

BEFORE THE HEARINGS OFFICE PANEL  
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

The United States of America; The Klamath  
Tribes

**STIPULATION TO RESOLVE  
CONTESTS NOS. 3780 AND 4082**

Contestants,

Case No. 170

vs.

Claim: 25

Martin Lester Pernoll,

Contest: 3780 and 4082

Claimant

The Oregon Water Resources Department (OWRD), Claimant Martin Lester Pernoll and  
Contestants United States of America and the Klamath Tribes agree and stipulate as follows:

**I. STIPULATED FACTS**

- A. Claimant filed Claim 25 on December 4, 1990 to affirm water rights in the Klamath Adjudication.
- B. Claimant filed Claim 25 for a total of 23.31 cubic feet per second (cfs) for irrigation of 932.4 acres and livestock watering of 600 head.
- C. Claimant is a non-Indian successor to Klamath Indian Allottees. This claim is a Walton right with a priority date of October 14, 1864.
- D. The United States of America filed contest 3780 and the Klamath Tribes filed contest 4082 against Claim 25 and the Preliminary Evaluation of the Claim.
- E. OWRD, Claimant and Contestants agree that Contests 3780 and 4082 can be resolved without the need for a hearing pursuant to the terms outlined below.

## II. TERMS OF THE AGREEMENT

### A. Claimant, Contestants, and OWRD agree that Claim 25 should be approved by the Adjudicator as follows:

#### 1. Coyote Creek Diversion

- a. POINT OF DIVERSION LOCATION: NE ¼ SE ¼, Section 27, Township 31 South, Range 13 East, W.M.
- b. SOURCE: Coyote Creek, tributary to Sycan River
- c. USE: irrigation of 24.7 acres
- d. AMOUNT ACTUALLY BENEFICIALLY USED: 0.62 cubic feet per second, measured at the point of diversion
- e. RATE: 1/40 cubic foot per second/acre
- f. DUTY: 2.625 acre foot/acre
- g. PERIOD OF USE: April 1 - October 1
- h. PRIORITY DATE: October 14, 1864
- i. PLACE OF USE:  
NE ¼ NW ¼ 24.7 ACRES IRRIGATION  
SECTION 35  
TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

#### 2. Long Creek Diversion

- a. POINT OF DIVERSION LOCATION: SW ¼ NE ¼, Section 4, Township 32 South, Range 13 East, W.M.
- b. SOURCE: Long Creek, tributary to Sycan River
- c. USE: irrigation of 892.7 acres
- d. AMOUNT ACTUALLY BENEFICIALLY USED: 22.32 cubic feet per second, measured at the point of diversion
- e. RATE: 1/40 cubic foot per second/acre
- f. DUTY: 2.625 acre foot/acre
- g. PERIOD OF USE: April 1 - October 1
- h. PRIORITY DATE: October 14, 1864
- i. PLACE OF USE:

NE ¼ NE ¼	40.0	ACRES IRRIGATION
NW ¼ NE ¼	39.2	ACRES IRRIGATION
SW ¼ NE ¼	40.0	ACRES IRRIGATION
SE ¼ NE ¼	40.0	ACRES IRRIGATION
NE ¼ NW ¼	4.6	ACRES IRRIGATION
SE ¼ NW ¼	36.5	ACRES IRRIGATION
NE ¼ SW ¼	40.0	ACRES IRRIGATION
SE ¼ SW ¼	40.0	ACRES IRRIGATION
NE ¼ SE ¼	40.0	ACRES IRRIGATION
NW ¼ SE ¼	40.0	ACRES IRRIGATION

SW ¼ SE ¼ 40.0 ACRES IRRIGATION  
SE ¼ SE ¼ 40.0 ACRES IRRIGATION  
SECTION 35  
TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

NE ¼ SW ¼ 40.0 ACRES IRRIGATION  
NW ¼ SW ¼ 28.5 ACRES IRRIGATION  
SW ¼ SW ¼ 2.0 ACRES IRRIGATION  
SE ¼ SW ¼ 18.2 ACRES IRRIGATION  
NE ¼ SE ¼ 40.0 ACRES IRRIGATION  
NW ¼ SE ¼ 40.0 ACRES IRRIGATION  
SW ¼ SE ¼ 40.0 ACRES IRRIGATION  
SE ¼ SE ¼ 40.0 ACRES IRRIGATION  
SECTION 2  
TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M.

