



April 1, 2005

Vanesa Boyd Willard
Indian Resources Section
US Department of Justice
999 18th St Ste 945
Denver CO 80202

Carl V. Ullman
The Klamath Tribes
Water Adjudication Project
PO Box 957
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Jess Ratcliffe
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Natural Resources Section
1162 Court St NE
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Michael J. Reynolds
Oregon Water Resources Department
725 Summer St NE Ste A
Salem OR 97301-1271

STEVEN L. SHROPSHIRE

Admitted In:
Oregon and Washington

Re: **Klamath Adjudication Case No. 203/Claim 75**
Claimant: Ron and Lisa Cole
Our File No. 48928-34365

Dear Parties:

Enclosed is a fully executed copy of the Stipulation to Resolve Contests 3743 and 4124 in the above-entitled matter. This agreement resolves all remaining issues in this case.

Because all of the issues are now resolved, a hearing will not be required for this case. Therefore, I request that the Oregon Water Resources Department withdraw this case from the Office of Administrative Hearings pursuant to OAR 137-003-0515(4).

Thank you for your assistance in this matter.

Sincerely,

JORDAN SCHRADER PC

A handwritten signature in black ink, appearing to read "S. Shropshire", written over a horizontal line.

Steven L. Shropshire

Enclosure

cc w/enc: Ron and Lisa Cole

Direct Dial
(503) 598-5583

E-mail
steve.shropshire@jordanschradler.com

Mobile
(503) 522-8667

COPY

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, v. Ron and Lisa Cole; Claimants.	STIPULATION TO RESOLVE CONTESTS 3743 AND 4124 Case No. 203 Claim: 75 Contests: 3743, and 4124 ¹
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Claimants Ron and Lisa Cole² (the “Coles”), Contestants United States of America (the “United States”) and the Klamath Tribes (collectively “Contestants”), 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 January 28, 1991, the Coles’ predecessor-in-interest Gordon A. Webb (“Mr. Webb”) filed Claim No. 75 in the Klamath Basin Adjudication. Claim No. 75 claimed 7.42 cfs from 4 points of diversion for the irrigation of 296.6 acres. The season of use claimed was April 1 – October 31 and the watering of 250 head of stock was claimed as incidental to irrigation.

¹ On May 2, 2000, the Klamath Project Water Users filed Contest No. 3467. Don Vincent voluntarily withdrew from Contest No. 3467 on December 4, 2000. Beriva Pritchard voluntarily withdrew from Contest No. 3467 on June 24, 2002. The remaining Klamath Project Water Users Contestants voluntarily withdrew Contest No. 3467 in its entirety on April 7, 2004.

² Originally, Gordon and Karen Webb were listed as claimants. The claim has since been assigned to Ron and Lisa Cole.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim No 75, preliminarily approving the claim, but for less acreage and a smaller quantity of water than was claimed.

3. On May 5, 2000, the United States filed Contest No. 3743 alleging insufficient evidence to establish the elements of the water right claimed and contesting the acreage, rate and duty.

4. On May 8, 2000, the Klamath Tribes filed Contest No. 4124 alleging insufficient evidence to establish the elements of the water right claimed and contesting the acreage, rate and duty.

5. On November 5, 2004, Mr. Webb sold the property named as the place of use in Claim No. 75 to the Coles.

6. The Coles, the United States and the Klamath Tribes agree that Contest Nos. 3743 and 4124 can be resolved without need for hearing pursuant to the terms outlined below.

B. TERMS OF THE AGREEMENT

1. The Coles, the United States, the Klamath Tribes, and OWRD agree that the terms of the water right derived from Claim No. 75 should be approved by the Adjudicator to the extent described below:

a. POINT OF DIVERSION LOCATIONS: (3 total)

P.O.D. # 1: NE1/4 SW1/4, Section 19, Township 34 South,
Range 9 East, W.M.

P.O.D. #2: NE1/4 SE1/4, Section 24, Township 34 South,
Range 8 East, W.M.

P.O.D. # 3: NE1/4 SE1/4, Section 24, Township 34 South,
Range 8 East, W.M.

- b. SOURCE: Sprague River, tributary to Williamson River.
- c. USE: Irrigation of 262.2 acres and stock watering incidental to irrigation.
- d. DIVERSION RATE: 6.56 cubic feet per second (cfs) total for all three points of diversion with the following rates at each point of diversion:

P.O.D. # 1: 1.54 cfs

P.O.D. # 2: 1.0 cfs

P.O.D. # 3: 4.02 cfs

- e. DUTY: The total diversion shall not exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.
- f. PERIOD OF USE: April 1 through October 31
- g. PRIORITY DATE: October 14, 1864
- h. PLACE OF USE: (total of 262.2 acres)

Acres served by P.O.D. #1:

NE1/4 NW1/4 – 18.0 acres irrigation

Lot 1 (NW1/4 NW1/4) – 8 acres irrigation

Lot 2 (SW1/4 NW1/4) – 9 acres irrigation

SE1/4 NW1/4 – 7.6 acres irrigation

NE1/4 SW1/4 – 10.2 acres irrigation

Lot 3 (NW1/4 SW1/4) – 8.8 acres irrigation

Section 19, Township 34 S, Range 9 E, W.M.

Acres served by P.O.D. #2:

SE1/4 NE1/4 – 9.2 acres irrigation

NE1/4 SE1/4 – 26 acres irrigation

Section 24, Township 34 S, Range 8 E, W.M.

Lot 3 (NW1/4 SW1/4) – 4.8 acres irrigation

Section 19, Township 34 S, Range 9 E, W.M.

