

**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

Contestant,

VS.

F.M.S Shorthorn Ranch,

Claimant/Contestant.

STIPULATION TO RESOLVE CONTESTS

Case No. 229

Claim No. 119

Contests 3107¹ and 3762²

Claimant F.M.S Shorthorn Ranch (“Claimant”), the United States of America (“United States”), 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 October 19, 1990, Claim 119 was filed with OWRD by the original Claimant, F.M.S Shorthorn Ranch. Current Claimants are successors in interest to the property at issue in Claim 119.

¹ Don Vincent voluntarily withdrew from Contest 3495 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3495 on June 24, 2002. On January 16, 2004, Klamath Hills District Improvement Company voluntarily withdrew from Contest 3495. On April 8, 2004, the remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3495.

² On January 26, 2005, the Klamath Tribes voluntarily withdrew their Contest 4149.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 119.
3. On May 4, 2000, the United States filed a Statement of Contest of Claim and Preliminary Evaluation of Claim, Contest 3762.
4. Claimant, Contestant, and OWRD agree that Contests 3107 and 3762 can be resolved without the need for a hearing pursuant to the terms set forth below.

B. TERMS OF STIPULATION

1. Claimant, Contestant, and OWRD agree that Claim 119 should be approved by the Adjudicator to the extent described below:

a. Irrigation:

POINT OF DIVERSION LOCATION:

Lot 9 (SENE) Section 23, Township 36 South, Range 12 East.

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: Spring on Spring Creek, tributary to the Sprague River

PRIORITY DATE: October 14, 1864

USE: irrigation

RATE: 2.41 cubic feet per second, measured at point of diversion

DUTY: 3 acre feet per acre

PERIOD OF USE: April 1 – September 15

PLACE OF USE: Table below and Map at Exhibit A

Acres	Government Lot	Quarter/Quarter	Section	Township	Range
17.9	1	NENE	23	36 SOUTH	12 EAST
19.0	8	NENE	23	36 SOUTH	12 EAST
4.4	2	NWNE	23	36 SOUTH	12 EAST

5.3	7	NWNE	23	36 SOUTH	12 EAST
11.5	10	SWNE	23	36 SOUTH	12 EAST
5.1	15	SWNE	23	36 SOUTH	12 EAST
17.5	9	SENE	23	36 SOUTH	12 EAST
2.7	16	SENE	23	36 SOUTH	12 EAST
11.5		NWNW	24	36 SOUTH	12 EAST
1.6		SWNW	24	36 SOUTH	12 EAST

TOTAL ACRES: 96.5

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.

b. Livestock:

POINT OF DIVERSION LOCATION: (same as irrigation)

Lot 9 (SENE) Section 23, Township 36 South, Range 12 East.

SOURCE: Spring on Spring Creek, tributary to the Sprague River

PRIORITY DATE: October 14, 1864

USE: livestock

RATE: limited to 2400 gallons per day total

PERIOD OF USE: January 1 – December 31

PLACE OF USE: same as irrigation / see table above and Exhibit A

2. Claimant, Contestant and OWRD agree that pursuant to the terms of this Stipulation, Contests 3107 and 3762 have been satisfactorily resolved, and such resolution ends the need for a hearing before the Administrative Law Judge on these Contests to Claim 119.

3. Based on the Stipulation of Claimant, Contestants and OWRD that Claim 119 and the contests thereto can be resolved without the need for a hearing, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 119 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 119 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 119 does not conform to the terms set forth in paragraph B.1., above, Claimant and Contestant reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 119 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 119.

5. Claimant and Contestant 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 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 related 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:

DATED: February 28, 2005



SHARON TUCKER

as Trustees of the Ferris Stotler Trust
uda January 5, 1996
976 Newington Street
Salina, California 93906

DR. KENT PATTON

P.O. Box 430

Winchester, California 92596

DEAN and SUE PERKINS

Rimfire Ranch

P.O. Box 70

Beatty, Oregon 97621

Claimant:

DATED: February____, 2005

SHARON TUCKER
as Trustees of the Ferris Stotler Trust
uda January 5, 1996
976 Newington Street
Salina, California 93906

Cindy Domenigoni
Andy Domenigoni 3/12/05

ANDY DOMENIGONI
CINDY DOMENIGONI
31851 Winchester Road
Winchester, California 92596

DEAN and SUE PERKINS
Rimfire Ranch
P.O. Box 70
Beatty, Oregon 97621

Claimant:

DATED: February __, 2005

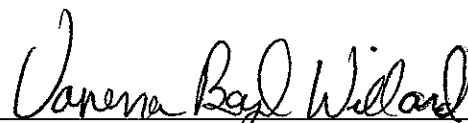
SHARON TUCKER
as Trustees of the Ferris Stotler Trust
uda January 5, 1996
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Salina, California 93906

DR. KENT PATTON
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Winchester, California 92596


DEAN and SUE PERKINS
~~Rimfire Ranch~~ J-DRANCH
P.O. Box 70
Beatty, Oregon 97621

For Contestant, the United States of America:

DATED: March 15th, 2005

A handwritten signature in cursive script, reading "Vanessa Boyd Willard", written over a horizontal line.

