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THE OFFICE OF ADMINISTRATIVE HEARINGS

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
FOR THE  
WATER RESOURCES DEPARTMENT

In the Matter of the Determination of the Relative Rights of the Waters of the Klamath River,  
a Tributary of the Pacific Ocean

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United States Bureau of Reclamation; The Klamath Tribes; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Company; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S Luscombe; Berlva Prichard; Don Vincent; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC,

**STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091 AND ORDER THEREON**

Case No. 105  
Claim No. 35  
Contests: 2765, 3384, 3783, and 4091

Contestants,

vs.

J.R. Simplot Self-Declaration of Revocable Trust,

Claimant/Contestant.

Claimant J.R. Simplot, Trustee for the J.R. Simplot Self-Declaration of Revocable Trust ("Simplot"), Contestants United States of America (the "United States"), the Klamath Tribes, and Klamath Project Water Users (the "KPWU")<sup>1</sup> (collectively,

<sup>1</sup> The KPWU includes each of the Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Co., Enterprise Irrigation District, Klamath Hills District Improvement Company, Malin Irrigation District, Midland District Improvement Company, Pine Grove

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“Contestants”), and the Oregon Water Resources Department (the “Department”) hereby agree and stipulate as follows:

**A. STIPULATED FACTS**

1. On January 31, 1991, Metropolitan Life Insurance Company dba ZX Land & Cattle Company filed Claim No. 35 in the Klamath Basin Adjudication. Simplot subsequently acquired the property that is the subject of Claim No. 35.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 35, preliminarily approving the claim, but for less acreage and a smaller quantity of water than was claimed.

3. On May 8, 2000, the KPWU filed Contest 3384 alleging insufficient evidence for the right claimed and alleging that the required elements are not established for the claim.

4. On May 8, 2000, Simplot filed Contest 2765 to Claim 35 contesting the Adjudicator’s Preliminary Evaluation with respect to the Adjudicator’s disapproval of ZX Creek as a source.

5. On May 8, 2000, the United States filed Contest 3783 alleging insufficient evidence to establish the elements of the water right claimed and contesting the acreage and diversion rate. On May 5, 2003, the United States filed an Amended Statement of Contest of Claim and Preliminary Evaluation of Claim alleging that natural overflow is not a valid water right.

6. On May 8, 2000, the Klamath Tribes filed Contest 4091 alleging insufficient evidence to establish the elements of the water right claimed and contesting the acreage and

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Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Modoc Lumber Co., Bradley S. Luscombe, Don Vincent, Randy Walthal and Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Company and Collins Products, LLC. Bervla Pritchard withdrew her contest to Claim 35 on June 24, 2002. (See Letter from Vic Conrad, Simplot, to Judge Young, July 16, 2002).

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diversion rate. On May 5, 2003, the Klamath Tribes filed an Amended Statement of Contest of Claim and Preliminary Evaluation of Claim alleging that natural overflow is not a valid water right.

7. On August 29, 2003, Administrative Law Judge Maurice J. Russell signed the Stipulation to Resolve Contests 2765 and 3384 and Order Thereon. KPWU and Simplot agreed that their respective contests were resolved without need for hearing pursuant to the terms of the August 29, 2003 Stipulation and Order. Simplot and KPWU agree that the terms outlined below are consistent with the August 29, 2003 Stipulation and Order, and Contests 2765 and 3384 can be resolved without need for hearing.

8. Simplot, the United States and the Klamath Tribes agree that Contests 3783 and 4091 can be resolved without need for hearing pursuant to the terms outlined below.

