BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 170

In the Matter of	)	
	)	OREGON NATURAL RESOURCES
PACIFIC POWER & LIGHT	)	COUNCIL, WATERWATCH OF
(dba PACIFICORP)	)	OREGON, AND PACIFIC COAST
	)	FEDERATION OF FISHERMEN'S
Request for a General Rate Increase in the	)	ASSOCIATIONS' REPLY BRIEF
Company's Oregon Annual Revenues	)	
(Klamath River Basin Irrigator Rates)	)	
	)	

March 13, 2006

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INTRODUCTION

The exceedingly low power rates paid by the individuals and organizations represented by the Klamath Water Users Association, Klamath Off-Project Water Users, and the Bureau of Reclamation (collectively, "Klamath irrigators") are approximately one tenth of those paid by similarly situated irrigators and do not meet the "just and reasonable" rate standard set forth in ORS chapters 756 and 757. In their Opening Briefs the Klamath irrigators argue that the current rates meet the "just and reasonable" standard set forth in ORS chapters 756 and 757. However, the fact that other PacifiCorp customers subsidize the Klamath irrigation rates at a cost of nearly 10 million dollars annually (ONRC et al./100, McCarthy/9) so that Klamath irrigators can pay rates of only $1/10^{th}$ the rates paid by other similarly situated irrigators served by PacifiCorp is a strong indicator that these rates do not meet the "just and reasonable" standard.

There is no reasonable basis for establishing a separate customer class for the Klamath irrigators in accordance with ORS 757.230. The Klamath irrigation rates should be raised to standard tariff and the transition should occur according to the terms of SB 81.

The Klamath irrigators should not be granted rate credits based on incorrect and incomplete hydrological analysis put forward by Klamath Off-Project Water Users ("KOPWU"), Klamath Water Users Association ("KWUA") and the Bureau of Reclamation ("BOR"). On its face, the theory that irrigated agriculture causes more water to flow downstream than would otherwise is absurd. The irrigators have propped up this theory through a complex series of assumptions, numerous critical omissions, selective reference to available studies and scientifically refuted depictions of Klamath

Basin hydrology. Their numbers, and their theories, must be rejected under any rational reading of the evidence in the record. Further, the claim that a separate customer class is warranted because the Klamath Basin irrigators use more power than irrigation customers who pay standard tariff must be rejected due to differences within the proposed class and based on the common-sense concept of price elasticity of demand.

There is no precedent for the irrigators' proposed rate credits and the Commission should not establish one here. In Oregon, all water belongs to the public and water right holders do not retain any legal interest in their return flows and are not allowed to use water appropriated under their water rights for a use not identified therein. ORS 537. 110; ORS 540.610; Hennings v. Water Resources Department, 50 OR.App. 121, 622 P.2d 333 (1981). Similarly, Oregon does not and should not reward landowners for reducing water infiltration on their property and increasing storm runoff through destruction of natural marshlands, wetlands and lakes.

Finally, moving the Klamath irrigators to standard tariff is in the public interest. An Oregon State University study found that moving these irrigators to standard tariff would not affect the viability of irrigated agriculture in the Klamath Basin. Included in the record as ONRC et al./103, McCarthy/9 (W. K. Jaeger, Energy Pricing and Irrigated Agriculture in the Upper Klamath Basin). Yet such a move will have the positive impacts of encouraging energy conservation, eliminating unfair competition between Klamath irrigators and other farmers around the state, and eliminating the inequitable transfer of wealth from other PacifiCorp customers to Klamath irrigators of nearly 10 million dollars annually (ONRC et al./100, McCarthy/9). Importantly, increased water conservation that will accompany the increased power rates will also help address the

needs of imperiled Klamath River salmon, other Endangered Species Act listed fish, Oregon's sport and commercial fishing industries, and Tribal water and fishing rights.

ARGUMENT

I. The current Klamath Basin irrigation rates and not "just and reasonable" and there is no basis for establishing a separate customer class.

The Klamath irrigators currently pay exceedingly low power rates that are approximately one tenth of those paid by similarly situated irrigators and do not meet the "just and reasonable" rate standard set forth in ORS chapters 756 and 757. These rates are subsidized by other PacifiCorp customers at a cost of nearly 10 million dollars annually (ONRC et al./100, McCarthy/9). Applying inflation to the Klamath irrigation rates since their inception (for example, by using the federal Consumer Price Index tables) alone shows that these rates are no longer reasonable. The Klamath irrigation rates are also unfair to other similarly situated irrigators separated only by geography in violation of Oregon's laws against discriminatory rates. ORS 757.310 and ORS 757.325.

There is also no basis for establishing a separate customer class for the Klamath irrigators. Their argument that a separate customer class should be established because they use more power per customer ignores the obvious cause and effect between the their exceedingly low rates and this high consumption. As Staff explained:

> Assuming the existence of a negatively sloping demand curve for electricity, the higher consumption by Klamath irrigators is significantly correlated to the very low price they pay for electricity . . . Economic theory would suggest that it is likely that a large increase in the price of electricity . . . will lower consumption.

Staff/1502, McNamee/8.

Establishing a class to perpetuate these low rates is circular.

Other reasons proposed by the Klamath irrigators in support of establishment of a special class of customers also fall short. See ONRC et al. Opening Brief at 41-43 (historical context does not support separate class); 38-39 and 44-45 (showing that there is no identifiable class).

II. KOPWU's hydrological theories offered to support a rate credit are not supported by the record.

KOPWU's assertion that it provides increased water supply to the Klamath River is based on its own incorrect version of basic Klamath hydrology that is not supported by the record, and fails to account for any of its surface water diversions or consumptive use. ONRC et al.'s Opening Brief discussed these issues in detail at pp. 4-16. Additionally, a few key problems evident in KOPWU's Opening Brief are addressed below.

A. KOPWU has not and cannot refute the fact that its groundwater pumping reduces surface flows.

KOPWU's proffered analysis ignores surface water impacts from both any long-term declines of groundwater levels and those documented from seasonal declines in the Off-Project area resulting from groundwater pumping. KOPWU depicts its consumptive groundwater pumping as a "free lunch" with no surface flow impacts for which it should be held accountable. This free lunch theory is not supportable and is clearly refuted by the record.

KOPWU claims "the quantitative evidence in the record provides no basis to conclude that ground water pumping is having a 'direct and immediate' impact on surface water flows." KOPWU Opening Brief at 21. Even if true, this statement in no way disproves the well-established fact that groundwater pumping in the Off-Project area reduces surface water flows. While determining the exact extent and timing of these

surface flow reductions is beyond the scope of this proceeding (and unnecessary to disprove KOPWU's theory), KOPWU's continued denial that these impacts exist at all severely undermines KOPWU's theory of increased water supply and associated calculations.

