

COPY

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

**STIPULATION TO RESOLVE  
CONTESTS**

Case No. 201

vs.

Claim: 71

Cary Havird; Marlys Havird;  
Claimants.

Contests: 3741 and 4122

Claimants Cary Havird; Marlys Havird ("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 January 29, 1990, Claimants filed Claim 71 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 71, preliminarily approving the claim generally as claimed.
3. The following contests were filed to Claim 71: Contest 3741, filed by the United States; and Contest 4122, filed by the Tribes (referred to jointly as the "Contestants").
4. Claimants, Contestants, and OWRD agree that Contests 3741 and 4122 can be resolved without the need for a hearing pursuant to the terms set forth below.

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**B. TERMS OF STIPULATION**

1. Claimants, Contestants, and OWRD agree that Claim 71 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: portable within the E1/2NE1/4, Section  
23, Township 34 South, Range 8 East, W.M.

SOURCE: Sprague River, tributary to Williamson River

PRIORITY DATE: October 14, 1864

USE: irrigation of 30.0 acres

AMOUNT ACTUALLY BENEFICIALLY USED: 0.75 cubic feet per  
second, measured at the point of diversion.

PERIOD OF USE: July 1 – October 1

PLACE OF USE:

¼, ¼ to be supplied shortly,

See also the attached map showing the place of use.

DUTY: 2.0 acre-feet/acre

2. Claimants, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contests 3741 and 4122 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these contests to Claim 71.

3. Based on the Stipulation of Claimants, Contestants and OWRD that Claim 71 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 71 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further

recommends that Claim 71 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 71 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 71 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 201.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

Stipulated, agreed and approved by:

CLAIMANTS:

~~NOVEMBER~~ DECEMBER 8, 2003

*Cary Havird*

CARY HAVIRD  
P.O. Box 498  
Chiloquin, Oregon 97624

*Marlys Havird*

MARLYS HAVIRD  
P.O. Box 498  
Chiloquin, Oregon 97624

Stipulation, Claim 71, Case 201

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For Contestant, the United States of America:

Dated: December 8, 2003



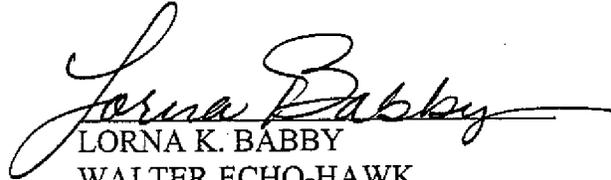
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Stipulation, Claim 71, Case 201

KBA\_ACFOD\_01108

For Contestants, the Klamath Tribes:

Dated: December 12, 2003

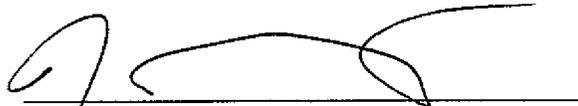


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[wechohawk@narf.org](mailto:wechohawk@narf.org)

For the Oregon Water Resources Department:

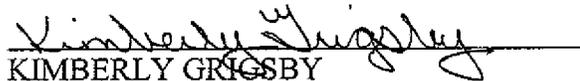
HARDY MEYERS  
Attorney General

*December 18*  
Dated: November     , 2003



JUSTIN WIRTH  
WALTER PERRY  
Assistant Attorneys General  
Oregon Department of Justice  
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*December*  
Dated: November 19, 2003



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AGENCY REPRESENTATIVE FOR  
OREGON WATER RESOURCES  
DEPARTMENT

MAP PREPARED FROM:  
 MINOR LAND PARTITION  
 NO. 79-117  
 KLAMATH COUNTY RECORDS  
 SEPTEMBER, 1979

THIS MAP IS PREPARED FOR  
 THE PURPOSE OF IDENTIFYING  
 THE LOCATION OF THE WATER  
 RIGHT ONLY AND IS NOT  
 INTENDED TO PROVIDE LEGAL  
 DIMENSIONS OR LOCATIONS OF  
 PROPERTY OWNERSHIP LINES.

2.12 ACRES

7.85 ACRES

20.03 ACRES

SPRAGUE  
 RIVER

WILLIAMSON RIVER ROAD

1315.60'  
 N89°50'40"E  
 NE CORNER SECTION 23

S00°13'30"W  
 615.85'

S00°00'00"W  
 2960.15'

S07°44'01"W  
 834.53'

S89°57'59"E  
 460.56'

S00°00'48"W  
 397.84'

14 13

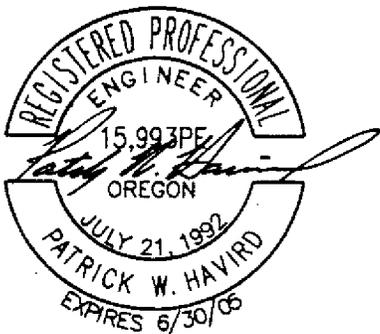
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SCALE: 1"=500'

INDICATES IRRIGATED ACREAGE

TOTAL IRRIGATED AREA=30.00 ACRES

LOCATED IN:  
 THE E 1/2 OF THE NE 1/4 OF SECTION 23  
 T. 34 S., R. 8 E., W.M. KLAMATH COUNTY, OR.



KLAMATH ADJUDICATION

IRRIGATION ACREAGE MAP

MAP PREPARED FOR:  
 CARY L. & MARLYS J. HAVIRD  
 P.O. BOX 498  
 CHILOQUIN, OR 97624  
 CLAIM # 71

12/03

SHEET



OF

