

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

May 16, 2005

**ALL PARTIES TO KLAMATH ADJUDICATION CASE 241, CLAIM 236**

Re: Klamath Adjudication – Case No. 241, Claim No. 236, Contest Nos. 3506, 3737,  
and 4202  
DOJ File No. 690-600-GN0212-03

Dear Parties:

Enclosed please find fully executed copies of the Stipulation to Resolve Contests 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/GENM6546  
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.

Mark D. Anderton;  
Claimant.

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**) STIPULATION TO RESOLVE  
CONTESTS**

) Case No. 241

) Claim: 236

) Contests: 3506<sup>1</sup>, 3737, and 4202<sup>2</sup>

Claimant Mark D. Anderton (“Claimant”), the United States of America (“Contestant”) (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 Contest as follows:

**A. STIPULATED FACTS**

1. On January 31, 1991, Claim 236 was filed with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 236.
3. On May 2, 2000, the Tribes filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 4202. This contest was subsequently withdrawn.

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<sup>1</sup> The Klamath Project Water Users voluntarily withdrew Contest 3506 on August 8, 2004.

<sup>2</sup> The Klamath Tribes voluntarily withdrew Contest 4202 on July 26, 2004. *See*, KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (July 26, 2004).

4. On May 4, 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3737.

5. On May 2, 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3506. This contest was subsequently withdrawn.

6. The Parties and OWRD agree that Claim 236 can be resolved without the need for a hearing pursuant to the terms set forth below.

**B. TERMS OF STIPULATION**

1. The Parties and OWRD agree that Claim 236 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATIONS: Point of Diversion Location No. 1 is a portable pump in the NW¼ SE ¼, Sec. 23, T34S, R8E, W.M.; Point of Diversion Location No. 2(a) is a pump in a slough off of the Sprague River located in the NW¼ SE¼ T34S, R8E, Sec. 23, W.M.; Point of Diversion Location No. 2(b) is a pump in a slough off of the Sprague River located in the NW¼ SE¼ T34S, R8E, Sec. 23, W.M. Point of Diversion Location Nos. 2(a) and 2(b) are set forth more particularly in the map attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein. Locations 1 and 2(a) are current points of diversion and Location 2(b) is a future point of diversion. Claimant can use two of these three points of diversion at any one time.

SOURCE: Sprague River, tributary to the Williamson River

PRIORITY DATE: October 14, 1864

USE: domestic, irrigation and livestock use incidental to irrigation

RATE: 2.31 cubic feet per second, measured at the point of diversion

DUTY: 3.0 acre feet per acre, measured at the point of diversion

PERIOD OF USE: April 15 -- October 15 for irrigation and livestock; January 1 to December 31 for domestic use

PLACE OF USE: Table below and Map attached hereto as Exhibit A, which is incorporated by reference as if set forth fully herein, showing 92.1 acres

Acres	¼, ¼	Sec.	Township	Range
24.4	NW, NE	23	34S	8E
13.6	SW, NE	23	34S	8E
38.5	NW, SE	23	34S	8E
15.6	SW, SE	23	34S	8E
Total Acres: 92.1				

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Claim 236 has been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge.

3. Based on the Stipulation of the Parties and OWRD that Claim 236 and the Contest thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 236 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 236 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 236 does not conform to the terms set forth in paragraph B.1., above, the Parties reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 236 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 236.

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 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 Water Rights Adjudication or in any other 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 related entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

8. The Parties and OWRD represent, warrant, and agree 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 their joint efforts 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. Claimant has proceeded in this matter without counsel. Claimant represents that his execution of this stipulation is knowing and voluntary, and that he has had the opportunity, if so desired, to consult with legal counsel before executing this document.

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

Stipulated, agreed and approved by:

Claimant:

DATED: 05-09-05, 2005

  
MARK D. ANDERTON  
P.O. Box 380,  
Chiloquin, OR 97624

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.

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Stipulated, agreed and approved by:

Claimant:

DATED: \_\_\_\_\_, 2005

\_\_\_\_\_  
MARK D. ANDERTON  
P.O. Box 380  
Chiloquin, OR 97624

For Contestant, the United States of America:

DATED: May 11, 2005

  
\_\_\_\_\_  
DAVID W. HARDER  
Indian Resources Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
Telephone: (303) 312-7328  
Telefax: (303) 312-7379  
e-mail: [david.harder@usdoj.gov](mailto:david.harder@usdoj.gov)

For the Oregon Water Resources Department:

For the Oregon Water Resources Department:

HARDY MEYERS  
Attorney General

DATED: May 12, 2005

  
\_\_\_\_\_  
JESSE D. RATCLIFFE OSB No. 04394  
STEPHEN E.A. SANDERS OSB No. 85321  
Assistant Attorneys General  
Oregon Department of Justice  
1162 Court Street NE  
Salem, Oregon 97301-4096  
Telephone: (503) 947-4500  
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e-mail: [jesse.d.ratcliffe@doj.state.or.us](mailto:jesse.d.ratcliffe@doj.state.or.us)  
[steve.sanders@doj.state.or.us](mailto:steve.sanders@doj.state.or.us)

DATED: May 12, 2005

  
\_\_\_\_\_  
MICHAEL J. REYNOLDS  
Oregon Water Resources Department  
725 Summer Street, NE, Suite A  
Salem, Oregon 97301-1217  
Telephone: (503) 986-0820  
Telefax: (503) 986-0901  
e-mail: [michael.j.reynolds@wrd.state.or.us](mailto:michael.j.reynolds@wrd.state.or.us)

