and is of no force or effect.

Dated at Salem, Oregon on February 28, 2014

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication