

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

October 11, 2005

TO ALL PARTIES:

Re: Klamath Adjudication – Case No. 224, Claim No. 113, Contest Nos. 3489, 3757,  
and 4144  
DOJ File No. 690-600-GN0195-03

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 agreement resolves all the remaining issues in this case.

Since all issues in this case have been resolved, there is no need to hold a hearing. Accordingly, the Oregon Water Resources Department will withdraw this case from the Office of Administrative Hearings, pursuant to OAR 137-033-0515(4).

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

Sincerely,

Jesse D. Ratcliffe  
Stephen E.A. Sanders  
Assistant Attorney General  
Natural Resources Section

JDR:tmc/GENO0598  
Enclosure  
c: Service List



**A. STIPULATED FACTS**

1. On December 7, 1990, Claim 113 was filed with OWRD by the original Claimant, Hickey Ranches, Inc.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 113.
3. In May 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3757.
4. In May 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3489.
5. The Claimant did not file a Statement of Contest of Claim and/or Preliminary Evaluation of Claim.
6. On December 8, 1004, the Office of Administrative Hearings issued an *Order On Reconsideration* which limited Claimant to a total of 186.9 acres based on payment of filing fees.
7. The Parties and OWRD agree that Contests 3757 and 3489 can be resolved without the need for a hearing pursuant to the terms set forth below.

**B. TERMS OF STIPULATION**

1. Claimant, the Parties, and OWRD agree that Claim 113 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: Lot 24, NE1/4, SE1/4, Section 11,  
Township 36 South, Range 11 East, Willamette Meridian.

SOURCE: The Sprague River, tributary to the Williamson River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: 4.67 cubic feet per second, measured at the point of diversion

DUTY: 3 acre feet per acre measured at the point of diversion

PERIOD OF USE: April 1 -- October 15

PLACE OF USE: 186.9 acres as shown below and on the map attached hereto  
as Exhibit A and incorporated by reference herein.

Acres	¼, ¼	Sec.	Township	Range
Lot 24 - 16.2 acres	NE1/4 SE1/4	11	T36S	R11E
Lot 25 - 18.8 acres	SE1/4 SE1/4	11	T36S	R11E
Lot 26 - 4.5 acres	SW1/4 SE1/4	11	T36S	R11E
Lot 1 - 14.3 acres	NE1/4 NE1/4	14	T36S	R11E
Lot 2 - 18.5 acres	NW1/4 NE1/4	14	T36S	R11E
Lot 5 - 12.5 acres	NW1/4 NW1/4	14	T36S	R11E
Lot 7 - 20 acres	NW1/4 NE1/4	14	T36S	R11E
Lot 8 - 18.8 acres	NE1/4 NE1/4	14	T36S	R11E
Lot 9 - 12 acres	SE1/4 NE1/4	14	T36S	R11E
Lot 10 - 17.3 acres	SW1/4 NE1/4	14	T36S	R11E
Lot 11 - 18.8 acres	SE1/4 NW1/4	14	T36S	R11E
Lot 12 - 11 acres	SW1/4 NW1/4	14	T36S	R11E
Lot 14 - 4.2 acres	SE1/4 NW1/4	14	T36S	R11E

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Contests 3757 and 3489 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 113.

3. Based on the Stipulation of the Parties and OWRD that Claim 113 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby

recommends to the Adjudicator that Claim 113 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 113 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.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 113 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 113 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 113.

5. The Parties agree not to oppose or object to this Stipulation or any of its terms, provisions, conditions, or covenants and to support this Stipulation if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

6. 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 Parties to this Stipulation and OWRD 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 or any other judicial or administrative proceeding.

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 relate 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.

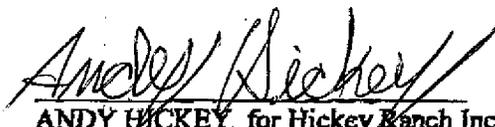
10. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the Parties, notwithstanding that the Parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by facsimile transmission shall be as effective as delivery of an original signed counterpart of this Stipulation.

11. 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.

12. This Stipulation shall be effective as of the date of the last signature hereto.  
Stipulated, agreed and approved by:

For the Claimant:

DATED: June \_\_, 2005



ANDY HICKEY, for Hickey Ranch Inc.  
159 East Front  
Merrill, OR 97633

For Contestant, the United States of America:

*Sept. 23*  
DATED: ~~June~~ \_\_\_\_\_, 2005

KELLY A. JOHNSON  
Acting Assistant Attorney General



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ATTORNEY FOR THE UNITED STATES OF AMERICA

For Contestants, the Klamath Project Water Users:

DATED: June     , 2005

*Amel*

*August 22*



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For the Oregon Water Resources Department:

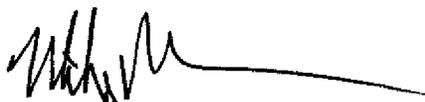
HARDY MEYERS  
Attorney General

*October*  
DATED: ~~May~~ *6*, 2005

  
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ATTORNEYS FOR OREGON WATER  
RESOURCES DEPARTMENT

*Oct.*  
DATED: ~~May~~ *10*, 2005

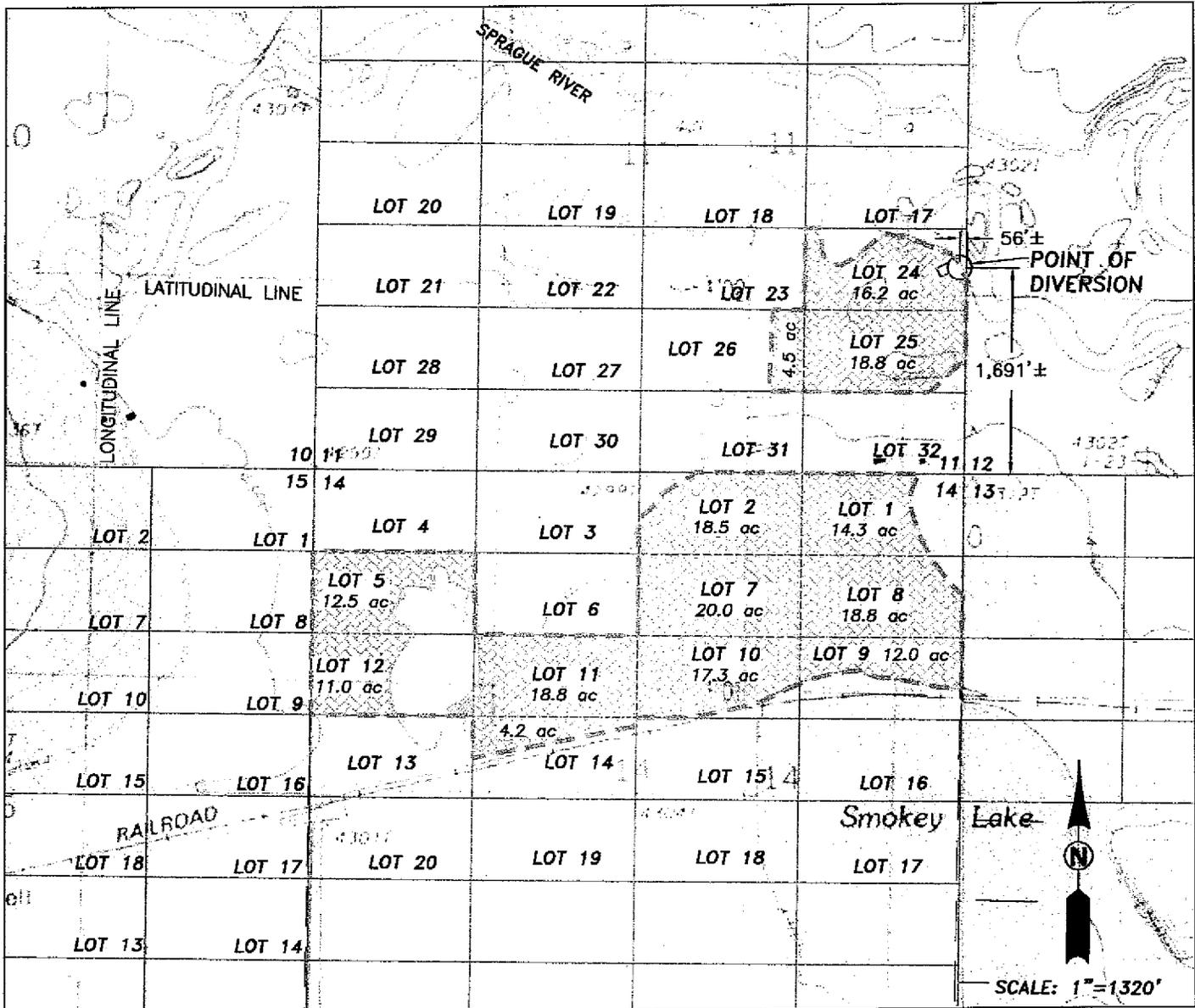
  
\_\_\_\_\_  
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AGENCY REPRESENTATIVE FOR OREGON  
WATER RESOURCES DEPARTMENT

# ADJUDICATION CLAIM 113 MAP

FOR  
**HICKEY RANCHES, INC.**  
 CASE NO. 224

LOCATED IN THE SOUTHERLY HALF OF SECTION 11 & THE  
 NORTHERLY HALF OF SECTION 14, T.36S., R.11E, W.M.,  
 KLAMATH COUNTY, OR.

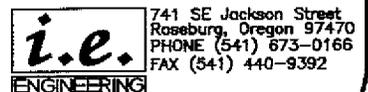


\*NOTE:  
 BACKGROUND MAP PROVIDED  
 THROUGH TERRAIN NAVIGATOR, USGS.  
 IRRIGATED AREA WITHIN EACH LOT SHOWN  
 IN ACRES

- DIVERSION PUMP
- IRRIGATED LOTS

MAIN DITCH LOCATIONS ARE APPROXIMATE

THE PURPOSE OF THIS MAP IS TO  
 IDENTIFY THE LOCATION OF THE  
 WATER RIGHT ONLY. THERE IS NO  
 INTENT TO PROVIDE DIMENSIONS OR  
 LOCATIONS OF PROPERTY LINES.



PROJECT NO. 2033-01T2

## CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October 2005, I served the within  
STIPULATION TO RESOLVE CONTESTS on the parties hereto by regular first-class  
mail and by e-mail (where an e-mail address is listed below), a true, exact and full copy  
thereof to:

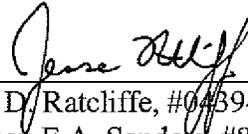
**VIA STATE SHUTTLE MAIL**  
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