

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

Horsefly Irrigation District; Langell Valley
Irrigation District; Medford Irrigation
District; Rogue River Valley Irrigation
District; 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 Co.; 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 Walthal; 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,

v.

PacifiCorp, dba Pacific Power and Light Co.,

Claimant/Contestant.

**STIPULATION TO RESOLVE
CONTESTS 2059, 3204, 3422, 3855,
2060, 3205, 3423, AND 3856**

Case Nos. 145, 146

Claim Nos. 221, 222

Contest Nos. 2059, 3204, 3422, 3855, 4197
(withdrawn), 2060, 3205,
3423, 3856, 4198 (withdrawn)

Claimant/Contestant PacifiCorp ("PacifiCorp"), Contestants Horsefly Irrigation
District, Langell Valley Irrigation District, Medford Irrigation District, Rogue River
Valley Irrigation District, the United States of America, and the Klamath Project Water

1 Users (the "KPWU")¹ (collectively, the "Contestants"), and the Oregon Water Resources
2 Department (the "Department") hereby agree and stipulate as follows:

3 **Stipulated Facts**

4 I. On January 31, 1991, PacifiCorp, doing business as Pacific Power and Light Co.,
5 submitted a statement and proof of claim (Claim No. 221) to the Department for
6 12.5 cubic feet per second ("cfs") from one point of diversion located on the south
7 bank of the Klamath River, for irrigation of 29.4 acres. In addition, PacifiCorp
8 submitted a statement and proof of claim (Claim No. 222) to the Department for
9 12.5 cfs from one point of diversion located on the north bank of the Klamath
10 River, for irrigation of 54 acres.² For each claim, the claimed period of use was
11 April 15 through October 31 of each year, and the claimed priority date was 1874.³
12 II. On October 4, 1999, the Adjudicator issued his preliminary evaluation of Claim
13 No. 221 and Claim No. 222. For each claim, the Department found the use as
14 claimed but, imposing basin-wide rate and duty limitations, limited Claim No. 221
15 to 0.74 cfs beneficially used for irrigation of 29.4 acres, and Claim No. 222 to
16 1.44 cfs beneficially used for irrigation of 57.6 acres. The use was approved for
17

18 ¹ The KPWU includes each of the Tulelake Irrigation District, Klamath Irrigation
19 District, Klamath Drainage District, Klamath Basin Improvement District, Ady District
20 Improvement Co., Enterprise Irrigation District, Malin Irrigation District, Midland District
21 Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement
22 Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside
23 Irrigation District, Don Johnston & Son, Bradley S. Luscombe, 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.
Don Vincent and Bervla Pritchard withdrew their contests to Claim Nos. 221 and 222 on
November 28, 2000 and June 24, 2002, respectively. The Klamath Hills District
Improvement Company withdrew its contests to Claim Nos. 221 and 222 on January 15,
2004.

24 ² PacifiCorp amended its Claim No. 222 on January 27, 1999 to specify irrigation of
25 57.6 acres, but inadvertently only paid fees for 54 acres. In the context of settlement
26 negotiations, the company has agreed to reduce the claimed acreage to 54 acres for Claim
No. 222.

³ Based upon preliminary evidence examined by the parties in the context of
settlement negotiations, the parties agreed to a later priority date of April 30, 1876.

1 March 1 through October 31 of each year with a priority date of December 31,
2 1874.

3 III. On May 5, 2000, PacifiCorp filed Contest 2059 to the preliminary evaluation of
4 Claim No. 221 and Contest 2060 to the preliminary evaluation of Claim No. 222, in
5 each contesting the Adjudicator's findings regarding the reduced amount of water
6 allowed under the claims. PacifiCorp restated the claimed amounts and requested a
7 contested case hearing.

8 IV. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District,
9 Medford Irrigation District, and Rogue River Valley Irrigation District filed
10 Contests 3204 and 3205, the United States filed Contests 3854 and 3855, the
11 KPWU filed Contests 3422 and 3423, and the Klamath Tribes filed Contests 4197
12 and 4198. The Tribes withdrew their contests on December 19, 2003 and January
13 23, 2004.

