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February 11, 2021

To: House Committee on Water, Chair Ken Helms, Vice-Chair Mark Owens, Vice-Chair Jeff Reardon, and Members of the Committee

**Re: Testimony for February 11, 2021 Public Hearing on HB 2244 (2021)**

Dear Chair Ken Helms, Vice-Chair Mark Owens, Vice-Chair Jeff Reardon, and Members of the Committee:

I am Dominic Carollo, an attorney based in Roseburg, and I am providing this written testimony on behalf of Water for Life, Inc., as its counsel. Water for Life opposes HB 2244 because it would substantially infringe on the due process rights of water right holders subject to certain regulatory orders of the Oregon Water Resources Department (“OWRD”) and would do so in a manner that arbitrarily targets the Klamath Basin and, on top of that, provide arbitrary and preferential treatment to instream water rights over all other types of water rights recognized by Oregon water law.

## **I. Introduction**

The intent of HB 2244 is to modify the procedural right to the stay of enforcement of final orders of the Water Resource Commission or Water Resource Department (collectively, “OWRD”), pursuant to ORS 536.075(5), when the order becomes the subject of a petition for judicial review in Circuit Court, or an appeal in the Oregon Court of Appeals. Eliminating this procedural safeguard would, in many contexts, violate the due process rights of water right holders and could result in the State’s unlawful taking of private property rights. In addition, the purported need for HB 2244—that the stay provision is being abused by junior water right holders—is simply not true. In reality, the vast majority of lawsuits filed against OWRD under ORS 537.075(5) have been settled on terms favorable to the petitioners who filed the lawsuits or OWRD has lost the lawsuits outright. In particular, many of the lawsuits have to do with groundwater regulation and OWRD’s regulatory approach has now been decisively struck down in court. In response to ten of the lawsuits challenging groundwater regulation in 2018, OWRD settled those cases and voluntarily agreed to pay the petitioners’ attorney fees. OWRD then adopted new regulations, targeting six wells but, in 2020, OWRD lost a subsequent lawsuit in which Marion County Circuit Court Judge Claudia Burton ruled that those rules were illegally

adopted and, consequently, the agency illegally regulated the plaintiffs' well in violation of their due process rights.

In short, eliminating the automatic stay provision in ORS 536.075(5) is neither lawful nor necessary. The system is working appropriately and as intended by the Legislature when it enacted the automatic stay provision in 1985.

## **II. Background**

### **A. ORS 536.075**

In 1985, the Legislature made a deliberate choice to prescribe special requirements and procedures for judicial review of all OWRD final orders, which vary significantly from the default provisions of the Oregon Administrative Procedures Act (“APA”) (applicable here, ORS 183.482 and ORS 183.484). This is particularly significant with respect to the stay provision of ORS 536.075(5). Because an “order in other than contested case” is, by definition, *issued without any prior due process*, the stay provision in ORS 536.075(5) ensures that when such final orders are subject to judicial review, they will not be enforced until after the petitioner is afforded due process in circuit court, unless the agency makes the requisite finding of “substantial public harm.” In this sense, *regulating property rights* through an order in other than contested case implicates delicate due process issues. Put simply, this is a unique situation that calls for a unique legal process; and that is exactly what the Legislature wisely gave Oregonians in 1985 in ORS 536.075, which was developed with the input from the likes of former Oregon Supreme Justice “Mick” Gillette. See attached minutes from 1985 hearing.

Under ORS 183.484, there are a number of grounds upon which a final order in other than contested case can be unlawful, including: (1) when and “agency has erroneously interpreted a provision of law[;]” (2) when an agency acts “outside the range of [its] discretion[;]” (3) when the agency’s order is “inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency[;]” or (4) when the agency’s order is not based on substantial evidence. ORS 183.484(5). For OWRD final orders in other than contested case, the person subject to the order has no opportunity to challenge the order on any of those grounds before OWRD makes a final decision and the order is enforced, often depriving the person the use of their water rights. The orders are, effectively, *ex parte* orders that are the product of virtually no due process. The stay provision in ORS 536.075(5) ensures that, when a person invokes their right to due process by filing a petition for judicial review, the property right deprivation is suspended until due process can be provided by an Oregon circuit court.

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### **B. The Oregon APA and Due Process**



The due process clause of the Fourteenth Amendment to the United States Constitution provides: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” In evaluating due process claims, “[t]he first issue is whether the state has deprived a person of a liberty or property interest within the meaning of the Due Process Clause. If it has, the second is what process is due.” *Stogsdill v. Board, of Parole*, 342 Or. 332, 336 (2007), *citing Wilkinson v. Austin*, 545 U.S. 209, 224 (2005). When a government actor deprives a person use of their water rights without due process—even for just a one-year period—it can be subject to liability for a “taking” without just compensation in violation of the Fifth Amendment of the United States Constitution. *See Klamath Irrigation v. United States*, 129 Fed. Cl. 722, 730 (2016) (citations omitted).

The Oregon APA takes due process requirements into account in defining the circumstances in which a contested case is required (vs. when one is not required). *See* ORS 183.310(2)(a) (defining “contested case”). One of the leading Oregon cases on determining when the due process clause requires a contested case under ORS 183.310(2)(a)(A) is *Corey v. Dep't of Land Conservation & Dev.*, 210 Or. App. 542, *on reconsideration*, 212 Or. App. 536 (2007) (“*Corey v. DLCDC*”). In that case, the question was this: “Does anything in the United States Constitution require DLCDC to provide a Measure 37 claimant with notice and a hearing before DLCDC decides not to waive certain land use regulations for the benefit of the claimant?” *Id.* at 546. The Court of Appeals decided that the petitioners had a “protected property interest” in the waivers and were, therefore, entitled to a contested case hearing. In short, under *Corey*, when deprivation of a “protected property interest” is at stake, a state agency must provide due process prior to depriving the person of the property interest. Notably, Justice Gillette also discussed the due process requirements encapsulated in the APA when he testified on the current statute in 1985.

Oregon law is clear that “[t]he right to the use of water constitutes a vested property interest which cannot be divested without due process of law.” *Skinner v. Jordan Valley Irr. Dist.*, 137 Or. 480, 491, *opinion modified on other grounds on denial of reh'g*, 137 Or. 480 (1931) (citations omitted). Accordingly, OWRD cannot deprive a water right holder the use of their water right without providing, at a minimum, and opportunity for due process of law. The stay provision in ORS 536.075 preserves the opportunity for due process for water rights holders subject to regulation orders. It is clear this was a delicate and decisive choice the Legislature made in 1985.