AGENCY REPRESENTATIVE FOR OREGON  
WATER RESOURCES DEPARTMENT

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# ADJUDICATION CLAIM 236MAP

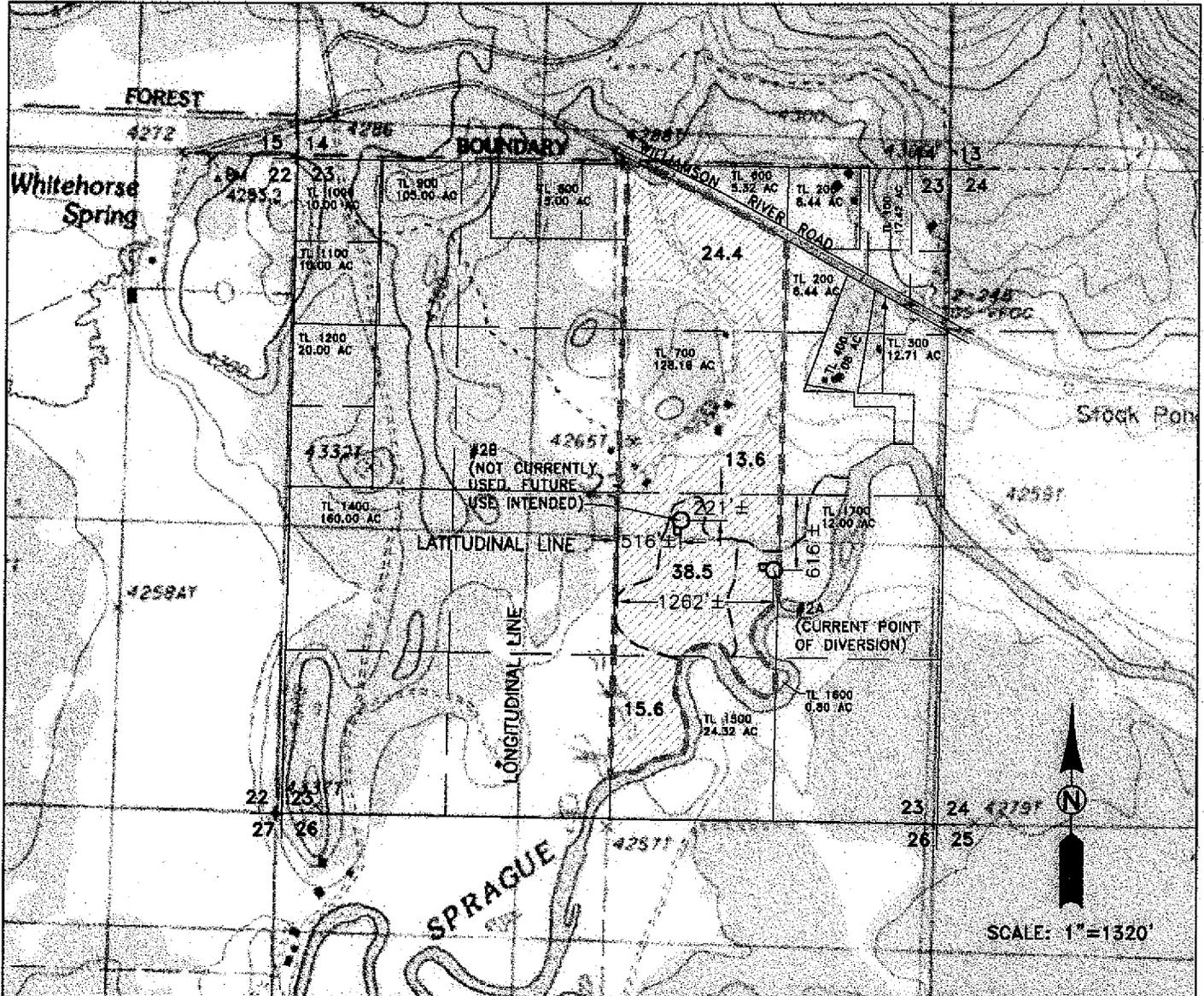
**RECEIVED**

FOR  
MARK D. ANDERTON

APR 05 2005

LOCATED IN THE WESTERLY HALF OF THE EASTERLY  
HALF OF SECTION 23, T.34S., R.8E, W.M.

WATER RESOURCES DEPT  
SALEM, OREGON



**\*NOTES:**

1) IN ADDITION TO THE DIVERSION POINTS SHOWN THERE IS A PORTABLE POINT OF DIVERSION LOCATED IN THE NW 1/4 OF THE SE 1/4 OF SECTION 23.

2) BACKGROUND MAP PROVIDED THROUGH TERRAIN NAVIGATOR, USGS.

3) AREAS SHOWN IN ACRES

4) IRRIGATION MAINLINES ARE NOT PERMANENT INSTALLATIONS

5) MAIN DITCH LOCATIONS ARE APPROXIMATE

**LEGEND:**

DIVERSION PUMP

IRRIGATED AREA

APPROXIMATE OUTLINE OF SLOUGH

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT ONLY. THIS MAP IS NOT INTENDED TO PROVIDE LEGAL DIMENSIONS OR LOCATIONS OF PROPERTY LINES.



EXPIRES: 12/31/2006

Exhibit "A"

Page 1

**i.e.** ENGINEERING  
741 SE Jackson Street  
Roseburg, Oregon 97470  
PHONE (541) 673-0168  
FAX (541) 440-9392

PROJECT NO. 2047-01

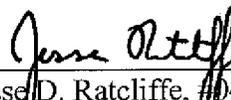
## CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of May 2005, I served the within LETTER TO ALL PARTIES with STIUPLATION TO RESOLVE CONTESTS AND EXHIBIT "A" 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  
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)  
[teri.k.hranac@wrdd.state.or.us](mailto:teri.k.hranac@wrdd.state.or.us)

David Harder  
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Environment and Natural Resources Div.  
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