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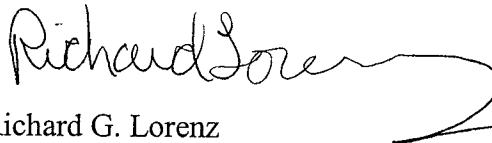
Re: UE 170 – Pacific Power & Light (dba PacifiCorp) Request for a General Rate
Increase in the Company's Oregon Annual Revenues

Dear Filing Center:

Please find enclosed the original and five (5) copies of KLAMATH WATER USERS
ASSOCIATION'S REPLY BRIEF in the above-referenced docket.

Thank you for your assistance. Should you have any questions regarding this matter,
please feel free to contact me.

Very truly yours,



Richard G. Lorenz

cc: UE-170 Service List (via email & first class mail)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 170

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	KLAMATH WATER USERS
(dba PacifiCorp))	ASSOCIATION REPLY BRIEF
)	
Request for a General Rate Increase in the)	
Company's Oregon Annual Revenues)	

I. INTRODUCTION

The Klamath Water Users Association (“KWUA”) respectfully submits this Reply Brief on behalf of irrigators served through facilities of the United States Bureau of Reclamation’s (“Reclamation”) Klamath Irrigation Project. Other irrigators in the Klamath Basin that are not located within the Irrigation Project are represented by the Klamath Off-Project Water Users Association (“KOPWUA”). The members of KWUA and KOPWUA are collectively referred to herein as the “Klamath Irrigators.”

The questions before the Commission can be distilled down to the following issue: Is the Commission required to comply with a “statutory directive,” but free to disregard a statutorily mandated “objective?” In its opening brief, KWUA demonstrated how the Klamath River Basin Compact, as codified in Oregon law at ORS 542.610-620 (the “Compact”), provides the Klamath Irrigators a statutory entitlement to electric power rates that reflect the cost of power generated using the waters of the Klamath River.¹ PacifiCorp contends that the Commission may disregard the entitlement provided to the Klamath Irrigators by the Compact because it is framed as a statutory objective rather than a statutory directive. But PacifiCorp’s argument merely begs the question whether there is any such distinction in the law between a statutorily mandated

¹ More specifically, KWUA has argued that the rates set forth in the current retail contract (the “1956 Contract”), which is a condition on PacifiCorp’s federal license to own and operate the Klamath Hydroelectric Project, should remain in effect until such time as a new federal license is issued without such a condition. If a federal license is issued for the Klamath Hydroelectric Project that does not require PacifiCorp to renew the 1956 Contract, then the rate provision of the Compact takes over.

objective and a statutory directive. Ultimately, PacifiCorp's argument rests on a false dichotomy.

The Commission may not disregard the objective mandated by the Compact. An examination of the text and context of ORS 542.620 supports this conclusion. The Commission has held that it will follow the three-step process articulated in *Portland General Electric v. Bureau of Labor and Industries*, 317 Or. 606, 859 P.2d 1143 (1993) ("*PGE v. BOLI*"):

We now turn to the application of the principles of statutory construction. As NW Natural notes, the Oregon Supreme Court has set out the process for statutory construction in [*PGE v. BOLI*]. To determine legislative intent, the court first looks at the text of the statute, using rules of construction which bear directly on how to read the text. At this first level, the court also considers the context of the statute, including the total statute itself and related statutes, using rules of construction which relate to context. If the intent is clear from the text and context, the analysis goes no further. If the court's review of the text and context does not resolve the matter, however, the court will consider legislative history, along with the text and context, to determine legislative intent. If the legislative intent is still unclear, the court will refer to general maxims of construction to make its decision on legislative intent.

OPUC Order No. 01-719 (Aug. 9, 2001).

As applied here, the text and context of the compact draw a direct connection between the price paid by the Klamath Irrigators and the hydroelectric development of the waters of the Klamath River Basin. Any such hydroelectric power production is to be furnished to the Klamath Irrigators at the lowest reasonable rate. The text of ORS 542.620 is unequivocal in that this "shall be" the objective of Oregon. Second, the legislative history of the Compact reflects PacifiCorp's longstanding agreement to provide power at cost to the Klamath Irrigators from the Klamath Hydroelectric Project in exchange for the legal right to develop the Klamath Hydroelectric Project. Finally, the general maxims of statutory construction require that the Compact be liberally construed to give effect to its statutory objectives—which are legally distinct from the default just and reasonable rate standard. Thus, the Commission's task in this proceeding is to implement the statutory objective stated in the Compact.

II. THE TEXT AND CONTEXT OF THE COMPACT SET FORTH THE LEGAL STANDARD GOVERNING POWER RATES TO THE KLAMATH IRRIGATORS

- A. PacifiCorp provides no legal authority in support of its basic premise that the Commission is free to disregard a statutory objective.

PacifiCorp's textual analysis begins and ends with the proposition that any legal import of Article IV is stripped away because it "shall be the objective" of the State, as compared to a directive. PacifiCorp argues that the Commission would be required to comply with a statutory directive, but may completely disregard a statutorily mandated objective. *See* PacifiCorp's Opening Brief, p. 6. In reviewing Section B.1 of PacifiCorp's opening brief, however, the Commission will see that *PacifiCorp cites absolutely no legal authority to support this fundamental assumption*. That PacifiCorp has produced nothing that is indicative of the fact that its basic premise is simply wrong.

Contrary to PacifiCorp's platitudes, administrative agencies such as the Commission may not disregard legally mandated objectives, whether they are couched in terms of "goals," "policies," "objectives" or otherwise. For example, land-use planning in Oregon is governed in large part by a series of statewide land-use "goals." The Oregon Court of Appeals has directly rejected the argument that a state agency need not comply with these "goals." *See, e.g., Audubon Society of Portland v. Oregon Department of Fish and Wildlife*, 67 Or.App 776, 681 P.2d 135 (1983) (holding that the Fish and Wildlife Commission "is required to conform its procedures and standards for issuing permits to the requirements of Goal 16 *to assure that the objectives and requirements of the goal are fully addressed*". Thus, petitioners' argument that it need not meet the Goal's inventory requirement is without merit.") (emphasis added).

Another example comes from the Oregon Ground Water Act of 1955, which sets forth a number of "policies" concerning the appropriation and use of ground water. *See* ORS 537.525. The Oregon Water Resources Commission has promulgated administrative rules to implement these policies. WaterWatch of Oregon² brought an action challenging the administrative rules on the grounds that they violated one of the statutorily mandated policies of ORS 537.525. *See*

² It is also noteworthy that WaterWatch of Oregon is one of the parties now arguing that the Commission may disregard the statutory objective set forth in ORS 542.620. This is diametrically opposed to the position that WaterWatch argued to the Oregon Court of Appeals with respect to the "policies" stated in ORS 537.525.

WaterWatch of Oregon v. Oregon Water Resources Department, 120 Or.App. 366, 852 P.2d 902 (1993). The Oregon Water Resources Commission defended by asserting that it may not disregard one statutorily mandated policy in order to implement another. *See id.* at 369. The court upheld the administrative rules on the grounds that the agency may not disregard any of the statutorily mandated policies—which the court used interchangeably with the phrase “statutory objectives.” The Court explained that “[t]he problem with petitioner’s argument is that it focuses on only one objective of the statute and disregards other statutory objectives. * * * The commission’s rules constitute an application of the statutory policies that we conclude is consistent with them and that we will not disturb.” *Id.* at 370.

Other courts have even held that administrative decisions—much less rules or statutes—that are couched as “objectives” are legally binding. In *California v. United States Forest Service*, 2005 WL 1630020 (N.D. Cal. 2005), for example, the court held:

The Forest Service argues that these instructions are not decisions because they are framed as “objectives.” * * * The only reason these specific criteria are framed as goals is that they may be missed due to unpredictable natural conditions or because of budgetary uncertainties. Neither of these contingencies, however, detract from the fact that the “objectives” bind the on-the-ground forest managers to execute their treatment activities in a manner designed to achieve the specific parameters.

In short, the answer is the same whether the law speaks in terms of a goal, policy, objective or directive. Affected agencies are required to do something to uphold and implement the law.

B. Article IV speaks in terms of an “objective” to account for unforeseen contingencies and maintain regulatory flexibility.

There are understandable reasons why the text of the Compact was framed as a statutorily mandated objective. The primary reason was to preserve this Commission’s authority to implement that objective. KWUA and PacifiCorp have agreed that this Commission has authority to set or approve rates for the Klamath Irrigators. In setting that rate, the Commission must receive evidence concerning the costs associated with generating the power at the Klamath Hydroelectric Project and distributing the power to the Klamath Irrigators. These costs will vary considerably over time and could not have been anticipated when the Compact was drafted.

ORS 542.620 sets forth a legally required rate standard but also preserves the Commission's discretion on how to meet that objective consistent with the Compact.

Furthermore, Article IV is couched in terms of an objective rather than a directive because the drafters of the Compact understood that there might come a time when there is no hydroelectric generation using the waters of the Klamath River. In such case, the drafters of the Compact did not want Article IV to be construed as directing or requiring the States themselves to construct and operate hydroelectric projects to provide power to the Klamath Irrigators.

- C. PacifiCorp and Staff ignore the direct connection between the hydroelectric development of the Klamath Basin and the power rate to be charged to the Klamath Irrigators.

PacifiCorp argues that the words "the lowest power rates which may be reasonable," as they appear in Article IV, may simply be conflated with the default "just and reasonable" standard. PacifiCorp's argument ignores the key text of Article IV and misses the whole point of the provision. It is no coincidence that the applicable rate standard falls under the heading "Hydroelectric Power:"

ARTICLE IV HYDROELECTRIC POWER

It shall be the objective of each state, in the formulation and the execution and the granting of authority for the formulation and execution of plans for the distribution and use of the water of the Klamath River Basin, to provide for the most efficient use of available power head and its economic integration with the distribution of water for other beneficial uses in order to secure the most economical distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.

(emphasis added).

When read in its entirety, as *PGE v. BOLI* requires, the text of Article IV concerns the terms and conditions under which a private utility may use and, in effect, monopolize the waters of the Klamath River for hydroelectric development.³ One of these statutorily mandated terms is that any such developer, in order to have authority from the State of Oregon to use the water, must use the water to make power available to the Klamath Irrigators at the lowest reasonable rates. The plain language of Article IV singles out the Klamath Irrigators both by geographic

³ It is no coincidence that PacifiCorp was and is the only developer of hydroelectric power on the Klamath River.

location and by end-use. Thus, the rate standard set forth in Article IV of the Compact and ORS 542.620 is directly linked to PacifiCorp's use of the waters of the Klamath River to generate hydroelectric power.

- D. The Compact does not expressly amend ORS 756.040 because the Compact also is the law of California and the United States.

Turning to the context of the statute, Staff argues that if the drafters of the Compact intended to displace the default "just and reasonable" rate standard, they would have done so by directly amending ORS 756.040. *See* Staff's Opening Brief, p. 4. Staff and PacifiCorp also suggest that the Compact is not a rate standard because it appears in ORS chapter 542 rather than ORS chapters 756 or 757. These arguments fail to appreciate the nature of the Compact.

The Compact was codified in ORS chapter 542 rather than ORS chapters 756 or 757 because all of the water-related compacts to which Oregon is a party are located in ORS 542. *See, e.g., Willamette River Basin Project; Rogue River Watershed Project; Oregon-California Goose Lake Interstate Compact; Columbia River Natural Resources Management Compact.* By placing the Compact in ORS 542, the Oregon Legislative Assembly was simply conforming to a sensible numbering convention that codifies similar compacts, in their entirety, within one chapter of the Oregon Revised Statutes. It was not making a statement that the Compact has no legal significance outside of ORS 542.