Acres served by P.O.D. #3:

SW1/4 NE1/4 – 27.6 acres irrigation

SW1/4 NW1/4 – 20.8 acres irrigation

SE1/4 NW1/4 – 33.8 acres irrigation

NE1/4 SW1/4 – 36.5 acres irrigation

NW1/4 SW1/4 – 9.4 acres irrigation

SE1/4 SW1/4 – 0.3 acres irrigation

NW1/4 SE1/4 – 32.2 acres irrigation

Section 24, Township 34 S, Range 8 E, W.M.

The Place of Use is set forth more particularly in the map attached hereto as Exhibit 1, and which is incorporated by reference as if set forth fully herein.³

³ The attached map at Exhibit 1 identifies 4 Points of Diversion. To clarify, the Coles do not claim P.O.D. #4 on the map as a separate point of diversion. It is merely a distribution pump for water diverted at P.O.D. #3. Therefore, this Stipulation provides terms for P.O.D. ##1-3 only.

2. The Coles hereby agree to a 10-year commitment to the Cooperative Agreement between the U.S. Fish and Wildlife Service and Gordon Webb, FWS Agreement # 11450-3-J514 (hereinafter "Cooperative Agreement"). A copy of the Cooperative Agreement is attached hereto as Exhibit 2 and a copy of the Modification to Cooperative Agreement is attached hereto as Exhibit 3. The Coles' 10-year commitment to the Cooperative Agreement commenced upon Mr. Webb's signing of the Cooperative Agreement in 2003 and extends until September 30, 2013. See Section VIII of Cooperative Agreement.

a. Section XIII of the Cooperative Agreement provides that either party may terminate the Cooperative Agreement with 60-days notice to other parties. The Coles hereby waive their right to terminate. In the event that the Coles unilaterally terminate for any reason otherwise not contemplated within the Cooperative Agreement anytime prior to September 30, 2013, the Coles hereby understand and agree that such a termination shall also constitute an amendment of their water right claims such that lands located within former Indian Allotment 940 consisting of 42.6 acres shall be deleted with prejudice from their claim as follows:

NE1/4 NW1/4 – 18 acres irrigation

Lot 1 (NW1/4 NW1/4) – 8 acres irrigation

Lot 2 (SW1/4 NW1/4) – 9 acres irrigation

SE1/4 NW1/4 – 7.6 acres irrigation

Section 19, Township 34 S, Range 9 E, W.M.

b. In the event that the Coles unilaterally terminate for any reason otherwise not contemplated within the Cooperative Agreement anytime prior to September

30, 2013 as described in paragraph B.2.a., above, but while the Klamath Adjudication is pending before OWRD or any court of competent jurisdiction, the Coles, the United States, and the Klamath Tribes may jointly file this Stipulation and the document(s) constituting the Coles' unilateral termination with the OWRD Adjudicator or the court before which the Adjudication is pending, and such filing shall constitute an amendment of the Coles' claim. In the event the parties cannot agree as to whether the Coles' termination is for a reason contemplated under the Cooperative Agreement, the parties shall first resolve that dispute through non-binding dispute resolution or civil suit before seeking to amend the claim. If said filing and amendment occurs, then the Coles, the United States, the Klamath Tribes, and OWRD agree that the terms of the water right derived from Claim No. 75 should be as follows:

- i. POINT OF DIVERSION LOCATIONS: (3 total)
 - P.O.D. # 1: NE1/4 SW1/4, Section 19, Township
34 South, Range 9 East, W.M.
 - P.O.D. #2: NE1/4 SE1/4, Section 24, Township
34 South, Range 8 East, W.M.
 - P.O.D. # 3: NE1/4 SE1/4, Section 24, Township
34 South, Range 8 East, W.M.
- ii. SOURCE: Sprague River, tributary to Williamson River.
- iii. USE: Irrigation of 219.6 acres and stock watering incidental to irrigation.

iv. DIVERSION RATE: 5.5 cubic feet per second (cfs) total for all three points of diversion with the following rates at each point of diversion:

P.O.D. # 1: 0.48 cfs

P.O.D. # 2: 1.0 cfs

P.O.D. # 3: 4.02 cfs

v. DUTY: The total diversion shall not exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.

vi. PERIOD OF USE: April 1 through October 31

vii. PRIORITY DATE: October 14, 1864

viii. PLACE OF USE: (total of 219.6 acres)

Acres served by P.O.D. #1:

NE1/4 SW1/4 – 10.2 acres irrigation

Lot 3 (NW1/4 SW1/4) – 8.8 acres irrigation

Section 19, Township 34 S, Range 9 E, W.M.

Acres served by P.O.D. #2:

SE1/4 NE1/4 – 9.2 acres irrigation

NE1/4 SE1/4 – 26 acres irrigation

Section 24, Township 34 S, Range 8 E, W.M.

Lot 3 (NW1/4 SW1/4) – 4.8 acres irrigation

Section 19, Township 34 S, Range 9 E, W.M.

Acres served by P.O.D. #3:

SW1/4 NE1/4 – 27.6 acres irrigation
SW1/4 NW1/4 – 20.8 acres irrigation
SE1/4 NW1/4 – 33.8 acres irrigation
NE1/4 SW1/4 – 36.5 acres irrigation
NW1/4 SW1/4 – 9.4 acres irrigation
SE1/4 SW1/4 – 0.3 acres irrigation
NW1/4 SE1/4 – 32.2 acres irrigation

Section 24, Township 34 S, Range 8 E, W.M.

