

**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**

v.

Case No. 177

Claim No. 33

Dayton O. Hyde; Gerda V. Hyde,
Claimants.

Contests 2823,¹ 3730, and 4089

Claimants Dayton and Gerda Hyde ("Claimants"), Contestant United States, and Contestant Klamath Tribes ("Tribes")², collectively referred to as the "Parties," and the Oregon Water Resources Department ("OWRD"), stipulate and agree as follows.

A. STIPULATED FACTS

1. On January 24, 1991, Claimants filed Claim 33 with OWRD. Claim 33 involves water rights claims at and near the headwaters of the Williamson River.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 33, preliminarily approving the claim generally as claimed.
3. The following contests were filed against Claim 33: Contest 2823 filed by WaterWatch of Oregon, Inc., such contest being voluntarily withdrawn on April 8, 2003;

¹ On April 8, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2823, without prejudice.

² Contestant WaterWatch of Oregon was dismissed from these proceedings by Order dated May 20, 2003. WaterWatch withdrew its contest 2823 in this case on April 8, 2003. Accordingly, WaterWatch and its contest 2823 are not involved in this Stipulation.

Contest 3730 filed by the United States, and Contest 4089 filed by the Tribes. The United States and Tribes are jointly referred to herein as "Contestants."

4. Claimants, Contestants, and OWRD agree that Claim 33 and Contests 3730 and 4089 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. (a) Claimants, Contestants and OWRD agree that Claim 33 should be approved by the Adjudicator as described below.

POINTS OF DIVERSION LOCATION:

POD #5 – "House Spring" Spring-fed channel tributary to Williamson River:
SW ¼ NW ¼, Section 9, Township 33 South, Range 11 East, W.M.

POD #6 - spring-fed channel, headwaters of the Williamson River:
SW ¼ SW ¼, Section 4, Township 33 South, Range 11 East, W.M.

POD #7 - Williamson River tributary to Upper Klamath Lake:
LOT 1 NE ¼ NE ¼, Section 5, Township 33 South, Range 11 East, W.M.

POD #8 - Williamson River tributary to Upper Klamath Lake:
NW ¼ SE ¼, Section 29, Township 32 South, Range 11 East, W.M.

SOURCE: Springs, tributary to Williamson River, and Williamson River, tributary to Upper Klamath Lake; sources are commingled.

USE: irrigation of 953.1 acres.

DIVERSION RATE: Not to exceed a total rate of 23.83 cubic feet per second, measured jointly at all points of diversion, and also subject to the terms of Section B.1.(b) below.

DUTY: Not to exceed 3.1 acre feet per acre per year total from all diversion points.

PERIOD OF USE: April 1 - October 31.

PRIORITY DATE: October 14, 1864.

PLACE OF USE:

NW ¼ SE ¼	14.6	ACRES IRRIGATION
SW ¼ SE ¼	37.6	ACRES IRRIGATION

Dayton O. Hyde et al (177)

STIPULATION TO RESOLVE CONTESTS 2

SE ¼ SE ¼ 6.4 ACRES IRRIGATION
SECTION 29
TOWNSHIP 32 SOUTH, RANGE 11 EAST, W.M.

NE ¼ NE ¼ 9.6 ACRES IRRIGATION
NW ¼ NE ¼ 40.0 ACRES IRRIGATION
SW ¼ NE ¼ 38.4 ACRES IRRIGATION
SE ¼ NE ¼ 4.0 ACRES IRRIGATION
NE ¼ NW ¼ 39.2 ACRES IRRIGATION
NW ¼ NW ¼ 8.8 ACRES IRRIGATION
SW ¼ NW ¼ 15.2 ACRES IRRIGATION
SE ¼ NW ¼ 40.0 ACRES IRRIGATION
NE ¼ SW ¼ 37.6 ACRES IRRIGATION
NW ¼ SW ¼ 0.8 ACRES IRRIGATION
SE ¼ SW ¼ 39.2 ACRES IRRIGATION
NW ¼ SE ¼ 31.2 ACRES IRRIGATION
SW ¼ SE ¼ 38.4 ACRES IRRIGATION
SE ¼ SE ¼ 0.8 ACRES IRRIGATION

SECTION 32
TOWNSHIP 32 SOUTH, RANGE 11 EAST, W.M.

NW ¼ SW ¼ 16.0 ACRES IRRIGATION
SW ¼ SW ¼ 29.6 ACRES IRRIGATION
SECTION 4
TOWNSHIP 33 SOUTH, RANGE 11 EAST, W.M.

LOT 1 NE ¼ NE ¼ 12.8 ACRES IRRIGATION
LOT 2 NW ¼ NE ¼ 39.7 ACRES IRRIGATION
SW ¼ NE ¼ 40.0 ACRES IRRIGATION
SE ¼ NE ¼ 23.2 ACRES IRRIGATION
Lot 3 NE ¼ NW ¼ 31.2 ACRES IRRIGATION
SE ¼ NW ¼ 33.6 ACRES IRRIGATION
NE ¼ SW ¼ 38.2 ACRES IRRIGATION
NW ¼ SW ¼ 7.2 ACRES IRRIGATION
SE ¼ SW ¼ 11.2 ACRES IRRIGATION
NE ¼ SE ¼ 40.0 ACRES IRRIGATION
NW ¼ SE ¼ 30.4 ACRES IRRIGATION
SW ¼ SE ¼ 12.6 ACRES IRRIGATION
SE ¼ SE ¼ 40.0 ACRES IRRIGATION

SECTION 5
TOWNSHIP 33 SOUTH, RANGE 11 EAST, W.M.

