

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. 227
vs.	Claim: 117
Bruce S. Topham; Claimant.	Contests: 3760, 4147, and 3493 ¹

Claimant Bruce S. Topham (Claimant¹), 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 December 5, 1990, Claimant filed Claim 117 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 117.
3. The following Contests were filed to Claim 117: Contest 3760, filed by the United States; and Contest 4147, filed by the Tribes (referred to jointly as the "Contestants"). Klamath Project Water Users also filed Contest 3493, however, that Contest was withdrawn on April 1, 2004. *See* Notice of Withdrawal of Contest No. 3493.

¹ Contest 3493 was filed by Klamath Project Water Users on May 8, 2000. On April 1, 2004, the Klamath Project Water Users filed a Notice of Withdrawal of Contest No. 3493.

4. Claimant, Contestants, and OWRD agree that Contests 3760 and 4147 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimant, Contestants, and OWRD agree that Claim 117 should be approved by the Adjudicator to the extent described below:

a. DOMESTIC

POINT OF DIVERSION LOCATION:

Lot 32 SE1/4 SE1/4, Section 13, Township 36 South, Range 11 East, W.M. ; being 40 feet North and 275 West of the SE Corner of Section 13

SOURCE: an unnamed spring, tributary to the Sprague River

PRIORITY DATE: October 14, 1864

USE: domestic

RATE: 0.01 cubic feet per second, measured at point of diversion

PERIOD OF USE: year round / January 1 – December 31

PLACE OF USE:

NE1/4 NE1/4, Section 24, Township 36 South, Range 11 East, W.M.

b. LIVESTOCK

POINT OF DIVERSION LOCATION: (2 locations / same as irrigation below)

NW1/4 SE1/4, Section 13, Township 36 South, Range 11 East, W.M.
SE1/4 SE 1/4 , Section 13, Township 36 South, Range 11 East, W.M.

SOURCE: Whiskey Creek, tributary to Sprague River

PRIORITY DATE: October 14, 1864

USE: livestock, up to 600 head of stock

RATE: 12 gallons per day / head

PERIOD OF USE: year round / January 1- December 31

PLACE OF USE: same as irrigation / see table below

c. IRRIGATION

POINT OF DIVERSION LOCATION: (2 locations)

NW1/4 SE1/4, Section 13, Township 36 South, Range 11 East, W.M.

SE1/4 SE 1/4 , Section 13, Township 36 South, Range 11 East, W.M.

SOURCE: Whiskey Creek, tributary to Sprague River

PRIORITY DATE: October 14, 1864

USE: irrigation of 225.3 acres

RATE: 5.63 cubic feet per second total, measured at the points of
diversion

DUTY: 3.0 acre feet per acre

PERIOD OF USE: May 1 – October 15

PLACE OF USE: See Table below and Map at Exhibit A

Acres	1/4, 1/4	Sec.	Township	Range
26.6	SESW	13	36S	11E
22.9	NWSE	13	36S	11E
29.6	SWSE	13	36S	11E
32.4	SESE	13	36S	11E
4.0	NENE	24	36S	11E
39.1	NWNE	24	36S	11E
23.6	SWNE	24	36S	11E
17.0	SENE	24	36S	11E
28.8	NENW	24	36S	11E
1.3	SENW	24	36S	11E
225.3	TOTAL			

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

2. Claimant, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contests 3760 and 4147 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 117.

3. Based on the Stipulation of Claimant, Contestants and OWRD that Claim 117 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 117 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 117 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 117 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 117 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 227.

5. Claimant and 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. 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.

7. 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.

8. 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.

9. 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.

10. This Stipulation may be executed in several counterparts and all documents

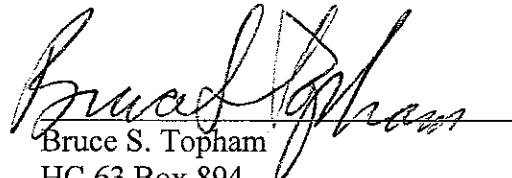
so executed shall constitute one Stipulation, binding on the Parties, notwithstanding that the Parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by facsimile transmission shall be as effective as delivery of an original signed counterpart of this Stipulation.

11. 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.