Staff's arguments also fail to account for the fact that the Compact is the law of California and the United States. The Compact was enacted in the same form by each of Oregon, California and the United States in 1957. *See generally* Or. Laws 1957, ch. 142; Cal. Stats 1957, ch. 113 (codified at Cal. Water Code Section 5901); Pub. L. 85-222, 71 Stat. 497 (1957). It would be quite odd for California or the United States to enact a statute that directly amends a particular provision of *Oregon* law. The opposite also is true: it would not make sense for Oregon to enact a statute that amends the default power rate standards codified under California law. In short, the drafters of the Compact chose language that is flexible enough to make sense within the framework of each of the Oregon, California and federal statutory schemes.

Furthermore, the Commission will see that, when put into its proper context as a state *and federal* law, the Article IV of the Compact is analogous to the federal “preference” laws that were commonly enacted in the 1930s through the 1950s. *See, e.g.*, Pacific Northwest Electric Power Planning and Conservation Act of 1981, 16 USC §§ 839-839h (renewing earlier legislation); Hungry Horse Dam Act of 1944, 43 USC § 539; Niagara Power Project Act, 16 USC § 836(b)(1); Flood Control Act of 1944, 16 USC § 825s. These federal preference laws typically provide people in a certain geographic area a statutory entitlement to purchase power at a cost based on the cost of electricity production at particular generating resources. Many of these statutes, in fact, deal with a hydroelectric resource. This is precisely what the drafters of the Compact were seeking to accomplish through Article IV.

E. All of the provisions of the Compact are the law.

The context of the statute also confirms that all of the provisions of the Compact have the force of law. ORS 542.610(1) provides that “[t]he Legislative Assembly of the State of Oregon hereby ratifies the Klamath River Basin Compact set forth in ORS 542.620, and the provisions of such compact hereby are declared to be the law of this state upon such compact becoming effective * * *.” The Attorney General confirmed that “*Oregon is now subject to all the terms and conditions of the Klamath River Basin Compact.*” 39 Or.Op.Atty.Gen. 748 (1979) (emphasis added). The Commission must recognize that both ORS 542.610(1) and the Oregon Attorney General were referring to *all* of the provisions of the Compact, including Article IV.

III. THE HISTORICAL BACKGROUND CONFIRMS THE KLAMATH IRRIGATORS’ STATUTORY RIGHT TO THE LOWEST POWER RATES THAT MAY BE REASONABLE USING THE KLAMATH RIVER

A. The legislative history reveals that the Compact was carefully negotiated and drafted over the course of four years.

The second level of statutory analysis under *PGE v. BOLI* is consideration of the legislative history of the statute. In this case, the legislative history of ORS 542.620 includes the voluminous notes of the Klamath Compact Commission. These Compact Commission notes indicate, first and foremost, that the Compact was no afterthought. To the contrary, the Compact Commission spent several years working out the language of the Compact. Attached as Exhibit

A are excerpts from the Compact Commission notes that highlight the Compact Considerations deliberations with respect to power rates and the 1956 Contract.⁴ These excerpts are summarized in the following timeline:

1953	Legislation establishes the California and Oregon Klamath River Compact Commissions. CA Senate Bill 749, Cal Gov. Code 8110-8118 OR House Bill 127, 1953 Laws c. 431.
4/19/1954	JC Boyle appeared before the Oregon Klamath River Compact Commission to discuss Big Bend Project.
June 1954	Joint Compact Commission begins conducting regular meetings
10/25/1954	Compact Commission minutes indicated that JC Boyle was invited to, and did, participate in meetings on October 25 to present PacifiCorp's plan for developing power on the Klamath River.
10/26/1954	Reclamation representative participates in Compact Commission meeting and states that conflicting legal positions between water rights and contract rights in PacifiCorp's 1917 contract will be an issue.
12/8-9/1954	Compact Commission adopted resolution requesting Interior to withhold approval of PacifiCorp contract until it can be formulated as part of an interstate compact.
1/7/1955	Secretary of Interior agrees that new PacifiCorp contract will not be approved until Compact Commission has an opportunity to comment.
August 1955	Congress authorizes Oregon and California to enter into Compact. 69 Stat 613, Pub. Law 84-316
8/25-26/1955	Compact Commission discusses impact of the 1956 Contract on Compact formation and agrees to draft resolution on the matter. There is concern that the 1956 Contract would be detrimental to Compact negotiations.
9/23/1955	Preliminary draft of Compact distributed to Compact Commission. Commission discusses the advisability of requesting postponement of 1956 Contract until Compact is approved by Congress.
9/23/1955	PacifiCorp representatives participate in Compact Commission meeting after distribution of Compact draft.
9/27/1955	Compact Commission meets to discuss the 1956 Contract and suggests changes.
9/28/1955	PacifiCorp and Compact Commission discuss the Compact Commission's suggested revisions to 1956 Contract. A major issue was PacifiCorp's acquisition of water rights that would be superior to irrigation water rights.
October 1955	PacifiCorp and the Compact Commission reach agreement that the Compact Commission will withdraw opposition to the 1956 Contract in exchange for agreement on alignment of water rights.
10/14/1955	JC Boyle submits letter to KWUA stating that he told the Compact Commission that rates charged the Klamath Irrigators would be cost-based.
10/19/1955	First draft of Compact made available for public comment.
10/31/1955	Compact Commission meets with the Oregon and California Public Utilities Commissions for purpose of raising issues about Contract.

⁴ The Commission will see that that excerpts all have Bates numbers because all have been provided to PacifiCorp and others by KWUA during the course of UE 171.

December 1955	Public Hearing held on first draft of Compact
May 1956	Second Draft of Compact made available for Public Comment
9/6/1956	Third Draft of Compact made available for Public Comment
1957	Compact Ratified and Codified: Or. Laws 1957, ch. 142, §2; Ca. Stats. 1957 ch. 113, §2

After working on the terms of the Compact for so many years, the members of the Compact Commission would be quite surprised by PacifiCorp's argument that material provisions of the Compact have no legal force. It is hard to believe that the drafters would spend the better part of four years (1953-1957) drafting a provision that "shall" be the objective of the State, if they ultimately intended that objective to be meaningless.

B. PacifiCorp itself was an instrumental participant in negotiating the terms of the Compact.

The legislative history also reflects considerable input and involvement by JC Boyle, the President of what is now PacifiCorp. The table above includes no less than five instances in which JC Boyle or other PacifiCorp representatives were directly involved with negotiating and drafting the Compact. PacifiCorp now argues, however, that the Compact has nothing to do with electric ratemaking. Instead, the Compact deals only with "plans for the distribution and use of waters of the Klamath River Basin." PacifiCorp's Opening Brief, p. 7. In other words, PacifiCorp now wants to brand the Compact as only a water law, not an electricity law. If this is true, then how does PacifiCorp account for the vital role played by its own President in the negotiation and drafting of the Compact? If the Compact does not concern itself with electric power, as PacifiCorp now suggests, then why did JC Boyle care whether the Compact was enacted and what it said?

JC Boyle cared about the Compact because it was, and remains, instrumental in his company's legal authority to use the waters of the Klamath River to generate hydroelectric power. KWUA has amply demonstrated how the United States Department of Interior ("Reclamation") urged the Federal Power Commission to reject PacifiCorp's application to develop the Klamath Hydroelectric Project. *See generally Protest of the United States to the Application For License of the California-Oregon Power Company, Project No. 180, June 1,*

1951. In a compromise facilitated by FERC, Reclamation agreed to withdraw its Protest on the condition that PacifiCorp continue supplying the Klamath Project with low-cost power. *See generally In The Matter of the California Oregon Power Company Upon Application for License*, 13 F.P.C. 1, 1954 WL 47779 (Jan. 28, 1954).⁵ PacifiCorp and Reclamation subsequently negotiated and executed the 1956 Contract.⁶ The cost of power under the 1956 Contract is directly tied to the cost of production from the Klamath Hydroelectric Project.

The Compact as a whole, and Article IV in particular, must be read in light of PacifiCorp's contemporaneous compromise agreement to make power from the Klamath Hydroelectric Project available to the Klamath Irrigators at the cost of production. The Compact was negotiated and drafted during the same time period as the 1956 Contract, and with input from many of the same people. In fact, the legislative history indicates that the Compact Commission devoted considerable energy to reconciling the Compact with the 1956 Contract. Thus, PacifiCorp's interpretation of the Compact is half right. The Compact is a water law. But it is a law that directly governs PacifiCorp's use of the water of the Klamath River to generate hydroelectric power. One of the conditions is that PacifiCorp must use the water to make power available to the Klamath Irrigators at the lowest reasonable rates.

IV. MULTIPLE CANNONS OF STATUTORY CONSTRUCTION YIELD THE SAME INTERPRETATION

The third level of statutory interpretation articulated in *PGE v. BOLI* yields the same outcome as the first two. Several maxims of statutory construction all point to the conclusion

⁵ FERC explained:

In reporting under Section 4(e) of the Federal Power Act on Copco's application for license, the Secretary of the Interior recommended that the license be denied. However, in the oral argument before us, counsel for the Secretary stated that the Presiding Examiner's Initial Decision in the project proceeding was generally satisfactory—*primarily because it contains a condition which would require Copco to enter into a contract with the Department of the Interior prior to issuance of a license. That requirement will be included in the license.*

Id. at 4 (Emphasis added).

⁶ The record reflects that the price specified in the 1956 Contract corresponds to PacifiCorp's cost of producing power at the Klamath Hydroelectric Project. Meeting minutes kept by KWUA reflect the following: "The discussion on power rate schedule was brief, however, Mr. Boyle did state that the 6 mill rate was at cost before delivery. 4.54 mills to generate, 1.43 mills pump storage; making 5.97 mills at the switchboard." Exhibit B.

that ORS 542.620 must be given some meaning separate and distinct from the default “just and reasonable” standard.

A. The Compact is to be liberally construed to give effect to its objectives.

PacifiCorp essentially invites the Commission to ignore the statutory objective of Article IV and adopt an interpretation that renders it, in effect, meaningless. In taking this position, PacifiCorp ignores the fact that the Compact is the type of law that must be read liberally to give full effect to its provisions. See ___ Or.Op.Atty.Gen. ___ (OP-5559, 1984)(“It is, however, a general principle of statutory interpretation that *compacts, like treaties, are to be given a liberal interpretation to carry out the intended objectives of the contracting parties.*”) (emphasis added).

In a separate Opinion, the Attorney General expressly rejected an interpretation of the Compact that would undermine its statutory objectives:

As noted above, Oregon is now subject to all the terms and conditions of the Klamath River Basin Compact. Article III of the Compact establishes priorities for the use of waters in that basin. It may be argued that, since the priorities established in Article III are priorities for ‘granting permits to appropriate waters,’ and since establishment of minimum stream flows by rule is not, strictly speaking, the granting of a permit for the appropriation of waters, the Article III priorities do not apply to such action.

We do not take such a literal view of the compact’s provisions. Establishment of minimum stream flows is merely an entitlement, but in a very real sense represents an ‘appropriation’ of water by the state which affects water available for other uses. We believe such action is subject to the priority requirements of Article III.

Under ORS 536.310(7), minimum perennial stream flows are to be established by the board for the purpose of supporting aquatic life and minimizing pollution on ‘if existing rights and priorities under existing laws will permit.’ This provision was adopted in 1955; the compact was adopted two years later, in 1957. Again, under a literal interpretation of this statute, it could be argued that since the compact was not an ‘existing law’ when ORS 536.310(7) was adopted, the board need not consider the compact when it sets minimum stream flows.

We reject such an interpretation.

39 Or.Op.Atty.Gen. 748 (1979) (emphasis added). Under the method of analysis prescribed by the Oregon Attorney General, the Commission must read Article IV of the Compact liberally so as to give effect to the underlying purpose of granting a power preference to Klamath Irrigators.⁷

It is curious that the Staff's opening brief, which was written and filed by an Assistant Attorney General, fails to even address these numerous prior decisions by the Oregon Attorney General concerning the proper interpretation of the Compact in particular, and interstate compacts in general.