14 V. On July 7, 2004, PacifiCorp met with the Contestants and the Department and
15 discussed settlement of Claim No. 221 and Claim No. 222 and their respective
16 contests. PacifiCorp, the Contestants, and the Department agree that the issues
17 raised in the contests are resolved solely pursuant to the terms outlined below, and
18 that Contests 2059, 3204, 3422, 3855, 2060, 3205, 3423, and 3856 can be resolved
19 without the need for hearing pursuant to the terms outlined below.

20 **Terms of the Agreement**

21 1. PacifiCorp, the Contestants, and the Department agree that the terms of Claim No.
22 221 and any water right that may derived therefrom in this Adjudication are as
23 follows:

- 24 a) Point of diversion location: Government Lot 3, SW 1/4 SE 1/4, Section 12,
25 Township 41 South, Range 5 East, W.M.
26 b) Source: Klamath River

- 1 c) Use: Irrigation of 29.4 acres
- 2 d) Amount actually beneficially used: 1.51 cubic feet per second, measured at
- 3 the point of diversion and further limited to a diversion not to exceed 3.25
- 4 acre-feet per acre for each acre irrigated during the period of use of each
- 5 year
- 6 e) Period of Use: April 15 – October 31 of each year
- 7 f) Priority Date: April 30, 1876
- 8 g) Place of Use:

NE 1/4 SE 1/4 6.7 ACRES OF IRRIGATION
SE 1/4 SE 1/4 9.1 ACRES OF IRRIGATION

SECTION 15

TOWNSHIP 48 NORTH, RANGE 3 WEST, M.D.M.

NE 1/4 NE 1/4 4.3 ACRES OF IRRIGATION
SE 1/4 NE 1/4 1.0 ACRES OF IRRIGATION
NE 1/4 SE 1/4 3.7 ACRES OF IRRIGATION

SECTION 22

TOWNSHIP 48 NORTH, RANGE 3 WEST, M.D.M.

NW 1/4 SW 1/4 4.6 ACRES OF IRRIGATION

SECTION 23

TOWNSHIP 48 NORTH, RANGE 3 WEST, M.D.M.

- 15 2. PacifiCorp, the Contestants, and the Department agree that the terms of Claim No.
- 16 222 and any water right that may derived therefrom in this Adjudication are as
- 17 follows:

- 18 a) Point of diversion location: Government Lot 3, Section 13, Township 41
- 19 South, Range 5 East, W.M.
- 20 b) Source: Klamath River
- 21 c) Use: Irrigation of 54 acres
- 22 d) Amount actually beneficially used: 1.82 cubic feet per second, measured at
- 23 the point of diversion and further limited to a diversion not to exceed 3.25
- 24 acre-feet per acre for each acre irrigated during the period of use of each
- 25 year
- 26 e) Period of Use: April 15 – October 31 of each year
- f) Priority Date: April 30, 1876
- g) Place of Use:

1 NE 1/4 SE 1/4 1.4 ACRES OF IRRIGATION
2 SW 1/4 SE 1/4 1.1 ACRES OF IRRIGATION
3 SE 1/4 SE 1/4 10.2 ACRES OF IRRIGATION

SECTION 15
TOWNSHIP 48 NORTH, RANGE 3 WEST, M.D.M.

4 NE 1/4 NE 1/4 18.5 ACRES OF IRRIGATION
5 NW 1/4 NE 1/4 2.0 ACRES OF IRRIGATION
6 SW 1/4 NE 1/4 0.9 ACRES OF IRRIGATION
7 SE 1/4 NE 1/4 18.1 ACRES OF IRRIGATION
8 NE 1/4 SE 1/4 1.0 ACRES OF IRRIGATION
9 NW 1/4 SE 1/4 0.8 ACRES OF IRRIGATION

SECTION 22
TOWNSHIP 48 NORTH, RANGE 3 WEST, M.D.M.

9 3. PacifiCorp, the Contestants, and the Department acknowledge that the Klamath Basin
10 Adjudication does not include a determination of the relative rights to the use of waters
11 of the Lost River basin, as opposed to waters of the Klamath River basin, and that
12 nothing in the resolution of Contests 2059, 3204, 3422, 3855, 2060, 3205, 3423, and
13 3856, or in the recommendation by Department staff to the Adjudicator, shall constitute
14 or be construed as a finding or determination with respect to rights of any person to use
15 the waters of Lost River, Clear Lake, Gerber Reservoir, or their tributaries.

