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STATE OF OREGON
KLAMATH [illegible]
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF KLAMATH

In the Matter of the Determination of the Relative Rights of the Waters of the Klamath River, A Tributary of the Pacific Ocean

In Re: WATERS OF THE KLAMATH RIVER BASIN.	Case No. WS1300001 OBJECTION AND MOTION FOR HEARING UNDER ORCP 82F AND G OF VAN BRIMMER DITCH COMPANY, KLAMATH IRRIGATION DISTRICT, REAMES GOLF AND COUNTRY CLUB, MODOC LUMBER COMPANY, TULELAKE IRRIGATION DISTRICT, KLAMATH BASIN IMPROVEMENT DISTRICT, ADY DISTRICT IMPROVEMENT COMPANY, ENTERPRISE IRRIGATION DISTRICT, KLAMATH DRAINAGE DISTRICT, MIDLAND DISTRICT IMPROVEMENT COMPANY, PINE GROVE IRRIGATION DISTRICT, POE VALLEY IMPROVEMENT DISTRICT, SUNNYSIDE IRRIGATION DISTRICT, COLLINS PRODUCTS LLC, PLEVNA DISTRICT IMPROVEMENT COMPANY, PIONEER DISTRICT IMPROVEMENT COMPANY, DON JOHNSTON & SON, RANDOLPH AND JANE WALTHALL 1995 TRUST, WINEMA HUNTING LODGE, INC., BRADLEY S. LUSCOMBE, INTER-COUNTY PROPERTIES COMPANY, MALIN IRRIGATION DISTRICT, AND SHASTA VEIW IRRIGATION DISTRICT ON OBJECTION TO THE SUFFICIENCY OF THE ISSUERS OR SURETIES ASSOCIATED WITH APPLICATION FOR STAY AND NOTICE REGARDING SAME

Come now: Van Brimmer Ditch Company, by and through its attorneys Nathan J. Ratliff of Parks & Ratliff, P.C.; Klamath Irrigation District, Modoc Lumber Company, and Reames Golf and Country Club, by and through their attorney William M. Ganong; Tulelake Irrigation District,

by and through its attorneys Paul S. Simmons of Somach Simmons & Dunn; Klamath Basin Improvement District, by and through its attorney Richard Fairclo; Ady District Improvement Company, Enterprise Irrigation District, Klamath Drainage District, Midland District Improvement Company, Pine Grove Irrigation District, Poe Valley Improvement District, Sunnyside Irrigation District, Malin Irrigation District, and Shasta View Irrigation District, by and through their attorney Justin E. Throne; Collins Products LLC and Plevna District Improvement Company, by and through their attorneys P. Andrew McStay and Richard M. Glick of Davis Wright Tremaine; and Pioneer District Improvement Company, Don Johnston & Son, Randolph and Jane Walthall 1995 Trust, Winema Hunting Lodge, Inc., Bradley S. Luscombe, and Inter-County Properties Company, by and through their attorney B.J. Matzen (hereinafter collectively, KPWU).

Pursuant to ORCP 82F and G, KPWU object to the issuers or sureties in the undertakings filed by Clifford Rabe; Flynn & Sons, LLC, Joe Flynn Ranch, Jack Flynn Cattle Co.; Lon Brooks, Troy Brooks, Bar 2 Livestock LLC; Pine Mountain Cattle Co.; Duarte Livestock; John R. Briggs, Jr.; Vincent Briggs; Danny Milligan; Topham Family Trust; Griffith Livestock LLC; Duane Martin Livestock LP; River Springs Ranch; C and A Vogt Community Property Trust; Whiskey Creek Land Company LLC; Whiskey Creek Ranch; Thomas Mallams; Greg Harris; Obenchain Cattle Co.; Wayne Jacobs, Margaret Jacobs; Vince Hill, BK Ranch; Thomas H. Bentley, Jacqueline L. Bentley; Double K Ranch; Kevin Newman, Jennifer Newman; Lynne Richardson Cabral, The Richardson Family Trust; Wayne Ranch LLC; Gerald Hawkins, Ausaymas Cattle Co., Harlowe Ranch, Hawkins Cattle Co., Owens and Hawkins, T&B Ranch; Kenneth Owens; Martin Nicholson, Goose Nest Ranches LLC; Mary Ann Nicholson, Nicholson Loving Trust; Randall Kizer; Roger Nicholson Ranches, NBCC LLC, Productive Timberlands LLC, Agri Water LLC, Roger Nicholson Cattle Co., Richard Nicholson, Roger Nicholson; Lee Traynham, Robinson Best, LLC; Wood River District Improvement Co.; Ambrose McAuliffe; John Owens; and, TP Bar Ranch[1] (collectively, UBC Petitioners), and notify

[1] KPWU received a letter from Elizabeth E. Howard, counsel for the Petitioners, on May 13, 2013, that stated that it enclosed an additional Undertaking filed by John Haydn-Myer. A certificate of service dated May 13, 2013, also indicates that parties have been served with this undertaking. The receipt for Mr. Haydn-Myer's undertaking does

the UBC Petitioners of said objection, for the reason that the issuers of the undertaking are insufficient. KPWU request that this matter be set for hearing in conjunction with future hearings regarding the propriety of the stay sought and the appropriate bond amount and conditions. KPWU further request that the court reject the undertaking currently filed, and, if over KPWU's opposition a stay is issued, require that UBC Petitioners post a bond, issued by a licensed surety, in the amount deemed appropriate by the court in light of ORS 539.180 and ORCP 82A(1)(a) and 82A(4), and conditioned as provided in ORS 539.180.

