

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

January 27, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 204, Claim No. 76, Contest Nos. 17, 3468,  
3744, and 4125  
DOJ File No. 690-600-GN175-03

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 Attorneys General  
Natural Resources Section

JDR:tmc/GENO9169  
Enclosure  
c: Service List

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE STATE OF OREGON  
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  
Contestant,

vs.

Earl M. Harris

Claimant/Contestant.

**STIPULATION TO RESOLVE  
CONTESTS**

Case No. 204

Claim No. 76

Contests 17<sup>1</sup> and 3744<sup>2</sup>

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Claimant Earl M. Harris ("Claimant"), the United States of America ("Contestant"), (collectively "Parties"), and the Oregon Water Resources Department ("OWRD"), hereby agree and stipulate, and request the Adjudicator to resolve the above-captioned Claim and Contest as follows:

**A. STIPULATED FACTS**

1. On December 6, 1990, Claim 76 was filed with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 76.
3. On April 17, 2000, the Claimant filed a Statement of Contest of Preliminary

Evaluation of Claim 76, Contest 17.

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<sup>1</sup> On April 8, 2004, the Klamath Project Water Users voluntarily withdrew their contest 3468.

<sup>2</sup> On January 21, 2004 Klamath Tribes withdrew contest 4125.

4. On May 2, 2000, the Tribes filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 4125. This contest was subsequently withdrawn.

5. On May 4, 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3744.

6. On May 2, 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3468. This contest was subsequently withdrawn.

7. Claimant, Contestant, and OWRD agree that Contest 17 and 3744 can be resolved without the need for a hearing pursuant to the terms set forth below.

#### **B. TERMS OF STIPULATION**

1. Claimant, Contestant, and OWRD agree that Claim 76 should be approved by the Adjudicator to the extent described below:

**POINT OF DIVERSION LOCATION:** Diversion #1, SE1/4, SW1/4, Diversion #2, Lot 3 (NW1/4, SW1/4), Section 30, Township 34 South, Range 9 East, W.M.

**SOURCE:** Sprague River, tributary to the Williamson River

**PRIORITY DATE:** October 14, 1864

**USE:** irrigation

**RATE:** Point of Diversion #1: 1.57 cubic feet per second, measured at the point of diversion; Point of Diversion #2: 1.57 cubic feet per second, measured at the point of diversion.

**DUTY:** 2.9 acre feet per acre measured at the point of diversion

**PERIOD OF USE:** April 1 – October 1

**PLACE OF USE:** Table below and Map at Exhibit A of 131 acres

**DIVERSION #1, SE1/4, SW1/4**

Acres	¼, ¼	Sec.	Township	Range
9.4	SESE	30	34S	9E
9.0	SESW	30	34S	9E
16.2	Lot 1 (NWNW)	31	34S	9E
33.6	NENW	31	34S	9E
Total Acres: 68.2				

**DIVERSION #2, LOT 3 (NW1/4, SW1/4)**

Acres	¼, ¼	Sec.	Township	Range
25.5	NESW	30	34S	9E
6.0	SWSE	30	34S	9E
5.8	NWSE	30	34S	9E
7.0	SENE	30	34S	9E
14.3	NESE	30	34S	9E
4.2	Lot 3 (NWSW)	30	34S	9E
Total Acres: 62.8				
TOTAL COMBINED ACRES: 131				

The Place of Use is set forth more particularly in the map attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Contests 17 and 3744 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 76.

3. Based on the Stipulation of the Parties and OWRD that Claim 76 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby

recommends to the Adjudicator that Claim 76 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 76 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 76 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 76 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 76.

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.

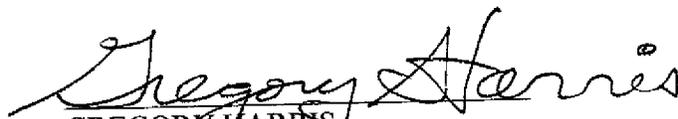
10. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the Parties, notwithstanding that the Parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by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

Claimant:

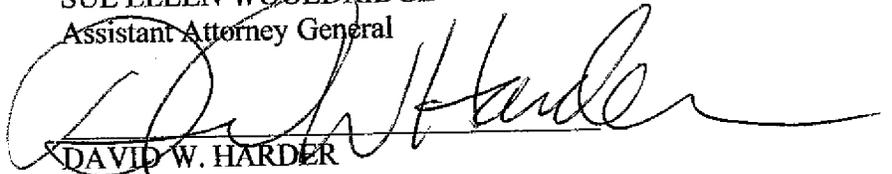
DATED: December 23, 2005

  
GREGORY HARRIS  
Box 467  
Chiloquin, OR. 97624

For Contestant, the United States of America:

*January 3, 2006*  
DATED: ~~December~~, 2005

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General

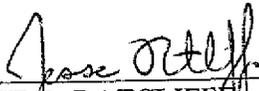


DAVID W. HARDER  
Indian Resources Section  
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U.S. Department of Justice  
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Telefax: (303) 312-7379  
e-mail: [david.harder@usdoj.gov](mailto:david.harder@usdoj.gov)

For the Oregon Water Resources Department:

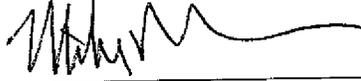
*January 6, 2006*  
DATED: ~~December~~, 2005

HARDY MEYERS  
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[steve.sanders@doj.state.or.us](mailto:steve.sanders@doj.state.or.us)

ATTORNEYS FOR THE OREGON WATER  
RESOURCES DEPARTMENT

January 10, 2006  
DATED: ~~December~~, ~~2005~~



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Oregon Water Resources Department  
725 Summer Street, NE, Suite A  
Salem, Oregon 97301-1217  
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e-mail: [mike.j.reynolds@wrд.state.or.us](mailto:mike.j.reynolds@wrд.state.or.us)

