

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE STATE OF OREGON
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; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement Company; Ady District Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Co; 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; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Co.; Plevna District Improvement Company; Collins Products, LLC;

STIPULATION TO RESOLVE CONTESTS

Case No. 214

Claim No. 99

Contests 3,284¹, 3480², 3749, and 4134

Claimants Henry J. Caldwell, Jr., Deborah L. Caldwell, Glen R. Crouch, and Sharline J.

Crouch (collectively “Claimants”), the United States of America (“United States”), the Klamath Tribes (“Tribes”), the Klamath Project Water Users (“KPWU”) and the Oregon Water Resources

¹ WaterWatch of Oregon, Inc.'s Contest 2841 was dismissed. See ORDER DISMISSING WATERWATCH OR OREGON, INC.'S CONTESTS, May 20, 2003

² Don Vincent voluntarily withdrew from Contest 3480 on December 4, 2000. Berlva Prichard voluntarily withdrew from Contest 3480 on June 24, 2002.

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 14, 1991, Claim 99 was filed with OWRD by the original claimant, D.G. Richardson. Current Claimants are successors in interest to the property at issue in Claim 99.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 99.
3. On May 2, 2000, the Tribes filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 4134.
4. On May 4, 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3749.
5. On May 2, 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3480.
4. Claimants, Contestants, and OWRD agree that Contests 4134, 3749, and 3480 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimants, Contestants, and OWRD agree that Claim 99 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: SW1/4NW1/4, Section 4, Township 36 South, Range 10 East, Willamette Meridian; 1826 feet South and 593 feet East of from the Northwest Corner of Section 4.

The Point of Diversion is set forth more particularly in the map attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

SOURCE: Sprague River, tributary to the Williamson River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: 11.1 cubic feet per second, measured at point of diversion

DUTY: 3.5 acre feet per acre

PERIOD OF USE: April 1 – October 31

PLACE OF USE: Table below and Map at Exhibit A

Acres	$\frac{1}{4}$, $\frac{1}{2}$	Sec.	Township	Range
40	Lot 4 (NWNW)	4	T36S	R10E
24.6	SWNW	4	T36S	R10E
38	Lot 3 (NENW)	4	T36S	R10E
40	Lot 1 (NENE)	5	T36S	R10E
40	Lot 2 (NWNE)	5	T36S	R10E
30	Lot 3 (NENW)	5	T36S	R10E
14	SENW	5	T36S	R10E
40	SWNE	5	T36S	R10E
40	SENE	5	T36S	R10E
20	SWSE	32	T35S	R10E
40	SESE	32	T35S	R10E
33.4	SESW	32	T35S	R10E
40	SWSW	33	T35S	R10E
30	SESW	33	T35S	R10E
Total Acres: 470				

The Place of Use is set forth more particularly in the map attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

2. Claimants, Contestants and OWRD agree that pursuant to the terms of this Stipulation, Contests 4134, 3749, and 3480 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 99.

3. Based on the Stipulation of Claimant, Contestants and OWRD that Claim 99 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 99 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 99 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 99 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 Finding of Fact and Order of Determination as to Claim 99 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 99.

5. Claimants 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:

Claimants:

DATED: November 24, 2004

Henry J. Caldwell, Jr., Trustee

Deborah K. Caldwell, Trustee

HENRY J. CALDWELL, Jr.
DEBORAH L. CALDWELL
as Trustees of the Caldwell Family Trust
since January 5, 1996
7990 Hill Road
Klamath Falls, OR 97603

GLEN R. CROUCH
SHARLINE J. CROUCH
180 Commercial Street NE #9
Salem, OR 97301

Claimants:

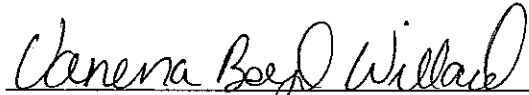
DATED: November __, 2004

HENRY J. CALDWELL, Jr.
DEBORAH L. CALDWELL
as Trustees of the Caldwell Family Trust
uda January 5, 1996
7990 Hill Road
Klamath Falls, OR 97603

 11/24/04
 11-28-04
GLEN R. CROUCH
SHARLINE J. CROUCH
180 Commercial Street NE #9
Salem, OR 97301

For Contestant, the United States of America:

DATED: November 16th, 2004

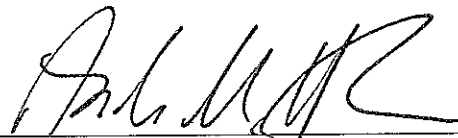


VANESSA BOYD WILLARD

Indian Resources Section
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U.S. Department of Justice
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e-mail: vanessa.boydwillard@usdoj.gov

For Contestants, the Klamath Project Water Users:

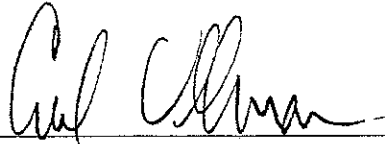
DATED: November 16, 2004

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

ANDREW HITCHINGS
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
Telephone: (916) 446-7979
Telefax: (916) 446-8199
email: ahitchings@lawssd.com

For Contestants, the Klamath Tribes:

DATED: November 16, 2004

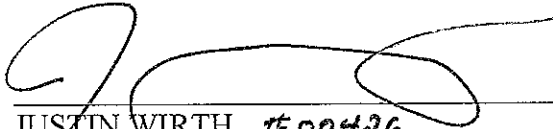
A handwritten signature in black ink, appearing to read 'Carl Ullman', written over a horizontal line.

