

BEFORE THE HEARINGS OFFICE PANEL
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

The United States of America; The Klamath
Tribes

**STIPULATION TO RESOLVE
CONTESTS NOS. 3780 AND 4082**

Contestants,

Case No. 170

vs.

Claim: 25

Martin Lester Pernoll,

Contest: 3780 and 4082

Claimant

The Oregon Water Resources Department (OWRD), Claimant Martin Lester Pernoll and Contestants United States of America and the Klamath Tribes agree and stipulate as follows:

I. STIPULATED FACTS

- A. Claimant filed Claim 25 on December 4, 1990 to affirm water rights in the Klamath Adjudication.
- B. Claimant filed Claim 25 for a total of 23.31 cubic feet per second (cfs) for irrigation of 932.4 acres and livestock watering of 600 head.
- C. Claimant is a non-Indian successor to Klamath Indian Allottees. This claim is a Walton right with a priority date of October 14, 1864.
- D. The United States of America filed contest 3780 and the Klamath Tribes filed contest 4082 against Claim 25 and the Preliminary Evaluation of the Claim.
- E. OWRD, Claimant and Contestants agree that Contests 3780 and 4082 can be resolved without the need for a hearing pursuant to the terms outlined below.

II. TERMS OF THE AGREEMENT

A. Claimant, Contestants, and OWRD agree that Claim 25 should be approved by the Adjudicator as follows:

1. Coyote Creek Diversion

- a. POINT OF DIVERSION LOCATION: NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27, Township 31 South, Range 13 East, W.M.
- b. SOURCE: Coyote Creek, tributary to Sycan River
- c. USE: irrigation of 24.7 acres
- d. AMOUNT ACTUALLY BENEFICIALLY USED: 0.62 cubic feet per second, measured at the point of diversion
- e. RATE: 1/40 cubic foot per second/acre
- f. DUTY: 2.625 acre foot/acre
- g. PERIOD OF USE: April 1 - October 1
- h. PRIORITY DATE: October 14, 1864
- i. PLACE OF USE:
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 24.7 ACRES IRRIGATION
SECTION 35
TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

2. Long Creek Diversion

- a. POINT OF DIVERSION LOCATION: SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 4, Township 32 South, Range 13 East, W.M.
- b. SOURCE: Long Creek, tributary to Sycan River
- c. USE: irrigation of 892.7 acres
- d. AMOUNT ACTUALLY BENEFICIALLY USED: 22.32 cubic feet per second, measured at the point of diversion
- e. RATE: 1/40 cubic foot per second/acre
- f. DUTY: 2.625 acre foot/acre
- g. PERIOD OF USE: April 1 - October 1
- h. PRIORITY DATE: October 14, 1864
- i. PLACE OF USE:

NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.0	ACRES IRRIGATION
NW $\frac{1}{4}$ NE $\frac{1}{4}$	39.2	ACRES IRRIGATION
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.0	ACRES IRRIGATION
SE $\frac{1}{4}$ NE $\frac{1}{4}$	40.0	ACRES IRRIGATION
NE $\frac{1}{4}$ NW $\frac{1}{4}$	4.6	ACRES IRRIGATION
SE $\frac{1}{4}$ NW $\frac{1}{4}$	36.5	ACRES IRRIGATION
NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.0	ACRES IRRIGATION
SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.0	ACRES IRRIGATION
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0	ACRES IRRIGATION
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0	ACRES IRRIGATION

SW ¼ SE ¼ 40.0 ACRES IRRIGATION
SE ¼ SE ¼ 40.0 ACRES IRRIGATION

SECTION 35

TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

NE ¼ SW ¼ 40.0 ACRES IRRIGATION
NW ¼ SW ¼ 28.5 ACRES IRRIGATION
SW ¼ SW ¼ 2.0 ACRES IRRIGATION
SE ¼ SW ¼ 18.2 ACRES IRRIGATION
NE ¼ SE ¼ 40.0 ACRES IRRIGATION
NW ¼ SE ¼ 40.0 ACRES IRRIGATION
SW ¼ SE ¼ 40.0 ACRES IRRIGATION
SE ¼ SE ¼ 40.0 ACRES IRRIGATION

SECTION 2

TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M.

SW ¼ NE ¼ 15.3 ACRES IRRIGATION
SE ¼ NE ¼ 36.1 ACRES IRRIGATION
SW ¼ NW ¼ 15.5 ACRES IRRIGATION
SE ¼ NW ¼ 25.9 ACRES IRRIGATION
LOT 1 NE ¼ NE ¼ 27.7 ACRES IRRIGATION
LOT 2 NW ¼ NE ¼ 28.5 ACRES IRRIGATION
LOT 3 NE ¼ NW ¼ 34.0 ACRES IRRIGATION
LOT 4 NW ¼ NW ¼ 20.7 ACRES IRRIGATION

SECTION 3

TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M.

- B. OWRD, Claimant and Contestants agree that the total acres of irrigation for the Coyote Creek Diversion should be reduced from the claimed amount of 39.7 acres to 24.7 acres. The 15 acres removed from the claim are indicated on the attached sketch labeled Exhibit A and are located as follows:

NW ¼ NE ¼ 0.8 ACRES IRRIGATION
NE ¼ NW ¼ 10.7 ACRES IRRIGATION bordering the northwest
boundary of Long Creek Ditch
SE ¼ NW ¼ 3.5 ACRES

SECTION 35

TOWNSHIP 31 SOUTH, RANGE 13, EAST, W.M.

