

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

~~Medford Irrigation District; Rogue River Valley
Irrigation District; Horsefly Irrigation District;
Langell Valley Irrigation District; United States of
America; The Klamath Tribes;~~

Contestants,

v.

Marta C. Carpenter,

Claimant.

**STIPULATION TO RESOLVE
CONTEST**

Case No. 119

Claim: 143

Contests: 3137,¹ 3827, and 4168²

INTRODUCTION

Claimant Marta C. Carpenter (“Claimant”) and Contestant the United States of America (the “United States”) (“Contestant”) (collectively, the “Parties”), and the Oregon Water Resources Department (“OWRD”), agree and stipulate as follows:

A. STIPULATED FACTS

1. On January 31, 1991, Claimant’s predecessor-in-interest filed Claim 143 with OWRD. The claimed place of use for Claim 143 is certain real property located in portions of Sections 14, 15, 22, and 23, Township 38 South, Range 8 East of the Willamette Meridian (“W.M.”).

¹ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew, without prejudice, from Contest 3137. See VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT dated August 21, 2002. Medford Irrigation District and Rogue River Valley Irrigation District resolved Contest 3137 by Stipulation. See STIPULATION TO RESOLVE CONTEST 3137 AGAINST CLAIM NO. 143 dated April 25, 2006.

² The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4168. See KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTESTS dated August 14, 2006.

2. On October 4, 1999, OWRD issued its Preliminary Evaluation of Claim 143, preliminarily approving the claim.

3. The following contests were filed to Claim 143: Contest 3827, filed by the United States; Contest 4168, filed by the Klamath Tribes; and Contest 3137, filed by Langell Valley, Horsefly, Medford, and Rogue River Valley Irrigation Districts. On August 21, 2002, Langell Valley and Horsefly Irrigation Districts voluntarily withdrew from Contest 3137. On April 25, 2006, Medford and Rogue River Valley Irrigation Districts resolved Contest 3137 by stipulation. On August 14, 2006, the Klamath Tribes voluntarily withdrew Contest 4168. Contest 3827 is referred to hereinafter as the "Contest."

4. The Parties and OWRD agree the Contest can be resolved without the need for further proceedings pursuant to the terms below, except that the Claimant and OWRD agree that further proceedings are appropriate to determine the exact rate of diversion, as set forth below.

B. TERMS AND CONDITIONS

1. The Parties and OWRD agree that Claim 143 should be approved by the Adjudicator as described below:

- a. **SOURCE:** Upper Klamath Lake, tributary to Klamath River.
- b. **LOCATION OF POINT OF DIVERSION:** A headgate located in Lot 2, SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 14, Township 38 South, Range 8 East, W.M. The approximate location of the headgate is shown on the map included in OWRD Exhibit 1 at page 7, a true and correct copy of which map is attached hereto at **Exhibit A** (the "Claim Map").
- c. **USE:** Irrigation of 497.9 acres and livestock watering of 500 head of cattle.
- d. **DIVERSION RATE:** The Parties agree that Claim 143 should be approved by the Adjudicator with a diversion rate of 12.5 cubic feet per second (cfs) for irrigation and 6,000 gallons per day (gpd) for livestock. The Claimant and OWRD agree that Claim 143 should be approved by the Adjudicator with a diversion rate of no less than 8.47 cfs and no more than 12.5 cfs for irrigation and

6,000 gpd for livestock, with the narrow issue of the exact diversion rate for irrigation to be the subject of further proceedings. The Parties and OWRD agree that to facilitate livestock watering, water may be diverted as reasonably necessary to transport the water and to prevent the ditches and channels from being completely frozen, but at no time shall more water be diverted than has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the ditches and channels from being completely frozen.

- e. **DUTY FOR IRRIGATION USE:** 3.0 acre-feet per acre.
- f. **PERIOD OF USE:** January 1 through December 31 for irrigation and livestock watering.
- g. **PRIORITY DATE:** December 31, 1889, except for irrigation and livestock watering on 58.9 acres of the 497.9 acres making up the total place of use (including Township 38 South, Range 8 East, W.M., Section 14, Lot 1, NWNW (1.4 acres); and Lot 2, SWNW (13.5 acres); and Section 15, NENE (4.0 acres); SWNE (5.7 acres); Lot 1, SENE (31.9 acres); and Lot 2, NWSE (2.4 acres)), for which the priority date is December 31, 1907.
- h. **PLACE OF USE FOR IRRIGATION AND LIVESTOCK WATERING:**
Use of water under Claim 143 on the following place of use, when combined with use of water under any other right adjudicated in the Klamath Basin Adjudication for any portion or all of the same place of use, may not exceed the rate and duty necessary for beneficial use as determined in the Klamath Basin Adjudication.
Township 38 South, Range 8 East, W.M.
Section 14: SENW (1.7 acres); NESW (7.6 acres); NWSW (40.0) acres; SWSW (40.0 acres); SWSE (1.5 acres); SESW (2.1 acres); Lot 1, NWNW (1.4 acres); Lot 2, SWNW (13.5 acres); Lot 3, SWNW (22.6 acres); Lot 4, SENW (3.9 acres); Lot 5, NESW (20.0 acres); Lot 6, SESW (36.8 acres)