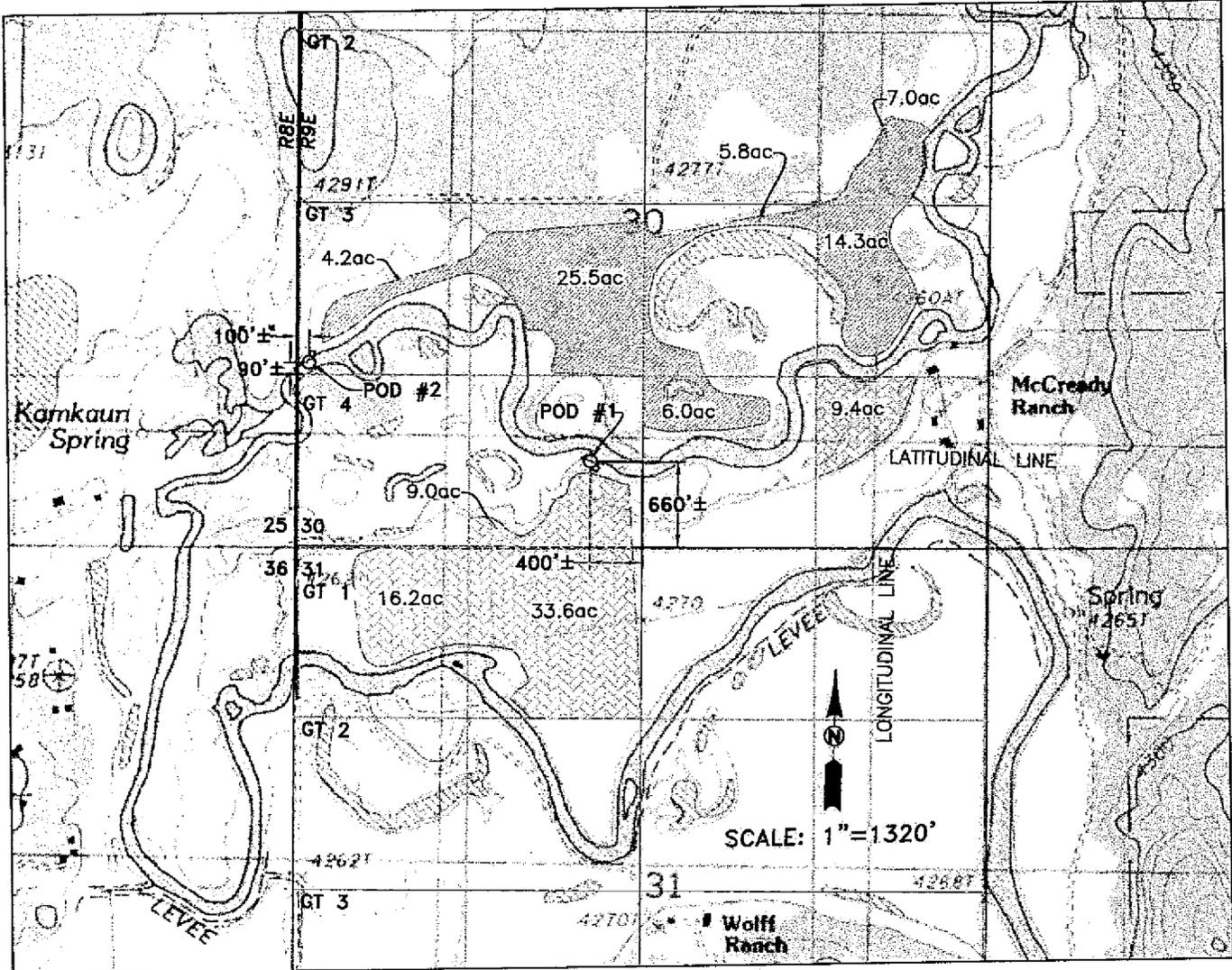
AGENCY REPRESENTATIVE FOR OREGON  
WATER RESOURCES DEPARTMENT

# ADJUDICATION CLAIM MAP

FOR  
GREG HARRIS

CLAIM# 76

LOCATED IN SECTION 30 & THE N.W. 1/4 OF SECTION  
31, T.34S., R.9E, W.M. KLAMATH COUNTY, OREGON



\*NOTE:  
BACKGROUND MAP PROVIDED  
THROUGH TERRAIN NAVIGATOR, USGS.  
IRRIGATED AREAS SHOWN IN ACRES

- DIVERSION PUMP (POD)
-  AREA IRRIGATED BY POD #1
-  AREA IRRIGATED BY POD #2
- 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.



EXPIRES: 12/31/2006

**i.e.**  
ENGINEERING  
741 SE Jackson Street  
Roseburg, Oregon 97470  
PHONE (541) 673-0166  
FAX (541) 440-9392

PROJECT NO. 2033-017

Exhibit A

## CERTIFICATE OF SERVICE

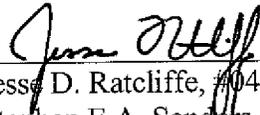
I hereby certify that on the 27th day of January 2006, I served the within LETTER TO PARTIES, STIPULATION TO RESOLVE CONTESTS, AND CERTIFICATE OF SERVICE on the parties hereto by e-mail, mail (where an e-mail address is listed below) and by regular first-class, a true, exact and full copy thereof to:

### **VIA STATE SHUTTLE MAIL**

Dwight W. French / Teri Hranac  
Oregon Water Resources Dept.  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
[dwight.w.french@state.or.us](mailto:dwight.w.french@state.or.us)  
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