Oregon
Kate Brown, Governor

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BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF AN INVESTIGATION IN AID OF DISTRIBUTION PURSUANT TO ORS 540.210	)	**DETERMINATION ON STATUS OF RELEASES OF WATER STORED UNDER DETERMINED CLAIM KA 294**
Klamath Irrigation District *Petitioner*,	)	
Bureau of Reclamation *Reservoir Owner*.	)	

To: Staff of the Oregon Water Resources Department

I. BACKGROUND

Pursuant to the order of the Marion County Circuit Court dated October 13, 2020, [1] (*Klamath Irrigation District v. Water Resources Department* (20CV15606)) the Oregon Water Resources Department (Department) must determine whether water that is passing through the Link River Dam is water stored pursuant to Determined Claim KA 294. This Determination provides the status of water released from Upper Klamath Lake (UKL) between August 24, 2021, and September 26, 2021 (Determination #9).

[1] The October 13, 2020, Order directed the Watermaster to:

"* * * immediately stop the distribution, use and/or release of Stored Water from the UKL [Upper Klamath Lake] without determining that the distribution, use and/or release is for a permitted purpose by users with existing water rights of record or determined claims to use the Stored Water in UKL.

The term "existing water rights of record" has the meaning provided in ORS 540.045(4). The term "determined claim" has the meaning provided in Section 1, chapter 445, Oregon Laws 2015 (which is published in the Oregon Revised Statutes as a note following ORS 539.170).

II. REGULATION OF DETERMINED CLAIMS

ORS 540.145 authorizes the Water Resources Commission to adopt rules to "secure the equal and fair distribution of water in accordance with the rights of the various users" which rules "shall apply to all water rights that have been established * * * "[u]nder an order of the Commission or the Water Resources Director in proceedings for the determination of relative rights to the use of water * * *." The rules of the Commission authorizing the distribution of Determined Claims in the Amended and Corrected Findings of Fact and Final Order of Determination (ACFFOD[2]) to secure the equal and fair distribution of water in accordance with the rights of the various users are provided in Oregon Administrative Rules (OAR) Chapter 690 Division 250.

A "reservoir" includes a modified natural lake such as UKL, in which water is collected for beneficial use or purpose.[3] "Legally stored water" means any "water impounded in a reservoir under the provisions of an established right to store water."[4] Use of legally stored water is governed by the water rights that may call on that source of water and is limited to that amount of water that may be put to beneficial use without waste.[5] Any legally stored water that is in excess of the needs of the water rights calling on that stored water is considered "natural flow" which may be diverted according to the next water right in priority or is once again public water subject to appropriation.[6]

III. FINDINGS OF FACT

A. KA 294 and KA 1000

1. The Bureau's Klamath Project (Project) was established in accord with federal legislation and state legislation in 1902 and 1905, respectively. The Bureau built and owns the facilities, known as the works in the Project area. UKL is a modified natural lake and is one of the three reservoirs in the Project which also comprises eight dams, five major pumping plants, 19 canals, and other works.

2. The Bureau is the sole owner of Determined Claim KA 294. KA 294 provisionally authorizes the Bureau to store a maximum annual volume of 486,828 acre-feet (AF) of water

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2 The term "ACFFOD" refers to the Amended and Corrected Findings of Fact and Order of Determination. The ACFFOD is the Director's order of determination regarding claims filed in the Klamath Adjudication and is currently under review in the Klamath County Circuit Court. Pursuant to ORS 539.170 while the ACFFOD is pending before the Circuit Court, the "division of water from the stream involved in the appeal shall be made in accordance with the order of the Director."

3 OAR 690-250-0010(13); Modifications of the outlet of UKL along with the construction of the Link River Dam around 1916 allow the UKL to be operated and managed as a reservoir between the elevations of 4136 and 4143.3.