CARL V. ULLMAN
Water Adjudication Project
The Klamath Tribes
P.O. Box 957
Chiloquin, Oregon 97624
Telephone: (541) 783-3081
Telefax: (541) 783-2609
e-mail: *bullman3@earthlink.net*

For the Oregon Water Resources Department:

HARDY MEYERS
Attorney General

December
DATED: November 2, 2004


JUSTIN WIRTH #00426
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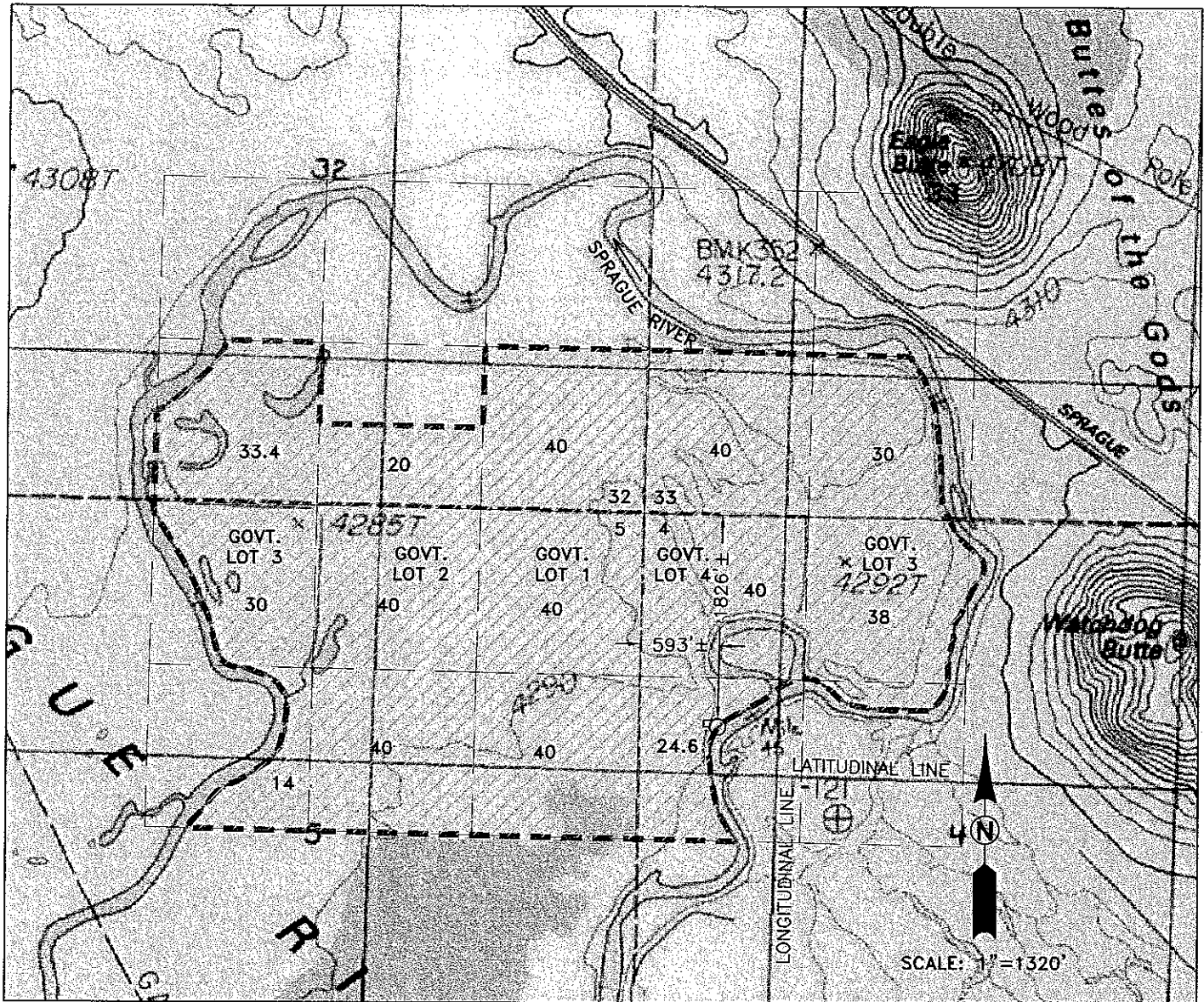
December
DATED: November 2, 2004


~~KIMBERLY GRIGSBY~~ *Reaée Montuon*
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Salem, Oregon 97301-1217
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AGENCY REPRESENTATIVE FOR OREGON
WATER RESOURCES DEPARTMENT

ADJUDICATION CLAIM 99 MAP

FOR
HENRY J. CALDWELL JR. AND DEBORAH L. CALDWELL,
TRUSTEES OF THE CALDWELL FAMILY TRUST.
UDA JANUARY 5, 1996,
GLEN R. CROUCH AND SHERLINE J. CROUCH.
LOCATED IN SECTIONS 32 & 33, T.35S., R.10E, W.M.
AND SECTIONS 4 & 5, T.36S., R.10E, W.M.



EXPIRES: 12/31/2004

*NOTE:
BACKGROUND MAP PROVIDED
THROUGH TERRAIN NAVIGATOR, USGS.
AREAS SHOWN IN ACRES

- DIVERSION PUMP
- IRRIGATED AREA - CERTIFICATES 8201 AND 42756
- MAIN DITCH LOCATIONS ARE APPROXIMATE

THE PURPOSE OF THIS MAP IS TO
IDENTIFY THE LOCATION OF THE
WATER RIGHT ONLY. THERE IS NO
INTENT TO PROVIDE DIMENSIONS OR
LOCATIONS OF PROPERTY LINES.



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PROJECT NO. 2033-01