

# Issues in the Regulation of Water Rights in Oregon

## WSWC Legal Committee

OREGON



WATER RESOURCES  
DEPARTMENT



**NOTICE of REGULATION of WATER USE**

I AM HEREBY GIVEN to the responsible party, that I have regulated and posted this WATER CONTROL on JULY 23, 2013, at 23:00 hrs., and the same is under my control. This order is posted according to ORS 540.045 and is legal notice to anyone interested in the diversion or use of water from SYCAN RIVER + TRIBS. You may not lawfully change or interfere with this water use control. A violation of this regulation is punishable by a fine and/or imprisonment. This order expires on OCTOBER 31 at 00:01 hrs., unless otherwise notified by the Watermaster.

**REASON FOR REGULATION**

- ☐ Use of water without a valid water right.
- ☐ Violation of permit condition.
- ☐ Violation of ORS 540.310 and 540.320 (headgate measuring device).
- ☒ Water supply insufficient to satisfy senior rights.
- ☐ Other \_\_\_\_\_

WATERMASTER, DISTRICT NO. 17 Phone: (541) 883-4182

This is a **FINAL ORDER** in other than a contested case, 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 183.484(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.



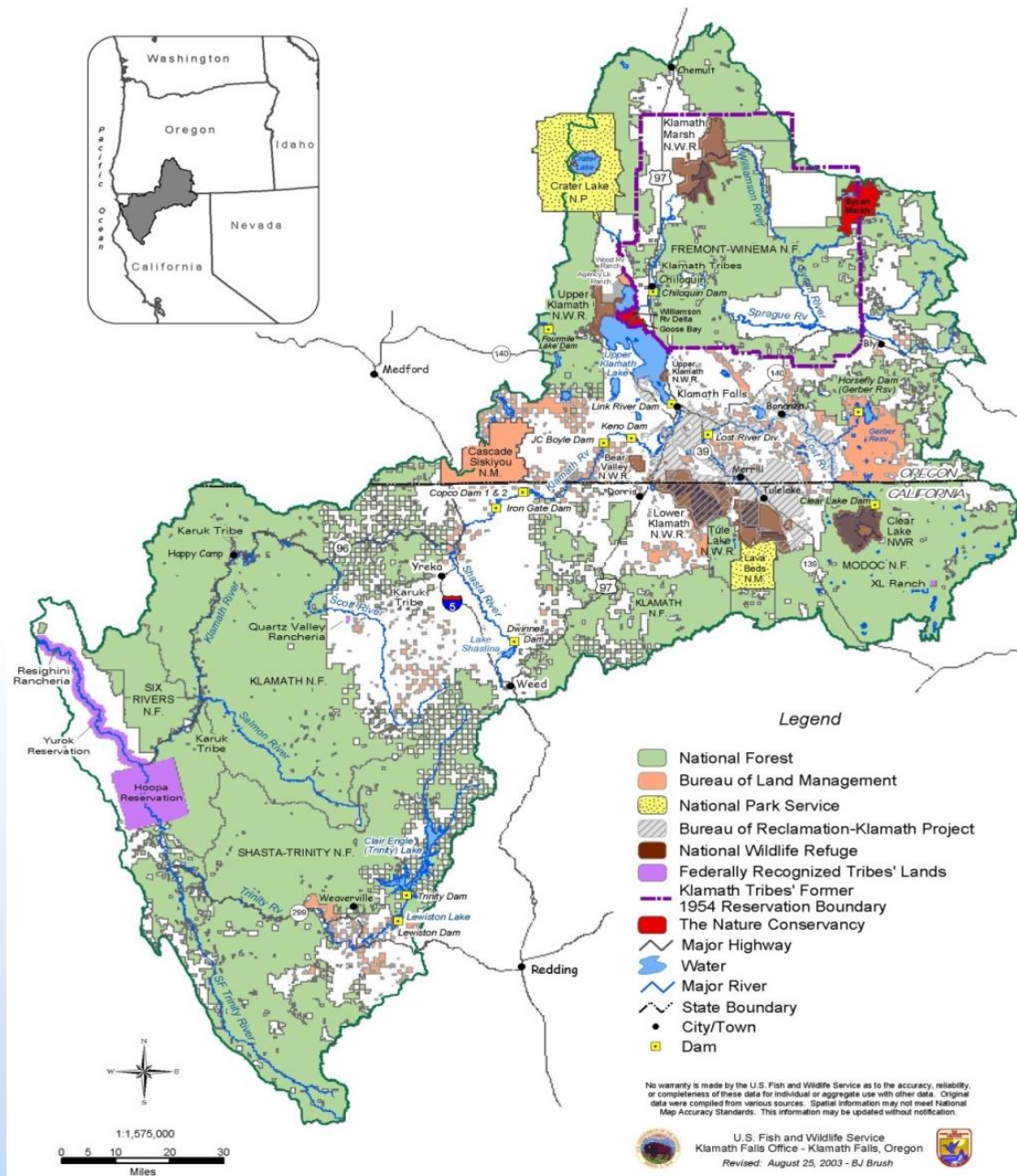
**Presented by: Tom Byler, Director**

## Stay of Regulation

### **536.075 (5) Judicial review of final order**

- **The filing of a petition in either the circuit court or the Court of Appeals shall stay enforcement...unless the commission or the department determines that substantial public harm will result if the order is stayed.**
- **If the commission or the department denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that will result from allowing the stay.**

# The Klamath River Basin



## ***Baley vs. U.S. - Background***

- 1975** Klamath Adjudication begins
- 1994** *U.S. v. Oregon*, 9<sup>th</sup> Circuit affirms McCarran amendment applies: Klamath Tribes and federal agencies required to participate in the Klamath Basin Adjudication (KBA) or waive their federal reserved rights
- 1997** Klamath Tribes and BIA – File claims for Klamath Tribes; no claims filed for other tribes
- 2001** Bureau of Reclamation shuts off irrigation from Klamath Project for ESA listed species
- 2013** Final Order of Determination filed in KBA; regulation of determined claims begins
- 2017** *Baley vs U.S.* - Federal Claims Court decision

# WRD Amicus on Appeal to U.S. Court of Appeals

- **Court of Claims conclusion is flawed:**
  - **Klamath, Hoopa, and Yurok Tribes did not have federal reserved water rights for Upper Klamath Lake in 2001 that were legally enforceable under state law**
- **WRD Asserts:**
  - **The Hoopa and Yurok Claims Have Been Waived**
  - **The Klamath Tribes Claims Were Not Fully Established in 2001**
    - **No federal reserved rights could call for water in 2001**

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