

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

FILE COPY

May 20, 2005

ALL PARTIES TO KLAMATH ADJUDICATION CASE 142, CLAIM 215

Re: Klamath Adjudication – Case No. 142, Claim No. 215, Contest Nos. 3420, 3852
and 4194
DOJ File No. 690-600-GN0114-03

Dear Parties:

Enclosed please find fully executed copies of the Stipulation to Resolve Contests, Affidavit for the Partial Diminution of Water Right Certificates and Deed of Conservation Easement 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,

A handwritten signature in black ink, appearing to read "Jesse Ratcliffe".

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

JDR:tmc/GENM7110
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.

**STIPULATION TO RESOLVE
CONTEST**

Case No. 142

Claim No. 215

Contest Nos. 3420¹, 3852, 4194²

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 No. 215 seeking a water right to an unspecified amount of water for irrigation of 78.0 acres located in Section 11, Township 41 South, Range 4 East, Willamette Meridian ("the Property").
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 215, preliminarily approving the claim "to the extent of beneficial use as described in item 9" of the Preliminary Evaluation.
3. On May 8, 2000, the United States filed Contest 3852.

¹ The Klamath Project Water Users voluntarily withdrew Contest 3420 on April 7, 2004

² The Klamath Tribes voluntarily withdrew Contest 4194 on March 1, 2004.

4. The Parties and OWRD agree that Contest 3852 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 215 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 11, Township 41 South,
Range 4 East, Willamette Meridian

SOURCE: Sloan Springs, tributary to Sloan Creek.

USE: Irrigation

DIVERSION RATE: 1.18 cubic feet per second (cfs) at the point of diversion.

DUTY: The total diversion shall not exceed 3.25 acre-feet per acre.

PERIOD OF USE: March 1 to October 30

PRIORITY DATE: December 31, 1900

PLACE OF USE: (irrigation of 62.1 acres)

NE $\frac{1}{4}$ NW $\frac{1}{4}$ – 13.2 acres irrigation

SE $\frac{1}{4}$ NW $\frac{1}{4}$ – 31.1 acres irrigation

NE $\frac{1}{4}$ SW $\frac{1}{4}$ – 17.8 acres irrigation

Section 11, Township 41 South, Range 4 East, Willamette Meridian

The Point 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, except that acreage depicted on said map located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 11, Township 41 South, Range 4, East, Willamette Meridian is not included within this Stipulation.

C. RESOLUTION BASED ON TERMS OF AGREEMENT

1. Contestant the United States agrees that, pursuant to this Stipulation, the United States' Contest 3852 has been satisfactorily resolved and such resolution negates the need for a hearing on Contest 3852 before the Office of Administrative Hearings.

2. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 215 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 215 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B, above.

3. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 215 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 215 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law.

4. 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.

5. This Stipulation is entered into for the purpose of resolving a disputed claim. The Parties 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 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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.

A handwritten signature in black ink, appearing to read 'S. Shropshire', written over a horizontal line.

STEVEN E. SHROPSHIRE

Jordan Schrader PC

PO Box 230669

Portland, OR 97281

Phone: (503) 598-7070

Fax: (503) 578-7373

steve.shropshire@jordanschrader.com

For Contestant, the United States of America

Dated: May 13, 2005

KELLY JOHNSON,
Acting Assistant Attorney General

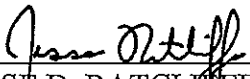
A handwritten signature in cursive script, reading "Stephen R. Palmer", written over a horizontal line.

STEPHEN R. PALMER
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, California 95825
Telephone: 916/978-5683
Telefax: 916/978-5694

For the Oregon Water Resources Department

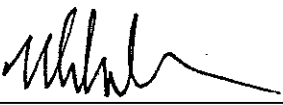
HARDY MEYERS
Attorney General

DATED: April 19, 2005.



JESSE D. RATCLIFFE
STEVEN E. A. SANDERS
Assistant Attorneys General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

DATED: April 22, 2005.



MICHAEL J. REYNOLDS
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1271
Phone: (503) 986-0820
Fax: (503) 986-0901
e-mail: mike.j.reynolds@state.state.or.us

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T.41S.,R.4E.,W.M.

