

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 4, 2005

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 144, Claim No. 217, Contest Nos. 3854 and
4196
DOJ File No. 690-600-GN116-03

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.

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,

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

JDR:tmc/GENO0073
Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October 2005, I served the within
STIPULATION TO RESOLVE CONTESTS on the parties hereto by e-mail (where an
e-mail address is listed below), and by regular first-class mail, a true, exact and full copy
thereof to:

VIA STATE SHUTTLE MAIL
Dwight W. French / Teri Hranac
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
[dwight.w.french@state.or.us](mailto:dwright.w.french@state.or.us)
teri.k.hranac@wrds.state.or.us

Stephen R. Palmer
Special Attorney, U.S. Dept. of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

Gregory M. Abel
Attorney at Law
Grantland, Blodgett & Shaw
1818 E. McAndrews Road
Medford, OR 97504
greg@ashland.law.com



Jesse D. Ratcliffe, #4394
Stephen E.A. Sanders, #85321
Assistant Attorneys General

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
vs.	Case No. 144
Charles E. Troutman; Marilyn E. Troutman; Chuck Troutman; Val Troutman; William E. Goldman ² ; Kristy L. Goldman ² ; Claimant(s).	Claim(s): 217
	Contest(s): 3854 and 4196 ¹

Claimants Charles E. Troutman, Marilyn E. Troutman, and Chuck Troutman and Val Troutman (“Claimants”), the United States of America (the “United States”), 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 November 28, 1990, Original Claimant Larry Leonard filed Claim 217 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 217.
3. The following Contests were filed to Claim 217: Contest 3760, filed by the United States (“Contestant”); and Contest 4196, filed by the Klamath Tribes.

¹ The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4196 on December 5, 2003.

² William E. Goldman and Kristy L. Goldman subsequently sold their interest to the Troutmans. See *Change of Ownership* dated July 22, 2004.

Contest 4196 was withdrawn on December 5, 2003. *See* Notice of Withdrawal of Contest No. 4196.

4. Claimants, Contestant, and OWRD agree that Contest 3854 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimants, Contestant, and OWRD agree that Claim 217 should be approved by the Adjudicator to the extent described below:

a. DOMESTIC

POINT OF DIVERSION LOCATION:

SW ¼ NE ¼, Section 2, Township 41 South, Range 4 East, W.M.

SOURCE: an unnamed spring, tributary to the Fall Creek

PRIORITY DATE: December 31, 1895

USE: domestic

RATE: 0.02 cubic feet per second, measured at point of diversion; 0.01 cfs per dwelling

PERIOD OF USE: year round / January 1 – December 31

PLACE OF USE:

NE ¼ SW ¼ DOMESTIC, SECTION 2, TOWNSHIP 41 SOUTH, RANGE 4 EAST, W.M.

b. LIVESTOCK

POINT OF DIVERSION LOCATION: (same as irrigation below)

SE ¼ NW ¼, Section 2, Township 41 South, Range 4 East, W.M.

SOURCE: three springs, tributary to Fall Creek

PRIORITY DATE: December 31, 1895

USE: livestock, up to 60 head

RATE: 12 gallons per day / head, up to 720 gallons per day

PERIOD OF USE: year round / January 1- December 31

PLACE OF USE: same as irrigation / see below

c. IRRIGATION

POINT OF DIVERSION LOCATION:

SE ¼ NW ¼, Section 2, Township 41 South, Range 4 East, W.M.

SOURCE: three springs, tributary to Fall Creek

PRIORITY DATE: December 31, 1895

USE: irrigation of 20.0 acres

RATE: 0.5 cubic feet per second total, measured at the points of diversion

DUTY: 3.0 acre-feet per acre

PERIOD OF USE: May 1 – October 31

PLACE OF USE: SE ¼ NW ¼ Section 2, Township 41 South,
Range 4 East, W.M.

The place of use is shown more particularly on the map attached hereto as Exhibit A, which is incorporated by reference as if set forth fully herein.

2. Claimants, Contestant and OWRD agree that pursuant to the terms of this Stipulation, Contest 3854 has been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 217.

3. Based on the Stipulation of Claimant, Contestants and OWRD that Claim 217 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 217 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 217 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 217 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 217 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 144.

5. Claimants and Contestant agree not to oppose or object to this Agreement or any of its terms, provisions, conditions, or covenants and to support this Agreement 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 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.

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. 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-

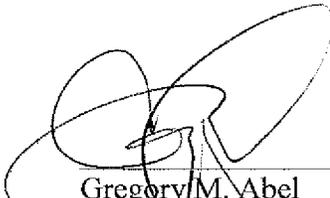
length negotiations; therefore, the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Stipulation.

