

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; The Klamath Tribes; Contestants	<b>STIPULATION TO RESOLVE CONTESTS</b>
vs.	Case No. 223
Sarah A. Dexter; Alta M. Van Sickle; Lloyd D. Van Sickle; Claimants.	Claim: 112
	Contests: 3756 and 4143

Claimants Sarah A. Dexter, Alta M. Van Sickle and Lloyd D. Van Sickle (collectively "Claimants"), the United States of America (the "United States"), the Klamath Tribes (the "Tribes"), 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 November 30, 1990, Claimant filed Claim 112 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 112.
3. On May 4, 2000, the Klamath Tribes filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 4143.
4. On May 4, 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3756.

4. Claimants, Contestants, and OWRD agree that Contests 4143 and 3756 can be resolved without the need for a hearing pursuant to the terms set forth below.

**B. TERMS OF STIPULATION**

1. Claimants, Contestants, and OWRD agree that Claim 112 should be approved by the Adjudicator to the extent described below:

a. IRRIGATION

POINT OF DIVERSION LOCATION:

SW1/4 SE1/4, Section 3, Township 36 South, Range 10 East, W.M.

SOURCE: Sprague River, tributary to the Williamson River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: 2.76 cubic feet per second, measured at point of diversion

DUTY: 3.2 acre feet per acre

PERIOD OF USE: May 1 – October 1

PLACE OF USE: Table below and Map at Exhibit A

Acres	¼, ¼	Sec.	Township	Range
40.0	SENE	3	36S	10E
19.7	SWNE	3	36S	10E
16.4	NESE	3	36S	10E
26.3	NWSE	3	36S	10E
8.0	SWSE	3	36S	10E
110.4 acres	TOTAL			

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.

b. LIVESTOCK

POINT OF DIVERSION LOCATION: (same as irrigation)

SW1/4 SE1/4, Section 3, Township 36 South, Range 10 East, W.M.

SOURCE: Sprague River, tributary to the Williamson River

PRIORITY DATE: October 14, 1864

USE: livestock

RATE: limited to 900 gallons per day total

PERIOD OF USE: year round / January 1- December 31

PLACE OF USE: same as irrigation / see table above

2. Concurrently with this Stipulation, Claimants shall enter into a Stream Restoration Agreement with the Klamath Tribes and the United States, contemplating future ecosystem restoration activities on their land. A copy of the Stream Restoration Agreement is attached hereto as Exhibit B. The Parties to the Stream Restoration Agreement agree that should any dispute arise regarding the Stream Restoration agreement, they will use their best efforts to reach resolution outside the Klamath Basin Adjudication processes in order to avoid filing exceptions in the Circuit Court to the Adjudicator's findings of fact and order of determination with respect to Claim 223. Claimants and contestants agree that such exceptions may only be filed when other means of resolving any dispute that may arise concerning the Stream Restoration Agreement have been exhausted.

3. Claimant, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contests 4143 and 3756 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 112.

4. Based on the Stipulation of Claimant, Contestants and OWRD that Claim 112 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 112 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 112 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 112 does not conform to the terms set forth in paragraph B.1., above, Claimants and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 112 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Case 223.

6. Claimants, Contestants and OWRD 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. 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.

8. 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 relate entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

9. 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.

10. 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.

11. 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.

12. 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.

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

Stipulated, agreed and approved by:

Claimants:

DATED: June \_\_\_\_, 2004

July 19, 2004



Sarah A. Dexter\*

Alta M. Van Sickle

Lloyd D. Van Sickle

P.O. Box 375

Sprague River, OR 97639

\* A signature by one of the Claimants on the signature line above shall constitute agreement by all three Claimants to this Stipulation.

For Contestant, the United States of America:

DATED: June     , 2004

July 9, 2004



VANESSA BOYD WILLARD

Indian Resources Section

Environment & Natural Resources Division

U.S. Department of Justice

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For Contestants, the Klamath Tribes:

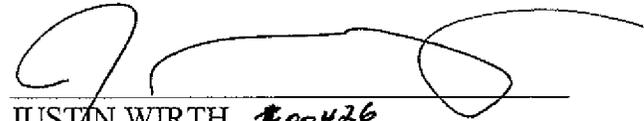
DATED: ~~June~~ <sup>July</sup> 8, 2004

  
CARL V. ULLMAN  
Water Adjudication Project  
The Klamath Tribes  
P.O. Box 957  
Chiloquin, Oregon 97624  
Telephone: (541) 783-3081  
Telefax: (541) 783-2609  
e-mail: *bullman3@earthlink.net*

For the Oregon Water Resources Department:

HARDY MEYERS  
Attorney General

DATED: June 10, 2004



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DATED: June 11, 2004



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AGENCY REPRESENTATIVE FOR  
OREGON WATER RESOURCES  
DEPARTMENT

## STREAM RESTORATION AGREEMENT

The undersigned parties, being Lloyd Van Sickle, Alta Van Sickle and Sarah Dexter ("Landowners") and the Klamath Tribes ("Tribes"), agree to this Restoration Agreement as part of the settlement of the Landowners' water rights claim in the Klamath Basin Adjudication. The parties agree that the settlement of that claim, and the contests to that claim, constitute good and adequate consideration for the mutual promises made herein.

