

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 2, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 197, Claim No. 66, Contest Nos. 3103, 3463,
3805 and 4118
DOJ File No. 690-600-GN0168-03

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. 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
Walter Perry III
Assistant Attorneys General
Natural Resources Section

JDR:WNP:tmc/GENQ0070
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; Klamath Tribes;~~ STIPULATION TO RESOLVE
Klamath Irrigation District; Klamath Drainage CONTESTS
District; Tulelake Irrigation District; Klamath
Basin Improvement District; Ady District Case No. 197
Improvement Company; Enterprise Irrigation
District; Malin Irrigation District; Midland Claim: 66
District Improvement Co.; Pine Grove Irrigation
District; Pioneer District Improvement Company; Contests: 3103, 3463¹, 3805², and 4118³
Poe Valley Improvement District; Shasta View
Irrigation District; Sunnyside Irrigation District;
Don Johnston & Son; Bradley S. Luscombe;
Randy Walthall; Inter-County Title Company;
Winema Hunting Lodge, Inc.; Van Brimmer
Ditch Company; Plevna District Improvement
Company; Collins Products, LLC;
Contestants

vs.

Stephen S. Napier; Mary Anna Napier;
Claimants/Contestants.

Claimants/Contestants Stephen S. Napier and Mary Anna Napier ("Claimants"),
Contestants Klamath Project Water Users,⁴ ("KPWU"), (collectively, the "Parties"), and the
Water Resources Department ("OWRD") hereby agree and stipulate as follows:

¹ Don Vincent voluntarily withdrew from Contest 3463 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3463 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contest 3463 on January 15, 2004.

² The United States voluntarily withdrew Contest 3805 on August 2, 2005. *See* STIPULATION BETWEEN STEPHEN S. NAPIER, MARY ANNA NAPIER, AND THE UNITED STATES AND WITHDRAWAL [sic] OF CONTEST BY THE UNITED STATES dated August 2, 2005.

³ The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4118 on July 28, 2004. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (July 28, 2004).

⁴ The term Klamath Project Water Users includes Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Randy Walthall and Inter-County Title

Page 1 – STIPULATION TO RESOLVE CONTESTS

A. STIPULATED FACTS

- 1. On January 24, 1991, Jack Simington, filed Claim 66 with OWRD.
- 2. The current claimants are Stephen S. Napier and Mary Anna Napier ("Napier"), who are successors in interest to Mr. Simington.
- 3. The property comprising the original claimed place of use ("Claim Lands") is located in the SW¼NE¼ of Section 12, Township 34 South, Range 7½ East, Willamette Meridian.
- 4. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 66.
- 5. The following contests were filed to Claim 66 and/or the Preliminary Evaluation of Claim 66: Contest 3102 filed by Stephen S. Napier and Mary Anna Napier; Contest 3463 filed by the Klamath Project Water Users; Contest 3905 filed by the United States of America, which was voluntarily withdrawn on July 21, 2005 per the terms of a stipulation with the Napiers; and, Contest 4118 filed by the Klamath Tribes, which was voluntarily withdrawn on July 27, 2004.
- 6. Claimants, KPWU, and OWRD agree that Contests 3103 and 3463 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. The Claimants, KPWU, and OWRD agree that Claim 66 should be approved by the Adjudicator as described below:

a. Domestic Use

Source: Tecumseh Spring Tributary: Crooked Creek

| | | | | |
|------------|-----------------|--------------|----------------|-------------|
| Point Of | <u>Township</u> | <u>Range</u> | <u>Section</u> | <u>Q/Q:</u> |
| Diversion: | 34 S | 7.5 E | 12 | SWNE |

More particularly described as: 460' South, 515' West from NE 1/16, Sec. 12, T.34 S., R.7.5 E., W.M.

Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Reames Golf and Country Club, Plevna District Improvement Company, and Collins Products, LLC.

Priority: 10/14/1864

Use, Period Of Use: Period Of Use: Rate:
Use and Domestic 01-01 to 12-31 .02cfs
Quantity: (Domestic use shall be limited to providing domestic water for a
maximum of 2 houses and 2 ancillary shop buildings)

Place Of Township Range Section Q/Q: Lot: Acreage:
Use: 34 S 7.5 E 12 SWNE

b. Irrigation of .5 Acre Parcel

Source: Crooked Creek Tributary: Wood River

Point Of Township Range Section Q/Q:
Diversion: 34 S 7.5 E 12 SWNE
More particularly described as: 775' South, 750' West from NE 1/16,
Sec. 12, T.34 S., R.7.5 E., W.M.

