

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

~~WaterWatch of Oregon, Inc.~~; United States of America; ~~The Klamath Tribes~~; Klamath Irrigation District; Klamath Drainage District; Tulalake 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 Walthall; Inter-County Title Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC,
Contestants,

**STIPULATION TO RESOLVE
CONTESTS**

Case No. 182

Claim No. 46

Contests 2830¹, 3272, 3450², 3791,
and 4101³

v.

Richard Nicholson; Roger Nicholson; Dorothy
Nicholson Trust,
Claimants/Contestants.

¹ By an Order dated May 20, 2003, WaterWatch of Oregon, Inc. was dismissed as a party contestant from all proceedings in the Klamath Basin Adjudication. *See* ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTEST NOS 2820 ET AL.

² Don Vincent voluntarily withdrew from Contest 3450 on November 28, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS. Berlva Pritchard voluntarily withdrew from Contest 3450 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

Klamath Hills District Improvement Company voluntarily withdrew, without prejudice, from Contest 3450 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

³ The Klamath Tribes' voluntarily withdrew, without prejudice, from Contest 4101 on January 19, 2005. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST.

Claimants Richard Nicholson, Roger Nicholson and Dorothy Nicholson Trust (hereinafter "Claimants"), Contestants the Klamath Project Water Users⁶ (hereinafter "KPWU"), Contestant the United States of America (hereinafter "United States") (collectively "Parties") and the Oregon Water Resources Department (hereinafter "OWRD") hereby agree and stipulate as follows:

A. STIPULATED FACTS

1. On February 1, 1991, Claimants filed Claim 46 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 46.
3. The following contests were filed to Claim 46 and/or the Preliminary Evaluation of Claim 46: Contest 3450 filed by the Klamath Project Water Users; Contest 3791 filed by the United States; Contest 4101 filed by the Tribes, which was voluntarily withdrawn on January 19th, 2005; and Contest 2830, filed by WaterWatch of Oregon, Inc., which was dismissed on May 20, 2003.
4. Claimant, Contestants, and OWRD agree that Contests 3450 and 3791 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. The Parties and OWRD agree that Claim 46 should be approved by the Adjudicator as described below:

⁶ The Klamath Project Water Users consists of 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 Walthall; Inter-County Title Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; and Collins Products, LLC.

- a. POINT OF DIVERSION LOCATION: NW ¼ NW ¼, Section 26, Township 33 South, Range 7½ East, W.M.
- b. SOURCE: Fort Creek, tributary to the Wood River.
- c. USE: Irrigation of 0.2 acres.
- d. DIVERSION RATE: .005 cubic feet per second (c.f.s.) for irrigation. Incidental watering of 10 head of livestock; no additional water diversion for stock
- e. DUTY: 3.5 acre-feet/acre/year.
- f. PERIOD OF USE: April 1 to November 1.
- g. PRIORITY DATE: October 14, 1864.
- h. PLACE OF USE:

SE ¼ SW ¼ 0.2 ACRES
SECTION 35, TOWNSHIP 33 SOUTH, RANGE 7½ EAST, W.M.

The place of use and point of diversion are shown more particularly on the map attached hereto as Exhibit 1 and is incorporated by reference herein, as if set forth fully herein. The map attached hereto as Exhibit 1 depicts 0.4 irrigated acres in the SW¼ SE¼, Section 35, Township 33 South, Range 7½ East, W.M., which are *not* included in the place of use under this Stipulation.

2. The Parties and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contests 3450 and 3791 have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on the contests to Claim 46.
3. Based on the Stipulation of the Parties and OWRD that Claim 46 and the Contests thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 46 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 46 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.

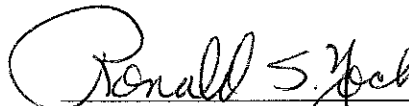
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 46 does not conform to the terms set forth in paragraph B.1., above, Claimant and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 46 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 46.
5. The Parties agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. The Parties agree that this 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 parties 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.
6. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.
7. Each Party to 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 party and bind that party to the terms of the Stipulation.

8. The terms, provisions, conditions, and covenants of this Stipulation are not severable, except, if any term, provision, conditions, 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 Parties, notwithstanding that the Parties 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 between the Parties concerning the subject matter hereof 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 shall be binding and enforceable upon the Parties and not mere recitals.
11. The Parties and OWRD agree to each bear their own costs and attorney fees.
12. This Stipulation shall be effective as of the date of the last signature hereto.

