

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE OF OREGON
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; WaterWatch of Oregon, Inc.¹; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Co.; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Co.; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Co.; Plevna District Improvement Co.; and Collins Products, LLC

Contestants,

vs.

Stafford Ranches, Inc.,

Claimant.

The Oregon Water Resources Department (hereinafter "OWRD"), Claimant

Stafford Ranches, Inc. (hereinafter "Claimant"), Contestant the United States of America

STIPULATION TO RESOLVE
CONTESTS

Case No. 158

Claim No. 5

Contests 2814¹, 3431, 3711, and 4067

¹ Contestant Water Watch of Oregon, Inc, withdrew Contest 2814 on February 18, 2003.

(hereinafter "United States"), Contestant Klamath Project Water Users,² and Contestant the Klamath Tribes (hereinafter "Tribes") hereby agree and stipulate as follows:

A. STIPULATED FACTS

1. On January 25, 1991, the Claimants filed Claim 5 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 5.
3. The following contests were filed to Claim 5: Contest 3431, filed by the Klamath Project Water Users; Contest 3711, filed by the United States; and Contest 4067, filed by the Tribes (hereinafter collectively "Contestants").
4. Claimant, Contestants, and OWRD agree that Contests 3431, 3711, and 4067 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. Claimants, Contestants, and OWRD agree that Claim 5 should be approved by the Adjudicator as described below:

POINT OF DIVERSION LOCATION: SW ¼ SE ¼, Section 15, Township 30 South, Range 8 East, W.M.

SOURCE: An unnamed stream locally known as Lenz Creek, tributary to Big Springs Creek.

² Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Co.; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Co.; Poe Valley Improvement District; Shasta View Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Co.; Plevna District Improvement Co.; and Collins Products, LLC, (hereinafter collectively "Klamath Project Water Users").

USE: Irrigation of 711.6 acres and livestock.

AMOUNT ACTUALLY BENEFICIALLY USED FOR IRRIGATION AND

LIVESTOCK: 17.8 cubic feet per second (cfs) measured at the point of diversion.

DUTY: 2.19 Acre-Feet/Acre/Year.

IRRIGATION AND LIVESTOCK PERIOD OF USE: April 15 through September 15.

PRIORITY DATE: October 14, 1864.

PLACE OF USE:

LOT 1 (NE ¼ NW ¼) 0.7	ACRES IRRIGATION AND LIVESTOCK
LOT 1 (NW ¼ NE ¼) 8.8	ACRES IRRIGATION AND LIVESTOCK
LOT 2 (NE ¼ NE ¼) 13.0	ACRES IRRIGATION AND LIVESTOCK
LOT 2 (SE ¼ NE ¼) 17.5	ACRES IRRIGATION AND LIVESTOCK
LOT 3 (SE ¼ NE ¼) 22.4	ACRES IRRIGATION AND LIVESTOCK
LOT 3 (NE ¼ NE ¼) 0.1	ACRES IRRIGATION AND LIVESTOCK
LOT 4 (NW ¼ NE ¼) 13.0	ACRES IRRIGATION AND LIVESTOCK
LOT 5 (NE ¼ NW ¼) 26.7	ACRES IRRIGATION AND LIVESTOCK
LOT 6 (NW ¼ NW ¼) 10.9	ACRES IRRIGATION AND LIVESTOCK
SW ¼ NE ¼ 39.9	ACRES IRRIGATION AND LIVESTOCK
SW ¼ NW ¼ 39.7	ACRES IRRIGATION AND LIVESTOCK
SE ¼ NW ¼ 39.9	ACRES IRRIGATION AND LIVESTOCK
NE ¼ SW ¼ 39.9	ACRES IRRIGATION AND LIVESTOCK
NW ¼ SW ¼ 39.9	ACRES IRRIGATION AND LIVESTOCK
SW ¼ SW ¼ 39.9	ACRES IRRIGATION AND LIVESTOCK
SE ¼ SW ¼ 39.9	ACRES IRRIGATION AND LIVESTOCK

NE ¼ SE ¼ 39.9 ACRES IRRIGATION AND LIVESTOCK
NW ¼ SE ¼ 39.9 ACRES IRRIGATION AND LIVESTOCK
SW ¼ SE ¼ 39.9 ACRES IRRIGATION AND LIVESTOCK
SE ¼ SE ¼ 39.9 ACRES IRRIGATION AND LIVESTOCK

SECTION 24

TOWNSHIP 30 SOUTH, RANGE 8 EAST, W.M.