Section 15: NENE (4.0 acres); SWNE (5.7 acres); NESE (40.0 acres); Lot 1, SENE (31.9 acres); Lot 2, NWSE (2.4 acres); Lot 5, SWSE (1.5 acres); Lot 6, SENE (7.0 acres); Lot 7, NWSE (16.2 acres); Lot 8, SESE (31.1 acres); Lot 8, SWSE (0.4 acres)

Section 22: Lot 9, NENE (1.3 acres)

Section 23: NENW (40.0 acres); Lot 1, SWNW (2.4 acres); Lot 2, NESW (1.2 acres); Lot 7, SWNE (9.6 acres); Lot 8, NWNE (13.1 acres); Lot 9, NWNW (34.4 acres); Lot 9, SWNW (24.9 acres), Lot 10 SENW (39.7 acres)

497.9 acres total

The 497.9 acres are shown more particularly on the Claim Map attached hereto as **Exhibit A.**

2. The Parties and OWRD agree that under the terms and provisions of this Stipulation, and when viewed in light of the Stipulation to Resolve Contest 3137 Against Claim No. 143, the Contest has been satisfactorily resolved except for determining the exact diversion rate for irrigation, and such resolution ends the need for further proceedings before the Administrative Law Judge on the Contest except for the need to determine the exact diversion rate for irrigation.

3. OWRD adjudication staff recommends that Claim 143 be approved in the Findings of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B.1 above, and further in accordance with the Stipulation to Resolve Contest 3137 Against Claim No. 143. OWRD adjudication staff makes no recommendation herein as to the rate of diversion for irrigation except as set forth in paragraph B.1, above. The exact rate of diversion for irrigation will be the subject of further proceedings.

4. If the Findings of Fact and Order of Determination issued by the Adjudicator for Claim 143 does not conform with the terms set forth in paragraph B.1, above, the Parties reserve any rights they may have to file exceptions to the Findings of Fact and Order of Determination as to Claim 143 with the Adjudicator or in the courts, and otherwise reserve any rights they may

have to participate in any further proceedings authorized by law concerning Claim 143. In particular, the Claimant and OWRD reserve the right to file exceptions with regard to the determination of the exact rate of diversion, as contemplated in paragraph B.1.d above.

5. The Parties and OWRD agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending administrative action. The Parties and OWRD agree that no offers and/or compromises made in the course of negotiations shall be construed as admissions against interest. The Parties and OWRD agree that this Stipulation shall not be offered as evidence or treated as an admission regarding any matter 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 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, and further agree that neither the Stipulation nor any of its terms shall affect the rights or obligations, if any, of the Parties to Contract No. I8r-0983, dated March 6, 1942, at OWRD Exh. 1, pp. 20-24, between the Claimant's predecessor in interest and the United States concerning, among other things, a supply of water from Upper Klamath Lake for a portion or all of the claimed place of use, including the right to seek judicial relief to enforce Contract No. I8r-0983, other than as expressly set forth in this Stipulation.

6. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and OWRD and their respective heirs, executors, administrators, 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 signatory 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 signatory and bind that signatory to the terms of the Stipulation.

8. The terms, provisions, conditions, and covenants of this Stipulation are not severable; however, 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. The Stipulation may be executed in several counterparts. All documents so executed shall constitute one Stipulation, binding on the signatories, notwithstanding that the signatories 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. This Stipulation comprises the entire agreement, and the terms of this Stipulation are contractual and not merely a recital.

11. In settling the Contest, Contestant does not waive any issue or argument regarding the administration of any water right granted to it in this adjudication.

