

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 27, 2005

ALL PARTIES TO KLAMATH ADJUDICATION CASE 143, CLAIM 216

Re: Klamath Adjudication – Case No. 143, Claim No. 216, Contest Nos. 43, 3421,
3853 and 4195
DOJ File No. 690-600-GN0115-03

Dear Parties:

Enclosed please find fully executed copies of the Stipulation to Resolve Contests and Exhibit 1 in the above-entitled matter. This agreement resolves all the remaining issues in this case.

Since all of the issues in the case have been resolved, there is no need to hold a hearing on this case. Accordingly, the Oregon Water Resources Department will withdraw this case from the Office of Administrative Hearings pursuant to OAR 137-003-0515(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/GENM7901
Enclosure
c: Service List

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,

v.

Jerry Barry,

Claimant/Contestant.

**STIPULATION TO RESOLVE
CONTESTS**

Case No. 143

Claim No. 216

Contest Nos. 43, 3421¹, 3853 and
4195²

Claimant/Contestant Jerry Barry ("Mr. Barry") and Contestant United States of America (the "United States") (collectively, the "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:

A. STIPULATED FACTS

1. On January 24, 1991, Mr. Barry filed Claim 216 seeking a water right to an unspecified amount of water for irrigation of 80.0 acres located in Sections 3 and 10, Township 41 South, Range 4 East, Willamette Meridian ("the Property").
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 216, preliminarily denying the claim.
3. On May 1, 2000, Mr. Barry filed Contest 43.
4. On May 5, 2000, the United States filed Contest 3853.

¹ Don Vincent voluntarily withdrew from Contest 3421 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3421 on June 24, 2002. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3421 on April 7, 2004.

5. The Parties agree that Contests 43 and 3853 can be resolved without need for hearing pursuant to the terms outlined below.

B. TERMS AND PROVISIONS

The Parties agree that the terms of the water right derived from Claim 216 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATIONS (3 total):

P.O.D. # 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 2, Township 41 South, Range 4 East,
Willamette Meridian

P.O.D. #2: SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 3, Township 41 South, Range 4 East,
Willamette Meridian

P.O.D. # 3: NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10, Township 41 South, Range 4 East,
Willamette Meridian

SOURCE: Fall Creek spring, tributary to the Klamath River.

USE: Irrigation

DIVERSION RATE: A cumulative maximum of 1.25 cubic feet per second (c.f.s.) total for all three points of diversion, with the following individual maximum rates at each point of diversion:

P.O.D. # 1: 0.97 c.f.s.

P.O.D. # 2: 0.96 c.f.s.

P.O.D. # 3: 0.28 c.f.s.

DUTY: The cumulative diversions from these points of diversion shall not exceed 3.5 acre-feet per acre per year.

² The Klamath Tribes voluntarily withdrew, without prejudice, from Contest 4195 on October 30, 2003.

PERIOD OF USE: March 1 to October 30

PRIORITY DATE: December 2, 1899

PLACE OF USE: (irrigation of 54.3 acres)

Acres Served by P.O.D. #1;

NE ¼ NE ¼ – 0.5 acres irrigation

Section 10, Township 41 South, Range 4 East, Willamette Meridian

Acres served by P.O.D. #1 and #2:

SW ¼ SE ¼ – 4.8 acres irrigation

Section 3, Township 41 South, Range 4 East, Willamette Meridian

NE ¼ NE ¼ – 1.5 acres irrigation

NW ¼ NE ¼ – 27.2 acres irrigation

NE ¼ NW ¼ – 8.3 acres irrigation

Section 10, Township 41 South, Range 4 East, Willamette Meridian

Acres served by P.O.D. #3:

NE ¼ NE ¼ – 1.7 acres irrigation

NW ¼ NE ¼ – 2.4 acres irrigation

SE ¼ NE ¼ – 0.4 acres irrigation

SW ¼ NE ¼ – 2.6 acres irrigation

NE ¼ NW ¼ – 0.3 acres irrigation

SE ¼ NW ¼ – 4.6 acres irrigation

Section 10, Township 41 South, Range 4 East, Willamette Meridian

The Points of Diversion and Place of Use are set forth more particularly in the map attached hereto as Exhibit 1, and which is incorporated by reference as if set forth fully herein.

C. RESOLUTION BASED ON TERMS OF AGREEMENT

1. Mr. Barry agrees that, pursuant to this Stipulation, Mr. Barry's Contest 43 has been satisfactorily resolved and such resolution negates the need for a hearing on Contest 43 before the Office of Administrative Hearings.

2. Contestant the United States agrees that, pursuant to this Stipulation, the United States' Contest 3853 has been satisfactorily resolved and such resolution negates the need for a hearing on Contest 3853 before the Office of Administrative Hearings.

3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 216 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 216 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B, above.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 216 does not conform to the terms set forth in paragraph B, Mr. Barry and the United States reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 216 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

5. Mr. Barry and the United States 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 Parties agree that this 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 this Stipulation may be used in any future proceeding to interpret and/or

enforce the terms of this Stipulation. Further, the Parties agree that neither this Stipulation nor any of its terms shall be used to establish precedent with respect to any other claim or contest in the Adjudication.

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 related 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.

11. 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.

12. 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.

13. The Parties and OWRD agree to each bear their own costs and attorney fees.

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

STIPULATED, AGREED AND APPROVED:

FOR CLAIMANT JERRY BARRY:

DATED: April 22, 2005.