4 OAR 690-250-0010(10).

5 OAR 690-250-0010(3); *Bennett v. City of Salem*, 192 Or 531, 543 (1951)(An appropriator is never entitled to divert more water than is actually put to beneficial use, reasonable transmission losses excepted); *In re Water Rights of Deschutes River and Tributaries*, 134 Or 623, 644 (1930) ("The right of a prior appropriator is paramount, and the right is limited to such an amount of water as is reasonably necessary for such use and project as may be fairly within contemplation at the time the appropriation is made); *Tudor v. Jaca*, 178 Or 126, 143 (1945) *citing Bolter v. Garrett*, 44 Or 204 (1904) for the proposition that the use of water appropriated "must not only be beneficial to the lands of the appropriator, but it must also be reasonable in relation to the reasonable requirements of subsequent appropriators."

6 OAR 690-250-0150(4); *Jones v. Warmsprings*, 162 Or 186, 195 (1939) (Water discharged to the natural stream with no intent to recapture it becomes part of the natural stream and is subject to reappropriation).

in UKL between elevations 4,136 feet and 4,143.3 feet, relative to the Bureau's Klamath Basin Datum.

3. The volume of water stored in UKL above elevation 4,136 is estimated based on an elevation capacity curve, or rating, provided by the Bureau, and using the weighted mean lake level as reported by the United States Geological Survey (USGS). The most recent rating provided by the Bureau indicates the maximum storage volume for KA 294 (486,828 AF) is met when the lake elevation is at 4,142.48 feet.[7]

4. The KID and 20 other Klamath Project Water Users (together the KPWU) and the Bureau are co-owners of Determined Claim KA 1000. KA 1000 provisionally authorizes the diversion of natural flow from UKL and water stored in UKL pursuant to KA 294 for beneficial use by the KPWU both upstream and downstream of the Link River Dam.[8] KA 1000 does not specify what amount of water must be taken from natural flow as opposed to stored water and does not prohibit the taking of water from both sources simultaneously.

5. Pursuant to KA 1000, KID may divert up to 1,150 cubic feet per second (cfs) through the A-Canal for irrigation during the irrigation season March 1 through October 31, with a priority date of May 19, 1905.

6. The Link River Dam is a federally owned dam located on the Link River. The storage and release of water pursuant to KA 294 from UKL is through the Link River Dam.

7. Downstream of the Link River Dam, and pursuant to KA 1000, there are 34 authorized points of diversion from the Klamath River. Many of these diversions have an authorized season of use from March 1 to October 31, and two irrigation districts also maintain an additional season of use from November 1 to February 28. These 34 points of diversion have a total authorized instantaneous maximum diversion rate of 1,572.51 cfs.

B. Determining Water Stored in UKL Pursuant to KA 294

1. Calculating Storage Release

8. The equation the Department is using to calculate stored water releases is:

{eqn 1} Storage Release = Link River Flow – (UKL Inflows - UKL Diversions)

with the storage release in excess of water rights then calculated as:

{eqn 2} Excessive Storage Release = Storage Release – Downstream Storage Diversion KA1000.

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[7] The weighted mean lake level of UKL is monitored and reported by the USGS. Four separate lake stage gages are operated and maintained by the USGS, and the data from each gage are entered into an equation to calculate the weighted mean lake elevation. The provisional lake elevation data are available at the website: https://waterdata.usgs.gov/or/nwis/uv/?site_no=11507001&agency_cd=USGS

[8] KA 1000 erroneously refers to KA 293, but this is a typographical error.

If either equation results in a zero or negative value, then no storage release unrelated to water rights is occurring.

Description of the Variables Used in the Equation:

Link River flow data are available from a USGS stream gage (USGS 11507500) operated on the river. The Keno power canal began diverting flow on 04/28/2021. The diversion starts at Link River Dam and the diverted water enters the Link River below the Link River stream gage. The Keno power canal diversion was added to the Link River flow to get the total outflow to the Klamath River from Upper Klamath Lake.

UKL inflows represent the total amount of *natural flow* coming into the lake from surface water, groundwater, and precipitation. Some of these inflows are measured directly (e.g., Wood and Williamson River stream gages) while others must be estimated (e.g., groundwater inflows) as explained below.

