

122F00040007
**BEFORE THE HEARING OFFICER PANEL
FOR THE STATE OF OREGON
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**

United States of America; The Klamath
Tribes; Klamath Irrigation District;
Klamath Drainage District; Tukelake
Irrigation District; Klamath Basin
Improvement District; Ady Ditch
Improvement; 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 Johnson & Son;
Bradley S. Luscombe; 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 and to
Recommend A Final Determination of the
Claim**

Case No.: 122

Claim(s): 171

Contest(s): 3402, 3830, 4172

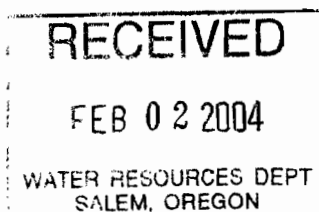
Contestant(s),

vs.

Donald E. Rowlett,

Claimant (s)

Contestants, the United States of America ("United States"), the Klamath Tribes
("Tribes") and the Klamath Project Water Users ("KPWU") (the United States, the Tribes and
the KPWU collectively referred to as "Contestants"), Claimant, Donald Rowlett ("Claimant"),



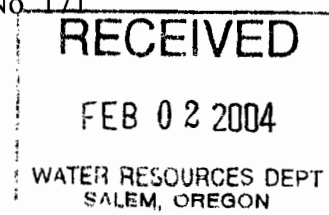
and the Oregon Water Resources Department ("OWRD") hereby agree and stipulate, and request the Adjudicator to resolve the above-captioned claim and contests, as follows.

A. STIPULATED FACTS

1. On November 26, 1990, Donald E. Rowlett, filed a claim for a pre-1909 water right for a total of 2.65 cubic feet per second (cfs) from four points of diversion located on Beaver Creek, South Fork Beaver Creek and 2 unnamed streams, tributary to Jenny Creek, for irrigation of 106.1 acres. The claimed period of use is March 15 through November 15. The claimed priority date is 1879.

2. On October 4, 1999, the Adjudicator, Richard D. Bailey, issued a preliminary evaluation (P.E.) of the claim, preliminarily approving that the claim be granted as follows: a total combined quantity of water for 106.1 acres of irrigation of 2.65 cfs, from four points of diversion, with amount actually beneficially used for irrigation of 11.5 acres, measured at the point of diversion of commingled water of Beaver Creek and South Fork Beaver Creek, tributary to Jenny Creek and 94.6 acres for irrigation, measured at the point of diversion of commingled water of Beaver Creek and South Fork Beaver Creek and 2 unnamed creeks, tributary to Jenny Creek. The P. E. also recommended a duty of 3.5 af/acre and the claimed season of use of March 15 - November 15 for irrigation while limiting the claim to a priority date of December 31, 1906.

3. On May 4, 2000, the United States filed Contest No. 3830 to the Claim and to the Preliminary Evaluation of the Claim.



4. On May 4, 2000, the Tribes filed Contest No. 4172 to the Claim and to the Preliminary Evaluation of the Claim.

5. On May 4, 2000, the KPWU filed Contest No. 3402 to the Claim and to the Preliminary Evaluation of the Claim.

6. Claimants did not file a Contest to the Adjudicator's Preliminary Evaluation of the Claim.

7. Contestants asserted that there was insufficient information to support a valid pre-1909 water right for the entire place of use claimed, and thus, the claim should be reduced accordingly.

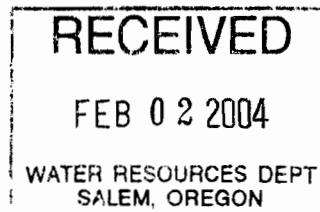
8. Contestants do not believe that Claimant can establish the necessary elements to establish an appropriation of water prior to 1909 for the entire claimed place of use.

9. With respect to the Preliminary Evaluation of the Claim, Contestants do not believe that the evidence supports the Adjudicator's preliminary determination of a pre-1909 water right for the entire claimed place of use of 106.1 acres.

10. Nonetheless, Contestants are willing to resolve their Contests to the Claim and the Preliminary Evaluation of the Claim based on additional information and clarifications provided by claimant and a reduction in the claimed place of use and the priority date identified in the P.E.

11. Claimant is willing to limit the place of use claimed together with the corresponding reduction in the amount to be beneficially used and otherwise agrees to the findings and conclusions in the P.E.

B. TERMS OF STIPULATION



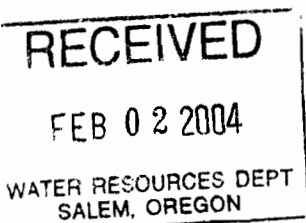
1. Clarifications and Limitations Concerning the Place of Use. Claimant agrees to accept the points of diversion, period of use and the priority date set forth in the Adjudicator's Preliminary Evaluation of the Claim and to limit the place of use of water for irrigation to 94.6 acres and the amount to be beneficially used to 2.36 cfs. This amount equates to 1/40th cfs per acre as provided in the P.E. The portion of the claimed place of use (11.5 acres) that is to be excluded is located in the S/W1/4, N/W1/4 and the NW1/4, SW1/4 of Section 32, T 39 S, R 4 E.