NE ¼ NE ¼ 40.0 ACRES IRRIGATION
NW ¼ NE ¼ 20.8 ACRES IRRIGATION

SW ¼ NE ¼ 20.0 ACRES IRRIGATION
SE ¼ NE ¼ 40.0 ACRES IRRIGATION
SECTION 8
TOWNSHIP 33 SOUTH, RANGE 11 EAST, W.M.

NW ¼ NW ¼ 14.4 ACRES IRRIGATION
SW ¼ NW ¼ 10.4 ACRES IRRIGATION
SECTION 9
TOWNSHIP 33 SOUTH, RANGE 11 EAST, W.M.

The places of use for all points of diversion are shown more particularly on the map attached hereto as Exhibit 1, which is incorporated herein by reference. The parties agree and stipulate that the United States and HKM Engineering, Inc., shall be released and held harmless from loss, injury, damage, and/or reduction in value of land and/or the associated water rights that may in any way be connected to the attached map.

(b) The exercise of the water right described herein is subject to maintaining a flow of at least one-half of the total flow in the Williamson River upstream of the current north boundary of Claimants' property, such boundary being approximately the north edge of the South ½ of the NW ¼, Section 17, T. 32 S, R 11 E, W.M. For the purposes of this condition, this flow shall be deemed to be met based upon the following principles, measurements and calculations:

The total flow at the Head of the Williamson River (located at the SW¼ SW¼, Section 4, Township 33 South, Range 11 East, W.M.) will be determined by adding the flow in the Upper Williamson channel (as measured in the SW¼ SW¼, Section 4, Township 33 South, Range 11 East, below the dam located in that quarter-quarter) to the sum of all diversions from the pool above the dam at that location. The minimum flow to be maintained is one-half that total.

The flow to be maintained at Wickiup Dam will be determined by adding the flow at the Head of the River (located at the SW¼ SW¼, Section 4, Township 33 South, Range 11 East, W.M.) as described above, to the flow at Farnsworth Spring. The flow to be maintained at Wickiup Dam is one-half that total.

(c) Claimants' use of their water right upstream of the current north boundary of Claimants' property, such boundary being approximately the north edge of the South ½ of the NW ¼, Section 17, T. 32 S, R 11 E, W.M., will not be curtailed in favor of any senior water right now held or later acquired by the United States or the Klamath Tribes. The United States and the Klamath Tribes agree that they will not place any call on the Williamson River that will result in the curtailment of Claimants' use of water in excess of the principles set forth in paragraph B.1.(b), above. To ensure implementation of this provision, the United States and the Klamath Tribes hereby request that the Adjudicator's Findings of Fact and Order of Determination place a condition implementing the principles set forth in paragraph B.1.(b), above, thereby preventing exercise, upstream of the current north boundary of Claimants' property, such boundary being approximately the north edge of the South ½ of the NW ¼, Section 17, T. 32 S, R 11 E, W.M of any rights adjudicated in favor of the United States on behalf of the Klamath Tribes in Claim No. 633. The United States and the Klamath Tribes also request that the same provision be placed on any rights adjudicated in favor of the Klamath Tribes with respect to the that portion of the Klamath Tribes' Claim No. 612 that incorporates Claim 633 filed by the United States on behalf of the Klamath Tribes.

(d) Claimants and Contestants anticipate that it will be unnecessary to invoke the provisions of paragraph B.1.(b), above, due to the Conservation Easement discussed below and attached hereto as Exhibit 2. However, to the extent that one or more of the Parties determines that regulation of the river is necessary, such regulation will be conducted subject to the availability of the watermaster to carry out this work. In the event more frequent or precise management is desired by the parties than, provided by

the watermaster for other water rights, such additional work shall be carried out by an Assistant Watermaster appointed pursuant to and acting in accordance with all statutes and rules governing Assistant Watermasters and subject to the availability of appropriated funds.

(e) Claimants agree to grant to the Tribes a Conservation Easement on the property above the boundary described in paragraph B.1.(b). Such Conservation Easement will be on terms agreed to by the Claimants and the Tribes, and will be recorded in the property records of Klamath County. The Easement will incorporate and be premised on holistic management in developing upland, riparian and water management programs for the involved lands. Management under the Easement may bring about stream flows other than those minimum flows described herein. Management under the Easement may not cause water use in excess of the parameters of Claimants' water right described in Section B.1.(a) above. Enforcement of any provision of the Conservation Easement will be done through proceedings under the Easement itself, and will not be cause for filing exceptions in the Circuit Court to the Adjudicator's findings of fact and order of determination. The Conservation Easement is attached to this Stipulation as Exhibit 2.

(f) Claimants also hold Water Right Certificates Nos. 37002 and 8615. Claimants do not intend to exercise their water rights under these Certificates in a manner so as to cause depletion of water in the Williamson River in amounts greater than those identified in paragraph B.1.(b). To ensure that such a result does not occur, Claimants hereby file Affidavits of Diminution with OWRD, and request that Certificate Nos.