B. Article IV of the Compact must be given some meaning.

Another problem with PacifiCorp's false dichotomy between a statutorily mandated objective and a directive is that it would render a material portion of ORS 542.620 superfluous. As discussed above, such an outcome would defy common sense in light of the substantial investment of time by the parties drafting and negotiating the Compact—including PacifiCorp. Moreover, this just is not permitted under Oregon law. *See Keller v. SAIF Corp.*, 175 Or.App. 78, 82, 27 P.3d 1064 (2001) ("We will not construe a statute in a way that renders its provisions superfluous."); *Fed'n of Parole & Prob. Officers v. Washington County*, 142 Or.App 252, 259, 920 P.2d 1141 (1996) ("In construing those statutes, we are to presume that the legislature did not intend to enact a meaningless statute."). The Commission must, therefore, interpret ORS 542.620 in a manner that gives effect to every term included by the drafters.

C. Related statutory provisions using different terms must be given different meanings.

Oregon law presumes that related statutes having different terms also have different meanings. *See, e.g., Premier West Bank v. GSA Wholesale, LLC*, 196 Or.App 640, 103 P.3d 1169 (2004) ("Ordinarily, when the legislature has used different terms in related statutes, we infer that it intended different meanings."). In this case, the Oregon Legislative Assembly specifically singled-out irrigation and pumping in the Klamath Basin for special rate treatment. The power rate for these end-users is tied to PacifiCorp's use of the Klamath River. The default just and

⁷ The Commission will note that in rendering a liberal interpretation of the Compact, the Attorney General considered the historical context in which the Compact was enacted.

reasonable standard, by contrast, is not tied to any specific generating resource or to any specific end-use.

Furthermore, it is axiomatic that the words “lowest power rate which may be reasonable” are not the same as the words “just and reasonable.” PacifiCorp has conveniently reframed KWUA’s argument to suggest that the word “reasonable” does not mean the same as the word “just and reasonable.” *See* PacifiCorp’s Opening Brief, p. 8. PacifiCorp is just playing games with words. On its face, Article IV does not merely say “reasonable,” it says “the lowest power rates which may be reasonable.” The word “lowest” in that formulation is a material modification of the word “reasonable.” By way of illustration, “the *lowest* power rate which may be reasonable” would not necessarily be the same as the “*highest* power rate which may be reasonable,” even though both use the word “reasonable.” Furthermore, PacifiCorp’s argument completely misses the point of Article IV, which ties the lowest power rate which may be reasonable to the hydroelectric development of the Klamath River. Because the Oregon Legislative Assembly chose different words for the Compact and ORS 542.620 than those used in ORS 756.040, the law presumes that it intended to adopt a different rate standard.

D. The Compact describes the power rates specifically applicable to the Klamath Irrigators and therefore controls the default rate standard.

The specific rate standard applicable to the Klamath Irrigators controls the default rate standard applicable to PacifiCorp’s other customers. *See generally* ORS 174.020(2) (“When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.”)

The Staff attempts to turn this argument on its head by arguing that ORS 756.040 is the particular provision and the Compact is a general provision. *See* Staff Opening Brief, p. 3. Staff’s position is nonsense. The Oregon Attorney General already has determined that, for purposes of ORS 174.020(2), the Compact is a “specific” statute. *See* 39 Or.Op.Atty.Gen. 748, 751 (1979) (“ORS 536.310 is a general statute dealing with statewide water use considerations and policies. *The compact, however, is an act dealing specifically with the Klamath River*

Basin.”) (emphasis added).⁸ Furthermore, the Oregon Court of Appeals already has ruled that ORS 756.040 is a “general” provision, for purposes of ORS 174.020(2). *See Citizens Utility Board of Oregon v. Public Utility Commission of Oregon*, 154 Or.App 702, 716-717, 962 P.2d 744 (1998) (“The *general grants of authority in ORS 756.040* and other general statutes do not empower PGE to charge or PUC to approve rates of a kind that are specifically contrary to the limitations in ORS 757.355 and ORS 757.140(2).”); *Pacific Northwest Bell Telephone Co. v. Eachus*, 135 Or.App 41, 48-49, 898 P.2d 774, 779 (1995) (ORS 756.040 is “circumscribed” by other more specific provisions.). Thus, the Staff’s argument on this issue is, like much of its opening brief, deficient in analyzing the law.

V. CONCLUSION

In short, PacifiCorp and the Staff expect the Commission to turn a blind eye to a statutorily mandated objective and over fifty years of history in the Klamath Basin in order to treat the Klamath Irrigators the same as PacifiCorp’s other irrigation customers.

- They provide no legal authority for the proposition that a statutory objective, as compared to a statutory directive, may be ignored. Nor do they discuss the legal authority to the contrary of their proposition.
- They ask the Commission to ignore the fact that each of the provision of the Compact, including Article IV, is a binding statute in Oregon.
- They ask the Commission to ignore the fact that the Compact must be liberally construed to give effect to its statutory objectives.
- They ask the Commission to ignore the fact that the text of the Compact directly ties the Klamath Irrigator’s power rates to the cost of producing hydroelectric power using the waters of the Klamath River.
- They ask the Commission to ignore the fact that the Compact was negotiated and adopted in order to help implement the deal that PacifiCorp struck with the Federal Government and the Klamath Irrigators in order to develop the Klamath Hydroelectric Project.
- They ask the Commission to pretend that the Compact Commission, and PacifiCorp itself, spent the better part of four years negotiating and drafting what they intended to be a meaningless policy document.

⁸ Again, it is astonishing that the Assistant Attorney General would fail to even address these Attorney General Opinions concerning the Compact that are not only on point, but directly contradict the Assistance Attorney General’s arguments.

- They ask the Commission to ignore the coincidence between the language used in Article IV and other contemporaneous federal preference laws.
- They ask the Commission to overlook the fact that ignoring the Compact would violate at least four different canons of statutory construction.

But the Commission is not blind, and the Klamath Irrigators are not the same as PacifiCorp's other irrigation customers. ORS 542.620 gives the Klamath Irrigators a statutory entitlement to power rates based on the cost of hydroelectric power generated using the waters of the Klamath River. The Commission's task in this proceeding is to implement this statutorily mandated objective by ordering a factual investigation to determine the lowest reasonable cost of producing power at the Klamath Hydroelectric Project.

DATED this 16th day of September, 2005.

Respectfully submitted,



Richard Lorenz, OSB # 00308

Edward A. Finklea, OSB # 84216

Cable Huston Benedict Haagensen & Lloyd LLP

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Portland, OR 97204

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Of Attorneys for Klamath Water
Users Association

MINUTES OF MEETING
OF
OREGON KLAMATH RIVER COMMISSION

Held in the office of the Commission April 19, 1954.

All members of the Commission were present.

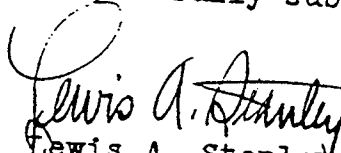
The meeting was called to order by the Chairman at 10 A.M. and there was general discussion of the progress of studies being made and the special problems, particularly the matters of additional storage in Upper Klamath Lake and the projects proposed by the Bureau of Reclamation in its report which is now in final stages of preparation.

Mr. John Boyle, Vice President and General Manager of the California Oregon Power Company appeared before the Commission and discussed the proposal of his company for construction of the Big Bend No. 2 Power Project.

On motion duly made, seconded and carried, it was ordered that the Commission's engineer should prepare a draft of a letter to the Secretary of the Interior setting forth the views of the Commission in the matter of a new contract by the Department of the Interior and the California Oregon Power Company covering storage of water in Upper Klamath Lake.

The meeting was adjourned at 12:30 P. M.

Respectfully submitted,



Lewis A. Stanley, Secretary pro tem.

CALIFORNIA KLAMATH RIVER COMMISSION
MINUTES OF THE REGULAR MEETING

Held in Cedar Room of Williard
Hotel, Klamath Falls, Oregon,
October 25, 1954, and October 26, 1954.
Monday, Tuesday

Joint Meeting with Oregon Klamath
River Commission held in Conference
Room of Pelican Cafe, Klamath Falls,
Oregon, October 26, 1954.

Members Present:

William G. Hagelstein, Chairman
Bert A. Phillips, Vice Chairman
James G. Stearns, Secretary
A. D. Edmonston
Nelson C. Bowles

Others Present:

Frank L. Lathrop, Consultant
Robert B. Bond, Division of Water Resources

John Boyle, Vice President, California Oregon Power Company (appearance only)
Thomas H. Wick, Manager of Tule Lake & Lower Klamath Wildlife Refuge, United States Fish & Wildlife Service (appearance only)

The meeting was called to order at 10:00 a.m. by Chairman Hagelstein.

~~Minutes of the previous meeting - The minutes of the Commission's regular~~
The Cal Kl R Comm on September 14, 1954
meeting of September 14, were read; and on motion by Mr. Bowles, seconded by

Mr. Phillips and unanimously carried, were approved and submitted

After a discussion on the numerical order of consideration of future uses
of water, it was decided to eliminate the numbers. It was also decided that the
word "recreation" would include wildlife, sport fishing and commercial fishing.

~~Communications - Communications from and to Attorney Feeley relating to
fluctuations of the Klamath River were read and filed.~~

~~Invitations to Mr. Boyle and Mr. Spencer outlining questions, and their
letters of acceptance were read and filed.~~

~~Refuge Meeting at Klamath Falls, Oregon, September 20, 1954 - Mr. Stearns
made a verbal report on this meeting which was also attended by Members
Hagelstein and Phillips.~~

~~Edmonston's Report - Mr. Edmonston reported on contacting the Attorney
General's office relative to the two opinions requested by the Commission on~~

BUDGET FOR FISCAL YEAR 1955-1956

State Engineer Edmonston presented a preliminary budget for the Commission for fiscal year 1955-1956.

UPON MOTION DULY MADE, SECONDED, AND UNANIMOUSLY CARRIED, THE BUDGET APPROXIMATING \$70,000 WAS ADOPTED; MR. STEARNS AND MR. EDMONSTON WERE DIRECTED TO PRESENT THIS BUDGET TO THE LEGISLATIVE BUDGET COMMITTEE ON NOVEMBER 4, 1954 IN SACRAMENTO.

The meeting was recessed at 12:00 noon for lunch and reconvened at 1:00 p.m.

COPCO'S PLANS FOR DEVELOPMENT OF KLAMATH RIVER BASIN

Vice President, John Boyle, of the California Oregon Power Company, presented Copco's plans for developing a stretch of the Klamath River between Keno and Copco. He read a prepared statement of his company's position, a copy of which was filed pursuant to the administrative rules adopted June 9, 1954. Mr. Boyle stated he would furnish the Commission a memorandum of a meeting with officials of the Bureau of Reclamation in Sacramento, October 15, 1954; and will provide maps and an engineering report on Copco's proposed development of additional storage in Aspen, Long and Round Lakes; and will also furnish a proposed pumping schedule of power rates applicable to Butte Valley and all areas within the Upper Basin. He stated that his company proposes to take the water out of the Klamath River immediately above Keno and to return the water to the place of diversion.

The meeting was recessed at 5:00 p.m. for dinner and reconvened at 7:50 p.m. for evening session.

WILDLIFE REFUGES

Regional Manager of Wildlife Refuges, Thomas Horn, stated that the United States Fish and Wildlife Service was seeking to develop and manage federal refuges within the Klamath River Basin to protect farming areas within the Basin.

The meeting was adjourned at 9:40 p.m. until 8:00 a.m., October 26, 1954.

ADMINISTRATIVE RULES

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS RESOLVED THAT THE FOLLOWING ADMINISTRATIVE RULES AND REGULATIONS BE ADOPTED TO SUPPLEMENT RULES 1-5 INCLUSIVE, ADOPTED BY RESOLUTION AT THE MEETING OF JUNE 9, 1954 (Minutes of first Commission meeting).

BE IT RESOLVED that the following rules be adopted to govern the meetings of the California Klamath River Commission:

Exhibit A Page 3 of 44

FISCAL MATTERS

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, MR. LATHROP WAS INSTRUCTED TO PREPARE AND PRESENT A FINANCIAL STATEMENT OF THE BUDGET FUNDS FOR THE COMMISSION AT EACH MEETING.