### **C. OWRD’s Use of Orders in Other Than Contested Case.**

OWRD’s practice is to issue final orders in other than contested case when it regulates water use among water right holders during an irrigation season. OWRD will issue a final order directing junior water rights holders to cease water use in order to fulfill senior water right holders. OWRD will normally do so, as a matter of course, without giving affected water right holders any opportunity to contest the factual findings and legal conclusions of the agency prior

to the order going into effect. Many of these orders are issued based on a straightforward application of the prior appropriation doctrine and are not controversial—no lawsuits are ever filed.

However, in some cases, OWRD is making regulation decisions based not merely on the basis of seniority and the prior appropriation doctrine but, rather, based on controversial scientific determinations, poorly-investigated facts and inconsistent application of statutes and rules. As discussed, in the groundwater context, across the state OWRD has recently tried to rely on hydraulic modeling to regulate groundwater users in favor of surface water users; these orders are issued without giving irrigators any kind of due process to challenge the scientific methodologies or providing opportunities to have neutral third-party decision-makers make findings of fact about groundwater-surface water connection and interference. In the absence of a stay in the effect of such orders, recipients of unlawful orders will have suffered an erroneous deprivation of their vested property rights without due process. ORS 536.075(5) represents the Legislature’s wise solution for ensuring that water right holders subject to a final order in other than contested case are accorded due process—before any deprivation of their protected property rights—when such orders are the subject of a petition for judicial review.

#### **D. Recent Petitions for Judicial Review Filed Against OWRD.**

Contrary to certain parties’ representations, the vast majority of petitions for judicial review filed against OWRD have been meritorious and resolved favorably to the petitioners. Below are examples:

- 2016/2017 – *TPC, LLC v. OWRD*, Marion County Circuit Court, Nos. 16CV27427 and 17CV22113 – the “Hyde Case”.
  - OWRD shut off irrigators’ (the Hyde’s) water in violation of a contract signed by the agency and the Klamath Tribes. Plaintiffs won a judgment requiring OWRD to honor the contract. The judge separately awarded attorney fees and costs to plaintiffs because OWRD took frivolous positions in the case. The decision was recently reversed by the Oregon Court of Appeals on subject matter jurisdiction grounds but is subject to a pending petition for reconsideration.
  - Even if the reversal on subject matter jurisdiction stands, the dispute between the Hydes and the Klamath Tribes will remain an active dispute, including in the Klamath Basin Adjudication. The Hyde family granted the Klamath Tribes a permanent conservation easement over their ranch that was intended to support fish and other tribal resources. *See TPC, LLC v. Oregon Water Res. Dep’t*, 308 Or. App. 177, 183 (2020). In exchange, OWRD and the Klamath Tribes promised that the Hyde family’s water use would not be curtailed as long as they left 50% of the streamflow in the Upper Williamson River. *Id.* The Hydes are simply

trying to get a court to enforce the bargain that they struck with OWRD and the Klamath Tribes.

- 2017 – *NBCC, LLC v. OWRD*, Marion County Circuit Court, No. 17CV21859.
  - OWRD used inaccurate streamflow gauging data as basis for shutting off irrigators. The case settled after OWRD agreed to reconsider how it measures the Wood River in Fort Klamath, Oregon. Following the lawsuit, the irrigators have received funding for new, more accurate gauges. The petitioners have not filed a subsequent lawsuit since these important changes took place, as a direct result of the lawsuit.
- 2017 – *Mosby v. OWRD*, Marion County Circuit Court, No. 17CV22113.
  - OWRD shut off irrigator’s water in violation of futile call doctrine and OAR 690-250-0020. The case settled after OWRD changed its position on application of futile call doctrine in favor of the irrigator. The irrigator’s use of the surface water source in question has not been regulated since filing the lawsuit.
- 2018 – *Sprague River Cattle Company v. Byler*, Marion County Circuit Court, No. 18CV201167; *Jacobs v. Byler*, Marion County Circuit Court, No. 18CV26118; *Duane Martin Ranches, L.P. v. Byler*, Marion County Circuit Court, No. 18CV26120; *Newman v. Byler*, Marion County Circuit Court, No. 18CV26124; *Duarte v. Byler*, Marion County Circuit Court, No. 18CV26125; *Miller v. Byler*, Marion County Circuit Court, No. 18CV26130; *Melsness v. Byler*, Marion County Circuit Court, No. 18CV2615; *Wilks Ranch Oregon, LTD. v. Byler*, Marion County Circuit Court, No. 18CV26122; *Edwards v. Byler*, Marion County Circuit Court, No. 18CV28865; *Brooks v. Byler*, Marion County Circuit Court, Case No. 18CV26126 (Marion County Circuit Court).
  - OWRD decided to regulate 140 wells in the Upper Klamath Basin in favor of instream water rights based on a technical memo dated April 26, 2018, purporting to determine an impact on streamflows. The regulation orders were dated and issued a day later, on April 27, 2018, but did not even include the technical memo. I have attached a copy of one of the regulation orders as an example of how little information is provided to the water right holder.
  - Ten lawsuits were filed challenging OWRD’s groundwater regulation in the Upper Klamath Basin.
  - The cases settled after OWRD agreed to propose new groundwater regulation rules that reduced the number of wells subject to regulation in the Upper Klamath Basin from more than 140 wells to 6 or 7 wells. As part of the settlement, OWRD agreed to pay the irrigator’s attorney fees and court costs. I have attached a copy of one of the ten judgments that were entered.
- 2019 – *Brooks v. OWRD*, Marion County Circuit Court, No. 19CV27798.