KOPWU ignores the fact that groundwater pumping can reduce flows at springs where groundwater discharges, as well as streamflows, by causing seasonal declines in groundwater levels, long-term declines in groundwater levels, or both at the same time. KOPWU fails to account for either and cannot refute the finding of the State of Oregon's Ground Water Report 41 ("Grondin Report") that ground water pumping in the Eastern Lost River sub-basin, an area dominated by Off-Project lands, reduces surface water flows. This report is the most in-depth and comprehensive analysis of groundwater resources in the Off-Project area currently available.[1] That KOPWU's expert, Mr. Rozaklis, failed to cite the leading hydrological analysis of groundwater pumping covering much of the Off-Project area or use this report in any way in his own analysis only underscores the highly selective and novel nature of his analysis and his conclusions.

KOPWU's expert, Mr. Rozaklis, reported that his analysis of Upper Klamath Basin irrigation wells showed that "long-term water levels in those wells are generally declining."[2] KOPWU/202, Rozaklis/15. He attributes these "downward trends" to

[1] KOPWU tries to minimize the importance of this report by portraying it as a narrow exercise conducted to examine 32 so-called ADR wells. KOPWU Opening Brief at 19. However, the report itself explains that the analysis went beyond these wells, stating that "the effort necessitated advancing the state of knowledge about the ground water system." ONRC et al./401 at 1. The report analyzed 243 water well reports in the Eastern Lost River sub-basin (ONRC et al./401 at 4) which is dominated by Off-Project lands.

[2] Rozaklis's assessment is inconsistent with the finding from the Grondin Report that "[g]enerally, the data indicate ground water levels in the sub-basin decline and recover seasonally and over multiple years" (KOPWU/609 at 10) (finding some areas of long-term decline only in the southeast Poe Valley) (ONRC et al./401 at 8). The former finding is also reported at p. 21 of KOPWU's Opening Brief though misquoted

groundwater pumping and states that they show that groundwater pumping is reducing aquifer storage rather than affecting streamflow.[3] Id. Rozaklis's claim that such drawdown would not affect streamflows is inconsistent with the Grondin Report's finding that:

> The interference affect on the Lost River and springs due to pumping ground water from basalt is directly proportional to the ground water drawdown in basalt at the river and springs. Larger drawdowns cause larger affects at the river and spring.

ONRC et al./401 at 7.

In other words, Rozaklis is incorrect in assuming that the long-term groundwater level declines – which he reports result from groundwater pumping – would not affect streamflows.[4]

Further, the Grondin Report's finding that, generally, groundwater levels in the Eastern Lost River sub-basin decline and recover seasonally does not support the

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with the "generally" deleted. This is likely due at least in part to the fact that one of the wells Rozaklis chose as representative, and that shows a decline over at least part of the time period, was in an area with well-documented well-construction problems that caused groundwater level declines. See ONRC et al./407 (Oregon Water Resources Department investigation into well-construction problems in Whisky Creek Area, near Sprague River). A well identified at p. 26 has this construction problem and has the same legal description (T36S/R12E-28) as the well Rozaklis analyzed. The well in the report is almost certainly the well chosen by Rozaklis, as there is only that section matching the age of Rozaklis's well according to Oregon Water Resources Department well-log data. (Clarify this)

[3] KOPWU seems to criticize ONRC et al. and PacifiCorp for asserting a drawdown in ground water levels, among other things (KOPWU Opening Brief at 17), but it was their own expert whose independent analysis included this finding.

[4] KOPWU's focus on the Grondin Report's conclusion regarding the lack of "excessively declining groundwater levels" is misplaced. See KOPWU Opening Brief at 19-20. First, as the Grondin Report explains, "excessive decline" is a legally defined term set forth by OAR 690-08-001. To convey that the terms are legally defined, presumably to avoid misinterpretation of its statements, the Grondin Report always shows "excessively declining groundwater levels" (and "excessive" for short) in quotes. KOPWU actually removes these quotation marks in at least one misquote from the report, effectively twisting the conclusion to one apparently of its liking. See KOPWU Opening Brief at 20 (quoting the report as concluding that "these declines are not considered excessive," in a qualitative sense when the actual conclusion is that "these declines are not considered "excessive"" as defined in the relevant rule). As an example of how the rule works, a groundwater decline of 20 feet was not considered "excessive" as a legal matter because the decline was "geographically limited." ONRC et al./401 at 6. Second, lack of legally defined "excessive" declines does not mean that pumping did not result in spring or streamflow impacts – the Grondin Report found several instances of such impacts in the very sub-basins where it found no legally "excessive" declines, as explained above.

conclusion that these declines do not cause surface water reductions, as KOPWU seems to argue. This represents a fundamental mischaracterization not only of the Grondin Report, but of basic Klamath hydrology. KOPWU Opening Brief at 21 (citing Grondin Report finding about seasonal recovery and adding that "[t]he 1974 USGS Report also described this seasonal ground water recharge, and there is no reasonable basis to dispute that it occurs."). The Grondin Report found both this general seasonal recovery and springs going dry from groundwater pumping, regardless of whether the groundwater is fully recharged during the winter. ONRC et al./401 at 10.

In three of the four sub-areas analyzed by the Grondin Report, the study found that springs had dried up in response to, in whole or in part, seasonal groundwater pumping. ONRC et al./401 at 10. Those sub-areas are: Bonanza; Swan Lake Valley to Poe Valley; south Langell Valley. Id. In the case of Poe and Langell valleys, seasonal groundwater pumping combined with drought to lower groundwater levels enough to stop the springs from flowing. In the Bonanza area, groundwater pumping on its own was enough to stop the spring from flowing. Obviously, dry springs impact the volume of streamflows. Rozaklis fails to account for these effects. Seasonal declines in groundwater levels can and do cause seasonal impacts to surface flows, impacts which Rozaklis simply ignored or assumed for purposes of his analysis did not occur. In sum, any objective or complete "water budget" related to the effects of groundwater pumping must account for the effects on surface water streamflows from groundwater pumping. Rozaklis' analysis fails to do this and should be rejected accordingly.

KOPWU also misunderstands or misrepresents the 1974 State of Oregon Ground Water Report 21, "Ground Water in Selected Areas in the Klamath Basin, Oregon,"

prepared by the USGS, which also contains important information about groundwater in the Off-Project area. Included in the record as KOPWU/610. As with the Grondin Report, Mr. Rozaklis did not review use this report in developing his testimony. KOPWU quotes the report's description of "volcanic-rock aquifers" that are confined above and below as supporting Rozaklis's theory that these aquifers are disconnected from surface flow.[5] See KOPWU Opening Brief at 17. However, KOPWU fails to note that the same report also explains at length how and where this groundwater discharges to spring and streams. For example, the report explains:

> A large part of the water infiltrating the ground seeps downward to deep zones and moves laterally toward and beneath the lowlands. Where favorable permeable zones or fractures are intersected by streams, some of this water is discharged by large springs, such as Big, Kamkaun, Medicine, and Bonanza . . . All the lowlands are areas of discharge where ground water is discharged by upward seepage from confined aquifers and through springs. Discharge is widespread in the prominent marshes such as Klamath Marsh, the marshy reaches of Sprague River and Langell Valley, and the closed basins of Yonna and Swan Lake Valleys.