**B. TERMS OF THE AGREEMENT**

1. Simplot, the United States, the Klamath Tribes, the KPWU, and the Department agree that the terms of the water right derived from Claim No. 35 in this Adjudication are as follows:

- a. POINT OF DIVERSION LOCATIONS:  
SW ¼ NE ¼, Section 21, Township 32S, R14E, W.M.  
SW ¼ SE ¼, Section 21, Township 32S, R14E, W.M.
- b. SOURCE: Sycan River, tributary to Sprague River
- c. USE: Irrigation of 170.0 acres and stock
- d. AMOUNT BENEFICIALLY USED: 4.25 cubic feet per second (cfs), measured at the point of diversion and further limited to a diversion not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
- e. PERIOD OF USE: March 1 to October 31 for irrigation; April 1 to October 31 for stock

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- f. PRIORITY DATE: October 8, 1879
- g. PLACE OF USE:
  - NW ¼ NE ¼ 32.0 acres irrigation and livestock
  - SW ¼ NE ¼ 7.0 acres irrigation and livestock
  - NE ¼ NW ¼ 32.5 acres irrigation and livestock
  - NW ¼ NW ¼ 31.0 acres irrigation and livestock
  - SW ¼ NW ¼ 36.5 acres irrigation and livestock
  - SE ¼ NW ¼ 18.0 acres irrigation and livestock
  - NW ¼ SW ¼ 12.0 acres irrigation and livestock
  - SW ¼ SW ¼ 1.0 acres irrigation and livestock

2. Contestant United States agrees that, pursuant to this agreement, the United States' Contest 3783 described in Paragraph A.5 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 3783 before the Office of Administrative Hearings.

3. Contestant the Klamath Tribes agrees that, pursuant to this agreement, the Klamath Tribes' Contest 4091 described in Paragraph A.6 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 4091 before the Office of Administrative Hearings.

4. Contestant the KPWU agrees that, pursuant to the August 29, 2003 Stipulation and Order and this agreement, the KPWU's Contest 3384 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 3384 before the Office of Administrative Hearings.

5. Claimant Simplot agrees that, pursuant to the August 29, 2003 Stipulation and Order and this agreement, Simplot's Contest 2765 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 2765 before the Office of Administrative Hearings.

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6. The Department staff agree to recommend to the Chief Adjudicator the terms of Claim No. 35 as described in Paragraph B.1.

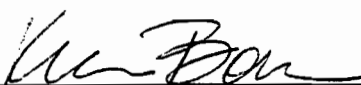
7. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for Claim No. 35 do not accord with the terms listed in Paragraph B.1 above, Simplot reserves any rights it may have to file exceptions to the Findings of Fact and Final Order of Determination as to Claim No. 35 in the Circuit Court for Klamath County, and reserves any rights Simplot may have to participate in any future proceedings authorized by law.

8. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for Claim No. 35 exceeds the scope and extent of limitations on the claim as set forth in Paragraph B.1 above, the United States, the Klamath Tribes, and the KPWU reserve any rights they may have to file exceptions to the Findings of Fact and Final Order of Determination as to Claim No. 35 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

9. In exchange for the United States and the Klamath Tribes resolution of Contests 3783 and 4091, Simplot also agrees to withdraw Contests 2766, 2767, 2768, and 2769 of Claim Nos. 663, 665, 667 and 612, respectively, in the Klamath Basin Adjudication Case No. 279 within 30 days of receiving a signed order from the Office of Administrative Hearings on this Stipulation and Order.

DATED: March 29, 2004.

For Claimant J.R. Simplot, Trustee for  
the J.R. Simplot Self-Declaration of  
Revocable Trust

  
\_\_\_\_\_  
David E. Filippi, OSB No. 96509  
Krista I. Born, OSB No. 99300  
STOEL RIVES LLP, Of Attorneys for  
Claimant

3/29/04  
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Date

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For Contestants Klamath Project Water Users

  
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Andrew M. Hitchings

(Pro Hac Vice; Bar No. 154554)  
Somach, Simmons & Dunn, Of Attorneys  
for Contestant Klamath Project Water Users

\_\_\_\_\_  
Date 2/26/04

For Contestants The Klamath Tribes

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Lorna K. Babby,  
Montana State Bar No. 89156  
Walter Echo-Hawk,  
Colorado State Bar No. 005216  
Native American Rights Fund  
Carl Ullman, Oregon State Bar No. 89156

\_\_\_\_\_  
Date

For Contestant United States of America

\_\_\_\_\_  
Barbara Scott-Brier  
Special Attorney, United States Department  
of Justice  
Of Attorneys for Contestant United States  
of America