UKL Diversions: The largest UKL Diversion, the A-Canal, is monitored by a gage accessible at this link: https://www.usbr.gov/pn-bin/wyreport.pl?site=acho&parameter=qj&head=yes
There are 12 authorized points of diversion from UKL above the Link River Dam included in KA 1000. Additionally, there are ten state certificated water rights and eight non-KA 1000 determined claims each exceeding one cfs for the use of natural flow from UKL. These 18 non-KA 1000 water rights and determined claims have a combined total of 23 authorized points of diversion from UKL. Because many of these points of diversion do not have measuring devices installed, their diversion rates are estimated using the authorized diversion rate on the determined claim or water right, estimations provided by the water user, or measured by Watermaster staff.[9]

Downstream Storage Diversions $_{KA1000}$: Gages monitor three of the KA 1000 diversions below UKL; the Lost River Diversion Channel (LRDC), the North Canal, and the Ady Canal. There are 34 authorized points of diversion identified under the KA 1000 below the Link River Dam and approximately 61 other diversions from the Klamath River downstream of the Link River Dam not associated with KA 1000. The ungaged diversions and individual pump diversions are currently estimated as described below (see footnote 9).

The estimated ungaged diversions between Link River Dam and Keno Dam, which are not part of equation 2, were updated on May 17, 2021, based on the water balance between those two sites from the gages monitoring inflows and outflows in the reach. The large number of diversions, inability to

access these diversions, and lack of measuring devices made direct measurements of the diversion amounts impractical. This reach showed a neutral water balance (no unaccounted-for difference in flow between Link River Dam and Keno Dam) until the irrigation season started, at which time a negative water balance was calculated similar in magnitude to the theoretical diversion rate of the water rights in the reach. A 7-day moving average of the daily water balance is used to estimate the daily diversions to account for gaging uncertainty, travel time for water between the beginning and end of the reach, and ability of the channel to temporarily store and release water.

Both gaged and ungaged diversions below Link River Dam have been taking natural flow as no storage releases have occurred and the water rights allow for these users to divert natural flow.

[9] Efforts are underway to develop a more sophisticated mechanism of estimating these numerous smaller users that divert water directly from UKL, including inventorying each POD and working with the landowner to install measuring devices.

2. Calculating Inflows

9. To manage the water rights and determined claims and distinguish between natural flow and stored water, the Department must quantify gross inflows to UKL. Table 1 contains measured inflows (all reported in cfs) between August 24, 2021, and September 26, 2021.

10. Stream tributaries constitute one component of inflow that contributes to UKL. Tributary inflows include the Williamson River, Wood River, Sevenmile Creek, Crystal Creek, Thomason Creek, and Fourmile Creek. These streams and their tributaries are listed as sources on KA 294.[10]

11. Groundwater contributions and direct precipitation are also estimated inflow contributions that contribute to UKL. Table 1 includes estimates of groundwater inflow[11] and direct precipitation into the UKL.[12]

12. Ungaged tributary inflows are also estimated inflow contributions to UKL. A constant engaged inflow estimate for the ungagged tributaries (approximately 60 cfs) was implemented for the daily water distribution determination based on the average inflows from these tributaries observed in a USGS water budget study of the lake (Hubbard, 1970). At the issuance of the present Determination, the ungaged inflow estimate was updated (200 cfs) based on the lake water balance reconciliation process as described in section 3.0 and equation 2 and applied retroactively backwards to the previous Determination. By using this approach, large swings in the daily gross inflow estimate are avoided, thereby reducing the need for large daily (or sub-daily) changes in water management unrelated to changes in actual hydrologic conditions.

3. Calculating Inflows in Relation to Outflows

13. The total UKL inflow estimate is reconciled against the change in UKL contents and the outflows based on a water balance of the lake performed periodically, expressed as the following equation:

{eqn 2} Reconciled UKL Inflows = Change in UKL Contents + UKL outflows

Adjustments to the estimated ungaged tributary inflow are made based on this reconciliation to ensure the UKL water balance is satisfied (Table 2) as previously described in section two.

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[10] Gaged inflow streams include the Williamson and Wood Rivers, and Sevenmile Creek. On November 5, 2020, the Department issued a FINAL ORDER MEASURING DEVICES to the Bureau requiring installation of measuring devices on Sevenmile Creek, Thomason Creek, Fourmile Creek, and Crystal Creek. On December 30, 2020, the Bureau requested reconsideration of this Order, and on February 23, 2021, the Department notified the Bureau that it is reconsidering its Order. At the time of the issuance of this Order, the Department is working with the Bureau to evaluate the viability of installing gages on Crystal Creek and Fourmile Creek.

