

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; The Klamath Tribes; Contestants	STIPULATION TO RESOLVE CONTESTS Case No. 199
vs.	Claim: 68
Dorothy Buchanan; Claimant.	Contests: 3739 and 4120

Claimant Dorothy Buchanan (“Claimant”), the United States of America (the “United States”), the Klamath Tribes (the “Tribes”), 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 November 8, 1990, Claimant filed Claim 68 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 68, preliminarily approving the Claim generally as claimed.
3. The following Contests were filed to Claim 68: Contest 3739, filed by the United States; and Contest 4120, filed by the Tribes (referred to jointly as the “Contestants”).
4. Claimant, Contestants, and OWRD agree that Contests 3739 and 4120 can be resolved without the need for a hearing pursuant to the terms set forth below.

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B. TERMS OF STIPULATION

1. Claimant, Contestants, and OWRD agree that Claim 68 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: NE1/4NE1/4, Section 22, Township 34 South, Range 8 East, W.M.

SOURCE: Whitehorse Spring, tributary to Sprague River

PRIORITY DATE: October 14, 1864

USE: domestic

AMOUNT ACTUALLY BENEFICIALLY USED: 0.01 cubic feet per second, measured at the point of diversion.

PERIOD OF USE: January 1 to December 31

PLACE OF USE: NE1/4NE1/4, Section 22, Township 34 South, Range 8 East, W.M.

USE: livestock for 600 head

AMOUNT ACTUALLY BENEFICIALLY USED: 0.01 cubic feet per second, measured at the point of diversion.

PERIOD OF USE: January 1 to December 31

PLACE OF USE: See irrigation place of use

USE: irrigation of 242.22 acres

AMOUNT ACTUALLY BENEFICIALLY USED: 6.06 cubic feet per second, measured at the point of diversion.

PERIOD OF USE: March 1 - October 31

PLACE OF USE:

Acres	¼, ¼	Sec.	Township	Range
1.54	SWNW	22	34S	8E
15.34	SENW	22	34S	8E
29.86	NWNW	22	34S	8E
19.35	NENW	22	34S	8E
22.42	NWNE	22	34S	8E
29.82	SWNE	22	34S	8E
11.53	SENE	22	34S	8E
3.84	NWSE	22	34S	8E
35.93	NESE	22	34S	8E
1.51	SWSE	22	34S	8E
4.08	SWSE	22	34S	8E
34.29	SESE	22	34S	8E
5.98	NWNE	27	34S	8E
26.73	NENE	27	34S	8E
242.22	TOTAL			

See also the attached map showing the place of use.

DUTY: 3.0 acre-feet/acre

2. Claimant, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contests 3739 and 4120 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 68.

3. Based on the Stipulation of Claimant, Contestants and OWRD that Claim 68 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 68 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 68 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 68 does not conform to the terms set forth in paragraph B.1., above, Claimant and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 68 in the Circuit Court for Klamath County, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Case 199.

5. Claimant and Contestants agree not to oppose or object to this Agreement or any of its terms, provisions, conditions, or covenants and to support this Agreement 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 signatories to this Stipulation 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 signatories to this Stipulation 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.

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 relate entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

8. 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.

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 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.

12. This Stipulation shall be effective as of the date of the last signature hereto.
Stipulated, agreed and approved by:

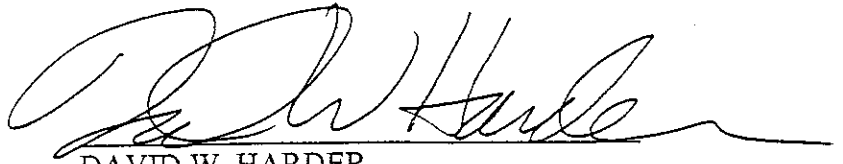
CLAIMANT:

December 2, 200~~8~~⁴
January

Dorothy Buchanan
Dorothy Buchanan
13851 Algoma Road
Klamath Falls, Oregon 97601

For Contestant, the United States of America:

Dated: December 23, 2003



DAVID W. HARDER
Indian Resources Section
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U.S. Department of Justice
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For Contestants, the Klamath Tribes:

Dated: December 22, 2003

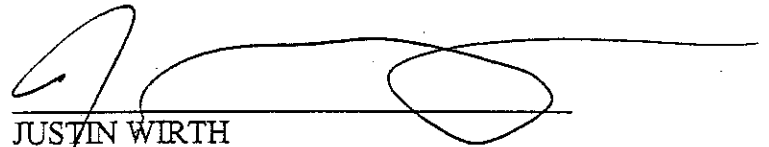


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For the Oregon Water Resources Department:

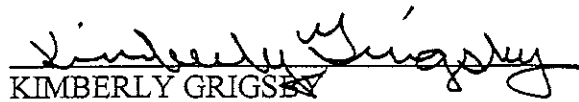
HARDY MEYERS
Attorney General

Dated: January 15, 2004



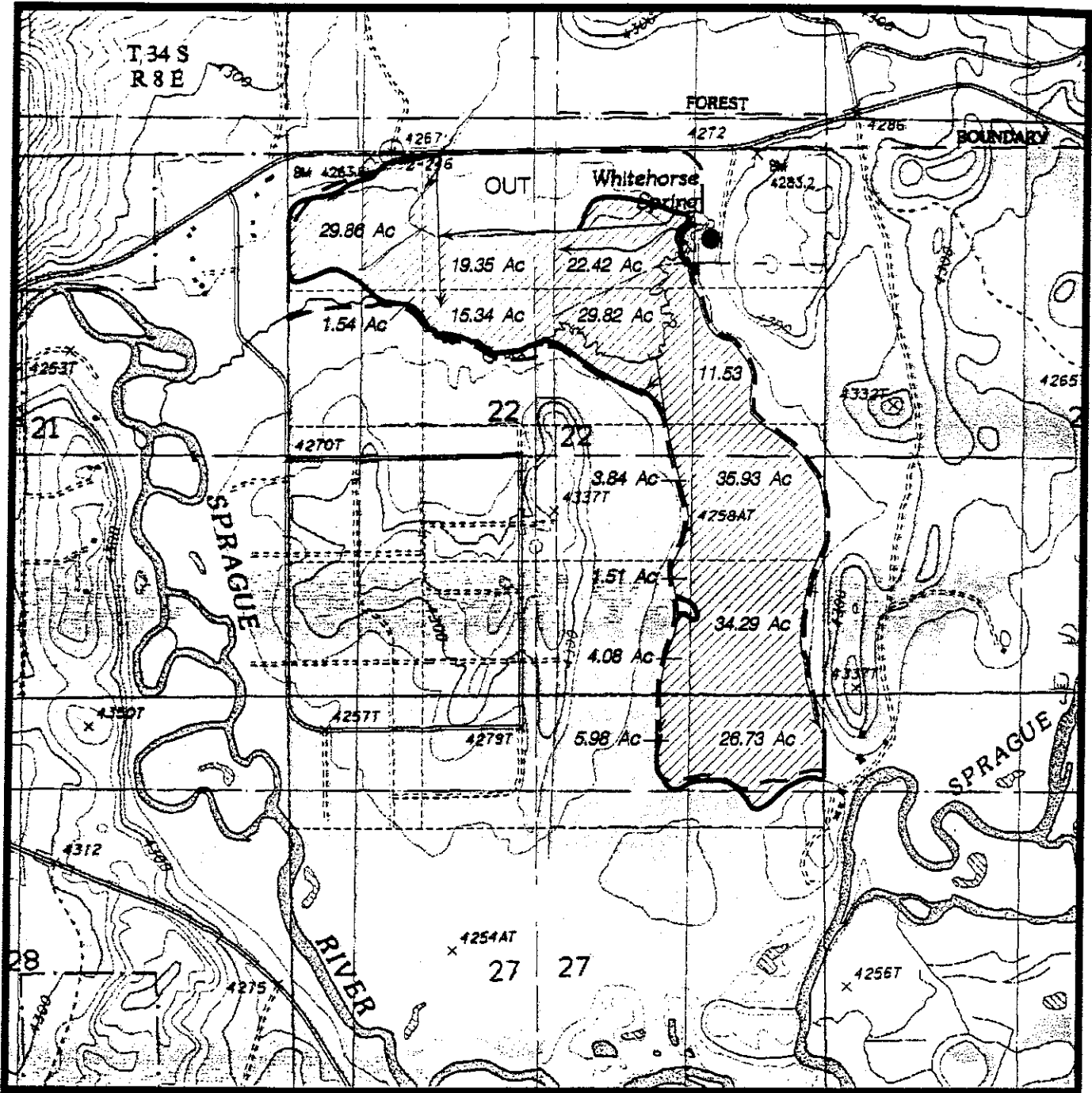
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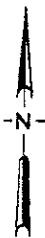
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AGENCY REPRESENTATIVE FOR
OREGON WATER RESOURCES
DEPARTMENT



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LEGEND



Irrigated Acreage agreed to for Settlement of Claim No. 68 is 242.22 Acres

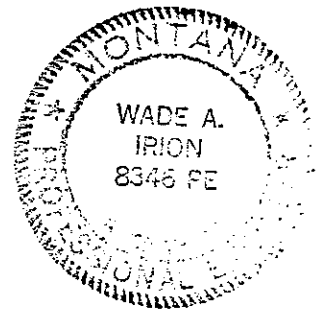


Domestic Use



Ditches

1 Inch : approx. 1500 feet



● HKM Engineering Project No. 3M137.215

● December 2003



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**KLAMATH CLAIMS
CLAIM NO. 68**
CHILLOQUIN and S'OCHOLIS CANYON 7.5-Min. TOPO QUADS

**FIGURE
1**