

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 21, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 186, Claim No. 51, Contest No. 1712, 2069,
3795, and 4106
DOJ File No. 690-600-GN0157-03

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 137-033-0513(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/GENQ7774
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; Kurt Gruen
Contestants

**STIPULATION TO RESOLVE
CLAIMANTS' CONTEST 1712**

vs.

Case No. 186

James Root; Valerie Root
Claimants/Contestants

Claim: 51

Contests: 1712, 2069¹, 3795², and 4106³

Claimants/Contestants James Root and Valerie Root (hereinafter "Claimants") and the Oregon Water Resources Department (hereinafter "OWRD") hereby stipulate and agree to resolve Contest 1712 as follows:

A. STIPULATED FACTS

1. On December 4, 1990, Kurt Gruen filed Claim 51 (the "Claim"), a "Walton" right claim, in the Klamath Basin Adjudication with OWRD. Claimants James Root and Valerie Root are the successors in interest to Mr. Gruen's interest in the lands comprising the claimed place of use for Claim 51 and are the current claimants/contestants under Claim 51.

¹ On September 14, 2004, James and Valerie Root voluntary withdrew, without prejudice, Contest 2069. *See* James and Valerie Root's Voluntary Withdrawal of Contest.

² On April 12, 2006, Claimants and the United States entered into a Stipulation Between Claimants and the United States to Resolve United States' Contest 3795. On May 3, 2006, Administrative Law Judge Daina Upite issued an Order Admitting into the Record Stipulation Between Claimants and United States Resolving Contest 3795.

³ The Klamath Tribes voluntary withdrew Contest 4106 on July 16, 2004. *See*, Klamath Tribes' Voluntary Withdrawal of Contest.

2. On October 4, 1999, the Adjudicator issued his preliminary evaluation of Claim 51 in which he preliminarily denied the claim solely on the grounds that the claimed source was previously adjudicated as part of the Wood River, Crane Creek, Sevenmile Creek, and Fourmile Creek Adjudication.

3. The following contests were filed to the Claim and/or the Preliminary Evaluation of the Claim: Contest 1712 filed by Kurt Gruen; Contest 2069 filed by James and Valerie Root; Contest 3795 filed by the United States; and Contest 4106 filed by the Klamath Tribes.

4. On April 20, 2004, Hearing Officer William D. Young issued an order in Case 900 that, among other things, established the standards for denying a claim on the grounds that the claimed source was previously adjudicated as part of the Wood River, Crane Creek, Sevenmile Creek, and Fourmile Creek Adjudication. Case 900 included Claim 51. None of the contestants to Claim 51 subsequently challenged the Claim within the time allowed in prehearing and scheduling orders on the grounds that the claimed source was previously adjudicated.

5. On July 16, 2004, the Klamath Tribes voluntarily withdrew Contest 4106.

6. On September 14, 2004, James and Valerie Root voluntarily withdrew Contest 2069, which contest they filed prior to succeeding to Mr. Gruen's interest in the lands comprising the claimed place of use for Claim 51. This withdrawal of contest did not affect Contest 1712, which was filed by Mr. Gruen and to which Claimants succeeded as the current claimants/contestants after acquiring Mr. Gruen's interest in the Claim 51 lands.

7. On April 12, 2006, Claimants and the United States entered into a Stipulation Between Claimants and the United States to Resolve United States' Contest 3795. On May 3, 2006, Administrative Law Judge Daina Upite issued an Order Admitting into the Record Stipulation Between Claimants and United States Resolving Contest 3795.

8. Claimants and OWRD agree that Contest 1712 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. Claimants and OWRD agree that Claim 51 should be approved by the Adjudicator as described below:

- a. Point of Diversion: Lot 4 (SW/4SW/4), Section 18, Township 34 South, Range 7 East, W.M., at a point 815 feet east and 1,100 feet north of the SW/4 corner of said Section 18.
- b. Source: Agency Spring, tributary to Agency Creek, tributary to Crooked Creek, tributary to Wood River.
- c. Use: Irrigation of 15 acres and incidental livestock watering.
- d. Diversion Rate: 0.375 cubic feet per second (cfs) (15 acres x 1/40 cfs/acre), measured at the point of diversion, for irrigation and incidental livestock watering.
- e. Duty: 3.5 acre-feet/acre/year, measured at the point of diversion.
- f. Place of Use:

15.0 acres SE/SE, Section 13, Township 34 South, Range 7.5 East, W.M.

The place of use is shown more particularly on the map attached hereto as Exhibit A, which is incorporated by reference as if set forth fully herein.
- g. Period of Use: April 1 to October 31.
- h. Priority Date: October 14, 1864.

2. The Claimants and OWRD stipulate and agree that pursuant to the terms and provisions of this Stipulation, Contest 1712 has been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on this contest to Claim 51.

3. Based on the Stipulation of Claimants and OWRD that Claim 51 and the Contest thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 51 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 51 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 Findings of Fact and Order of Determination issued by the Adjudicator for Claim 51 does not conform to the terms set forth in paragraph B.1., above, Claimants reserve any rights they may have to file timely exceptions with the Adjudicator and seek judicial review in the circuit and appellate courts, and otherwise reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 51, as to any terms that do not conform to this Stipulation.

