

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

September 26, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 206, Claim No. 81, Contest Nos. 2800, 3471,  
3733, 4127, and 4949  
DOJ File No. 690-600-GN0177-03  
AND  
Klamath Adjudication – Case No. 210, Claim No. 91, Contest Nos. 2801, 3475,  
3735, 4130, and 4950  
DOJ File No. 690-600-GN0181-03

Dear Parties:

Enclosed for your records are the fully executed copies of the Stipulations to Resolve Contests and Certificates of Service in the above-entitled matters. These agreements resolve all the remaining issues in these cases. Accordingly, the Oregon Water Resources Department will withdraw these cases from the Office of Administrative Hearings, pursuant to OAR 137-033-0515(4).

Thank you very much for your courtesies and cooperation in resolving these matters.

Sincerely,

Jesse D. Ratcliffe  
Assistant Attorney General  
Natural Resources Section

JDR:tmc/GENR4220  
Enclosures

c: Service Lists (Case 206 and Case 210)

**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 District; Ady Ditch Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Company; 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; Thomas W. Mallams,  
Contestants,

vs.

The Nature Conservancy,  
Claimant/Contestant.

**STIPULATION TO RESOLVE  
CONTESTS 2801, 3735, AND 4130**

Case No. 210  
Claim No. 91  
Contest Nos. 2801, 3735, 3475, and 4130  
~~and 4950~~

Claimant The Nature Conservancy (“TNC”), Contestants United States of America (the “United States”), and the Klamath Tribes (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.

**A. STIPULATED FACTS**

1. On February 1, 1991, Tulana Farms filed Claim 91 in the Klamath Basin Adjudication. TNC subsequently acquired the property subject to the Claim, and succeeded to the interest of Tulana Farms to the Claim.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 91, preliminarily approving significant portions of the water right sought under Claim 91, subject to certain terms and conditions.

3. On May 3, 2000, Thomas W. Mallams filed contest 4950 to Claim 91. Thomas W. Mallams is not a party to this Stipulation, or to this case, his Contest having been dismissed by Order dated April 28, 2006.

4. On May 4, 2000, the United States filed Contest 3735.

5. On May 4, 2000, the Klamath Tribes filed Contest 4130.

6. On May 8, 2000, TNC filed Contest 2801 to Claim 91 contesting the Adjudicator's Preliminary Evaluation.

7. On May 17, 2000, Klamath Project Water Users (the "KPWU")<sup>1</sup> filed Contest 3475 to Claim 91. KPWU are not a party to this Stipulation, their Contest 3475 being withdrawn by Stipulated Withdrawal of Contest No. 3475.

8. The Parties and OWRD agree that the remaining Contests 2801, 3735, and 4130 can be resolved without need for hearing pursuant to the terms outlined below.

**B. TERMS OF THE AGREEMENT**

1. The parties and OWRD agree that Claim 91 in this Adjudication should be approved as follows:

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<sup>1</sup> The KPWU includes each of the Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Co., Enterprise Irrigation District, Klamath Hills District Improvement Company, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Modoc Lumber Co., Bradley S. Luscombe, Randy Walthall and Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Company and Collins Products, LLC.

a. POINT OF DIVERSION LOCATION: The point of diversion is described and located as follows:

POD designation on Map	Location of Point of Diversion
C	SE ¼ NE ¼ Sect. 36, T 35 S, R 7 ½ E, being 2,820 feet north and 5,340 feet west of the SE corner of Sect. 31 of T 35 S, R 7 E

b. SOURCE: The source for the point of diversion is the Williamson River, tributary to Upper Klamath Lake.

c. USE: Irrigation of 630.7 acres on the land designated in Attachment 1 annexed hereto and made a part hereof. The Parties and OWRD understand and agree that irrigation for the purposes hereof includes the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants, including the application of water to crops or plants growing or to be grown in marshlands or wetlands, with or without any commercial harvest or grazing of such crops or plants. In other contested cases in the Klamath Basin Water Rights Adjudication, OWRD has asserted a definition of "irrigation" that is inconsistent with the above definition of "irrigation" in some aspects. OWRD staff agrees to recommend the above definition of "irrigation" to the Adjudicator for the purposes of this Stipulation to Resolve Contests only, and reserves the right to assert, maintain, or promulgate a definition of "irrigation" inconsistent with the above definition with respect to any other claim or contest in the Klamath Basin Water Rights Adjudication, in any other proceeding, or by statute, regulation, or policy.