2. Resolution of Claim and Contests Without Need for Post-Hearing Briefs.
Claimant, Contestants and OWRD agree that this stipulation will satisfactorily resolve Contest Nos. 3830, 4172 and 3402 and eliminate the need for the filing of post-hearing briefs before the Hearing Officer on the Claim and Contests.

3. Request by Claimant, Contestants and OWRD that the Hearing Officer Panel issue a proposed order adopting this stipulation. The parties to this Stipulation request the Hearing Officer Panel to issue a proposed order adopting this stipulated agreement as full and complete resolution of this case, including the claim and contests, and refer the matter back to the Adjudicator for final resolution. The parties request the Hearing Officer Panel to issue the proposed order setting forth the following findings of fact and conclusion:

FINDINGS OF FACT:

- a. Points of Diversion Location: NE 1/4, NE 1/4, Section 31, T 39 S, R 4 E, W.M., NE 1/4, NE 1/4, Section 31, T 39 S, R 4 E, W.M., SW 1/4, NW 1/4, Section 32, T 39 S, R 4 E, W.M., NE 1/4, SE 1/4, Section 31, T 39 S, R 4 E, W.M..
- b. Source: Commingled water of Beaver Creek and South Fork Beaver Creek and 2 unnamed creeks, tributary to Jenny Creek
- c. Use: Irrigation of 94.6 acres at a duty of 3.5 af/acre



d. Amount Actually Beneficially Used: Total combined quantity of water for 94.6 acres of irrigation is 2.36 cubic feet per second, measured at the points of diversion and not to exceed 331.1 acre-feet.

e. Period of Use: March 15 - November 15

f. Priority Date: December 31, 1906

g. Place of Use:

NW1/4SW1/4	8.0 acres irrigation
SW1/4SW1/4	28.0 acres irrigation
SE1/4SW1/4	8.0 acres irrigation

Section 32, Township 39 South, Range 4 East, W.M.

SW1/4NE1/4	.2 acres irrigation
SE1/4NW1/4	4.0 acres irrigation
Lot 2 NW1/4NE1/4	4.0 acres irrigation
Lot 3 NE1/4NW1/4	38.8 acres irrigation
Lot 4 NW1/4NW1/4	3.6 acres irrigation

Section 5, Township 40 South, Range 4 East, W.M.

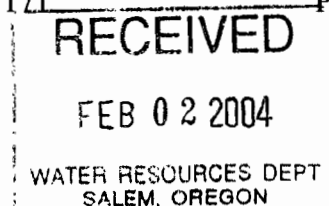
h. Rate: 1/40th cfs/acre; Duty: 3.5 af/acre

CONCLUSION: The elements for a Pre-1909 right are established for this claim. Therefore, the claim is approved to the extent of beneficial use as described in the above findings of fact.

4. Request that Adjudicator Limit Approval of the Claim. Claimant and Contestants agree and request the Adjudicator to limit his approval of the Claim as described in paragraph B.1. above and to include the findings of fact and conclusion provided in paragraph B.3. above in the Adjudicator's Order of Determination.

5. Recommendation of OWRD Adjudication Staff that Adjudicator Enter an Order of Determination Approving and Limiting Claim in Accordance with Paragraphs B.1. and B.3.

Based on its review of the record in this case, OWRD adjudication staff hereby recommends to



the Adjudicator that he enter an Order of Determination approving and limiting the Claim in accordance with the terms of paragraphs B.1. and B.3. above.

6. Further Participation by Contestants. If the Order of Determination issued by the Adjudicator does not follow the request of Claimant and Contestants and the recommendation of OWRD adjudication staff that the Claim be approved and limited in accordance with the terms of paragraphs B.1. and B.3. above, Contestants reserve the right to file exceptions to the Order of Determination as to the Claim in the Circuit Court for Klamath County and reserve the right to participate in any other future proceedings authorized by law.

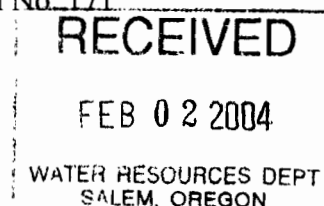
7. Stipulation Not to be Used Against Parties. This Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement. Nothing in this Stipulation, including the agreement to resolve the Claim and contests without the need for post-hearing briefs, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence or used in any other manner in any proceeding, including in this adjudication, other than for interpretation or enforcement of this Stipulation or for a purpose contemplated by Oregon Rule of Evidence 408.