KOPWU/610 at 23 (emphasis added). KOPWU wrongly equates this USGS report's term "confined aquifer" with a lack of hydraulic connection to surface water. Yet the report details in clear terms how and where this hydraulic connection occurs, including in the Off-Project areas such as Langell Valley, Sprague Basin, and Yonna and Swan Lake Valleys. Again, KOPWU selectively ignores this hydrology in its analysis, failing to account for the effects of groundwater pumping on streamflows in its "water budget."

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[5] The "volcanic-rock aquifers" that KOPWU claims are disconnected from streamflow are, of course, the same as the "basalt" aquifers that the Grondin Report concludes are "hydraulically connected to the Lost River." ONRC et al./401 at 9. These are also the same aquifers found by the Oregon Water Resources to be connected to surface water in the denials and proposed denials of four groundwater permit applications in the Williamson and Lost River basins due to potential for substantial interference with surface water found in the record at ONRC et al./403-406. For a description of the structure and attributes of these volcanic or basalt aquifers, see ONRC et al./205, Balance/12-15.

In summary, KOPWU has not and cannot refute the objective hydrological evidence showing that groundwater pumping in the Off-Project area can and does reduce surface water flows. KOPWU would have us believe that groundwater use is essentially a "free lunch" with no surface flow impacts. It is telling that this position has been rejected by all the relevant studies in the record except the one prepared by KOPWU's own Colorado-based expert, who apparently chose selectively to ignore leading hydrological studies and their conclusions regarding the effects of groundwater pumping on surface water flows in his own analysis.

B. KOPWU misunderstands the concepts of in-lieu pumpage and pumping directly to streams.

In its 1996 report on pre-Project hydrology of the Klamath Basin, prepared on behalf of the Yurok Tribe, ONRC et al.'s expert Balance Hydrologics, Inc. describes potential short-term tools for increasing lower river flows.[6] Included as ONRC et al./205 (Initial Assessment of Pre- and Post-Klamath Project Hydrology on the Klamath River and Impacts of the Project on Instream Flows and Fishery Habitat). The study examines

[6] KOPWU's attempt to undermine Balance's rebuttal testimony as a "brief review of these issues" in contrast to their expert's "authoritative study" (KOPWU Opening Brief at 13) falls flat. Balance has a long-term (over a decade) track record of work on Klamath Basin hydrology, has produced an in-depth and relevant study regarding pre-Project hydrology in 1996 (discussed above, and in the record as ONRC et al./205), and Principal Hydrologist Barry Hecht is extensively published on west coast hydrology issues (see ONRC et al./201, Balance/5-6). As evidenced throughout its testimony, Balance drew from its extensive Klamath experience, including field work in the basin, over many years in evaluating KOPWU's opening testimony (see Transcript at p. 295, ln 11—298, ln. 8). In contrast, KOPWU's expert Mr. Rozaklis works in Colorado, made only one two-day visit to the Klamath Basin in preparing his analysis (Transcript at p. 249, ln. 14-18) and his resume lists no project experience in Oregon or in the Klamath Basin. KOPWU also criticizes ONRC et al. for not serving data requests on KOPWU when WaterWatch served two, including a continuing data request (also served to KWUA) for any information KOPWU had relating to alleged contribution to surface water flows theory (WaterWatch's 1st Data Request to KOPWU in UE-171 (March 4, 2005); In its March 18, 2005 response, KOPWU replied that this issue was "not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence." KOPWU failed to provide any documents or other discovery in response to this data request. KWUA's data request response was similar. Additionally, as evidenced by ONRC et al./402, KOPWU did provide Rozaklis's workpapers to WaterWatch in response to a later data request.

the impact of the Klamath Project on flows below Iron Gate dam and proposes five physical solutions that could reduce the negative effects of the Project on aquatic habitat.

KOPWU focuses on only two of Balance's five proposed physical solutions, misrepresenting and then discrediting them as inconsistent with Balance's conclusions that groundwater pumping often lowers stream flows.[7] KOPWU Opening Brief at 13-14, 21 ("In other words, Balance previously agreed with the concepts that KOPWU has presented to justify the Off-Project rate.") This represents a serious misrepresentation of Balance's 1996 suggestions and/or of KOPWU's own pumping practices.

There are two flow restoration tools that Balance describes in its 1996 report that involve groundwater pumping: (1) in-lieu pumpage; and (2) occasional pumping directly to streams. ONRC et al./205, Balance/35. In-lieu pumpage is Balance's term for irrigation with groundwater that is done in-lieu of surface water irrigation only during dry years. Id. at 36. Though some Off-Project irrigators may do this, according to KOPWU's witness, 78% of Off-Project groundwater irrigated acreage is irrigated with groundwater every year. Moreover, these 78% of lands do not have an associated primary surface water right that would present an opportunity for in-lieu groundwater pumping. KOPWU/202, Rozaklis/9. In other words, in-lieu pumping represents a kind of groundwater savings account drawn upon only when absolutely necessary but otherwise left to draw interest when not needed. The year-after-year pumping on the 78% of KOPWU lands without associated primary surface water rights instead represents

[7] KOPWU's criticism regarding Balance's use of the Yreka's rain gauge in this 1996 Klamath hydrology study is also misplaced. See KOPWU Opening Brief at 26-27. Balance explained in detail to KOPWU why that gauge provided the best record for analyzing climatic fluctuations in the Klamath. Transcript at p. 304-308. KOPWU's criticism that Balance's professional judgment resulted in a "lack of precision [that] undermines its reliability for the purpose for which it was used" is not substantiated and should be disregarded.

a constantly used checking account. Thus, KOPWU cannot claim that their members' groundwater pumping is anything like in-lieu pumpage. In fact, according to KOPWU's witness, the opportunity is not even available to the vast majority of KOPWU members, because they lack surface water rights.

The second groundwater pumping tool Balance describes is "occasional pumping directly to streams," without first applying that water to a field to be consumptively used. ONRC et al./205, Balance/36-37. KOPWU members clearly pump for consumptive use on crop or pasture. Aside from use of the Bureau's Water Bank, there is no evidence that KOPWU members pump groundwater to augment streamflows of their own accord. The limited KOPWU participation in the Bureau's Water Bank should be excluded from consideration as these users have already been handsomely compensated for their efforts with taxpayer funds, as noted in ONRC et al's Opening Brief. Also, KOPWU reports its total Water Bank participation (combining in-lieu pumping and pumping directly to streams) as "at least 3,000 acre-feet per year." KOPWU/202, Rozaklis/24. This represents only 2% of the 131,000 acre-feet for which KOPWU seeks low power rates. Clearly, KOPWU members should not receive power rate reductions for doing something they are already well paid to do through the Water Bank. See ONRC et al. Opening Brief at 14-15 for a discussion of this issue.

In summary, nothing in Balance's 1996 study supports KOPWU's contention that "Balance previously agreed with the concepts that KOPWU has presented to justify the Off-Project rate." KOPWU Opening Brief at 14. The flow restoration groundwater pumping practices that Balance proposed make up a tiny and irregular fraction of KOPWU's groundwater pumping and are not in conflict with Balance's assessment of the

impacts of KOPWU's standard, consumptive and habitual groundwater pumping practices.