ADMINISTRATIVE RULES

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS RESOLVED THAT THE FOLLOWING ADMINISTRATIVE RULES AND REGULATIONS BE ADOPTED TO SUPPLEMENT RULES 1-12 INCLUSIVE, ADOPTED BY RESOLUTION AT THE MEETINGS OF JUNE 9, AND OCTOBER 25, 1954.

13. The Chairman will employ a stenographer to record the minutes of each meeting;
14. All expenditures of funds by and on behalf of the Klamath River Commission of California shall be subject to the approval of the Chairman.

FILING CABINETS

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE CHAIRMAN WAS DIRECTED TO ORDER FROM THE STATE PURCHASING AGENT FILING CABINETS FOR USE BY THE COMMISSION, AND REQUEST THE DIRECTOR OF FINANCE TO TRANSFER NECESSARY FUNDS OUT OF THE 1954-1955 BUDGET FOR THIS PURPOSE.

RESOLUTION REQUESTING DELAY OF POWER CONTRACT

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED REQUESTING THE SECRETARY OF INTERIOR TO WITHHOLD APPROVAL OF ANY POWER CONTRACT ON THE UPPER KLAMATH LAKE UNTIL IT CAN BE FORMULATED AS A PART OF AN INTERSTATE WATER COMPACT.

This resolution is attached as Exhibit "A".

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS AGREED THAT THE RESOLUTION WOULD NOT BE RELEASED FOR PUBLICATION UNTIL TEN DAYS HENCE OR UNTIL SUCH TIME AS SECRETARY MCKAY REQUESTS PUBLIC RELEASE OF THE RESOLUTION.

REVIEW OF BUREAU OF RECLAMATION REPORT

Assistant State Engineer Gerald Jones reviewed the United States Bureau of Reclamation Report, entitled "Upper Klamath River Basin, Oregon-California, June 1954". This review was based upon an official review by the Division of Water Resources which was filed pursuant to the administrative rules of the Commission. Mr. Jones stated that 200,000 acre-feet annually, in addition to the amounts needed for lands of the Klamath Project of the U.S. Bureau of Reclamation which lie in California, would be sufficient to supply present and future needs of California within the Upper Klamath River Basin.

(Report filed in folder marked "Reports - Federal")
Exhibit 1 Page 4 of 44

The meeting was recessed at 12:00 noon for lunch and reconvened at 1:30 p.m.

STORAGE AND PUMPING FACILITIES

To implement the distribution of water to that portion of the Upper Klamath Basin which lies in California, Mr. Jones proposed the construction of storage facilities at the mouth of Willow Creek in the south end of Oklahoma District, with regulating pumps located near Indian Tom Lake and a water canal through the ridge to Butte Valley south of Dorris.

DEFINITION OF "UPPER KLAMATH RIVER BASIN"

Mr. Jones read a definition of the boundaries of the Upper Klamath which was prepared in cooperation with Mr. Lewis A. Stanley, State Engineer of Oregon. (Statement Filed in "Compact - Butte Valley - Engineering Studies" Folder)

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE BOUNDARY DESCRIPTION WAS ADOPTED, SUBJECT TO CORRECTION, AS THE OFFICIAL DESCRIPTION TO BE USED IN THE INTERSTATE COMPACT. THE DESCRIPTION WAS FILED PURSUANT TO THE ADMINISTRATIVE RULES OF THE COMMISSION.

BUTTE VALLEY WATER DEVELOPMENT

Mr. Jones stated that certain waters from Lower Klamath Lake were not of a quality suitable for re-use, and that a water supply for Butte Valley must come from Klamath River. He stated that the economic feasibility of Butte Valley development depends to a great extent on the cost of power in the area. If the power is to be developed privately, the cost of power should be given careful consideration in the proposed renewal of the Copco contract.

The meeting was adjourned at 5:30 p.m. until 10:00 a.m., December 9, 1954.

CONSENT BILL

Chairman Hagelstein stated that the Chairman of the Oregon Klamath River Commission informed him that a bill was being drafted by the Oregon Commission to obtain congressional consent for the States to enter into an interstate water compact, and that this bill would provide for the appointment of a federal representative to advise the Joint Commissions.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS RESOLVED THAT THE CHAIRMAN DRAFT A COMPANION CONSENT BILL AND SELECT A CONGRESSMAN FROM CALIFORNIA TO INTRODUCE THE BILL AT THE NEXT SESSION OF CONGRESS.

PAYMENT OF CLAIMS

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE CHAIRMAN WAS AUTHORIZED TO APPROVE FOR PAYMENT EXPENDITURES MADE BY FRANK L. LATHROP, CONSULTANT, AS FOLLOWS:

Month of July, 1954	\$ 59.85
Month of August, 1954	107.96
Month of October, 1954	32.97
Month of November, 1954	74.70
Total	\$275.48

The meeting was recessed at 12:00 noon for lunch and reconvened at 1:30 p.m.

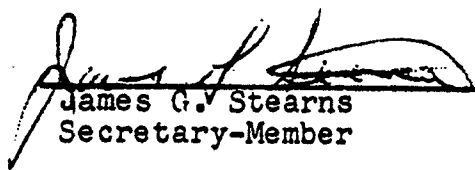
POSITION OF TULELAKE IRRIGATION DISTRICT

Mr. Anderson, President Tulelake Irrigation District, filed with the Commission a written statement, and in addition, stated the District has not been able to conclude a contract with the U.S. Bureau of Reclamation for the administration of the District and the repayment of capital charges, annual maintenance, and water charges. The District has a proposal to trade some third and fourth class land as substitute for good land now in refuges. The District asserts that refuges should pay both capital cost of facilities and annual maintenance and water charges. (Statement Filed in Folder marked "Compact - Battle Valley")

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS AGREED THAT THE NEXT MEETING BE SCHEDULED FOR JANUARY 27, 1955 AT KLAMATH FALLS, OREGON.

There being no further business to come before the Commission the meeting was adjourned.


William S. Hagelstein
Chairman


James G. Stearns
Secretary-Member

Attachment
Exhibit "A"

STATE OF CALIFORNIA
CALIFORNIA KLAMATH RIVER COMMISSION
Chapter 1473, Stats. 1953

Seal

CALIFORNIA KLAMATH RIVER COMMISSION

RESOLUTION NO. _____

DECEMBER 9, 1954

WHEREAS, the California Klamath River Commission was created under Chapter 1473, of California Senate Bill No. 749, Section 8116 which reads: "It is the function of the Commission to cooperate with a similar commission representing the State of Oregon in formulating and submitting to the legislatures of both states for their approval an interstate compact relative to the distribution and use of the waters of the Klamath River." And,

WHEREAS, the Oregon and California Klamath River Commissions are engaged in studies with the objective of arriving at an interstate compact or agreement with regard to the distribution and use of the waters of the Klamath River that will provide protection for all interests in both states that will ultimately be concerned with the diversion of water for beneficial use. And,

WHEREAS, each joint meeting between the State commissions has resulted in unanimous agreement in problems presented for discussion. And

WHEREAS, the joint efforts of the two commissions have reached a point of negotiation where the framework of a compact is beginning to take form. And,

WHEREAS, it is evident that any decision with regard to the development of additional hydroelectric power on the Klamath River between Keno and Copco Lake will be a key consideration in formulation of any such compact. And,

WHEREAS, numerous agencies, political subdivisions, irrigation districts and other interested groups are yet to be invited to present their view. And,

WHEREAS, it might be found desirable and mutually advantageous for the integration and joint use of proposed

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

Washington 25, D. C.

JAN - 7, 1955

My dear Mr. Bagelstein:

Thank you for your letter of December 17 transmitting a copy of the December 9 resolution of the California Klamath River Commission. I note that in its resolution the Commission requests the Secretary to withhold approval of any power contract, including renewal of the present contract with The California-Oregon Power Company, until it can be formulated as an integral part of a draft of interstate compact.

As you know, we in the Department are keenly aware of the importance to the Klamath Basin economy of the present contract between the Company and the United States. We are equally aware of the importance of any new contract to the future economy of the Basin. Our concern in this regard was expressed in Secretary McKay's letter of July 1, 1954, to you. We feel the same today.

I am therefore pleased to assure you that any new contract will not be approved until your Commission, that of the State of Oregon, and other affected local groups, have had the fullest opportunity to comment upon it. I anticipate that at appropriate points of time, Regional Director Spencer, of the Bureau of Reclamation, will meet with you to discuss the matter fully. It is my hope that any agreements reached at the field level will, when included in a draft of contract, already have received your approval.

It is on this basis that Mr. Spencer is being instructed to open discussions of contract terms with the Company. Since negotiations of mutually satisfactory terms will take some time, it seems reasonable that the work you say the two Commissions are doing on the interstate compact will move along in parallel fashion.

In view of the interest of the Oregon Klamath River Commission in the subject, I am furnishing a copy of this letter to Mr. Nelson Reed, Chairman of that body.

Sincerely yours,

/s/ Douglas McKay
Secretary of the Interior

Mr. William G. Bagelstein, Chairman
California Klamath River Commission, Dorris, California
Copy to: Mr. Nelson Reed, Chairman,
Oregon Klamath River Commission, Klamath Falls, Oregon

MINUTES OF THE MEETING
of the
KLAMATH RIVER COMMISSION OF CALIFORNIA
Held at
Conference Room, Public Works Building
Sacramento, California

rough
Draft
*Minutes for
Official Files*
and Exhibits

Thursday, August 25, 1955
Friday, August 26, 1955

The meeting was called to order at 9:00 a.m. by Chairman Hagelstein.

The following members of the Klamath River Commission of California were present:

William G. Hagelstein, Chairman
Bert A. Phillips, Vice-Chairman
James G. Stearns, Secretary
A. D. Edmonston
Nelson C. Bowles

Also present were:

Frank L. Lathrop, Consultant
Gerald H. Jones, Assistant State Engineer, Division of Water Resources
Allan G. Bird, Special Legal Counsel
Adolph Moskovitz, Special Legal Counsel
Henry Holsinger, Principal Attorney, Division of Water Resources
Gladys Phillips, Stenographer

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE MINUTES OF THE MEETING OF THE CALIFORNIA KLAMATH RIVER COMMISSION ON JUNE 14, 15 and 16, 1955 WERE APPROVED AS SUBMITTED.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE MINUTES OF THE JOINT MEETING OF THE OREGON AND CALIFORNIA KLAMATH RIVER COMMISSIONS ON JUNE 15 and 16, 1955 WERE APPROVED AS SUBMITTED.

COMMUNICATIONS

The following communications were read and ordered filed, pursuant to the administrative rules adopted June 9, 1954.

1. Letter from Senator William F. Knowland dated June 30, 1955, expressing his thanks for comments in support of H.R. 3587 (Bill on Consent Legislation) and assuring the Commission of his attention when the bill reaches the Senate floor. A copy of this letter is attached hereto as Exhibit 1.
2. Letter from Senator Thomas H. Kuchel dated June 28, 1955, expressing his thanks for comments in support of H.R. 3587 and assuring the Commission of his attention when the Bill reaches the Senate Interior Committee of which he is a member.

Copy of this letter is attached hereto as Exhibit 2.

KWVA 00539

which have not occurred to me. Unfortunately, I have not had the opportunity to fully explore this with Mr. Jones whom I consider the most astute, qualified and experienced engineer that I have ever known. Before I would fully approve the adoption of only one method of approach as a practical matter, I certainly would want to discuss it with him, which I have not had time to do."

Mr. Moskovitz arrived at 9:30 a.m.

Mr. Moskovitz stated substantially as follows: Well, I do not propose to argue law here. I do not think this is the way to decide questions of law. However, the document which Mr. Bird apparently read....they are joint ideas. I was under the impression originally that Mr. Ferrier and Mr. Holsinger concurred with these views. However, there was some misunderstanding as to the use of our analysis. Mr. Bird and I agreed that you start by outlining your objective in practical terms and then, after you have determined what you want, you seek the solution. That you don't start from the technical articles and then go back. The question is 'What do you want for California?' As I understand it, and I think this little paper states it at the outset....California's objective is to secure protection for future water resources development within the Upper Klamath River Basin in California. A right to use water from the Klamath River which will have priority over power and other non-consumptive uses. ...