37002 and 8615 be diminished in accordance therewith. These Affidavits of Diminution are attached hereto as Exhibit 3.

(g) Claimants also agree that they will not exercise any water rights that they may hereafter acquire or receive in such a manner so as to cause depletion of water in the Williamson River in amounts greater than those identified in paragraph B.1.(b). To ensure that such a result does not occur, claimants hereby agree to make appropriate requests to OWRD to place conditions on such right(s) necessary to prevent such exercise.

2. The Parties agree that under the terms and provisions of this Stipulation, the Contests have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on the Contests.

3. Based on the Stipulation of the Parties that Claim 33 and the Contests can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 33 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 33 be approved in the Findings of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of Section B.1 above.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 33 does not conform to the terms set forth in paragraph B.1, above, the Parties reserve any rights they may have to file exceptions to the Findings of Fact and Order of Determination as to Claim 33 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 33.

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, or in any other proceeding.

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 for 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 and expenses.

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

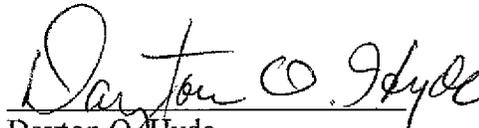
IN WITNESS WHEREOF, the Parties have hereunto set their hands on the dates indicated:

For Claimants:

Dated: 2-8-05



Gerda Hyde
Box 371
Chiloquin, OR 97624



Dayton O. Hyde

For the United States:

Dated: _____

Larry Brown
Natural Resources Section
Environment & Nat'l Res's Division
U.S. Department of Justice
Box 663
Ben Franklin Station
Washington, D.C 20044-0663

David Harder
Indian Resources Section
Environment & Nat'l Res's Division
U.S. Department of Justice
999 18th, Suite 945

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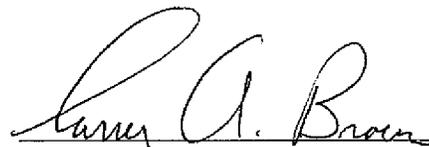
Dated: _____

Gerda Hyde
Box 371
Chiloquin, OR 97624

Dayton O. Hyde

For the United States:

Dated: 02/07/2005


Larry Brown
Natural Resources Section
Environment & Nat'l Res's Division
U.S. Department of Justice
Box 663
Ben Franklin Station
Washington, D.C 20044-0663

David Harder
Indian Resources Section
Environment & Nat'l Res's Division
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For Claimants:

Dated: _____

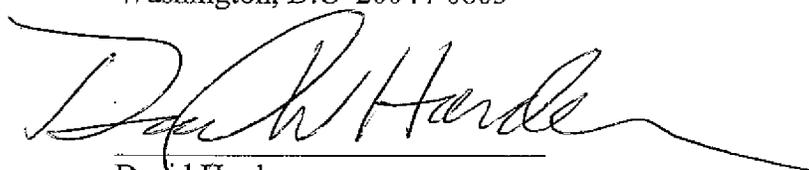
Gerda Hyde
Box 371
Chiloquin, OR 97624

Dayton O. Hyde

For the United States:

Dated: February 4, 2005

Larry Brown
Natural Resources Section
Environment & Nat'l Res's Division
U.S. Department of Justice
Box 663
Ben Franklin Station
Washington, D.C 20044-0663



David Harder
Indian Resources Section
Environment & Nat'l Res's Division
U.S. Department of Justice
999 18th, Suite 945

Denver, CO 80202

For the Klamath Tribes:

Dated: 2/2/5

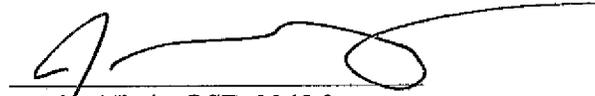

Allen Foreman, Chairman
Box 436
Chiloquin, OR 97624

Dated: 2/8/5


Carl Ullman
Water Adjudication Project
The Klamath Tribes
Box 436
Chiloquin, OR 97624