STIPULATED, AGREED AND APPROVED:

FOR CLAIMANTS RICHARD NICHOLSON, ROGER NICHOLSON AND DOROTHY NICHOLSON TRUST

DATED: March 15, 2005



RONALD S. YOCKIM
Attorney at Law
P.O. Box 2456
Roseburg, OR 97470
Phone: 541-957-5900
Fax: 541-957-5923
E-mail: ryockim@mcsi.net

FOR CONTESTANT, THE UNITED STATES OF AMERICA:

DATED: March 11, 2005

THOMAS L. SANSONETTI
Assistant Attorney General



THOMAS K. SNODGRASS

Trial Attorney
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 663
Washington, D.C. 20044-0663
(Overnight mail only:
601 D. Street NW
3rd Floor, Room 3531
Washington, D.C. 20004
Telephone: 202/305-0489
Telefax: 202/305-0274
Email: thomas.snodgrass@usdoj.gov
klamathcase.enrd@usdoj.gov

BARBARA SCOTT-BRIER
Special Attorney
Environment & Natural Resources Division
U.S. Department of Justice
Office of the Solicitor
Pacific Northwest Region
U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607
Portland, OR 97232
Telephone: 503/231-2139
Telefax: 503/231-2166

ATTORNEYS FOR THE UNITED STATES OF
AMERICA

FOR CONTESTANT, THE KLAMATH PROJECT WATER USERS:

DATED: February 24, 2005



ANDREW M. HITCHINGS

Attorneys for Tulelake Irrigation District and on behalf of
the Klamath Project Water Users

Somach, Simmons & Dunn

Hall of Justice Building

813 Sixth Street, Third Floor

Sacramento, CA 95814-2403

Phone: 916-446-7979

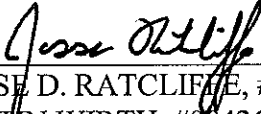
Fax: 916-446-8199

E-mail: ahitchings@lawssd.com

FOR THE OREGON WATER RESOURCES DEPARTMENT:


HARDY MYERS
Attorney General

DATED: ~~February~~ ^{March} 18, 2005



JESSE D. RATCLIFFE, #04394
JUSTIN WIRTH, #00426
Assistant Attorneys General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
Phone: 503-947-4500
Fax: 503-378-3802
E-mail: jesse.d.ratcliffe@doj.state.or.us
justin.wirth@doj.state.or.us

DATED: ~~February~~ ^{March} 18, 2005



MICHAEL J. REYNOLDS
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, Oregon 97301-1271
Phone: 503-986-0820
Fax: 503-986-0901
E-mail: mike.j.reynolds@state.or.us

RECEIVED

REVISED

JAN 13 1999

ADJUDICATION CLAIMS MAP

WATER RESOURCES DEPT.
SALEM, OREGON

FOR

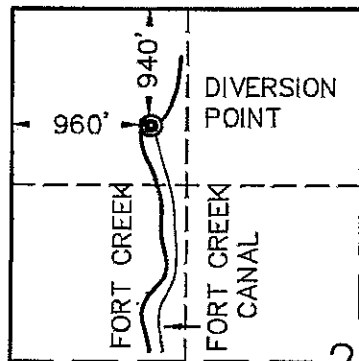
RICHARD NICHOLSON, ROGER NICHOLSON AND DOROTHY NICHOLSON TRUST

LOCATED IN THE SW 1/4 SE 1/4, SE 1/4 SW 1/4 SEC. 35, T.33S., R.07 1/2E., W.M.

KLAMATH COUNTY, OREGON

KLAMATH ADJUDICATION

46 PAGE 1 088

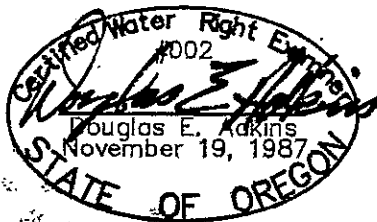
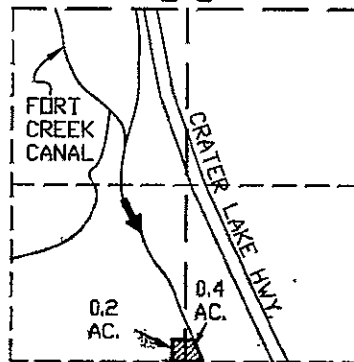


T.33S., R.07 1/2E., W.M.

26



SCALE
1" = 1320'



ADKINS

CONSULTING
ENGINEERS, INC.



AREA IRRIGATED

THIS MAP IS FOR THE PURPOSE OF IDENTIFYING THE LOCATION OF THE WATER RIGHT ONLY AND HAS NO INTENT TO PROVIDE DIMENSIONS OR LOCATION OF PROPERTY LINES.

Engineers ▲ Planners ▲ Surveyors

2950 Shasta Way • Klamath Falls, Oregon 97603 • (541) 884-4666 • FAX (541) 884-5335

June, 1991

Klamath Falls, OR • Medford, OR • Alturas, CA

JOB No. 1266-02