SW ¼ NE ¼ 15.3 ACRES IRRIGATION  
SE ¼ NE ¼ 36.1 ACRES IRRIGATION  
SW ¼ NW ¼ 15.5 ACRES IRRIGATION  
SE ¼ NW ¼ 25.9 ACRES IRRIGATION  
LOT 1 NE ¼ NE ¼ 27.7 ACRES IRRIGATION  
LOT 2 NW ¼ NE ¼ 28.5 ACRES IRRIGATION  
LOT 3 NE ¼ NW ¼ 34.0 ACRES IRRIGATION  
LOT 4 NW ¼ NW ¼ 20.7 ACRES IRRIGATION  
SECTION 3  
TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M.

- B. OWRD, Claimant and Contestants agree that the total acres of irrigation for the Coyote Creek Diversion should be reduced from the claimed amount of 39.7 acres to 24.7 acres. The 15 acres removed from the claim are indicated on the attached sketch labeled Exhibit A and are located as follows:

NW ¼ NE ¼ 0.8 ACRES IRRIGATION  
NE ¼ NW ¼ 10.7 ACRES IRRIGATION bordering the northwest  
boundary of Long Creek Ditch  
SE ¼ NW ¼ 3.5 ACRES  
SECTION 35  
TOWNSHIP 31 SOUTH, RANGE 13, EAST, W.M.

Claimant will submit a map prepared in conformance with OAR 690 028-0025(4) depicting the 15 acres removed from the claim to OWRD within six months of the execution of this Stipulation by the last signatory. Upon submission to OWRD, the map will be substituted for Exhibit A in this Stipulation and incorporated by reference as if fully set forth in this Stipulation. If this map is not submitted within the time period

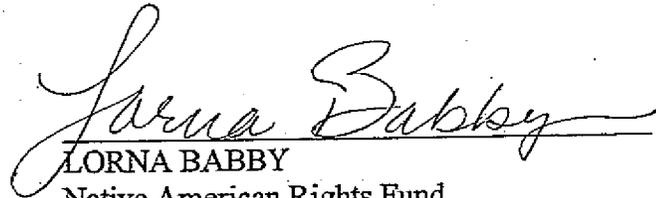
identified above, this Stipulation will be void and the claim and the contests will be referred back to the Office of Administrative Hearings for further proceedings.

- C. OWRD, Claimant and Contestants agree that pursuant to the terms of this Agreement, Contests Nos. 3780 and 4082 have been satisfactorily resolved and there is no need for a hearing before the Hearing Officer on the contests to Claim 25.
- D. Based upon the agreement of OWRD, Claimant, and Contestants that Claim 25 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 25 be approved in the Final Order of Determination issued by the Adjudicator in accordance with the terms in paragraph A. above.
- E. If the Final Order of Determination issued by the Adjudicator for Claim 25 does not follow the terms listed in paragraph A. above, Claimant and Contestants reserve any rights they may have to file exceptions to the Final Order of Determination as to Claim 25 in the Circuit Court for Klamath County and reserve any rights they may have to participate in any future proceedings authorized by law.
- F. This Stipulation is entered into on good faith negotiations to resolve legal disputes by compromise and settlement. Nothing in this Stipulation or offers of compromise made in the course of negotiating this Stipulation shall be construed as admissions or tendered or used as evidence or used in any other manner in any proceeding including in this adjudication other than for a purpose contemplated by Oregon Rule of Evidence 408.
- G. The terms of this Stipulation are non-severable.
- H. This Stipulation shall bind and inure to the benefit of successors, heirs and assigns of the parties.
- I. The Stipulation may be signed in counterparts.

DATED: March 9, 2004

  
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DATED: Feb. 2, 2004

  
LORNA BABBY

Native American Rights Fund

1506 Broadway

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Phone: (303) 447-8760

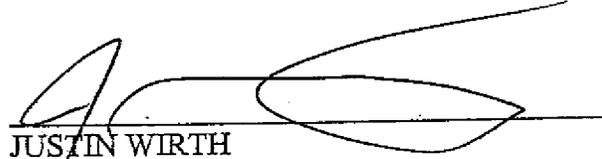
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[babby@narf.org](mailto:babby@narf.org)

For the Oregon Water Resources Department

HARDY MEYERS  
Attorney General

DATED: March 19, 2004



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DATED: March 19, 2004



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AGENCY REPRESENTATIVE FOR OREGON  
WATER RESOURCES DEPARTMENT

DATED: March 25, 2004

Barbara Scott-Brier

BARBARA SCOTT-BRIER  
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CERTIFICATE OF SERVICE

I hereby certify that on January \_\_\_\_, 2004, I mailed a true copy of the following: STIPULATED AGREEMENT, by depositing the same in the U.S. Post Office, Portland, Oregon, 97201, with first class postage prepaid thereon, and addressed to:

Walter Echohawk/Lorna Babby  
Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302  
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Hearing Officer  
Hearings Officer Panel  
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Salem, OR 97303-4924