d. AMOUNT BENEFICIALLY USED: The amount of water used for the purposes above is limited to a diversion not to exceed 15.77 cfs from POD C ( 630.7 acres at 1/40<sup>th</sup> cfs per acre), for each acre irrigated during the irrigation season each year, as measured at the point of diversion, and shall not exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

e. PERIOD OF USE: March 15 to October 31 for irrigation.

f. PRIORITY DATE: October 14, 1864.

g. PLACES OF USE: A description of the places of use to which this right is appurtenant is set forth in Attachment 1 annexed hereto and made a part hereof. The places of use are also depicted on the map of the property attached hereto.

2. Except for the approved terms and conditions set forth above, the Parties and OWRD agree that the remainder of Claim 91 is to be denied.

### **C. RESOLUTION BASED ON TERMS OF AGREEMENT**

1. Contestant United States agrees that, pursuant to this agreement, the United States' Contest 3735 has been satisfactorily resolved and such resolution eliminates the need for a hearing on Contest 3735 before the Office of Administrative Hearings.

2. Contestant the Klamath Tribes agree that, pursuant to this agreement, the Klamath Tribes' Contest 4130 has been satisfactorily resolved and such resolution eliminates the need for a hearing on Contest 4130 before the Office of Administrative Hearings.

3. Claimant TNC agrees that TNC's Contest 2801 has been satisfactorily resolved and such resolution eliminates the need for a hearing on Contest 2801 before the Office of Administrative Hearings.

4. OWRD staff hereby recommends to the Adjudicator that Claim 91 be approved in the Findings of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of Claim 91 as described in Paragraph B, above.

5. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for Claim 91 does not accord with the terms set forth in Paragraph B above, the Parties and OWRD reserve any and all rights they may have to file exceptions to or seek reconsideration of the Findings of Fact and Final Order of Determination as to Claim 91 with the Adjudicator or in the Circuit Court for Klamath County, and otherwise reserves all rights the Parties and OWRD may have to participate in any future proceedings authorized by law concerning Claim 91, including but not limited to any appellate proceedings or proceedings on remand.

6. The Parties and OWRD agree not to oppose or object to this Agreement 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.

7. This Stipulation does not affect nor is it intended to affect the exercise or administration of any senior water rights separately adjudicated to or otherwise held by any of the Contestants. This Stipulation is entered into for the purpose of resolving a disputed claim. The Parties and OWRD 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 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 in any other proceeding.

8. This Stipulation shall be binding upon and shall inure to the benefit of the Parties, 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.

9. Each of the Parties and OWRD 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.

10. 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.

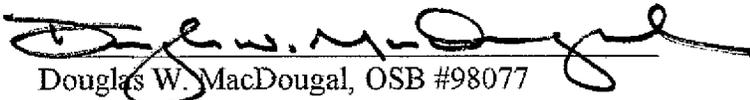
11. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the Parties, notwithstanding that they did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by facsimile transmission shall be as effective as delivery of an original signed counterpart of this Stipulation.

12. The Parties and OWRD agree and acknowledge that this Stipulation has been drafted after full and arms-length negotiations, and that 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.

13. All Parties to this Agreement and OWRD shall bear their own costs and consultants' and attorneys' fees incurred in connection with this Stipulation.

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

For Claimant The Nature Conservancy

  
Douglas W. MacDougal, OSB #98077  
Schwabe, Williamson & Wyatt, P.C., Of Attorneys  
for Claimant

August 28, 2006  
Date

For Contestants The Klamath Tribes

  
Carl Ullman, Oregon State Bar No. 89156

17 AUG 06  
Date

For Contestant United States of America  
SUE ELLEN WOOLDRIDGE  
ASSISTANT ATTORNEY GENERAL

\_\_\_\_\_  
Thomas K. Snodgrass  
Of Attorneys for Contestant United States of America

\_\_\_\_\_  
Date

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Douglas W. MacDougal, OSB #98077  
Schwabe, Williamson & Wyatt, P.C., Of Attorneys  
for Claimant