The Place of Use is set forth more particularly in the map attached hereto as Exhibit 1, except the following 42.6 acres shown on the map are not recognized:

NE1/4 NW1/4 – 18 acres irrigation
Lot 1 (NW1/4 NW1/4) – 8 acres irrigation
Lot 2 (SW1/4 NW1/4) – 9 acres irrigation
SE1/4NW1/4 – 7.6 acres irrigation

Section 19, Township 34 S, Range 9 E, W.M.

c. Alternatively, in the event that the Coles unilaterally terminate for any reason otherwise not contemplated within the Cooperative Agreement anytime prior to September 30, 2013 as described in paragraph B.2.a., above, but after the Klamath County Circuit Court has issued its Final Decree, the Coles agree that they will file for cancellation, pursuant to ORS 540.621, of a portion of their water right, such that the remaining water right will be as described under

paragraph B.2.b., above. In the event the parties cannot agree as to whether the Coles' termination is for a reason contemplated under the Cooperative Agreement, the parties shall first resolve that dispute through non-binding dispute resolution or civil suit before the Coles are required to file their cancellation request.

d. The Coles' 10-year commitment to the Cooperative Agreement shall be binding upon their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, and successors.

3. Concurrently with this Stipulation, the Coles shall enter into a Stream Restoration Agreement with the Klamath Tribes, contemplating future ecosystem restoration activities on their land, in addition to the Cooperative Agreement described above. A copy of the Stream Restoration Agreement is attached hereto as Exhibit 4. The Parties to the Stream Restoration Agreement agree that should any dispute arise regarding the Stream Restoration Agreement, they will use their best efforts to reach resolution outside the Klamath Basin Adjudication processes in order to avoid filing exceptions in the Circuit Court to the Adjudicator's findings of fact and order of determination with respect to Claim No. 75. The Parties to the Stream Restoration Agreement agree that such exceptions may only be filed when other means of resolving any dispute that may arise concerning the Stream Restoration Agreement have been exhausted.

C. RESOLUTION BASED ON TERMS OF AGREEMENT

1. Contestant the United States agrees that, pursuant to this agreement, the United States' Contest No. 3743 has been satisfactorily resolved and such resolution negates the need for a hearing on Contest No. 3743 before the Office of Administrative Hearings.

2. Contestant the Klamath Tribes agrees that, pursuant to this agreement, the Klamath Tribes Contest No. 4124 has been satisfactorily resolved and such resolution negates the need for a hearing on Contest No. 4124 before the Office of Administrative Hearings.

3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim No. 75 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim No. 75 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, or paragraph B.2., above, in the event that the Coles, the United States, and/or the Klamath Tribes submits to the OWRD Adjudicator the document(s) as set forth in paragraph B.2.b., above.

4. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for Claim No. 75 does not conform to the terms set forth in paragraph B.1. or B.2., as applicable, the Coles and Contestants reserve any rights they may have to file exceptions to the Findings of Fact and Final Order of Determinations as to Claim No. 75 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

5. Claimants and Contestants agree not to oppose or object to this Agreement or any of its terms, provisions, conditions, or covenants and to support this Agreement if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

6. This Stipulation is entered into for the purpose of resolving a disputed claim. The signatories to this Stipulation agree that the 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 signatories to this Stipulation 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.

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 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.

9. 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.

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. The Parties agree and acknowledge that this Stipulation has been drafted and reviewed through joint efforts of their respective legal counsel after full and arms-length

negotiations; therefore, the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Stipulation.

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

For Claimants:

DATED: April 1, 2005



STEVEN L. SHROPSHIRE
Jordan Schrader PC
PO Box 230669
Portland OR 97281
Phone: (503) 598-7070
Fax: (503) 598-7373
steve.shropshire@jordanschrader.com

ATTORNEY FOR RON AND LISA COLE

For Contestant, the United States of America:

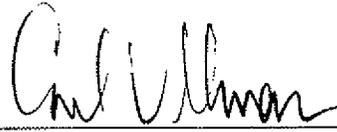
DATED: March 25th, 2005



VANESSA BOYD-WILLARD
Trial Attorney, Indian Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
999 18th St Ste 945
Denver CO 80202

For Contestants, the Klamath Tribes

DATED: March 23, 2005



CARL V. ULLMAN
The Klamath Tribes
PO Box 957
Chiloquin OR 97624

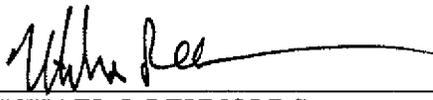
For the Oregon Water Resources Department

HARDY MEYERS
Attorney General

DATED: March 29, 2005


~~JUSTIN WIRTH~~ **JESSE O. RATCLIFFE**
Assistant Attorney General
Oregon Department of Justice
1162 Court St NE
Salem OR 97301-4096

DATED: March 29, 2005


MICHAEL J. REYNOLDS
Oregon Water Resources Department
725 NE Summer St Ste A
Salem OR 97301
michael.j.reynolds@wrд.state.or.us

