

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 21, 2005

TO ALL PARTIES TO KLAMATH ADJUDICATION CASE NO. 217, CLAIM NO.
103

Re: Klamath Adjudication – Case No. 217, Claim No. 103, Contest Nos. 2842, 3483,
3809 and 4137
DOJ File No. 690-600-GN0188-03

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve Contests, Exhibit A, 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,

A handwritten signature in black ink, appearing to read "Jesse D. Ratcliffe".

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

JDR:tmc/GENIN3444
Enclosure
c: Service List

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**WATER RESOURCES DEPT
SALEM, OREGON**

**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,
Contestant,

vs.

John S. Kronenberger,
Claimant.

STIPULATION TO RESOLVE CONTEST

Case No.: 217

Claim: 103

Contest: 2842; 3483; 3809 ;4137

Claimant John S. Kronenberger (Claimant), Contestant United States of America (Contestant), collectively referred to as the ("Parties")¹, and the Oregon Water Resources Department ("OWRD"), stipulate and agree as follows.

A. STIPULATED FACTS

1. On November 14, 1990, Claimant's predecessors Russell and Edith Walsh filed Claim No. 103 within the Klamath Basin Adjudication for a *Walton* water right with a priority of October 14, 1864, for a total rate of 6.0 cubic feet per second from a point of diversion located on the Sycan River, for irrigation of 240.0 acres, and for a season of use of April 15 through September 30.

2. The United States timely filed a contest to Claim No. 103, Contest No. 3809. The

¹ Water Watch of Oregon Inc.'s Contest 2842 was dismissed. See ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTESTS, May 20, 2003. Don Vincent voluntarily withdrew from Contest 3483 (contest of Klamath Project Water Users) on June 24, 2002. On April 8, 2004, the remaining entities comprising the Klamath Project Water users voluntarily withdrew contest 3483. The Klamath Tribes withdrew Contest 4137 on March 4, 2005.

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Klamath Tribes and the Klamath Project Water Users also filed contests against the claim (nos. 4137 and 3483, respectively), subsequently withdrawn, and Water Watch of Oregon Inc., filed a contest against the claim (contest no. 2842), subsequently dismissed.

3. Claimant, Contestant, and OWRD agree that pursuant to the terms set forth below in Section B of this Stipulation, Contest No. 3809 can be resolved without the need for further proceedings before the Administrative Law Judge.

4. The Parties stipulate for purposes of resolving Claim No.103 that the acres described in Section B of this Stipulation were developed in a sufficiently timely manner after transfer out of Indian ownership and continuously used in order to qualify for a *Walton* right.

5. The Parties also stipulate for purposes of resolving Claim No. 103 that the remaining acres do not qualify for a *Walton* right.

B. TERMS AND PROVISIONS

Claimant, Contestant, and OWRD agree that Claim No. 103 should be approved by the Adjudicator as described below:

Use:	Irrigation of 71.4 acres
Rate:	1/40 cfs for a total of 1.79 cubic feet per second for Irrigation
Duty:	3 acre feet per acre
Priority Date:	October 14, 1864
Season of Use:	April 15 through September 30
Source:	Sycan River, Tributary to Sprague River
Point of Diversion:	East Bank of Sycan River 800' West & 25' North of the SE Corner of Section 28, Township 35 South, Range 12 East, Willamette Meridian
Place of Use:	16.0 acres irrigation: SE ¼ SE ¼ Section 28, Township 35 South, Range 12 East, Willamette Meridian

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38.2 acres irrigation:

NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 34, Township 35 South, Range 12 East,
Willamette Meridian

17.2 acres irrigation:

SW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 34, Township 35 South, Range 12 East,
Willamette Meridian

Total acres: 71.4 acres

The place of use for Claim No. 103 is shown more particularly on the maps attached hereto as Exhibits A and B, and incorporated by reference herein. The map at Exhibit A, the claim map, depicts the 55.4 acres of irrigated lands in the place of use in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 35 South, Range 12 East. In addition, the map at Exhibit B, 2005 map, depicts the 16.0 irrigated acres in the place of use in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 35 South, Range 12 East, Willamette Meridian. The remaining acres shown on Exhibit A are not in the Claim No. 103 place of use.

The point of diversion for Claim No. 103 is shown on Exhibit A as: "Existing Diversion Point on East Bank of [Sycan] River 800' West and 25' North of Section Corner," which is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 28, Township 35 South, Range 12 East, Willamette Meridian. The remaining points of diversion shown on Exhibit A are not points of diversion for Claim No. 103.

