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FILED
Pb. 9/3/13
Circuit Court Clerk: _____ Date
By _____ DEPUTY

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 Nos. WS1300001, WS1300002
WS1300003, WS1300004

**ORDER (1) DETERMINING
OBLIGATIONS OF STAY PETITIONERS
REGARDING "ALL DAMAGES" AND
(2) DENYING PETITIONS FOR STAY OF
UPPER BASIN CONTESTANTS**

By order dated June 20, 2013, the Court consolidated all of the following for hearing on the merits of common issues: (i) Petition for Partial Stay of Findings of Fact and Order of Determination by Upper Basin Contestants as to OAH Case 003 (Claims 294, 321-1, 321-4, 321-6, 321-9, KPCC 321-17/293/323-3) (Case No. WS1300001); (ii) Petition for Partial Stay of Findings of Fact and Order of Determination by Upper Basin Contestants as to Certain Tribal Claims (Case No. WS1300002); (iii) Petition for Stay by Contestant Mathis Family Trust of Claim 668 (Wood River), Claim 669 (Crooked Creek), Claim 670 (Fort Creek), and Claim 622 (Upper Klamath Lake) (Case No. WS1300003); and (iv) Petition for Partial Stay of Findings of Fact and Order of Determination by River Springs Ranch Co. as to Denial of Claim 131 (Case No. WS1300004). In each of the consolidated cases, the petitioner or petitioners seek, under ORS 539.180, a partial stay of the Findings of Fact and Order of Determination, Klamath River Basin General Stream Adjudication, March 7, 2013. Petitioner River Springs Ranch Co. is among the parties collectively identified as Upper Basin Contestants and thus among the

1 Petitioners in Case Nos. WS1300001 and WS1300002, but is the sole Petitioner in Case
2 No. WS1300004.

3 The Court has considered all of the papers and other filings of the parties related to the
4 consolidated hearing issues received on or before July 3, 2013, and heard oral argument on July 2
5 and 3, 2013, at which Elizabeth Howard appeared for Petitioners collectively known as Upper
6 Basin Contestants, Adam Orford appeared for Petitioner Mathis Family Trust, Dominic Carollo
7 appeared for Petitioner River Springs Ranch Co., Carl Ullman appeared for Respondent Klamath
8 Tribes, David Harder and Bruce Bernard appeared for Respondent United States, Paul Simmons
9 and William Ganong appeared for Respondents collectively known as Klamath Project Water
10 Users, Darsee Staley and Sarah Weston appeared for Respondent the State of Oregon, and Steven
11 Shropshire appeared for Respondents Rogue River Valley Irrigation District and Medford
12 Irrigation District. The Court thereby being fully advised, on July 15th, 2013 and August 15th,
13 2013, filed decision letters, attached hereto and incorporated by this reference.

14 **IT IS HEREBY ORDERED AS FOLLOWS:**

15 1. Under ORS 539.180, the potential liability of a party who obtains a stay is not
16 limited to the amount prescribed by the Court for a bond or letter of credit (collectively, "bond").
17 As a condition of any stay under ORS 539.180, the party seeking it must agree to "pay all
18 damages that may accrue by reason of the determination not being enforced." This obligation to
19 pay all damages that may accrue by reason of the determination not being enforced is in addition
20 to the bond and the amount of a bond is not a limit or cap to that obligation.

21 2. In addition, the petitions for partial stay in Case Nos. WS1300001 and
22 WS1300002 are denied in their entirety because they do not request a lawful stay, for reasons
23 stated in the attached decision letter.

24 3. Further proceedings in Case No. WS1300003 and Case No. WS1300004 will
25 occur under the prior order of consolidation or bifurcated, or both, as determined by the Court.

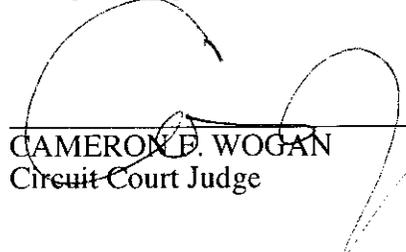
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IT IS HEREBY ORDERED this 3rd day of ~~August~~ ^{September} 2013.



