

BEFORE THE HEARING OFFICER PANEL
STATE OF OREGON
for the
WATER RESOURCES DEPARTMENT

In the Matter of the Determination of the Relative rights of the Waters of the Klamath River
a Tributary of the Pacific Ocean

Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC,
Contestants,

**STIPULATION TO RESOLVE
CONTEST 3491**

Case No. 266

Claim No. 115

Contest 3491

v.

Richard H. Smith; Victor S. Smith,
Claimants.

The Oregon Water Resources Department (OWRD), Claimants Richard H. Smith and Victor S. Smith (Claimants), and Contestants Klamath Project Water Users (KPWU) (Contestants) hereby agree and stipulate as follows:

A. STIPULATED FACTS

1. On January 29, 1991, Lula Smith filed Claim 115 in the Klamath Adjudication. Richard H. Smith and Victor S. Smith (Claimants) subsequently acquired the property that is the subject of Claim 115.

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2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 115, preliminarily approving the claim, but for less acreage and a smaller quantity of water than was claimed.

3. On May 8, 2000, the KPWU filed Contest 3491 to Claim 115 and indicated in said contest that the KPWU accepted the Adjudicator's Preliminary Evaluation of Claim 115. No other contests were filed to Claim 115 or the Preliminary Evaluation for this claim.

4. OWRD, Claimants, and Contestants agree that Contest 3491 can be resolved without the need for a hearing pursuant to the terms outlined below.

B. TERMS OF THE AGREEMENT

1. OWRD, Claimants, and Contestants agree that Claim 115 should be approved by the Adjudicator according to the terms of the Adjudicator's October 4, 1999 Preliminary Evaluation for this claim, as follows:

- a. POINT OF DIVERSION LOCATION: Government Lot 18, NW ¼ SE ¼, Section 13, Township 36 South, Range 11 East, W.M.
- b. SOURCE: Whiskey Creek, tributary to Sprague River
- c. USE: irrigation of 179.5 acres and livestock use.
- d. AMOUNT ACTUALLY BENEFICIALLY USED: 4.49 cubic feet per second, measured at the point of diversion for irrigation and 3600 gallons per day for livestock.
- e. PERIOD OF USE: March 1 - October 31 for irrigation
 January 1 - December 31 for livestock
- f. PRIORITY DATE: October 14, 1864
- g. PLACE OF USE:
 LOT 21 NW ¼ SW ¼ 1.6 ACRES IRRIGATION
 LOT 27 SE ¼ SW ¼ 9.7 ACRES IRRIGATION
 LOT 28 SW ¼ SW ¼ 15.9 ACRES IRRIGATION

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LOT 29 SW ¼ SW ¼ 16.6 ACRES IRRIGATION
LOT 30 SE ¼ SW ¼ 15.5 ACRES IRRIGATION

SECTION 12
TOWNSHIP 36 SOUTH, RANGE 11 EAST, W.M.

LOT 2 NW ¼ NE ¼ 7.8 ACRES IRRIGATION
LOT 3 NE ¼ NW ¼ 19.8 ACRES IRRIGATION
LOT 4 NW ¼ NW ¼ 9.0 ACRES IRRIGATION
LOT 5 NW ¼ NW ¼ 5.5 ACRES IRRIGATION
LOT 6 NE ¼ NW ¼ 20.0 ACRES IRRIGATION
LOT 7 NW ¼ NE ¼ 16.9 ACRES IRRIGATION
LOT 10 SW ¼ NE ¼ 13.7 ACRES IRRIGATION
LOT 11 SE ¼ NW ¼ 15.1 ACRES IRRIGATION
LOT 12 SW ¼ NW ¼ 2.0 ACRES IRRIGATION
LOT 15 SW ¼ NE ¼ 10.5 ACRES IRRIGATION

SECTION 13
TOWNSHIP 36 SOUTH, RANGE 11 EAST, W.M.

LOT 21 NW ¼ SW ¼ LIVESTOCK
LOT 27 SE ¼ SW ¼ LIVESTOCK
LOT 28 SW ¼ SW ¼ LIVESTOCK
LOT 29 SW ¼ SW ¼ LIVESTOCK
LOT 30 SE ¼ SW ¼ LIVESTOCK

SECTION 12
TOWNSHIP 36 SOUTH, RANGE 11 EAST, W.M.

LOT 2 NW ¼ NE ¼ LIVESTOCK
LOT 3 NE ¼ NW ¼ LIVESTOCK
LOT 4 NW ¼ NW ¼ LIVESTOCK
LOT 5 NW ¼ NW ¼ LIVESTOCK
LOT 6 NE ¼ NW ¼ LIVESTOCK
LOT 7 NW ¼ NE ¼ LIVESTOCK
LOT 10 SW ¼ NE ¼ LIVESTOCK
LOT 11 SE ¼ NW ¼ LIVESTOCK
LOT 12 SW ¼ NW ¼ LIVESTOCK
LOT 15 SW ¼ NE ¼ LIVESTOCK

SECTION 13
TOWNSHIP 36 SOUTH, RANGE 11 EAST, W.M.

2. OWRD, Claimants, and Contestants agree that pursuant to the terms of this Agreement, Contest 3491 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Hearing Officer on this contest to Claim 115.

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3. Based upon the agreement of OWRD, Claimants, and Contestants that Claim 115 and the contest thereto, can be resolved without the need for a hearing. OWRD adjudication staff hereby recommend to the Adjudicator that Claim 115 be approved in the Final Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B. 1 above.

4. If the Final Order of Determination issued by the Adjudicator for Claim 115 does not follow the terms listed in paragraph B. 1 above, Claimants and Contestants reserve any rights they may have to file exceptions to the Final Order of Determination as to Claim 115 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

For Claimants Richard H. Smith and Victor S. Smith



Paul C. Lodine, #80456
Elizabeth Howard, #01295
Churchill, Leonard, Lodine & Hendrie, LLP,
Of Attorneys for Claimants

2-18-03

Date

For the Oregon Water Resources Department

HARDY MEYERS
Attorney General



Justin Wirth, #00426
Walter Perry, III, #83361
Assistant Attorneys General

3/6/03

Date

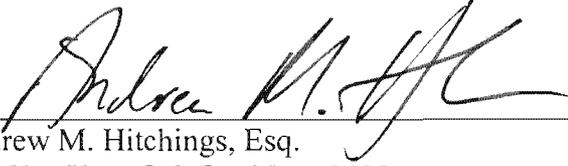


Kimberly Grigsby, Agency Representative
Oregon Water Resources Department

3-6-03

Date

For Contestants, Klamath Project Water Users



Andrew M. Hitchings, Esq.
Pro Hac Vice; Cal. Bar No. 154554
Of Attorneys for Tulelake Irrigation District,
And on behalf of Klamath Project Water Users

2/25/03

Date

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