

## *The Network Note* **April 2021** *Focus on Oregon*

### ***Race, Federal Indian Policy, and Access to Water*** **Parts III – The Lower Klamath River**

*Dividing the Waters* will convene its 3<sup>rd</sup> webinar on racial justice and water, addressing tribal water interests in the Lower Klamath River conflict. The participants will include representatives from:

- The Yurok Tribe
- California Department of Fish & Wildlife
- Klamath River Renewal Corporation.

Instead of water rights, the Lower Klamath River conflict has focused on four power dams' impact on the salmon fishery, which is central to the River's tribal interests. Stay tuned for more information on the date/time for this webinar!

#### **OR: Administrative Water Right Adjudications**

When Oregon enacted its 1909 water act, it adopted the Appropriation Doctrine for water rights and required water users to obtain a right from the OR Water Resources Department (OWRD). It provided for OWRD administrative adjudication of pre-1909 water rights in each basin. Since 1999, OWRD has relied on ALJs in the independent Office of Administrative Hearings to review water right claims and present a draft adjudication decision for the OWRD Director's approval. Once the OWRD director approves, the state circuit court reviews the OWRD decision and the parties litigate.

In 1987, the Legislature enacted laws to recognize instream water rights and require water users in all remaining unadjudicated areas to file registration statements of their claims by 1995. Oregon law recognizes a formal link between surface and ground water. For groundwater uses, combined water rights must not exceed the average annual recharge to a groundwater source or result in the further depletion of over-appropriated connected surface waters. OWRD has adjudicated most major river basins, with the Klamath River Basin Adjudication still proceeding in Circuit Court.

#### ***Dividing the Waters Resources Available Online/Email***

The COVID-19 pandemic has led *Dividing the Waters* to expand its reach by offering its programs and resources online. Judges who may not have the budget or the time to participate in a conference have joined the Program's webinars and accessed publications. If you seek access to *DTW* resources, please contact the [Executive Director, Steve Snyder](#).

#### **OR: State Water Agencies**

OWRD has the longest history and the most substantial portfolio of state water agencies. Its mission is "practicing and promoting responsible water management." It has responsibilities for surface and groundwater management, with watermasters across the state. It develops and manages water data, and responds to water emergencies (*e.g.*, drought).

Oregon has many other agencies that also touch on water. In February 2020, Gov. Kate Brown announced the newest water agency, the Water Future Advisory Council. Others include:

- **Department of Environmental Quality:** Monitors and regulates water quality, under the Clean Water Act.
- **Department of Fish & Wildlife:** Protects and enhances fish habitat, including instream water rights management.
- **Water Resources Commission:** Engages five regional representatives to set statewide water policy, at OWRD.
- **Watershed Enhancement Board:** Issues state grants for watershed conservation and restoration projects.

#### **OR: Governor's 100-Year Water Vision**

In response to climate change and a growing population, OR Gov Kate Brown directed the OR Watershed Enhancement Board to engage Oregonians in creating a "100-Year Vision" for OR water resources. The Vision sets four goals:

- **Health:** Clean water for all who live in Oregon
- **Economy:** Sustainable and clean water to support local economic vitality
- **Environment:** Adequate clean, cool water to sustain Oregon's ecosystems for healthy fish and wildlife
- **Safety:** Resilient water supplies and flood protection systems for Oregon's communities

The Vision builds on the OR Water Resources Commission's 2017 "Integrated Water Resources Strategy."

#### **OR: Klamath River Basin Adjudication Legal Issues**

The State of Oregon's adjudication of the Klamath River Basin, in Oregon, started in 1976. Since then, judges, legislatures and agencies, in both OR and CA, have addressed numerous legal issues, including:

- **Tribal Fishing Rights:** *US v. Adair* (9<sup>th</sup> Cir. 1983)
- **Endangered Species Act:** USFWS/NMFS (1997)
- **Clean Water Act:** CA SWRCB (1996-98)
- **Property Rights in Water:** *Baley v. US* (Fed. Cir. 2019)

***Ideas for Network Note? Court Decision on Water? Contact [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)***