16 4. PacifiCorp agrees that pursuant to this Stipulation its contests to the preliminary
17 evaluation of the claims have been satisfactorily resolved and agrees that a hearing on
18 Contest 2059 and Contest 2060 before the Office of Administrative Hearings is not
19 required.

20 5. Contestants Horsefly Irrigation District, Langell Valley Irrigation District, Medford
21 Irrigation District, and Rogue River Valley Irrigation District agree that, pursuant to
22 this Stipulation, Contests 3204 and 3205 have been satisfactorily resolved and such
23 resolution vitiates the need for a hearing on Contest 3204 and Contest 3205 before the
24 Office of Administrative Hearings.

25 6. Contestant United States agrees that, pursuant to this Stipulation, Contests 3854 and
26 3855 have been satisfactorily resolved and such resolution vitiates the need for a

1 hearing on Contest 3854 and Contest 3855 before the Office of Administrative
2 Hearings.

3 7. Contestant KPWU agrees that, pursuant to this Stipulation, Contests 3422 and 3423
4 have been satisfactorily resolved and such resolution vitiates the need for a hearing on
5 Contest 3422 and Contest 3423 before the Office of Administrative Hearings.

6 8. Based on the stipulation of the parties that Claim No. 221 and Claim No. 222 and
7 Contests 2059, 3204, 3422, 3855, 2060, 3205, 3423, and 3856 can be resolved without
8 the need for further proceedings, the Department staff hereby recommends to the
9 Adjudicator that Claim No. 221 and Claim No. 222 be withdrawn from the Office of
10 Administrative Hearings. Department staff further recommends that Claim No. 221
11 and Claim No. 222 be approved in the Finding of Fact and Order of Determination
12 issued by the Adjudicator in accordance with the terms set forth in paragraph 1 and
13 paragraph 2 above.

14 9. If the Findings of Fact and Order of Determination issued by the Adjudicator for Claim
15 No. 221 or Claim No. 222 do not accord with the terms listed in paragraph 1 and
16 paragraph 2 above, PacifiCorp reserves the right to file exceptions to the Findings of
17 Fact and Order of Determination as to Claim No. 221 and Claim No. 222 in the Circuit
18 Court for Klamath County, and reserves any rights PacifiCorp may have to participate
19 in any future proceedings authorized by law.

20 10. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for
21 Claim No. 221 and Claim No. 222 exceed the scope and extent of limitations on such
22 claims as set forth in paragraph 1, paragraph 2, and paragraph 3 above, the Contestants
23 reserve the right to file exceptions to the Findings of Fact and Order of Determination
24 as to Claim No. 221 and Claim No. 222 in the Circuit Court for Klamath County, and
25 reserve any rights they may have to participate in any future proceedings authorized by
26 law.

1 11. Upon issuance of the Certificate by the Department after conclusion of the proceedings
2 in the Circuit Court, any violation of the terms therein shall constitute a violation of the
3 Certificate and shall not give rise to any private cause of action by the Contestants
4 under this Stipulation. Enforcement as to any violation of the Certificate shall occur in
5 the normal course pursuant to Oregon water law and the applicable rules and
6 regulations.

7 12. The parties agree that this Stipulation has been reached through good faith negotiations
8 for the purpose of resolving legal disputes, including pending administrative action.
9 The parties agree that no offers or compromises made in the course of negotiations
10 shall be construed as admissions against interest. The parties agree that this Stipulation
11 shall not be offered as evidence or treated as an admission regarding any matter and
12 may not be used in proceedings on any other claim or contest whatsoever, except that
13 this Stipulation may be used in any future proceeding to interpret or enforce the terms
14 of this Stipulation. Further, the parties agree that neither the Stipulation nor any of its
15 terms shall be used to establish precedent with respect to any other claim or contest in
16 the Klamath Basin Water Rights Adjudication.

17 13. This Stipulation shall be binding upon and shall inure to the benefit of the parties and
18 their respective heirs, executors, administrators, trustors, trustees, beneficiaries,
19 predecessors, successors, affiliated and related entities, officers, directors, principals,
20 agents, employees, assigns, representatives, and all persons, firms, associations, and
21 corporations connected with them.