CAMERON P. WOGAN
Circuit Court Judge

Submitted by:
Paul S. Simmons, OSB 971386
Attorneys for Tulelake Irrigation District
Authorized Representative Attorney for Parties
Identified as Klamath Project Water Users



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JUL 19 2013

CAMERON F. WOGAN
Circuit Judge

Circuit Court of the State of Oregon
for KLAMATH COUNTY
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KLAMATH FALLS, OREGON 97601
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Beth Dunaway
Judicial Assistant
Sandra Goebel
Court Clerk

July 15, 2013

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All Attorneys
Re: Matter of the Waters of the Klamath Basin
July 15, 2013
Page 2

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Re: In the Matter of the Waters of the Klamath River Basin
Case No: WS1300001/WS1300002/WS1300003 and WS 1300004

Dear Counsel:

INTRODUCTION AND BACKGROUND

These petitions pit upstream and downstream farmers, ranchers, and others against each other. After about 38 years of work, an order was filed March 7, 2013 that determines the rights of over 730 claims to the waters of the Klamath Basin.

Now, around 40 upstream farmers, ranchers, and businesses want parts of that order to be stayed and not in effect. Many disagree, including 15 downstream irrigation districts that serve hundreds of farmers and ranchers in the Klamath Basin, the Medford and Rogue River Irrigation Districts, the State of Oregon, the Klamath Tribe and the United States. The proposed stays could be in effect until this case is concluded in the Circuit Court which the parties estimate would be 5-10 years.

Four requests for stays have been filed. In cases WS1300001 and WS1300002, upstream farmers and ranchers want to limit the water that the order says will go to downstream farmers, ranchers and the Tribe and have that water provided to only them. In case WS1300003, an upstream ranch seeks to stop the enforcement of certain claims granted by the order. In case WS1300004, an upstream ranch is asking to stay the part of the order that denied his own claim to water.

Of course the court's job is nothing more and nothing less than to follow the law.

All Attorneys
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SUMMARY OF DECISION

The requests for a stay in cases WS1300001 and WS1300002 are denied because, contrary to law, they would elevate petitioners over everyone so they would be the only ones to get extra water if downstream rights are curtailed as they request.

I also decide that as a condition of any stay, the party seeking it must agree to “pay all damages that may accrue by reason of the determination not being enforced.” ORS 539.180 This obligation is in addition to the bond and the amount of the bond does not limit or cap that obligation. In case WS1300003 Mr. Orford should notify me if his client would like to pursue or withdraw its petition for stay in view of this ruling. His client may want to withdraw its request for a stay because this ruling may make it subject to a significant liability. If it would like to pursue its request for a stay, I will then consider the many other arguments relating to whether the stay is mandatory or discretionary and will decide if one is to be granted. If one is granted, we will then set and conduct a further hearing on the amount of the bond.

The parties in case WS1300004 have the right to file further briefs and present arguments so I make no rulings on it at this time. I have set it for a status conference for July 24th, 2013 at 1:30 p.m. when we will set a time for oral arguments.

EXPLANATION IN CASES WS1300001 AND WS1300002

In cases WS1300001 and WS1300002 the petitioners ask for a stay of certain water rights but that these rights be stayed only as to themselves. They rely upon the language of ORS 539.180 that says that the order filed March 7, 2013 can be stayed “in part...” The question is what is meant by the words “in part.” When interpreting a statute, “[t]he first step remains an examination of text and context.” *State v. Gaines*, 346 Or. 160 (2009).

Like most western states, Oregon adheres to the water law known as the prior appropriation doctrine which generally provides that a person may acquire a right to appropriate, or use, water “on a ‘first come, first served’ basis by diverting water and applying it to a beneficial use.” *Teel Irrigation District v. Water Resources Dept of the State of Oregon*, 323 Or. 663, 666-667 (1996). That law provides context for ORS 539.180.