\_\_\_\_\_  
Date

For Oregon Water Resources Department

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Renee Moulun,  
Agency Representative

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Date

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Krista I. Born, OSB No. 99300  
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Date

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Somach, Simmons & Dunn, Of Attorneys  
for Contestant Klamath Project Water Users

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Date

For Contestants The Klamath Tribes

*Lorna K. Babby*  
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Montana State Bar No. 89156  
Walter Echo-Hawk,  
Colorado State Bar No. 005216  
Native American Rights Fund  
Carl Ullman, Oregon State Bar No. 89156

*Feb. 26, 2004*  
\_\_\_\_\_  
Date

For Contestant United States of America

\_\_\_\_\_  
Barbara Scott-Brier  
Special Attorney, United States Department  
of Justice  
Of Attorneys for Contestant United States  
of America

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Date

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Walter Echo-Hawk,  
Colorado State Bar No. 005216  
Native American Rights Fund  
Carl Ullman, Oregon State Bar No. 89156

\_\_\_\_\_  
Date

For Contestant United States of America

Barbara Scott-Brier  
Barbara Scott-Brier  
Special Attorney, United States Department  
of Justice  
Of Attorneys for Contestant United States  
of America

March 25, 2004  
Date

For Oregon Water Resources Department

\_\_\_\_\_  
Renee Moulun,  
Agency Representative

\_\_\_\_\_  
Date

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Date

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Walter Echo-Hawk,  
Colorado State Bar No. 005216  
Native American Rights Fund  
Carl Ullman, Oregon State Bar No. 89156

\_\_\_\_\_  
Date

For Contestant United States of America

\_\_\_\_\_  
Barbara Scott-Brier  
Special Attorney, United States Department  
of Justice  
Of Attorneys for Contestant United States  
of America

\_\_\_\_\_  
Date

For Oregon Water Resources Department

\_\_\_\_\_  
*Renee Moulun*  
Renee Moulun,  
Agency Representative

\_\_\_\_\_  
Date

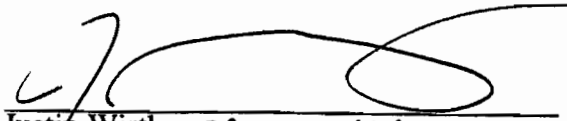
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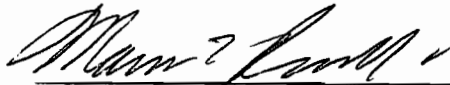
WATER RESOURCES DEPT  
SALEM OREGON



Justin Wirth, OSB #00426  
Walter Perry, Of Attorneys for the  
Oregon Department of Water Resources

2/9/04  
Date

IT IS SO ORDERED



Maurice L. Russell,  
Administrative Law Judge  
Office of Administrative Hearings

5/10/04  
Date

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SALEM OREGON

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on March 29, 2004, I caused the original of  
**STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091 AND ORDER  
THEREON** to be filed by first-class mail and e-mail to the following:

Maurice L. Russell, II  
Administrative Law Judge  
Klamath Basin Adjudication  
Office of Administrative Hearings  
PO Box 14020  
Salem, OR 97309-4020  
Fax: 503-378-4067  
E-mail: maurice.l.russell@state.or.us  
E-mail: klamath.adjudication@state.or.us

I further certify that I served a true and correct copy of **STIPULATION TO  
RESOLVE CONTESTS 2765, 3384, 3783, AND 4091 AND ORDER THEREON** on the  
parties listed on the attached service/ mailing list by e-mail (where e-mail is listed) or by  
facsimile (where no e-mail is listed), or by regular first-class mail with sufficient first-class  
postage prepaid (where no e-mail or facsimile number is listed).

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DATED: March 29, 2004.

  
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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2004, I mailed a true copy of the following: **SIGNED STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091 AND ORDER THERON**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

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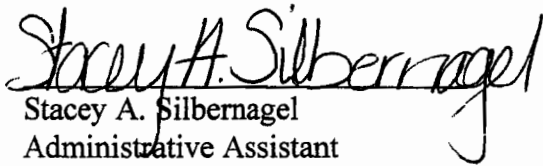
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Administrative Assistant