C. Off-Project agricultural development has decreased, not increased, inflows to the Klamath River in summer months as well as destroyed natural water storage originally providing those summer inflows.

KOPWU continues to maintain that it should be credited for the drainage of marshlands. KOPWU Opening Brief at 7. However, draining these marshlands has had significant adverse impacts on summer flows in the Klamath River.

As Balance explains, "the Project and expansion of irrigated agriculture in the upper Klamath Basin have reduced the persistent and sustained outflow during summer and during droughts." ONRC et al./205, Balance/34. The lower river flows are lower now in the summer than they used to be before extensive agricultural development, due in part to large scale draining and destruction of natural water storage in the Upper Basin that historically sustained these flows. Id. at 21 ("Expanding agricultural activities both within and beyond the Project boundaries has also led to the draining of wetlands and lakes which, ironically, at one time provided stored water and which ultimately sustained late season flows in the Klamath River.") See also id. at 41 for more discussion regarding long-term reductions of summer flows created by Project and Off-Project agricultural development.

Balance identifies "reclaiming the natural marshlands which have been drained and cultivated" as one way to increase natural storage in order to sustain Klamath River flows during dry seasons and droughts. Id. This is in stark contrast to KOPWU's claim of increased flows through destruction of 66,000 acres of these same natural marshlands. The analysis by Mr. Rozaklis does not take into account the long-term hydrological

losses of summer and late summer flows, much less the loss of aquifer recharge functions that have resulted from the destruction of the vast natural water storage systems (wetlands, marshes, and lakes) now converted to consumptive irrigation uses.

D. KOPWU misrepresents the hydrology connecting Upper Klamath Lake to certain Off-Project areas, even though it received responses to thirteen data request questions from ONRC et al. explaining this issue in detail.

In its Second Data Request to ONRC et al., KOPWU asked thirteen questions regarding a sentence at ONRC et al./200, Balance/3, ln.24-26 in Balance's rebuttal testimony regarding removal of Klamath River water for irrigation use in the Lost River, Pine Flat, Yonna and Swan Lake Valleys. KOPWU 2nd Set of Data Requests to ONRC et al., DRs 2.3 to 2.15 inclusive. In response, KOPWU received a detailed description of: (1) how groundwater pumping in these areas draws ground waters to them which would otherwise flow to Upper Klamath Lake; and (2) how groundwater moves within these and adjacent areas. Balance clarified that the water in question moved in underground aquifers and not the non-existent diversion canals inferred by KOPWU.

At the Evidentiary Hearing, KOPWU submitted into evidence only a portion of the ONRC et al. response, specifically excluding these detailed explanations, then objected strenuously when WaterWatch made a motion to submit the entire response. Transcript at p. 143, ln 8-22. Yet KOPWU now includes a heading in its opening brief exclaiming that "Balance Falsely Claims that Water is Diverted from Upper Klamath Lake to Off-Project Lands." At 24. In an apparent effort to mislead the Commission regarding Balance's testimony, KOPWU also points out that "[n]o canals extend to this area from Upper Klamath Lake" KOPWU Opening Brief at 24. In fact, KOPWU has completely misrepresented Balance's testimony and subsequent data request response,

which addressed hydrological and aquifer connections between these locations and not water transported through surface canals. If KOPWU was unable to comprehend the scientific detail in the data request responses it received from ONRC et al., it should have asked for further explanation rather than choosing to ignore the information provided, attempting to block its inclusion in the record, and reverting back to its own incorrect interpretation of Balance's testimony.

ONRC et al. now understand the point of KOPWU's strenuous objection to including the rest of the data request responses in evidence – a complete exhibit would have undermined KOPWU's desire to make this misleading argument by using only a portion of the responses. To correct and complete the record, our full response to the original KOPWU questions on this issue is attached as Exhibit 1.

III. KWUA's analysis does not support a rate credit or perpetuation of low rates on any other basis.

KWUA's assertion that it provides increased flow in the Klamath River fails to properly account for its consumptive use, instead pointing out the fact that the water rights it uses are senior to PacifiCorp's.[8] ONRC et al.'s Opening Brief discussed these issues in detail at pp. 17-20. Additionally, a few key problems evident in KWUA's Opening Brief are addressed below.

A. KWUA misunderstands the nature of Oregon water rights.

KWUA's Opening Brief states that:

> There is nothing in the On-Project Irrigators' water rights that requires them to return to the Klamath River water they have lawfully diverted and appropriated.

[8] Curiously, KWUA's analysis never reveals that the most senior water rights in the basin belong to the Klamath Tribes. The priority date for such rights is "time immemorial." U.S. v. Adair, 723 F2d 1394 (9th Cir. 1983). When these tribal rights are quantified, they will be senior to all other water rights in the basin, including any held by BOR, KUWA, or its members.

KWUA Opening Brief at 11.

This is not correct under Oregon water law.

Oregon water law requires the holder of a water right to return any water diverted but not used for the specific beneficial use identified in the permit or claim back to Oregon's waterways. See ORS 537.110 ("All water within the state from all sources of water supply belongs to the public); ORS 540.610 ("Beneficial use shall be the basis, the measure and the limit of all rights to the use of water within this state."); Hennings v. Water Resources Department, 50 Or.App. 121, 622 P.2d 333 (1981) (upholding an Oregon Water Resources Department forfeiture action against a permit holder who used water for purpose other than the beneficial use of irrigation identified in the permit).

It is true that depending on the location of the On-Project water user, water not used for the beneficial use (irrigation) may be returned first to a tributary of the Klamath River, and not directly to the river itself, but the portion not beneficially used must be returned under Oregon law. KWUA is incorrect in asserting that it has no duty to return water it does not use to the Klamath River, and adopts a legally erroneous position when it claims any right for compensation for unused irrigation water returned to the Klamath River. See ONRC et al. Opening Brief at 31-35 for further discussion on Oregon water rights, the public ownership of Oregon's waters, and the limit on Oregon water right holders to use appropriated water only for the beneficial use identified in the permit or claim.

B. KWUA's statement that there is substantial evidence in the record showing that increased power rates will result in decreased water efficiencies within the Klamath Project is incorrect and unsupported.

KWUA criticizes Staff for ignoring "the substantial evidence in the Record that indicates that increased power rates would result in *decreased* water use efficiencies within the Klamath Irrigation Project." KWUA Opening Brief at 8. KWUA does not cite anything in support of this contention. Contrary to KWUA's contention, the record shows that along with increased power rates will likely come increased water conservation. See Reclamation/Service/1, Cole/3 ("As water conservation increases along with power rates . . ."); ONRC et al./103, McCarthy/8 ("The proportion of lands planted to water- and energy-intensive crops likely would decline relative to non-water intensive and non-energy intensive crops;" id. at 9 (suggesting that some marginal lands would no longer be irrigated resulting in a reduction of irrigation diversions.)

Importantly, the increased water conservation that will accompany the increase in power rates will also help address the needs of imperiled Klamath River salmon, other Endangered Species Act listed fish, sport and commercial fishermen, and Tribal water and fishing rights. The water and power conservation that could be achieved by moving Klamath irrigators to Schedule 41 is especially critical in the Klamath Basin, where legitimate needs for water go unmet even in normal water years and water conflicts are pervasive.

