

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 21, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 49, Claim No. 233, Contest Nos. 1720, 3524
DOJ File No. 690-600-GN0284-03

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve Contests and Certificate of Service in the above-entitled matter. This Stipulation revokes and replaces a prior stipulation resolving contests entered into on December 1, 2005. The prior stipulation contained an error in the name of the Claimant, which this Stipulation corrects. Because this case was withdrawn from the Office of Administrative Hearings (“OAH”) following execution of the prior stipulation, neither the parties nor the Oregon Water Resources Department need take additional action with respect to the OAH at this time.

Thank you very much for your courtesies and cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse D. Ratcliffe".

Jesse D. Ratcliffe
Assistant Attorney General
Natural Resources Section

JDR:tmc/GENS3491
Enclosure
c: Service List

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

~~Klamath Irrigation District; Klamath Drainage District; Tulalake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; 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.; Reames Golf and Country Club; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC;~~
STIPULATION TO RESOLVE
CONTEST 1720
Case No. 49
Claim: 233
Contests: 1720 and 3524¹
Contestants

vs.

South Valley Bank & Trust, as Trustee for
Melva Fye Lifetime Trust;
Claimants/Contestants.

Claimant/Contestant South Valley Bank & Trust, as Trustee for Melva Fye Lifetime Trust, and the Oregon Water Resources Department (OWRD), hereby agree and stipulate, and request the Adjudicator to resolve the above captioned Claim and Contest as follows:

¹ Don Vincent voluntarily withdrew from Contest 3524 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3524 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3524 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3524 on April 7, 2005.

A. STIPULATED FACTS

1. On January 31, 1991, Claim 233 for a federal reserved Indian water right was filed with OWRD by the Claimant.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 233.
3. On May 3, 2000, the Claimant filed a Statement of Contest of Preliminary Evaluation of Claim 233, Contest 1720.
4. Claimant/Contestant and OWRD agree that Contest 1720 can be resolved without the need for a hearing pursuant to the following:

B. TERMS OF STIPULATION

1. Claimant/Contestant and OWRD agree that the Water Right Claim 233 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 233, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.
2. Claimant/Contestant agrees that pursuant to the terms of this Stipulation, Contest 1720 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.
3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 233 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 233 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator as a federal reserved Indian water right in accordance with the Description of Water Right Claim 233.
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 233 does not conform to the terms set forth in the attached Description of Water Right Claim 233, Claimant/Contestant reserves any rights they may have to file exceptions to the

Finding of Fact and Order of Determination as to Claim 233 in the Circuit Court for Klamath County, and reserves any rights they may have to participate in any future proceedings authorized by law concerning Claim 233.

5. Claimant/Contestant agrees 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. 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. Each entity or person entering into 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 entity or person and bind that entity or person 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 signatories, notwithstanding that the

signatories 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.

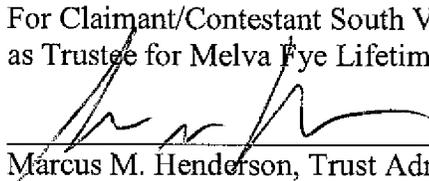
10. This Stipulation comprises the entire agreement and no promise, inducement, or representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this Stipulation are contractual and not merely a recital. This Stipulation revokes and replaces the Stipulation to Resolve Contest 1720 entered into on December 1, 2005.

11. Claimant/Contestant and OWRD shall each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For Claimant/Contestant South Valley Bank & Trust,
as Trustee for Melva Fye Lifetime Trust

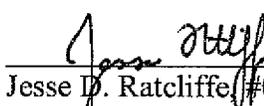


Marcus M. Henderson, Trust Administrator

December 4, 2006
Date

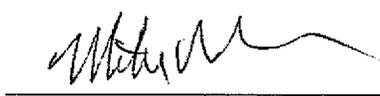
For the Oregon Water Resources Department

HARDY MYERS
Attorney General



Jesse D. Ratcliffe #04394
Assistant Attorney General

12/7/06
Date



Michael Reynolds
Agency Representative
Oregon Water Resources Department

12-13-06
Date

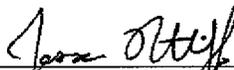
CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December 2006, I served the within
STIPULATION TO RESOLVE CONTESTS AND CERTIFICATE OF SERVICE on the
parties hereto by regular first-class mail and by e-mail if an e-mail address is listed
below, a true, exact and full copy thereof to:

VIA STATE SHUTTLE MAIL

Dwight W. French / Teri Hranac
Oregon Water Resources Dept.
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@wrđ.state.or.us
teri.k.hranac@wrđ.state.or.us

Marcus M. Henderson, J.D.
Manager of Trust Business Development
South Valley Bank & Trust
803 Main Street
Klamath Falls, OR 97601
marc.henderson@southvalleybank.com



Jesse D. Ratcliffe, #04394
Assistant Attorney General