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

Stipulated, agreed and approved by:

For Claimants:

DATED: 9/16, 2005



Gregory M. Abel
Attorney at Law, OSB # 03178
Grantland, Blodgett & Shaw
1818 E. McAndrews Rd.
Medford, OR 97504
Telephone: (541) 773-6855

For Contestant, the United States of America

Dated: August 23, 2005

KELLY JOHNSON,
Acting Assistant Attorney General

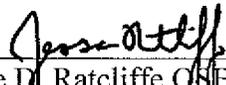


STEPHEN R. PALMER
Special Attorney, U.S. Department of Justice
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U.S. Department of the Interior
2800 Cottage Way, Room E-1712
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Telephone: 916/978-5683
Telefax: 916/978-5694

For the Oregon Water Resources Department:

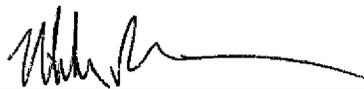
HARDY MEYERS
Attorney General

DATED: September 15, 2005



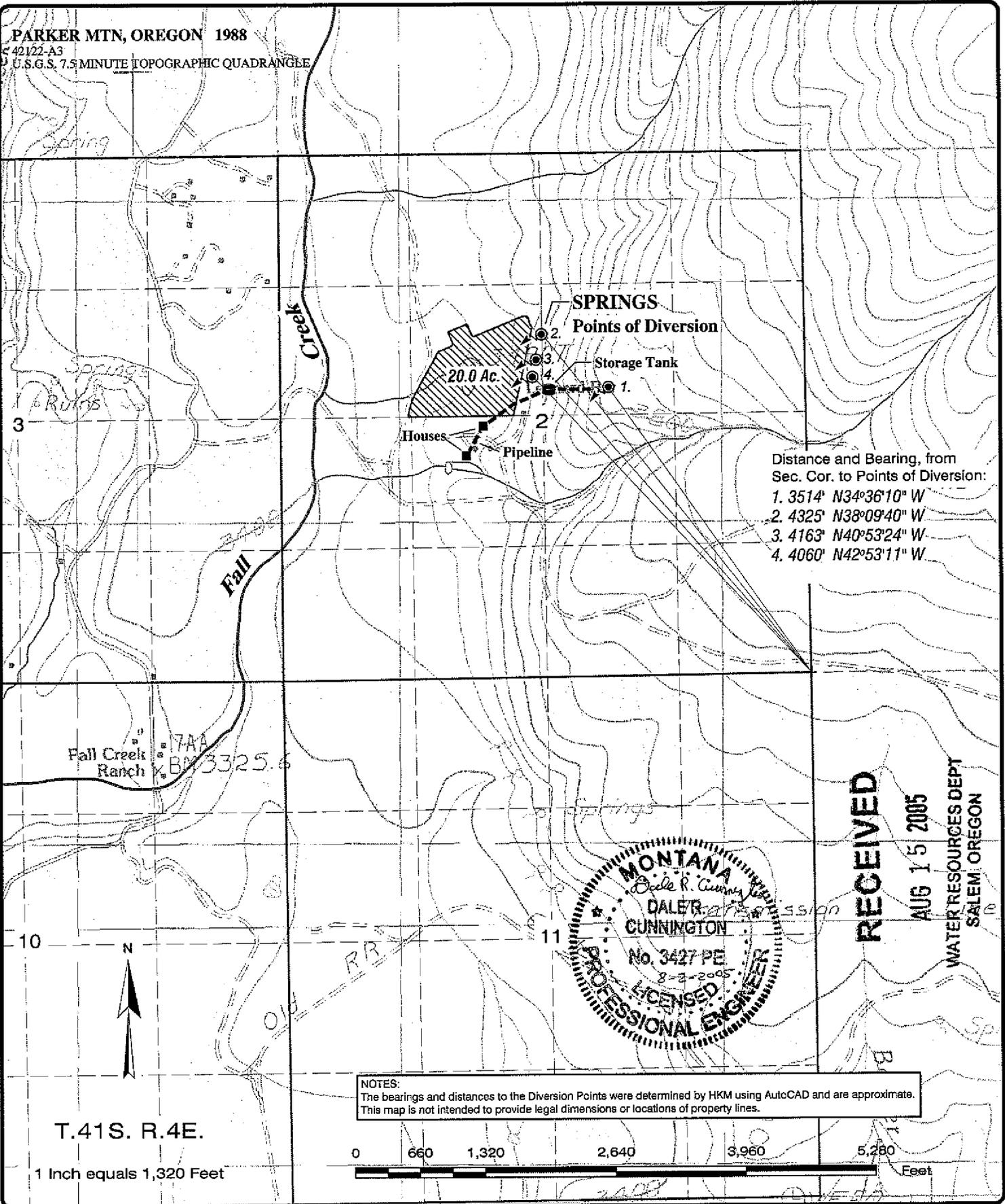
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steve.sanders@doj.state.or.us

DATED: 9-29, 2005



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AGENCY REPRESENTATIVE FOR
OREGON WATER RESOURCES
DEPARTMENT



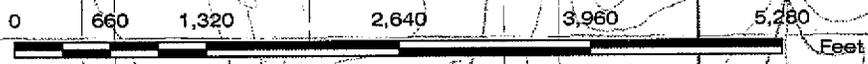
Distance and Bearing, from
 Sec. Cor. to Points of Diversion:

1. 3514' N34°36'10" W
2. 4325' N38°09'40" W
3. 4163' N40°53'24" W
4. 4060' N42°53'11" W

MONTANA
 Dale R. Cunningham
 DALE R. CUNNINGHAM
 No. 3427 PE
 8-3-2005
 PROFESSIONAL ENGINEER

RECEIVED
 AUG 15 2005
 WATER RESOURCES DEPT
 SALEM, OREGON

NOTES:
 The bearings and distances to the Diversion Points were determined by HKM using AutoCAD and are approximate.
 This map is not intended to provide legal dimensions or locations of property lines.



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 P.O. Box 31318
 Billings, MT 59107-1318
 (406) 656-6399, FAX: (406) 656-6398

KLAMATH BASIN WATER RIGHTS ADJUDICATION
CLAIM NO. 217 - SETTLEMENT
CLAIMANTS: TROUTMANS & GOLDMANS