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U. S. DISTRICT COURT  
DISTRICT OF OREGON  
**FILED**

ROBERT M. CHRIST, CLERK  
BY Bjw DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES,

Plaintiff,

and

KLAMATH INDIAN TRIBE,

Plaintiff-Intervenor,

v.

BEN ADAIR, et al.,

Defendants,

and

THE STATE OF OREGON

Defendant-Intervenor.

Civil No. 75-914

DECLARATORY JUDGMENT

IT IS ORDERED AND ADJUDGED:

1. The Treaty of 1864 reserved rights already possessed by the Klamath Tribe and its members to fish, hunt, trap and gather on the Klamath Indian Reservation.

2. Said hunting, fishing, trapping and gathering rights for the Tribe, its members on the final tribal roll, and for their descendants survived the Klamath Termination Act.

3. In creating the Reservation by treaty in 1864 the Government reserved

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1 land from the public domain to preserve the Tribe's hunting, fishing, trapping and  
2 gathering rights and to encourage agriculture. The treaty granted the Tribe an  
3 implied right to as much water on the Reservation as was necessary to fulfill these  
4 purposes.

5 4. The termination of the Reservation did not abrogate the Tribe's  
6 water rights. The Tribe is entitled to a quantity of water sufficient to maintain  
7 as wetlands the portion of the former Reservation lands now within the Klamath  
8 Marsh in order that habitat be preserved to support the game and fish necessary  
9 for the exercise of their hunting, fishing, trapping and gathering rights.

10 5. Individual Indian land owners are entitled to use water essential to  
11 their agricultural needs when those needs arise, subject to the Tribe's superior  
12 rights to use the water for the preservation of hunting, fishing, trapping and  
13 gathering.

14 6. The termination of the Reservation and the disposition of all tribal  
15 land did not dispossess the Tribe of water rights essential to protect hunting and  
16 fishing rights. The Tribe has the same treaty hunting, fishing and water rights  
17 as its members, and it has standing to assert these rights on behalf of its members.

18 7. ~~As~~ Exercise of the Tribe's water rights will protect the water  
19 rights asserted herein by the Government; the Government has standing to assert  
20 the same rights.

21 8. With respect to forest lands outside former Reservation, which  
22 were withdrawn by the Government for national forest purposes in 1893, 1906, 1907,  
23 and 1930, the Government is entitled to water which was unappropriated when the  
24 forest lands were reserved and which is essential for timber production and  
25 conservation of water flow.

26 9. A non-Indian successor to an Indian allottee or to Tribal land  
27 acquires an appurtenant right to water for the actual acreage under irrigation  
28 when he acquires title from his Indian predecessor. The priority date of that

1 water right is 1864. The non-Indian also acquires a right, with a priority date  
2 of 1864, to water for additional acreage which he<sup>or</sup> she, with reasonable diligence,  
3 may place under irrigation. Once land passes out of Indian ownership, all subse-  
4 quent conveyances are subject to the doctrine of prior appropriation.

5 10. The rights of the State of Oregon to water for land it acquired  
6 by succession to Indian allottees are the same as those of the individual non-  
7 Indian land owners in this action.

8 11. The priority date of the Tribe's hunting, fishing, trapping and  
9 gathering rights, and their water rights necessary to preserve these hunting,  
10 fishing, trapping and gathering rights is time immemorial.

11 12. The priority date of the Indians' water rights for irrigation  
12 and domestic purposes is 1864.

13 13. The priority date of the water rights of the United States for  
14 the national forest lands outside the Reservation is the date on which the  
15 Government withdrew each parcel for use as national forest.

16 14. For irrigation and domestic purposes, the non-Indian land owners  
17 and the State of Oregon are entitled to an 1864 priority date for water rights  
18 appurtenant to their land which formerly belonged to the Klamath Indians.

19 15. This Court retains jurisdiction of this case for a period of one  
20 year from the date a final judgment is entered in the State court, or if that  
21 judgment is appealed, from the date of the final judgment on appeal, for the  
22 purpose of enabling the parties or their successors in interest to apply to this  
23 court at any time for such orders and directions as may be necessary or appropriate  
24 for the construction and effectuation of this judgment, for the modification of any  
25 of the provisions hereof, and for the enforcement of compliance with this judgment.  
26 Subject to the continuing jurisdiction of this Court, quantification of the rights  
27 to the use of the waters of the Williamson River and its tributaries within the  
28 litigation area will be performed by the State of Oregon within its applicable

3 - DECLARATORY JUDGMENT

1 procedures.

2 16. The Court directs that none of the parties or intervenors recover  
3 costs, disbursements, or attorneys fees in this case.

4 Dated this 21st day of April, 1980.

5  
6 *Lucy J. Moran*  
7 UNITED STATES DISTRICT COURT JUDGE

8 Presented by:

9  
10 *Thomas C. Lee*  
11 THOMAS C. LEE, Assistant U.S. Attorney  
12 Of Attorneys for Plaintiff,  
13 United States of America

14 *Raymond Cross by T C L*  
15 RAYMOND CROSS  
16 Of Attorneys for Plaintiff-Intervenor,  
17 Klamath Indian Tribe

18 U. S. DEPARTMENT OF JUSTICE  
19 RETURN IN FIVE DAYS TO  
20 OFFICE OF  
21 UNITED STATES ATTORNEY  
22 POST OFFICE BOX 71  
23 UNITED STATES COURTHOUSE  
24 PORTLAND, OREGON 97207

STATE OF OREGON, )  
County of Klamath )  
Filed for record at request of

on this 14th day of May A.D. 19 80  
at 3:25 o'clock P M, and duly  
recorded in Vol. 180 of Deeds  
age 8879

Wm D. MILNE, County Clerk

By *Berntha H. H. H.* Deputy

Fee \$14.00

25 Certified to be a true and correct  
26 copy of original filed in my office.

27 Dated 5-1-80  
28 By *Robert M. Christ* Clerk  
*Deputy*

4 - DECLARATORY JUDGMENT