

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 3, 2005

TO ALL PARTIES TO KLAMATH ADJUCATION CASE 75, CLAIM 274

Re: Klamath Adjudication – Case No. 75, Claim No. 274, Contest Nos. 1748 and
3509
DOJ File No. 690-600-GN0310-03

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve Contests and Certificate of Service in the above-entitled matter. This agreement resolves all the remaining issues in this case.

Since all issues in this case have been resolved, there is no need to hold a hearing. Accordingly, the Oregon Water Resources Department will withdraw this case from the Office of Administrative Hearings, pursuant to OAR 137-033-0515(4).

Thank you very much for your courtesies and cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Ratcliffe".

Jesse D. Ratcliffe
Stephen E.A. Sanders
Assistant Attorneys General
Natural Resources Section

JDR:tmc/GENN4507
Enclosure
c: Service List

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

Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; 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 Walthall; Inter County Title Company; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC;	STIPULATION TO RESOLVE CONTEST 1748
Contestants	Case No. 75
	Claim: 274
	Contests: 1748 and 3509 ¹

vs.

Phil Tupper; Rayson C. Tupper; Rachel Tupper;
Hi Robbins Corporation;
Claimants/Contestants.

Claimants/Contestants Phil Tupper, Rachel Tupper, Rayson C. Tupper, and Hi Robbins Corporation, and the Oregon Water Resources Department (OWRD), hereby agree and stipulate, and request the Adjudicator to resolve the above captioned Claim and Contest as follows:

¹ Don Vincent voluntarily withdrew from Contest 3509 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3509 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3509 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3509 on April 7, 2005.

A. STIPULATED FACTS

1. On January 31, 1991, Claim 274 for a federal reserved Indian water right was filed with OWRD by the Claimants.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 274.
3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 274, Contest 1748.
4. Claimants/Contestants and OWRD agree that Contest 1748 can be resolved without the need for a hearing pursuant to the following:

B. TERMS OF STIPULATION

1. Claimants/Contestants and OWRD agree that the Water Right Claim 274 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 274, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.
2. Claimants/Contestants agree that pursuant to the terms of this Stipulation, Contest 1748 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.
3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 274 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 274 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator as a federal reserved Indian water right in accordance with the Description of Water Right Claim 274.
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 274 does not conform to the terms set forth in the attached Description of Water Right Claim 274, Claimants/Contestants reserve any rights they may have to file exceptions to the

Finding of Fact and Order of Determination as to Claim 274 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 274.

5. Claimants/Contestants agree not to oppose or object to this Agreement or any of its terms, provisions, conditions, or covenants and to support this Agreement if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

6. 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.

7. Each entity or person entering into 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 entity or person and bind that entity or person to the terms of the Stipulation.

8. The terms, provisions, conditions, and covenants of this Stipulation are not severable, except, if any term, provision, condition, or covenant of this Stipulation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, conditions, and covenants shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

9. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the signatories, notwithstanding that the

signatories 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.

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

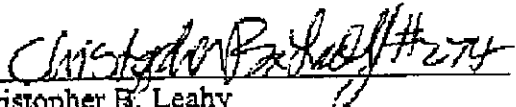
11. Claimants/Contestants and OWRD shall each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For Klamath Allottee Water Users Association Member
Claimant/Contestants Phil Tupper, Rachel Tupper, Rayson C. Tupper and Hi Robbins
Corporation,

FREDERICKS, PELCYGER & HESTER, LLC

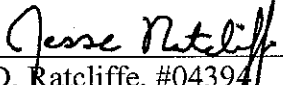

Christopher B. Leahy

Pro Hac Vice; Colorado Bar 23612

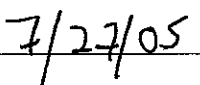
7/21/05
Date

For the Oregon Water Resources Department

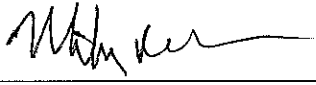
HARDY MYERS
Attorney General



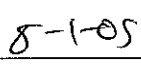
Jesse D. Ratcliffe, #04394
Stephen E.A. Sanders, #85321
Assistant Attorneys General