C. RESOLUTION BASED ON TERMS OF STIPULATION

1. The Parties agree that, pursuant to this Stipulation, Claim No. 103 and the Contest thereto have been satisfactorily resolved by this Stipulation and such resolution vitiates the need for a hearing on Claim No. 103 before the Office of Administrative Hearings.

2. OWRD Adjudication staff hereby recommends to the Adjudicator that Claim No. 103 be withdrawn from further consideration by the Office of Administrative Hearings and that Claim No. 103 be approved in the Findings of Fact and Order of Determination issued by the

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Adjudicator in accordance with the terms of Section B of this Stipulation, above.

3. If the Findings of Fact and Order of Determination issued by the Adjudicator for Claim No. 103 do not accord with the terms set forth in Section B of this Stipulation, above, Claimant and Contestant, respectively, each reserves any right each may have to file exceptions to the Findings of Fact and Final Order of Determination as to Claim No. 103 in the Circuit Court for Klamath County, and reserves any rights each may have to participate in any future proceedings authorized by law.

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

5. This Stipulation is entered into for the purpose of resolving a disputed claim. The Parties and OWRD 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 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 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 related entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

7. Each entity or person entering into 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 entity or person and bind that entity or person to the terms of the Stipulation.

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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 the Stipulation.

11. This Stipulation comprises the entire agreement and no promise, inducement, or representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this Stipulation are contractual and not merely a recital.

12. The Parties and OWRD shall each bear their own costs in this proceeding.

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

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FOR CLAIMANT JOHN S. KRONENBERGER



Donald R. Crane
Attorney at Law
Attorney for Claimant John S. Kronenberger

May 11, 2005
Date

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FOR CONTESTANT THE UNITED STATES OF AMERICA
ACTING ASSISTANT ATTORNEY GENERAL KELLY A. JOHNSON

Barbara Scott-Brier

Barbara Scott-Brier
Special Attorney
United States Department of Justice
Attorney-Adviser
United States Department of the Interior

5/3/05

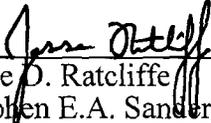
Date

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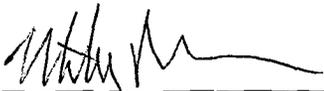
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FOR THE OREGON WATER RESOURCES DEPARTMENT
ATTORNEY GENERAL HARDY MEYERS



Jesse D. Ratcliffe
Stephen E.A. Sanders
Assistant Attorneys General
Of Attorneys for the
Oregon Water Resources Department