The parties agree to pursue the goals of continuing the Landowners' ability to make all or a portion of their livelihood from the lands under consideration (that is, the lands involved in Klamath Basin Adjudication Claim Number 112), while at the same time improving water quality, riparian vegetation, and stream conditions in the Sprague River and its tributaries. In this regard, they also agree to pursue funding for expenditure improving the Landowners' property as described herein. Accordingly:

**1. Riparian management.** The Landowners agree to engage in active management of the riparian area on the Landowners' property, for the long-term encouragement and perpetuation of growth of riparian plants like rushes, sedges, and willows. More specifically, the Landowners will actively manage grazing on their property to protect the growth of riparian vegetation. This will include maintenance of fencing along the riparian area to allow for exclusion of cattle during all or part of the year, and allowing grazing within the fenced area only as consistent with encouraging and perpetuating the growth of riparian plants. Landowners agree to continue and maintain their riparian fencing, which is already in place as of the date of this Agreement.

**2. Return flows.** The parties agree to work toward the goal of reducing surface water return flow from Landowners' irrigated lands to the Sprague River and its tributaries. This will be done by improving application of irrigation water to reduce runoff, and/or by additional tree planting along the riparian area.

**3. Tree Planting.** The parties agree to develop a tree planting plan as part of the Restoration Plan. Subject to the availability of funding, the Tribes agree to provide such funds as may be available for the planting of 250 trees per year on said property for each year of this Agreement. The parties shall all agree on the type of trees to be planted. Landowners recommend that consideration be given to hybrid poplars, based on the Landowners' experience with a previous restoration plan involving tree planting. The parties shall be jointly responsible for planting the trees and shall agree on the specifics of said planting.

**4. Wildlife Nest Boxes.** The Landowners agree to continue and maintain the wildlife nest boxes that are part of an on-going restoration project. The parties agree that some of said nest boxes may be relocated to better provide for wildlife habitat.

**5. Site-specific planning; costs; monitoring; access.** The parties agree to use their best efforts in good faith to develop a site-specific, written Restoration Plan to achieve the goals described in this Agreement.

A. To the extent this can be done using existing techniques, facilities and mechanisms, Landowners agrees to undertake this work, with the agreement that no funds are required to be supplied directly by Landowners.

B. To the extent this work requires techniques, facilities and mechanisms that call for additional funding, the parties agree to seek such funding. In such an instance, the Landowners are not obliged to undertake the work until such funding is available to them. When such funding is available, the Landowners will work with the United States and the Tribes to develop appropriate methods for achieving the goals described in this Agreement.

C. Provision will be made for monitoring of the work to determine its efficacy. Modification of the original Plan, to respond to what is learned from monitoring, will be undertaken as mutually agreed to.

D. Landowners will grant the Tribes reasonable access to the areas subject to the Plan to enable them to carry out such work as is required by the Plan. Access arrangements will be structured to minimize impacts on Landowners' operations on their land, while allowing the necessary work to be done to meet the goals described in this section as set out in the Plan. All access by the Tribes shall only occur upon advance notice to the Landowners, and said access shall only occur when a representative of the Landowners is present.

**6. No public access.** No right of access by the general public to any portion of the Landowners' property is conveyed by this Agreement.

**7. Permits Needed for Restoration Work.** If any permits or other authorizations are required for the restoration work undertaken pursuant to this Agreement, responsibility for obtaining such permits or authorizations will be allocated in the Plan or as otherwise agreed to by the parties.

**8. Control of Land.** The Landowners will retain complete control as a fee simple owner of the lands.

**9. Assignment and Transfer.** The Tribes may transfer their interests in, and responsibilities under, this Agreement to another person or entity, but only with the consent of the Landowners. The Landowners may transfer their interest in, and responsibilities under, this Agreement to successors in interest to the land described herein. The Landowners may also

transfer their interest in, and responsibilities under, this Agreement to another person or entity, but only with the consent of the Tribes.

**10. Successors.** This Agreement shall be binding upon, and inure to the benefit of, the parties, and their successors, heirs, or assigns regarding the property described herein.

**11. Notice.** Any notice, notification or other communication that any party desires or is required to give the other parties shall be sent by first class mail, postage prepaid, and addressed as follows:

To the Landowners: Lloyd and Alta Van Sickle, Box 375, Sprague River, OR 97639 and Sarah Dexter, P.O. Box 33004, Juneau, AK 99803.

To the Tribes: The Klamath Tribes, Box 436, Chiloquin, OR 97624

**12. Entire Agreement.** This document sets forth the entire agreement of the parties regarding this Restoration Agreement and supercedes all prior discussions, negotiations, understandings, or agreements, except those embodied in the settlement documents resolving the Landowners' Claim 112 in the Klamath Basin Adjudication.

**13. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of interpretations that will effect the purpose of the Agreement.

**14. Severability.** If any provision of this Agreement is found to be invalid, the remainder of the provisions shall not be affected thereby.

**15. Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties and deemed an original instrument thereby.

**16. Time of Agreement.** This agreement shall last for a period of ten years from the date this agreement is signed by the Landowners.

IN WITNESS WHEREOF, representatives of the Landowners and the Klamath Tribes have hereunto set their hands on the day and year below written.

For the Landowners:

*Sarah A. Dexter*

*July 19, 2004*

Date

For the Klamath Tribes:

\_\_\_\_\_

\_\_\_\_\_

Date

transfer their interest in, and responsibilities under, this Agreement to another person or entity, but only with the consent of the Tribes.

**10. Successors.** This Agreement shall be binding upon, and inure to the benefit of, the parties, and their successors, heirs, or assigns regarding the property described herein.

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IN WITNESS WHEREOF, representatives of the Landowners and the Klamath Tribes have hereunto set their hands on the day and year below written.

For the Landowners:

For the Klamath Tribes:

\_\_\_\_\_

  
\_\_\_\_\_

Date

7-16-04  
\_\_\_\_\_

Date