

COPY

009F00020003
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

Water Watch of Oregon, INC.; John Briggs;
Peter Bourdet; Vincent Lee Briggs; Thomas
William Mallams; Thomas H. Bentley;
Thomas E. Stephens; Roger Nicholson;
Ambrose McAuliffe; David Cowan; Leonard
Baio; Gary Strong; Flynn Brothers; Robert
Bartell; Margaret Jacobs; Carolyn Obenchain;
Rodney Z James; Newman Enterprise, Douglas
Newman; Hilda Francis, Francis Loving Trust;
Duane F. Martin; JR Simplot as Trustee of the
JR Simplot Self Declaration of Revocable
Trust; The Nature Conservancy;

**STIPULATION TO RESOLVE
CONTESTS 2162, 2163, 2166, 2168,
2169, 2171, 2172, 2174, 2177, 2184,
2186, 2188, 2190, 2192, 2194, 2196,
2198, 2200, 2201, 2203, 2205, 2207,
2209, 2211, 2213, 2214, 2216, 2218,
2220, 2222, 2224, 2225, 2227, 2229,
2231, 2233, 2234, 2236, 2238, 2240,
2242, 2244, 2246, 2248, 2250, 2252,
and 2253**

Case No. 009

Claim Nos. 469, 472, 476, 479,
480, 484, 485, 487, 490,
504, 507, 510, 513, 516,
519, 522, 525, 528, 530,
533, 536, 539, 542, 545,
548, 550, 553, 555, 558,
561, 564, 566, 569, 572,
574, 578, 580, 583, 586,
589, 710, 713, 716, 719,
722, 725, 727

v.



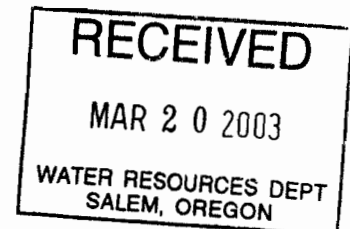
United States of America,
National Forest Service.

Contest Nos. 138, 141, 145 et al.

The Oregon Water Resources Department (OWRD) and the United States of
America, Department of Agriculture, Forest Service (Forest Service), hereby agree and
stipulate as follows:

///

///



RECEIVED

MAR 20 2003

WATER RESOURCES DEPT
SALEM, OREGON

A. STIPULATED FACTS

1. On April 29, 1997, the Forest Service submitted Statements and Proofs of Claims 469, 472, 476, 479, 480, 484, 485, 487, 490, 504, 507, 510, 513, 516, 519, 522, 525, 528, 530, 533, 536, 539, 542, 545, 548, 550, 553, 555, 558, 561, 564, 566, 569, 572, 574, 578, 580, 583, 586, 589, 710, 713, 716, 719, 722, 725, and 727 (collectively "the Claims"). The Claims requested instream flows for the purpose of controlling and preventing forest fires to protect timber under the Organic Act, 16 USC § 473 *et seq.* The Forest Service provided amended claim forms for the Claims on August 3, 1999, and formally filed the amended claims with supporting documentation on September 30, 1999.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of the Claims which preliminarily approved the Claims as amended in most respects. The Preliminary Evaluation, however, limited the season of use from June through October of each year. Thus, the Preliminary Evaluation effectively preliminarily denied those portions of the claim requesting uses from May 1 through 31 and November 1 through 15 of each year. In addition, the Preliminary Evaluation of claim 528 contained a typographical error as to the place of use, the Preliminary Evaluation of claim 484, 485, 542, 545, 564, and 574 did take into account amended claim materials provided on September 30, 1999, and the Preliminary Evaluation of claim 727 contained typographical errors as to the place of use and the priority date.

3. On May 5, 2000, the Forest Service filed contests 2162, 2163, 2166, 2168, 2169, 2171, 2172, 2174, 2175, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2214, 2216, 2218, 2220, 2222, 2224, 2225, 2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, and 2253

2227, 2229, 2231, 2233, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, and 2253 to the Preliminary Evaluation.

4. OWRD and the Forest Service agree that the Contests are resolved pursuant to the terms outlined below.

B. TERMS OF THE AGREEMENT

1. OWRD adjudication staff agrees to recommend to the Adjudicator that the claims be approved in the Final Order of Determination issued by the Adjudicator as follows:

a. Claim 469 and Contest 2162:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 469 will not be in excess of the amount allowed in this stipulation.