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Carl Ullman  
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705 Greensburg Circle  
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Walter Perry/Justin Wirth  
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1162 Court St. NE  
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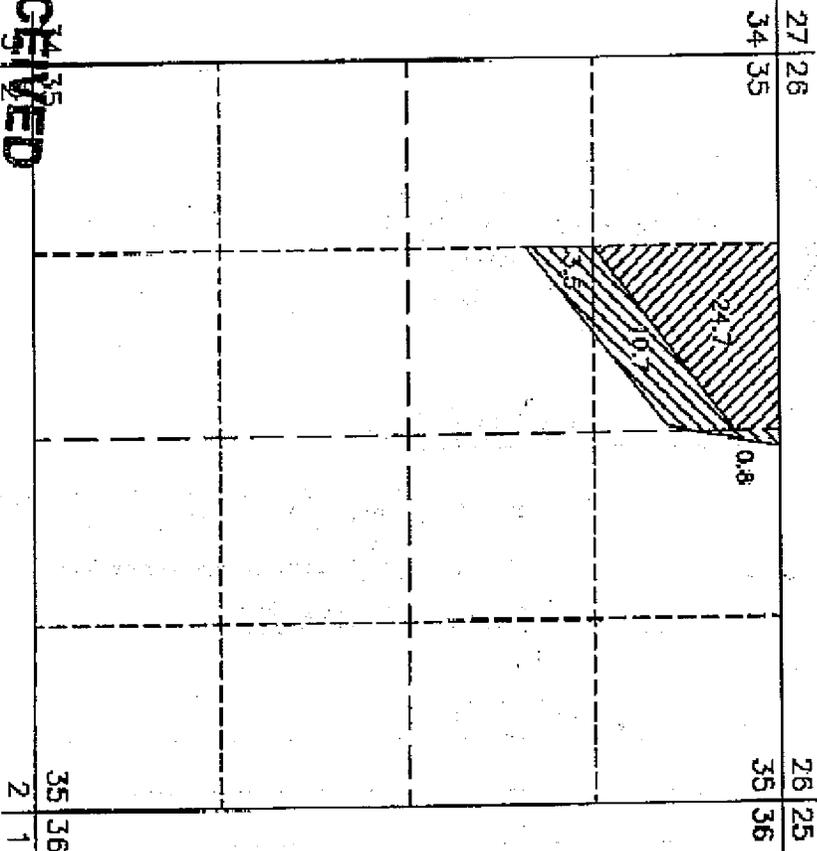
Teri Hranac  
Oregon Water Resources Department  
158 12<sup>th</sup> St NE  
Salem, OR 97301

  
Nanci L. Klinger  
Attorney for Martin Lester Pernoll, Claimant



**KLAMATH ADJUDICATION  
CLAIM 25  
MAPPING OF LANDS AS PER  
STIPULATION TO RESOLVE  
CONTESTS NO. 3780 AND 4082**

SECTION 35, TOWNSHIP 31 SOUTH,  
RANGE 13 EAST, W.M., LAKE COUNTY, OREGON



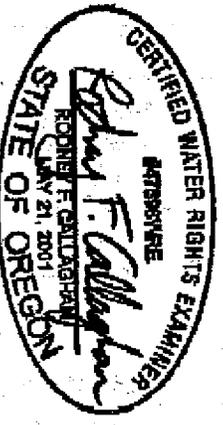
**LEGEND**

-  15.0 ACRES TO BE REMOVED AS PER STIPULATION TO RESOLVE CONTESTS NO. 3780 AND 4082.
-  24.7 ACRES TO BE REMAIN AS PER STIPULATION TO RESOLVE CONTESTS NO. 3780 AND 4082.

SOURCE: COYOTE CREEK, A TRIBUTARY TO SYCAN RIVER.

**POINT OF DIVERSION**

LOCATED IN THE NE1/4SE1/4 OF SECTION 27, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M., LAKE COUNTY, OREGON AS MAPPED BY THE OREGON WATER RESOURCES DEPARTMENT.



RE-NEW: 12/31/05

**RECEIVED**

MAY 26 2004

WATER RESOURCES DEPT  
SALEM, OREGON

R13E

T31S

THIS MAP IS FOR THE PURPOSE OF LOCATING A WATER RIGHT ONLY AND HAS NO INTENT TO PROVIDE LEGAL DIMENSIONS OR THE LOCATION OF PROPERTY LINES.

SCALE 1"=1320'

PREPARED FOR: MARTIN LESTER PERNOLL  
705 GREENSBURG CIRCLE  
RENO, NV 89509

PREPARED BY:  
**CLS** CALLAGHAN LAND SURVEYING  
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(541) 947-5841

DATE: 5/25/2004 DRAWING: 200407A