

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

In the Matter of the Determination of Water
Right Claim Number 275

**STIPULATION TO RESOLVE
CONTEST 1749**

Case No. 042

Elwood Miller,
Claimant/Contestant.

Claim No. 275

Contest No. 1749

The Oregon Water Resources Department (OWRD) and Claimant/Contestant
Elwood Miller (Claimant/Contestant) hereby agree and stipulate as follows:

A. STIPULATED FACTS

1. Raymond L. Unive originally filed Claim 275 in the Klamath
Adjudication. Claimant Elwood Miller subsequently acquired the property that is the
subject of Claim 275. Pursuant to an agreement between OWRD and the Klamath
Allottees Water Users Association (KAWUA), acting on behalf of Claimant/Contestant,
this claim was filed in three steps, with deadlines of February 1, 1991, September 1,
1991, and November 2, 1992. Claimant/Contestant submitted additional information
supporting the claim which was received by OWRD on October 1, 1999, October 12,
1999, October 29, 1999, and January 3, 2000.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of
Claim 275 preliminarily approving in part and denying in part Claim 275. The
Preliminary Evaluation evaluated Claim 275 as a *Walton* claim, and only took into
consideration information available to OWRD as of September 5, 1999.

3. On May 3, 2000, Claimant/Contestant filed Contest 1749 to Claim 275 which contested the Adjudicator's Preliminary Evaluation of Claim 275. No other contests were filed to Claim 275 or the Preliminary Evaluation for that claim.

4. OWRD and Claimant/Contestant agree that Contest 1749 can be resolved without the need for a hearing pursuant to the terms outlined below.

B. TERMS OF THE AGREEMENT

1. OWRD and Claimant/Contestant agree that Claim 275 should have been evaluated as an Allottee claim, instead of as a *Walton* claim.

2. OWRD and Claimant/Contestant agree that Claim 275 should be approved for current uses as follows:

- a. POINT OF DIVERSION LOCATION: SE ¼ SE ¼, Section 27, Township 34 South, Range 7 East, W.M.
- b. SOURCE: Williamson River, tributary to Upper Klamath Lake.
- c. USE: Irrigation of 1.2 acres and livestock use.
- d. AMOUNT ACTUALLY BENEFICIALLY USED: 0.03 cubic feet per second for irrigation; 10 gallons per day for livestock.
- e. PERIOD OF USE: March 1 – October 31 for irrigation;
January 1 – December 31 for livestock.
- f. PRIORITY DATE: October 14, 1864.
- g. PLACE OF USE:

SE ¼ SE ¼ 1.2 ACRES IRRIGATION AND LIVESTOCK
SECTION 27
TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M.

3. OWRD and Claimant/Contestant agree that Claim 275 should be approved for future irrigation use on Practically Irrigable Acreage (PIA) by the Adjudicator as follows:

- a. POINT OF DIVERSION: SE ¼ SE ¼, Section 27, Township 34S, Range 7 East, W.M.
- b. SOURCE: Williamson River, tributary to Upper Klamath Lake.
- c. USE: Irrigation of 5.3 acres.
- d. AMOUNT TO BE BENEFICIALLY USED: 0.09 cubic feet per second (cfs), measured at the point of diversion. Total duty of water for the entire place of use shall not exceed 16.5 acre feet per year.
- e. PERIOD OF USE: March 1 through October 31.
- f. PRIORITY DATE: October 14, 1864.
- g. PLACE OF USE:

SE ¼ SE ¼ 5.3 ACRES IRRIGATION
SECTION 27
TOWNSHIP 34 SOUTH, RANGE 9 EAST, W.M.

4. OWRD and Claimant/Contestant agree that pursuant to the terms of this Agreement, Contest 1749 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge on Contest 1749.

5. Based upon the agreement of OWRD and Claimant/Contestant that Claim 275 and the contest thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 275 be approved in the Final Order of Determination issued by the Adjudicator in accordance with the terms of paragraphs B.2. and B.3., above.

6. If the Final Order of Determination issued by the Adjudicator for Claim 275 does not follow the terms listed in paragraphs B.2. and B.3. above, Claimant/Contestant reserve any rights they may have to file exceptions to the Final Order of Determination as to Claim 275 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

6. This Stipulation to Resolve Contest 1726 may be executed in multiple, original counterparts, each of which constitutes and serves as the original hereof. Signatures by facsimile are acceptable.

For the Oregon Water Resources Department

HARDY MYERS
Attorney General

Justin Wirth, #00426
Walter Perry, III, #83361
Assistant Attorneys General

Date

Renee Moulton, Agency Representative
Oregon Water Resources Department

Date

For Klamath Allottee Water Users Association Member Claimant/Contestant Marilyn Hall

FREDERICKS, PELCYGER & HESTER



Christopher Leahy
Pro Hac Vice; Colorado Bar No. 23612
Attorneys for Klamath Allottee Water Users Association Member Claimant/Contestant
Marilyn Hall

6/27/03

Date

7. This Stipulation to Resolve Contest 1749 may be executed in multiple, original counterparts, each of which constitutes and serves as the original hereof. Signatures by facsimile are acceptable.

For the Oregon Water Resources Department

HARDY MYERS
Attorney General



Justin Wirth, #00426
Walter Perry, III, #83361
Assistant Attorneys General

July 1, 2003
Date



Renee Moulun, Agency Representative
Oregon Water Resources Department

7/1/03
Date

For Klamath Allottee Water Users Association Member Claimant/Contestant Elwood Miller

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Attorneys for Klamath Allottee Water Users Association Member Claimant/Contestant
Elwood Miller

Date