AGENCY REPRESENTATIVE FOR
OREGON WATER RESOURCES
DEPARTMENT

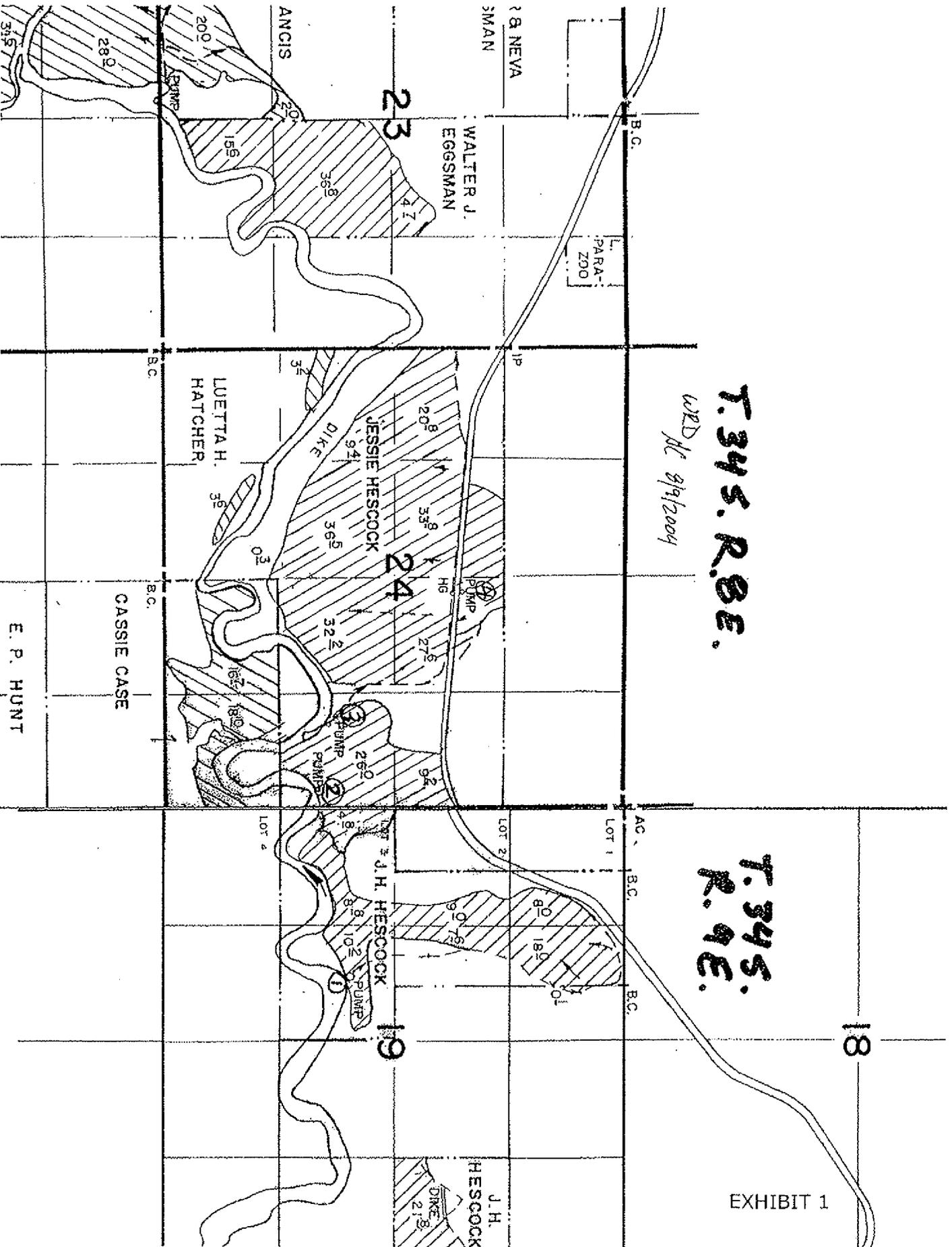


EXHIBIT 1

COOPERATIVE AGREEMENT
between the
U.S. FISH AND WILDLIFE SERVICE
and
GORDON WEBB

FWS AGREEMENT # 11450-3-5514
Charge Code: 11450-1121-JITW
Amount Obligated: \$132,750.00
Recipient Tax Identification No.: _____
CFDA No. (If applicable): _____
Project Title: Sprague River 2003/Webb

I. TYPE OF AGREEMENT:

- Grant
- Cooperative Agreement
- Private Lands
- Challenge Cost-Share

II. TYPE OF ORGANIZATION:

- State, Local or Indian Gov.
- Non-Profit Organization
- Higher Education Inst.
- Private Individual
- Business Organization

III. PARTICIPANTS:

Funding Organization:

U.S. Fish & Wildlife Service
6610 Washburn Way
Klamath Falls, Oregon 97603

Recipient Organization:

Gordon Webb
860 Ocean Drive
Bandon, OR 97411

IV. PROJECT OFFICERS:

FWS Officer:

Name: Sue Mattenberger
Phone: 541-885-8481

Recipient:

Name: Gordon Webb
Phone: 541.783.2944

V. PURPOSE/OBJECTIVE:

The project will improve water quality and habitat for the endangered Lost River and shortnose sucker by decreasing input of sediment to the Sprague River by restoring river and riparian function. The appropriate meander pattern of the river will be re-established by blocking four cut-off chutes, which will reduce velocity and sheer stress along the streambank, allowing vegetation to establish and streambanks to stabilize. A grazing management technique plan will include fencing to sustain vegetation.

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VI. AUTHORITY

16 U.S.C. 661-666c Fish and Wildlife Coordination Act of 1934, as amended
16 U.S.C. 742f(a) (4) Fish and Wildlife Act of 1956

VII. FUNDING INFORMATION:

Nothing herein shall be considered as obligating the Service to expend funds or otherwise obligate the Service for the future payment of money in excess of appropriations authorized by law and administratively allocated for the activities associated with this agreement.

See attachment with budget details. Service shall provide \$132,750 to recipient to accomplish attached work plan. OWEB will provide \$132,750. Recipient in-kind services are valued at \$75,000, and include landowner management, materials, and use of equipment and tool.

VIII. TERM OF AGREEMENT:

The period of this Agreement is from the date of signature by both parties through September 30, 2013. The project must be implemented within three years of signing; funds must be dispersed within five years of signing; and the project must be maintained for 10 years from the date of completion.

IX. SPECIFIC OBLIGATIONS OF EACH PARTY:

The Recipient's work plan and budget is hereby incorporated as an integral part of this project. Recipient shall furnish the necessary personnel, materials and services, and do all things necessary to accomplish the following program objectives:

1. Use funding obligated to meet the goals and objectives identified in the attached work plan, "Sprague River 2003/Webb".
2. Provide final report described in "Reporting Requirements."
3. Document that all permits needed to do the work described in the work plan are obtained, and provide the Service with responses to permit applications within ten days after receipt by the Cooperator.
4. Work with the Service to provide for watershed restoration improvements to remain beneficial for a period of 10 years. The Service will not hold the Cooperator responsible for failure due to acts of nature outside the control of all parties. Acts of nature include, but are not limited to floods, earthquakes, volcanic eruptions, wind storms, stampedes, droughts meteor hits and landslides.