The power company is able and in a position to develop its power plants first, and, therefore, unless there is some other provision in a compact, the first in time will be first in right and future irrigators will have rights subject to the power company. ... We thought they were mutually both proper approaches, but are not sure how they would fit together. ... When does it become operative? That is the thing that we have been unable to determine and that is why we have prepared the two approaches. If you spell it out in the compact, it is possible you can fit them together, but thus far they do not fit together. They do not say whether or not the later irrigator will have to pay compensation...."

Mr. Bird gave a short outline of the contract terms and stated that this contract, regardless of its terms, is and can be very detrimental to the negotiations of the compact.

Members of the Staff of The Klamath River Project of the Bureau of Reclamation, United States Department of the Interior:

J. P. Elmore, Project Manager
Donald Gray, Project Planning Engineer
Chris Lawrence, Project Hydrologist

STATEMENT OF REGIONAL DIRECTOR, BUREAU OF RECLAMATION

Mr. A. N. Murray, Regional Planning Engineer, Bureau of Reclamation, representing the Regional Director, Mr. Clyde H. Spencer, read a prepared statement, copies of which were furnished all members of both Commissions, and attached hereto as Exhibit A.

The basic issues that must be composed before any further development can be planned by the two states, the Federal Government, and private power interests Mr. Murray stated, are:

- (1) Conflicting legal positions relating to water rights and the contractual rights contained in the 1917 Copco contract, and conditions and stipulations sought in a renewal of such contract now pending before the Secretary of Interior.
- (2) That responsible state and local agencies should establish some definite policies to guide all agencies working toward future development of the Basin.
- (3) To clearly define the areas within the outer boundaries of the Upper Basin which are now and which should be entitled to a full supply of water from Upper Klamath Lake sources.
- (4) To agree on the priority of use of water between consumptive uses for irrigation and other purposes, and for the production of hydroelectric energy.
- (5) Out of court determination, if possible, of the relative legal rights to the use of water and the quantities to be allocated to satisfy such rights.
- (6) A determination should be formulated on who shall develop the power, where it shall be developed, and how much water there will be available upon which to predicate such development.

Mr. Murray stated this program calls for detailed investigations, all of which are expensive and none of which are warranted until some of the basic physical and legal issues are composed.

Mr. Murray's concluding remarks were directed to a suggestion that the two Klamath River Commissions and the organized districts of the Basin should proceed diligently to establish the facts that will provide answers to the foregoing six main points at issue, which should establish conditions, formulas and definitions upon which to predicate the terms for power development.

Exhibit A Page 11 Of 44

KWVA 00069

PRELIMINARY DRAFT FOR THE "KLAMATH RIVER BASIN COMPACT"
BETWEEN THE STATES OF OREGON AND CALIFORNIA, PREPARED BY THE
STAFFS OF THE CALIFORNIA ATTORNEY GENERAL AND STATE ENGINEER,
DATED SEPTEMBER 8, 1955

Mr. Phillips distributed among the Oregon Commission and staff copies of the above entitled compact draft. Mr. Moskovitz read and explained the changes included in this draft as compared to the Second Preliminary Draft. He stated that Article III of this draft is based upon a prior resolution of the Joint Commissions relative to future preferences to the use of the waters of the Klamath River. General discussion ensued on this Article, with particular comment by Mr. Stinson on ~~Paragraph V, of page 6 of the draft~~ *Paragraph 5, of subsection C of Article III on page 6.* ✓

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, PARAGRAPH D, PAGE 11, OF THE SECOND PRELIMINARY DRAFT WAS TENTATIVELY SUBSTITUTED IN PLACE OF PARAGRAPH V OF PAGE 6 OF THE DRAFT UNDER CONSIDERATION.

A copy of the Preliminary Draft, dated September 8, 1955, is attached hereto in the form of Exhibit "A".

BUREAU-COPCO CONTRACT

Mr. Phillips advised that officials of the Bureau of Reclamation and representatives from The California Oregon Power Company would attend the afternoon session of the meeting. He requested that time be allowed for consideration of a prepared statement of California's objective in negotiating the "Klamath River Compact" and of a list of questions which the California Commission desired to have answered by the Bureau and Copco representatives during the session.

Mr. Phillips read a statement of California's objective as follows:

"The basic objective of the State of California in negotiating a Compact with Oregon for the distribution and use of the waters of the Klamath River is to preserve for future domestic, municipal and irrigation use in California a right to the waters of the Klamath River superior to all other types of uses which may develop in the future, regardless of the time when any such uses may be initiated, and without the payment of any compensation therefor. It is the belief of the California Klamath River Commission that the draft of proposed contract between The California Oregon Power Company and the United States Bureau of Reclamation, dated August 5, 1955, if executed prior to the adoption of a Compact between

the two States, will defeat this basic objective of the State of California. The simple reason is that execution of the contract will enable The California Oregon Power Company to secure a license for construction and operation of Big Bend No.2 Power Plant and will thus enable the Company to acquire the right to appropriate the water necessary for such operation before the Compact ~~became~~ *becomes* effective. This appropriative right would be earlier in time and, under well established principles of Western Water Law, superior in right to the rights which may be acquired for domestic, municipal and irrigation use in California after the Compact becomes effective."

Mr. Phillips then asked Mr. Reed whether the Oregon Klamath River Commission would consent to take whatever action is necessary to accomplish California's basic objective as read. Mr. Reed answered that he would hesitate to request postponement of execution of the contract until the Compact was approved by Congress, because approval of Congress may take at least two years. He stated that it is very important to have the power dam built, and if future irrigation can be protected, the Oregon Commission is in favor of the contract being executed as soon as possible.

Mr. Phillips then inquired whether the Oregon Klamath River Commission would be willing to recommend that the current draft of contract be amended before it is executed so as to accomplish California's basic objective. Mr. Reed answered in the affirmative. Mr. Stinson suggested that the two Commissions are close to an agreement and the negotiators might sign the Compact before January 31, 1956. Mr. Stanley stated that he had been in favor of inserting in the proposed Bureau-Copco contract a provision to the effect that any rights which may be granted for storage and use of water by Copco shall be subject to the laws of the State of Oregon and the terms of any interstate compact between the two States. Mr. Stinson recommended that after the Compact was signed by the two Commissions the language which Mr. Stanley suggested could be implemented by attaching to the Bureau-Copco contract a draft of the compact as an exhibit, with the proviso in the contract that Copco would abide by the terms of the Compact draft. In this way, Mr. Stinson advised, Copco would be bound by the principles of the Compact, even though the Compact was never ratified.

Mr. Phillips asked whether the Oregon Commission would agree to the contract as it is now written. Mr. Stanley answered that some of the provisions in the contract are beyond the scope of the authority of the Secretary of the Interior. For instance, one provision attempts to give Copco the right to

use drainage water from Butte Valley. He stated that, in his opinion, the Bureau has no right to determine who shall use those waters.

Among other specific language changes suggested was the following: On page 5 of the contract, sixth line, the Oregon Commission desires to expand the language appearing at that point because they do not want any limitation on the amount of water that can be transported through the Cascade Canal.

The meeting was recessed at 1:00 p.m. for lunch and reconvened at 2:30 p.m.

At the afternoon session the following were also present from 2:30 p.m. until 4:30 p.m.:

Representing the United States Bureau of Reclamation:

Clyde H. Spencer, Regional Director
E. K. Davis, Attorney
A. N. Murray, Regional Planning Engineer

Representing The California Oregon Power Company:

V. S. Cummins, President
J. C. Boyle, Vice President and General Manager
G. O. Harrison, Attorney
Truman Runyan
Sam Richie

Representing the Morrison Knudsen Company:

J. R. Morton
J. N. Wells.

TRANSCRIPT OF JOINT MEETING

A transcript was taken of that portion of the meeting at which the Bureau and Copco representatives were in attendance, by Mrs. Doris Abernathy, court reporter of Klamath Falls, Oregon.

UPON MOTION DULY MADE, SECONDED AND UNANIMOUSLY CARRIED, THE OFFICIAL TRANSCRIPT OF THE MEETING OF THE KLAMATH RIVER COMMISSIONS OF OREGON AND CALIFORNIA, HELD FRIDAY, AUGUST 23, 1955, FROM 2:30 P.M. TO 4:30 P.M., WAS INCORPORATED BY REFERENCE AND MADE A PART OF THE MINUTES OF SAID MEETING.

The official transcript of this portion of the meeting is attached hereto as Exhibit "B".

The meeting recessed at 5:00 p.m. and reconvened at 5:30 p.m.

DESIGNATION OF AUTHORITY

Authority for Gerald H. Jones to represent State Engineer A. D. Edmonston as a member of the California Klamath River Commission was read and filed without objection.

OREGON HYDROELECTRIC COMMISSION WILL IMPOSE CONDITIONS IN COPCO LICENSE

Mr. Stanley announced that Copco will complete its application to the Oregon Hydroelectric Commission for a license to operate its power facilities before the contract is signed. He further stated that the Commission will issue Copco a license, with reservations containing certain conditions, under the provisions of which Copco's rights for the generation of electric power would be made subordinate to the future uses of water for domestic, municipal and irrigation uses, ~~in Oregon.~~ ✓

Mr. Bird questioned whether a provision for afterbay storage below the Copco No. 2 Power Plant in California would be included as a condition in such a license. Mr. Stanley replied he did not know whether the Oregon Hydroelectric Commission would approve of such a condition. Mr. Stinson suggested that the afterbay storage problem could be resolved by Copco agreeing to file an amended license before the Federal Power Commission. Thereafter general discussion followed on the matter of the proposed Copco contract.

The meeting recessed at 6:30 p.m. and reconvened at 8:30 p.m.

CONTINUED DISCUSSION OF THE PRELIMINARY DRAFT FOR THE "KLAMATH RIVER BASIN COMPACT" DATED SEPTEMBER 8, 1955, BETWEEN THE STATES OF OREGON AND CALIFORNIA, PREPARED BY THE STAFFS OF THE CALIFORNIA ATTORNEY GENERAL AND STATE ENGINEER

Mr. Banks read, article by article, the draft of Compact which the California Commission presented for the consideration of the Oregon Commission. Questions regarding the draft were answered by staff members of the California Commission. Various language changes were proposed by the members of both Commissions.

JOINT COMPACT COMMITTEE MEETING

UPON MOTION DULY MADE, SECONDED AND UNANIMOUSLY CARRIED THE MEMBERS OF THE JOINT COMPACT DRAFTING COMMITTEE WERE INSTRUCTED TO MEET IN SACRAMENTO, SEPTEMBER 27, 28 AND 29, 1955, FOR THE PURPOSE OF REDRAFTING THE COMPACT IN ACCORDANCE WITH THE SEVERAL LANGUAGE CHANGES REQUESTED BY THE TWO COMMISSIONS AND TO PRESENT AT THE NEXT JOINT MEETING THE ~~THIRD~~ PRELIMINARY DRAFT OF THE "KLAMATH RIVER COMPACT". ✓
FOURTH

REPORT OF BUDGET COMMITTEE ON PRELIMINARY BUDGET FOR FISCAL YEAR 1956-1957

The Budget Committee appointed at the last meeting of the California Commission held in Klamath Falls on June 14-16, 1955, submitted to the Commission a preliminary budget for the fiscal year 1956-1957 in the amount of \$58,871.00, together with a work program to support the appropriation requested.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED THE PRELIMINARY BUDGET AND WORK PROGRAM FOR THE FISCAL YEAR 1956-1957 WAS APPROVED AND THE VICE CHAIRMAN WAS DIRECTED TO SUBMIT IT TO THE DIRECTOR OF FINANCE FOR APPROVAL PRIOR TO SEPTEMBER 1, 1955.

A copy of this Budget and Work Program is attached hereto as Exhibit "K".