[11] Groundwater contributions are based on USGS estimates and adjusted for current hydro-climate conditions.

[12] Precipitation is scaled from the average daily precipitation recorded at the two USBR AgriMet sites KFLO and AGKO located north and south of the lake. The scaling is based on the PRISM precipitation data set ratio of the lake areal average compared to the two AgriMet sites and results in an approximately 14% increase from the recorded average values at the AgriMet sites.

Upper Klamath Lake Inflows (CFS)							
DATE	USGS Gage 11504115 Wood River	USGS Gage 11504290 Sevenmile at Dike Rd	USGS Gage 11502500 Williamson	GW Inflow Estimate	Fourmile, Crystal Creek & Other Ungaged Tributaries	Precipitation	Total Inflow to UKL
8/24/2021	295	12	471	224	200	0	1200
8/25/2021	293	0	470	224	200	0	1190
8/26/2021	291	6	463	224	200	0	1180
8/27/2021	294	13	462	224	200	0	1190
8/28/2021	294	20	472	224	200	0	1210
8/29/2021	293	4	477	224	200	0	1200
8/30/2021	296	19	469	224	200	0	1210
8/31/2021	293	23	473	224	200	0	1210
9/1/2021	291	18	481	224	200	0	1210
9/2/2021	289	16	483	224	200	0	1210
9/3/2021	289	12	478	224	200	0	1200
9/4/2021	292	17	469	224	200	0	1200
9/5/2021	295	15	466	224	200	0	1200
9/6/2021	294	21	474	224	200	0	1210
9/7/2021	295	17	471	224	200	0	1210
9/8/2021	308	22	475	224	200	0	1230
9/9/2021	311	22	484	224	200	0	1240
9/10/2021	335	22	505	224	200	2412	3700
9/11/2021	331	29	505	224	200	0	1290
9/12/2021	320	30	509	224	200	0	1280
9/13/2021	323	30	505	224	200	0	1280
9/14/2021	324	31	502	224	200	0	1280
9/15/2021	324	26	499	224	200	0	1270
9/16/2021	325	28	495	224	200	0	1270
9/17/2021	323	4	488	224	200	0	1240
9/18/2021	329	0	491	224	200	660	1900
9/19/2021	347	0	493	224	200	132	1400
9/20/2021	343	14	492	224	200	0	1270
9/21/2021	343	9	497	224	200	0	1270
9/22/2021	344	10	502	224	200	0	1280
9/23/2021	356	5	502	224	200	0	1290
9/24/2021	355	15	519	224	200	0	1310
9/25/2021	359	20	515	224	200	0	1320
9/26/2021	358	16	496	224	200	0	1290

Table 1: Measured Inflows into UKL in Cubic Feet per Second. ***Note: OWRD gages were located and installed to monitor instream determined claims.***

Description of the Variables Used in the Equation:

The **change in UKL contents** is based on contents derived from the USBR elevation capacity table using the average UKL elevation from four USGS lake level gages.
UKL outflows consist of lake evaporation, outflows through the Link River and A-Canal, and

23 other authorized diversions greater than one cfs directly from the UKL. Lake evaporation is currently estimated using weather station data from two nearby AgriMet sites.[13] Flow through the Link River and A–Canal are measured with gages. The other diversions from the UKL are currently estimated.

Water Balance Summary Table

Start Date (12:01 am)		8/24/2021
End Date (11:59 pm)		9/26/2021
Number of Days in Reporting Period		34
	AC-FT	*Equivalent CFS*
Change in Contents (+ = increase)	-15,884	*-236*
Gaged Inflows	55,241	*819*
Ungaged Inflows [1]	13,481	*200*
Groundwater Inflow[2]	15,106	*224*
Precipitation Inflow	6,353	*94*
Total Inflow	90,182	*1,337*
Evaporation	-42,342	*-628*
Link River Outflow	-60,595	*-899*
A Canal Diversions	0	*0*
Adjacent UKL Land Diversions	-3,129	*-46*
Total Outflow	-106,066	*-1,573*
UKL Water Balance	0	0
[1] Adjusted to close water balance		
[2] Updated from Hubbard using Spring Cr&Fall R as hydro-climate index		

Table 2: Water Balance Table in Reconciliation Process.