C. Contrary to KWUA's assertion, there is no precedent for what the Klamath irrigators are requesting of the Commission.

KWUA attempts to lump its request for reduced power rates in with multiple examples of customers who have received credits for voluntarily reducing loads or that

"service load using renewable resources." KWUA Opening Brief at 16. KWUA does neither of these things. KWUA instead reports that its members use more power per customer than the customers served under Schedules 41 (KWUA/102, Schoenbeck/6) and do not claim to have offered to reduce these unusually high loads. To our knowledge, KWUA also does not specifically utilize renewable power but rather is served on PacifiCorp's standard power grid, which delivers power from both renewable and non-renewable sources. Therefore, KWUA power use is not like the other customers it cites as having received rate credits.

D. KWUA's proposal to set rates at cost of service based on cost of power production from PacifiCorp's Klamath dams is highly problematic.

KWUA proposes, as an alternative to receiving rate credits, that the On-Project irrigators receive power "at cost" from PacifiCorp's Klamath River Hydroelectric Project. It proposes that this cost would be equal to "PacifiCorp's fully embedded investment in the facilities, plus the expenses incurred in operating and maintaining the facilities." KWUA Opening Brief at 23. KWUA's proposal is problematic for several reasons.

This hydroelectric project is currently undergoing relicensing by the Federal Energy Regulatory Commission ("FERC") (Docket P-2082-027). Hydroelectric projects must be brought into compliance with federal environmental laws, including the Endangered Species and Clean Water Acts, in order to get new licenses from FERC. Due to the age of PacifiCorp's Klamath dams, the lack of fish passage facilities, and associated water quality problems, major and potentially expensive alterations will be necessary for these dams to receive a new FERC license. The costs of these upgrades, which could run into the hundreds of millions of dollars, would have to be considered as

part of the PacifiCorp investment in the facilities and be passed on as cost of service to the Project and Off-Project customers, substantially upping the costs of service calculation. In the alternative, some or all of the dams may be decommissioned at considerable expense.

The Commission should not link KWUA's (or KOPWU's or the BOR/USFWS's) power rates to specific dams which will likely incur considerable expense in the near future and may cease to exist. Linking rates to dams which may soon be decommissioned would only add further confusion to this already complex issue. Such rate linkages to a specific set of dams would also be problematic because dam costs change, dams sometimes fail or must be shut down, and every dam must eventually be decommissioned at the end of its engineered life span. Most importantly, both Project and Off-Project irrigators use power from the PacifiCorp's whole power grid, not just these dams. The Commission should not set the Klamath irrigators power rate as though all Klamath irrigation power comes from the Klamath dams because it does not.

IV. Any payment due to the Bureau of Reclamation should be addressed through the payment of annual dam uses charges in accordance with FERC's Janaury 20, 2006 order.

FERC recently issued an order denying the Department of Interior petition seeking a declaratory order regarding inclusion of the historic power rates on any annual license issued for PacifiCorp's Klamath River Hydroelectric Project (Klamath Project No. 2082). In the January 20, 2006, order FERC ensured that Government dam use charges would be decoupled from PacifiCorp's retail rates and to set such charges based on the graduated fixed rates set forth in 18 C.F.R. § 11.3(b). See PPL/1908, Richardson/11. To the extent the Department of Interior should be compensated by PacifiCorp, these annual dam use

charge rules appear to provide the appropriate – and legal – vehicle. Such compensation to the Department of Interior should not be achieved through a retail rate subsidy paid for by other PacifiCorp customers, for which there is no basis in Oregon or federal law.

V. The Klamath Basin Compact supports movement of Klamath Basin Irrigators to standard tariff.

KWUA, KOPWU and BOR all continue to argue that Article IV of the Klamath Basin Compact ("Compact") dictates that they should receive subsidized power rates forever, all based on an out-of-context and incomplete misreading of the partial clause "lowest power rates that may be reasonable" embedded in a small part of an inter-state water sharing agreement.

Even assuming, arguendo, that the Compact is relevant here, the Commission must give full meaning to the Compact's equally positioned goal of "securing the most economical distribution and use of water." See ONRC et al. Opening Brief at 40-42. Today, imperiled Klamath salmon runs, other Endangered Species Act listed fish, associated fisheries closures and their impacts on local and regional economies, as well as unmet Tribal water and fishing rights, all must be considered under Article IV. The goal of economical distribution and use of water cannot be met if low irrigation power rates that inhibit conservation of water are perpetuated. See id. for full discussion.

VI. Neither the On-or Off-Project irrigators or the BOR retains any interest in the return flow from their water rights or the ability to apply any of the water to a use not identified in the permits or claims.

The Commission should not entertain the rate credit theories that are based on the alleged increased flows because these theories are in direct conflict with Oregon water law. In Oregon all water belongs to the public (ORS 537.110) and water right holders

only have a right to use the water needed for the beneficial use identified in their permit or claim. ORS 540.510; 610. The irrigators do not retain any interest in their return flows and if they did, they would not be permitted to use that water for a purpose (i.e. trading for a rate credit) not identified in the water permit or claim. See ONRC et al. Opening Brief at 31-35 for further discussion on Oregon water rights, the public ownership of Oregon's waters, and the limit on Oregon water right holders to use appropriated water only for the beneficial use identified in the permit or claim.

Finally, while hydroelectric generation is a specific beneficial use recognized under Oregon law, there is no evidence in this record that any irrigator holds or has applied for any specific hydroelectric permit or license to appropriate waters of Oregon to generate electricity through PacifiCorp's hydro project on the Klamath River. See generally, ORS Chapter 543 (governing appropriation of waters for hydroelectric purposes).

VII. Transitioning the Klamath Basin irrigators to standard tariff is in the public interest.

Contrary to KOPWU's assertion that perpetuating low power rates for Klamath Basin irrigators in the Klamath Basin is in the public interest (KOPWU Opening Brief at 45), it is moving the Klamath Basin irrigators to standard tariff that best serves the public interest.

The Oregon State University study regarding the Klamath irrigation power subsidy found that movement of the Klamath Basin irrigators to standard tariff would not harm the viability of agriculture in the Upper Klamath Basin:

> Overall, the analysis above indicates that most of the irrigated lands in the Upper Klamath Basin (and in particular those lands within the Klamath Reclamation Project) are highly productive and would continue to be profitable to irrigate under energy prices and fees currently paid by farmers in other parts of Oregon and northern California. Indeed, the viability of agriculture in the region does not

depend on the current low energy prices, although these prices provide significant financial benefits to landowners and owner-operators in the region.

ONRC et al./103, McCarthy/9 (emphasis added).

At the same time, such a move will eliminate the need for other PacifiCorp customers to subsidize the rates of these irrigators, encourage energy conservation, and eliminate unfair competition between irrigators in the Klamath and others around the state. Importantly, the increased water conservation that will likely accompany the increase in power rates will also help address the needs of imperiled Klamath River salmon, other Endangered Species Act listed fish, sport and commercial fishing industries and the regional and local economies they support, and Tribal water and fishing rights.

