

BEFORE THE HEARINGS OFFICER PANEL
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; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady Ditch Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Company; 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; Berlva Prichard; Don Vincent; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC;
Contestant(s)

STIPULATION TO RESOLVE CONTESTS
4065, 3380, AND 3709

Case No. 101

Claim(s): 2

Contest(s): 4065, 3380, 3709

vs.

James Schelhaas,
Helen Schelhaas;
Claimant(s)

The United States of America (the "United States"), the Klamath Tribes (the "Tribes"), and Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady Ditch Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Company; Malin Irrigation District; Midland

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District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Modoc Lumber Co.; Bradley S. Luscombe; Berlva Pritchard; Don Vincent; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; Collins Products, LLC, (collectively referred to as Klamath Project Water Users (“KPWU”)) and the Oregon Water Resources Department (“OWRD”), do hereby agree and stipulate, and request the Adjudicator to resolve the above-captioned claim and contests, as follows:

STIPULATION TO RESOLVE CONTESTS

A. STIPULATED FACTS

- I. On December 24, 1990, (“Claimant”) submitted a Statement and Proof of Claim (“claim 2”) to OWRD for a total of 2.0 cubic feet per second of “natural overflow” from Jack Creek, tributary of the Williamson River, for irrigation of 218.4 acres. The claimed priority date is “prior to 1909.”
- II. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of claim 2 stating that the best information available indicates that no intent to utilize the natural overflow existed prior to February 24, 1909. The Preliminary Evaluation further stated that the record does not establish that there was use of water, an intent to use water, or construction of works for the application of water prior to February 24, 1909. The Preliminary Evaluation thus preliminarily denied claim 2.
- III. On May 4, 2000, KPWU filed contest 3380 to claim 2.
- IV. On May 4, 2000, the United States filed contest 3709 to claim 2.

- V. On May 4, 2000, the Tribes filed contest 4065 to claim 2.
- VI. The Claimant did not file a contest to the preliminary denial of his claim by the Adjudicator in the Preliminary Evaluation.
- VII. The contests filed to claim 2 by KPWU, the United States and the Tribes (“Contestants”) concurred with the Adjudicator’s Preliminary Evaluation preliminarily denying claim 2 and asserted that the Adjudicator should deny the claim in its entirety.
- VIII. On June 11, 2002, the Claimant was sent notice of this stipulation by certified mail with return receipt requested. This notice informed the claimant that if he/she did not object on or before July 2, 2002, then this stipulation would be executed by the parties herein, and the Adjudicator would withdraw this case from the Hearing Officer Panel. On June 17, 2002, OWRD received the returned receipt mail card signed by the Claimant. Claimant failed to object by the July 2, 2002, deadline stated in the notice.
- IX. OWRD and Contestants agree that Contests 3380, 3709 and 4065 can be resolved without the need for a hearing based on the terms described below.

B. TERMS OF THE AGREEMENT

1. Although certain Contestants continue to dispute that natural overflow or sub-irrigation provides the basis for a valid water right claim and reserve the right to assert that position, OWRD and the Contestants agree that the Adjudicator’s entry of a Final Order of Determination denying claim 2 will satisfactorily resolve contests 3380, 3709 and 4065 and vitiate the need for a hearing before the Hearing Officer on this claim.
2. Based on the agreement of OWRD 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 2 from the Hearing Officer Panel.

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3. Based on its review of the record in this case, OWRD adjudication staff hereby recommends to the Adjudicator that he enter a Final Order of Determination denying claim 2 on the basis that the record does not establish that the intent to utilize the natural overflow existed prior to February 24, 1909, and that the record does not establish that there was use of water, an intent to use water, or construction of works for the application of water prior to February 24, 1909, and that, therefore, the elements required to establish a pre-1909 use are not present for claim 2.

4. If the Final Order of Determination issued by the Adjudicator for claim 2 does not follow the recommendation of OWRD adjudication staff that the claim be denied, as set forth in the preceding paragraph (paragraph 3), Contestants reserve the right to file exceptions to the Final Order of Determination as to claim 2 in the Circuit Court for Klamath County and reserve the right to participate in any other future proceedings authorized by law.

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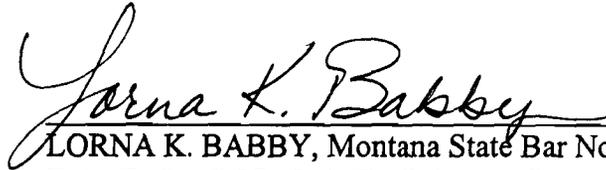
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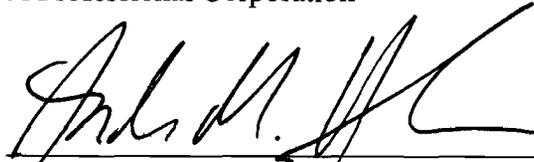
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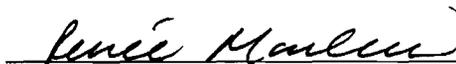
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CERTIFICATE OF SERVICE

I certify that on September 12, 2002, I served a true and correct copy of the STIPULATION TO RESOLVE CONTESTS 4065, 3380, AND 3709, with sufficient first-class postage prepaid to the following:

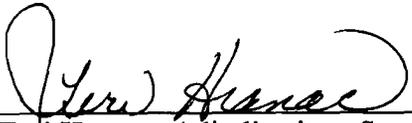
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