

COPY

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

United States of America; The Klamath
Tribes;
Contestants

**STIPULATION TO RESOLVE
CONTESTS**

Case No. 201

vs.

Claim: 71

Cary Havird; Marlys Havird;
Claimants.

Contests: 3741 and 4122

Claimants Cary Havird; Marlys Havird ("Claimants"), the United States of America (the "United States"), the Klamath Tribes (the "Tribes"), and the Oregon Water Resources Department ("OWRD"), hereby agree and stipulate, and request the Adjudicator to resolve the above-captioned Claim and Contests as follows:

A. STIPULATED FACTS

1. On January 29, 1990, Claimants filed Claim 71 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 71, preliminarily approving the claim generally as claimed.
3. The following contests were filed to Claim 71: Contest 3741, filed by the United States; and Contest 4122, filed by the Tribes (referred to jointly as the "Contestants").
4. Claimants, Contestants, and OWRD agree that Contests 3741 and 4122 can be resolved without the need for a hearing pursuant to the terms set forth below.

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B. TERMS OF STIPULATION

1. Claimants, Contestants, and OWRD agree that Claim 71 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: portable within the E1/2NE1/4, Section 23, Township 34 South, Range 8 East, W.M.

SOURCE: Sprague River, tributary to Williamson River

PRIORITY DATE: October 14, 1864

USE: irrigation of 30.0 acres

AMOUNT ACTUALLY BENEFICIALLY USED: 0.75 cubic feet per second, measured at the point of diversion.

PERIOD OF USE: July 1 – October 1

PLACE OF USE:

¼, ¼ to be supplied shortly,

See also the attached map showing the place of use.

DUTY: 2.0 acre-feet/acre

2. Claimants, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contests 3741 and 4122 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these contests to Claim 71.

3. Based on the Stipulation of Claimants, Contestants and OWRD that Claim 71 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 71 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further

recommends that Claim 71 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 71 does not conform to the terms set forth in paragraph B.1., above, Claimants and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 71 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Case 201.

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 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.

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 relate 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, 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 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. The Parties agree and acknowledge that this Stipulation has been drafted and

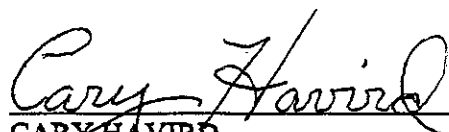
reviewed through joint efforts of their respective legal counsel after full and arms-length negotiations; therefore, the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Stipulation.

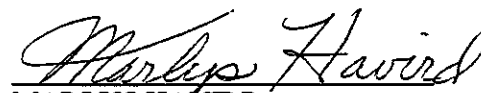
11. This Stipulation shall be effective as of the date of the last signature hereto.

Stipulated, agreed and approved by:

CLAIMANTS:

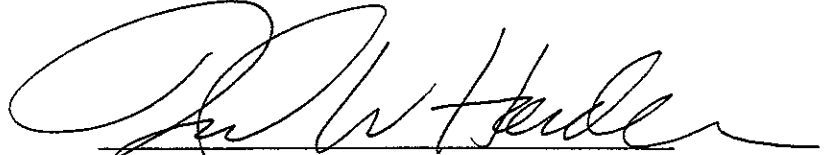
~~NOVEMBER~~ DECEMBER 8, 2003


CARY HAVIRD
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MARLYS HAVIRD
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For Contestant, the United States of America:

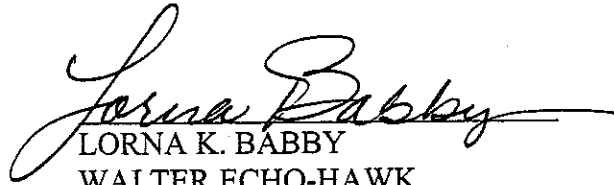
Dated: December 8, 2003

A handwritten signature in black ink, appearing to read "David W. Harder", written over a horizontal line.

DAVID W. HARDER
Indian Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
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For Contestants, the Klamath Tribes:

Dated: December 12, 2003

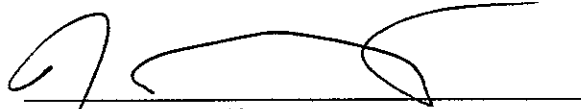
A handwritten signature in black ink that reads "Lorna Babby". The signature is written in a cursive style with a long horizontal flourish extending to the right.

LORNA K. BABBY
WALTER ECHO-HAWK
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For the Oregon Water Resources Department:


HARDY MEYERS
Attorney General

December 18
Dated: ~~November~~ __, 2003



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December
Dated: ~~November~~ 19, 2003



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AGENCY REPRESENTATIVE FOR
OREGON WATER RESOURCES
DEPARTMENT

