

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 27, 2005

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 235, Claim No. 128, Contest Nos. 37, 2846,
3503, 3769, and 4157
DOJ File No. 690-600-GN0206-03

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. 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/GENO2624
Enclosure
c: Service List

A. STIPULATED FACTS

1. On January 16, 1991, Claim 128 was filed with OWRD by the original Claimants, William L. Gallagher.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 128.
3. In May 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3769.
4. In May 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3503.
5. In May 2000, the Claimants filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 37.
6. The Parties and OWRD agree that Contests 3769, 3503, and 37 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimants, the Parties, and OWRD agree that Claim 128 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION:

P.O.D. No.	¼, ¼	Sec.	Township	Range	Source
1 (Area 1,2,7,8) ⁴	SE¼, SW¼	30	T36S	R12E	Whiskey Creek and Whiskey Creek Springs, Tributaries to Sprague River
2 (Area 3)	NE¼, NW¼	30	T36S	R12E	Modoc Billy Creek, Tributary to Whiskey

⁴ Area numbers refer to the attached map, which outlines the irrigation system by Areas that correspond to certain points of diversion.

					Creek
3 (Area 4,8,9)	NE¼, SE¼	36	T36S	R11E	Modoc Billy Creek, Tributary to Whiskey Creek
4 (Area 5,9)	NW¼, NE¼ Lot 2	1	T37S	R11E	Unnamed Spring, Tributary to Whiskey Creek
5 (Area 6,7)	SW¼, NE¼	30	T36S	R12E	Lola-K-Wast Spring, Tributary to Whiskey Creek
6 (Area 10)	SW¼, NW¼ Lot 2	31	T36S	R12E	Whiskey Creek and Whiskey Creek Springs, Tributaries to Sprague River

SOURCES: Modoc Billy Creek, Lola-K-Wast Spring, and Unnamed Spring, tributaries to Whiskey Creek, and Whiskey Creek and Whiskey Creek Springs, tributaries to Sprague River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: A cumulative maximum of 12.74 cubic feet per second (c.f.s.) total for all listed points of diversion, with the individual maximum rates for each place of use, measured at the points of diversion, as specified below

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

PERIOD OF USE: April 1 – November 1

PLACE OF USE: 619.4 acres as shown below and on the attached map.

Acres Served by P.O.D. # 1 (Areas 1 & 2 on attached map)

Acres	¼, ¼	Sec.	Township	Range
26.6	NE¼, SW¼	30	T36S	R12E
13.3	SE¼, SW¼	30	T36S	R12E
20.5	SW¼, SE¼	25	T36S	R11E
6.5	SE¼, SE¼	25	T36S	R11E
31.4	NE¼, SE¼	25	T36S	R11E
25.4	NW¼, SE¼	25	T36S	R11E
Total Acres: 123.7				
RATE: 3.09 cfs				

Acres Served by P.O.D. # 2 (Area 3 on attached map)

Acres	¼, ¼	Sec.	Township	Range
37.2	NW¼, NW¼ Lot 1	30	T36S	R12E
44.5	SW¼, NW¼ Lot 2	30	T36S	R12E
Total Acres: 81.7				
RATE: 2.04 cfs				

Acres Served by P.O.D. # 3 (Area 4 on attached map)

Acres	¼, ¼	Sec.	Township	Range
44.4	NW¼, SW¼ Lot 3	30	T36S	R12E
44.5	SW¼, SW¼ Lot 4	30	T36S	R12E

1.8	NE¼, SW¼	30	T36S	R12E
7.2	SE¼, SW¼	30	T36S	R12E
43.8	NW¼, NW¼	31	T36S	R12E
4.1	NE¼, NW¼	31	T36S	R12E
2.0	SE¼, SE¼	36	T36S	R11E
15.6	NE¼, SE¼	36	T36S	R11E
29.7	SE¼, NE¼	36	T36S	R11E
26.1	NE¼, NE¼	36	T36S	R11E
.3	SW¼, NE¼	36	T36S	R11E
12.0	NW¼, NE¼	36	T36S	R11E
0.6	SW¼, SE¼	25	T36S	R11E
Total Acres: 232.1				
RATE: 3.2 cfs				

Acres Served by P.O.D. # 4 (Area 5 on attached map)

Acres	¼, ¼	Sec.	Township	Range
13.5	SE¼, SE¼	36	T36S	R11E
7.2	NE¼, SE¼	36	T36S	R11E
Total Acres: 20.7				
RATE: 0.52 cfs				

Acres Served by P.O.D. # 5 (Area 6 on attached map)

Acres	¼, ¼	Sec.	Township	Range
32	NW¼, SE¼	30	T36S	R12E
13.8	SW¼, NE¼	30	T36S	R12E
Total Acres: 45.8				
RATE: 1.0 cfs				

Acres Served by P.O.D. # 6 (Area 10 on attached map)

Acres	¼, ¼	Sec.	Township	Range
36.3	SW¼, SE¼	30	T36S	R12E
6.1	SE¼, SE¼	30	T36S	R12E
0.2	NW¼, NW¼	31	T36S	R12E
21.1	NE¼, NW¼	31	T36S	R12E
5.5	NW¼, NE¼	31	T36S	R12E
Total Acres: 69.2				
RATE: 1.73 cfs				

Acres Served by P.O.D.'s # 1 and 5 (Area 7 on attached map)

NOTE: The following Place of Use is jointly served by two Points of Diversion. The combined rate of diversion for these two Points of Diversion shall not exceed 0.17 cfs for the following Place of Use.

Acres	¼, ¼	Sec.	Township	Range
5.3	NW¼, SE¼	30	T36S	R12E
1.4	SW¼, NE¼	30	T36S	R12E
Total Acres: 6.7				

Acres Served by P.O.D.'s # 1 and 3 (Area 8 on attached map)

NOTE: The following Place of Use is served by two Points of Diversion. The combined rate of diversion for these two Points of Diversion shall not exceed 0.56 cfs for the following Place of Use.

Acres	¼, ¼	Sec.	Township	Range
5.4	NW¼, NE¼	36	T36S	R11E
14.9	SW¼, SE¼	25	T36S	R11E
1.9	SE¼, SE¼	25	T36S	R11E

Total Acres: 22.2				
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Acres Served by P.O.D.'s # 3 and 4 (Area 9 on attached map)

NOTE: The following Place of Use is jointly served by two Points of Diversion. The combined rate of diversion for these two Points of Diversion shall not exceed 0.43 cfs for the following Place of Use.

Acres	¼, ¼	Sec.	Township	Range
11.4	NE¼, SE¼	36	T36S	R11E
5.9	SE¼, NE¼	36	T36S	R11E
Total Acres: 17.3				

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Contests 3769, 3503, and 37 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 128.

3. Based on the Stipulation of the Parties and OWRD that Claim 128 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 128 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 128 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 128 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 128 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 128.

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. The Parties 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 Claimants:

DATED: May 14, 2005

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For Contestant, the United States of America:

DATED: October 24, 2005

Kelley A. Johnson
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ATTORNEY FOR THE UNITED STATES OF AMERICA

For Contestants, the Klamath Project Water Users:

DATED: Oct. 24, 2005

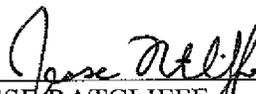


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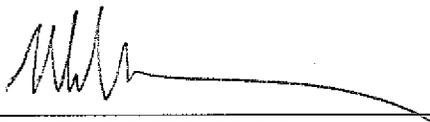
DATED: October 25, 2005



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ATTORNEYS FOR OREGON WATER
RESOURCES DEPARTMENT

DATED: October 26, 2005



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