

BEFORE THE HEARING OFFICER PANEL  
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; Klamath  
Irrigation District; Klamath Drainage  
District; Tulelake Irrigation District;  
Klamath Basin Improvement District; Ady  
District Improvement Company;  
Enterprise Irrigation District; Klamath  
Hills District Improvement Company;  
Malin Irrigation District; Midland District  
Improvement Company; 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,

vs.

Leta Mae Johnson,

Claimant.

STIPULATION TO RESOLVE  
CONTESTS

Case No. 215

Claim No. 100

Contest Nos. 3481, 3750 and 4135

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NATURAL RESOURCES  
DEPT. OF JUSTICE  
SALEM OREGON

Contestants, the United States of America (“United States”), and the Klamath Project  
Water Users (“KPWU”), (collectively referred to as “Contestants”), Claimant, Leta Mae Johnson  
 (“Claimant”), 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.

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**A. STIPULATED FACTS**

1. On December 7, 1990, Claimant filed Claim No. 100 for 8.5 cfs, a period of use of March 1 through July 31, and a claimed priority date of "October 14, 1864" (the "Claim").

2. On October 4, 1999, the Adjudicator, Richard D. Bailey, issued a Preliminary Evaluation of the Claim, denying the claim.

3. On May 8, 2000, the United States filed Contest No. 3750 to the Claim and to the Preliminary Evaluation of the Claim.

4. On May 8, 2000, the Klamath Tribes filed Contest No. 4135 to the Claim and to the Preliminary Evaluation of the Claim. The Klamath Tribes have withdrawn from the case.

5. On May 2, 2000, the KPWU filed Contest No. 3481 to the Claim and to the Preliminary Evaluation of the Claim.

6. Claimant did not file a Contest to the Adjudicator's Preliminary Evaluation of the Claim.

7. Contestants do not believe that Claimant can establish the necessary elements to establish a Walton right for the claimed place of use.

8. With respect to the Preliminary Evaluation of the Claim, Contestants agree that the evidence supports the Adjudicator's finding denying the claim based on the fact that the elements of a *Walton* right are not established for this claim.

9. Nonetheless, Contestants are willing to resolve their Contests to the Claim and the Preliminary Evaluation of the Claim based on the clarifications and limitations concerning the scope of the privilege to continued use of natural overflow described below.

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**B. TERMS OF STIPULATION**

1. Request that Adjudicator Limit Approval of the Claim. Claimant and Contestants agree and request the Adjudicator to limit his approval of the Claim as described in paragraph 1 above, to include the following findings of fact and conclusion in the Adjudicator's Order of Determination:

FINDINGS OF FACT:

- a. Point of Diversion Location: none; natural overflow from unnamed stream
- b. Source: unnamed stream, tributary to Sprague River
- c. Use: Irrigation of 160 acres
- d. Amount Actually Beneficially Used: 8.5 cubic feet per second
- e. Period of Use: March 1 - October 31
- f. Priority Date: None – the privilege to continue to accept the natural overflow of the 160 acres of pasture recognized herein does not constitute a water right and cannot be asserted to curtail water rights through the priority system
- g. Place of Use:

W1/2NW1/4, SW1/4            56 acres irrigation

Section 22, Township 35 South, Range 11 East, W.M.

E1/2NE1/4                    104 acres irrigation

Section 21, Township 35 South, Range 11 East, W.M.

2. Approval of Privilege. The claim is approved only as a privilege to continue to accept the irrigation of the 160 acres of pasture identified above, and further provided that:

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- a. the privilege to so use water does not constitute a water right and cannot be asserted to curtail other water rights through the priority system;
- b. the privilege to so use water cannot be transferred to any other property; and
- c. the privilege to so use water cannot be altered by the use of any physical means to modify the manner in which the natural overflow occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from the natural overflow, and that any such alteration shall require the filing of an application for permit to appropriate water from the Oregon Water Resources Department, the priority date of which shall be, in accordance with ORS 537.150(2), the date of the filing of the application.