Claimant will submit a map prepared in conformance with OAR 690 028-0025(4) depicting the 15 acres removed from the claim to OWRD within six months of the execution of this Stipulation by the last signatory. Upon submission to OWRD, the map will be substituted for Exhibit A in this Stipulation and incorporated by reference as if fully set forth in this Stipulation. If this map is not submitted within the time period

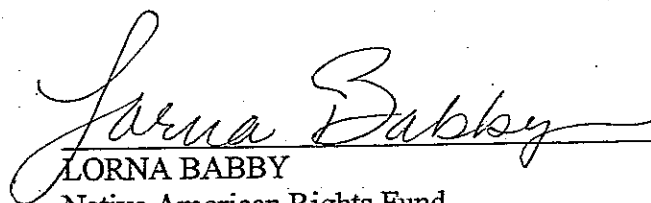
identified above, this Stipulation will be void and the claim and the contests will be referred back to the Office of Administrative Hearings for further proceedings.

- C. OWRD, Claimant and Contestants agree that pursuant to the terms of this Agreement, Contests Nos. 3780 and 4082 have been satisfactorily resolved and there is no need for a hearing before the Hearing Officer on the contests to Claim 25.
- D. Based upon the agreement of OWRD, Claimant, and Contestants that Claim 25 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 25 be approved in the Final Order of Determination issued by the Adjudicator in accordance with the terms in paragraph A. above.
- E. If the Final Order of Determination issued by the Adjudicator for Claim 25 does not follow the terms listed in paragraph A. above, Claimant and Contestants reserve any rights they may have to file exceptions to the Final Order of Determination as to Claim 25 in the Circuit Court for Klamath County and reserve any rights they may have to participate in any future proceedings authorized by law.
- F. This Stipulation is entered into on good faith negotiations to resolve legal disputes by compromise and settlement. Nothing in this Stipulation or offers of compromise made in the course of negotiating this Stipulation shall be construed as admissions or tendered or used as evidence or used in any other manner in any proceeding including in this adjudication other than for a purpose contemplated by Oregon Rule of Evidence 408.
- G. The terms of this Stipulation are non-severable.
- H. This Stipulation shall bind and inure to the benefit of successors, heirs and assigns of the parties.
- I. The Stipulation may be signed in counterparts.

DATED: March 9, 2004


NANCI L. KLINGER
Attorney for Claimant Martin Pernoll
Davis Wright Tremaine
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
Phone: (503) 5203
Fax: (503) 778-5299
nanciklinger@dwt.com

DATED: Feb. 2, 2004


LORNA BABBY

Native American Rights Fund

1506 Broadway

Boulder, CO 80302

Phone: (303) 447-8760

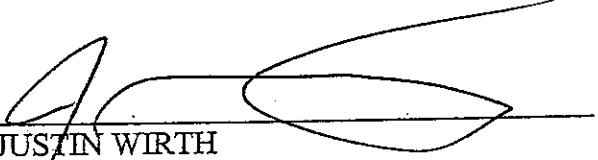
Fax: (303) 443-7776

babby@narf.org

For the Oregon Water Resources Department

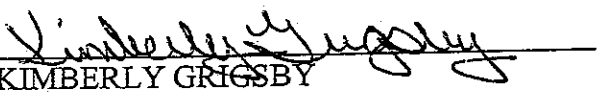
HARDY MEYERS
Attorney General

DATED: March 19, 2004



JUSTIN WIRTH
Oregon Department of Justice
1162 Court St. NE
Salem, OR 97310
Phone: (503) 947-4500
Fax: (503) 378-3802
justin.wirth@state.or.us

DATED: March 19, 2004



KIMBERLY GRIGSBY
Oregon Water Resources Department
~~158 Twelfth Street NE~~ 725 Summer St., Ste. 14
Salem, OR 97301
Phone: (503) 378-8455 986-0825
Fax: (503) 278-6203 986-0901
kimberly.j.grigsby@wrdd.state.or.us

AGENCY REPRESENTATIVE FOR OREGON
WATER RESOURCES DEPARTMENT

DATED: March 25, 2004

Barbara Scott-Brier

BARBARA SCOTT-BRIER

Special Attorney U.S. Dept. of Justice

500 NE Multnomah St., Suite 607

Portland, OR 97232

Phone: (503) 231-1239

Fax: (503) 231-2166

CERTIFICATE OF SERVICE

I hereby certify that on January ____, 2004, I mailed a true copy of the following:
STIPULATED AGREEMENT, by depositing the same in the U.S. Post Office, Portland,
Oregon, 97201, with first class postage prepaid thereon, and addressed to:

Walter Echohawk/Lorna Babby
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Phone: (303) 447-8760
Fax: (303) 443-7776
babby@narf.org

Barbara Scott-Brier
US Dept. of Interior
500 NE Multnomah St., Suite 607
Portland, OR 97232
Phone: (503) 231-1239
Fax: (503) 231-2166

Hearing Officer
Hearings Officer Panel
PO Box 14020
Salem, OR 97303-4924

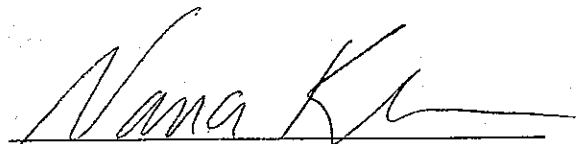
Richard D. Bailey
Oregon Water Resources Department
158 12th St NE
Salem, OR 97301

Carl Ullman
PO Box 957
Chiloquin, OR 97624

Dr. Martin L. Pernoll
Pernoll Ranch LLC
705 Greensburg Circle
Reno, NV 89509

Walter Perry/Justin Wirth
Oregon Dept. of Justice
1162 Court St. NE
Salem, OR 97310

Teri Hranac
Oregon Water Resources Department
158 12th St NE
Salem, OR 97301



Nanci L. Klinger
Attorney for Martin Lester Pernoll, Claimant

1998
MRD MAP
T315
R13E

W FILE PAGE

00025 00012

- Coyote Cr.
- Lone Cr.