FINAL REPORT ON KLAMATH RIVER BASIN BY THE DIVISION OF WATER RESOURCES

Mr. Bond reported that the Klamath River investigation is presently at a standstill because no funds were appropriated by the Legislature for its continuation.

EXECUTIVE ASSISTANCE REGARDING PROPOSED COPCO CONTRACT

Mr. Edmonston was requested by the Commission to call the Governor's office and, on behalf of the Commission, request an audience to discuss the matter of the Copco contract. At 2:30 p.m. the meeting was recessed for the members of the Commission to hold a conference with Mr. Bright, secretary to the Governor, in the Governor's office. At this conference the Commissioners requested that the vacancy created by the resignation of Chairman Hagelstein be filled as soon as possible. Secretary Bright was also informed regarding the proposed contract and urged to have the Governor take whatever action he deemed appropriate in the matter.

The meeting reconvened at 3:30 p. m.

RESOLUTION TO MR. SPENCER, REGIONAL DIRECTOR OF UNITED STATES BUREAU OF RECLAMATION

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS AGREED UPON TO BE SENT TO MR. SPENCER OF THE BUREAU OF RECLAMATION REQUESTING AN EXTENSION OF TIME FOR CONSIDERATION OF THE PROPOSED CONTRACT BETWEEN THE BUREAU OF RECLAMATION AND THE CALIFORNIA-OREGON POWER COMPANY.

JOINT MEETING
CALIFORNIA & OREGON
KLAMATH RIVER COMPACT COMMISSIONS

Spruce Room
Willard Hotel
Klamath Falls, Oregon

September 23, 1955
1:40 o'clock P.M.

(Also present were representatives of the California Oregon Power Company and the Bureau of Reclamation.)

MR. BANKS: Ladies and gentlemen, please come to order. This is a meeting of the joint Compact Commissions of Oregon and California. We are pleased to have representatives of Copco here today to discuss the proposed form of contract that has been negotiated in the form of a draft for discussion this afternoon. The joint Commissions have discussed it briefly this morning for about half an hour, and I am glad that you folks are here to give us some of the details and explain some of the details of the contract.

Mr. Phillips, the Chairman of the California Compact Commission has a prepared statement he would like to read setting forth the position of California with respect to the contract. Following that I think we should proceed with the reading of the form of contract and discuss it paragraph by paragraph. That will be the best and most logical way in getting at it.

MR. PHILLIPS: Gentlemen of both Commissions and guests

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Paragraph 11. (Reads Paragraph 11, page 7.) Any comments on Paragraph 11? Paragraph 12. (Reads Paragraph 12, page 7.) Any comments on Paragraph 12? Thirteen. (Reads Paragraph 13, pages 7 and 8.)

MR. DAVIS: Mr. Banks, if you want to save time the rest are what I call Government boiler plate which have no interest in them.

MR. BANKS: I know they are, but there are just a couple more pages to go through them. (Reads the remainder of the Contract.)

I don't think we need to go into this proposition about the rates. Anybody want to discuss those rates? If not, we can proceed to general comments.

MR. STANLEY: Mr. Chairman, I think that some of the members of the Oregon Commission want to discuss that subject of rates. I do not want to do so but I understood they did.

MR. BANKS: Rates?

MR. STANLEY: Yes.

MR. BANKS: Okeh. Does that involve reading them?

MR. STANLEY: No, I think not. It may be they don't want to talk, I don't know.

MR. BANKS: Does anybody want to discuss these rates?

MR. STEVENSON: The Klamath Water Users Association, the Klamath Protective Association asked for a small percentage on these rates. I believe the Government pumping puts it

down here, I believe it is five and three. They ask for it to be changed to four and two. That is the only comment I have to make on the rates.

MR. BANKS: Just what page and line does that show up on?

MR. LATHROP: B-3, I think.

MR. MURRAY: It is on page B-3, Mr. Banks.

MR. BOYLE: I was going to suggest that George refer to the two paragraphs on page 3 under the heading "Rate". The on-peak pumping rate is 5 mills, and the next paragraph the off-peak pumping rate is 3 mills. Reduce it five to four and the three to two?

MR. STEVENSON: That is what they asked for, I believe.

MR. BANKS: Do you want to take that under advisement, Mr. Boyle?

MR. BOYLE: Yes. This is the rate we agreed on with the Bureau. We don't want to make any change in the rate provided in this Contract at present.

MR. STEVENSON: It is a very problematical question. I think there is a feeling all through the Valley among the farmers, both under the Bureau of Reclamation and on their own projects that the differential power rates should be extended to all irrigable land, both irrigated now and in the future. I think the California delegation has the same thought. And also perhaps that the protection to prior use of water should be extended to all land in and out of the Government

Project, whether it is under the Bureau of Reclamation or whether it is under private development. There are many areas here that are too small for the Reclamation Service to put a project on that can be developed by private means -- a few hundred acres or a few thousand acres in a place where the Reclamation Service wouldn't be interested in at all, it is out of their line. And it would facilitate these very greatly if the preferential power rate were extended and they were guaranteed water when and if they need it. There is a question apparently -- one view is that the Interior Department, the Bureau of Reclamation controls all the water in the Valley, and there is an opposing view that the State of Oregon and the State of California control the water they use in projects and are entitled to that for future projects that they develop. So there are certain things in this that may be under dispute. There might as well be a few more.

MR. SPENCER: Mr. Chairman, I don't know whether I can answer Mr. Stevenson's questions beyond saying that this Contract does not propose to divide up the water of the entire Basin. We do not understand that the Secretary has anything to do whatever. All we are doing is trying to write a Contract between the Department of the Interior and Copco which will

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13:60

protect and give a priority for irrigation for all projects in which the Federal government is interested. Now when you go beyond the Federal government it seems to me like the Secretary is overstepping his bounds when he attempts to assert any kind of control over the water for these non-Federal projects. I don't know whether that is an answer to your question, but that is why we do not feel there can go into this Contract any blanket agreement in which the Secretary of the Interior and Copco divide up the waters of the Upper Klamath Basin.

MR. STEVENSON: Well, the purpose is to protect all land that may be irrigated and this present Contract doesn't do anything to protect that land. If something was done to protect the land that isn't irrigated now and may be irrigated, and possibly may never be irrigated but is possibly irrigable land in the future -- if something were done to assure them of a water supply there would be no objection to the Contract as written, I believe.

MR. BANKS: Isn't that more a function of the Compact than it is the Contract?

MR. STEVENSON: I think it is, Mr. Banks, but this Contract is going to come ahead of the Compact.

MR. REED: This Contract would then extend preferential rates to Indian lands whether or not they are Bureau of Reclamation projects?

MR. SPENCER: Just a minute. I understand it is a Federal project. I might want to check that with Mr. Boyle. We had in mind any projects, anything the Bureau of Reclamation would have to do, and we did not go into the water rights of anybody -- the Indians. But the pumping rates I think maybe would require a little discussion with Copeo. You might ask Mr. Boyle.

MR. REED: Do you want to comment, Joe?

MR. BOYLE: Well, I believe that the two points raised by Mr. Stevenson cannot be properly covered in this Contract. The Contract, as I understand it, is a contract between the Bureau of Reclamation and the Company and provides for adjudication of the rights that may appear between the two. Now as for the water rights that are not for land irrigated, not under the Project boundary, and the matter of rates, and the two other points I think raised by the Klamath Water Users Association, I don't think they can be covered by this Contract. We thought perhaps a discussion with the Bureau of Reclamation and the Water Users Protective Association on those points would clarify them, but if you do want a complete statement at this time on those two points I would be glad to read it for the record.

MR. PHILLIPS: We would like it.

MR. BOYLE: All right. First with respect to the pumping rate: The Company has said -- by the way this is a

memorandum which we prepared to give to the Klamath Water Users Protective Association should they so desire, thinking that they might be represented here, to have at their meeting on rates and have these comments at that time.

The Company has said that it would consider off-peak pumping rates and discuss with properly organized districts or individual pumpers pumping rates outside the jurisdiction of the Bureau which would be equal to the pumping rates in the Contract, plus the equivalent of what is paid the government for water. The matter could only be determined by the Public Utilities Commissions of Oregon and California in their regular proceedings in which the Public Utilities Commissions would determine whether or not any special rates are proper and legal; so the Company cannot make a commitment at this time which would bind either the Company or the Commission. This is a matter entirely beyond the scope of the Contract.

Now with respect to the use of water outside of the Project we have prepared this comment: First it refers to the -- one of the comments made by the Water Users Association with respect to the paragraph in the Contract covering power -- development of power. So the statement is this:

There is no provision in the Contract which limits the generation of power to Copco. The paragraph referred to simply provides that the Contract priorities granted for

irrigation purposes to land already within the Project shall not extend to the generation of electrical energy by the Reclamation Service. It or any other applicant may still proceed to perfect any water right for hydroelectric generation or otherwise under the laws of Oregon and California.

As to the proposal that all hydroelectric water rights of the Company shall be subordinated to all future irrigation users the truth is that this is a matter which does not concern land already within the Project, and is beyond the proper reaches of the Project. Future irrigation rights will depend upon the laws of California and Oregon as administered by the Oregon Hydroelectric Commission and the California Division of Water Resources. However, the Contract, in its practical effect, gives a priority to irrigation use, with the return of water above Keno.

Now, that involves, in my opinion, several legal questions which I am not capable of commenting on. But we do know after this Contract is signed that we will have to make application to the Hydroelectric Commission of Oregon for an amendment to our original filing, and at that time the determination of what we have to do with respect to developing water in the Klamath River will be contained in the licenses. Similarly, the State of California water rights which we obtain in that State will have to come through the State Department of Natural Resources.

So I do not believe at this moment that these proceedings can determine at all what may be the outcome of the proceedings before these Commissions.

Would you care to make any further comment?

MR. HARRISON: No; I subscribe to that entirely. We understand all we are doing with the Contract is continuing an agreement which has been in effect for some forty years, with some slight modifications and extended. And the Project and Project landowners, our power company doesn't purport to and couldn't create any water rights which must proceed from the proper State authorities. In addition, we don't see how this Contract could in any manner affect the function of this Commission.

MR. PHILLIPS: Mr. Harrison, would Copco have any objection to your Contract with the Bureau taking its place in the Interstate Compact that is being negotiated at the present time between the two States?

MR. HARRISON: I never considered such a thought. I will be glad to consider it. It is a novel idea. I don't see how it could affect the function of the Compact Commission and how it can properly enter into it; and in any event, I don't suppose there is any compact now in existence and we stand here now ready to execute the Contract. As a matter of fact, we have a contract at the present time, Mr. Phillips, which is almost identical with this Contract.

MR. PHILLIPS: We understand that, Mr. Harrison. Your contract, as I understand it, expires in '67?

MR. HARRISON: That is right.

MR. PHILLIPS: That is twelve years from the present year?

MR. HARRISON: That is right.

MR. PHILLIPS: Which leads to a question. Could not this Contract wait and take its place within a Interstate Compact? We understand your contract is with the Federal government exclusively.

MR. HARRISON: That is right.

MR. PHILLIPS: Which leads to another question. Does the Federal government have exclusive jurisdiction over the water in this Klamath River Basin in the two States of Oregon and California, or does either of the States of Oregon and California have any claim or rights to that water which is valid?

MR. HARRISON: I don't know. The only subject of this Contract is the operation of the Link River dam and the waters behind that dam, and if a dam was erected to regulate the present use of water by Copco and for irrigation of the Project, I can't see how the operation of a government dam at the mouth of Upper Klamath Lake could possibly affect the other matters you have mentioned or relate to them.

MR. PHILLIPS: May I ask Mr. Spencer. Mr. Spencer, I have caused to have delivered to yourself and Mr. Boyle a copy of the California basic position in this which I read previously.

Would the Bureau have any objections to a reasonable delay for the California Klamath River Commission staff and possibly the Oregon Commission staff to meet with the Bureau to try to reconcile any differences or concerns, as far as the States are concerned?

MR. SPENCER: The first thing I would want to know what you consider "reasonable". What length of time?