3. Resolution of Claim and Contests Without Need for Hearing. Claimant, Contestants and OWRD agree that this stipulation will satisfactorily resolve Contests 3481, 3750 and 4135 and eliminate the need for a hearing before the Hearing Officer on the Claim and Contests.

4. Recommendations of OWRD Adjudication Staff that Adjudicator Withdraw Referral from Hearing Officer Panel. Based on the agreement of Claimant and Contestants that these Contests can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that he withdraw the referral of Claim 100 from the Hearing Officer Panel.

5. Recommendation of OWRD Adjudication Staff that Adjudicator Enter an Order of Determination Approving and Limiting Claim in Accordance with Paragraphs B.1. and B.2. Based on its review of the record in this case, OWRD adjudication staff hereby recommends to the Adjudicator that he enter an Order of Determination approving and limiting the Claim in accordance with the terms of paragraphs B.1. and B.2. above.

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6. Further Participation by Contestants. If the Order of Determination issued by the Adjudicator does not follow the request of Claimant and Contestants and the recommendation of OWRD adjudication staff that the Claim be approved and limited in accordance with the terms of paragraphs B.1. and B.2. above, Claimant and Contestants reserve the right to file exceptions to the Order of Determination as to the Claim in the Circuit Court for Klamath County and reserve the right to participate in any other future proceedings authorized by law. 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.

7. Stipulation Not to be Used Against Parties. This Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement. Nothing in this Stipulation, including the agreement to resolve the Claim and contests without the need for a hearing, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence or used in any other manner in any proceeding, including in this adjudication, other than for interpretation or enforcement of this Stipulation or for a purpose contemplated by Oregon Rule of Evidence 408.

8. Signature Authority. Claimant has had the opportunity to consult with an attorney before signing the Stipulation. 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.

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9. Non-Severability. The terms of this Stipulation are non-severable.

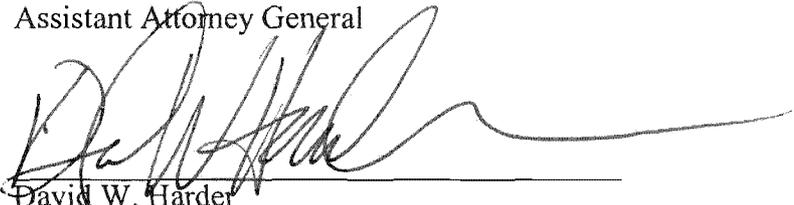
10. Stipulation Binding on Successors, Heirs and Assigns. This Stipulation shall bind and inure to the benefit of successors, heirs and assigns of the parties.

11. Effective Date. This Stipulation shall be effective as of the date of the last signature hereto.

12. Signing by Parties. This Stipulation may be signed separately by each party and once all parties have signed shall constitute one Stipulation, binding on the Parties, notwithstanding that the Parties did not sign the same original or the same document. 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.

DATED: February 9, 2005

THOMAS L. SANSONETTI  
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ATTORNEYS FOR THE UNITED STATES OF  
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DATED: February 9, 2005

*March*



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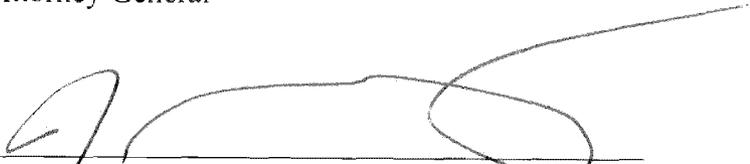
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For the Oregon Water Resources Department:

HARDY MEYERS  
Attorney General

DATED: ~~February~~ <sup>March</sup> 17, 2005



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ATTORNEYS FOR OREGON WATER RESOURCES  
DEPARTMENT

DATED: ~~February~~ <sup>March</sup> 15, 2005



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AGENCY REPRESENTATIVE FOR OREGON WATER  
RESOURCES DEPARTMENT

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DATED: ~~February~~ <sup>March</sup> 6, 2005

*Leta Mae Johnson*

Leta Mae Johnson  
10440 Hill Road  
Klamath Falls, OR 97601

CLAIMANT FOR CLAIM 100

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