

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; Kurt Gruen
Contestants

**STIPULATION BETWEEN CLAIMANTS
AND UNITED STATES TO RESOLVE
UNITED STATES' CONTEST 3795**

vs.

James Root; Valerie Root
Claimants/Contestants

Case No. 186

Claim: 51

Contests: 1712, 2069¹, 3795, and 4106²

Claimants/Contestants James Root and Valerie Root (hereinafter "Claimants") and
Contestant the United States of America (hereinafter "United States") (collectively the "Parties")
hereby stipulate and agree to resolve Contest 3795 as follows:

A. STIPULATED FACTS

1. On December 4, 1990, Kurt Gruen filed Claim 51 (the "Claim"), a "Walton" right claim, in the Klamath Basin Adjudication with the Oregon Water Resources Department ("OWRD"). Claimants James Root and Valerie Root are the successors in interest to Mr. Gruen's interest in the lands comprising the claimed place of use for Claim 51 and are the current claimants/contestants under Claim 51.

¹ On September 14, 2004, James and Valerie Root voluntary withdrew, without prejudice, Contest 2069. *See* James and Valerie Root's Voluntary Withdrawal of Contest.

² The Klamath Tribes voluntary withdrew Contest 4106 on July 16, 2004. *See*, Klamath Tribes' Voluntary Withdrawal of Contest.

2. On October 4, 1999, the Adjudicator issued his preliminary evaluation of Claim 51 in which he preliminarily denied the claim solely on the grounds that the claimed source was previously adjudicated as part of the Wood River, Crane Creek, Sevenmile Creek, and Fourmile Creek Adjudication.

3. The following contests were filed to the Claim and/or the Preliminary Evaluation of the Claim: Contest 1712 filed by Kurt Gruen; Contest 2069 filed by James and Valerie Root; Contest 3795 filed by the United States; and Contest 4106 filed by the Klamath Tribes.

4. On April 20, 2004, Hearing Officer William D. Young issued an order in Case 900 that, among other things, established the standards for denying a claim on the grounds that the claimed source was previously adjudicated as part of the Wood River, Crane Creek, Sevenmile Creek, and Fourmile Creek Adjudication. Case 900 included Claim 51. None of the contestants to Claim 51 subsequently challenged the Claim within the time allowed in prehearing and scheduling orders on the grounds that the claimed source was previously adjudicated.

5. On July 16, 2004, the Klamath Tribes voluntarily withdrew Contest 4106.

6. On September 14, 2004, James and Valerie Root voluntarily withdrew Contest 2069, which contest they filed prior to succeeding to Mr. Gruen's interest in the lands comprising the claimed place of use for Claim 51. This withdrawal of contest did not affect Contest 1712, which was filed by Mr. Gruen and to which Claimants succeeded as the current claimants/contestants after acquiring Mr. Gruen's interest in the Claim 51 lands.

7. Claimants and the United States agree that Contest 3795 is resolved pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. Claimants will limit the claimed rate, duty, and period of use and will conform the sources, points of diversion, and places of use for the Claim in the Klamath Basin Adjudication as follows:

- a. Point of Diversion: Lot 4 (SW/4SW/4), Section 18, Township 34 South, Range 7 East, W.M., at a point 815 feet east and 1,100 feet north of the SW/4 corner of said Section 18.
- b. Source: Agency Spring, tributary to Agency Creek, tributary to Crooked Creek, tributary to Wood River.
- c. Use: Irrigation of 15 acres and incidental livestock watering.
- d. Diversion Rate: 0.375 cubic feet per second (cfs) for irrigation (15 acres x 1/40 cfs/acre) and incidental livestock watering.
- e. Duty: 52.5 acre-feet per year (3.5 acre-feet/acre x 15 acres).
- f. Place of Use: 15 acres located in portions of the SW/4SW/4 of Section 18, Township 34 South, Range 7 East, W.M., and the SE/4SE/4 of Section 13, Township 34 South, Range 7.5 East, W.M. The precise location of the 15 acre place of use is to be identified within a reasonable time after the execution of this stipulation on a map to be prepared on Claimants' behalf in conformance with OWRD standards, but shall not be outside of the exterior boundaries of the lands in SW/4SW/4 of said Section 18 and the SE/4SE/4 of said Section 13 that are shown as irrigated on the maps included in OWRD Exhibit 1 at pages 83-84.
- g. Period of Use: April 1 to October 31.
- h. Priority Date: October 14, 1864.

2. The Parties stipulate and agree that pursuant to the terms and provisions of this Stipulation, Contest 3795 has been satisfactorily resolved.

3. If the rate, duty, or period of use exceed the terms of paragraph B.1., above, or if the sources, points of diversion, purposes of use, or places of use do not conform to the terms of paragraph B.1., above, in the Findings of Fact and Order of Determination issued by the Adjudicator for Claim 51, Claimants and the United States reserve any rights they may have to file timely exceptions with the Adjudicator and seek judicial review in the circuit and appellate courts, and otherwise reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 51, as to any terms that exceed or do not conform to this Stipulation. Notwithstanding the foregoing, the United States does not object to the issuance of a Findings of Fact and Order of Determination that further limits any water right that may be adjudicated under Claim 51 or that denies Claim 51 altogether.

4. Except as provided in paragraph B.3. of this Stipulation, the Parties agree not to oppose or object to this Stipulation or any of its terms, provisions, conditions, or covenants if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

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 does not affect nor is it intended to affect the exercise or administration of any senior water rights separately adjudicated to or otherwise held by the United States.

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 related entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

8. Each of the Parties represents, warrants, and agrees that the person(s) 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, conditions, 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. This Stipulation comprises the entire agreement between the Parties concerning the subject matter hereof, 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 shall be binding and enforceable upon the Parties and not mere recitals.

12. The Parties each agree to bear their own costs and attorney fees in these proceedings.

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

STIPULATED, AGREED AND APPROVED:

FOR CLAIMANTS/CONTESTANTS JAMES AND VALERIE ROOT



Greg D. Corbin, OSB No. 00033
STOEL RIVES LLP



Date

ATTORNEYS FOR JAMES AND VALERIE ROOT

FOR CONTESTANT, THE UNITED STATES OF AMERICA:

DATED: April 12, 2006

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