

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
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**

Horsefly Irrigation District; Langell Valley Irrigation District; Medford Irrigation District; Rogue River Valley Irrigation District; United States of America; 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; Randy Wathall; 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

**STIPULATION TO RESOLVE CONTEST**

Case No. 131

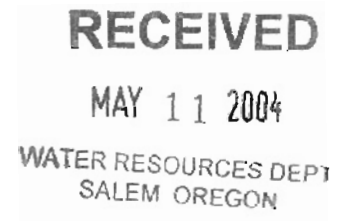
Claim No. 198

Contests 3186, 3409, 3840, and 4182

vs.

United States of America,  
Claimant/Contestant.

Claimant, the United States of America on behalf of the Bureau of Land Management (“United States”), Contestants, the Klamath Project Water Users,<sup>1/</sup> and the Oregon Water



---

<sup>1/</sup> The group of Contestants herein known as the “Klamath Project Water Users” currently includes the following Contestants: Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, 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. This group of Contestants formerly

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 January 30, 1991, John M. and Marilyn Mosby filed Claim 198 in the Klamath Adjudication. As noted below, the United States subsequently purchased the property that is the subject of Claim 198 and filed a Change of Ownership Form with OWRD.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 198, preliminarily approving the claim for a smaller quantity of water than was claimed.

3. The following contests were filed to Claim 198: Contest 3186, filed by Horsefly Irrigation District, Langell Valley Irrigation District, Medford Irrigation District and Rogue River Valley Irrigation District; Contest 3409, filed by the Klamath Project Water Users; Contest 3840, filed by the United States; and Contest 4182, filed by the Klamath Tribes. No other contests were filed to Claim 198 or the Preliminary Evaluation of the claim.

4. On December 23, 2002, Langell Valley Irrigation District and Horsefly Irrigation District filed a Voluntary Withdrawal of Contest. See 131F00060002. On February 13, 2003, the Klamath Tribes filed a Voluntary Withdrawal of Contest. On April 14, 2003, Medford Irrigation District and Rogue River Valley Irrigation District filed a Voluntary Withdrawal of Contest. See 131F00060003.

5. On June 27, 2003, the United States filed a Change of Ownership Form for Property Claimed in the Klamath River Basin Adjudication, with attached deeds indicating that

---

included Don Vincent, Berlva Pritchard and Klamath Hills District Improvement Co., however, Don Vincent withdrew his contest on December 4, 2000, Berlva Pritchard withdrew her contest on June 24, 2002, and Klamath Hills District Improvement Co. withdrew its contest on January 16, 2004.

MAY 11 2004

WATER RESOURCES DEPT  
SALEM, OREGON

the property that is subject to Claim 198 had been conveyed to the United States, and substituting the United States for John and Marilyn Mosby as the new Claimant for Claim 198. On September 15, 2003, the United States filed a Withdrawal of Contest. See 131F00040001.

6. The only remaining Contest to Claim 198 is Contest 3409, filed by the Klamath Project Water Users and, thus, the only remaining Contestants to Claim 198 are the Klamath Project Water Users.

7. Claimant, the United States, Contestants, the Klamath Project Water Users, and OWRD agree that Contest 3409 can be resolved without the need for a hearing pursuant to the terms set forth below.

#### **B. TERMS OF STIPULATION**

1. Claimant, the United States, Contestants, the Klamath Project Water Users, and OWRD agree that Claim 198 should be approved by the Adjudicator according to the terms of the Adjudicator's October 4, 1999 Preliminary Evaluation of the claim, with the exception that the period of use should be limited to the period claimed in the Statement and Proof of Claim (which is shorter than the period approved in the Preliminary Evaluation). Claimant, Contestants and OWRD agree that Claim 198 should be approved as follows:

- (a) Point of Diversion No. 1:
  - (1) POINT OF DIVERSION LOCATION: NE1/4SW1/4, Section 16, Township 40 South, Range 4 East, W.M.
  - (2) SOURCE: Jenny Creek, tributary to Klamath River
  - (3) USE: irrigation of 140.0 acres
  - (4) PERIOD OF USE: April 1 - October 31
  - (5) PRIORITY DATE: December 31, 1890

MAY 11 2004

WATER RESOURCES DEPT  
SALEM OREGON

(6) PLACE OF USE:

NE1/4NW1/4 0.5 ACRES IRRIGATION & LIVESTOCK  
 NW1/4NW1/4 17.6 ACRES IRRIGATION AND LIVESTOCK  
 NW1/4SW1/4 14.3 ACRES IRRIGATION AND LIVESTOCK  
 SW1/4SW1/4 10.2 ACRES IRRIGATION AND LIVESTOCK

SECTION 22

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

NW1/4NW1/4 23.3 ACRES IRRIGATION & LIVESTOCK  
 SW1/4NW1/4 21.9 ACRES IRRIGATION AND LIVESTOCK  
 NW1/4SW1/4 27.6 ACRES IRRIGATION AND LIVESTOCK  
 SW1/4SW1/4 7.8 ACRES IRRIGATION AND LIVESTOCK

SECTION 27

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

NE1/4SE1/4 3.4 ACRES IRRIGATION & LIVESTOCK  
 SE1/4SE1/4 13.4 ACRES IRRIGATION AND LIVESTOCK

SECTION 28

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

(b) Point of Diversion No. 2:

(1) POINT OF DIVERSION LOCATION: SE1/4SE1/4, Section 16,  
Township 40 South, Range 4 East, W.M.