MR. PHILLIPS: Mr. Spencer, "reasonable" is a wide open question. I will tell you this: This California Commission was created sixteen months ago and has been in session since. We are just about in agreement between the two States. We are composed of Commission members serving without compensation; we live in various parts of the State; we get together about twice a month and go over these problems in an effort to reach an agreement on a Interstate Compact. Could we leave that "reasonableness" open to this extent, and could I as Chairman of the California Commission, request a conference with yourself, your staff, the members of Copco if they wish, at some time in the near future, preferably next week or the week following, at your office in Sacramento if you wish or wherever you wish, to talk over and discuss these questions of concern fully with the State of California, and I believe some of them are joint concerns between the two States? It is regrettable that the two States, California in particular, and your Bureau have not had occasion or have not worked more closely together on our

too related problem. We have been busy negotiating a Interstate Compact with another State; you have been busy negotiating a Contract with a private utility power concern. Our two interests have probably kept us busy on the same negotiations for the same water. We of California are concerned that the present proposed Contract between the Bureau and Copco -- the extension, rather -- will supersede a Interstate Compact between the States of California and Oregon and take precedence over any Compact the two States may negotiate, and make particularly the State of California's position very uncertain and possibly untenable.

MR. SPENCER: Answering your second question first about a meeting with my staff next week the answer is "Yes", you may, at your convenience next week. Or, if you cannot make it next week we would be very happy to meet with you the next week. And this is not a new offer by the Bureau of Reclamation to meet with you people. I assure you we would have been happy at any time during these negotiations to meet with you, and we still are.

MR. PHILLIPS: Have you made us an offer before, Mr. Spencer?

MR. SPENCER: Yes, sir.

MR. PHILLIPS: Orally or in writing?

MR. SPENCER: To your Chairman, Mr. Hagelstein and I think your Secretary. I know I made it orally to your Consultant,

Mr. Lathrop, when he was first appointed. He came down to my office and I told him we would be very happy to discuss, meet and discuss any problems and help in any way we could.

MR. MURRAY: One example of that, Mr. Banks, but we were quite desirous of having the map which is appended to this Contract fit the map which the Compact Commission themselves were developing, and then of course the modification of the map which we ourselves of the Commission have brown up, and expressed on two or three occasions to staff members of the Commission we would be glad to work on any part of this with them.

MR. HARRISON: Mr. Phillips, I think the position of Copco with the Federal Power Commission should be repeated here, and that is it is not willing to proceed with any further hydroelectric development in the Upper Klamath Basin unless an extension of contract, fifty years from the date of the issuance of the license, is accomplished; and it would not be our position to proceed without a license. And therefore, the answer to your question is that so far as future development of hydroelectric power in Upper Klamath Basin, the power company could not proceed with it on the terms which you suggest.

MR. PHILLIPS: The terms being it become a part of the Compact?

MR. HARRISON: That it would be deferred. We would not proceed on any basis which would include the deferring of the Contract.

MR. MOSCOWITZ: I would like to ask the representatives of the Bureau of Reclamation whether they feel the inclusion in the Contract between the United States and the Company of a provision that the Company shall not use water for its power operations when such water is needed anywhere within the Upper Klamath River Basin for irrigation or domestic use, regardless under whose jurisdiction it is done, whether such a provision would be illegal and unauthorized under your laws?

MR. SPENCER: You are asking me a legal question and I am not prepared to answer; and I doubt whether Attorney Davis is, on whether it would be illegal or not. I think that would be up to the courts to decide.

MR. MOSCOWITZ: Are you willing to explore the possibility of including such a provision because such a provision should answer our first objection as we have outlined it in our statement.

MR. SPENCER: I am not sure that I am getting the right thinking in regard to that question, but if I am it brings up a question to me as to whether the two States would want the Secretary of the Interior establishing the water rights.

MR. MOSCOWITZ: We would not regard the provision we have in mind as leaving the Secretary of the Interior the power to establish water rights. What we are concerned about, as we indicated in the prepared statement, is that the signing of the Contract will pave the way to the acquisition of a water

right which may be uncon_____ by later acquired rights for irrigation development; and for that reason we want to safeguard in the Contract that that will not result.

MR. HARRISON: It isn't the position of the Attorney General's office in California any water right is created by this Contract?

MR. MOSCOWITZ: Certainly not.

MR. HARRISON: Is it not true the only way a water right can be acquired in the State of California is by complying with the general laws and a proceeding before the Division of Water Resources?

MR. MOSCOWITZ: That would be the position we would take in court.

MR. HARRISON: That is the law. So they will be acquired, and not acquired before, there is a proceeding before the Water Resources.

MR. MOSCOWITZ: Not necessarily the California officials. Maybe Oregon----

MR. HARRISON: I was only addressing myself to California at the moment. But in addition it is true a water right can be acquired in California only by complying with the general laws now in effect and a hearing before the Division of Water Resources?

MR. MOSCOWITZ: Yes; that is the law.

MR. HARRISON: Is it your opinion or not?

MR. MOSCOWITZ: Mr. Harrison, my opinion is valueless.

I would like to question you for a moment as to the possible effect of the decisions of the United States Supreme Court concerning the jurisdiction of the Federal Power Commission in granting a power license and their effect. I am speaking of the First Iowa case and the Deschutes River case in Oregon. Don't you think those cases possibly give ground for some concern?

MR. HARRISON: I wouldn't know.

MR. SPENCER: Mr. Chairman, may I ask if the California Commission will write us a letter suggesting the language, the wording that they want in this Contract, and we will be very happy to give it consideration.

MR. BIRD: Before that question is answered I would like to clarify something that has already been said here today. The California Commission has no specific language changes or any technical language changes here today, and we are here seeking advice of the Bureau of Reclamation and the officials of the California Oregon Power Company. You have heard our objective and we desire comment on whether or not the Contract, or any contract that you might negotiate, would meet our objective.

MR. SPENCER: Mr. Chairman, as you know we are scheduled to leave at four o'clock this afternoon, and I am sure we could not go into this suggestion request and frame any language here

here in the short time we have which we think might fit; and I am still not clear in my mind and would be very happy to have the California people bring that with them to Sacramento next week or the following week when we have this session, and we will explore it.

MR. STINSON: Mr. Chairman, the problem that is being discussed here I think is a pretty important one, although I wonder whether some of us are misconstruing it and maybe giving it undue importance. I believe it is of importance also to the State of Oregon, yet I believe it is a matter that can be handled by a carefully phrased negative statement in the Contract which doesn't imply that the United States controls all the water or the United States is granting a right. I think if men of good will -- as I am assuming all are -- could meet in Sacramento in Mr. Spencer's office in a little group that we could work out two or three sets of language that would accomplish the thing that I believe Mr. Phillips and his group are shooting at. I think it is worthwhile to explore. I don't think you need to get off into these side issues -- who claims all the water and what do the recent decisions, First Iowa and Pelton decisions really mean. You have to have them in mind. But I submit there is reasonable ground for the Chairmen of the Commissions and their engineers, and the Copco people and the Bureau people to meet, sit around a table, and try to solve that problem.

I add this as a personal point of view. Don't set it on

September 30th, that is when the Doctor has to look at my head again.

MR. BOYLE: Mr. Chairman, may I ask a question----

MR. BANKS: Surely.

MR. BOYLE: --from the California Compact Commission. What water right is it you fear we would put in jeopardy?

MR. MOSCOWITZ: This is what we fear, Mr. Boyle. We fear that the execution of the Contract will lead to the granting of a license to the Company to construct and operate the Big Bend No. 2 plant.

MR. BOYLE: Which is in Oregon.

MR. MOSCOWITZ: In Oregon; that is right. And that following such granting of a license in your procedure, which your Company believes complies with the laws of the United States and the States, you will secure a right to appropriate water for such development.

MR. BOYLE: That water, if used for that development, would pass on into the State of California.

MR. MOSCOWITZ: The proposed development of irrigation in California with water from the Klamath River would require diversion of water in Oregon at or about Keno -- actually I believe a little upstream from Keno. If the Company secures a right to appropriate water for use in its Big Bend No2 power plant, which has a priority as of the date the water is first used?

MR. BOYLE: For what area, please?

MR. MOSCOWITZ: For use in your Big Bend No. 2 plant.

MR. BOYLE: For what area would you make this appropriation, Butte Valley only?

MR. MOSCOWITZ: For the land in the Upper Basin in California deemed to be irrigable and capable for development in the future.

MR. BOYLE: Does that take outside of Butte Valley?

MR. MOSCOWITZ: It takes into account approximately 100,000 acres of land in Butte Valley, Oklahoma and Red Rock.

MR. BOYLE: That is already covered in this Government----

MR. MOSCOWITZ: That is already covered insofar as such land is developed by Federal projects.

MR. BOYLE: Isn't that the prospect at the present time, they develop it but include it in the Federal Reclamation Project?

MR. MOSCOWITZ: Not necessarily. That is a point at issue. It may be such development will be accomplished by the State of California or some other means, and the objective of the California Commission is to preserve the non-Federal development of such lands.

MR. HARRISON: Is it your position the 1250 second feet, continuous flow, necessary to develop power in the plants of Copco, should be discontinued?

MR. MOSCOWITZ: As to any rights not now vested.

MR. HARRISON: Their vested. I am asking you to discuss it. There is at the present time a flow of 1250 second feet, continuously, used in California for the generation of hydroelectric power. That same water is released from the dams constructed by the California Oregon Power Company at Upper Klamath Lake. It proceeds down the river and is used at Copco. All that is involved in the additional development is the use of the head between the point where the water is released and where it is used for the generation of hydroelectric energy in California. Is it your position that should be discontinued?

MR. MOSCOWITZ: Mr. Harrison, I would like to ask you to answer our question first, whether the Company would be willing to subordinate any future rights of the Company not now vested, whatever they may be -- and I am not prepared to go into a discussion of the vested rights.

MR. HARRISON: You fail to get the point. The thing you are asking to subordinate is the continuous flow of 1250 second feet in which they now own some vested right for the purpose of hydroelectric power in California.

MR. MOSCOWITZ: I did not define what the vested rights of your Company are.

MR. HARRISON: That is what they are.

MR. MOSCOWITZ: I am asking you if the Company is willing to accept the principle that any future rights for power below Keno would be subordinate -- any future rights.

MR. HARRISON: I am trying to tell you that would be a surrender of their present rights, and they couldn't do that.

MR. BOYLE: You said for irrigation. My question is, what irrigation? What irrigation do you expect to include in the California irrigation -- Shasta Valley, everything in Northern California?

MR. MOSCOWITZ: I thought I answered that question. It is 100,000 acres of land in Butte Valley, in the Oklahoma District and Red Rock.

MR. BOYLE: Then the water could be returned under the terms of this Contract for power purposes?

MR. MOSCOWITZ: I think that is the expectation.

MR. HARRISON: What about the Compact?

MR. MOSCOWITZ: I think it is probably hedged the same way you have it in your Contract, the same sort of way.

MR. STEARNS: I would like to ask this question: Under this proposal there is no guarantee a portion of this 1250 second feet you mention couldn't be bypassed past this present channel and dropped into the river through a penstock below the present town of Keno. Don't you anticipate that as part of your future development and your storage facilities?

MR. HARRISON: The successive uses of the head between Upper Klamath Lake are all set out in the application pending before the Power Commission and I don't have them all in mind.

MR. STEARNS: I see no provision in this Contract, so far

as the Bureau of Reclamation is concerned, to guarantee that 1250 second feet will be in the river above Keno where it would be available for pumping purposes.

MR. HARRISON: I don't suppose the Contract touches on that subject.

MR. STEARNS: Has the Bureau considered that phase of it?

MR. BOYLE: The application for license probably does before the State Power Commission. I have a little small drawing of the layout.

MR. STEARNS: That is the application to the Oregon people?

MR. BOYLE: This is a plan of the whole layout including pumps, storage which we have added to the plan recently, and from an economical power development standpoint I don't see how it would be possible to take the water out of the present river channel to some other water shed, if that is what you have in mind, because the use of storage in the river itself is essential for the economic development of the plant. It would have to be laid out with that in mind.