VIII. SB 81 should be implemented to result in a maximum seven-year ramp to standard tariff as intended.

ONRC et al. believe that the correct interpretation of SB 81 would result in a seven-year maximum ramp to standard tariff. The irrigators attempts to lengthen the ramp should be rejected. We support the implementation method recommended by Staff.

CONCLUSION

The extremely low power rates currently paid by the Klamath irrigators are approximately $1/10^{th}$ of those paid by other irrigators served by PacifiCorp in Oregon, are not "just and reasonable" under ORS chapter 756 and 757, are discriminatory under ORS 757.310 and ORS 757.325 and should be raised to the PacifiCorp's standard irrigation tariff.

There is no reasonable basis for establishing a separate customer class for any Klamath irrigators. The series of critical omissions and scientifically refuted depictions of Klamath Basin hydrology that have been used to prop up the theory that irrigated

agriculture causes more water to flow downstream than would otherwise do not support the rewarding of rate credits of any sort and must be rejected. Establishment of the standard tariff for Klamath Basin irrigators is required by Oregon rate setting statutes, is in the public interest and should be the outcome of this proceeding.

Respectfully submitted this 13th day of March, 2006,

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 170

In the Matter of PACIFIC POWER & LIGHT (dba PACIFICORP) Request for a General Rate Increase in the Company's Oregon Annual Revenues.	)	OREGON NATURAL RESOURCES COUNCIL ET AL. RESPONSE TO THE KLAMATH OFF-PROJECT WATER USERS, INC.'S SECOND SET OF DATA REQUESTS TO OREGON NATURAL RESOURCES COUNCIL ET AL.

Dated: February 14, 2006

Pursuant to Oregon Rules of Civil Procedure, including ORCP 36, 43 and other applicable rules of procedure in this proceeding, including OAR 860 Division 14, Oregon Natural Resources Council, Pacific Coast Federation of Fishermen's Associations and WaterWatch of Oregon, ("ONRC et al.") responds to the second set of data requests of the Klamath Off Project Water Users, Inc. ("KOPWU") as follows:

GENERAL OBJECTIONS AND GENERAL RESPONSE

A. ONRC et al. objects to KOPWU's definitions and instructions to the extent they attempt to impose obligations inconsistent with or in excess of those imposed by the Oregon Rules of Civil Procedure or rules of procedure relevant to this proceeding. In particular, and without limitation, ONRC et al. objects on this basis to all of KOPWU's definitions and instructions and specifically definitions 2, 6, and 7 and instructions 1-10 and 12 – 14. ONRC et al. also objects to the definitions and instructions on the grounds they are vague and ambiguous.

B. ONRC et al. objects to the production of responses to these data requests or any documents at the office of Kathryn Iverson in Surprise, Arizona. Any documents provided will be made available to counsel for KOPWU in Portland, Oregon.

C. ONRC et al. objects to each data request to the extent that it seeks information protected by the attorney-client privilege and/or work-product privilege and/or other applicable privilege or immunity. To the extent documents protected by any such privilege or immunity inadvertently are produced, such production is not an intentional relinquishment of the right to assert such privilege or immunity and shall therefore not be a waiver of such right unless ONRC ET AL. expressly indicates otherwise.

D. ONRC et al. objects to each data request to the extent that it seeks the production of documents relating to or containing confidential and/or proprietary information. Without waiving this objection, to the extent each data request seeks the production of documents relating to or containing such confidential and/or proprietary information, any production of documents by ONRC et al. responsive to each such data request will be made only after an appropriate protective order has been entered in this proceeding. To the extent confidential or proprietary documents are inadvertently produced, such production is not an intentional relinquishment of the right to assert any privilege related to such documents and shall therefore not be a waiver of such right unless ONRC et al. expressly indicates otherwise.

E. ONRC et al. objects to the requests to the extent they purport to require ONRC et al. to conduct computer forensic work on grounds it would be unduly burdensome and prohibitively expensive.

F. ONRC et al. objects to these data requests to the extent they seek to require ONRC et al. to locate, collect, copy and provide to KOPWU documents available as public records. The administrative and financial burden of locating, obtaining and photocopying such records is appropriately borne by KOPWU, the party requesting such

documents. Further, ONRC et al. objects to conducting, and will not conduct literature reviews of scientific publications for KOPWU's benefit.

G. All of the preceding General Objections and the General Response are incorporated by reference in each of the specific responses below.

SPECIFIC RESPONSES

2.1 Please provide a copy of all workpapers, including electronic files, that support the testimony and exhibits filed by ONRC et al. on February 6, 2006. For electronic files, please provide the file in the originating software with all formulae intact.

Response: In addition to citations, including to documents on the web, in the testimony, please see attached.

2.2 Please describe all numerical reviews and quantitative analyses that could not be completed with the materials provided and timeframe allowed, as indicated on ONRC et al./204, Balance/1.

Response: ONRC et al. objects to this request on the basis that it is vague and ambiguous. ONRC et al. further objects to this request on the basis that it is not our duty to describe for KOPWU analyses that Balance did not have time to formulate or implement. Balance staff simply noted, and continue to maintain, that the Bartell, Rozaklis, and Van Camp testimony present a large, disparate, and mainly new set of theories and computations. Because the amount of time presumably spent in developing these three declarations seems so disproportionate to the time allotted to respond to them, the Balance staff are letting the Commission know that a more equitable timeframe would have made it possible to develop further response to these new theories and computations.

2.3 Please provide all documents relied upon for Balance Hydrologics' statements in several locations that water is removed from Upper Klamath Lake to serve lands in the Lost River Drainage. E.g., ONRC et. al/200, Balance/3: "Mr. Bartell overemphasizes water 'added' by agriculture, but does not recognize water diverted from Upper Klamath Lake to Yonna and Swan Valleys ("Pine Flat") and other de-facto off-Project areas."

Response:
Leonard, A. R. and Harris, A. B. 1974. Ground water in selected areas in the Klamath Basin, Oregon. Oregon State Engineer, Ground Water Report #21. Portland, OR (attached); KOPWU/102, Bartell/3 (Note: It is not clear to us what nature of diversion, if any, this figure portrays, but whatever diversions occur or would occur would deplete Upper Klamath Lake.). Emerging USGS portrayals of the upper Klamath basin are available on the web, as cited in Rozaklis testimony (KOPWU/202). The 2004 OWRD study of the Eastern Lost River Subbasin is available at

http://www1.wrd.state.or.us/files/studies/bonanza/GW_Rpt_41_E_Lost_River_Sub_Basin/ (Executive Summary attached)

2.4 Please provide all documents or workpapers Balance Hydrologics relied on showing that water is diverted from Upper Klamath Lake to Yonna Valley.

