

**BEFORE THE HEARING OFFICER PANEL
FOR THE STATE OF OREGON
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;

**STIPULATION TO RESOLVE
CONTESTS**

Contestants

Case No. 100

vs.

Claim No. 1

Lawrence Iverson and Marjorie Iverson;

Contests 3708, 4064

Claimants

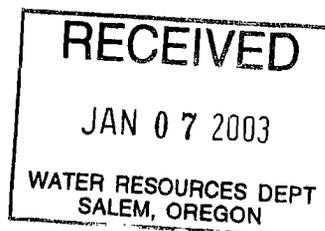
Contestants, the United States of America ("United States") and the Klamath Tribes ("Tribes") (the United States and the Tribes collectively referred to as "Contestants"), Claimants, Lawrence and Marjorie Iverson ("Claimants"), and the Oregon Water Resources Department ("OWRD") hereby agree and stipulate, and request the Adjudicator to resolve the above-captioned claim and contests, as follows.

A. STIPULATED FACTS

1. On November 16, 1990, Claimants filed Claim No. 1 for an unspecified amount of water, based on natural sub-irrigation of pasture, for a claimed period of use of March 1 through November 1, and a claimed priority date of "prior to 1909" (the "Claim").

2. On October 4, 1999, the Adjudicator, Richard D. Bailey, issued a Preliminary Evaluation of the Claim, recommending approval of a pre-1909 right in the amount of 3.47 cfs, for irrigation of 138.7 acres, with a period of use of March 1 through October 31, and a priority date of December 31, 1899.

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3. On May 4, 2000, the United States filed Contest No. 3708 to the Claim and to the Preliminary Evaluation of the Claim.

4. On May 4, 2000, the Tribes filed Contest No. 4064 to the Claim and to the Preliminary Evaluation of the Claim.

5. Claimants did not file a Contest to the Adjudicator's Preliminary Evaluation of the Claim.

6. Contestants assert that use of water provided through natural sub-irrigation does not constitute an appropriation of water and thus a water right, although such use may be recognized as a privilege if other elements, including the intent to beneficially use such water as of the claimed priority date and construction of a diversion within a reasonable period of time can be established.

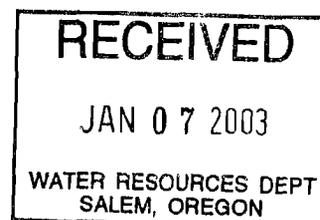
7. Contestants do not believe that Claimants can establish the necessary elements to establish an appropriation of water prior to 1909 or the perfection of a privilege to continue the claimed use.

8. With respect to the Preliminary Evaluation of the Claim, Contestants do not believe that the evidence supports the Adjudicator's finding of a December 31, 1899, priority date.

9. Nonetheless, Contestants are willing to resolve their Contests to the Claim and the Preliminary Evaluation of the Claim based on the clarifications and limitations concerning the scope of the privilege to continued use of natural sub-irrigation described below.

10. Claimants are willing to clarify and limit the scope of the privilege to continued use of natural sub-irrigation as described below in order to resolve the Contests filed by Contestants.

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B. TERMS OF STIPULATION

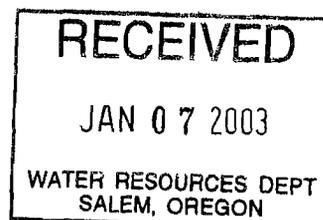
1. Clarifications and Limitations Concerning Scope of Privilege to Continued Use of Natural Sub-Irrigation. Claimants agree to accept the amount of beneficial use, place of use and period of use set forth in the Adjudicator's Preliminary Evaluation of the Claim and to limit the use of water to be recognized by providing that it constitutes a privilege to continue to accept the natural sub-irrigation of the 138.7 acres of pasture identified in the Adjudicator's Preliminary Evaluation of the Claim, and further provided that: (a) the privilege to so use water does not constitute a water right and cannot be asserted to curtail water rights through the priority system; (b) the privilege to so use water cannot be transferred to any other property; and (c) the privilege to so use water cannot be altered by the use of any physical means to change the manner in which the natural sub-irrigation occurs, to contain or further distribute water or to increase in any other way the consumption that takes place from the natural sub-irrigation, and that any such alteration shall require the filing of an application for permit to appropriate water from the Oregon Water Resources Department, the priority date of which shall be, in accordance with ORS 537.150(2), the date of the filing of the application.

2. Request that Adjudicator Limit Approval of the Claim. Claimants and Contestants agree and request the Adjudicator to limit his approval of the Claim as described in paragraph 1 above, to include the following findings of fact and conclusion in the Adjudicator's Order of Determination:

FINDINGS OF FACT:

- a. Point of Diversion Location: No point of diversion exists
- b. Source: Jack Creek, tributary to Klamath Marsh
- c. Use: Irrigation of 138.7 acres

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- d. Amount Actually Beneficially Used: 3.47 cubic feet per second
- e. Period of Use: March 1 - October 31
- f. Priority Date: None – the privilege to continue to accept the natural sub-irrigation of the 138.7 acres of pasture recognized herein does not constitute a water right and cannot be asserted to curtail water rights through the priority system

g. Place of Use:

NW1/4SW1/4	10.6 acres irrigation
SW1/4SW1/4	4.2 acres irrigation
SE1/4SW1/4	21.3 acres irrigation
SW1/4SE1/4	9.0 acres irrigation

Section 13, Township 27 South, Range 9 East, W.M.