8. Post-1909 Water Rights. Nothing in this Stipulation shall affect any valid existing permit or certificate to appropriate water for use on the claimed lands.

9. Non-Severability. The terms of this Stipulation are non-severable.

10. Stipulation Binding on Successors, Heirs and Assigns. This Stipulation shall bind and inure to the benefit of successors, heirs and assigns of the parties.

11. Captions. The captions of this Stipulation are for organizational purposes only



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and do not constitute the terms of the Stipulation.

12. Authority. Each Party to this Stipulation represents, warrants, and agrees that the person who executed this Stipulation on its behalf has the full right and authority to enter into this Stipulation on behalf of that party and bind that party to the terms of the Stipulation.

13. Counterparts. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one agreement, binding on the Parties, notwithstanding that the Parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by facsimile transmission shall be as effective as delivery of an original signed counterpart of this Stipulation.

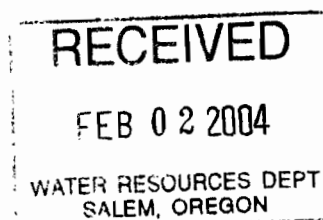
14. Effective Date. This Stipulation shall be effective as of the date of the last signature hereto.

DATE: September 15th, 2003



DONALD ROWLETT
16799 Highway 66
Ashland, OR 97520
Telephone: (530) 398-4131
Email:

CLAIMANT FOR CLAIM 171

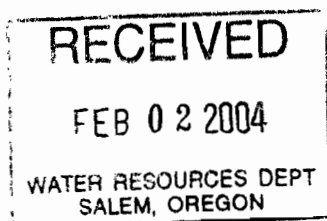


THOMAS L. SANSONETTI
Assistant Attorney General

DATED: September 12, 2003


STEPHEN R. PALMER
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825
Telephone: (916) 978-5683
Telefax: (916) 978-5694

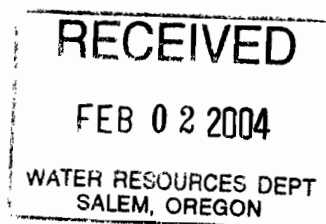
ATTORNEY FOR THE UNITED STATES OF AMERICA



DATED: September 15, 2003


ANDREW HITCHINGS
Somach, Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento, CA 95814
Telephone: (916) 446-7979

ATTORNEYS FOR KLAMATH PROJECT WATER
USERS



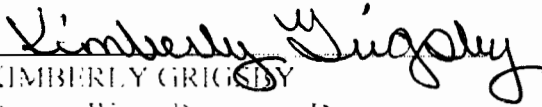
DATED September 15, 2003



WALTER PERRY, Oregon State Bar No. 83361
JUSTIN WIRTH, Oregon State Bar No. 00426
Assistant Attorneys General
Oregon Department of Justice
1162 Court Street
Salem, Oregon 97301-4096
Telephone: (503) 378-4409
Facsimile: (503) 378-3802
email: walter.perry@doj.state.or.us
email: justin.wirth@doj.state.or.us

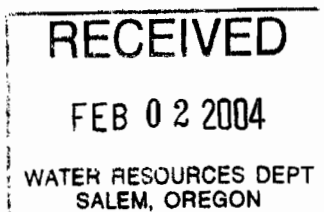
ATTORNEYS FOR OREGON WATER RESOURCES
DEPARTMENT

DATED September 15, 2003

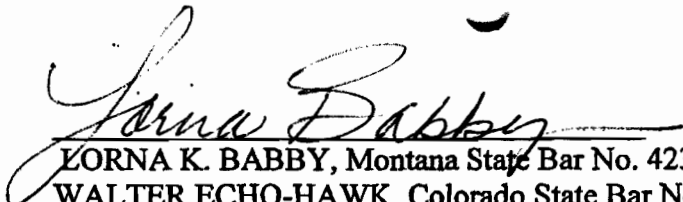


KIMBERLY GRIGSBY
Oregon Water Resources Department
158 12th Street, NE
Salem, Oregon 97301
Telephone: (503) 378-8455
Facsimile: (503) 378-6203
email: kimberly.grigsby@owrd.state.or.us

AGENCY REPRESENTATIVE FOR OREGON WATER
RESOURCES DEPARTMENT



DATED: September 18, 2003


LORNA K. BABBY, Montana State Bar No. 4235
WALTER ECHO-HAWK, Colorado State Bar No. 005216
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760
Facsimile: (303) 443-7776
email: babby@narf.org
email: wechohwk@narf.org

CARL ULLMAN, Oregon State Bar No. 89156
Water Adjudication Project
The Klamath Tribes
P.O. Box 957
Chiloquin, Oregon 97624
Telephone: (541) 783-3081
Facsimile: (541) 783-2609
email: bullman@cdsnet.net

ATTORNEYS FOR THE KLAMATH TRIBES