Response: KOPWU/102, Bartell/3; Leonard, A. R. and Harris, A. B. 1974. Ground water in selected areas in the Klamath Basin, Oregon. Oregon State Engineer, Ground Water Report #21. Portland, OR (attached). KOPWU/102, Bartell/3 (Note: It is not clear to us what nature of diversion, if any, this figure portrays, but whatever diversions occur or would occur would deplete Upper Klamath Lake.). Emerging USGS portrayals of the upper Klamath basin are available on the web, as cited in Rozaklis testimony (KOPWU/202). The 2004 OWRD study of the Eastern Lost River Subbasin is available at http://www1.wrd.state.or.us/files/studies/bonanza/GW_Rpt_41_E_Lost_River_Sub_Basin/ (Executive Summary attached)

Otherwise, see response to 2.3

2.5 Please explain how it is physically possible to divert water from Upper Klamath Lake to Yonna Valley, utilizing existing canal or diversion systems. Specifically identify canals and diversion works that divert water from Upper Klamath Lake to serve Yonna Valley. Please explain and identify each canal system or other diversion works that divert water to Yonna Valley out of Upper Klamath Lake.

Response: See response to 2.8

2.6 Please admit or deny that there is no water diverted out of Upper Klamath Lake to serve any Lands in Yonna Valley. If denied, please provide documentation that shows water is diverted out of Upper Klamath Lake to irrigate these lands.

Response: We deny "that there is no water diverted out of Upper Klamath Lake to serve any Lands in Swan Lake and Yonna Valley," with the clarification that in addition to any direct diversions from UKL to Yonna Valley, which may or may not exist, by this we mean that pumping of wells in the Yonna Valley can draw ground waters into the Swan Lake and Yonna Valleys which otherwise would flow to Upper Klamath Lake, pumping in the Yonna Valley diverts recharge to ground water flowing into Upper Klamath Lake is diverted into wells supporting agricultural uses in the Swan Lake Valley. Lastly we direct KOPWU to our note about KOPWU/102, Bartell/3 in the response to 2.3.

2.7 Please provide all documents or workpapers Balance Hydrologics relied on showing that water is diverted from Upper Klamath Lake to Swan [Lake] Valley.

Response: See response to 2.3 and 2.4

2.8 Please explain how it is physically possible to divert water from Upper Klamath Lake to Swan [Lake] Valley, utilizing existing canal or diversion systems. Specifically identify canals and diversion works that divert water from Upper Klamath Lake to serve

Swan [Lake] Valley. Please explain and identify each canal system or other diversion works that divert water to Swan [Lake] Valley out of Upper Klamath Lake.

Response: First, pumping of wells can draw ground waters into the Swan Lake, Yonna and other nearby valleys which otherwise would flow to Upper Klamath Lake. Surface and ground waters in this portion of Klamath County are interconnected (see, e.g., Leonard and Harris (1974) (attached)). To the extent that pumpers in Yonna and nearby valleys are drawing down water levels – either seasonally or (as Mr. Rozaklis cites) over the long term, they draw away some ground water which would otherwise flow into Upper Klamath Lake from the important recharge areas in northern upper Williamson and Sprague watersheds, causing it to be diverted to Yonna Valley and Lost River watershed. None of the water diverted from Klamath Lake will return to it, as these valleys are lower than the lake. Much or most of the ground water drawn into the Lost River watershed will not return to the Klamath River system where it can sustain fish and other significant natural or cultural resources.

Secondly, pumping in the Swan Lake and Yonna Valleys diverts recharge to ground water flowing into Upper Klamath Lake from beneath Hogback Mountain into wells supporting agricultural uses in the Swan Lake Valley. The amount diverted will depend in part on length of time that pumpage occurs in Swan Lake Valley and in part on how far down ground-water levels are drawn, especially along the northwestern and western portion of the valley.

Finally, we note that Mr. Bartell's testimony includes a diagram that appear to us to indicate water is coming out of Upper Klamath Lake. KOPWU/102, Bartell/3. It is not clear to us what nature of diversion, if any, this figure portrays. It seems reasonable that whatever diversions occur or would occur will deplete Upper Klamath Lake.

ONRC et al. has no other knowledge of specific canal, diversion systems or diversions works as described in this request.

2.9 Please admit or deny that there is no water diverted out of Upper Klamath Lake to serve any Lands in Swan [Lake] Valley. If denied, please provide documentation that shows water is diverted out of Upper Klamath Lake to irrigate these lands.

Response: We deny "that there is no water diverted out of Upper Klamath Lake to serve any Lands in Swan [Lake] Valley," with the clarification that in addition to any direct diversions from UKL to Swan Valley, which may or may not exist, by this we mean that pumping of wells in the Swan Lake Valley can draw ground waters into the Swan Valley which otherwise would flow to Upper Klamath Lake, pumping in the Swan Lake Valley diverts recharge to ground water flowing into Upper Klamath Lake is diverted into wells supporting agricultural uses in the Swan Valley. Lastly we direct KOPWU to our note about KOPWU/102, Bartell/3 in the response to 2.3.

Further, see response to 2.8.

2.10 Please provide all documents or work papers Balance Hydrologics relied on showing that water is diverted from Upper Klamath Lake to Pine Flat.

Response: See response to 2.3, 2.4, and 2.9.

2.11 Please explain how it is physically possible to divert water from Upper Klamath Lake to Pine Flat, utilizing existing canal or diversion systems. Specifically identify canals and diversion works that divert water from Upper Klamath Lake to serve Pine Flat. Please explain and identify each canal system or other diversion works that divert water to Pine Flat out of Upper Klamath Lake.

Response: ONRC et al. object on the basis that the request mischaracterizes Balance's rebuttal testimony. ONRC et al. further responds by referring KOPWU to the response to 2.8. ONRC et al. has no other knowledge of specific canal, diversion systems or diversions works as described in this request.

2.12 Please admit or deny that there is no water diverted out of Upper Klamath Lake to serve any lands in Pine Flat. If denied, please provide documentation that shows water is diverted out of Upper Klamath Lake to irrigate these lands.

Response: We deny "that there is no water diverted out of Upper Klamath Lake to serve any lands in Pine Flat," with the clarification that in addition to any direct diversions from UKL to Pine Flat, which may or may not exist, by this we mean that pumping of wells in the Pine Flat area can draw ground waters into the Pine Flat area which otherwise would flow to Upper Klamath Lake, pumping in the Pine Flat area diverts recharge to ground water flowing into Upper Klamath Lake is diverted into wells supporting agricultural uses in the Pine Flat area. Lastly we direct KOPWU to our note about KOPWU/102, Bartell/3 in the response to 2.3.

Further, see response to 2.8.

2.13 ONRC et al./204, Balance 2 states: "Neither Mr. Bartell nor Mr. Rozaklis account for the fact that irrigated agriculture in the Klamath Project and off –Project areas removes many tens of thousands of acre feet each year from the Klamath River for summer irrigation for use in the Lost River, Yonna and Swan Valley and other adjacent watersheds." Please identify and provide all documents Balance Hydrologics relied on showing that water is diverted from the Klamath River or Upper Klamath Lake to Off-Project lands in the Lost River Drainage. Please identify specific quantities of water that are diverted to Off-Project lands in the Lost River Drainage.

Response: See responses to 2.3 and 2.4. ONRC et al. have not compiled any specific quantities of water diverted to Off-Project lands in the Lost River drainage.

