

January 25, 2019

Ivan Gall

Field Services Division Administrator

Oregon Water Resources Department

725 Summer Street NE, Suite A

Salem, OR 97301

Re: Comments to RAC Meeting Notes and Recommended Changes Proposed Interim Rules

Dear Ivan:

On behalf of The Klamath Tribes as a representative and member of the RAC I would offer the following recommendations. These recommendations include corrections to RAC meeting notes regarding comments made during the RAC meeting held on January 15, 2019. I would also like to include the written statement I provided via email to both yourself and Dani Watson on 1-16-19 (provided below) in the Attachments section. I would also like to propose revisions to the draft Division 25 rules OWRD released.

In regards to the Meeting Notes specifically in the comments under **690-025-0025** Section (1) in reference to my comments:

- Brad Parrish – Any impairment is impairment for a senior water user

The statement is part of what was said but needs to include what was also stated in ***The Klamath Tribes opposes impairment to a senior water user*** (by a junior water user).

I would like a correction to read as follows:

- Brad Parrish – The Klamath Tribes oppose impairment to a senior water user

Also in the comments under General Comments:

- Brad Parrish – Made statement as a representative of the Klamath Tribes. Several concerns: Various models and data should be created during the interim process; Klamath Tribes oppose the current rules as drafted and fiscal impact study; Certain instream rights are not being met; Klamath Tribes do not feel that current time frame allows for proper consultation with tribes and Bureau of Indian Affairs (OWRD requested statement be emailed them)

I would like a correction to read as follows:

- Brad Parrish – Made statement as a representative of The Klamath Tribes. Several concerns: Various data is required and models developed further during the interim process; Klamath Tribes oppose the current rules as drafted because they are not protective of surface water rights; certain instream rights are not being met partly as a result of groundwater extraction; current timeframe does not allow for proper consultation between The Klamath Tribes and Bureau of Indian Affairs

In the **Attachments** section which includes comments from Roger Nicholson, David Mosby, Troy Brooks and also Rob Annear I would also like to include my statement as part of the record. Italicized below is the statement.

I would like to share my appreciation for the inclusion to the RAC as a representative of The Klamath Tribes and hope to voice their concerns. By participating as a member in this RAC groundwater rule making process The Klamath Tribes does not waive its sovereign immunity nor any federal rights, including treaty rights to surface and ground-water.

I Brad Parrish am a representative of The Klamath Tribes meant to portray The Klamath Tribes goals and protect and enhance resources, yet also recognizing any final decisions must be vetted through The Klamath Tribes approved processes.

Several concerns surrounding this process include the timeframe of both the interim rulemaking as well as the proposal of development of basinwide rules by the end of a 2 year process. It is my belief in order to protect all current adjudicated surface water rights of the Klamath Basin various data is required and models developed further. Data from well use including but not inclusive of groundwater depth and total use should be required in the basin during this interim process as necessary data for the development of groundwater rules.

The Klamath Tribes currently oppose the proposed interim rules because they are not protective of any surface water rights regardless of priority date as stated in the Statement of Need and Fiscal Impact provided. Although several groundwater studies conducted in the basin have documented the hydraulic connection of surface water and groundwater, the interim rules proposed are not protective of adjudicated surface waters.

Certain instream determined claim reaches are rarely met and it is believed as at least partly resulting from current groundwater extraction. These statements being shared, The Klamath Tribes would like to assist in the development of rules that are protective and inclusive of current adjudicated surface water rights as well as federally reserved groundwater rights, this process should include the BIA as trustee for The Klamath Tribes. The current scheduling has not afforded consultation of the BIA by the Klamath Tribes partly as a result of the government shutdown as well. The Klamath Tribes look forward to participating in the process with this understanding.

Proposed modifications to the January 24, 2019 revised draft Interim Rules, Chapter 690, Division 25, as follows:

690-025-0020:

Insert the phrase “right arising under applicable federal law” to the definition of “Existing Rights of Record” after the phrase “groundwater registrations” to read as follows:

- (2) “Existing Rights of Record” means authorized groundwater uses, determined claims, groundwater registrations, **rights arising under federal law** and surface water rights.

Recommendation to strike domestic and municipal from the “well” or “wells” definition.

- (9) “Well” or “wells” means a well as defined in ORS 537.515(9) that is located in the Upper Klamath Basin and is used to beneficially withdraw water for authorized groundwater uses including ~~domestic~~, stock, irrigation, industrial, ~~municipal~~ and aquifer storage and recovery uses.

The striking of domestic and municipal wells needs to include a moratorium on future applications or cap on current use during the interim while basinwide rules are developed.

690-025-0040:

- (1) In the Klamath Basin, **there is a rebuttable presumption that** groundwater and surface water are hydraulically connected. **To rebut this presumption, the party withdrawing or seeking to withdraw groundwater must demonstrate to the Department by clear and convincing evidence that no hydrologic connection exists between the groundwater reservoir being withdrawn or proposed to be withdrawn and surface water, and that such groundwater withdrawals have no measurable depletion to senior existing rights of record.**

Modify Subsection 6, (OAR 690-025-0040(6), as follows:

- (6) The Department ~~may~~ **shall** regulate wells that are located a horizontal distance equal to or less than 500 feet from a source of surface water rights whenever a valid call for surface water is made and the Department is regulating in accordance with the users’ existing rights of record. ~~Under this rule, the Department will not regulate wells located a horizontal distance greater than 500 feet from a source of surface water.~~

Add a new Subsection 7, OAR 690-025-0040(7), as follows:

- (7) **Whenever a valid call for surface water is made and the Department is regulating in accordance with the users’ existing rights of record, the Department may regulate wells that are located horizontal distance greater than 500 feet from a source of surface water rights if such regulation will provide effective and timely relief to the right(s) for which the valid call has been made.**

Make the following revision to new Subsection 7, (OAR 690-025-0040(7), as follows:

- ~~(7)~~ Groundwater regulation in the Upper Klamath Basin before March 1, 2021, will occur pursuant to OAR 690-0025-0020 to OAR 690-0025-0040. After March 1, 2021, OAR 690-0025-0020 to OAR 690-0025-0040 will no longer be in effect and groundwater regulation in the Upper Klamath Basin will occur under OAR 690-009, unless the Commission adopts new rules governing groundwater regulation in the Upper Klamath Basin **prior to March 1, 2021.**

The above corrections to the “Notes” are more reflective of the statement I provided and the recommended revisions to the rules is required for protection of current ACFFOD determined claims of the Upper Klamath Basin.

Sincerely,

Brad Parrish

Water Rights Specialist

The Klamath Tribes Research Station