\_\_\_\_\_  
Date

For Contestants The Klamath Tribes

\_\_\_\_\_  
Carl Ullman, Oregon State Bar No. 89156

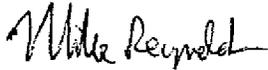
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Date

For Contestant United States of America  
SUE ELLEN WOOLDRIDGE  
ASSISTANT ATTORNEY GENERAL

  
\_\_\_\_\_  
Thomas K. Snodgrass  
Of Attorneys for Contestant United States of America

\_\_\_\_\_  
8/11/06  
Date

For Oregon Water Resources Department



\_\_\_\_\_  
Michael Reynolds,  
Agency Representative, Oregon Water Resources  
Department

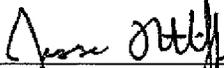
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Date

HARDY MYERS  
Attorney General

9/13/06

\_\_\_\_\_  
Date



\_\_\_\_\_  
Jesse D. Ratcliffe, OSB No. 04394  
Assistant Attorney General  
Of Attorneys for the Oregon Water Resources  
Department

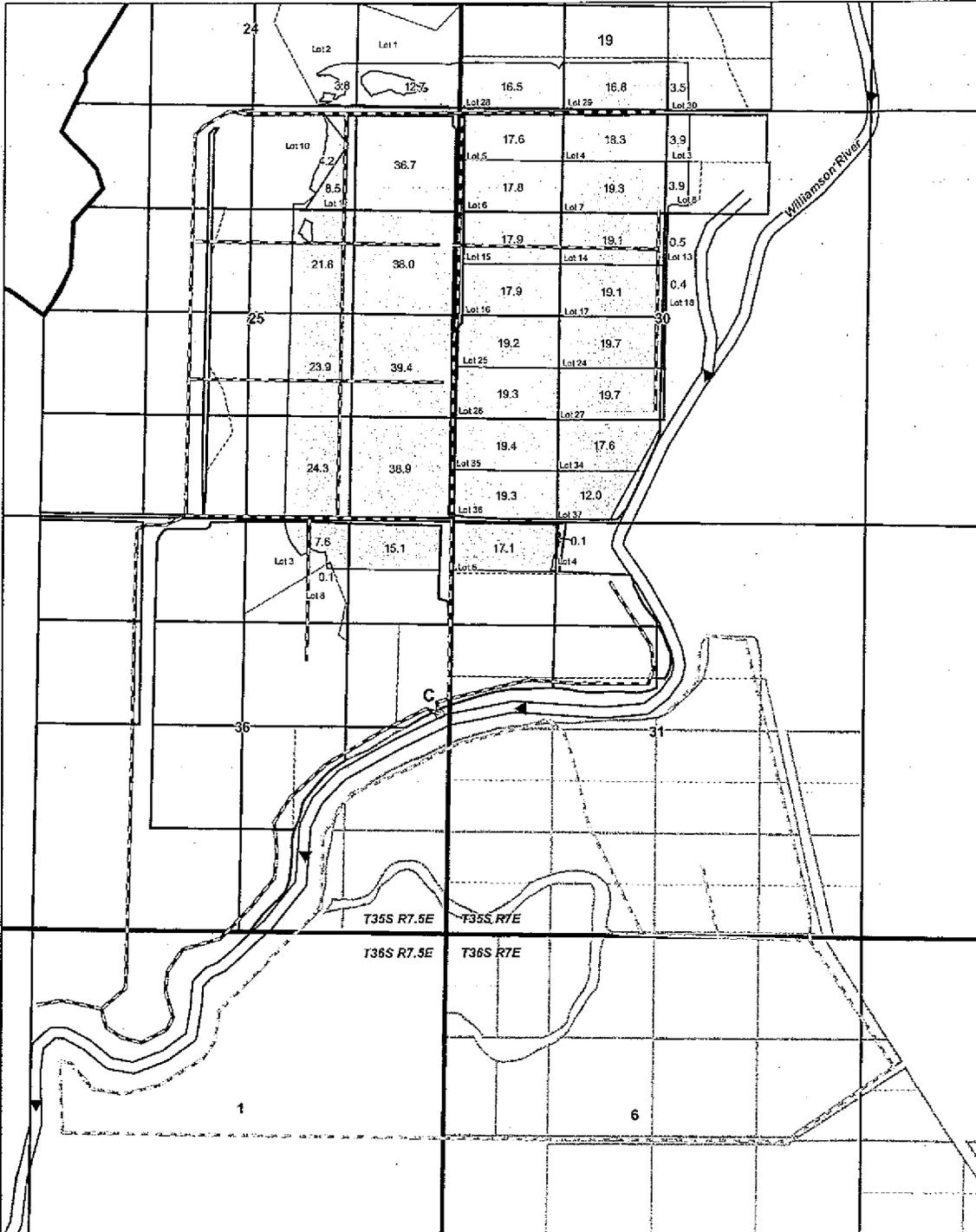
**ATTACHMENT 1: PLACES OF USE**

<b>Township 35 South, Range 7.5 East</b>				
<b>Point of Diversion</b>	<b>Section</b>	<b>Quarter/ Quarter</b>	<b>Lot ID</b>	<b>Acres</b>
<b>C</b>	24	SESE	Lot 1	12.7
		SWSE	Lot 2	3.8
	25	NENE		36.7
		NESE		39.4
		NWNE	Lot 1	8.5
		NWNE	Lot 10	4.2
		NWSE		23.9
		SENE		38.0
		SESE		38.9
		SWNE		21.6
		SWSE		24.3
	36	NENE		15.1
		NWNE	Lot 3	7.6
		NWNE	Lot 8	0.1
		<b>Total Acres:</b>		<b>274.8</b>
<b>Township 35 South, Range 7 East</b>				
<b>Point of Diversion</b>	<b>Section</b>	<b>Quarter/ Quarter</b>	<b>Lot ID</b>	<b>Acres</b>
<b>C</b>	19	SESW	Lot 29	16.8
		SWSE	Lot 30	3.5
		SWSW	Lot 28	16.5
	30	NENW	Lot 4	18.3
		NESW	Lot 24	19.7
		NWNE	Lot 3	3.9
		NWNW	Lot 5	17.6
		NWSW	Lot 25	19.2
		SENW	Lot 14	19.1
		SESW	Lot 34	17.6
		SWNE	Lot 13	0.5
		SWNW	Lot 15	17.9