(2) SOURCE: Jenny Creek, tributary to Klamath River

(3) USE: irrigation of 69.0 acres

(4) PERIOD OF USE: April 1 - October 31

(5) PRIORITY DATE: December 31, 1890

(6) PLACE OF USE:

SE1/4SE1/4 1.1 ACRES IRRIGATION & LIVESTOCK  
 SECTION 21

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

NW1/4NW1/4 4.1 ACRES IRRIGATION & LIVESTOCK  
 NW1/4SW1/4 6.8 ACRES IRRIGATION AND LIVESTOCK  
 SW1/4NW1/4 17.7 ACRES IRRIGATION AND LIVESTOCK  
 SW1/4SW1/4 16.0 ACRES IRRIGATION AND LIVESTOCK

SECTION 22

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

NW1/4NW1/4 12.7 ACRES IRRIGATION & LIVESTOCK  
SW1/4NW1/4 10.6 ACRES IRRIGATION AND LIVESTOCK  
SECTION 27  
TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

RECEIVED

MAY 11 2004

WATER RESOURCES DEPT  
SALEM OREGON

(c) As to both points of diversion:

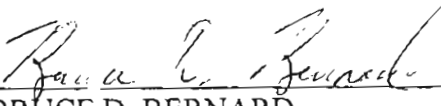
AMOUNT ACTUALLY BENEFICIALLY USED: 3.98 cubic feet per  
second, measured at the points of diversion

2. Claimant, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contest 3409 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge on this contest to Claim 198.
3. Based on the agreement of Claimant, Contestants and OWRD that Claim 198 and the contest thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 198 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 198 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B.1., above.
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 198 does not conform to the terms set forth in paragraph B.1., above, Claimant, the United States, and Contestants, the Klamath Project Water Users, reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 198 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 198.
5. This Stipulation is entered into for the purpose of resolving a disputed claim. The signatories to this Stipulation agree that the Stipulation shall not be offered as evidence or treated as an admission regarding any matter herein and may not be used in proceedings on any other

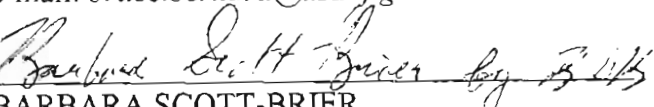
claim or contest whatsoever, except that the Stipulation may be used in any future proceeding to interpret and/or enforce the terms of this Stipulation. Further, the signatories to this Stipulation agree that neither the Stipulation nor any of its terms shall be used to establish precedent with respect to any other claim or contest in the Klamath Basin Water Rights Adjudication.

For Claimant, the United States of America, on behalf of the Bureau of Land Management:

Dated: May 7, 2004

  
\_\_\_\_\_  
BRUCE D. BERNARD  
General Litigation Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
999 - 18th Street, Suite 945  
Denver, Colorado 80202  
Telephone: (303) 312-7319  
Telefax: (303) 312-7379  
e-mail: *bruce.bernard@usdoj.gov*

Dated: May 7, 2004

  
\_\_\_\_\_  
BARBARA SCOTT-BRIER  
Special Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
500 NE Multnomah, #607  
Portland, Oregon 97232  
Telephone: (503) 231-2139  
Telefax: (503) 231-2166

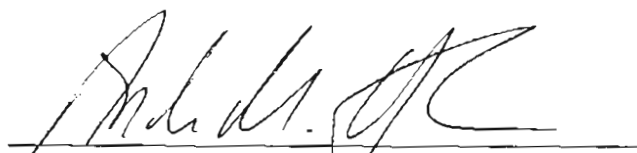
**RECEIVED**

MAY 11 2004

WATER RESOURCES DEPT  
SALEM OREGON

For Contestants, Klamath Project Water Users

Dated: 3/30/04, 2004




ANDREW M. HITCHINGS  
Somach, Simmons & Dunn, P.C.  
Hall of Justice Building  
813 Sixth Street, Third Floor  
Sacramento, California 95814-2403  
Telephone: (916) 446-7979  
Telefax: (916) 446-8199  
e-mail: [ahitchings@lawssd.com](mailto:ahitchings@lawssd.com)

*Pro Hac Vice*; Cal. Bar No. 154554  
Of Attorneys for Tulelake Irrigation District,  
And on behalf of Klamath Project Water Users

For the Oregon Water Resources Department:

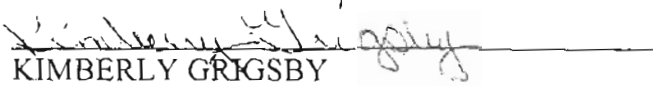
HARDY MEYERS  
Attorney General

Dated: May 3, 2004



JUSTIN WIRTH  
WALTER PERRY  
Assistant Attorneys General  
Oregon Department of Justice  
1162 Court Street NE  
Salem, Oregon 97301-4096  
Telephone: (503) 378-4409  
Telefax: (503) 378-3802  
e-mail: [justin.wirth@doj.state.or.us](mailto:justin.wirth@doj.state.or.us)  
[walter.perry@doj.state.or.us](mailto:walter.perry@doj.state.or.us)

Dated: May 5, 2004



KIMBERLY GRIGSBY  
Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, Oregon 97301  
Telephone: (503) 986-0825  
Telefax: (503) 986-0901  
e-mail: [kimberly.j.grigsby@wrд.state.or.us](mailto:kimberly.j.grigsby@wrд.state.or.us)

AGENCY REPRESENTATIVE FOR OREGON  
WATER RESOURCES DEPARTMENT