- This was the only lawsuit filed in the summer of 2019 challenging an OWRD regulatory shut-off order in the Klamath Basin, based on the agency's enforcement of the newly-adopted Division 025 rules. The petitioner was one of the 6 well owners subject to the new OWRD groundwater rules.
- Petitioners presented two core theories in the case:
  - Division 025 rules create a *de facto* CGWA for all wells within 500 feet of a surface water source without adherence to the statutory procedures required for establishment of a CGWA.
  - Existing wells cannot be regulated in favor of surface water without first providing a contested case; doing so violated petitioners' due process rights.
- Marion County Circuit Court Judge Claudia Burton found in favor of the Brooks on all four counts of their petition:
  - Count 1: As-applied to the Final Order, Respondents lacked statutory authority because the Division 025 rules declare a critical groundwater area but did not follow the statutory requirements under ORS 537.730-742.
  - Count 2: ***As-applied to the Final Order, the Division 025 rules did not provide adequate due process to existing water right holders prior to regulating off groundwater use.***
  - Count 3: The Division 025 rules and the Final Order were not authorized by ORS 537.525 because the Division 25 rules declare a critical groundwater area without following the statutory requirements under ORS 537.730-742.
  - Count 4: ***Respondents' issuance of the Final Order without providing Petitioners' a contested case hearing, or an adequate due process substitute, violated Petitioners' due process rights under the 14th Amendment of the United States Constitution.***
- OWRD did not appeal and the judgment is therefore binding on OWRD. I have attached a copy of the circuit court's judgment and its order granting summary judgment.
- The upshot of the court's judgment is that it essentially ruled that OWRD's Division 025 groundwater regulations were illegal because they did not conform to the applicable statutory standards and procedures and because OWRD adopted them without affording affected water right holders' due process. Thus, although the regulations were set to sunset two years after their adoption in 2019, they were effectively rendered void by the court's judgment.

Many of these litigants would not have been able to afford to pursue their meritorious lawsuits against OWRD if the automatic stay provision had not taken effect. In the *Brooks* case,





had the stay provision not been in place, they would have had their water shut off through the 2019 irrigation season, lost their crops and forage for cattle, and the State would have likely been subject to paying substantial compensation for regulating their property rights without first providing them due process.

### III. Discussion

In light of the *Brooks* case, SB 2244 is inappropriate because it would give OWRD even more power to regulate water right holders without giving them due process. The *Brooks* case validates the contentions of numerous irrigators that OWRD was illegally regulating wells in the Upper Klamath Basin in violation of water right holders' due process rights. OWRD has publicly acknowledged that its approach was wrong and will have to consider an alternative.<sup>1</sup> Yet, passing HB 2244 would invite OWRD to take yet another run at short-cutting irrigators' due process rights. That cannot be the public message this committee wants to send.

The reality of the situation is that the current system works. Without the stay provision, OWRD would have likely owed Brooks, and the dozen or so irrigators that filed suit in 2018 on the same grounds, substantial compensation for unconstitutional takings.

Similarly, contrary to what some parties have suggested, removing the stay will leave water right holders subject to an order in other than contested case without a traditional Oregon Administrative Procedures Act remedy. ORS 183.484 governs judicial review of "orders in other than contested case" and that statute **does not provide** a right to a stay, nor a procedure or standards for obtaining a stay, unlike for "orders in contested cases" under ORS 183.482. "Contested case orders" are the result of an administrative hearing, where parties can obtain discovery, present documents and evidence, and call and cross-examine witnesses. None of that occurs for "orders in *other* than contested case," which is the kind of order OWRD uses to regulate water use. That means that passing HB 2244 would leave water right holders with just one option for intermediary relief while a lawsuit was pending, a preliminary injunction, which is a completely inadequate remedy in this context, where an agency order is being issued without any prior hearing, public comment, or any other kind of publicly-accountable process.

In fact, removing the stay provision will likely make it harder, not easier, for OWRD to regulate in a timely and effective manner because it will raise the issue of whether a contested case is required before OWRD can regulate. Further, this particular bill raises equal protection

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<sup>1</sup> Judge: *Oregon water regulations exceeded authority*, Associated Press, March 18, 2020 (<https://apnews.com/article/90615b6accab506b0da55627324aa611>); *Oregon water regulators exceeded authority, judge rules*, Capital Press, March 17, 2020 ([https://www.capitalpress.com/state/oregon/oregon-water-regulators-exceeded-authority-judge-rules/article\\_19917ac8-68a9-11ea-adab-07f40fff6fbd.html](https://www.capitalpress.com/state/oregon/oregon-water-regulators-exceeded-authority-judge-rules/article_19917ac8-68a9-11ea-adab-07f40fff6fbd.html)).



concerns, on top of due process concerns, because it arbitrarily gives preference to instream water rights at the expense of the due process rights of consumptive use water right holders.

Beyond these consequences, HB 2244 is simply not necessary. Throughout the entire State, just a single shut-off order was challenged in 2019 and OWRD lost that lawsuit, confirming the complaint of numerous irrigators that OWRD was illegally regulating groundwater use. Likewise, the majority of pre-2019 lawsuits were meritorious and settled on favorable terms to the petitioners. For the small number of lawsuits filed that arguably lacked merit, ORS 536.075 vests OWRD with the necessary power to deny the automatic stay based on a finding of substantial public harm. OWRD has, and should, utilize that authority when circumstances warrant.

In short, the current system of due process and justice is working appropriately, as intended by the Legislature when enacted in 1985.

#### **IV. Conclusion**

The stay provision in ORS 536.075(5) strikes a careful and necessary balance between OWRD's practical need to be able to make timely and effective decisions affecting water right holders' water use, while also upholding the state's strict legal duty to provide due process consistent with the Fourteenth Amendment of the United States Constitution before depriving people of protected property interests. HB 2244 would either force OWRD into a process for water use regulation that expands the use of contested cases, which would be untimely and ineffective or, alternatively, expose the agency and state to costly litigation based on the deprivation water right holders' protected property rights without due process of law. Moreover, HB 2244 is not necessary. Claims of litigants abusing the current system are incorrect. Only one lawsuit was filed in 2019. The vast majority of pre-2019 lawsuits were meritorious and have been mutually resolved. Far from broken or flawed, the system is working the way it was intended.

Water for Life respectfully urges the Committee to reject HB 2244 and leave ORS 536.075 undisturbed.

Sincerely,



Dominic M. Carollo





hearing even in circumstances where it is not needed. Referring to section 10, he said the court cannot take testimony. They handle appeals, not trial matters. He suggested deleting the last sentence of section 10.

- 328 KIP LOMBARD, Oregon Water Resources Congress, submitted and explained proposed amendments to SB 287 (EXHIBIT B). Those amendments also suggested deleting the second sentence in section 10.
- 390 MOTION: Rep. Harper moved that the second sentence in section 10 be deleted.
- 402 MS. HOLMAN explained the impact of that deletion would be that the Court of Appeals would basically follow their usual procedure that is set out in the Administrative Procedures Act.