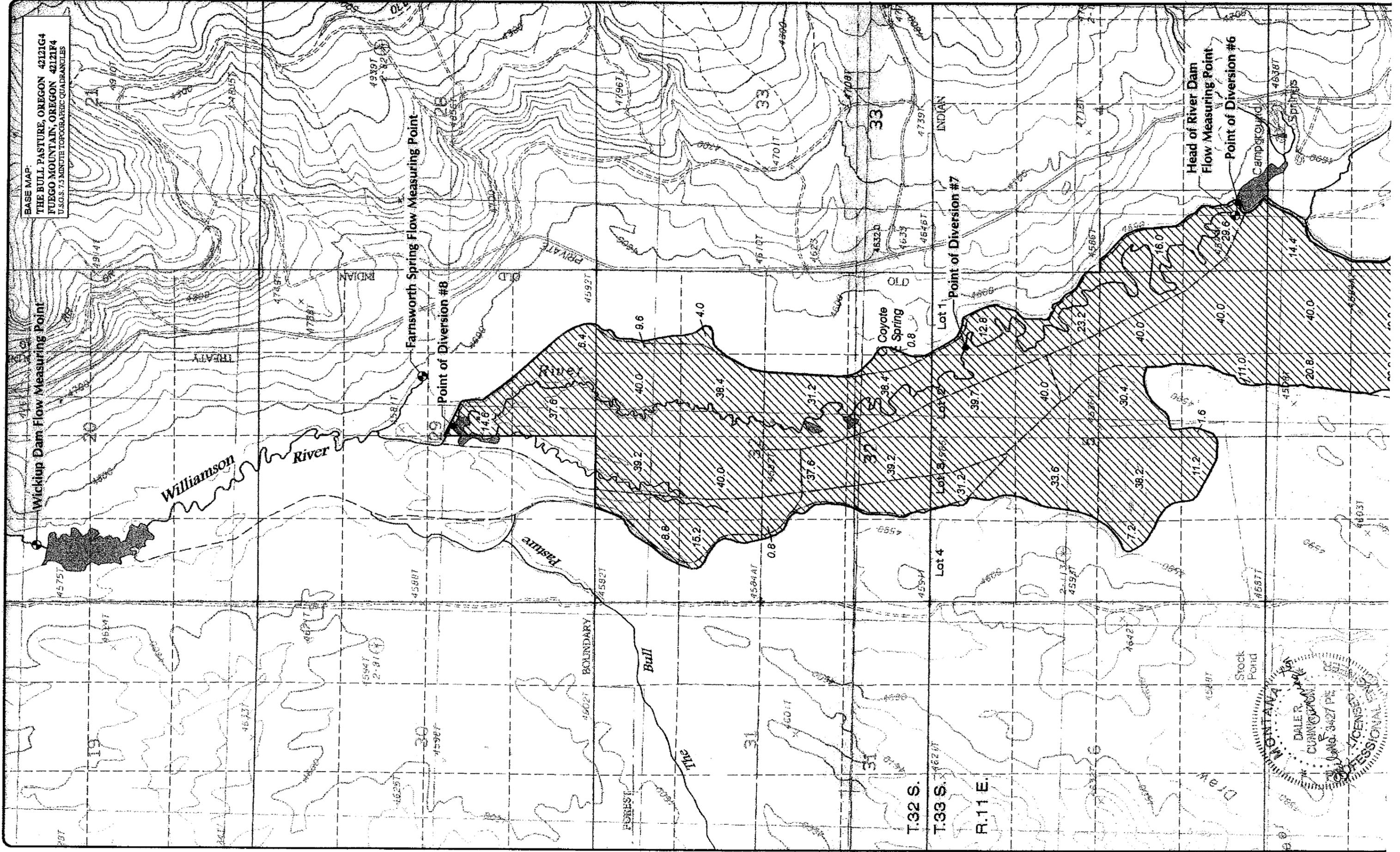
For the Oregon Water Resources Department:

Dated: 2/15/05


Justin Wirth, OSB 00426
Walter Perry OSB 83361
Assistant Attorneys General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096


Michael Reynolds
Oregon Water Resources
Department
725 Summer Street, NE, Suite A
Salem, OR 97301-1217

BASE MAP:
THE BULL PASTURE, OREGON 42121G4
FUEGO MOUNTAIN, OREGON 42121F4
U.S.G.S. 7.5 MINUTE TOPOGRAPHIC QUADRANGLES



MONTANA
DALE R. CUNNINGHAM
Professional Engineer
No. 3427 PE
LICENSED PROFESSIONAL ENGINEER

DEED OF CONSERVATION EASEMENT

This Grant Deed of Conservation Easement ("Easement") is made by Dayton O. and Gerda V. Hyde ("Grantor"), having an address of Box 371, Chiloquin, Oregon 97624, in favor of The Klamath Tribes, having an address of 501 Chiloquin Boulevard, Box 436, Chiloquin, Oregon 97624 ("Grantee"). Grantors and Grantee are collectively referred to herein as the Parties.

1. RECITALS

- 1.1 Grantor is the owner of the Yamsi Ranch in Klamath County, Oregon. Grantor has filed a water rights claim in the Klamath Basin Adjudication, being conducted by the Oregon Water Resources Department, for the irrigation of certain lands within Yamsi Ranch. Several miles of the Williamson River, and tributaries to the River, flow across the Ranch. Grantor uses the Ranch primarily for ranching and as a fishing resort. In addition to these uses, Grantor has for many years sought to manage the Ranch in a way that enhances its environmental and ecological values, including fishery, water quality, and fish and wildlife habitat values. Grantor employs holistic management methods in their approach to managing the Ranch and the waters thereon and appurtenant thereto.
- 1.2 Grantee is a federally recognized Indian tribe, and holds certain hunting, fishing, gathering and water rights in Klamath County, Oregon and elsewhere. Grantee has filed claims for water rights on the Williamson River and certain of its tributaries in the Klamath Basin Adjudication, and has filed contests against the claims of Grantor. Grantee has a vital interest in the environmental and ecological values of the Williamson River and its tributaries.
- 1.3 Grantor and Grantee share several goals regarding the Williamson River and its tributaries. Among these are resolution without litigation of issues in the Klamath Basin Adjudication, preservation of Grantor's ability to make a living at Yamsi Ranch, and improvement of water quality (including temperature), fish and wildlife habitat, and stream health on the Williamson River and its tributaries at and around the Ranch. The Parties also desire to work together using holistic management and adaptive management techniques in pursuit of these, and other mutually agreed upon, goals.
- 1.4 The Parties recognize the need to establish water management plans to provide for the diversion of water required by Grantor to meet irrigation needs, while preserving instream flows needed to promote aquatic values. In particular, the Parties recognize that there must be a regular process for determining water allocation, at and around the Ranch, within the legally recognized water rights of each of the Parties.
- 1.5 This Easement is intended by the Parties to significantly advance these shared goals by providing a foundation for resolution of Grantor's claims and Grantee's contests in the

Adjudication and establishing a context and a process for the Parties to work together in developing holistic management structures for the enhancement of the values discussed above.

