

Reagan L.B. Desmond (01719929)  
CLYDE SNOW & SESSIONS  
377 SW Century Drive, Ste. 203  
Bend, OR 97702  
P: 541.797.0011  
F: 801.521.6280  
[rlbd@clydesnow.com](mailto:rlbd@clydesnow.com)

*Attorneys for Klamath Drainage District*

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

<p>IN THE MATTER OF A DISPUTE PURSUANT TO ORS 540.210</p> <p>KLAMATH IRRIGATION DISTRICT, <i>Disputant,</i></p> <p>BUREAU OF RECLAMATION, <i>Reservoir Owner.</i></p>	<p><b>KLAMATH DRAINAGE DISTRICT’S RESPONSE TO REQUEST FOR INFORMATION</b></p>
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Pursuant to ORS 536.026 and applicable rules and regulations, Klamath Drainage District (“KDD”), by and through undersigned counsel, submits its responses to the Oregon Water Resources Department’s (the “Department”) Request for Information (hereafter, the “Request”) dated June 9, 2020. Pursuant to written agreement, KDD timely responds and objects to the Request on or before July 20, 2020.

**GENERAL OBJECTIONS**

1. Each response is subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety, and admissibility) that would require the exclusion of any document or information in any court or administrative

proceeding. All such objections and grounds for objection involving or relating to the matters raised herein are reserved and may be introduced at the time of trial or other hearing.

2. KDD objects to each numbered request to the extent the request seeks information protected by the attorney/client privilege or the work product doctrine.

3. KDD objects to each numbered request insofar as the request seeks information equally available to Department.

4. KDD objects to each numbered request insofar as the information sought can be obtained from another source that is more convenient, less burdensome, or less expensive.

5. KDD objects to each numbered request which solicits information that is not relevant to the subject matter of the above-captioned matter and/or not likely to lead to the discovery of admissible evidence.

6. KDD objects to each numbered request that is overly broad, vague and ambiguous, or unduly burdensome.

7. To the extent KDD adopts any term or definition presented by the Request, it is adopted solely for convenience in responding to the Request, and KDD does not accept any terms or definitions or concede that any of them are appropriate, descriptive or accurate.

8. KDD objects to the extent the Request purports to define KDD and Klamath Hills District Improvement Co. as a single entity. This Response is submitted solely on behalf of KDD, which is a separate and distinct entity from Klamath Hills District Improvement Co. As such, KDD could not, and does not, purport to respond on behalf of Klamath Hill District Improvement Co.

9. KDD reserves the right to amend or supplement its responses by virtue of obtaining additional information.

10. The objections above apply to each of the responses below, and the responses set forth are not to be deemed a waiver, either in whole or in part, of any of those objections. Notwithstanding the above objections, and without in any way waiving or limiting those objections, KDD will attempt in good faith to provide responses to the Request based on information known and reasonably available to KDD.

**RESPONSES TO REQUESTS 1-12**

1. WRD records show that the following water rights or determined claim authorize the use of water for irrigation or other uses on lands which list you as the owner:

Claim/Cert	Number	POD TRSQQ	Priority Date
PERMIT	48435	40S/8E-2NENW	10/10/1983
PERMIT	43334	40S/8E-2NENW	4/25/1977

2. If the above information is incorrect, please explain and provide any additional water right or determined claim number(s) for your lands sourced by the Klamath River or stored water from Upper Klamath Lake, in part or in full, here:

**KDD's Response:** KDD objects to this request on the grounds that it: (1) is overbroad and unduly burdensome to the extent it purports to request that KDD respond on behalf on any other entity; and (2) is duplicative of information more readily available from other sources.

Subject to and without waiving the General and specific objections, KDD responds as follows: KDD is not responding for Klamath Hills District Improvement Co. As to KDD, the above-referenced PERMIT 43334, 40S/8E-2NENW, 4/25/1977 is correct. KDD's additional rights are: (1)—Claim 321-17/293/323-3 (KA 1000); and (2)—Claim 321-1 (KA 1002).

3. Where is the point of diversion(s) (POD) from the Klamath River located? Please attach a photograph of each POD and give a GPS location if available.