5. Except as provided in paragraph B.4. of this Stipulation, the Claimants agree not to oppose or object to this Stipulation or any of its terms, provisions, conditions, or covenants if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

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

7. This Stipulation shall be binding upon and shall inure to the benefit of the Claimants and OWRD 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. Claimants and OWRD represent, warrant, and agree that the person(s) who executed this Stipulation on their behalf has the full right and authority to enter into this Stipulation on their behalf and bind them to the terms of the Stipulation.

9. The terms, provisions, conditions, and covenants of this Stipulation are not severable, except, if any term, provision, conditions, 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 Claimants and OWRD, notwithstanding that the Claimants and OWRD 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. This Stipulation comprises the entire agreement between the Claimants 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 Claimants and OWRD and not mere recitals.

12. The Claimants and OWRD each agree to bear their own costs and attorney fees in these proceedings.

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

STIPULATED, AGREED AND APPROVED:

FOR CLAIMANTS/CONTESTANTS JAMES AND VALERIE ROOT



Greg D. Corbin, OSB No. 00033
STOEL RIVES LLP


7/17/06
Date _____

ATTORNEYS FOR JAMES AND VALERIE ROOT

For the Oregon Water Resources Department:

HARDY MEYERS
Attorney General

Dated: July 19, 2006



JESSE D. RATCLIFFE
WALTER PERRY III
Assistant Attorneys General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 947-4500
Telefax: (503) 947-4500
e-mail: jesse.d.ratcliffe@doj.state.or.us
walter.perry@doj.state.or.us

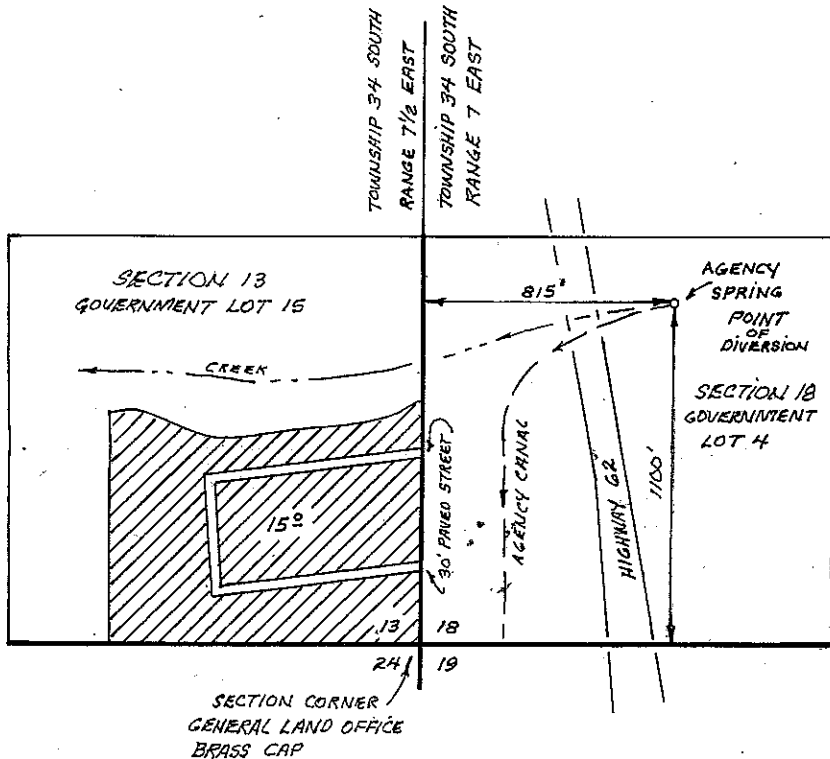
Dated: July 19, 2006



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@wrds.state.or.us

MAP SHOWING PLACE OF USE OF WATER RIGHTS
PER SETTLEMENT OF KLAMATH ADJUDICATION

CLAIM 51



PLACE OF USE: T34S R7 1/2 E SECTION 13
GOVERNMENT LOT 15 15.0 ACRES



THIS MAP IS NOT INTENDED TO PROVIDE LEGAL DIMENSIONS
OR LOCATIONS OF PROPERTY LINES.

THIS MAP PREPARED PER SETTLEMENT TERMS - CLAIM 51
JAMES AND VALERIE ROOT JUNE 13, 2006

SCALE: 1" = 400'

RECEIVED
JUN 30 2006
WATER RESOURCES DEPT
SALEM, OREGON

Certified Water Right Examiner
#260
Donald A. Greadel
Donald A. Greadel
May 22, 1990
STATE OF OREGON
EXP. 6/30/07

Exhibit "A"
Page 1 of 1

CERTIFICATE OF SERVICE

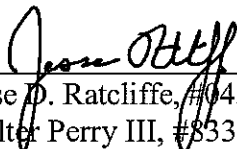
I hereby certify that on the 21st day of July 2006, I served the within
STIPULATION TO RESOLVE CLAIMANTS' CONTEST 1712 AND CERTIFICATE
OF SERVICE on the parties hereto by e-mail and by regular first-class mail, a true, exact
and full copy thereof to:

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

Greg D. Corbin
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
gdcorbin@stoel.com

Barbara Scott-Brier
US Dept of Interior
500 NE Multnomah St., Suite 607
Portland, OR 97232

Thomas K. Snodgrass
US Dept of Justice
Environment & Natural Resources Div.
1961 Stout Street – 8th Floor
Denver, CO 80294
thomas.snodgrass@usdoj.gov
klamathcase.enrd@usdoj.gov



Jesse D. Ratcliffe, #4394
Walter Perry III, #83361
Assistant Attorneys General