KPWU intend to file a request to be heard and memorandum in opposition to the UBC Petitioners' request for stay pursuant to ORS 539.180 and Case Management Order Nos. 1 and 2. This objection, motion, and memorandum are not themselves such request or opposition.

MEMORANDUM

UBC Petitioners have sought a Partial Stay of the Findings of Fact and Partial Determination for OAH Case 003 as it relates to Claims 294, 312, 317, 321-1, 321-4, 321-6, 321-9, KPCC Claims 321-17/293/323-3 (Order), in which the Adjudicator determined and confirmed the existence of vested water rights for the benefit of KPWU and their constituent landowners and water users.

Most or all[2] UBC Petitioners, in conjunction with their request for a partial stay, have submitted an undertaking in the amount of $500. ORS 539.180 states that a party seeking a stay of an adjudicator's order must file "a bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the circuit court wherein the determination is pending, in such amount as the judge may prescribe, conditioned that the party will pay all damages that may accrue by reason of the determination not being enforced." In addition to the bond requirement of ORS 539.180, ORCP 82A(1)(a) requires the giving of security by any applicant seeking a restraining order or a preliminary injunction and ORCP 82A(4) requires the giving of security by the applicant seeking any other provisional process.

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not match his name. To the extent any undertakings have been or are filed by any of the Petitioners for stay in case no. WS1300001, KPWU objects for the reasons stated herein.

[2] As described in footnote 1, KPWU have not received an undertaking for all of the UBC Petitioners.

ORCP 82D sets forth the applicable qualifications for sureties, as follows:

> D(1) **Individuals.** Each individual surety must be a resident of the state. If there is one individual surety, that surety must be worth twice the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities; where there is more than one individual surety, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.
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> D(2) **Corporations.** A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

Pursuant to ORS 731.186, "Surety insurance" means insurance guaranteeing the fidelity of persons holding places of trust, the performance of duties, contracts, bonds and undertakings, including the signing thereof as surety, and insuring the performance of obligations of employers under workers' compensation laws by surety bond.

ORCP 82F and G permit an objection and a request for a hearing as to the sufficiency of the surety, or maker of the undertaking, by a party for whose benefit the undertaking is given, when that party is not satisfied with the sufficiency of the issuer.

In this matter, the court has not determined whether a stay should issue or the magnitude of any undertaking. KPWU intend to oppose a stay, but if a stay is otherwise proper, KPWU intend to seek the imposition of an undertaking requirement that actually takes into consideration the costs, damages, and attorneys' fees which may be incurred as a result of the wrongful imposition of a stay, as dictated by Oregon law. KPWU are concerned that the maker of the undertakings at issue are not worth an amount sufficient to protect against the potential costs and losses that may be incurred, and specifically that they are not sufficiently solvent to fulfill the requirement of ORCP 82D(1) that their net worth, exclusive of property exempt from execution, is greater than two times of the security to be required.

Additionally, some UBC Petitioners are corporate, non-individual parties, and pursuant to ORCP 82D(2), they are an improper maker of an undertaking as they are not licensed to issue surety insurance as defined in ORS 731.186.

Finally, some of UBC Petitioners may not be residents of Oregon and therefore not qualified to act as a surety under ORCP 82D(1). UBC Petitioners must demonstrate to the court that each is qualified to act as a surety.

For the foregoing reasons, KPWU request that the court reject the undertakings currently filed. The appropriateness of a stay and the amount of a bond are matters to be briefed, but even if a stay were to issue, each of the UBC Petitioners would be obliged to post a bond, issued by a licensed surety, in the amount deemed appropriate by the court in light of ORS 539.180 and ORCP 82A(1)(a) and 82A(4), and conditioned as provided in ORS 539.180.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Objection & Motion For Hearing Under ORCP 82F and F of KWPU on Objection to the Sufficiency of the Issuers or Sureties Associated with Application For Stay and Notice Regarding Same of Van Brimmer Ditch Company, et al (KPWU) was served by first class mail, postage prepaid, and deposited at Klamath Falls, Oregon, to the parties at the addresses shown on the attached SERVICE LIST.

Dated this 15th day of May, 2013.

Wendy L Young

Wendy L. Young, Secretary for
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SERVICE LIST
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