

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

March 2, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case 236, Claim 129

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  
Walter Perry III  
Assistant Attorneys General  
Natural Resources Section

Enclosures  
JDR:trmc/GENP3680

**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; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC; Contestants	} <b>STIPULATION TO RESOLVE CONTESTS</b>  } Case No. 236  } Claim: 129  } Contests: 3108, 3504 <sup>1</sup> , and 3770 <sup>2</sup>
vs.	
Pierre A. Kern; Claimant/Contestant.	

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Claimant Pierre A. Kern (“Claimant”), the United States of America (“United States”), and the Klamath Project Water Users (“KPWU”), (collectively “Parties”), 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:

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<sup>1</sup> Don Vincent voluntarily withdrew from Contest 3504 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3504 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contest 3504 on January 15, 2004.

<sup>2</sup> The Klamath Tribes voluntarily withdrew their Contest No. 4158 on April 15, 2005.

**A. STIPULATED FACTS**

1. On December 7, 1990, Claim 129 was filed with OWRD by the original Claimant, Tottsie W. J. Lorenz Et Al. The current Claimant is successors in interest to the property at issue in Claim 129.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 129.
3. In May 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3770.
4. In May 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3504.
6. In May 2000, the Claimant filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3108.
7. The Parties and OWRD agree that Contests 3108, 3770, and 3504, can be resolved without the need for a hearing pursuant to the terms set forth below.

**B. TERMS OF STIPULATION**

1. Claimant, the Parties, and OWRD agree that Claim 129 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: NW1/4NW1/4, Section 7, Township 36 South, Range 13 East, Willamette Meridian.

SOURCE: Five Mile Creek, tributary to the North Fork Sprague River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: 3.75 cubic feet per second, measured at the point of diversion

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

PERIOD OF USE: April 1 -- November 1

PLACE OF USE: 150 acres as shown below and on the attached map.

Acres	¼, ¼	Sec.	Township	Range
0.7	NENE	13	T36S	R13E
0.7	NENW	13	T36S	R13E
31.7	SWNE	13	T36S	R13E
35.9	SENE	13	T36S	R13E
40.0	NESE	13	T36S	R13E
40.0	SESE	13	T36S	R13E
1.0	NENE	24	T36S	R13E
Total Acres: 150				

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Contests 3108, 3770, and 3504 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 129.

3. Based on the Stipulation of the Parties and OWRD that Claim 129 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 129 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 129 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 129 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 129 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 129.

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.

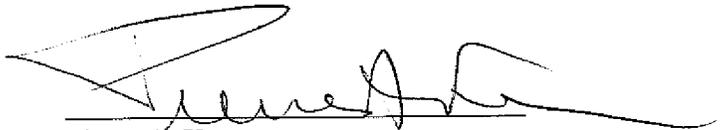
12. The parties waive all claims for attorney's fees or costs.

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

Stipulated, agreed and approved by:

For the Claimant:

DATED: December 23, 2005

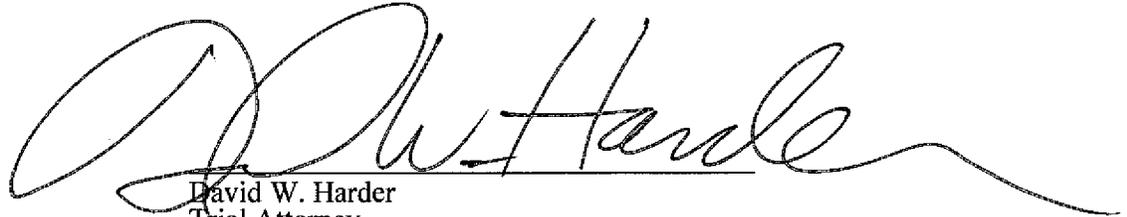
  
Pierre A. Kern

For Contestant, the United States of America:

*January 30, 2006*

DATED: ~~December~~     , 2005

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General



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[david.harder@usdoj.gov](mailto:david.harder@usdoj.gov)

For Contestants, the Klamath Project Water Users:

*Parkay*  
DATED: December 26, 200~~7~~<sup>0</sup>



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For the Oregon Water Resources Department:

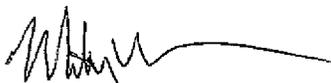
HARDY MEYERS  
Attorney General

February  
DATED: ~~January~~ 16, 2006

  
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ATTORNEYS FOR OREGON WATER  
RESOURCES DEPARTMENT

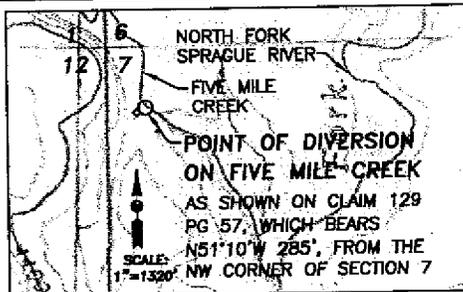
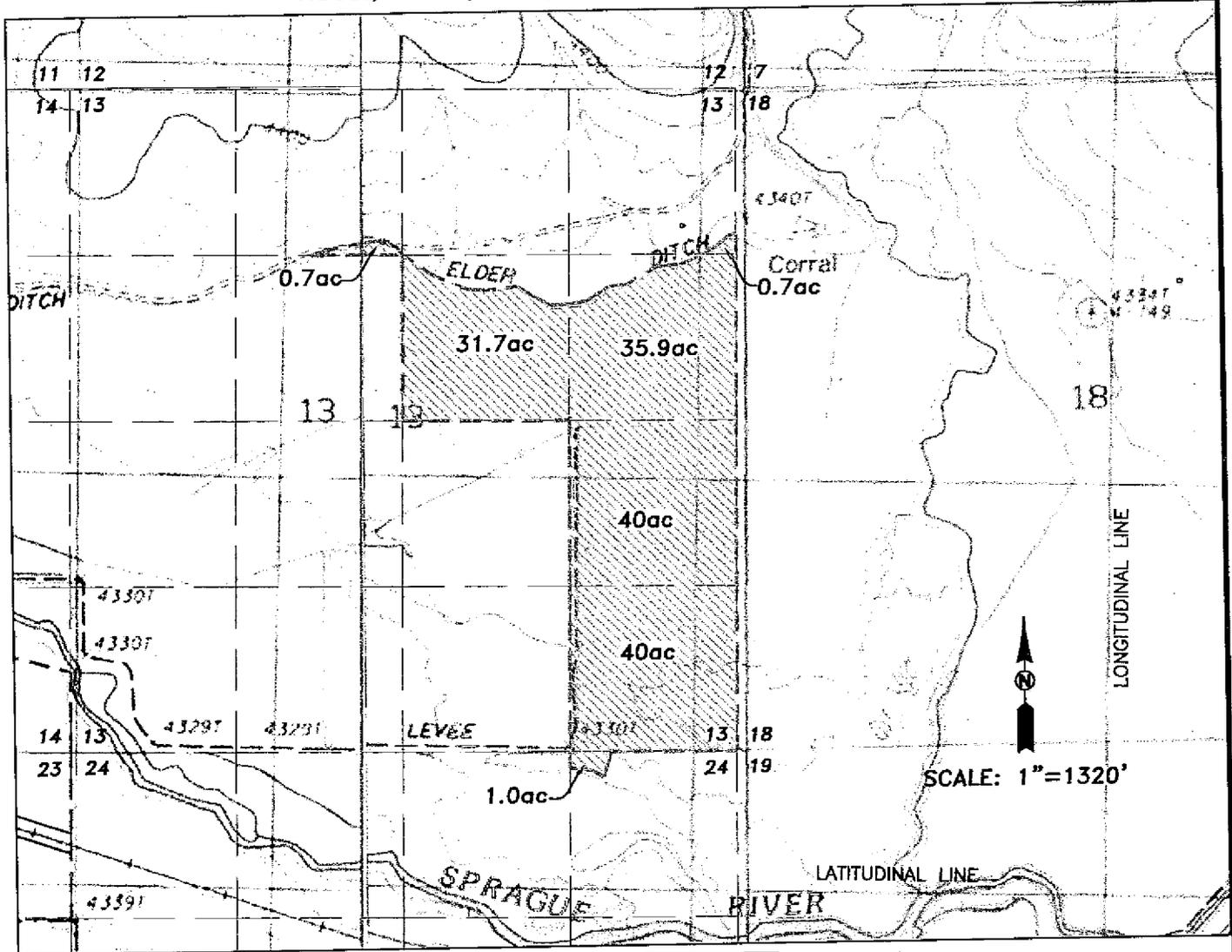
February  
DATED: ~~January~~ 16, 2006

  
\_\_\_\_\_  
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725 Summer Street, NE, Suite A  
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AGENCY REPRESENTATIVE FOR OREGON  
WATER RESOURCES DEPARTMENT

# ADJUDICATION CLAIM 129 MAP

FOR  
**RIVER SPRINGS RANCH CO.**  
 LOCATED IN SECTION 13 AND 24,  
 T.36S., R.13E., W.M., KLAMATH COUNTY, OR.



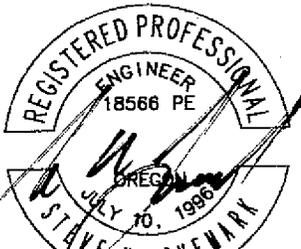
**P.O.D. DETAIL**

\*NOTE:  
 BACKGROUND MAP PROVIDED  
 THROUGH TERRAIN NAVIGATOR, USGS.

- DIVERSION PUMP
- IRRIGATED AREA

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



741 SE Jackson Street  
 Roseburg, Oregon 97470  
 PHONE (541) 673-0166  
 FAX (541) 440-9392

PROJECT NO. 2033-01t3

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of March 2006, I served the within LETTER TO PARTIES WITH COPY OF STIPULATION TO RESOLVE CONTESTS AND CERTIFICATE OF SERVICE on the parties hereto by regular first-class mail and by e-mail (where an e-mail address is listed below), a true, exact and full copy thereof to:

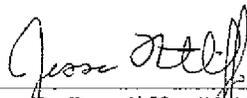
**VIA STATE SHUTTLE MAIL**  
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