2. CONVEYANCE AND CONSIDERATION

- 2.1 For the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Oregon, Grantor hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Grantee a Conservation Easement in gross in perpetuity over that portion of Yamsi Ranch described in Attachment A hereto and referred to herein as the Property, subject only to the restrictions set forth herein and any title matters of record as of the Effective Date of this Easement.
- 2.2 This conveyance is a conveyance of an interest in real property under the provisions of ORS § 93.010.
- 2.3 Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's and Grantee's successors and assigns.

3. PURPOSE

- 3.1 General purposes.
 - 3.1.1 The general purpose of this Easement is to further, and to balance, two goals at and around the Ranch and the Williamson River and its tributaries. One goal is the protection of Grantor's ability to continue to make a livelihood at Yamsi Ranch. The other goal is the protection, enhancement and improvement of environmental and ecological values of the Williamson River and its tributaries appurtenant to the Ranch.
 - 3.1.2 The Parties agree that they want to, and must, work together if they are to successfully achieve and balance the two goals described above. One purpose of this Easement is to establish that collaboration.
 - 3.1.3 The Parties agree that their knowledge is incomplete so they do not fully understand what steps they should take to pursue and balance the goals described above. As a result, a purpose of this Easement is to establish structures and mechanisms for determining management techniques on the Property and appurtenant waters that will assist the Parties in determining such steps and in implementing them.
- 3.2. Specific purposes.
 - 3.2.1 Structure: This Easement is to provide a structure in which the Parties will work together as described below, guided by holistic management principles.

- 3.2.2 Product: Under this Easement the Parties will develop and implement Riparian Corridor and Water Management Plans for the management of water and associated resources as necessary and appropriate within the water rights held by the Parties.
- 3.2.3 Avoiding default outcome: The Parties acknowledge that in the absence of a Riparian Corridor and Water Management Plan developed and implemented under this Easement, diversion limitations and stream flows will be in quantities defined by the Klamath Basin Adjudication and manifest in the water rights decreed to the Grantor; this default allocation will be generally a 50-50 split of the natural flow between irrigation diversions and instream flows at and near the Property. The Parties agree this is not a desirable outcome, so a purpose of this Easement is to bring about a better water allocation (as well as improved management in the riparian corridor) that is agreed to by the Parties and is within the limits of the water rights held by the Parties.

4. MECHANISMS AND STRUCTURES

- 4.1 The Parties agree to use their best efforts in good faith to develop a Riparian Corridor and Water Management Plan for Yamsi Ranch ("Plan"). The Plan, and the process of developing the Plan, will use a Holistic Management Model as described in The Essence of Holistic Management by Ann Adams and Jody Butterfield. The Plan may be for a specific period or for an indefinite time, but in any event it will be sufficiently specific to guide management, research and study on the relevant lands. It will address, by way of example and not limitation, the following concepts and management necessities.
- 4.1.1 Livestock, land and water management to maintain/enhance the livelihoods of the Parties, and to maintain/enhance the appropriate ecological structure and function of the Upper Williamson River Valley.
- 4.1.2 The seeking of alternatives to the existing irrigation infrastructure that will provide adequate, efficient irrigation without creating in-river reservoirs.
- 4.1.3 While alternatives to the existing irrigation infrastructure are being sought, and to the extent that viable alternatives are not forthcoming, the need to work with existing irrigation infrastructure, seeking to minimize negative impacts and enhance positive impacts.
- 4.1.4 Collaboratively conducting research and developing tools to reduce uncertainty associated with various management alternatives in identified subject areas.

The Plan will be mindful of, and will attempt to separate effects of, management actions from changes associated with unmanageable (by the Parties) factors like climate, forest management outside Yamsi Ranch, flow changes from springs, etc.

4.2 The Parties will establish a Yamsi Ranch Holistic Management Team composed of three representatives from each Party.

4.2.1 The Team will implement the Holistic Management Model on Yamsi Ranch as agreed to by the Parties.

4.2.2 The Team will meet at least twice a year, once in the late winter or early spring to formulate the annual Plan or to determine that an existing multi-year Plan should be continued, and once in the late fall or early winter to review management results for that year.

4.2.3 Specialists and experts will be involved, as appropriate and agreeable to the Parties, to assist in research, monitoring, grant writing, data analysis and interpretation, report writing, planning, etc.

5. RIGHTS CONVEYED TO GRANTEE

To accomplish the purposes and goals of this Easement, the following rights are conveyed from Grantor to Grantee by this Easement.