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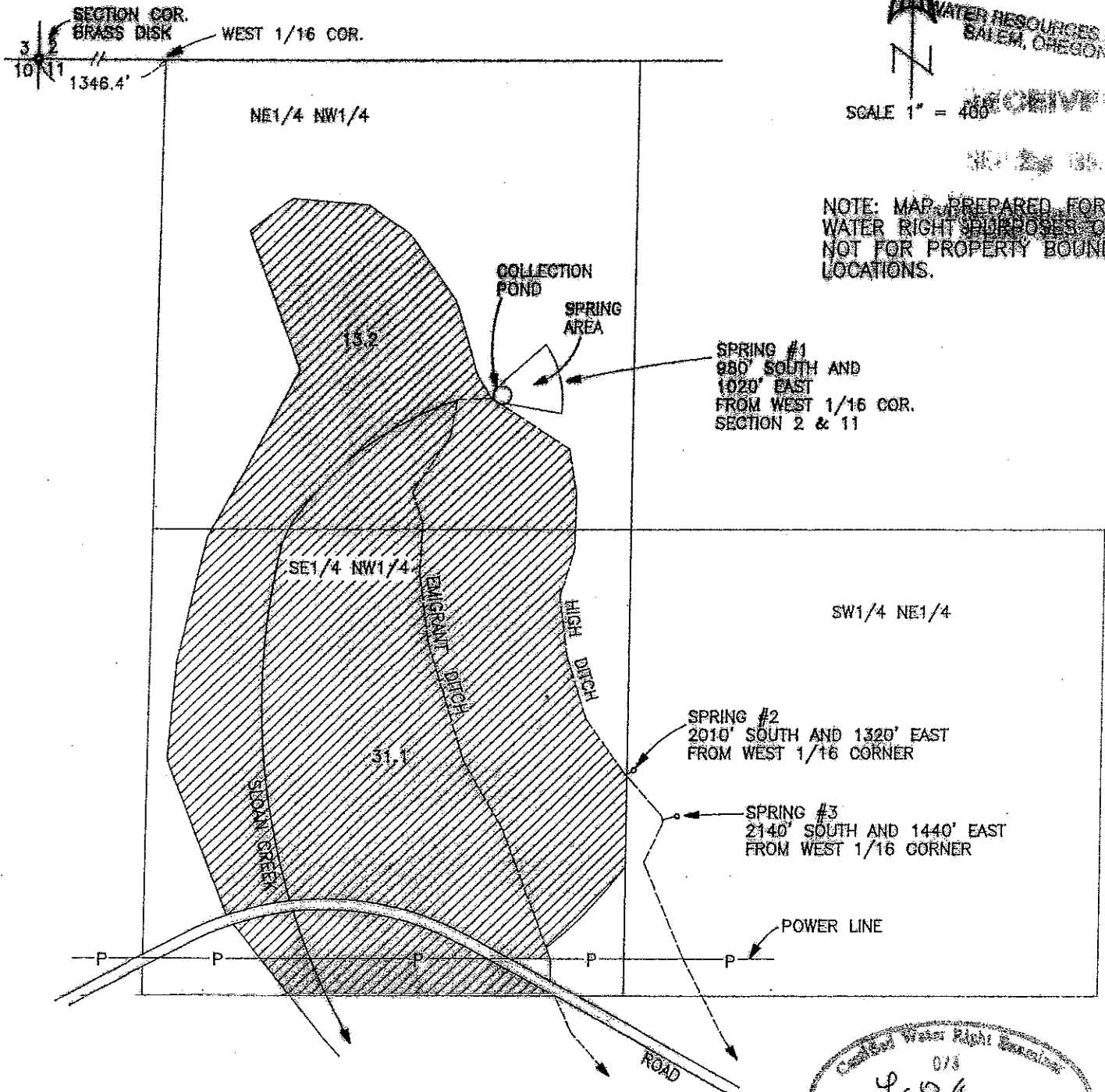
SEP 26 1999

WATER RESOURCES DEPT.
SALEM, OREGON



SCALE 1" = 400'

NOTE: MAP PREPARED FOR
WATER RIGHT PURPOSES ONLY,
NOT FOR PROPERTY BOUNDARY
LOCATIONS.



FINAL PROOF MAP

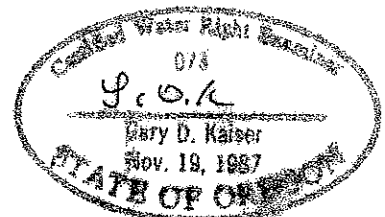
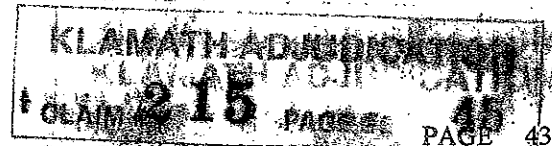
KLAMATH ADJUDICATION
CLAIM No. 215