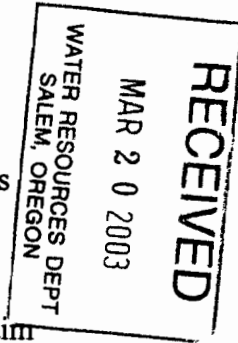
b. Claim 472 and Contest 2163:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 472 will not be in excess of the amount allowed in this stipulation.

c. Claim 476 and Contest 2166:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 476 will not be in excess of the amount allowed in this stipulation.





d. Claim 479 and Contest 2168:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 476 will not be in excess of the amount allowed in this stipulation.

e. Claim 480 and Contest 2169:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 480 will not be in excess of the amount allowed in this stipulation.

f. Claim 484 and Contest 2171:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use should be as set forth in the Forest Service's Amended Claim, received by OWRD on September 30, 1999; (iii) any further amendment of claim 484 will not be in excess of the amount allowed in this stipulation.

g. Claim 485 and Contest 2172:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use should be as set forth in the Forest Service's Amended Claim, received by OWRD on

September 30, 1999; and (iii) any further amendment of claim 485 will not be in excess of the amount allowed in this stipulation.

h. Claim 487 and Contest 2174:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 487 will not be in excess of the amount allowed in this stipulation.

i. Claim 490 and Contest 2175:

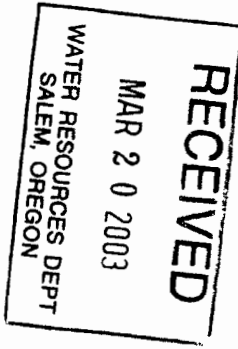
Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 490 will not be in excess of the amount allowed in this stipulation.

j. Claim 504 and Contest 2184:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 504 will not be in excess of the amount allowed in this stipulation.

k. Claim 507 and Contest 2186:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 507 will not be in excess of the amount allowed in this stipulation.



RECEIVED
MAR 20 2003
WATER RESOURCES DEPT
SALEM, OREGON

l. Claim 510 and Contest 2188:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 510 will not be in excess of the amount allowed in this stipulation.

m. Claim 513 and Contest 2190:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 513 will not be in excess of the amount allowed in this stipulation.

n. Claim 516 and Contest 2192:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 516 will not be in excess of the amount allowed in this stipulation.

o. Claim 519 and Contest 2194:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 519 will not be in excess of the amount allowed in this stipulation.

p. Claim 522 and Contest 2196:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of

use be May 1 through October 31, and (ii) any further amendment of claim 522 will not be in excess of the amount allowed in this stipulation.

q. Claim 525 and Contest 2198:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 525 will not be in excess of the amount allowed in this stipulation.

r. Claim 528 and Contest 2200:

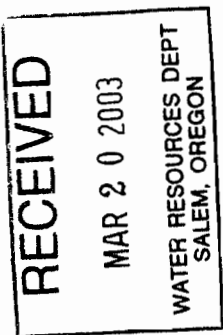
Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, (ii) the place of use should be “the North Fork of the Sprague River from Section 11 (NESW), Township 35S, Range 15E to Section 11 (NESW), Township 35S, Range 15E”, and (iii) any further amendment of claim 528 will not be in excess of the amount allowed in this stipulation.

s. Claim 530 and Contest 2201:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 530 will not be in excess of the amount allowed in this stipulation.

t. Claim 533 and Contest 2203:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of



use be May 1 through October 31, and (ii) any further amendment of claim 533 will not be in excess of the amount allowed in this stipulation.

u. Claim 536 and Contest 2205:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 536 will not be in excess of the amount allowed in this stipulation.

v. Claim 539 and Contest 2207:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 539 will not be in excess of the amount allowed in this stipulation.

w. Claim 542 and Contest 2209:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use should be as set forth in the Forest Service's Amended Claim, received by OWRD on September 30, 1999; and (iii) any further amendment of claim 542 will not be in excess of the amount allowed in this stipulation.

x. Claim 545 and Contest 2211:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use should be as set



forth in the Forest Service's Amended Claim, received by OWRD on September 30, 1999; and (iii) any further amendment of claim 545 will not be in excess of the amount allowed in this stipulation.

y. Claim 548 and Contest 2213:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 548 will not be in excess of the amount allowed in this stipulation.

z. Claim 550 and Contest 2214:

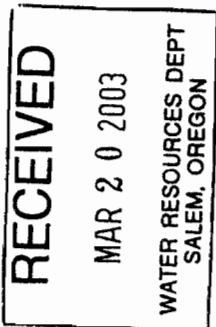
Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 550 will not be in excess of the amount allowed in this stipulation.

aa. Claim 553 and Contest 2216:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 553 will not be in excess of the amount allowed in this stipulation.

bb. Claim 555 and Contest 2218:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 555 will not be in excess of the amount allowed in this stipulation.



cc. Claim 558 and Contest 2220:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 558 will not be in excess of the amount allowed in this stipulation.

dd. Claim 561 and Contest 2222:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 561 will not be in excess of the amount allowed in this stipulation.

