

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;
Contestant

**STIPULATION TO RESOLVE
CONTESTS**

vs.

Case No. 147

Winston H. Patterson; Louise Patterson; James C. Ross; Marilyn J. Ross;
Claimant(s).

Claim(s): 224

Contest(s): 3198¹, 3857, and 4199²

Claimants Winston H. Patterson; Louise Patterson; James C. Ross; Marilyn J. Ross; (Claimants"), the United States of America (the "United States" or "Contestant") (collectively "Parties") 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 October 30, 1990, Claimant filed Claim 224 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 224.
3. The following Contests were filed to Claim 224 and/or the Preliminary Evaluation of Claim 224: Contest 3857 was filed by the United States. Contest

¹ On March 2, 2004, Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contest 3198. On March 15, 2004, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3198.

² On January 23, 2004, the Klamath Tribes voluntarily withdrew, without prejudice, Contest 4199.

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4199 was filed by the Tribes. The Klamath Tribes voluntarily withdrew this contest, without prejudice, on January 23, 2004. Contest 3198 was filed by Medford Irrigation District, Rogue River Valley Irrigation District, Horsefly Irrigation District and Langell Valley Irrigation District. Medford Irrigation District and Rogue River Valley Irrigation District, however, voluntarily withdrew from Contest 3198 on March 2, 2004 and on March 15, 2004, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice.

4. The Parties and OWRD agree that Contest 3857 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimant, Contestant and OWRD agree that Claim 224 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: NW1/4 NW1/4, Section 4,
Township 41 South, Range 8 East, W.M.

SOURCE: Bear Creek, tributary to Klamath River

PRIORITY DATE: May 13, 1899

USE: supplemental irrigation of 146.2 acres

RATE: 2.9 cubic feet per second, measured at the point of diversion

DUTY: 3.0 acre-feet per acre

PERIOD OF USE: April 15 through August 31

PLACE OF USE:

SW 1/4 NE 1/4
NE 1/4 NW 1/4

16.3 ACRES
7.9 ACRES

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NW 1/4 NW 1/4	16.9 ACRES
SW 1/4 NW 1/4	13.3 ACRES
SE 1/4 NW 1/4	35.4 ACRES
LOT 3 (NE 1/4 SW 1/4)	27.7 ACRES
LOT 4 (NW 1/4 SW 1/4)	0.7 ACRE
LOT 2 (NW 1/4 SE 1/4)	28.0 ACRES

SECTION 4

TOWNSHIP 41 SOUTH, RANGE 8 EAST, WM.

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

The surface water right that is the subject of this Stipulation is supplemental to Claimants' groundwater rights. Otherwise, this Stipulation does not affect Claimants' groundwater rights.

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Contest 3857 has been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on this Contests to Claim 224.

3. Based on the Stipulation of the Parties and OWRD that Claim 224 and the contest thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 224 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 224 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.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 224 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 Finding of Fact and Order of Determination as to Claim 224 in the Circuit Court for Klamath

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County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 224.

5. The Parties agree not to oppose or object to this Stipulation or any of its terms, provisions, conditions, or covenants and to support this Stipulation 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.

Stipulated, agreed and approved by:

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Claimants:

DATED: February 15, 2005

Winston H. Patterson by Louise Patterson
Winston H. Patterson (DECEASED)
by Louise Patterson, PERSONAL REPRESENTATIVE

DATED: February 15, 2005

Louise Patterson
Louise Patterson

DATED: February 15, 2005

James C. Ross
James C. Ross

DATED: February 15, 2005

Marilyn J. Ross
Marilyn J. Ross

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For Contestant, the United States of America:

DATED: March 16, 2005


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For the Oregon Water Resources Department:

HARDY MEYERS
Attorney General

DATED: March 21, 2005



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DATED: March 21, 2005



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AGENCY REPRESENTATIVE FOR
OREGON WATER RESOURCES
DEPARTMENT

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