

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

Francis Loving Trust, Hilda Francis Trustee;
William J. Rust and Ethel J. Rust; Thomas W.
Mallams,
Contestants,

v.

United States Fish and Wildlife Service,
Claimant.

**STIPULATION TO RESOLVE
CONTESTS 2759, 2760, AND 4945**

Case No. 156

Claim No. 3

Contest(s) 2759, 2760, and 4945

The Oregon Water Resources Department (OWRD), Claimant United States of America, for the Department of Interior, Fish and Wildlife Service (Claimant), and Contestants Francis Loving Trust, Hilda Francis Trustee, Thomas W. Mallams, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust (collectively, Contestants) hereby agree and stipulate as follows:

A. STIPULATED FACTS

1. On December 13, 1990, Mabel A. Schumacher filed Claim 3 in the Klamath Adjudication. The United States of America, for the Department of Interior, Fish and Wildlife Service (Claimant), subsequently purchased the property that is the subject of Claim 3.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 3, preliminarily approving the claim for a smaller quantity of water than was claimed.
3. On May 8, 2000, Contestants filed Contests 2759 (Francis Loving Trust, Hilda Francis, Trustee), 2760 (William J. Rust and Ethel J. Rust (David Cowan, Successor)), and 4945

(Thomas W. Mallams), contesting Claim 3 and the Preliminary Evaluation. No other contests were filed to Claim 3 or the Preliminary Evaluation for this claim.

4. OWRD, Claimant, and Contestants agree that Contests 2759, 2760, and 4945 can be resolved without the need for a hearing pursuant to the terms outlined below.

B. TERMS OF THE AGREEMENT

1. OWRD, Claimant, and Contestants agree that Claim 3 should be approved by the Adjudicator according to the terms of the Adjudicator's October 4, 1999 Preliminary Evaluation for this claim, as follows:

(a) For Point of Diversion No. 1:

(1) POINT OF DIVERSION LOCATION: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 15,
Township 29 South, Range 9 East, W.M.

(2) SOURCE: an unnamed spring, tributary to Cole Creek

(3) USE: domestic

a. AMOUNT ACTUALLY BENEFICIALLY USED: .01 cubic feet per second, measured at the point of diversion

b. PERIOD OF USE: January 1 – December 31

c. PRIORITY DATE: October 14, 1864

d. PLACE OF USE:

SE $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 15
TOWNSHIP 29 SOUTH, RANGE 9 EAST, W.M.

(4) USE: livestock

a. AMOUNT ACTUALLY BENEFICIALLY USED: 6000 gallons per day, measured at the point of diversion.

b. PERIOD OF USE: January 1 – December 31

c. PRIORITY DATE: October 14, 1864

d. PLACE OF USE:

SE $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 15
TOWNSHIP 29 SOUTH, RANGE 9 EAST, W.M.

(b) For point of diversion No. 2:

- (1) POINT OF DIVERSION LOCATION: SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28, Township 29 South, Range 9 East, W.M.
- (2) SOURCE: Three Creek, tributary to Williamson River
- (3) USE: livestock
 - a. AMOUNT ACTUALLY BENEFICIALLY USED: 6000 gallons per day, measured at the point of diversion. This is less than the amount claimed.
 - b. PERIOD OF USE: January 1 – December 31
 - c. PRIORITY DATE: October 14, 1864
 - d. PLACE OF USE:

SW $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 28
TOWNSHIP 29 SOUTH, RANGE 9 EAST, W.M.

2. OWRD, Claimant, and Contestants agree that pursuant to the terms of this Agreement, Contests 2759, 2760, and 4945 have been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge on these contests to Claim 3.

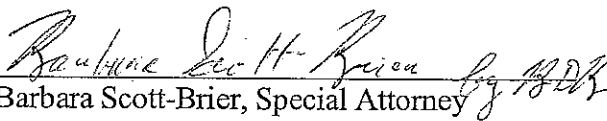
3. Based upon the agreement of OWRD, Claimant, and Contestants that Claim 3, and the contests thereto, can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 3 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 3 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.

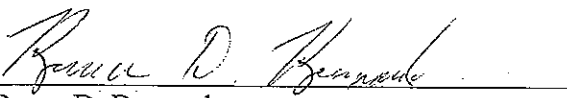
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 3 does not follow the terms listed in paragraph B.1., above, Claimant and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 3 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

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 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 United States of America, for the Department of Interior, Fish and Wildlife Service:


Barbara Scott-Brier, Special Attorney
U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior

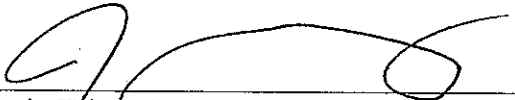
5-7-04
Date


Bruce D. Bernard
General Litigation Section
U.S. Department of Justice

5-7-04
Date

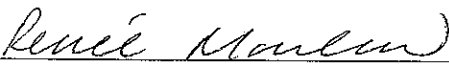
For the Oregon Water Resources Department:

HARDY MEYERS
Attorney General



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

August 6, 2004
Date



Renee Moulun, Agency Representative
Oregon Water Resources Department

8/9/04
Date

For Contestants Francis Loving Trust, Hilda Francis Trustee; Thomas W. Mallams; and David Cowan, successor in interest to William J. Rust and Ethel J. Rust:

Carol DeHaven Skerjanec
Carol DeHaven Skerjanec, #94175
Attorney at Law

August 3, 2004
Date