12. This Stipulation shall be effective as of the date of the last signature hereto.
Stipulated, agreed and approved by:

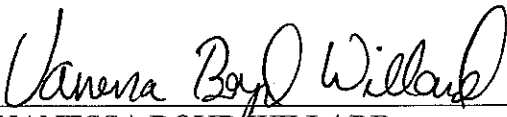
Claimant:

DATED: May 25, 2004


Bruce S. Topham
HC 63 Box 894
Sprague River, OR 97639

For Contestant, the United States of America:

DATED: May 28, 2004



VANESSA BOYD WILLARD

Indian Resources Section

Environment & Natural Resources Division

U.S. Department of Justice

999 - 18th Street, Suite 945

Denver, Colorado 80202

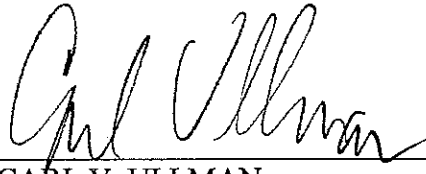
Telephone: (303) 312-7312

Telefax: (303) 312-7379

e-mail: vanessa.boydwillard@usdoj.gov

For Contestants, the Klamath Tribes:

DATED: May 20 2004

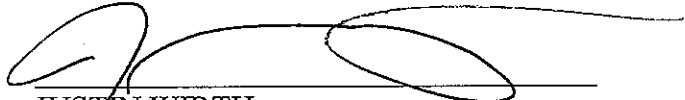


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For the Oregon Water Resources Department:

HARDY MEYERS
Attorney General

DATED: May 20, 2004



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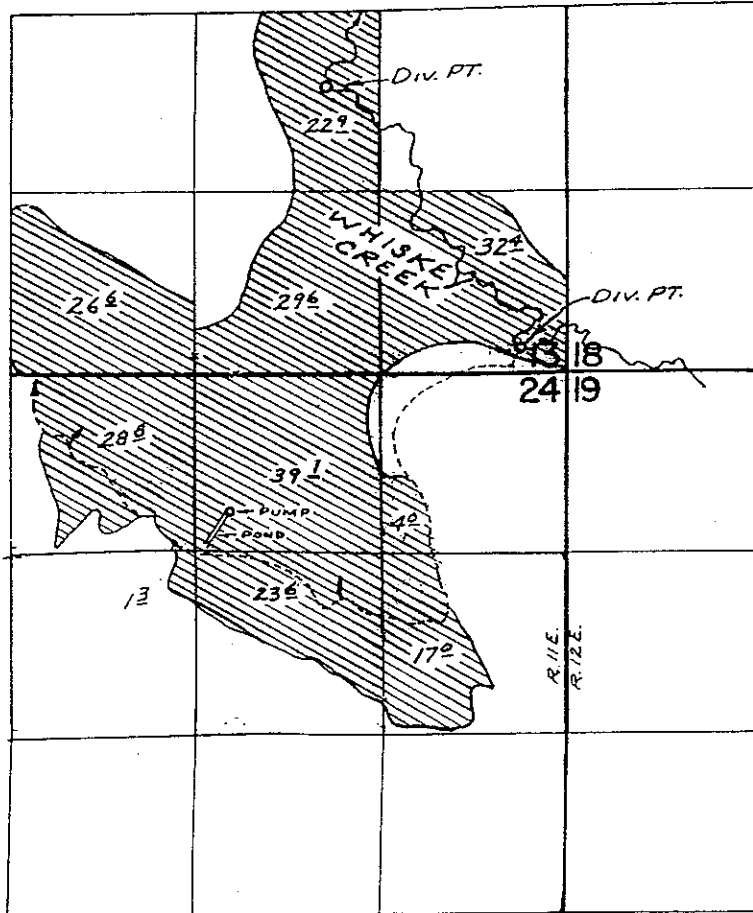
DATED: May 20, 2004



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AGENCY REPRESENTATIVE FOR
OREGON WATER RESOURCES
DEPARTMENT

T.36S.R.11&12E.W.M.



DIV. PT. LOC: 180' N. & 2340' E. FROM S 1/2 COR. SEC. 13
 2080' N. & 930' E. FROM S 1/4 COR. SEC. 13

FINAL PROOF SURVEY UNDER

Application No. 42,541 Permit No. 31,795
 IN NAME OF

BRUCE S. & VIRGINIA A. TOPHAM

Surveyed OCT. 28, 1974, by R. MUCKEN
APR. 12, 1978 D. E. KNAUER

Claim # 117
 L. Jun 1
 10-27-98

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WIP FILE PAGE

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