TAPE 39, SIDE B

- 020 VOTE: Aye - Sen. Ryles, Rep. Harper, Rep. Throop, Sen. Starkovich. Motion carried.
- 025 CHAIR STARKOVICH referred to section 9. JUDGE GILLETTE reviewed subsection (1). He read the definition of "order" in the APA, ORS 183.310, referred to in section 2(5) of the bill. Subsection (1) provides that an order can be appealed to the commission and subsections (2) and (3) provide the degree of formality that the commission is to use in reviewing the director's order. There needs to be more careful delineation between kinds of orders. He also said there is a problem in subsection (2) with respect to what a "hearing" means as opposed to "contested case hearing" in subsection (3).
- 070 In response to CHAIR STARKOVICH, MS. HOLMAN said she believes it is the intention in subsection (2) to refer to contested case hearing.
- 080 MOTION: CHAIR STARKOVICH moved that in line 24, page 3, the language read: "after a contested case hearing". (NO VOTE TAKEN)
- 090 JUDGE GILLETTE, in response to SEN. RYLES, said it has to be decided whether the director or the commission is to have the final say on any order. The language in subsection (1) needs to be changed if the director is to have to final say.
- 139 CHAIR STARKOVICH asked MR. SADLO and MS. HOLMAN to work with JUDGE GILLETTE on that issue.



- 150 JUDGE GILLETTE said, in reference to subsection (3), that a contested case hearing is granted only in circumstances in which a statute or due process require that a hearing to that extent be held. He suggested language to the effect that the commission shall conduct such hearing as may appear necessary and appropriate, in which case the commission, having a constitutional obligation to provide due process, can be deemed by rule which ones it will hear by a full hearing.
- 165 MR. LOMBARD said he agreed with JUDGE GILLETTE's comments. He said in OWRC's proposed amendments (Exhibit B), they drafted a new section 8a to precede section 9. A major concern is due process and having an adequate evidentiary hearing and factfinding process. He will not be at the hearing tomorrow, but Dave Nelson will be able to answer questions.
- 215 CHAIR STARKOVICH referred to item 1(A) on the Policy Decisions memo (Exhibit B, 2/28/85).
- 226 MOTION: REP. HARPER moved leaving the language as is in section 3(1) and add a statement to the effect that two members of the commission shall reside east of the Cascades.
- 260 VOTE: Aye - Rep. Harper, Sen. Ryles, Rep. Throop, Sen. Starkovich. Motion carried.
- 265 MS. HOLMAN said there are provisions in the bill now that the board makeup stays the same when it is changed to the commission. She asked if the subcommittee wants a provision to state the makeup will be changed as members are replaced. The subcommittee agreed that they did not want to bump anyone off the board. Discussion on term expirations coming up.
- 303 SEN. RYLES suggested saying by a date certain there has to be two members. Staff will check on this question for tomorrow's meeting.
- 328 MR. SADLO reviewed item 1(B) of the memo (Exhibit B, 2/28/85).
- 335 MOTION: REP. THROOP moved to retain the policy decision that is written into the bill that the Governor has the authority to remove a member without cause.
- 375 MOTION WITHDRAWN. REP. THROOP said he would like to review information on how other agencies treat this issue.

[REDACTED]

April 27, 2018

RE: GROUNDWATER USE AND REGULATION – PLEASE READ THIS ENTIRE NOTICE

This is a Final Order other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the time specified by ORS 183.482(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Dear Groundwater User,

Water right records at the Oregon Water Resources Department (OWRD) indicate that you are the owner, in full or in part, of the water rights and associated wells listed below. **If you are not the property owner, or if you lease the land to another operator, or are using a different well than is listed below, please contact us immediately.**

Water Right(s): [REDACTED] Well Location: [REDACTED]

**REQUIRED ACTION:** You are regulated off of the above-listed wells for the rest of the current irrigation season or until otherwise notified by the Watermaster.

**AUTHORITY:** Where groundwater and surface water are hydraulically connected and pumping a well will result in the potential for substantial interference with a surface water source, the OWRD regulates junior groundwater users in favor of a senior surface water right or a senior claim as provided in the Amended and Corrected Findings of Fact and Order of Determination in the Klamath Adjudication in accordance with the criteria set forth in OAR Chapter 690, Division 09. ORS 537.525(9); ORS 539.170; OAR 690-009-0050(2). Division 09 is available at:

[http://arcweb.sos.state.or.us/pages/rules/oars\\_600/oar\\_690/690\\_009.html](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_690/690_009.html)

#### FINDINGS OF FACT

1. A call was made by a senior water right holder or holder of a senior determined claim on the SPRAGUE RIVER. This call was investigated and validated by the Watermaster.
2. Your well is located within one mile from the PARADISE CREEK and your water right is junior in priority to the senior determined claim or water right of record.

3. Use of groundwater from your well(s) identified above has the potential for substantial interference with the PARADISE CREEK.

4. The Department has determined, using hydrogeologic principles and available well-specific data, that regulation of your well(s) identified above will provide effective and timely relief to the SPRAGUE RIVER.

#### CONCLUSION OF LAW

The Watermaster is authorized to regulate junior rights based on a valid call by senior rights (ORS 540.045; OAR 690-009; OAR 690-250-0120.)

#### ORDER

**Immediately shut off your well pump(s) or close the valve on the well(s) if it is flowing artesian. Service of this order is the date of mailing or the date of hand delivery. Failure to comply with this order may result in further action including assessment of civil penalties.** This order is effective as of the date of service and remains effective only during the current irrigation season. Your cooperation is appreciated.

If you would like more information from the Department, please contact Dani Watson, Watermaster (contact information provided below). Information in support of the findings in this order is available at <http://www.oregon.gov/owrd/Pages/Groundwater-Management-and-Regulations.aspx>.

Sincerely,



Dani Watson – Watermaster, District 17  
[Danette.M.Watson@oregon.gov](mailto:Danette.M.Watson@oregon.gov)  
541-883-4182

DATE OF MAILING: April 27, 2018

OR

DATE OF HAND DELIVERY: \_\_\_\_\_



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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

LON D. BROOKS and MARY E. BROOKS,  
Trustees of the Brooks Revocable Trust, UTD  
May 23, 2002, TROY BROOKS and  
TRACEY BROOKS, husband and wife,

Petitioners,

v.

THOMAS BYLER, in his official capacity as  
the Oregon Water Resources Department  
Director; DANETTE WATSON, in her  
official capacity as District No. 17  
Watermaster; and the OREGON WATER  
RESOURCES DEPARTMENT,

Respondents.

