

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 11, 2005

TO ALL PARTIES:

Re: Klamath Adjudication – Case No. 224, Claim No. 113, Contest Nos. 3489, 3757,
and 4144
DOJ File No. 690-600-GN0195-03

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.

Since all issues in this case have been resolved, there is no need to hold a hearing. 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
Stephen E.A. Sanders
Assistant Attorney General
Natural Resources Section

JDR:tmc/GENO0598

Enclosure

c: Service List

**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; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady Ditch Improvement Co.; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Co.; 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 Co.; and Collins Products, LLC; Contestants,)	STIPULATION TO RESOLVE CONTESTS Case No. 224 Claim No. 113 Contests 3489 ¹ and 3757 ²
vs.		
Hickey Ranches, Inc., Claimant.		

Claimant Hickey Ranches, Inc., (“Claimant”), the United States of America (“United States”), the Klamath Project Water Users (“KPWU”), (collectively “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:

¹ Don Vincent voluntarily withdrew from Contest 3489 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3489 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3489 on January 15, 2004.

² The Klamath Tribes voluntarily withdrew their Contest No. 4144 on January 28, 2005.

A. STIPULATED FACTS

1. On December 7, 1990, Claim 113 was filed with OWRD by the original Claimant, Hickey Ranches, Inc.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 113.
3. In May 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3757.
4. In May 2000, the KPWU filed a Statement of Contest of Claim and/or Preliminary Evaluation of Claim, Contest 3489.
5. The Claimant did not file a Statement of Contest of Claim and/or Preliminary Evaluation of Claim.
6. On December 8, 1004, the Office of Administrative Hearings issued an *Order On Reconsideration* which limited Claimant to a total of 186.9 acres based on payment of filing fees.
7. The Parties and OWRD agree that Contests 3757 and 3489 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimant, the Parties, and OWRD agree that Claim 113 should be approved by the Adjudicator to the extent described below:

POINT OF DIVERSION LOCATION: Lot 24, NE1/4, SE1/4, Section 11,
Township 36 South, Range 11 East, Willamette Meridian.

SOURCE: The Sprague River, tributary to the Williamson River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: 4.67 cubic feet per second, measured at the point of diversion

DUTY: 3 acre feet per acre measured at the point of diversion

PERIOD OF USE: April 1 – October 15

PLACE OF USE: 186.9 acres as shown below and on the map attached hereto
as Exhibit A and incorporated by reference herein.

Acres	¼, ¼	Sec.	Township	Range
Lot 24 – 16.2 acres	NE1/4 SE1/4	11	T36S	R11E
Lot 25 – 18.8 acres	SE1/4 SE1/4	11	T36S	R11E
Lot 26 – 4.5 acres	SW1/4 SE1/4	11	T36S	R11E
Lot 1 – 14.3 acres	NE1/4 NE1/4	14	T36S	R11E
Lot 2 – 18.5 acres	NW1/4 NE1/4	14	T36S	R11E
Lot 5 – 12.5 acres	NW1/4 NW1/4	14	T36S	R11E
Lot 7 – 20 acres	NW1/4 NE1/4	14	T36S	R11E
Lot 8 – 18.8 acres	NE1/4 NE1/4	14	T36S	R11E
Lot 9 – 12 acres	SE1/4 NE1/4	14	T36S	R11E
Lot 10 – 17.3 acres	SW1/4 NE1/4	14	T36S	R11E
Lot 11 – 18.8 acres	SE1/4 NW1/4	14	T36S	R11E
Lot 12 – 11 acres	SW1/4 NW1/4	14	T36S	R11E
Lot 14 – 4.2 acres	SE1/4 NW1/4	14	T36S	R11E

2. The Parties and OWRD agree that pursuant to the terms of this Stipulation, Contests 3757 and 3489 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 113.

3. Based on the Stipulation of the Parties and OWRD that Claim 113 and the Contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby

recommends to the Adjudicator that Claim 113 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 113 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 113 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 113 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 113.

5. The Parties 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.

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 Parties to this Stipulation and OWRD 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 or any other judicial or administrative proceeding.