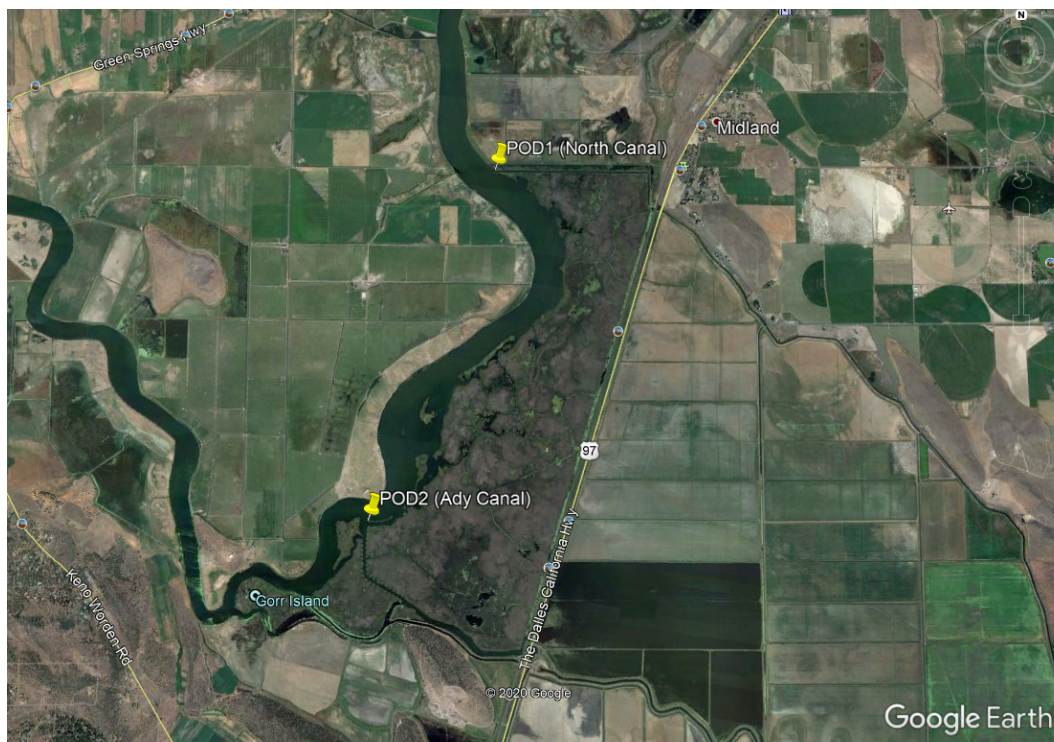
**KDD's Response:** KDD objects to this request on the grounds that it: (1) is unduly burdensome to the extent it purports to request that KDD generate a photo/documents that do not already exist; and (2) is duplicative of information more readily available from other sources.

Subject to and without waiving the General and specific objections, KDD responds as follows: KDD has two points of diversion located on the Klamath River—

POD1 (North Canal)'s GPS: 42.125791, -121.848954

POD2 (Ady Canal)'s GPS: 42.093175, -121.864455

GPS coordinates were taken from the points dropped on the Google Earth image below, which image KDD provides to the best of its ability to respond to this request but cannot attest to or authenticate the accuracy of any data provided by Google Earth:



4. What is the physical nature of the POD? (e.g., ditch, canal, or pump system)

**KDD's Response:** Subject to and without waiving the General objections, KDD responds as follows: Canal.

5. Is there a functioning headgate or valve at the POD?

**KDD's Response:** Subject to and without waiving the General objections, KDD responds as follows: Both diversions have functioning headgates. POD1's headgates are located approximately 1.25 river miles downstream from the authorized POD. POD2's headgates are located approximately 1.5 river miles downstream from the authorized POD.

6. Is there a water use measuring device at the POD? (e.g., weir, submerged orifice, totalizing flow meter) If yes please describe.

**KDD's Response:** Subject to and without waiving the General objections, KDD responds as follows: (1)—POD1: USGS Gage 11509105 North Canal at Highway 97, Near Midland, OR; and (2)—POD2: USGS Gage 11509200 Ady Canal at Highway 97, Near Worden, OR.

7. Do you physically divert water from the Klamath River through your PODs?

If yes:

- a) How do you measure the rate and duty of water you divert from the Klamath River?
- b) How frequently do you check or monitor the measuring device and record the readings?
- c) Please provide the last two years of water use data recorded for the POD.
- d) Do you communicate with the U.S. Bureau of Reclamation (BOR) that you are diverting water from the Klamath River? If so, please describe how and when you communicate diversions to BOR.