ee. Claim 564 and Contest 2224:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use and associated priority dates should be as set forth in the Forest Service's Amended Claim, received by OWRD on September 30, 1999; and (iii) any further amendment of claim 564 will not be in excess of the amount allowed in this stipulation.

ff. Claim 566 and Contest 2225:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 566 will not be in excess of the amount allowed in this stipulation.



gg. Claim 569 and Contest 2227:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 569 will not be in excess of the amount allowed in this stipulation.

hh. Claim 572 and Contest 2229:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 572 will not be in excess of the amount allowed in this stipulation.

ii. Claim 574 and Contest 2231:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use should be as set forth in the Forest Service's Amended Claim, received by OWRD on September 30, 1999; and (iii) any further amendment of claim 574 will not be in excess of the amount allowed in this stipulation.

jj. Claim 578 and Contest 2233:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 578 will not be in excess of the amount allowed in this stipulation.



kk. Claim 580 and Contest 2234:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 580 will not be in excess of the amount allowed in this stipulation.

ll. Claim 583 and Contest 2236:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 583 will not be in excess of the amount allowed in this stipulation.

mm. Claim 586 and Contest 2238:

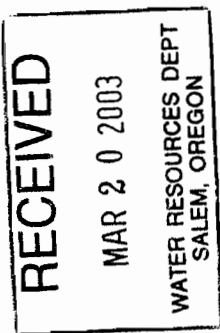
Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 586 will not be in excess of the amount allowed in this stipulation.

nn. Claim 589 and Contest 2240:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 589 will not be in excess of the amount allowed in this stipulation.

oo. Claim 710 and Contest 2242:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of



use be May 1 through October 31, and (ii) any further amendment of claim 710 will not be in excess of the amount allowed in this stipulation.

pp. Claim 713 and Contest 2244:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 713 will not be in excess of the amount allowed in this stipulation.

qq. Claim 716 and Contest 2246:

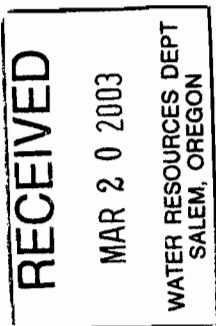
Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 716 will not be in excess of the amount allowed in this stipulation.

rr. Claim 719 and Contest 2248:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 719 will not be in excess of the amount allowed in this stipulation.

ss. Claim 722 and Contest 2250:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 722 will not be in excess of the amount allowed in this stipulation.



tt. Claim 725 and Contest 2252:

Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31, and (ii) any further amendment of claim 725 will not be in excess of the amount allowed in this stipulation.

uu. Claim 727 and Contest 2253:

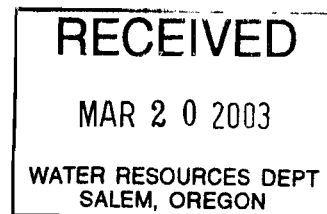
Recommend that the Adjudicator approve the claim upon the same terms as identified in the Preliminary Evaluation *except*: (i) that the period of use be May 1 through October 31; (ii) the places of use should be as set forth in the Forest Service's Claim, received by OWRD on August 3, 1999; (iii) that the priority date be April 15, 1961, in accordance with the April 25, 2002 stipulation between OWRD and the Forest Service; and (iv) any further amendment of claim 727 will not be in excess of the amount allowed in this stipulation.

2. OWRD and the Forest Service agree that pursuant to the terms of this Agreement, the Claims and Contests have been satisfactorily resolved, and a hearing before the Hearing Officer is not required. Under these circumstances, the Contestants waive the right to a contested case hearing before the Hearing Officer Panel with respect to the Contests, but explicitly reserve the right to participate in any other future proceedings authorized by law.

///

///

///



3. The Forest Service reserves the right to file exceptions to the Final Order of Determination as to the Claims in the Circuit Court for Klamath County if the Final Order of Determination issued by the Adjudicator for the Claims does not follow the recommendation of OWRD adjudication staff as indicated in paragraph B1, above.

For the United States of America, Department of Agriculture, Forest Service



David Gehlert
General Litigation Section
Environment & Natural Resources Division
U.S. Department of Justice
999 - 18th Street, Suite 945
Denver, CO 80202

3/13/03
Date

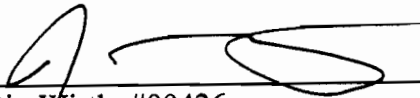


Holly R. McLean
Office of the General Counsel
U.S. Department of Agriculture
1734 Federal Building
1220 SW Third Avenue
Portland, OR 97204

3/13/03
Date

For the Oregon Water Resources Department

HARDY MEYERS
Attorney General



Justin Wirth, #00426
Walter Perry, III, #83361
Assistant Attorneys General

3/18/03
Date



Renee Moulun, Agency Representative
Oregon Water Resources Department

3/18/03
Date