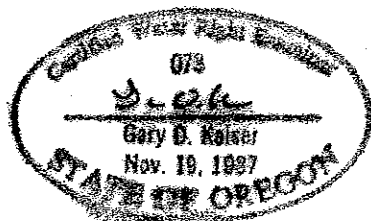
IN THE NAME OF
JERRY BARRY

OWRD EXHIBIT 1

Exhibit 1
Page 1 of 2

MAP PREPARED AUGUST 30, 1999 BY GARY D. KAISER





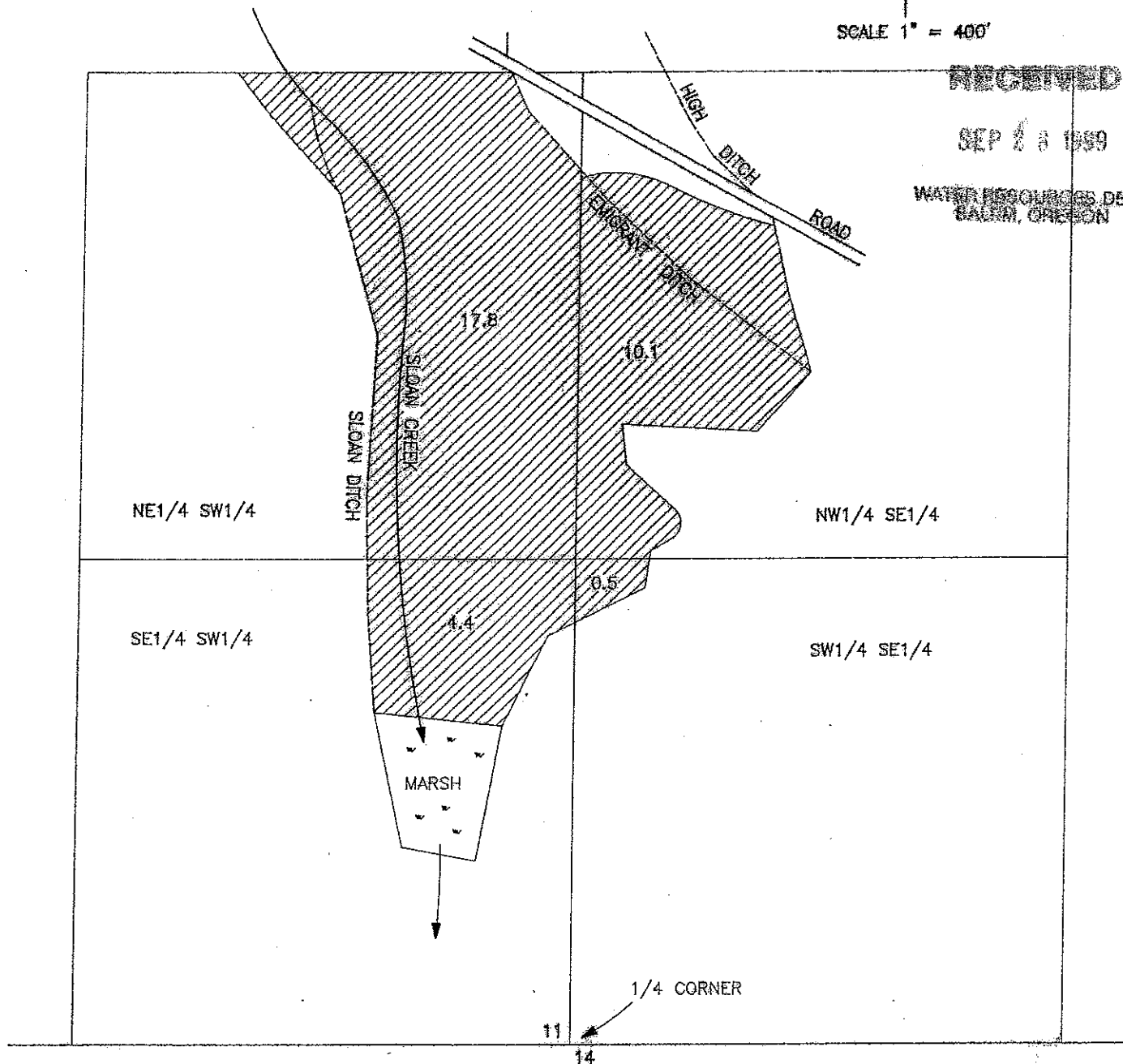
1.41S., R. 4E., W.M.



SCALE 1" = 400'

RECEIVED

SEP 28 1999

WATER RESOURCES DEPT.
SALMON, OREGON

FINAL PROOF MAP
KLAMATH ADJUDICATION
CLAIM No. 215

NOTE: MAP PREPARED FOR
WATER RIGHT PURPOSES ONLY,
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LOCATIONS.

IN THE NAME OF
JERRY BARRY

MAP PREPARED AUGUST 30, 1999 BY GARY D. KAISER

OWRD EXHIBIT 1

Exhibit 1
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KLAMATH ADJUDICATION
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May 2005, I served the within LETTER TO PARTIES AND 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
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@state.or.us
teri.k.hranac@wrdd.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

Steven L. Shropshire
Jordan Schrader PC
PO Box 230669
Portland, OR 97281
steve.shropshire@jordanschrader.com



Jesse D. Ratcliff, #04394
Stephen E.A. Sanders, #85321
Assistant Attorney General