Date 7/21/05



Michael J. Reynolds
Agency Representative
Oregon Water Resources Department

Date 7-21-05

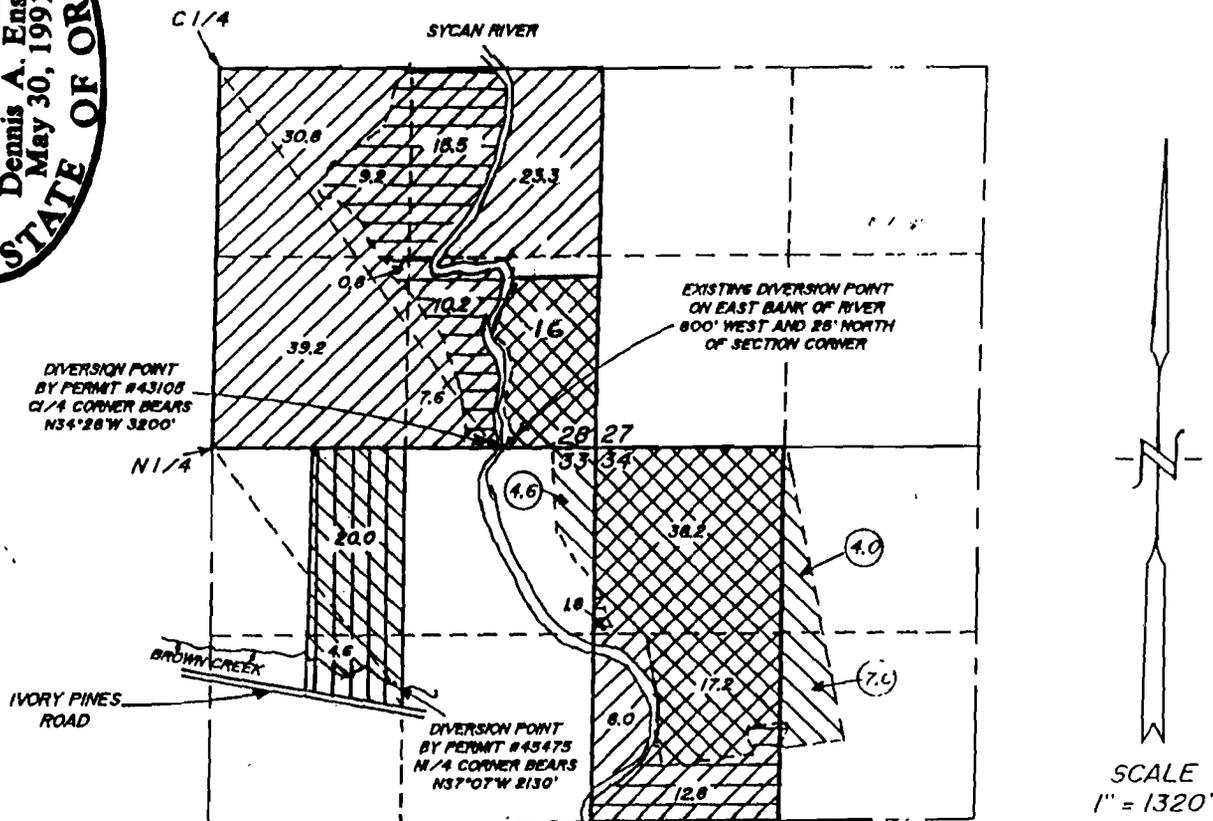
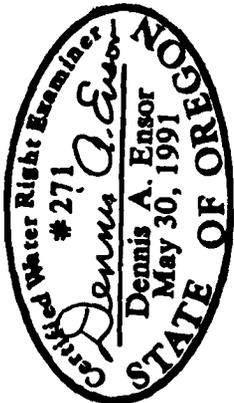
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MAP TO ACCOMPANY STATEMENT AND PROOF OF CLAIM TO USE OF WATER OF THE KLAMATH RIVER AND ITS TRIBUTARIES

SITUATED IN THE SE 1/4 SECTION 28, THE W 1/2 NE 1/4 SECTION 33, AND
THE W 1/2 NW 1/4 SECTION 34, T35S, R12EWM, KLAMATH COUNTY, OREGON
JUNE 1991 - REVISED JUNE 2005

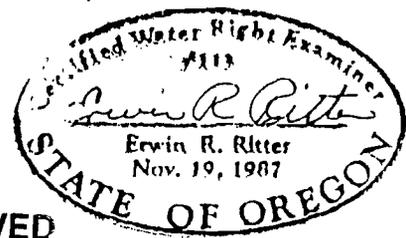
MAP PREPARED FOR -- RUSSELL & EDITH WALSH
CLAIM # 103

MAP PREPARED FROM MAPS OF APPLICATION #57268 - PERMIT #43105 AND
APPLICATION #61097 - PERMIT #45475, 1985 WAC AERIAL PHOTO AND FIELD
INSPECTION.



- REVISED TO SHOW 71.4 AC OF 1864 WALTON RIGHT
 - AREA COVERED BY APPLICATION #61097 - PERMIT #45475
 - AREA COVERED BY APPLICATION #57268 - PERMIT #43105
 - AREA BEING IRRIGATED WITH WHEEL LINE SPRINKLERS
 - AREA IN GRASS OWNER CLAIMS TO HAVE BEEN IRRIGATED WITH BIG GUN SPRINKLER & HAND MOVE LINES
- NOTE SEE ATTACHED AERIAL PHOTO FOR AREA UNDER GOVERNMENT CRP PROGRAM

AREA ADDED 7/11/91



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THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

Exhibit "A"
Page 1 of 1

TRU-LINE SURVEYING
2333 SUMMERS LANE
KLAMATH FALLS, OR. 97603

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July 2005, I served the within
STIPULATION TO RESOLVE CONTESTS on the parties hereto by regular first-class
mail and a courtesy copy by e-mail if an e-mail address was provided, a true, exact and
full copy thereof to:

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
teri.k.hranac@wrд.state.or.us

Barbara Scott-Brier
U.S. Department of Justice
Environment & Natural Resources Div.
500 NE Multnomah Street, Suite 607
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