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EXHIBIT 2
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5. Obtain prior written approval from the Service and the landowner for major project changes.
6. If cultural resources or contaminants are discovered during implementation of this project, all field work must stop and the Service must be notified immediately.
7. A project manager will be hired to implement project.

Obligations of the U.S. Fish and Wildlife Service are:

1. Provide funding to landowner to accomplish goals of report.
2. Provide assistance in obtaining permits.
3. Offer technical assistance as needed.

Any deviations from the procedures or objectives specified in the Recipient's work plan must be presented and approved by the Service for specific approval before implementation (see Section XIV. Modifications).

X. REPORTING REQUIREMENTS:

Report shall be submitted to:

Klamath Basin Ecosystem Restoration Office
6610 Washburn Way
Klamath Falls, OR 97603
Attn: Sue Mattenberger

Recipients shall immediately notify the Service Project Officer of developments that have a significant impact on activities covered by this agreement.

Final Financial and Performance Report

The Recipient shall submit, within 90 calendar days of completion of the project, a final financial and performance report. Report will identify the degree to which tasks in the agreement were accomplished, and any special problems encountered. The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government according to requirements of regulations referenced in Section XII - Applicable Regulations.

- Results and discussion of accomplishments during the project.
- Summary and conclusions.
- Summary of expenditures.

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• Photographs.

XI. INVOICING/ACCEPTANCE PROCEDURES:

All recipients not currently receiving funds electronically from the Department of the Interior or Fish and Wildlife Service are responsible for completing a Standard Form 3881 (ACH) and forwarding it to the Service Project Officer.

Upon acceptance of the terms and conditions of this agreement, the recipient may submit requests for advance or reimbursement, using the Standard Form 270, Request for Advance or Reimbursement, no more frequently than monthly. **Advanced Payments are Hereby Authorized.** Payments will be made on the basis of acceptable documentation submitted by the Recipient, including receipts, invoices, other supporting documentation, and the Final Report, during the life of this agreement. Ten percent of the total amount of the agreement may be withheld until all requirements of the agreement are accomplished. A Final Form 270 may be submitted for the 10% withheld once all the requirements are approved.

Requests shall be submitted to the Service Project Officer, at the following address:

U.S. Fish & Wildlife Service
6610 Washburn Way
Klamath Falls, Oregon 97603
Attn: Sue Mattenberger

Should the recipient be unable to complete the provisions of this agreement, all monies provided by the Service which prove to be cancelable obligations or unallowable in accordance with applicable administrative and cost principle regulations (as referenced in the "Applicable Regulations" Section of this agreement) or the approved budget, shall be refunded to the Service.

This agreement is intended to support a particular project for a specific period of time. Any portion of funds not expended by the expiration date of this agreement shall be returned to the Service, including any interest earned on that amount (subject to provisions in the applicable OMB Circular or 43 CFR Part 12 Subpart, as referenced in "Applicable Regulations" Section of this agreement).

XII. APPLICABLE REGULATIONS:

A. The recipient must submit with this agreement Standard Form 424D - Assurances Construction Programs. In addition to the assurances listed on Standard Form 424D, the recipient certifies compliance with the following regulations, as applicable, incorporated by reference with the same force and effect as if they were provided in full text. Failure of a recipient to comply with any provision may be the basis for withholding payments for proper

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charges made by the recipient and for termination of support.

1. OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments as codified at 43 CFR Part 12, Subpart C
2. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations as codified at 43 CFR Part 12, Subpart F
3. OMB Circular A-21, Cost Principles for Educational Institutions
4. OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
5. OMB Circular A-122, Cost Principles for Non-Profit Organizations
6. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
7. 43 CFR Part 12, Subpart D – Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace
8. 43 CFR Part 12, Subpart E – Buy American Requirements for Assistance Programs.
9. 43 CFR Part 18, New Restrictions on Lobbying
10. FAR 31.2, Contracts with Commercial Organizations
11. 48 CFR Part 52.215.2, Audit and Records - Negotiation

Copies of the above documents are available at the following websites:

<http://www.whitehouse.gov/OMB/circulars/index.html> or www.doi.gov/pam/pamfaeg.html

B. Small Business Policy

Reference 505 DM 3.5 C(1)(a):

It is a National policy to award a fair share of contracts to small and minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

1. The grantee and sub-grantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:

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EXHIBIT 2
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- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in (2)(i) through (v) above.

XIII. TERMINATION:

This agreement may be terminated by any party within 60 days of written notification to other party.

XIV. MODIFICATION PROCEDURES:

Modifications to this Agreement may be proposed by either party and shall become effective upon written concurrence of the parties. Work completed prior to approval of a modification is done at the Recipient's risk, without expectation of reimbursement.

XV. SPECIAL PROVISIONS:

Seat Belt Policies and Programs. Recipients of grants/cooperative agreements and/or sub-awards are encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally-owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

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Greening Policies and Programs. In accordance with Executive Order 13101, "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition", recipients of grants/cooperative agreements and/or sub-awards are encouraged to actively and systematically protect the natural processes that sustain life by whenever possible, incorporating environmentally preferable products in their activities. These measures include, but are not limited to, re-fined oil for all vehicles and heavy equipment, diverting solid waste from disposal in landfills through recycling and use of materials that reduce greenhouse gas emissions.