An estimate of lake evaporation between issued Determinations is required to determine the lake water balance, as shown in Table 2. Estimates of daily lake evaporation are also shown in the distribution Table 3 as one component of the daily lake outflows. This daily UKL evaporative estimate from the lake (ac-ft) was modified to be based on the 14-day moving average of the daily rate. The daily rate is based on weather data recorded at two nearby USBR AgriMet sites (KFLO and AGKO).

14. Table 3 represents the Department's calculations of inflows into UKL versus lake outflows for the time period between August 24, 2021, and September 26, 2021.

[13] The Department estimates evaporation by a Penman-Monteith equation that uses weather data from two USBR AgriMet weather stations just north and south of UKL. Evaporation estimates are adjusted for local lake conditions based on comparisons of the Penman-Montieth derived estimates with concurrent evaporation data on UKL from a study completed by USBR in 2015.

DATE	Lake Elevations (FT) and Storage (AC-FT)				Lake Inflows (CFS)	Lake Outflows (CFS)					Flow Distribution Calculation (cfs)						
	UKL Lake Elevation (USBRKB Datum)	UKL Storage	Stored since Jan 1, 2021	KLA 294 Remaining to Store (Max 486,828 AF)	Total Inflows into UKL	Evap	Link River + Keno Canal Flow	A- Canal Diversion	KA 1000 Diversions from Adjacent UKL Lands	Non KA 1000 Diversions from Adjacent UKL Lands	Live Flow Available to Pass Link R Dam	Stored Water Released from Link R Dam	Gaged KA 1000 below LRD	Ungaged KA 1000 below LRD	Non KA 1000 Diversions below LRD	KA 1000 Storage Deliveries blw LRD	Stored Release in Excess of WRs
8/24/2021	4138.83	191,370	211,384	52,827	1200	734	921	0	0.0	75.1	1125	0	232	0	64	0	0
8/25/2021	4138.80	189,295	211,783	52,429	1190	721	914	0	0.0	75.1	1115	0	248	0	74	0	0
8/26/2021	4138.79	188,603	212,158	52,054	1180	711	921	0	0.0	70.0	1110	0	247	0	95	0	0
8/27/2021	4138.78	187,912	212,548	51,663	1190	708	923	0	0.0	70.0	1120	0	248	0	114	0	0
8/28/2021	4138.77	187,220	212,967	51,245	1210	726	929	0	0.0	70.0	1140	0	244	0	131	0	0
8/29/2021	4138.75	185,838	213,542	50,669	1200	733	840	0	0.0	70.0	1130	0	235	0	141	0	0
8/30/2021	4138.74	185,147	214,129	50,082	1210	725	844	0	0.0	70.0	1140	0	218	0	143	0	0
8/31/2021	4138.73	184,457	214,708	49,503	1210	713	848	0	0.0	70.0	1140	0	210	0	142	0	0
9/1/2021	4138.72	183,766	215,474	48,737	1210	716	782	0	0.0	41.8	1168	0	220	0	135	0	0
9/2/2021	4138.71	183,076	216,157	48,054	1210	723	824	0	0.0	41.8	1168	0	233	0	131	0	0
9/3/2021	4138.69	181,695	216,707	47,505	1200	714	881	0	0.0	41.8	1158	0	248	0	126	0	0
9/4/2021	4138.67	180,313	217,096	47,116	1200	710	962	0	0.0	41.8	1158	0	242	0	123	0	0
9/5/2021	4138.66	179,623	217,487	46,725	1200	707	961	0	0.0	41.8	1158	0	238	0	123	0	0
9/6/2021	4138.66	179,623	217,942	46,270	1210	693	939	0	0.0	41.8	1168	0	241	0	115	0	0
9/7/2021	4138.65	178,933	218,424	45,788	1210	696	925	0	0.0	41.8	1168	0	239	0	104	0	0
9/8/2021	4138.64	178,244	218,954	45,258	1230	678	921	0	0.0	41.8	1188	0	137	0	116	0	0
9/9/2021	4138.63	177,554	219,660	44,551	1240	668	842	0	0.0	41.8	1198	0	78	0	115	0	0
9/10/2021	4138.68	181,004	225,409	38,803	3700	648	760	0	0.0	41.8	3658	0	77	0	102	0	0
9/11/2021	4138.69	181,695	226,131	38,080	1290	618	884	0	0.0	41.8	1248	0	80	0	77	0	0
9/12/2021	4138.68	181,004	226,316	37,896	1280	597	1145	0	0.0	41.8	1238	0	76	0	69	0	0
9/13/2021	4138.67	180,313	226,402	37,810	1280	580	1195	0	0.0	41.8	1238	0	66	0	74	0	0
9/14/2021	4138.65	178,933	226,507	37,704	1280	575	1185	0	0.0	41.8	1238	0	61	0	82	0	0
9/15/2021	4138.63	177,554	226,593	37,619	1270	564	1185	0	0.0	41.8	1228	0	62	0	75	0	0
9/16/2021	4138.62	176,865	226,673	37,539	1270	551	1195	0	0.0	34.6	1235	0	79	0	78	0	0
9/17/2021	4138.58	174,107	226,753	37,458	1240	554	1165	0	0.0	34.6	1205	0	88	0	93	0	0
9/18/2021	4138.57	173,417	228,162	36,049	1900	537	1155	0	0.0	34.6	1865	0	56	0	119	0	0
9/19/2021	4138.57	173,417	228,778	35,434	1400	513	1055	0	0.0	34.6	1365	0	49	0	141	0	0
9/20/2021	4138.57	173,417	229,653	34,558	1270	510	794	0	0.0	34.6	1235	0	60	0	150	0	0
9/21/2021	4138.57	173,417	230,809	33,403	1270	495	653	0	0.0	34.6	1235	0	68	0	153	0	0
9/22/2021	4138.59	174,796	232,095	32,117	1280	505	597	0	0.0	34.6	1245	0	60	0	148	0	0
9/23/2021	4138.59	174,796	233,409	30,803	1290	505	593	0	0.0	34.6	1255	0	63	0	141	0	0
9/24/2021	4138.59	174,796	234,768	29,443	1310	508	590	0	0.0	34.6	1275	0	66	0	139	0	0
9/25/2021	4138.60	175,486	236,152	28,060	1320	508	588	0	0.0	34.6	1285	0	63	0	134	0	0
9/26/2021	4138.60	175,486	237,384	26,827	1290	506	634	0	0.0	34.6	1255	0	58	0	122	0	0