Priority: 10/14/1864

Use: Irrigation and livestock watering incidental to irrigation

Period Of Period Of Use: Rate:
Use and 04-01 to 06-30 .0125 cfs
Quantity: 07-01 to 08-31 .006 cfs
09-01 to 10-15 .0125 cfs

Duty: 4.0 AFA

Place Of Township Range Section Q/Q: Lot: Acreage:
Use: 34 S 7.5 E 12 SWNE .5

c. Irrigation of 4.4 Acre Parcel

Source: Fort Creek Tributary: Wood River

Point Of Township Range Section Q/Q:
Diversion: 33 S 7.5 E 26 NWNW
More particularly described as: 950' South, 1100' East of the NW
Corner of S. 26, T. 33 S., R. 7.5 E., W.M. (Water is delivered via the
Fort Creek Ditch)

Priority: 10/14/1864

Use: Irrigation and livestock watering incidental to irrigation

| Period Of Use and Quantity: | Period Of Use: | Rate: |
|-----------------------------|----------------|----------|
| | 04-01 to 06-30 | .11 cfs |
| | 07-01 to 08-31 | .055 cfs |
| | 09-01 to 10-15 | .11 cfs |

Duty: 4.0 AFA

| Place Of Use: | Township | Range | Section | Q/Q: | Lot: | Acreage: |
|---------------|----------|-------|---------|------|------|----------|
| | 34 S | 7.5 E | 12 | SWNE | | 4.4 |

d. The Claimants and KPWU (but not OWRD), agree that the maximum number of stock permitted for incidental watering of livestock under this right shall not exceed 22 head.

e. No separate rate of diversion in addition to that adjudicated to the claimed irrigation use shall be adjudicated to the claimed stock watering use.

f. The place of use is more specifically set forth on the attached Exhibit A, further identified as the Claim Map located in OWRD Exhibit 1 at page 25.

2. The Claimants, KPWU, and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contests 3103, and 3463 have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on the contests to Claim 66.

3. Based on the Stipulation of the Claimants, KPWU, and OWRD that Claim 66 and the Contests thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 66 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 66 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.

4. If the Findings of Fact and Order of Determination issued by the Adjudicator for Claim 66 does not conform to the terms set forth in paragraph B.1., above, Claimants and Contestants reserve any rights they may have to file exceptions to the Findings of Fact and Order of Determination as to Claim 66 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 66.

5. The Claimants and KPWU agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The Claimants and KPWU agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. The Claimants and KPWU agree that this 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 Claimants and KPWU 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.

6. This Stipulation shall be binding upon and shall inure to the benefit of the Claimants and KPWU and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principles, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

7. OWRD and 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, or covenants of this Stipulation are not severable, except, if any terms, provision, conditions, or covenant of this Stipulation is held by a court of competent jurisdiction to be invalid, 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 and OWRD, notwithstanding that the Parties and OWRD did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by facsimile shall be as effective as delivery of an original signed counterpart of this Stipulation.

10. This Stipulation comprises the entire agreement between the Parties and OWRD concerning the subject matter hereof, and no promise, inducement, or representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this Stipulation shall be binding and enforceable upon the Parties and OWRD and not mere recitals.


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

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

STIPULATED, AGREED AND APPROVED BY:

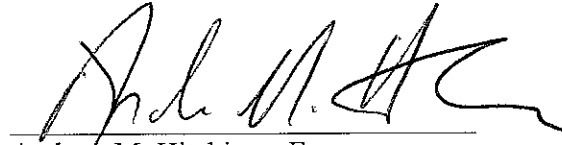
FOR THE CLAIMANTS/CONTESTANTS STEPHEN S. NAPIER AND MARY ANNA NAPIER:

DATED: Feb. 27, 2006


Ronald S. Yockim, OSB #81430
Attorney at Law
P.O. Box 2456
Roseburg, OR 97470
Phone: 541 957-5900
ryockim@mcsi.net

FOR THE CONTESTANTS KLAMATH PROJECT WATER USERS:

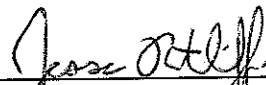
DATED: 4/24, 2006



Andrew M. Hitchings, Esq.
(*Pro Hac Vice*; Cal. Bar No. 154554)
On Behalf of Klamath Project Water Users
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
Phone: 916-446-7979
ahitchings@lawssd.com

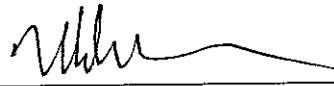
FOR THE OREGON WATER RESOURCES DEPARTMENT