XVI. RELATED ATTACHMENTS:

Attachment A

FOR THE U.S. FISH AND WILDLIFE SERVICE:

By: Signature: Curt Mullis Date: 15 July 03
Title: Field Supervisor

FOR THE RECIPIENT:

By: Signature: [Signature] Date: 9-10-03
Title: owner

FWS CONTRACT SUFFICIENCY REVIEW:

By: Signature: Stephanie A. Wickman Date: 7/8/03
Contracting Officer FWS # 19093

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KBA_ACFOD_01178

Attachment A**Work Plan and Budget: Sprague River 2003/Webb****Grant Requested: \$132,750****Cost-share: \$75,000 (landowner in-kind and cash contribution); \$132,750 OWEB****Project Location:**

Legal Description: T 34 S, R 9E Sec 9 and T 34 S, R 8 E Sec 24

Project Objectives:

- Establish stabilizing riparian vegetation along eroding banks of the Sprague River,
- Control damaging riparian grazing, eliminate cut-off chutes in riparian habitat to control streambank erosion and subsequent nutrient inputs in Sprague River.
- Assess stream and river function and commence monitoring of stream morphology along this section of the Sprague River.

Project Description:

Natural channel revetments will be placed in the meander cut offs to force water to stay in the historic channel meanders. The revetments will consist of rock from a nearby quarry, large wood that has the root structure attached, local native soils, willow clumps and other natural vegetation. Please see attached drawing. Work will take place during the ODFW open work period, the driest time of year, in order to minimize sedimentation to stay in compliance with the Clean Water Act. A temporary irrigation system for the planting will be installed to improve vegetative success. Fencing will be installed to manage grazing in the riparian area.

Construction will restore hydrologic and geomorphic function to 1.7 miles of the Sprague River. The project will involve blocking cut off chutes, which will force the river into its natural sinuous pattern. This will decrease velocity and reduce the stress on the banks, which will allow the creation of a narrower channel as vegetation grows in along the stream. Specific construction techniques in will involve installation of large woody debris, boulders, local native soils, and native vegetation. Fill will be to historic floodplain elevations sourced from nearby water ponds for waterfowl benefit. This creation of additional channel sinuosity, planting of riparian species, and transplanting of wetland fringe sod mats will restore hydrologic function to the river.

Install approximately 2 miles of fencing to improve management of livestock impacts to streambanks and riparian areas.

Re-establish recent flow paths which have been interrupted by active chute cutoff and head-cut activity. Install stable bank revetments where necessary at cut-off chutes to ensure geomorphically stable conditions that will reduce erosion and land loss.

Re-establish stabilizing riparian vegetation (e.g., willow communities) along restored

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streambank. Commence baseline stream morphology monitoring and assessment work. This project is being developed in conjunction with a similar project on the Greg Harris and Ed Case properties downstream. The water quality and riverine/riparian habitat value of this restoration project will be multiplied when considered along with the two project proposals on adjoining ownership.

Land Management Plan: The landowners rotate livestock among several pastures to use available plant growth more efficiently and to minimize impact to the riparian areas.

Relationship to Other Projects: This project compliments the proposed Webb Restoration Project immediately downstream and the Case Restoration Project (including two important sucker spawning springs) immediately upstream; when considered as one restoration project, these three ownerships will lead towards major restoration functions of over 12 miles of the Sprague River.

Monitoring Plan:

The following components of the monitoring plan will be established: photo points, cross sections and longitudinal profile, installation of water quality monitoring station to measure turbidity, and detailed topographic mapping. These monitoring activities will continue, with more detailed monitoring in specific project areas. The property owner will work in cooperation with agencies to ensure objectives are met and maintained, and gather data to submit an annual status report. The property owner will maintain the plantings. Photo points will be re-occupied annually for ten years. Cross sections (5) and profiles surveys will be surveyed in the first year after construction and every two years thereafter, unless a large storm event occurs, which would trigger a re-survey for at least five years. Fish and snorkel surveys have been implemented by the Klamath Tribes and USFWS and will continue to determine success.

Project Schedule: 2003: design, engineering, permitting and compliance.
2004: Project construction
2004-2013 Monitoring (cross-section, bank erosion, and photopoints)

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Proposed Project Flow Chart Sprague River - Case / Webb / Harris Property						
Task	June 2003	July 2003	August 2003 to June 2004	August 2004	Sept. 2004	2005 to 2010
Field Survey and Mapping Establish Permanent Cross-Sections Produce Draft Design Documents						
Technical Review - Draft Design Revise Design Specifications Finalize Permit and Contract Documents						
Begin Project Earth Work Place Revetment Structures Cut and Fill of Cut-Off Chutes						
Sod Mats, Transplants, Irrigation						
Final Grading of Pond Sites Seed and Mulch Disturbed Areas Resurvey As-Built Features						
Monitoring						

Project Permit Requirements: An Oregon Division of State Lands Remove and Fill Permit and a Corp of Engineers 401 permit will be applied for. A Oregon DEQ Clean Water Act (404) certification will be required as part of the remove and fill permit. Other Compliance documentation furnished and required by USFWS includes ESA section 7 consultation, NHPA cultural resource clearance, and NEPA documentation

Community Outreach and Education Plan: Project will be discussed with local residents and the Watershed Council.

Employment and Training:
3-5 workers will be hired for construction. The duration of employment is 3 to 8 weeks. Worker benefits include training opportunities in river Restoration techniques for wetlands and riparian habitats with techniques applicable to other areas of the basin.