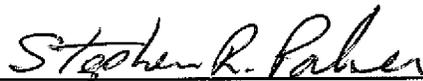


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For Contestant, the United States of America

Dated: May 13, 2005

KELLY JOHNSON,
Acting Assistant Attorney General

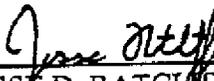


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For the Oregon Water Resources Department

HARDY MEYERS
Attorney General

DATED: ~~April~~ ^{May} 19, 2005.

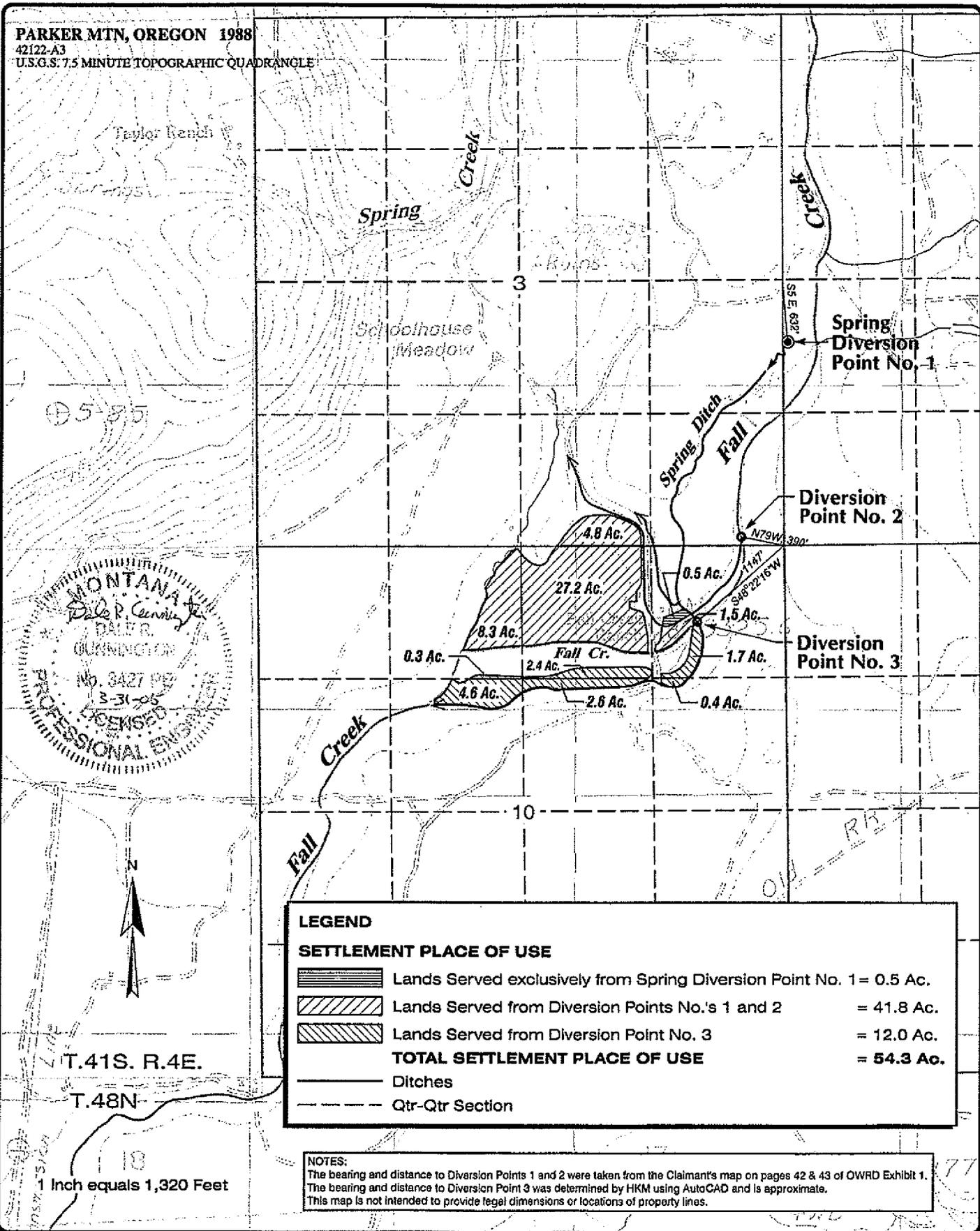


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DATED: ~~April~~ ^{MAY} 24, 2005.



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LEGEND	
SETTLEMENT PLACE OF USE	
	Lands Served exclusively from Spring Diversion Point No. 1 = 0.5 Ac.
	Lands Served from Diversion Points No.'s 1 and 2 = 41.8 Ac.
	Lands Served from Diversion Point No. 3 = 12.0 Ac.
TOTAL SETTLEMENT PLACE OF USE = 54.3 Ac.	
	Ditches
	Qtr-Qtr Section

NOTES:
 The bearing and distance to Diversion Points 1 and 2 were taken from the Claimant's map on pages 42 & 43 of OWRD Exhibit 1.
 The bearing and distance to Diversion Point 3 was determined by HKM using AutoCAD and is approximate.
 This map is not intended to provide legal dimensions or locations of property lines.

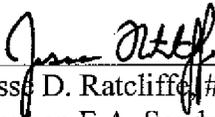
CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May 2005, I served the within LETTER TO PARTIES, STIPULATION TO RESOLVE CONTESTS AND EXHIBIT 1, on the parties hereto by regular first-class mail (with a courtesy copy by e-mail where an e-mail address is listed below), a true, exact and full copy thereof to:

VIA STATE SHUTTLE MAIL
Dwight W. French / Teri Hranac
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725 Summer Street NE, Suite A
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