NE ¼ NE ¼ 39.8 ACRES IRRIGATION AND LIVESTOCK
NW ¼ NE ¼ 40.0 ACRES IRRIGATION AND LIVESTOCK
NE ¼ NW ¼ 40.0 ACRES IRRIGATION AND LIVESTOCK
NW ¼ NW ¼ 40.0 ACRES IRRIGATION AND LIVESTOCK

SECTION 25

TOWNSHIP 30 SOUTH, RANGE 8 EAST, W.M.

The place of use is shown more particularly on the map attached hereto, which is incorporated by reference as if set forth fully herein. The parties agree and stipulate that the United States and HKM Engineering, Inc. shall be released and held harmless from loss, injury, damage, and/or reduction in value of land and/or the associated water rights that may in any way be connected to the attached map.

2. Neither the terms and provisions of this Stipulation, the Finding of Fact and Order of Determination filed in Claim 5, nor any final decree filed in Claim 5 shall affect the use of water by the Claimants under Water Right Certificate 37927. Nothing in this Stipulation shall be construed to entitle claimants to have more than one primary water right on the 711.6 acres of land identified in Paragraph B.1., above, such land being also identified and included in Certificate 37927. Claimants and Contestants agree that, upon

issuance of a Final Decree, claimants and/or contestants may take any appropriate action with respect to Certificate 37927 to delete any or all portions of Certificate 37927 that are duplicative of any water right decreed in the Klamath Adjudication; *provided*, such action(s) will not include any actions and/or attempts by claimants or contestants to delete and/or cancel any aspect of the water right evidenced by Certificate 37927 in excess of the provisions of the Final Decree with respect to Claim 5.

3. Claimant, Contestants and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contests 3431, 3711, and 4067 have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on these contests to Claim 5.

4. Based on the Stipulation of Claimant, Contestants, and OWRD that Claim 5 and the Contests thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 5 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 5 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.

5. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 5 does not conform to the terms set forth in paragraph B.1., above, Claimant and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 5 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 5.

6. 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.

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. 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.

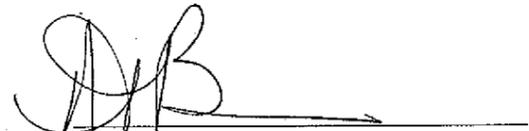
12. The Parties agree to bear their own costs and attorneys' fees.

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

STIPULATED, AGREED AND APPROVED BY:

For Claimant Stafford Ranches, Inc.:

Dated: ^{Sent} August 16, 2004



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For Contestant, the United States of America:

Dated: August 20th, 2004

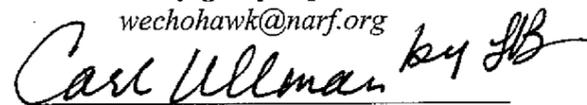

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For Contestants, the Klamath Tribes:

Dated: August _____, 2004



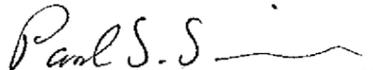
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For Contestants, the Klamath Project Water Users:

Dated: August 25, 2004

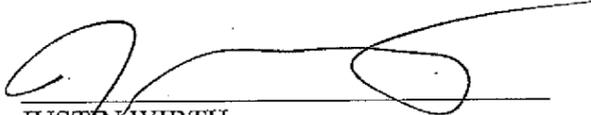


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^{October}
Dated: ~~August~~ 11, 2004



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