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:

For the Claimant:


DATED: June __, 2005


ANDY HICKEY, for Hickey Ranch Inc.
159 East Front
Merrill, OR 97633

For Contestant, the United States of America:

Sept. 23
DATED: ~~June~~ , 2005

KELLY A. JOHNSON
Acting Assistant Attorney General



VANESSA BOYD WILLARD
Trial Attorney
Indian Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
999 - 18th Street, Suite 945
Denver, CO 80202-2449
Telephone: 303.312.7312
Telefax: 303.312.7379
vanessa.boydwillard@usdoj.gov

ATTORNEY FOR THE UNITED STATES OF AMERICA

For Contestants, the Klamath Project Water Users:

DATED: June , 2005

(Am)

August 22




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 the Oregon Water Resources Department:

HARDY MEYERS
Attorney General

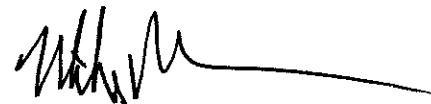
^{October}
DATED: ~~May~~ 6, 2005



JESSE D. RATCLIFF
STEPHEN E.A. SANDERS
Assistant Attorneys General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4409
Telefax: (503) 378-3802
e-mail: jesse.d.ratcliffe@doj.state.or.us
steve.sanders@doj.state.or.us

ATTORNEYS FOR OREGON WATER
RESOURCES DEPARTMENT

^{Oct.}
DATED: ~~May~~ 10, 2005



MICHAEL J. REYNOLDS
Oregon Water Resources Department
725 Summer Street, NE, Suite A
Salem, Oregon 97301-1217
Telephone: (503) 986-0820
Telefax: (503) 986-0901
e-mail: mike.j.reynolds@wrд.state.or.us

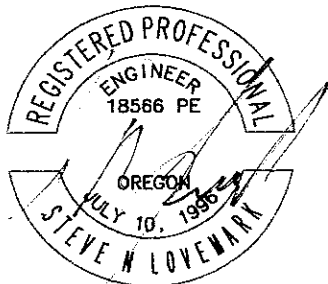
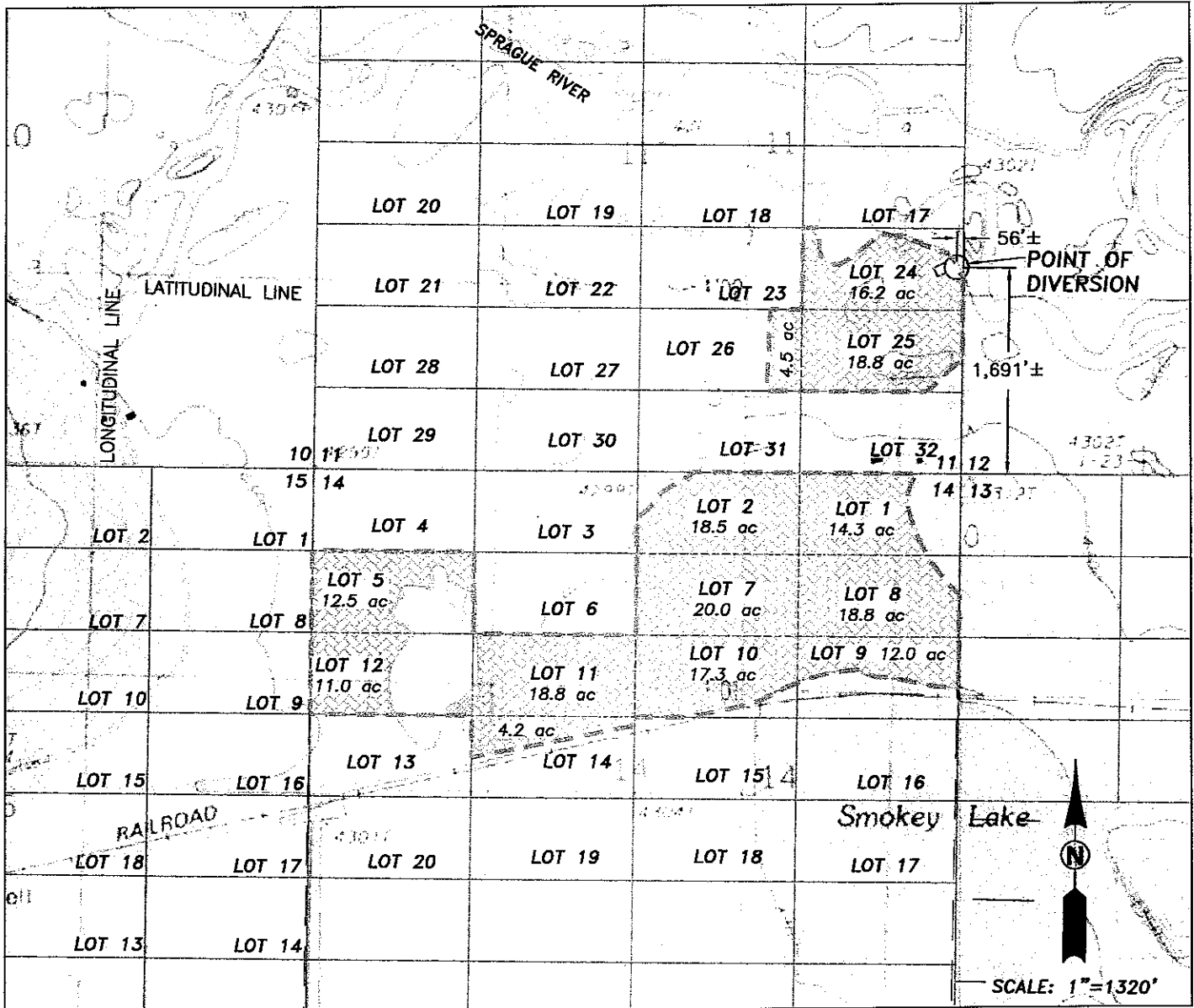
AGENCY REPRESENTATIVE FOR OREGON
WATER RESOURCES DEPARTMENT