		SWSW	Lot 35	19.4
		NENW	Lot 7	19.3
		NESW	Lot 27	19.7
		NWNE	Lot 8	3.9
		NWNW	Lot 6	17.8
		NWSW	Lot 26	19.3
		SENW	Lot 17	19.1
		SESW	Lot 37	12.0

Point of Diversion	Section	Quarter/ Quarter	Lot ID	Acres
C (Continued)	30	SWNE	Lot 18	0.4
		SWNW	Lot 16	17.9
		SWSW	Lot 36	19.3
	31	NENW	Lot 4	0.1
		NWNW	Lot 5	17.1
	<b>Total Acres:</b>			

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TOWNSHIP 35 & 36 SOUTH, RANGE 7 & 7.5 EAST, W.M.  
 CLAIM 91  
 Williamson River Delta Preserve  
 The Nature Conservancy

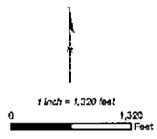


Last Modified: August 10, 2008  
 POD: 1111506060108111020601\_1902.dwg

POD C is 2,820 feet north and 5,340 feet west of the SE corner of Section 31

Confidential Attorney/Client Work Product

- NOTES**
1. This map is not intended to provide dimensions or locations of property ownership lines.
  2. The location of the irrigated areas are based on Oregon Water Resources Department maps prepared in the 1970s and documentation provided by The Nature Conservancy. These data have not been field verified by GeoEngineers, Inc.



**Legend**


**GEOENGINEERS**

## CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September 2006, I served the within  
LETTER TO PARTIES, STIPULATION TO RESOLVE CONTESTS, AND  
CERTIFICATE OF SERVICE on the parties hereto by e-mail, or by regular first-class  
mail (where no e-mail address is listed below), a true, exact and full copy thereof to:

### VIA STATE SHUTTLE MAIL

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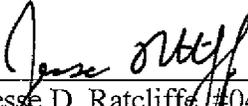
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\_\_\_\_\_  
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