

122F00001004
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.

United States of America; The Klamath
Tribes; Klamath Irrigation District; Klamath
Drainage District; Tulelake Irrigation
District; Klamath Basin Improvement
District; Ady Ditch 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; 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,
Contestants,

PROPOSED ORDER

Case No. 122
Claim No. 171
Contest No. 3402, 3830, 4172

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WATER RESOURCES DEPT
SALEM OREGON

vs.

Donald E. Rowlett,
Claimant

HISTORY OF THE CASE

On February 12, 2003, a hearing was conducted on the above-entitled matter. Thereafter, the participants requested that further proceedings be set-over to allow settlement discussions. This motion was granted.

On February 4, 2004, the participants filed a Stipulation to Resolve Contests and to Recommend a Final Determination of the Claim. This stipulation resolves all outstanding issues in this case, and forms the basis for this order.

ISSUE PRESENTED

Whether the elements for a Pre-1909 right are established for this claim.

EVIDENTIARY RULINGS

By virtue of the stipulation, no evidence outside the terms of the Stipulation is necessary for resolution of this case. The record of proceedings, including all evidence admitted at hearing, shall remain in the file for consideration in the event of review. For the purposes of this order, however, no evidence other than the facts as agreed-upon in the Stipulation are considered.

FINDING OF FACTS

The Stipulation to Resolve Contests and to Recommend a Final Determination of the Claim is hereby adopted. Based upon that stipulation, the findings of fact as agreed upon are adopted as follows:

- a. Points of Diversion Location: NE $\frac{1}{4}$, NE $\frac{1}{4}$, Section 31, T 39 S, R 4 E, W.M., NE $\frac{1}{4}$, NE $\frac{1}{4}$, Section 31, T. 39 S, R 4 E, W.M., SW $\frac{1}{4}$, NW $\frac{1}{4}$, Section 32, T 39 S., R 4 E, W.M., NE $\frac{1}{4}$, SE $\frac{1}{4}$, Section 31, T 39 S, R 4 E, W.M.
- b. Source: Commingled water of Beaver Creek and South Fork Beaver Creek and two 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

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g. Place of Use:

NW ¼ SW ¼	8.0 acres irrigation
SW ¼ SW ¼	28.0 acres irrigation
SE ¼ SW ¼	8.0 acres irrigation

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

SW ¼ NEW ¼	.2 acres irrigation
SE ¼ NW ¼	4.0 acres irrigation
Lot 2 NW ¼ NE ¼	4.0 acres irrigation
Lot 3 NE ¼ NW ¼	38.8 acres irrigation
Lot 4 NW ¼ NW ¼	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 OF LAW

The elements for a Pre-1909 right are established for this claim.

OPINION

As noted above, although a hearing was conducted and evidence admitted into the record, the participants have stipulated to specific findings of fact. Consequently, this order is entirely based upon the terms of the Stipulation.

ORDER

I recommend that the Adjudicator order as follows:

The claim is approved to the extent of beneficial use as described in the above findings of fact.



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

Dated: February 10, 2004

NOTICE TO THE PARTIES: If you are not satisfied with this Order you may:

EXCEPTIONS: Parties may file exceptions to this Order with the Adjudicator within 30 days of service of this Order. OAR 137-003-0650.

Exceptions may be made to any proposed finding of fact, conclusions of law, summary of evidence, or recommendations of the Hearing Officer. A copy of the exceptions shall also be delivered or mailed to all participants in this contested case.

Exceptions must be in writing and must clearly and concisely identify the portions of this Order excepted to and cite to appropriate portions of the record to which modifications are sought. Parties opposing these exceptions may file written arguments in opposition to the exceptions within 45 days of service of the Proposed Order. Any exceptions or arguments in opposition must be filed with the Adjudicator at the following address:

Richard D. Bailey
Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, OR 97301

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2004, I mailed a true copy of the following: **PROPOSED ORDER** by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Stephen R. Palmer, Attorney
US Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825
Phone: 916-978-5683
Fax: 916-978-5694

Richard D. Bailey
Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, OR 97301
richard.d.bailey@wrд.state.or.us

Kimberly J. Grigsby
Klamath Basin Adjudication
Oregon Water Resources Dept.
725 Summer Street N.E., Suite "A"
Salem, OR 97301
Phone: 503-986-0825
Fax: 503-986-0901
kimberly.j.grigsby@wrд.state.or.us

Walter Perry/Justin Wirth
Oregon Dept. of Justice
1162 Court St NE
Salem, OR 97310
Phone: 503-378-4009
Fax: 503-378-3802
walter.perry@doj.state.or.us
justin.wirth@doj.state.or.us

Donald E. Rowlett
16799 Highway 66
Ashland, OR 97520

Paul S. Simmons/Andrew M. Hitchings
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
Phone: 916-446-7979
Fax: 916-446-8199
psimmons@lawssд.com
ahitchings@lawssд.com

William M. Ganong
Attorney at Law
514 Walnut Street
Klamath Falls, OR 97601
Phone: 541-882-7228
Fax: 541-883-1923
wganong@aol.com

Carl V. Ullman
Water Adjudication Project
The Klamath Tribes
PO Box 957
Chiloquin, OR 97624
Phone: 541-783-3081
Fax: 541-783-2609
bullman@internetcds.com

Walter Echo-Hawk/Lorna Babby
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Phone: 303-447-8760
Fax: 303-443-7776
wechohwk@narf.org
babby@narf.org

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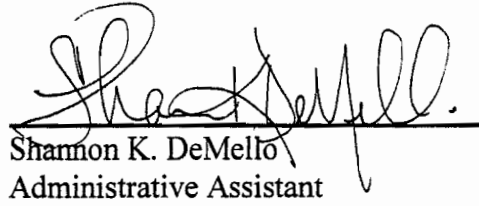
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David Solem, Manager
Klamath Irrigation District
6640 Klamath Irrigation District Lane
Klamath Falls, OR 97603
Kidhq@cdsnet.net

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Shamon K. DeMello
Administrative Assistant