MR. STEARNS: This water to Butte Valley is going to be meaningless if it comes in the river so far down it can't be picked up. As far as California is concerned, Oregon could grant the right and the water flowing down the river, it would practically amount to an out-of-the-river diversion if it was -- so far as the California area is concerned it would amount to an out-of-Basin diversion.

MR. BOYLE: No, it would be dropped in at Keno at the present river level.

MR. STEARNS: Excuse me, I misunderstood that.

MR. BOYLE: At the present river level above the regulation dam which regulates the flow of the lake. That regulation is an important item as far as power is concerned, and it does protect irrigation for all water which would be impounded in Round and Aspen Lakes.

MR. PHILLIPS: Mr. Chairman. Mr. Spencer, another important objective of the California Commission is the subject of afterbay storage. Would the Bureau of Reclamation be agreeable to amending their Contract to provide for afterbay storage below Copco No. 2 with the simultaneous development of any future power development to regulate the irregular flow of the stream that has caused damage to fish life, property and human beings?

MR. SPENCER: I do not think that the Secretary probably has that authority to demand. We would be very happy to include something in the Contract if Copco is agreeable. On the other hand, if you want to explore that I would rather take time and do a little research, then we could discuss that in Sacramento.

MR. PHILLIPS: May I ask that same question to Mr. Boyle?

MR. HARRISON: I would like to say on that, I don't think the Company has any choice because obviously the exclusive jurisdiction on that question rests with the Federal Power Commission.

MINUTES OF JOINT STAFF MEETING
OF THE
KLAMATH RIVER COMMISSIONS OF OREGON AND CALIFORNIA
Held in
Conference Room, Division of Water Resources
Public Works Building, Sacramento, California
September 27, 28, 29, 1955

The meeting was called to order at 9:00 a.m. on Tuesday,
September 27, 1955, by Chairman F. A. Banks.

Representing the State of Oregon were:

Nelson Reed, Chairman, Oregon Klamath River Commission
Geo. E. Stevenson, Member, Oregon Klamath River Commission
Howard R. Stinson, Consultant, Oregon Klamath River Com-
mission (afternoon only)

Representing the State of California:

Bert A. Phillips, Chairman, California Klamath River
Commission
Gerald H. Jones, Assistant State Engineer
Robert B. Bond, Associate Hydraulic Engineer, Division
of Water Resources
Allan G. Bird, Special Legal Counsel, California Klamath
River Commission
Adolph Moskovitz, California Deputy Attorney General,
California Klamath River Commission
Henry Holsinger, Principal Attorney, Division of Water
Resources
Porter A. Towner, Associate Attorney, Division of Water
Resources
Sam R. Leedom, Administrative Assistant, Water Resources
Board (morning only)
Gladys Phillips, Stenographer, Division of Water Resources

Representing the United States:

F. A. Banks, Federal Representative pro-tem, Chairman of
the meeting

Representing the Press:

Walter L. Barkdull, United Press
Brian Duff, Associated Press

Chairman Banks stated that the meeting was called to
discuss the provisions of the proposed contract between the Bureau
of Reclamation and Copco with a view to arriving at an agreement

Representing California Oregon Power Company:

J. C. Boyle, Vice President and General Manager, The
California Oregon Power Company
G. O. Harrison, Attorney, California Oregon Power
Company
V. S. Cummins, President, The California Oregon Power
Company

Representing the Press:

Robert Markson, Sacramento Bee

Before the meeting was formally called to order, representatives of the Bureau of Reclamation and The California Oregon Power Company were given copies of the changes which had been suggested by the joint staffs of the Commissions on the previous day and were allowed time to discuss these suggested changes among themselves. Following these informal discussions the two groups returned to the Conference Room for the start of the meeting.

Chairman Banks opened the meeting with a statement substantially as follows: "Yesterdays joint staff meeting of the Commissions of Oregon and California gave consideration to proposed contract between the Bureau and Copco. We have made some suggestions for amendments which the group desires to propose to the parties to this contract. The amendments in Paragraphs 6, 7 and 10 have been mimeographed and supplied to the parties to the contract and they have been giving consideration to those amendments this morning. Prior to the discussion of them, Mr. Phillips, Chairman of the California Commission, would like to present a statement to the meeting."

Mr. Phillips responded as follows:

MONDAY, OCTOBER 31, 1955, 10:00 O'CLOCK, A. M.

---oOo---

MR. PHILLIPS: Ladies and gentlemen and all those present, we have a distinguished visitor with us this morning. Assemblywoman Pauline Davis of Portola.

MRS. DAVIS: How do you do everyone.

MR. PHILLIPS: Adolph, are there any other legislators here?

MRS. DAVIS: Evidently I am the only one here.

MR. PHILLIPS: This meeting, gentlemen, today has been called as an emergency meeting of the two commissions to meet with the California Oregon Power Company. You gentlemen were kind enough to accept our invitation to come down again. I know it is an inconvenience for you as well as us. Each of us is scattered over two states, and so are you. So we hope that what we think are small differences can be reconciled and composed today and brought into agreement.

We will go back to this meeting - this meeting is called today primarily for the purpose of reaching agreement on the priority use of water, domestic, municipal and irrigation over that of power in times of need. We have, as you gentlemen of the company realize at two past meetings, one in Klamath Falls and one here in Sacramento, where the Company gave to the two Commissions a letter dated September 29, 1955, containing your agreements, agreeing to the priority use of water with provisions.

That was answered by the two Commissions in a letter dated October 21, giving the two commissions' interpretation of the letter that you submitted on September 29. We wish clarifications of some of the provisions in the letter which were not entirely clear to us.

THE CALIFORNIA OREGON POWER COMPANY

October 14, 1955

Mr. Frank Z. Howard, President
Klamath Basin Water Users Protective Association
Klamath County Court House
Klamath Falls, Oregon

Dear Mr. Howard:

Your letter of October 7, 1955 referring to the proposed agreement between the Secretary of the Interior and The California Oregon Power Company for the operation of the Link River Dam containing certain suggestions for reduced power rates has been received.

At the recent meeting of the Oregon and California Klamath River Commissions, The California Oregon Power Company considered proposed changes in the draft contract. The Company agreed to some of them, but then expressed its inability to agree to lower the pumping rates contained in Schedule B.

The proposal to reduce the pumping power rates for non-project users was also considered at the joint meeting of the Klamath River Commissions and at that time I expressed the position of the company as follows:

The company has said that it would consider off-peak pumping rates and discuss with the properly organized districts or individual pumpers pumping rates outside the jurisdiction of the Bureau which would be equal to the pumping rates in the contract, plus the equivalent of what is paid the government for water. The matter could only be determined by the Public Utility Commissions of Oregon and California in a regular proceeding in which the Public Utilities Commissions would determine whether or not any special rates were proper and legal. The company cannot make a commitment at this time which would bind either the company or the commissions. This is a matter entirely beyond the scope of the Link River dam contract.

KWVA 00965

11634.00

Exhibit A Page 43 of 44

(COPY)

STATE OF CALIFORNIA
CALIFORNIA KLAMATH RIVER COMMISSION

November 1, 1955

Mr. C. H. Spencer
Regional Director, Region 2
U. S. Bureau of Reclamation
P. O. Box 2511
Sacramento, California

Dear Mr. Spencer:

Enclosed is a copy of an agreement offered by the California Oregon Power Company and accepted by the California and Oregon Klamath River Commissions at a special meeting of the two Commissions in Sacramento, California, on October 31, 1955. By their acceptance, the two Commissions have withdrawn their opposition to the execution of the proposed contract between the California Oregon Power Company and the United States, dated August 5, 1955, as revised October 10, 1955, relating to the operation of the Link River Dam.

Very truly yours,

/s/ Bert A. Phillips

BERT A. PHILLIPS, Chairman
California Klamath River Commission

/s/ Nelson Reed

NELSON REED, Chairman
Oregon Klamath River Commission

RBB:md

Enc.

Exhibit A Page 44 of 44

KWVA 01002

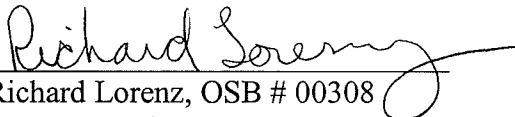
CERTIFICATE OF SERVICE

I CERTIFY that I have on this day served the **KLAMATH WATER USERS ASSOCIATION REPLY BRIEF** by electronic mail and/or mailing a copy properly addressed with first class postage prepaid to the following:

RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC RATES & REGULATORY AFFAIRS 121 SW SALMON STREET, 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	JIM ABRAHAMSON -- CONFIDENTIAL COMMUNITY ACTION DIRECTORS OF OREGON 4035 12TH ST CUTOFF SE STE 110 SALEM OR 97302 jim@cado-oregon.org
EDWARD BARTELL KLAMATH OFF-PROJECT WATER USERS INC 30474 SPRAGUE RIVER ROAD SPRAGUE RIVER OR 97639	KURT J BOEHM -- CONFIDENTIAL BOEHM KURTZ & LOWRY 36 E SEVENTH ST - STE 1510 CINCINNATI OH 45202 kboehm@bklawfirm.com
LISA BROWN WATERWATCH OF OREGON 213 SW ASH ST STE 208 PORTLAND OR 97204 lisa@waterwatch.org	LOWREY R BROWN -- CONFIDENTIAL CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org
PHIL CARVER OREGON DEPARTMENT OF ENERGY 625 MARION ST NE STE 1 SALEM OR 97301-3742 philip.h.carver@state.or.us	JOAN COTE -- CONFIDENTIAL OREGON ENERGY COORDINATORS ASSOCIATION 2585 STATE ST NE SALEM OR 97301 cotej@mwvcaa.org
MELINDA J DAVISON -- CONFIDENTIAL DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com	JOHN DEVOE WATERWATCH OF OREGON 213 SW ASH STREET, SUITE 208 PORTLAND OR 97204 john@waterwatch.org
JASON EISDORFER -- CONFIDENTIAL CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	RANDALL J FALKENBERG -- CONFIDENTIAL RFI CONSULTING INC PMB 362 8351 ROSWELL RD ATLANTA GA 30350 consultrfi@aol.com
PAUL M WRIGLEY PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 paul.wrigley@pacificorp.com	DAVID HATTON -- CONFIDENTIAL DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us
JUDY JOHNSON -- CONFIDENTIAL PUBLIC UTILITY COMMISSION PO BOX 2148 SALEM OR 97308-2148 judy.johnson@state.or.us	JASON W JONES -- CONFIDENTIAL DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us

DAN KEPPE KLAMATH WATER USERS ASSOCIATION 2455 PATTERSON STREET, SUITE 3 KLAMATH FALLS OR 97603	MICHAEL L KURTZ -- CONFIDENTIAL BOEHM, KURTZ & LOWRY 36 E 7TH ST STE 1510 CINCINNATI OH 45202-4454 mkurtz@bkllawfirm.com
JIM MCCARTHY OREGON NATURAL RESOURCES COUNCIL PO BOX 151 ASHLAND OR 97520 jm@onrc.org	KATHERINE A MCDOWELL STOEL RIVES LLP 900 SW FIFTH AVE STE 1600 PORTLAND OR 97204-1268 kamcdowell@stoel.com
DANIEL W MEEK -- CONFIDENTIAL DANIEL W MEEK ATTORNEY AT LAW 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net	NANCY NEWELL 3917 NE SKIDMORE PORTLAND OR 97211 ogec2@hotmail.com
MATTHEW W PERKINS DAVISON VAN CLEVE PC 333 SW TAYLOR, STE 400 PORTLAND OR 97204 mwp@dvclaw.com	JANET L PREWITT DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us
GLEN H SPAIN PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOC PO BOX 11170 EUGENE OR 97440-3370 fish1ifr@aol.com	DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com
ROBERT VALDEZ PO BOX 2148 SALEM OR 97308-2148 bob.valdez@state.or.us	

Dated in Portland, Oregon, this 16th day of September, 2005.


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Of Attorneys for Klamath Water
Users Association