ADJUDICATION CLAIM 113 MAP

FOR
HICKEY RANCHES, INC.

CASE NO. 224

LOCATED IN THE SOUTHERLY HALF OF SECTION 11 & THE
NORTHERLY HALF OF SECTION 14, T.36S., R.11E, W.M.,
KLAMATH COUNTY, OR.



EXPIRES: 12/31/2006

*NOTE:
BACKGROUND MAP PROVIDED
THROUGH TERRAIN NAVIGATOR, USGS.
IRRIGATED AREA WITHIN EACH LOT SHOWN
IN ACRES

-  DIVERSION PUMP
-  IRRIGATED LOTS

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.

i.e.
ENGINEERING
741 SE Jackson Street
Roseburg, Oregon 97470
PHONE (541) 673-0166
FAX (541) 440-9392

PROJECT NO. 2033-01T2

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October 2005, I served the within
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:

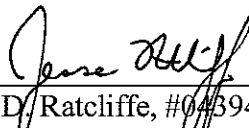
VIA STATE SHUTTLE MAIL
Dwight W. French / Teri Hranac
Oregon Water Resources Dept.
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@wrđ.state.or.us
teri.k.hranac@wrđ.state.or.us

Vanessa Boyd Willard
Trial Attorney, Indian Resources Section
Environment & Natural Resources Div.
U.S. Department of Justice
999 – 18th Street, Suite 945
Denver, CO 80202-2449
vanessa.boydwillard@usdoj.gov

Paul S. Simmons / Andrew M. Hitchings
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
psimmons@lawssd.com
ahitchings@lawssd.com

Ronald S. Yockim
Attorney at Law
548 SE Jackson, Suite 7
P.O. Box 2456
Roseburg, OR 97470
ryockim@mcsi.net

William M. Ganong
Attorney at Law
514 Walnut Street
Klamath Falls, OR 97601
wganong@aol.com



Jesse D. Ratcliffe, #04394
Stephen E.A. Sanders, #85321
Assistant Attorneys General