Table 3: Daily Calculations of Inflows Versus Outflows for UKL.

15. Based on the daily calculation of inflows and outflows, no storage releases occurred between August 24, 2021, and September 26, 2021.

IV. ULTIMATE FINDINGS OF FACT

1. As of the date of this Determination, water passing through the Link River Dam constitutes natural flow as opposed to water legally stored pursuant to KA 294.

V. CONCLUSION

1. During the period of August 24, 2021, through September 26, 2021, the Bureau has been in compliance with the Order.

VI. DETERMINATION

During the period of August 24, 2021, through September 26, 2021, the water passing through the Link River Dam was natural flow. The Department and the District 17 Watermaster will continue to monitor conditions in the UKL throughout 2021 and will issue a status determination on a monthly basis or as conditions change.

DATED this 29th day of September 2021.

DANETTE WATSON,
Watermaster, District 17
Oregon Water Resources Department

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2021, I served a full, true, and correct copy of the Department's DETERMINATION ON STATUS OF RELEASES OF WATER STORED UNDER DETERMINED CLAIM KA 294 upon the parties hereto as follows:

Jared Bottcher Interim Area Manager, US BOR Mid-Pacific Region Klamath Basin Area Office 6600 Washburn Way Klamath Falls, OR 97603-9365	☐ by certified mail # ☐ by hand-delivery ☐ by facsimile # ☐ by regular mail, postage prepaid ☒ Other: Email
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DATED this 29th day of September, 2021

Nirvana Cook

Nirvana Cook
Oregon Water Resources Department