

SETTLEMENT AGREEMENT

This Pre-Litigation Settlement Agreement is made this 19th day of September, 2002, by and between the State of Oregon, through the Director, Oregon Department of Water Resources (the "Department"), the United States of America, on behalf of the Regional Director, Pacific Northwest Region, Bureau of Reclamation ("Reclamation"), an agency of the Department of the Interior, and the Ridgeview Irrigation District ("RID"), an irrigation district organized under the laws of the State of Oregon.

The following preliminary statements explain a presently existing dispute between the Department and Reclamation:

- A. The Owyhee Project is located in Southeastern Oregon and Southwestern Idaho, on the west side of the Snake River. RID is one of several irrigation districts within the Owyhee Project. Each of these districts has entered into repayment contracts with the United States pursuant to federal Reclamation law.
- B. In August of 1927, Reclamation filed applications with the State of Oregon for permits to construct Owyhee Reservoir (Permit #R-599) and for a permit to divert and store the water of the Owyhee River (Permit #8171). These applications were made in compliance with Oregon State law.
- C. Reclamation contracted with, and transferred operation and maintenance of the federal project facilities to, the irrigation districts in the Owyhee Project through the Amendatory Repayment Contract of August 29, 1951, No. Ilr-876. This contract entitles Ridgeview lands to receive Owyhee Project water. Under Article 14 (a) of the Amendatory Repayment Contract, the parties to that contract agreed that the United States would perfect the water right claims made for the storage and diversion of the Owyhee River under Oregon permit numbers R-599 and 8171. Congress approved the Amendatory Repayment Contract in the Act of June 23, 1952, 66 Stat. 151-2.
- D. Article 11(a) of the Amendatory Repayment Contract lists the irrigable area within RID as 6,109 acres. Under Article 11(f) of the Amendatory Repayment Contract, adjustments in the irrigable area of the district can only be made with the approval of RID and the Secretary of the Interior.
- E. The United States made the necessary showings to perfect the water rights applied for with permits R-599 and 8171. On April 15, 1959, the Oregon State Engineer issued Oregon Certificate of Water Right No. 24707. That certificate explains that the United States of America, acting through the United States Bureau of Reclamation, as the permittee, made proof to the satisfaction of the Oregon State Engineer of both a storage

and a direct flow water right for use within the Bureau of Reclamation's Owyhee Project.

- F. Water Right Certificate No. 24707 recognized that the United States acquired a direct flow water right from the Owyhee River with a February 14, 1916 priority date for 750 c.f.s. and an August 19, 1924 priority date for 968 c.f.s. The certificate also recognized the United States' right to store 100,000 acre feet with a February 15, 1916 priority date and 600,000 acre feet with an August 20, 1924 priority date.
- G. Among the 6,109 acres within RID that were covered by the Congressionally approved contract were 31.8 acres of land owned, as of 1956, by O.L. Ashcraft. The 31.8 acres are located in the SW quarter of Section 3, Township 22 South, Range 46 East, W.M., and are referred to hereafter in this agreement as the "Ashcraft lands."
- H. In 1956, O.L. Ashcraft applied to RID to move the Project water rights appurtenant to the Ashcraft lands to other land he owned that was also within RID. RID approved and recorded the move in Malheur County, Oregon. Ashcraft later sold the land to which the 31.8 acres of water rights were moved to John Cameron. The lands to which Ashcraft moved the Project water rights are referred to hereafter in this agreement as the "Cameron lands."
- I. In 1956, a water right transfer had to be processed and approved by the State Engineer to be a valid transfer under Oregon law. ORS 540.510-540.530 (1953). Neither O.L. Ashcraft, RID, nor any of his successors submitted an application to the State Engineer to transfer the 31.8 acres of water rights from the Ashcraft lands to the Cameron lands.
- J. Department records show that on January 4, 1973, William T. Ashcraft, the son of O.L. Ashcraft, filed a water right application for irrigation of a certain 33.3 acre parcel of land from the Snake River. State Engineer records indicated that 31.8 acres of the 33.3 acres were covered by an existing water right. Department staff notified William T. Ashcraft that a new permit for a primary water right could not be issued from the 31.8 acres that had an existing water right.
- K. On January 22, 1973, William T. Ashcraft signed an affidavit stating that he had abandoned his interest in that portion of Water Right Certificate No. 24707 that, prior to 1956, had been used on his father's lands in the SW quarter of Section 3, Twp. 22 S., R. 46E., W.M., the Ashcraft lands. The affidavit contains a request that the right be canceled.
- L. As a result of William Ashcraft's affidavit, the Oregon State Engineer issued a special order of cancellation on June 30, 1975. The 1975 cancellation order states that it cancels .53 c.f.s. of the water right certified to the United States in certificate number 24707. The 1975 cancellation order hereafter is referred to in this agreement as the "voluntary cancellation."

- M. To the best of the parties' knowledge, the voluntary cancellation was made without prior Notice to Reclamation or RID.
- N. Reclamation and RID have continued to deliver Project water to the Cameron lands since RID moved water rights to said lands in 1956.
- O. It is the position of the Department that the voluntary cancellation was valid and reduces the number of acres that can be irrigated in the RID under Water Right Certificate No. 24707 by 31.8 acres, from 6,109 acres down to 6,077.2 acres.
- P. It is the position of the United States and RID that the voluntary cancellation was invalid and void ab initio.
- Q. Reclamation and the Department desire to settle their disagreement regarding the validity of the voluntary cancellation.