Case No. 18CV26126  
Honorable David E. Leith

**STIPULATED GENERAL JUDGMENT**

**ORS 20.140 - State fees deferred at filing**

This matter came before the Court on the following Stipulation of the parties:

**STIPULATION**

WHEREAS, the Petition for Judicial Review in the above-entitled matter challenged a final groundwater regulation order issued April 27, 2018, prohibiting Petitioners from pumping water from certain wells located in Klamath County, Oregon within one mile of certain surface water sources; and

WHEREAS, the order under review asserted as authority, inter alia, the criteria set forth in OAR Chapter 690, Division 09 for determining substantial interference with a surface water supply; and

WHEREAS, the Petition challenged the statutory and regulatory limits and boundaries of Respondents' authority to regulate or control the use of existing groundwater rights located

1 outside of a designated critical groundwater area and Petitioners alleged, inter alia, that, as-  
2 applied to the order under review, the OAR Chapter 690, Division 09 rules were ultra vires; and

3 WHEREAS, Respondents denied Petitioners' allegations of error and by this settlement  
4 admit no error or violation of law;

5 WHEREAS, the order under review expired by its own terms on October 31, 2017, and is  
6 of no further force or effect; and

7 WHEREAS, the Oregon Water Resources Department intends to initiate an administrative  
8 process for considering new, or amended, administrative rules governing the regulation of  
9 groundwater rights in the Klamath Basin, with input from the public and interested stakeholders;  
10 and

11 WHEREAS, Respondents have paid Petitioners an agreed upon amount in full and final  
12 settlement and compromise of all claims raised herein, receipt of which is acknowledged by  
13 Petitioners.

14 NOW THEREFORE, based on the parties' settlement and compromise of all claims raised  
15 herein, it is hereby ORDERED, ADJUDGED and DECREED as follows:

- 16 1. The Petition for Judicial Review is dismissed as moot; and
- 17 2. This judgment shall not have any preclusive effect on any of the parties  
18 whatsoever on any future litigation that is based on the alleged occurrence or recurrence of any  
19 claim, fact, circumstance or legal issue raised in the Petition; and

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1           3.       No costs, disbursements, attorney fees or prevailing party fees shall be awarded  
2 by the court to any party.

Signed: 1/3/2019 04:01 PM

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Circuit Court Judge Sean E. Armstrong

**IT IS SO STIPULATED:**

/s/ Dominic M. Carollo  
Dominic M. Carollo, OSB #093057  
Yockim Carollo LLP  
630 SE Jackson Street, Suite 1  
PO Box 2456  
Roseburg OR 97470  
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*Of Attorneys for Petitioners*

/s/ Darsee Staley  
Darsee Staley, OSB # 873511  
Senior Assistant Attorney General  
100 SW Market Street  
Portland, OR 97201  
E: Darsee.staley@doj.state.or.us  
*Of Attorneys for Respondents*

1 **CERTIFICATE OF READINESS**

2 This proposed **JUDGMENT** is ready for judicial signature because:

3 1.  Each party affected by this order or judgment has stipulated to the order or  
4 judgment, as shown by each opposing party's signature on the document being submitted.

5 2.  Each party affected by this order or judgment has approved the order or judgment,  
6 as shown by each party's signature on the document being submitted or by written confirmation  
7 of approval sent to me.

8 3.  I have served a copy of this order or judgment on each party entitled to service  
9 and:

10 a.  No objection has been served on me.

11 b.  I received objections that I could not resolve with a party despite  
12 reasonable efforts to do so. I have filed a copy of the objections I received and indicated which  
13 objections remain unresolved.

14 c.  After conferring about objections, [role and name of objecting party]  
15 agreed to independently file any remaining objection.

16 4.  Service is not required pursuant to subsection (3) of this rule, or by statute, rule,  
17 or otherwise.

18 5.  This is a proposed judgment that includes an award of punitive damages and  
19 notice has been served on the Director of the Crime Victims' Assistance Section as required by  
20 subsection (5) of this rule.

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1 6. [ ] Other:\_\_\_\_\_.

2 DATED this 17 day of December, 2018.

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s/ Darsee Staley  
DARSEE STALEY #873511  
Senior Assistant Attorney General  
Trial Attorney  
Tel (971) 673-1880  
Fax (971) 673-5000  
Darsee.Staley@doj.state.or.us  
Attorneys for State of Oregon

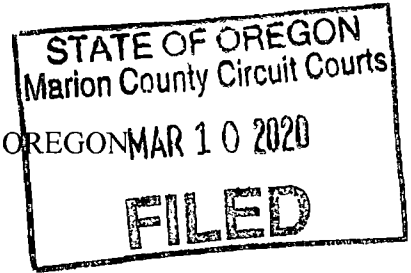
1 **CERTIFICATE OF SERVICE**

2 I certify that on December 17, 2018, I served the foregoing STIPULATED GENERAL  
3 JUDGMENT upon the parties hereto by the method indicated below, and addressed to the  
4 following:

5 Dominic Carollo  
6 Matthew D. Query  
7 Yockim Carollo LLP  
8 PO Box 2456  
9 630 SE Jackson Street, Suite 1  
10 Roseburg, OR 97470  
11 *Of Attorneys for Petitioners*

HAND DELIVERY  
 MAIL DELIVERY  
 OVERNIGHT MAIL  
 SERVED BY E-FILING

12 s/ Darsee Staley  
13 DARSEE STALEY #873511  
14 Senior Assistant Attorney General  
15 Trial Attorney  
16 Tel (971) 673-1880  
17 Fax (971) 673-5000  
18 Darsee.Staley@doj.state.or.us  
19 Of Attorneys for Respondents  
20  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

1 **TROY BROOKS and TRACEY BROOKS,** )  
 2 husband and wife, )  
 3 )  
 4 ) Petitioners, )  
 5 v. )  
 6 )  
 7 **THOMAS BYLER,** in his official capacity )  
 8 as the Oregon Water Resources Department )  
 9 Director; **DANETTE WATSON,** in her )  
 10 official capacity as District No. 17 )  
 11 Watermaster; and the **OREGON WATER** )  
 12 **RESOURCES DEPARTMENT,** )  
 13 )  
 14 Respondents. )

Case No. 19CV27798

**ORDER GRANTING PETITIONERS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

11 THIS MATTER came before the Court for a hearing on February 10, 2020 before the  
12 Honorable Claudia M. Burton on Petitioners' Motion for Partial Summary Judgment ("Petitioners'  
13 Motion"), filed November 15, 2019, and Respondents' Cross-Motion for Summary Judgment  
14 ("Respondents' Motion"), filed December 13, 2019. Dominic M. Carollo of Yockim Carollo LLP  
15 appeared for Petitioners. Darsee Staley of the Oregon Department of Justice appeared for  
16 Respondents.