DATED: May 1, 2006



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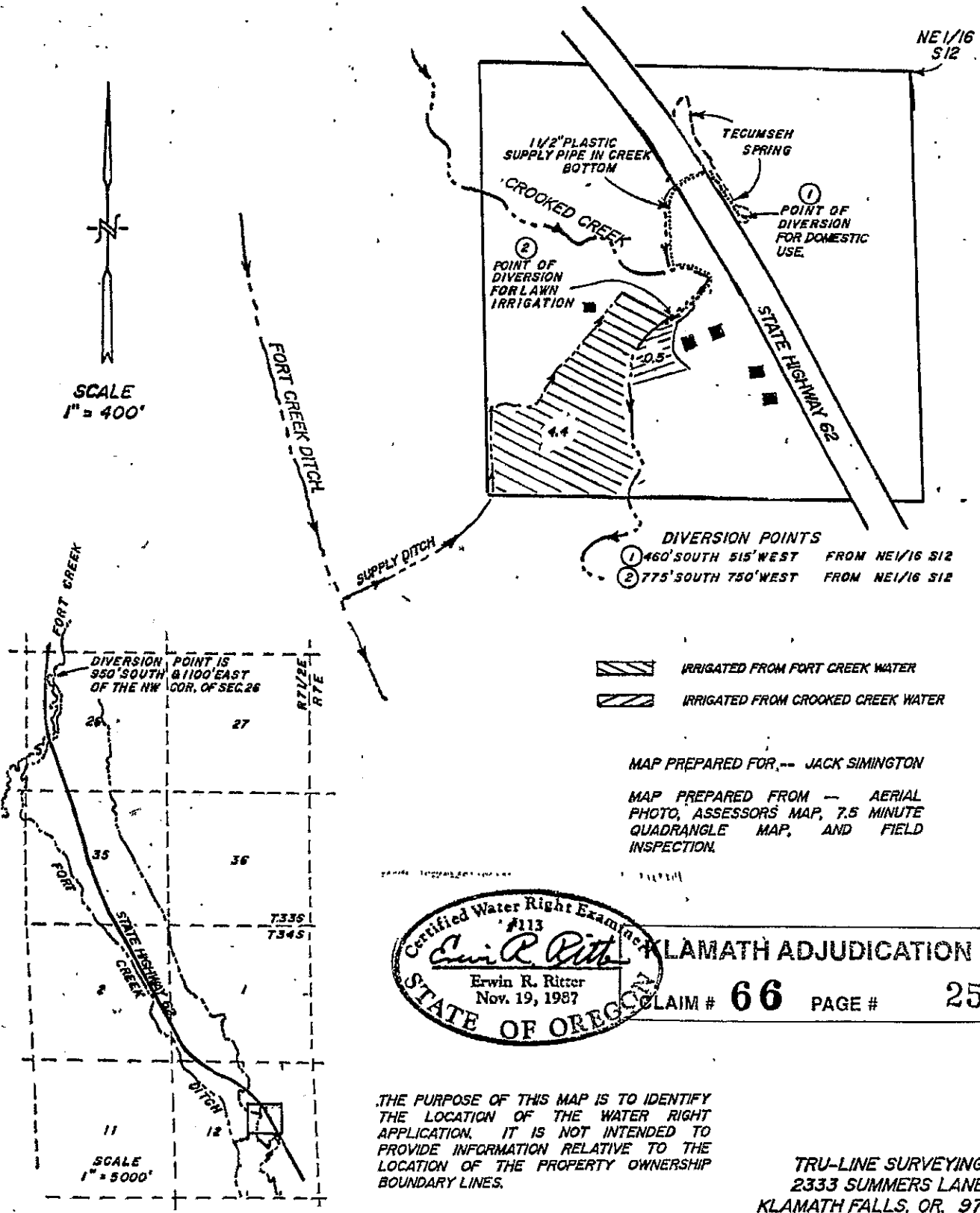
DATED: 5-2, 2006



Michael J. Reynolds
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271
Phone: 503-986-0820
mike.j.reynolds@state.or.us

**MAP TO ACCOMPANY STATEMENT AND PROOF OF CLAIM TO
USE OF WATER OF THE KLAMATH RIVER AND ITS TRIBUTARIES**

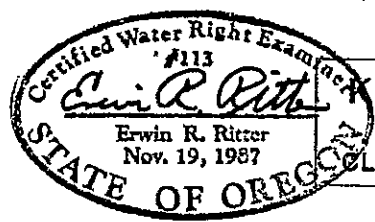
SITUATED IN THE SW 1/4 NE 1/4 OF SECTION 12,
T34S, R71/2EWM, KLAMATH COUNTY, OREGON



DIVERSION POINTS
 ① 460' SOUTH 515' WEST FROM NE 1/16 S12
 ② 775' SOUTH 750' WEST FROM NE 1/16 S12

IRRIGATED FROM FORT CREEK WATER
 IRRIGATED FROM CROOKED CREEK WATER

MAP PREPARED FOR -- JACK SIMINGTON
 MAP PREPARED FROM -- AERIAL PHOTO, ASSESSORS MAP, 7.5 MINUTE QUADRANGLE MAP, AND FIELD INSPECTION.



KLAMATH ADJUDICATION
 CLAIM # **66** PAGE # **25**

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT APPLICATION. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF THE PROPERTY OWNERSHIP BOUNDARY LINES.

TRU-LINE SURVEYING
 2333 SUMMERS LANE
 KLAMATH FALLS, OR. 97603

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May 2006, I served the within LETTER TO PARTIES AND STIPULATION TO RESOLVE CONTESTS on the parties hereto by regular first-class mail and by e-mail (where an e-mail address is listed below), a true, exact and full copy thereof to:

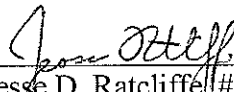
VIA STATE SHUTTLE MAIL
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