2.14 Please specifically identify those Off-Project lands in the Lost River Drainage that receive water from Upper Klamath Lake or the Klamath River.

ONRC et al. has not compiled information regarding the specific Off-Project lands that receive water from Upper Klamath Lake or the Klamath River.

2.15 Please admit or deny that no off-project water users in the Lost River Drainage receive water from Upper Klamath Lake or the Klamath River. If denied, please specifically identify those lands and the quantity of water diverted out of the Klamath River Drainage to serve those lands and please provide all documents supporting such a conclusion.

Response: We deny "that no off-project water users in the Lost River Drainage receive water from Upper Klamath Lake or the Klamath River," with the clarification that in addition to any direct diversions from UKL to the Lost River, which may or may not exist, by this we mean that pumping of wells in the Lost River can draw ground waters into the Lost River area which otherwise would flow to Upper Klamath Lake, pumping in the Lost River area diverts recharge to ground water flowing into Upper Klamath Lake into wells supporting agricultural uses in the Lost River area. Lastly we direct KOPWU to our note about KOPWU/102, Bartell/3 in the response to 2.3.

Further, see response to 2.8.

ONRC et al. further responds by directing KOPWU to the responses to 2.13 and 2.14.

2.16 At ONRC et al/204, Balance/2, Balance Hydrologics challenges Mr. Bartell's statement that the entire flow of the Lost River is diverted into the Lost River diversion channel into Lost River in the Wintertime. Please identify and provide all documents that Balance Hydrologics relied on for this statement. Specifically identify and provide documents showing that water routinely passes Wilson Dam (otherwise known as Lost River Diversion Dam) into the Lost River. Specifically identify and provide documents showing water routinely passing out of Lost River Diversion Channel into the Lost River during the wintertime.

Response: Balance relied upon its professional knowledge of the Klamath system.

2.17 ONRC et al./204, Balance/3 states: "Yet we note that water flowed from the Lost River system to the Klamath River system naturally at times prior to the Klamath project. Mr. Bartell does not account for this fact." Please identify and provide all documents that show that the Lost River system flowed into the Klamath River prior to the Klamath Project (i.e., prior to the year 1905).

Response: Balance relied on a 1908/9 USGS Report. We will forward the citation when it is located.2.18 Please identify who is responsible for each portion of Balance Hydrologics' testimony and reports and who specifically can testify to each statement made in Balance Hydrologics' testimony.

Response: Barry Hecht was primarily responsible for the comments on Mr. Bartell's testimony and the hydrogeology comments on Mr. Rozaklis' testimony. Bonnie Mallory and Stacey Porter worked together on the transit loss, ET, and marshland conversion

discussions. Barry Hecht added the "other considerations" to the Rozaklis comments. Barry Hecht is also the primary author of the comments on the Van Camp testimony.

2.19 At ONRC et al./300, Priestly/3, Ms Priestly states: "I estimate that his analysis failed to include the approximately 170,000, or two-thirds, of the Off-Project area that is typically irrigated through the use of diversions from surface water sources." Please provide all studies or workpapers used to develop this 170,000 acre number.

Response: As explained in Ms. Priestly's testimony, this number was derived by simple subtraction of Mr. Rozaklis's 78,000 acres of groundwater irrigated lands from the 249,000 acres found in ONRC et al./103, McCarthy/7. As also noted in Ms. Priestly's testimony, the total irrigated acreage in the Off-Project area likely varies somewhat from year to year.

2.20 Reference ONRC et al./300, Priestly/3. Please explain how Ms. Priestly differentiated beneficiaries of the Klamath Off-Project Contract from those irrigators who simply divert from the river system utilizing dams and gravity diversion within this 170,000 acre number. Please provide all workpapers or studies used and created in reaching this conclusion. Please provide specific numbers of acreages of those irrigators who gravity divert vs. those who pump water out of the river. Please provide all studies that have been done to reach this conclusion.

Response: Ms. Priestly's analysis did not make this distinction and WaterWatch has requested this information from KOPWU in WaterWatch's first set of data requests to KOPWU.

2.21 Does Ms. Priestly agree that removal of dams in the river system is beneficial to aquatic life? Does Ms. Priestly agree that removal of dams in the river system is beneficial to the flow of the river?

Response: ONRC et al. objects to this data request as overbroad, vague, ambiguous and not calculated to lead to the discovery of admissible evidence.

2.22 At ONRC et al./300, Priestly/3, Ms Priestly states: "Mr. Bartell reports, anecdotally, that he has seen visible increases in flow that he attributes to farmers and ranchers pumping groundwater by using electricity, but his analysis fails to discuss or account for the reductions in streamflow that are also associated with irrigated agriculture, both from surface water diversions and the use of groundwater that is in hydraulic connection with surface streamflows." Mr. Bartell was discussing the Sprague River. Please provide all studies Ms. Priestly has done showing the "reduction in streamflow" on the Sprague River. Please provide all scientific documentation that Ms. Priestly relied on for her conclusion that the flow of the Sprague river system Mr. Bartell was talking about is decreasing.

Response: ONRC et al. object on the basis that the request mischaracterizes Ms. Priestly's rebuttal testimony. The quoted sentence does not assert that there was an

overall "reduction of streamflow" on the Sprague or that the "the flow of the Sprague river system Mr. Bartell was talking about is decreasing." Ms. Priestly has not conducted any studies regarding the trend of streamflow on the Sprague. Ms. Priestly relied on a variety of documents to provide information regarding surface flow diversions and consumptive use in the Off-Project areas including those referenced in her testimony at ONRC et al./310, Priestly/6 –7 as available on the web, and the following:

OWRD website, Water Right Information System (analysis for Williamson, Irrigation/Surface Water, sorted by Claim). Available on the web: http://apps.wrd.state.or.us/apps/wr/wrinfo/

Water Allocation in the Klamath Basin: An Assessment of Natural Resource, Economic, Social and Institutional Issues, Draft 12/14/01, Background Section. 14 pages (attached).

Matthew Perkins, 02:26 PM 3/3/06, Supplemental Response to ONRC et al response to KOPWU DR request #

To: "Matthew Perkins" <MWP@dvclaw.com>
From: Lisa Brown <lisa@waterwatch.org>
Subject: Supplemental Response to ONRC et al response to KOPWU DR request #2
Cc:
Bcc:
Attached:

Mr. Perkins -

This email constitutes our Supplemental Response to ONRC et al response to KOPWU DR request #2 (see below). Please let me know if you have any questions.

Sincerely,
Lisa Brown

As a Supplemental Response to ONRC et al response to KOPWU DR request #2, we are forwarding the USGS citation referred to in our response to 2.17. That citation is:

Department of the Interior, United States Geological Survey, Water Supply Paper 291, Surface Water Supply of the United States, 1910, Part XI Pacific Coast in California. Prepared under the direction of M.O. Leighton by W.B. Clapp, F.F. Henshaw and H.D. McGlashan. Washington Government Printing Office 1912.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing brief upon each person listed below by email where an email address has been provided, and by postage prepaid US Postal mail at the addresses indicated.

Dated: March 13, 2006

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