17 The Court, having considered the parties' motions, the pleadings, the parties' declarations  
18 and supporting documents filed herein, and the arguments of counsel, and being otherwise fully  
19 informed in the premises, for the reasons stated by the Court on the record, the transcript of which  
20 findings and opinion is attached hereto as Exhibit A,

21 IT IS HEREBY ORDERED as follows:

- 22 1. Petitioners' Motion is GRANTED;
- 23 2. Respondents' Motion is DENIED;

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Verified Correct Copy of Original 3/11/2020.

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- 3. Petitioners are entitled to judgment in their favor on each of the four counts stated in Petitioners' First Claim for Relief; and
- 4. The parties shall confer on an appropriate form of judgment in light of the Court's rulings on the parties' motions.

IT IS SO ORDERED.

3/10/20  \_\_\_\_\_

**Prepared and Submitted by:**  
**Dominic M. Carollo**, OSB No. 093057  
 Email: [dcarollo@yockimlaw.com](mailto:dcarollo@yockimlaw.com)  
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 Yockim Carollo LLP  
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 Phone: (541) 957-5900  
 Fax: (541) 957-5923  
 Attorneys for Petitioners



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

TROY BROOKS, TRACY BROOKS,	)	Marion County
Plaintiff,	)	Circuit Court
	)	
vs.	)	Case No. 19CV27798
	)	
THOMAS BYLER, DANETTE WATSON,	)	
OREGON WATER RESOURCES DEPT,	)	
Defendant.	)	
	)	Volume 1 of 1
	)	Pages 1 - 37

BE IT REMEMBERED that the above-entitled matter came on regularly for trial before the Honorable CLAUDIA M. BURTON, Judge of the Marion County Circuit Court, Friday, February 10, 2020, at the Marion County Courthouse, Salem, Oregon.

APPEARANCES

For the Plaintiff:

Dominic Carollo, OSB #093057  
Yockim Carollo LLP  
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541.957.5900  
dcarollo@yockimlaw.com

For the Defendant:

Darsee Staley, OSB #873511  
Oregon Department of Justice  
116 Court Street, NE  
Salem, OR 97301  
971.673.1880  
darsee.staley@doj.state.or.us

1 is the fact that a senior water right holder is not getting  
2 satisfied doesn't mean it's my well that's causing it,  
3 basically.

4 MR. CAROLLO: Correct. Yes. And that -- that's  
5 what the statute reflects.

6 THE COURT: Ms. Staley?

7 MS. STALEY: I -- just one point that I -- I  
8 meant to make, Your Honor, with respect to the citation to  
9 the KID case as if that established if there was a taking.  
10 The ultimate outcome of the *Bailey* case, which is  
11 derivative of that, is that the senior rights -- because of  
12 the senior rights, we're entitled to the water there was  
13 none taken.

14 MR. CAROLLO: Very true, they were both surface  
15 water rights, though.

16 THE COURT: Okay. So I told you earlier that we  
17 don't do a lot of water rights cases here, so all I can do  
18 is do the best I can. I did spend a lot of time reading  
19 your briefs and the authorities that you cited.

20 So the first issue that the Petitioner raises, I  
21 would sort of rephrase -- or the Petitioner and the  
22 Respondent, is basically does 537.525 (9) -- does that  
23 allow the commission authority to act on groundwater use  
24 which they think is interfering with surface water? In  
25 other words, is that an independent grant of authority, or

1 is it just a policy statement and what they can actually do  
2 about it is specified in 537.730 and 537.775.

3           So I'm inclined to think the latter. That just  
4 saying this agency needs to address this problem doesn't  
5 necessarily, specifically, tell the agency how they can  
6 address that problem or doesn't necessarily vest them with  
7 discretion to do anything in the world to address that  
8 problem. But in this case, I don't think the issue is that  
9 broad because what I do think is the legislature did tell  
10 them what they have to do to declare a critical groundwater  
11 area. And that is exactly what this administrative rule  
12 does.

13           So if you look at 537.730, they can designate an  
14 area of the state a critical groundwater area if -- as the  
15 Plaintiff points out, under 1D, they find that there's a  
16 pattern of substantial interference between wells within  
17 the area in question, and an appropriator of surface water  
18 whose water right has an earlier priority date.

19           So 690-025-040 specifies an area, the upper  
20 Klamath basin, they make a specific finding that  
21 groundwater wells are reducing the surface water flow.  
22 They make a specific finding that regulating these wells is  
23 going to result in relief to surface water rights. And  
24 then they state which wells they're going to regulate.

25           I just don't see how that isn't designating a

1 critical groundwater area. And so, I could potentially buy  
2 that 537.529 Subsection 9 gives them discretion to take  
3 actions maybe that aren't set out in 537.730 or 537.775.  
4 And my thought of an example would be maybe there was just  
5 one particular well that's a problem, it's not a whole  
6 area.

7           But I do think the legislature told them what  
8 they had to do if they were going to declare a critical  
9 groundwater area, and I do not think that you can read  
10 537.525 (9) as saying you can do it the way we told you or  
11 you can do it some other way. When they're clearly  
12 specifying an area, making findings that the groundwater  
13 use is interfering with the surface water rights that has  
14 higher priority, making findings that regulating that  
15 groundwater use is going to provide relief to the surface  
16 water rights people.

17           So I'm granting the partial summary judgment  
18 motion first on the basis that what the legislature has  
19 done in the rule is declare a critical groundwater area,  
20 and they have to do that as provided in 537.730 and the  
21 subsequent statutes. Regardless of what authority 537.529  
22 9 gives them, it doesn't give them blanket authority to  
23 declare a critical groundwater area any way they would like  
24 to.

25           Regarding the due process issue, and I think I'm

1 really just talking here about straight 14th Amendment due  
2 process. Everyone agrees that water rights are property  
3 rights. Everybody agrees that the extent, if at all, to  
4 which the junior water right holder can use theirs is  
5 dependent on whether the senior people are satisfied.

6 But nevertheless, I think there is still some  
7 kind of property right in that junior water right holder.  
8 And in particular, the Plaintiff's argument is the basis on  
9 which you are interfering with our rights is a finding that  
10 we are interfering with the surface water rights. And you  
11 made that finding without us having an opportunity to put  
12 on evidence and cross-examine your witnesses and talk  
13 specifically about our well.

