

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE STATE OF OREGON  
WATER RESOURCES DEPARTMENT

**COPY**

**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 and The Klamath  
Tribes;

Contestants,

**STIPULATION TO RESOLVE  
CONTESTS**

Case No. 240

Claim No. 234

Contests 3736 and 4201

vs.

Robert Rathborne,

Claimant.

The Oregon Water Resources Department (hereinafter "OWRD"), Claimant  
Robert Rathborne (hereinafter "Claimant"), and Contestant the United States of America  
(hereinafter "United States"), hereby agree and stipulate as follows:

**A. STIPULATED FACTS**

1. On January 31, 1991, the Claimant's predecessor, Wilbur Crim, a Klamath Indian, filed Claim 234 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 234.
3. The following contests were filed to Claim 234: Contest 3736, was filed by the United States (hereinafter "Contestant"); and Contest 4201 was filed by the Klamath Tribes and was voluntarily withdrawn on March 1, 2004.

4. Claimant, Contestant, and OWRD agree that Contest 3736 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

**B. TERMS AND PROVISIONS**

1. Claimant, Contestant, and OWRD agree that Claim 234 should be approved by the Adjudicator as described below:

POINT OF DIVERSION LOCATION:

Lot 2 (NE ¼ NE ¼ ), Section 30, Township 35 South, Range 7 East, W.M.

SOURCE: Williamson River, tributary to Upper Klamath Lake

USE: Irrigation of 8.7 acres.

AMOUNT ACTUALLY BENEFICIALLY USED: 0.22 cubic feet per second (cfs) measured at the point of diversion.

DUTY: 3.5 Acre-Feet/Acre/Year.

IRRIGATION PERIOD OF USE: March 1 through October 16.

PRIORITY DATE: October 14, 1864.

PLACE OF USE:

LOT 2 (NE ¼ NE ¼)	8.5	ACRES IRRIGATION
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LOT 9 (NE ¼ NE ¼)	0.2	ACRES IRRIGATION
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SECTION 30

TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M.

The place of use is shown more particularly on the map attached hereto as Exhibit 1, which is incorporated by reference as if set forth fully herein.

2. Claimant, Contestant, and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contest 3736 has been satisfactorily resolved, and such

resolution ends the need for further proceedings before the Administrative Law Judge on these contests to Claim 234.

3. Based on the Stipulation of Claimant, Contestant, and OWRD that Claim 234 and the Contest thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 234 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 234 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 234 does not conform to the terms set forth in paragraph B.1., above, Claimant and Contestant reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 234 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 234.

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, 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. 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.

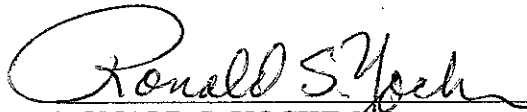
11. The Parties agree to bear their own costs and attorneys' fees.

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

STIPULATED, AGREED AND APPROVED BY:

CLAIMANT ROBERT RATHBORNE:

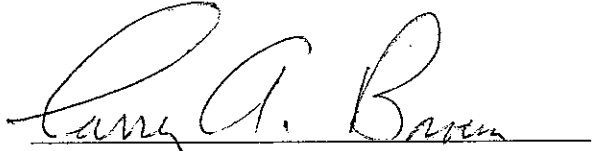
Dated: ~~August~~ <sup>Sept</sup> 16, 2004



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FOR CONTESTANT, THE UNITED STATES OF AMERICA:

Dated: August 20~~th~~, 2004

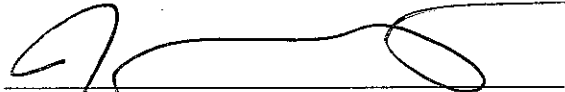


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FOR THE OREGON WATER RESOURCES DEPARTMENT:

HARDY MEYERS  
Attorney General

Dated: ~~August~~ <sup>October</sup> 12, 2004



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Dated: ~~August~~ <sup>October</sup> 12, 2004



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