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WATERSHED RESTORATION BUDGET

Attach additional pages if necessary

<i>Itemize projected costs under each of the following categories:</i>	Unit (i.e. hours, each, foot)	Unit Cost	Donated Services/ Supplies*	Match Funds*	OWEB Funds	Total Costs
PERSONNEL (Position title, wages, benefits, technical consultation, project management etc.)						
CONTRACTED SERVICES (Labor for fencing, instream work, tree planting, etc.)						
Labor	800	\$15		\$ 6,000	\$ 6,000	\$ 12,000
Project Mgmt & Engineering Design (Streamwise)	500 hours	\$ 75/hr		\$18,750	\$ 18,750	\$ 37,500
Cultural Monitors	400 hours	\$ 15/hr		\$ 3,000	\$ 3,000	\$ 6,000
SUPPLIES/MATERIALS (Fertilizer, seed, fencing, boulders, logs, plants, film, etc.)						
Logs/Rootwads	40	\$250	\$10,000			\$10,000
Sod, Willow	5000 cuyd	\$2 \$100	\$10,000 \$3,000			\$10,000 \$3,000
Plants/Seed	30 plants			\$4,000	\$4,000	\$ 8,000
Geotextile Coir	4500 sqyd	\$2		\$ 4,500	\$ 4,500	\$ 9,000
Fill	8000 cuyd	\$4	\$32,000			\$ 32,000
Rock	5000 cuyd	\$12		\$30,000	\$30,000	\$ 60,000
Fencing	2 miles	\$7000/mi		\$ 7,000	\$ 7,000	\$14,000
Off stream water	3	\$1000		\$1,500	\$1,500	\$ 3,000
PRODUCTION COSTS (Design, permits, inspection, video production, printing, direct mail, film developing, etc.)						
Permits				\$ 4,000	\$ 4,000	\$ 8,000
Monitoring 800 hrs @ \$30				\$12,000	\$12,000	\$24,000
EQUIPMENT (Items usable beyond end of the project with a value greater than \$100, i.e., rain gage, thermograph, Hatch kits, etc.)						
Cat, Positraction, Excavator, Backhoe,	4 sites	\$23,500	\$10,000	\$ 42,000	\$ 42,000	\$94,000
Dumptruck, Loader						
ADMINISTRATION						
			\$10,000			\$10,000
TOTAL						
			\$75,000	\$132,750	\$132,750	\$340,50

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Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4729-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4601 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- 11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- 12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- 13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
- 14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- 15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the

- National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-206).
- 16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- 17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (Identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
- 18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- 19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED	

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Charge Code: 11450-1121-JITW
Obligate: \$ N/A
Cumulative Total: \$132,750.00

MODIFICATION NO. 1
To

COOPERATIVE AGREEMENT NO. 11450-3-J514

Between
U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
And
GORDON WEBB

The purpose of this modification is to:

1. Provide for a change in the Cooperator. Gordon Webb sold his property to Ron and Lisa Cole, 61682 Broken Top Drive, Bend, Oregon 97702, 541-617-8658.

All other terms and conditions of this agreement remain unchanged.

U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

BY: Curt Mullis

TITLE: Field Supervisor

DATE: 1/20/05

GORDON WEBB

BY: Gordon Webb

TITLE: _____

DATE: 2-6-05

FWS Contract Sufficiency Review:

Jamie Thomas 01-14-05
Contracting Officer Date

RON AND LISA COLE

BY: Ron Cole

BY: Lisa Cole

TITLE: _____

DATE: 2/19/2005

**STREAM RESTORATION AGREEMENT
RON AND LISA COLE PROPERTY**

The undersigned Parties, being Ron and Lisa Cole (collectively the "Landowner") and the Klamath Tribes, agree to this Stream Restoration Agreement as part of the settlement of the Landowner's water rights claim in the Klamath Basin Adjudication. The parties agree that the settlement of that claim, and settlement of the contests to that claim, constitute good and adequate consideration for the mutual promises made herein.

Whereas, the parties agree to pursue the goals of continuing the Landowner's ability to make all or a portion of his livelihood from the lands under consideration (that is, the lands involved in Klamath Basin Adjudication Claim Number 75), while at the same time improving water quality, riparian vegetation, and stream conditions in the Sprague River and its tributaries, and

Whereas, the Parties are mindful of the existing 10-year contract between the Landowner and the U.S. Fish & Wildlife Service, FWS Agreement #11450-3-J514 (the "Cooperative Agreement"), regarding similar goals, and the present Agreement is intended to be consistent with the Cooperative Agreement, and to augment or further that work, as becomes appropriate under the conditions set out herein.

Therefore, the Parties agree as follows:

1. **Definition.** In this Agreement "Land" or "Lands" means that property in Sections 19 and 24, T. 34 S., R. 9 E., W.M., in the Sprague River Valley, Klamath County, Oregon, owned by Ron and Lisa Cole at the time of signing this Agreement, some of which is included in Claim 75 in the Klamath Basin Adjudication.

2. **Site-specific planning.** When funding for the activities described herein becomes available, or it appears that such funding can become available through reasonable efforts of the Parties, the Parties agree to enter into good faith discussions to develop, fund and implement a site-specific, written Stream Restoration Plan ("the Plan") designed to pursue the goals described in this Agreement. In addition to the livelihood goals described above, the restoration goals will include the following.

A. *Riparian management.* The Plan will provide for active management of the riparian area on the Land, for the long term encouragement and perpetuation of growth of riparian plants like rushes, sedges, and willows. More specifically, it will provide for active management of grazing on the property to protect the growth of riparian vegetation. This will include construction and maintenance of fencing along the riparian area to allow for exclusion of cattle and other stock during all or part of the year, and allowing grazing within the fenced area only as consistent with encouraging and perpetuating the growth of riparian plants. The fencing plan will be consistent with the fencing plan created under the Cooperative Agreement. That fencing plan provides for a small unfenced riparian zone directly below the primary residence, and for rocked-in water gaps for livestock in the riparian exclusion fence on other portions of the Land.

B. *Return flows.* The Plan will be designed to work toward elimination of irrigation water surface return flow from the Landowner's irrigated lands to the Sprague River and its tributaries. This will be done by improving mechanisms for application of irrigation water to eliminate runoff, and/or by development of small wetlands or similar areas to capture runoff before it reaches a stream.

C. *Ground water replacement.* The Plan will set out means for the elimination of ground water pumping to irrigate the Land, and replacing groundwater with surface water to meet the Landowner's irrigation needs, consistent with water rights determined in the Klamath Basin Adjudication and any other applicable law.