12. The Parties and OWRD agree to each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For Claimant Marta C. Carpenter:

Dated: 7/21, 2007



David E. Filippi, OSB No. 96509
Jennie L. Bricker, OSB No. 97524
Stoel Rives LLP
Of Attorneys for Claimant

For Contestant the UNITED STATES OF AMERICA:

RONALD J. TENPAS
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Dated: July 19, 2007

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Dated: August 8, 2007

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Department

Dated: Aug 8, 2007

Gerry Clark
~~Gerry Clark~~
~~Agency Representative for~~
Oregon Water Resources Department Staff

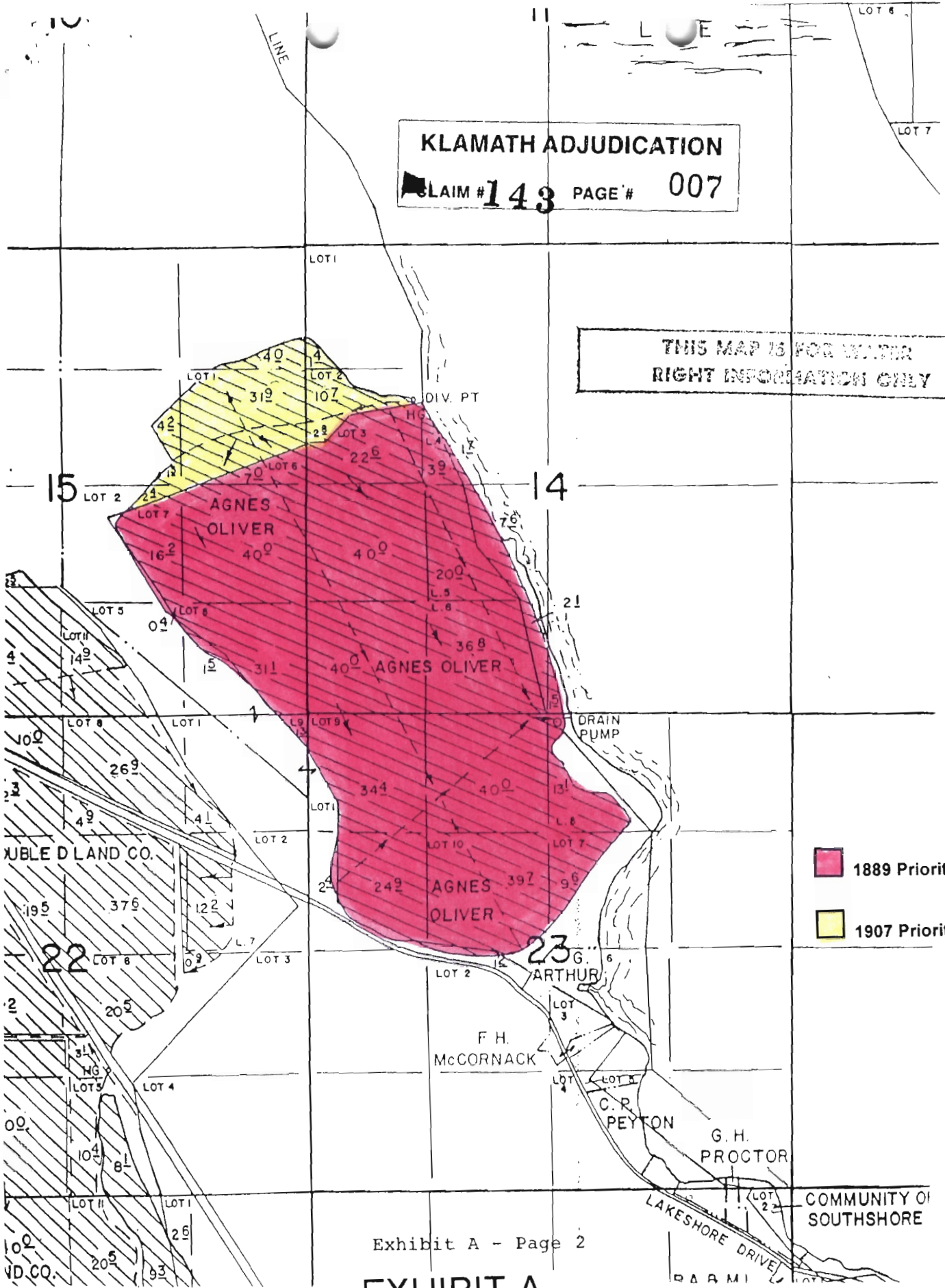
EXHIBIT A

[attached]

KLAMATH ADJUDICATION

CLAIM #143 PAGE# 007

**THIS MAP IS FOR WATER
RIGHT INFORMATION ONLY**





 1889 Priority Date
 1907 Priority Date

Exhibit A - Page 2

EXHIBIT A

Stipulation to Resolve Contests
KBA Case 119, Claim 143