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

25 15. The terms, provisions, conditions, and covenants of this Stipulation are not severable,
26 except, if any term, provision, condition, or covenant of this Stipulation is held by a

1 court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of
2 the terms, provisions, conditions, and covenants shall remain in full force and effect
3 and shall in no way be affected, impaired, or invalidated.

4 16. This Stipulation may be executed in several counterparts and all documents so executed
5 shall constitute one Stipulation, binding on the parties, notwithstanding that the parties
6 did not sign the same original or the same counterparts. Delivery of an executed
7 signature page to this Stipulation by facsimile transmission shall be as effective as
8 delivery of an original signed counterpart of this Stipulation.

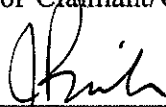
9 17. This Stipulation comprises the entire agreement and no promise, inducement, or
10 representation other than herein set forth has been made, offered, or agreed upon, and
11 the terms of this Stipulation are contractual and not merely a recital.

12 18. The Parties agree to bear their own costs and attorneys' fees.

13 19. This Stipulation shall be effective as of the date of the last signature hereto.

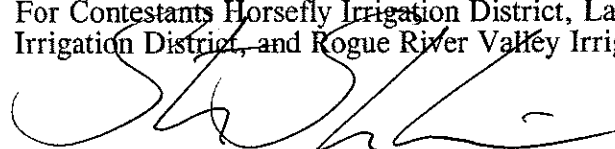
14 **STIPULATED, AGREED, AND APPROVED:**

15 For Claimant/Contestant PacifiCorp:

16 
17 Jennie L. Bricker, OSB No. 97524
18 STOEL RIVES LLP
19 Of Attorneys for PacifiCorp

March 18, 2005
Date

20 For Contestants Horsefly Irrigation District, Langell Valley Irrigation District, Medford
21 Irrigation District, and Rogue River Valley Irrigation District:

22 
23 Steven L. Shropshire, OSB No. 94437
24 Jordan Schrader PC
25 Of Attorneys for Contestants Horsefly Irrigation District, Langell Valley Irrigation
26 District, Medford Irrigation District, and Rogue River Valley Irrigation District

March 8, 2005
Date

1 For Contestant United States of America:

2 Stephen R. Palmer March 15, 2005
3 Stephen R. Palmer Date
4 Special Attorney, United States Department of Justice
5 Office of the Regional Solicitor
6 United States Department of the Interior
7 Of Attorneys for Contestant United States of America

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7 For Contestants Klamath Project Water Users:

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9 Andrew M. Hitchings Date
10 (Pro Hac Vice; California Bar No. 154554)
11 Of Attorneys for Tulelake Irrigation District,
12 And on behalf of Contestant Klamath Project Water Users

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For Oregon Water Resources Department:

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Michael Reynolds Date
15 Agency Representative

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17 HARDY MEYERS
Attorney General

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19 Justin Wirth, OSB No. 00426 Date
20 Oregon Department of Justice
Of Attorneys for the Oregon Department of Water Resources

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1 For Contestant United States of America:

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3 Stephen R. Palmer _____ Date _____
Special Attorney, United States Department of Justice
4 Office of the Regional Solicitor
United States Department of the Interior
5 Of Attorneys for Contestant United States of America

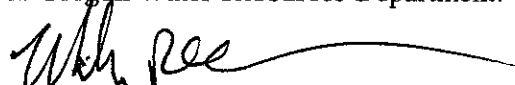
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7 For Contestants Klamath Project Water Users:

8  _____
9 Andrew M. Hitchings _____ Date 3/8/05
(Pro Hac Vice; California Bar No. 154554)
10 Of Attorneys for Tulelake Irrigation District,
And on behalf of Contestant Klamath Project Water Users

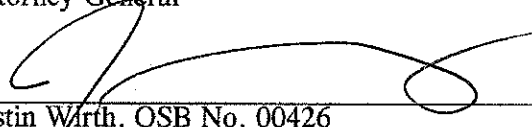
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12 For Oregon Water Resources Department:

13  _____
14 Michael Reynolds _____ Date 3/21/05
15 Agency Representative

16

17 HARDY MEYERS
Attorney General

18  _____
19 Justin Wirth, OSB No. 00426 _____ Date March 21, 2005
Oregon Department of Justice
20 Of Attorneys for the Oregon Department of Water Resources

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