14 And I agree with the Petitioners that telling  
15 them they can go to the Court of Appeals and argue that  
16 there wasn't substantial evidence in the record is not a  
17 very good due process substitute for the reasons that were  
18 articulated. They're stuck with a limited kind of record  
19 from a rulemaking proceeding that doesn't include calling  
20 witnesses and cross-examine, and they're stuck with an  
21 extremely differential standard of review, the substantial  
22 evidence standard, as opposed to having an opportunity to  
23 put on evidence and so forth.

24 And I would also add that even if they, I guess,  
25 enter the second claim for relief, which I'll confess to

1 not having looked at very much since it wasn't an issue.  
2 But even if they get this Court to review for substantial  
3 evidence and they would have the opportunity to make a  
4 record and call witnesses and cross-examine, but it's still  
5 a substantial evidence review standard. So I believe also  
6 that the Petitioners' due process rights were violated by  
7 regulating them off their well based on this administrative  
8 rule.

9 So for that reason as well, I am granting partial  
10 summary judgment to the Petitioner. So my question is, are  
11 you guys off on your merry way to the Court of Appeals, or  
12 are we doing something with any remaining claims that were  
13 plead here?

14 MR. CAROLLO: We'd like an opportunity, I think,  
15 to confer about that and get back to the Court maybe in a  
16 status conference. But I think probably it's going to moot  
17 the rest of the case and that we'd probably be able to  
18 finalize this in a judgment.

19 THE COURT: Okay.

20 What time frame, when would you like to come back  
21 for a status conference, like, 30 days or longer?

22 MR. CAROLLO: Could we do it the first week of  
23 March just because I'm going to be out of town for a week  
24 starting next Wednesday.

25 THE COURT: You cannot because I will be out of



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CERTIFICATE OF TRANSCRIBER

I, Courtney Montgomery, court-approved transcriber, certify that the foregoing is a full and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ \_\_\_\_\_

Courtney Montgomery

Weber Reporting Corporation

2755 Commercial Street SE, #101-216

Salem, OR 97302

970.405.3643

Date: February 20, 2020

**CERTIFICATE OF COMPLIANCE (UTCR 5.100)**

This proposed order or judgment is ready for judicial signature because:

- 1. \_\_\_\_\_ Each party affected by this order or judgment has stipulated to the order or judgment as shown by party’s signature on the document being submitted.
- 2. \_\_\_\_\_ Each party affected by this order or judgment has approved the order or judgment, as shown by each party’s signature on the document being submitted or by written confirmation of approval sent to me.
- 3.   X   I have served a copy of this order or judgment on each party entitled to service and:
  - a.   X   No objection has been served on me.
  - b. \_\_\_\_\_ I have received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c. \_\_\_\_\_ After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.
- 4. \_\_\_\_\_ Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.
- 5. \_\_\_\_\_ This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims’ Assistance Section as required by subsection (5) of this rule.
- 6. \_\_\_\_\_ Other: \_\_\_\_\_.

DATED this 27<sup>th</sup> day of February, 2020.

**YOCKIM CAROLLO LLP**

/s/ Dominic M. Carollo  
**Dominic M. Carollo**, OSB #093057  
 dcarollo@yockimlaw.com  
**Matthew D. Query**, OSB #174400  
 mquery@yockimlaw.com  
 Yockim Carollo LLP  
 630 S.E. Jackson Street, Suite 1  
 P.O. Box 2456  
 Roseburg, OR 97470  
 Telephone: (541) 957-5900  
 Facsimile: (541) 957-5923  
 Attorneys for Petitioners

## CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, I served the foregoing proposed **ORDER GRANTING PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT** on:

Darsee Staley  
Oregon Department of Justice  
1162 Court Street N.E.  
Salem, OR 97301  
[Darsee.Staley@doj.state.or.us](mailto:Darsee.Staley@doj.state.or.us)  
Attorney for Respondents

by the following indicated method or methods:

\_\_\_\_\_ by the Court's Electronic Case Filing system.

  X   by **mailing** a copy thereof in a sealed envelope, First Class postage prepaid, and deposited in the United States Postal Service at Roseburg, Oregon, on the date set forth below.

  X   by **emailing** a copy thereof to the person(s) and/or attorney(s) at the email address shown above, on the date set forth below.

DATED this 21<sup>st</sup> day of February, 2020.

### YOCKIM CAROLLO LLP

/s/ Dominic M. Carollo

**Dominic M. Carollo**, OSB #093057

[dcarollo@yockimlaw.com](mailto:dcarollo@yockimlaw.com)

**Matthew D. Query**, OSB #174400

[mquery@yockimlaw.com](mailto:mquery@yockimlaw.com)

Yockim Carollo LLP

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Telephone: (541) 957-5900

Facsimile: (541) 957-5923

Attorneys for Petitioners

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

3	<b>TROY BROOKS and TRACEY BROOKS,</b>	)	Case No. 19CV27798
4	husband and wife,	)	
5		)	<b>GENERAL JUDGMENT</b>
6	Petitioners,	)	
7	v.	)	
8	<b>THOMAS BYLER,</b> in his official capacity	)	
9	as the Oregon Water Resources Department	)	
10	Director; <b>DANETTE WATSON,</b> in her	)	
11	official capacity as District No. 17	)	
12	Watermaster; and the <b>OREGON WATER</b>	)	
13	<b>RESOURCES DEPARTMENT,</b>	)	
14		)	
15	Respondents.	)	

THIS MATTER came before the Court on the *Petition for Judicial Review of Final Order In Other Than Contested Case, and Complaint for Declaratory Judgment and Injunction* (“PJR”), filed by Petitioners Troy Brooks and Tracey Brooks, husband and wife, on June 24, 2019. In the PJR, Petitioners challenge the lawfulness of a final order in other than contested case (“Final Order”) Respondents issued to Petitioners on June 18, 2019. The Final Order “regulated off” Petitioners’ use of their well for irrigation (KLAM 2431; Certificate No. 47916) in Klamath County, Oregon, in response to a call for fulfillment of senior instream surface water rights.

The Final Order was based on rules adopted at Oregon Administrative Rule Chapter 690, Division 025 (“Division 025 Rules”).

The Upper Klamath Basin is not within a critical groundwater area (“CGWA”) designated under ORS 537.730-472. Respondents did not provide Petitioners with the opportunity for a contested case hearing prior to issuing the Final Order and regulating off Petitioners’ use of their well.