NOW THEREFORE, the parties agree as follows:

ARTICLE I: TRANSFER OF WATER RIGHTS

- A. Reclamation and RID will prepare applications for transfer of water rights from lands within the Gem Irrigation District to the Cameron lands, plus an additional 675.9 acres of lands within RID, which RID has identified through its HB 3111 process as lacking a recognized water right. The Gem Irrigation District and RID Boards of Directors already have approved the proposed transfers.
- B. The Department will assist RID and Reclamation in preparing the transfer maps in order to expedite the transfer process.
- C. The Department will process the transfer applications in accordance with the Department's rules and regulations.
- D. The goal of the transfers described in this article is a final order issued by the Department approving the transfers. If the Department fails to approve the transfers or the approved transfers are overturned on appeal, the United States is not prevented by this agreement from challenging the voluntary cancellation by any method that is available to it.

ARTICLE II: FUTURE NOTICE

- A. The Department will continue actively to support legislation that would amend the Oregon water code to provide, at a minimum, the following protections for the United States:
 - 1. The Department will provide 90 days advance published notice in its Public

Notice of Water Use Requests of all proposed voluntary cancellations of water rights, and will send copies of such proposed cancellations by mail:

- a. To any irrigation district and to Reclamation when a party requesting voluntary cancellation of water rights is located within an irrigation district or federal reclamation project and provides this required information, or
- b. To an irrigation district or the United States when the irrigation district or the United States is identified on the subject water rights certificate affected by the proposed action.

2. If introduced, the Department also will support further amendments to legislation to establish uniform 90-day notice provisions for other water use requests where the request is permanent in nature. Such requests include, but are not limited to, proposed actions to permanently transfer place of use, type of use, point of diversion, or point of appropriation, including transfers within irrigation districts, and applications for new water rights. These requests, and other water use requests that affect the interests of the Bureau of Reclamation, including voluntary cancellations and temporary transfers, hereafter are described as 'state water use actions.'

B. In addition to supporting legislation referenced in subsection A above, the Department shall, commencing immediately upon the execution of this Agreement by the parties:

1. Add information to state water use actions published in the Public Notice of Water Use Requests identifying the party whose name appears on the water right certificate that is the subject of the state water use action, including any irrigation district or Reclamation if appearing on the certificate;
2. Provide Reclamation with a copy of the Public Notice of Water Use Requests through a subscription service, or otherwise;
3. Provide Reclamation with the current statutory time limit of notice if further uniform notice has not been enacted as provided in paragraph II (A) above, or 90 days' notice if no applicable statutory time period exists, on state water use actions where the water right is in the name of the United States or where the water right is used within the boundaries of a Reclamation project. The Department shall provide Reclamation with such notice of state water use actions through the Public Notice of Water Use Requests as provided in subsection II (B) (2) above, for any such proposed water right actions.
4. In addition to the notice provided in subsection II (B) (3) above, the Department will send a copy of a water right transfer application by mail to any

irrigation district and to Reclamation when a water right that is the subject of the proposed transfer is located within an irrigation district or federal reclamation project and such information is provided in the transfer application, or when an irrigation district or the United States is identified on the water right certificate that is the subject of the proposed transfer.

ARTICLE III: WAIVER OF RIGHTS TO DISPUTE PUTATIVE CANCELLATION

If the Department issues a final order approving the transfers addressed in Article I that is not overturned on appeal, and complies with Article II, then the United States will not file a lawsuit or otherwise challenge the voluntary cancellation.

ARTICLE IV: FULL UNDERSTANDING OF THE PARTIES

This Settlement Agreement is the result of negotiations wherein each party was represented and advised by legal counsel. It expresses the full and complete understanding of the parties in regard to the voluntary cancellation. No other promises, conditions, covenants, or agreements exist either orally or in writing in regard to this settlement. This Settlement Agreement cannot be modified or assigned except by a writing signed by all the parties.

ARTICLE V: GOOD FAITH AGREEMENT

This Settlement Agreement is entered into and executed voluntarily by all parties in good faith and without exertion of duress or undue influence.

ARTICLE VI: BINDING ON SUCCESSORS

This Settlement Agreement is binding upon the parties and their successors.

ARTICLE VII: INTEGRATED AGREEMENT

Each provision of this agreement is essential to a full implementation of the parties' intent. Therefore, this agreement is to be construed as a whole. Neither judicial invalidation of any provision or obligation contained herein, nor the forbearance or any party from requiring specific performance of any such provision or obligation, will invalidate or waive any other provision or obligation contained herein.

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IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE STATE OF OREGON

by Paul R. Cleary
Director, Oregon Department of Water Resources

THE UNITED STATES OF AMERICA

by Stephen M. Mahubane
Trial Attorney, United States Department of Justice

RIDGEVIEW IRRIGATION DISTRICT

by Paul J. Shamba
Chairman, Board of Directors