If no:

- e) Who physically diverts water from the Klamath River for your use? (e.g., BOR, irrigation district, etc.)
- f) How are you informed about the rate and duty of water diverted from the Klamath River for your use by others?

- g) Do you have a contract with the person or entity who diverts water from the Klamath River for your use? If so, please attach a copy.

**KDD's Response:** KDD objects to this request on the grounds that it: (1) is unduly burdensome to the extent it requests information comprising and requiring compilation of over 365 pages of data per year; (2) is vague and ambiguous as to the scope and extent of “communications” with the BOR; and (3) is duplicative of information more readily available from other sources.

Subject to and without waiving the General and specific objections, KDD responds as follows to each subpart of the request:

No. 7: Yes.

7(a): KDD uses a gate equation to calculate rate and duty for each POD.

7(b): Daily, at or around approximately 8:00 a.m.

7(c): KDD provides the following as the best approximation based on information reasonably available:

2018: 31,024 acre-feet

2019: 47,011 acre-feet

7(d): KDD does communicate with the BOR via email, telephone or in person. As a district in the Klamath Reclamation Project, KDD is in continuous communication with the BOR on multiple accounts including diversion and general water management.

8. Of the water diverted for the 2020 irrigation season, how much (in acre feet) is from live flow and how much is from stored water?

**KDD's Response:** KDD objects to this request on the grounds that it: (1) is unduly burdensome as to KDD to the extent that BOR manages the release of water from Upper

Klamath Lake and is better suited to respond; (2) is overbroad and vague and ambiguous to the extent that the request requires making legal assumptions as to water rights; and (3) is duplicative of information more readily available from other sources, specifically the BOR.

Subject to and without waiving the General and specific objections, KDD responds as follows: Based on its stated specific objections, KDD declines or is unable to answer this request.

9. How many acre feet of water in total have you diverted from the Klamath River in 2020?

**KDD's Response:** KDD objects to this request on the grounds that it: (1) is vague and ambiguous as to the meaning and scope of "water in total" for 2020; and (2) is duplicative of information more readily available from other sources.

Subject to and without waiving the General and specific objections, KDD responds as follows: Since Jan 1, 2020, KDD has diverted 11,651 AF, including water diverted under its winter water right. In the 2020 Water Year, KDD has diverted approximately 26,500 acre-feet. This number is the total for the water year (beginning Oct. 1, 2019) and therefore includes winter water. These are strictly diversions for KDD from the Klamath River.

10. Do you also use water from another source, such as groundwater, another stream, or a spring? If so, how much water have you diverted or pumped from each of those other sources in 2020?

**KDD's Response:** Subject to and without waiving the General objections, KDD responds as follows: No.

11. How many irrigated acres are currently in production? How many acres do you estimate will be ready, willing and able to apply water for beneficial use in 2020?

**KDD's Response:** KDD objects to this request on the grounds that it: (1) is vague and ambiguous as to the meaning of “will be ready, willing and able” and unduly burdensome to the extent it requires KDD to speculate without additional information.

Subject to and without waiving the General and specific objections, KDD responds as follows: Approximately 27,000 acres, of which KDD estimates all are ready, willing and able to apply water for beneficial use.

12. Who is the best point of contact for any questions or requests for access to the POD? Please provide name, telephone number and email:

**KDD's Response:** Subject to and without waiving the General objections, KDD responds as follows: Scott White, General Manager, (541) 510-6311, [scott@klamathdrainagedistrict.org](mailto:scott@klamathdrainagedistrict.org). KDD further requests all communications relating to this matter be copied to counsel at: Reagan Desmond, Clyde Snow & Sessions, P.C., 541-797-0011, [rlbd@clydesnow.com](mailto:rlbd@clydesnow.com).

DATED this 17th day of July 2020.

As to objections:

**CLYDE SNOW & SESSIONS**

*/s/ Reagan Desmond* \_\_\_\_\_

Reagan Desmond  
Attorneys for KDD

As to responses:

*/s/ Scott White* \_\_\_\_\_

Scott White  
General Manager of KDD  
(Signed electronically with written permission)