1           Petitioners filed a *Motion for Partial Summary Judgment* on November 15, 2019, seeking  
2 judgment on their First Claim for Relief asserted in the PJR. Respondents filed a *Response to*  
3 *Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment* on  
4 December 13, 2019. On January 3, 2020, Petitioners filed their *Combined Response/Reply in*  
5 *Support of Petitioners’ Motion for Partial Summary Judgment and in Opposition to Respondents’*  
6 *Cross-Motion for Summary Judgment*. Respondents’ filed their *Reply in Support of Cross-Motion*  
7 *for Summary Judgment* on January 17, 2020. On February 10, 2010, the Court heard oral  
8 arguments from the parties on their respective motions. Dominic Carollo of Yockim Carollo LLP  
9 appeared and argued on behalf of Petitioners. Darsee Staley of the Oregon Department of Justice  
10 appeared and argued on behalf of Respondents. At the oral argument hearing, the Court ruled in  
11 favor of Petitioners and against Respondents.

12           On March 10, 2020, the Court issued an order granting Petitioners’ motion and denying  
13 Respondents’ motion. The order provides that Petitioners are entitled to judgment in their favor  
14 on each of the four counts stated in Petitioners’ First Claim for Relief. The parties subsequently  
15 informed the Court that they consider the Court’s ruling in Petitioners’ favor on the First Claim  
16 for Relief effectively renders moot the remaining claims asserted in the PJR.

17           The Court having issued an order granting partial summary judgment to Petitioners and  
18 otherwise being fully informed in the premises;

19           NOW, THEREFORE, IT IS HEREBY DECLARED AND ADJUDGED as follows:

- 20           1. On Petitioners’ First Claim for Relief, judgment is for Petitioners and against  
21 Respondents. Respondents lacked statutory authority to issue the Final Order. The  
22 Division 25 rules effectively designated a CGWA but without following the  
23 Legislatively-mandated process and procedures for establishing such an area under  
24 ORS 537.730-742.


- 1           2.     On Count 1 of Petitioners’ First Claim for Relief, the Court declares as follows:
- 2           a.     As-applied to the Final Order, Respondents lacked statutory authority because
- 3                 the Division 025 rules declare a critical groundwater area but did not follow
- 4                 the statutory requirements under ORS 537.730-742.
- 5           3.     On Count 2 of Petitioners’ First Claim for Relief, the Court declares as follows:
- 6           a.     As-applied to the Final Order, the Division 025 rules did not provide adequate
- 7                 due process to existing water right holders prior to regulating off groundwater
- 8                 use.
- 9           4.     On Count 3 of Petitioners’ First Claim for Relief, the Court declares as follows:
- 10           a.     The Division 025 rules and the Final Order were not authorized by ORS
- 11                 537.525 because the Division 25 rules declare a critical groundwater area
- 12                 without following the statutory requirements under ORS 537.730-742.
- 13           5.     On Count 4 of Petitioners’ First Claim for Relief, the Court declares as follows:
- 14           a.     Respondents’ issuance of the Final Order without providing Petitioners’ a
- 15                 contested case hearing, or an adequate due process substitute, violated
- 16                 Petitioners’ due process rights under the 14th Amendment of the United
- 17                 States Constitution.
- 18           6.     Pursuant to ORS 183.484(5)(a), the Court finds that Respondents erroneously
- 19                 interpreted a provision of law and that a correct interpretation requires a judicial
- 20                 declaration that the Final Order is unlawful and invalid. Accordingly, the Final
- 21                 Order is hereby SET ASIDE.
- 22           7.     The remaining claims asserted in the PJR are dismissed as moot.

23    ///

24    ///

1           8.       Matters relating to Petitioners' request for attorney fees and costs shall be  
2                    considered pursuant to ORCP 68.

Signed: 5/5/2020 03:46 PM



---

Circuit Court Judge Claudia M. Burton

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5  
6  
7   **Prepared and Submitted by:**  
8   **Dominic M. Carollo**, OSB No. 093057  
9   Email: [dcarollo@yockimlaw.com](mailto:dcarollo@yockimlaw.com)  
10  Yockim Carollo LLP  
11  630 S.E. Jackson Street, Suite 1  
12  P.O. Box 2456  
13  Roseburg, Oregon 97470  
14  Phone: (541) 957-5900  
15  Fax: (541) 957-5923  
16  Attorney for Petitioners

**CERTIFICATE OF COMPLIANCE (UTCR 5.100)**

This proposed order or judgment is ready for judicial signature because:

1. \_\_\_\_\_ Each party affected by this order or judgment has stipulated to the order or judgment as shown by party's signature on the document being submitted.
2. \_\_\_\_\_ Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
3.   X   I have served a copy of this order or judgment on each party entitled to service and:
  - a.   X   No objection has been served on me.
  - b. \_\_\_\_\_ I have received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c. \_\_\_\_\_ After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.
4. \_\_\_\_\_ Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.
5. \_\_\_\_\_ This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.
6. \_\_\_\_\_ Other: \_\_\_\_\_.

DATED this 4<sup>th</sup> day of May, 2020.

**YOCKIM CAROLLO LLP**

/s/ Dominic M. Carollo

**Dominic M. Carollo**, OSB #093057

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**Matthew D. Query**, OSB #174400

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Telephone: (541) 957-5900

Facsimile: (541) 957-5923

Attorneys for Petitioners



## CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2020, I served the foregoing proposed **GENERAL JUDGMENT** on:

Darsee Staley  
Oregon Department of Justice  
1162 Court Street N.E.  
Salem, OR 97301  
[Darsee.Staley@doj.state.or.us](mailto:Darsee.Staley@doj.state.or.us)  
Attorney for Respondents

by the following indicated method or methods:

  X   by the Court's Electronic Case Filing system.

       by **mailing** a copy thereof in a sealed envelope, First Class postage prepaid, and deposited in the United States Postal Service at Roseburg, Oregon, on the date set forth below.

  X   by **emailing** a copy thereof to the person(s) and/or attorney(s) at the email address shown above, on the date set forth below.

DATED this 4<sup>th</sup> day of May, 2020.

### YOCKIM CAROLLO LLP

/s/ Dominic M. Carollo

**Dominic M. Carollo**, OSB #093057

[dcarollo@yockimlaw.com](mailto:dcarollo@yockimlaw.com)

**Matthew D. Query**, OSB #174400

[mquery@yockimlaw.com](mailto:mquery@yockimlaw.com)

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Attorneys for Petitioners