NE1/4NE1/4	13.8 acres irrigation
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Section 24, Township 27 South, Range 9 East, W.M.

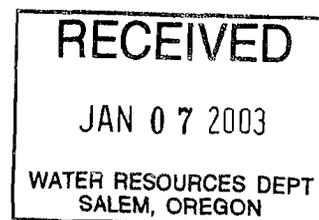
NE1/4NW1/4	27.9 acres irrigation
NW1/4NW1/4	35.5 acres irrigation
SE1/4NW1/4	16.4 acres irrigation

Section 19, Township 27 South, Range 10 East, W.M.

CONCLUSION:

The claim is approved only as a privilege to continue to accept the natural sub-irrigation of the 138.7 acres of pasture identified above, and further provided that:

- a. the privilege to so use water does not constitute a water right and cannot be asserted to curtail water rights through the priority system;
- b. the privilege to so use water cannot be transferred to any other property; and
- c. the privilege to so use water cannot be altered by the use of any physical means to modify the manner in which the natural sub-irrigation occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from the natural sub-irrigation, and that any such alteration shall require the filing of an application for permit to appropriate water from the Oregon Water Resources Department, the priority date of which shall be, in accordance with ORS 537.150(2), the date of the filing of the application.



3. Resolution of Claim and Contests Without Need for Hearing. Claimants, Contestants and OWRD agree that this stipulation will satisfactorily resolve Contests 3708 and 4064 and eliminate the need for a hearing before the Hearing Officer on the Claim and Contests.

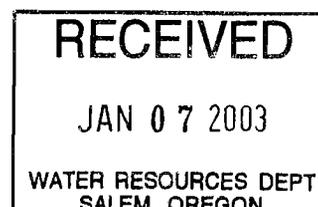
4. Recommendations of OWRD Adjudication Staff that Adjudicator Withdraw Referral from Hearing Officer Panel. Based on the agreement of Claimants and Contestants that these contests can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that he withdraw the referral of Claim 1 from the Hearing Officer Panel.

5. Recommendation of OWRD Adjudication Staff that Adjudicator Enter an Order of Determination Approving and Limiting Claim in Accordance with Paragraphs B.1. and B.2. Based on its review of the record in this case, OWRD adjudication staff hereby recommends to the Adjudicator that he enter an Order of Determination approving and limiting the Claim in accordance with the terms of paragraphs B.1. and B.2. above.

6. Further Participation by Contestants. If the Order of Determination issued by the Adjudicator does not follow the request of Claimants and Contestants and the recommendation of OWRD adjudication staff that the Claim be approved and limited in accordance with the terms of paragraphs B.1. and B.2. above, Contestants reserve the right to file exceptions to the Order of Determination as to the Claim in the Circuit Court for Klamath County and reserve the right to participate in any other future proceedings authorized by law.

7. Stipulation Not to be Used Against Parties. This Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement. Nothing in this Stipulation, including the agreement to resolve the Claim and contests without the need for a hearing, or any offers or compromises

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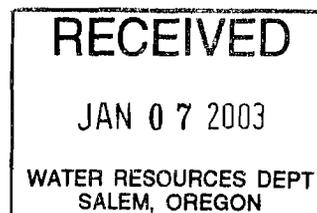
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made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence or used in any other manner in any proceeding, including in this adjudication, other than for interpretation or enforcement of this Stipulation or for a purpose contemplated by Oregon Rule of Evidence 408.

8. Post-1909 Water Rights. Nothing in this Stipulation shall affect any valid existing permit or certificate to appropriate water for use on the claimed lands.

9. Non-Severability. The terms of this Stipulation are non-severable.

10. Stipulation Binding on Successors, Heirs and Assigns. This Stipulation shall bind and inure to the benefit of successors, heirs and assigns of the parties.



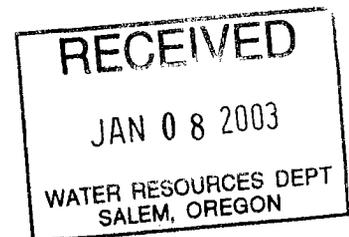
THOMAS L. SANSONETTI
Assistant Attorney General

DATED: January 6, 2003

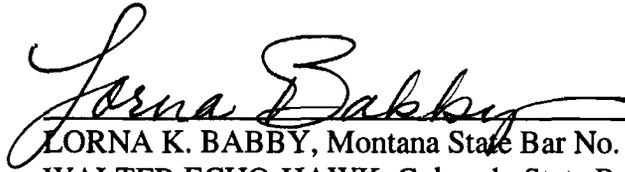


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DATED: January 6, 2003

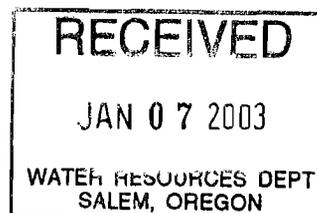


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ATTORNEYS FOR THE KLAMATH TRIBES

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DATED: January 11, 2003

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DATED: January 16, 2003

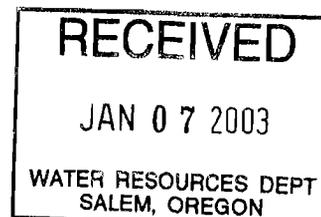

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