Date



Michael Reynolds, Agency Representative
Oregon Water Resources Department



Date

BEFORE 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	)	Description Of
Pacific Ocean	)	Water Right Claim 274
_____	)	

Name and Address: Phil Tupper
Rayson C. Tupper
Rachel Tupper
Hi Robbins Corporation
PO Box 1797
Klamath Falls, OR 97601

Source: Unnamed Creek **Tributary:** Sprague River

Point Of Diversion:	<u>Township</u> 36 S	<u>Range</u> 10E	<u>Section</u> 13	<u>Q/Q:</u> SWNE	<u>Lot:</u>
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Priority: 10/14/1864

Use, Period Of Use and	<u>Use:</u> Irrigation	<u>Period Of Use:</u> 03-01 to 10-16	<u>Rate:</u> 2.13 cfs	<u>Duty:</u> 4.3 AFA
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Quantity:	Livestock	01-01 to 12-31	4200 gpd
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Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	10E	13	NENE	1	9.1
	36 S	10E	13	NWNE	2	8.2
	36 S	10E	13	NWNE	7	13.1
	36 S	10E	13	NENE	8	10.0
	36 S	10E	13	SENE	9	8.1
	36 S	10E	13	SWNE	10	15.8
	36 S	10E	13	SWNE	15	14.7
	36 S	10E	13	SENE	16	7.3

Total Irrigated Acreage	86.3
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The Place of Use is set forth more particularly in the map attached hereto as Exhibit B, and which is incorporated by reference as if set forth fully herein.

INCHOATE WATER RIGHT CLAIM DESCRIPTION

Source: Sprague River

Tributary: Williamson River

Point Of Diversion: Township Range Section Q/Q: Lot:
36 S 10E 12 SESE

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
Irrigation 03-01 to 10-16 1.23 cfs 3.1 AFA

<u>Place Of Use:</u>	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	10E	13	SWNE		9.0
	36 S	10E	13	SENE		23.4
	36 S	10E	13	NWNE		17.8
	36 S	10E	13	NENE		18.1

Total Practicably Irrigable Acreage 68.3

The Place of Use is set forth more particularly in the map attached hereto as Exhibit B, and which is incorporated by reference as if set forth fully herein.

TOWNSHIP 36 SOUTH, RANGE 10 EAST, W.M.

Owner # 46, Property # 3
OWRD Claim # 274

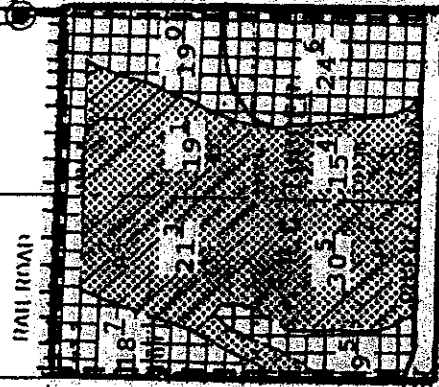
AMATH ADJUDICATION

CLAIM: 274 PAGE # 118

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OCT 04 1999

WATERS RESOURCES DEPT
SALEM, OREGON



- Presently Irrigated Land
- Practically Irrigable Acreage
- Header Pipe
- Point of Diversion

By: Natural Resources Consulting Engineers Inc.
1236 Addison St., Suite 204
Berkeley, Ca. 94702
Berkeley (510) 841-7814



CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August 2005, I served the within
STIPULATION TO RESOLVE CONTESTS AND CERTIFICATE OF SERVICE on the
parties hereto by regular first-class mail and by e-mail (where an e-mail address is listed
below), a true, exact and full copy thereof to:

VIA STATE SHUTTLE MAIL

Dwight W. French / Teri Hranac
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@state.or.us
teri.k.hranac@wrdd.state.or.us

Christopher B. Leahy / Niccole Brennan
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