VANESSA BOYD WILLARD

Indian Resources Section

Environment & Natural Resources Division

U.S. Department of Justice

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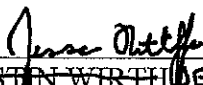
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For the Oregon Water Resources Department:

HARDY MEYERS
Attorney General

DATED: ~~March~~ ^{April} 14, 2005


~~JUSTIN WIRTH~~ **JESSE D. RATCLIFFE**
~~WALTER PERRY~~ **STEPHEN E.A. SANDERS**
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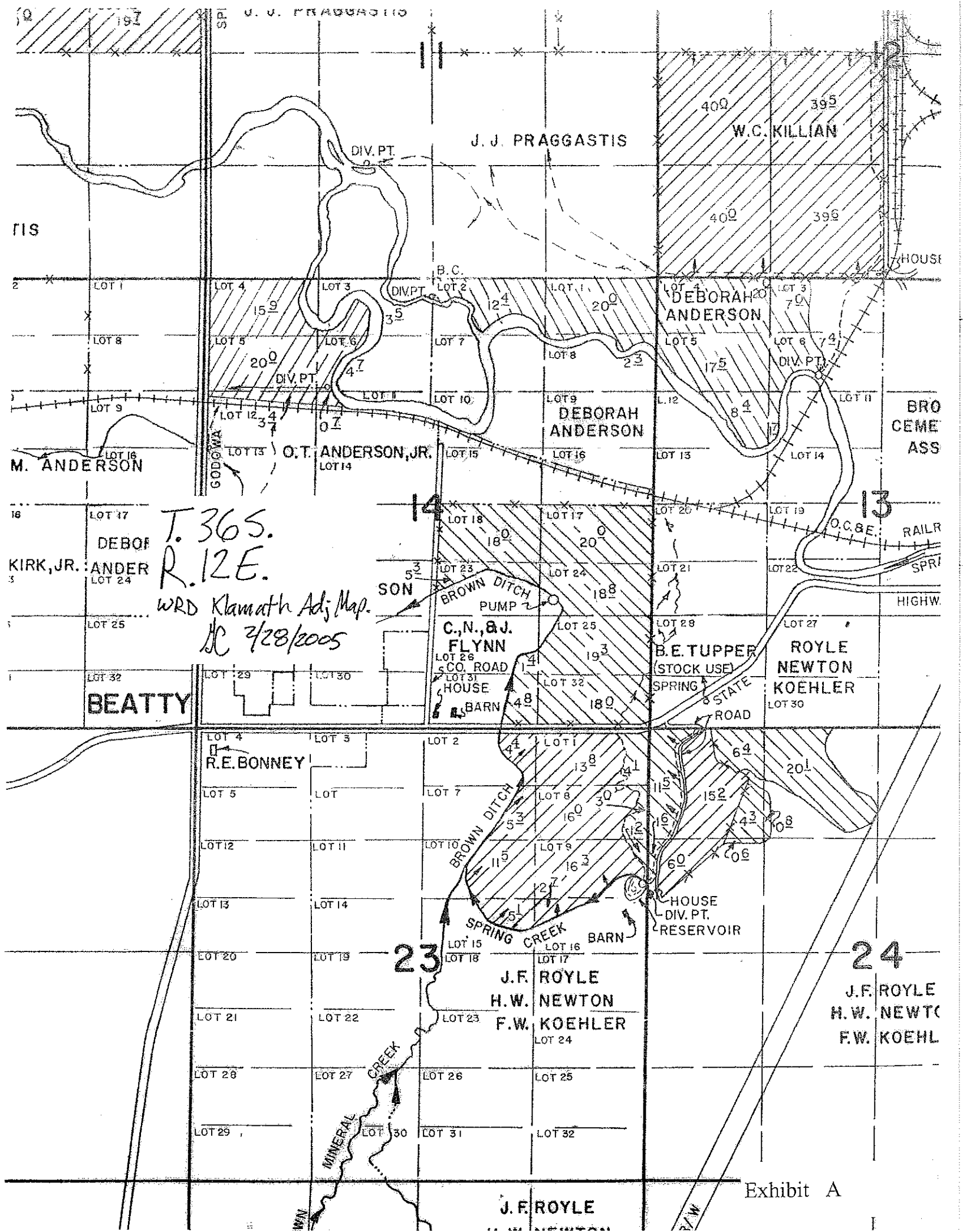
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DATED: ~~March~~ ^{April} 14, 2005


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AGENCY REPRESENTATIVE FOR OREGON
WATER RESOURCES DEPARTMENT

GEN8257



CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April 2005, I served the within LETTER TO ALL PARTIES WITH COPY OF STIPULATION TO RESOLVE CONTESTS on the parties hereto by regular first-class mail (with a courtesy copy 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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