The effect of these proposed stays is to give the petitioners alone the benefit of the water right that was stayed. That violates the prior appropriation doctrine because those with more senior and better rights would not get any part of the water as they should. Thus, the term “in part” does not mean that a water right can be stayed only for the benefit of certain other water users as requested.

All Attorneys
Re: Matter of the Waters of the Klamath Basin
July 15, 2013
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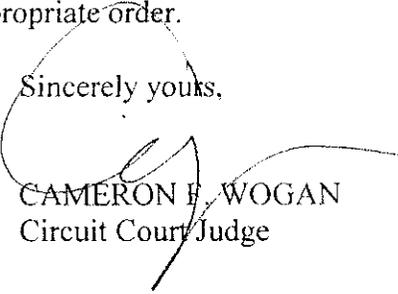
EXPLANATION ABOUT THE OBLIGATION TO PAY ALL DAMAGES

The law generally provides that someone who wants to stay or stop the effect of a lawful order or ruling while they appeal it must be prepared to pay for harm caused to the other party by the stay. Issues have developed about how those damages are paid.

To get a stay a party must file a bond or irrevocable letter of credit "...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." ORS 539.180 The petitioners want their potential liability to be limited to the amount of the bond. I now conclude that the obligation to pay damages is in addition to the bond and the amount of the bond is not a limit or cap to that promise because that is simply what the statute says. ORS 539.180; *State v. Gaines, 346 Or. 160 (2009)*. Furthermore, three times the Oregon legislature has rejected proposed amendments that would have created such a cap. The effect of this law is straight forward: If a water user is wrongfully harmed because of a stay, they should get paid for their entire loss.

Mr. Simmons should present an appropriate order.

Sincerely yours,



CAMERON F. WOGAN
Circuit Court Judge

CFW/bad



STATE OF OREGON
CLERK OF COURT
2013 AUG 15 PM 2:11

CAMERON F. WOGAN
Circuit Judge

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Sandra Goebel
Court Clerk

August 15, 2013

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 August 15, 2013
 Page 2

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Re: In the Matter of the Waters of the Klamath River Basin
 Case No: WS1300001/WS1300002/WS1300003 and WS 1300004

Dear Counsel:

I have read and considered letters that raise arguments about the form of the order relating to my July 15th, 2013 opinion letter. I have received arguments from the following:

<u>From</u>	<u>Date</u>	<u>Client</u>
Ms. Howard	7/30/13	UBC
Mr. Simmons	8/1/13	KPWU
Mr. Orford	8/1/13	Mathis Family Trust
Mr. Yockim	8/5/13	River Springs Ranch
Ms. Howard	8/6/13	UBC
Mr. Ullman	8/6/13	Klamath Tribe
Mr. Harder	8/6/13	USA

I now correct a statement made in my July 15th, 2013 letter. In the third full paragraph on Page 3 I incorrectly stated that I made no rulings in Case #WS1300004. That is incorrect because the directive that a party must agree to pay all damages as explained in the second paragraph on Page 3 applies to Case #WS1300004. In the case management conference on June 25th, 2013 the court indicated that this issue was a part of the consolidated hearing. Counsel for River Springs Ranch participated in that conference and the hearing itself.

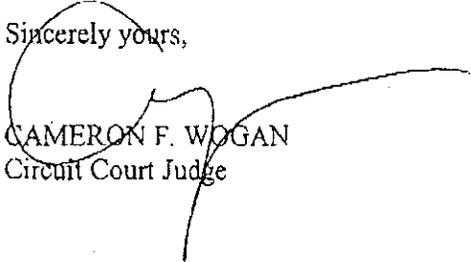
All Attorneys
Re: Matter of the Waters of the Klamath Basin
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Page 3

Mr. Simmons should submit a new order identical to that submitted earlier except that the sentence on Lines 12 and 13 on Page 2 should be replaced with the following:

The court thereby being fully advised, on July 15th, 2013 and August 15th, 2013
filed decision letters, attached hereto and incorporated by this reference.

This letter should be attached to the order.

Sincerely yours,


CAMERON F. WOGAN
Circuit Court Judge

CFW/bad