5.1. Except as otherwise provided in a currently applicable Riparian Corridor and Water Management Plan, Grantor will maintain at all times in the Williamson River upstream of the current north boundary of Grantor's property, such boundary being approximately the north edge of the South $\frac{1}{2}$ of the NW $\frac{1}{4}$, Section 17, T 32 S, R 11 E, W.M., a minimum flow of at least one-half of the natural flow of the Williamson River at each particular time, such natural flow to be measured at the Head of the River and at Wickiup Dam, and determined as follows:

The natural flow at the Head of the River, below the dam located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 4, T 33 S, R 11 E, W.M., will be determined by adding the flow in the Upper Williamson channel to the sum of all diversions from the pool above the dam at that location. The flow to be maintained is one-half that total.

The natural flow below Wickiup Dam, which is a dam located at SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 20, T 32 S, R 11 E, W.M., will be determined by adding the natural flow at Head of the River (as determined in the preceding paragraph) to the flow at Farnsworth Spring, and dividing that sum by two. The flow to be maintained is one-half that quotient.

5.2 Grantor will conduct activities on the Property that result in diversions of water from the Williamson River, and/or its tributaries appurtenant to the Property, that do not exceed quantities set out in the Riparian Corridor and Water Management Plan developed under this Easement.

- 5.3 Grantor will assure that stream flows in the Williamson River at the Property are in the quantities set out in the Riparian Corridor and Water Management Plan developed under this Easement.
- 5.4 Grantor will not cause or allow development on the Property in a way that will degrade water quality or fish and wildlife habitat below the levels present on the effective date of this Easement, except as agreed to with Grantee in a Riparian Corridor and Water Management Plan.
- 5.5 Grantee shall have the right to prevent, or to cause Grantor to prevent, any use of, or activity on, the Property that is inconsistent with the terms of this Easement or with the provisions of the Riparian Corridor and Water Management Plan.
- 5.6 Grantee shall have the right to enforce the terms of this Easement in accordance with Section 9 below or as otherwise provided for herein.

6. GRANTOR'S RESERVED RIGHTS

- 6.1 Grantor reserves for itself and its successors and assigns, any and all rights not otherwise conveyed to Grantee under this Easement and any and all uses of, or activities on, the Property that are not inconsistent with this Easement. Without limiting the foregoing, Grantor specifically reserves the following uses and activities.
- 6.2 Grantor's water use on and around the Property shall not be restricted or confined in any way, except as provided for in a Riparian Corridor and Water Management Plan and as limited by Grantor's decreed or certificated water rights or other applicable law.
- 6.3 Grantor retains full control over ranching, fishing and other business or recreational activities on the Property, including control over the mechanisms for implementing Riparian Corridor and Water Management Plans.
- 6.4 Nothing in this Easement shall be interpreted as allowing public access to the Property or to the Ranch, or as limiting in any way Grantor's right to determine who may have access to the Property or the Ranch.
- 6.5 Grantor retains complete control over the quantity and type of livestock maintained on the Property and the Ranch, except as otherwise agreed in a Riparian Corridor and Water Management Plan.
- 6.6 Grantor may construct, enlarge and repair any and all improvements, temporary or permanent, on the Property that are consistent with this Easement, including, without limitation, houses, barns, fences, corrals, roads, ditches, pumps, and levees.
- 6.7 Grantor has sole discretion regarding the removal of trees or plants from the Property for purposes of commercial use, pest control, fire control, disease control, restoration, domestic or other use, provided, however, that such removal shall not be undertaken to

such extent as would make it impossible to achieve or maintain the Purposes or goals described herein.

- 6.8 Grantor may undertake activities necessary to protect public health or safety or prevent significant property damage, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity.
- 6.9 Grantor retains responsibility for taxes or other fees levied against the Property, and for liabilities related to the ownership, operation, and maintenance of Yamsi Ranch and the Property.

7. NOTICE, CONCURRENCE AND CONSENT

- 7.1 Whenever in this Easement, in a Riparian Corridor and Water Management Plan, or otherwise, the concurrence or consent of Grantee or Grantor is required, and no other timeline is set forth, the Party seeking concurrence or consent shall provide written notice to the other Party not less than 30 days prior to taking the action as to which concurrence or consent is sought. Such concurrence or consent may be withheld only upon a reasonable determination by the concurring or consenting Party that the action as proposed would be inconsistent with purposes or goals of this Easement or with the Riparian Corridor and Water Management Plan.
- 7.2 When concurrence or consent is required, and when the Party whose concurrence or consent is required does not grant or withhold its concurrence or consent within 15 days after receiving notice as described in this section, the Party requesting concurrence or consent may conclusively assume the other Party's concurrence or consent in the proposed action.
- 7.3 Notwithstanding the above, if Grantor must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's concurrence or consent.
- 7.4 Any notice or communication that either Party desires or is required to give to the other shall be in writing either served personally or sent by first class mail addressed as follows:

To Grantor: Yamsi Ranch
Box 371
Chiloquin, OR 97624

To Grantee: The Chairperson
The Klamath Tribes
Box 436
Chiloquin, OR 97624

8. DISPUTE RESOLUTION

- 8.1 Grantor and Grantee shall meet no less than annually at a date, place and time convenient for both Parties, but not to exceed one business day in duration (unless otherwise agreed), to share information concerning the Property and activities under this Easement. This is in addition to any meetings to develop Riparian Corridor and Water Management Plans or for other purposes, unless the Parties agree that such other meetings satisfy the requirement of this paragraph.
- 8.2 Grantor and Grantee will promptly give the other notice of problems or concerns arising in connections with the other's actions under this Easement, and will meet as needed, but no later than 15 days after receipt of a written request for a meeting, to minimize such problems or concerns.
- 8.3 If the Parties are unable between themselves to resolve a disagreement, they shall appoint a single impartial mediator acceptable to both Parties.
- 8.3.1 The purpose of the mediation is to: (a) promote discussion between the Parties; (b) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; (c) assist the Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the issues. The mediation is not intended to result in any direct or indirect modification or amendment of the terms of this Easement.
- 8.3.2 All information presented to the mediator shall be deemed confidential and may be disclosed by the mediator only with the consent of the Parties. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an admission of a Party.

9. RIGHTS OF ENFORCEMENT

- 9.1 Either Party may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin violation by temporary or permanent injunction, and to recover any damages to which a Party may be entitled. This right belongs only to the Parties and is not available to any third party.
- 9.2 The Parties agree that remedies at law for violation of the terms of this Easement are inadequate and that either Party shall be entitled to injunctive relief as appropriate and necessary to effectuate the Easement.
- 9.3 Nothing in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct or restore any condition on the Property or to recover damages resulting from actions by a trespasser or causes beyond Grantor's control, including, without limitation, climate change, fire, floods, pest infestation and earth movement.

10. AMENDMENT, TRANSFER OR EXTINGUISHMENT

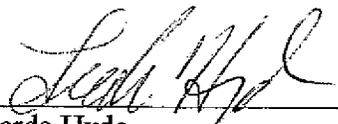
- 10.1 The Parties may amend this Easement at any time by written agreement.
- 10.2 If the Parties agree that circumstances have arisen that render the Purposes and goals of this Easement impossible to accomplish, this Easement can be terminated by written agreement of the Parties. In the absence of such agreement, the Easement can be terminated only by judicial proceedings in a court of competent jurisdiction.
- 10.3 This Easement shall be expressly referred to in any deed or other legal instrument by which Grantor divests itself of, or otherwise transfers, any interest in the Property.

11. GENERAL PROVISIONS

- 11.1 The effective date of this Easement shall be the date on which Grantor signs it.
- 11.2 This Easement shall be liberally construed to accomplish the Purposes and goals set out herein, any general rule of construction to the contrary notwithstanding.
- 11.3 If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions, or the application of such provision to other persons or circumstances, shall not be affected thereby.
- 11.4 This instrument sets forth the entire agreement of the Parties with respect to the Easement, and it supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 11.5 The terms and conditions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, and to any party taking ownership of the Property or any portion thereof.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the dates shown:

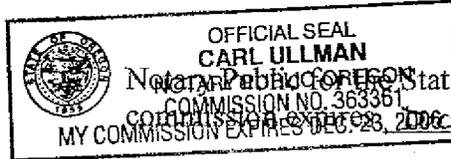
YAMSI RANCH and DAYTON O. AND GERDA V. HYDE, Grantor,

By 
Gerda Hyde

Date 2-8-05

Subscribed before me this 8 day of Feb, 2005

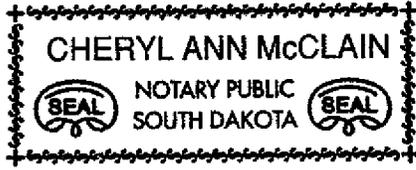




By Dayton O. Hyde
Dayton O. Hyde

Date 2/11/05

Subscribed before me this 11 day of Feb., 2005



Cheryl Ann McClain
Notary Public for the State of So Dakota
My commission expires _____
My commission expires:
September 8, 2006

THE KLAMATH TRIBES, Grantee, does hereby accept the above Grant Deed of Conservation Easement.

By [Signature]

Date 2/8/05

Subscribed before me this 8 day of February, 2004



Carl Ullman
Notary Public for the State of Oregon. My
commission expires 12-23-06

ATTACHMENT A

The land for which this Conservation Easement is granted, called "the Property" in the Conservation Easement documents, is located in Klamath County, Oregon, more specifically described as follows:

S ½ NW ¼
SW ¼
Section 17, T 32 S, R 11 E., W.M.

NE¼ NW¼
NW¼ NW¼
SW¼NW¼
SW¼
Section 20, T 32 S, R 11 E., W.M.

NW¼NE¼
SW¼NE¼
NW¼
SW¼
NW¼SE¼
SW¼SE¼
SE¼SE¼
Section 29, T 32 S, R 11 E., W.M.

NE¼NE¼
Section 31, T 32 S, R 11 E., W.M.

NE¼
NW¼
NE¼SW¼
NW¼SW¼
SE¼SW¼
NW¼SE¼
SW¼SE¼
SE¼SE¼
Section 32, T 32 S, R 11 E., W.M.

NW¼SW¼
SW¼SW¼
Section 4, T 33 S, R 11 E., W.M.

NE¼
NE¼NW¼
SE¼NW¼
NE¼SW¼

NW $\frac{1}{4}$ SW $\frac{1}{4}$
SE $\frac{1}{4}$ SW $\frac{1}{4}$
SE $\frac{1}{4}$

Section 5, T 33 S, R 11 E., W.M.

NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 8, T 33 S, R 11 E., W.M.

NW $\frac{1}{4}$ NW $\frac{1}{4}$
SW $\frac{1}{4}$ NW $\frac{1}{4}$
NW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 9, T 33 S, R 11 E., W.M.

**AFFIDAVIT FOR THE PARTIAL DIMINUTION OF
WATER RIGHT CERTIFICATES**

We, Gerda Hyde and Dayton O. Hyde, being first duly sworn depose and say:

1. We are the legal owners of the property described in water rights certificates 37002 and 8615, as shown in the attached deed and legal description and made part of this affidavit, except for those portions near Sand Creek which we have sold and 12.3 acres owned by the United States. We can be reached at mailing address Box 371, Chiloquin, Oregon, 97624, phone 541 783 2403.
2. We have filed Claim No. 33 in the Klamath Basin Water Rights Adjudication, asserting a right to use water on the property described in paragraph 1, above. Claim No. 33 has been contested by the United States, the Klamath Tribes, and WaterWatch of Oregon. WaterWatch of Oregon's contest was dismissed on April 8, 2003. The United States, the Klamath Tribes and we have reached a Stipulation to resolve their contests to our Claim No. 33.
3. As part of the Stipulation to resolve the United States' and Klamath Tribes' contests to my Claim No. 33 in the Klamath Basin Water Rights Adjudication, we agreed to seek partial diminishment of Water Right Certificate Nos. 37002 and 8615 by having a condition placed upon these certificates so that we cannot use water under these certificates in a manner so as to result in depletion of greater than one half of the flow in the Williamson River, as set forth more specifically in the following paragraph.
4. Therefore, we request that the Water Resources Department place the following condition on Water Right Certificate Nos. 37002 and 8615:

The exercise of the water right described herein is subject to maintaining a flow of at least one half of the total flow at the Head of the Williamson River, upstream of the current north boundary of Certificate holders' property, such boundary being approximately the north edge of the South $\frac{1}{2}$ of the NW $\frac{1}{4}$, Section 17, T. 32 S, R 11 E, W.M. For purposes of this condition, this flow shall be deemed to be met based upon the following principles, measurements and calculations:

The total flow at the Head of the Williamson River (located at the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 4, Township 33 South, Range 11 East, W.M.) will be determined by adding the flow in the Upper Williamson channel (as measured in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 4, Township 33 South, Range 11 East, below the dam located in that quarter-quarter) to the sum of all diversions from the pool above the dam at that location. The minimum flow to be maintained is one-half that total.

The flow to be maintained at Wickiup Dam will be determined by adding the flow at the Head of the River (located at the SW¹/₄ SW¹/₄, Section 4, Township 33 South, Range 11 East, W.M.) as described above, to the flow at Farnsworth Spring. The flow to be maintained at Wickiup Dam is one-half that total.

5. The water right described in Water Right Certificate Nos. 37002 and 8615 is not located within the boundaries of an irrigation district.
6. This request does not pertain to two parcels of land owned by the United States and included in Certificate No. 37002 (2.3 acres in the SE ¹/₄ SE ¹/₄ Section 30, T. 32 S., R. 11 E., W.M.) and Certificate No. 8615 (10 acres in the NE ¹/₄ NW ¹/₄, Section 9, T. 33 S., R. 11 E., W.M.), or to parcels included in Certificate No. 37002 near Sand Creek which we have sold (in Sections 5, 6 and 8, T. 32 S., R. 11 E., W.M.).
7. We understand and agree that if this change is approved, it is permanent and the right to the use of the water will be limited as set forth above.

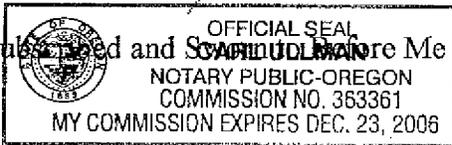


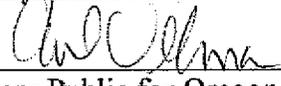
Gerda Hyde

2-8-05

Date

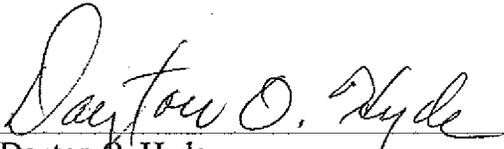
Subscribed and Sworn Before Me this 8 day of February, 2005.





Notary Public for Oregon

My Commission Expires December 23, 2006

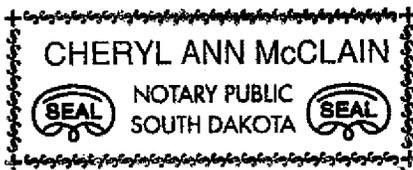


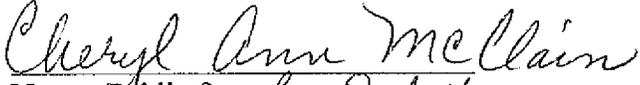
Dayton O. Hyde

2/11/05

Date

Subscribed and Sworn Before Me this 11 day of Feb., 2005.





Notary Public for So Dakota

My Commission Expires September 8, 2006