3. **Measurement and monitoring.** The Plan will provide the means for measurement and monitoring of the work to determine its efficacy. Modification of the original Plan, to respond to what is learned from monitoring and measurement, will be undertaken as mutually agreed to.

4. **Parties' access.** The Landowner will work with the Tribes to permit reasonable access to the areas subject to the Plan to enable them to carry out such work as is required by the Plan. Access arrangements will be structured to minimize impacts on the Landowner's operations on the Land, while allowing the necessary work to be done to meet the goals described in this section as set out in the Plan.

5. **No public access.** No right of access by the general public to any portion of the Land or any of the Landowner's property is conveyed by this Agreement.

6. **Permits Needed for Restoration Work.** If any permits or other authorizations are required for the restoration work undertaken pursuant to this Agreement, responsibility for obtaining such permits or authorizations will be allocated in the Plan or as otherwise agreed to by the parties.

7. **Control.** The Landowner will retain complete possession and control as fee simple owner. However, pursuant to the terms of this Agreement and the Plan, the Landowner shall allow the Tribes to carry out activities set out in the Plan.

8. **Assignment and Transfer.** The Tribes may transfer their interests in, and responsibilities under, this Agreement to another person or entity, but only with the consent of the Landowner. The Landowner may transfer his interest in, and responsibilities under, this Agreement to successors in interest to the Land without the consent of the Tribes. The Landowner may also transfer his interest in, and responsibilities under, this Agreement to a non-successor person or entity, but only with the consent of the Tribes.

9. **Successors.** This Agreement shall be binding upon, and inure to the benefit of, the parties, and their successors, heirs, or assigns regarding the property described herein.

10. **Notice.** Any notice, notification or other communication that any party desires or is required to give the other parties shall be sent by first class mail, postage prepaid, and addressed as follows:

To the Landowner: Ron and Lisa Cole, 61682 Broken Top Drive, Bend, OR 97702

To the Tribes: The Klamath Tribes, Box 436, Chiloquin, OR 97624

11. **Entire Agreement.** This document sets forth the entire agreement of the parties regarding this Stream Restoration Agreement and supercedes all prior discussions, negotiations, understandings, or agreements regarding the matters addressed herein. This integration clause does not extend to any agreement embodied in the settlement documents resolving the Landowner's Claim 75 in the Klamath Basin Adjudication, or to the Cooperative Agreement.

12. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of interpretations that will effect the purpose of the Agreement.

13. **Jointly Drafted.** The Parties agree and acknowledge that this Agreement has been drafted and reviewed through joint efforts of their respective legal counsel after full and arms-length negotiations; therefore the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Agreement.

14. **Not an Admission; Limited Use.** This Agreement is part of the resolution of a disputed claim in the Klamath Basin Adjudication. The signatories to this Agreement agree that the Agreement 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 Agreement may be used in any future proceeding to interpret and/or enforce the terms of this Agreement.

15. **Severability.** If any provision of this Agreement is found to be invalid, the remainder of the provisions shall not be affected thereby.

16. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties and deemed an original instrument thereby.

IN WITNESS WHEREOF the Parties have hereunto set their hands on the day and year below written.

For the Landowners:



Ron Cole

2/22/2005
Date



Lisa Cole

2-22-05
Date

For the Klamath Tribes:

Date

To the Tribes: The Klamath Tribes, Box 436, Chiloquin, OR 97624

11. **Entire Agreement.** This document sets forth the entire agreement of the parties regarding this Stream Restoration Agreement and supercedes all prior discussions, negotiations, understandings, or agreements regarding the matters addressed herein. This integration clause does not extend to any agreement embodied in the settlement documents resolving the Landowner's Claim 75 in the Klamath Basin Adjudication, or to the Cooperative Agreement.

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IN WITNESS WHEREOF the Parties have hereunto set their hands on the day and year below written.

For the Landowners:

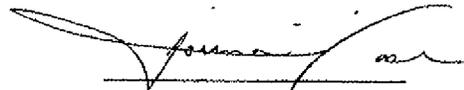
Ron Cole

Date

Lisa Cole

Date

For the Klamath Tribes:



2-28-05

Date

CERTIFICATE OF FILING/SERVICE

I hereby certify that I served the above letter dated April 1, 2005, on the parties listed below by first class mail (with a courtesy copy by e-mail or where no e-mail address is listed by facsimile) a true, in fact full copy thereof to:

Walter Echo-Hawk/Lorna K. Babby
Native American Rights Fund
1506 Broadway
Boulder CO 80302
wechohwk@narf.org
babby@narf.org

Richard D. Bailey
Oregon Water Resources Department
725 NE Summer St Ste A
Salem OR 97301
richard.d.bailey@wrđ.state.or.us

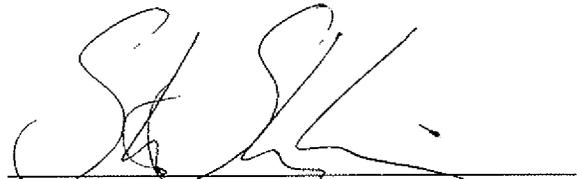
Carl Ullman
PO Box 957
Chiloquin OR 97624
bullman3@earthlink.net

Vanessa Boyd-Willard
United States Dept of Justice
Environmental and Natural Resources Section
999 18th St Ste 945
Denver CO 80202
Vanessa.boydwillard@us.doj.gov

Jessie Ratcliff
Oregon Department of Justice
1162 Court St NE
Salem OR 97310
justin.wirth@doj.state.or.us

Teri Hranac
Oregon Water Resources Department
725 NE Summer St Ste A
Salem OR 97301
teri.k.hranac@wrđ.state.or.us

Dated this 1st day of April, 2005.



Steven L. Shropshire, OSB # 94437
Attorneys for Assignees Ron & Lisa Cole
steve.shropshire@jordanschrader.com