HARDY MYERS
Attorney General

PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 30, 2005

TO ALL PARTIES TO THE KLAMATH ADJUDICATION CASE NO. 43, CLAIM 226

Re: Klamath Adjudication – Case No. 43, Claim No. 226, Contest Nos. 1714
DOJ File No. 690-600-GN0277-03

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 Ratcliffe

Jesse D. Ratcliffe
Stephen E.A. Sanders
Assistant Attorneys General
Natural Resources Section

JDR:jrs/GENN1844
Enclosure
c: Service List

1162 Court Street NE, Salem, OR 97301-4096 Telephone: (503) 947-4500 Fax: (503) 378-3802 TTY: (503) 378-5938

HARDY MYERS
Attorney General

PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: July 7, 2005

TO: Teri Hranac, Adjudications Specialist

FROM: Jesse D. Ratcliffe, Assistant Attorney General
Natural Resources Section

SUBJECT: Klamath Adjudication – Case 43, Claim 226

Enclosed with this memorandum is the original, fully executed Stipulation to Resolve Contests and Certificate of Service which I am providing so that you can make it a part of OWRD's original record. Copies of all documents were e-mailed and mailed to all parties together with a letter advising them that the case would be withdrawn from OAH by the Adjudicator, pursuant to OAR 137-003-0515(4).

This case is now ready for withdrawal from OAH at the Adjudicator's convenience.

Enclosures
JDR:jrs/GENN1861

1162 Court Street NE, Salem, OR 97301-4096 Telephone: (503) 947-4500 Fax: (503) 378-3802 TTY: (503) 378-5938

BEFORE THE 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

~~Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; 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 Company; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC~~; Contestants	STIPULATION TO RESOLVE CONTEST 1714 Case No. 43 Claim: 226 Contests: 1714 and ~~3517~~[1]

vs.

Herman Anderson; Deborah Anderson;
Claimants/Contestants.

Claimants/Contestants Herman Anderson and Deborah Anderson, and the Oregon Water Resources Department (OWRD), hereby agree and stipulate, and request the Adjudicator to resolve the above captioned Claim and Contest as follows:

A. STIPULATED FACTS

1. On January 31, 1991, Claim 226 for a federal reserved Indian water right was filed with OWRD by the Claimants.

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[1] Don Vincent voluntarily withdrew from Contest 3517 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3517 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3517 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3517 on April 7, 2005.

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2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 226.

3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 226, Contest 1714.

4. Claimants/Contestants and OWRD agree that Contest 1714 can be resolved without the need for a hearing pursuant to the following:

B. TERMS OF STIPULATION

1. Claimants/Contestants and OWRD agree that the Water Right Claim 226 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 226, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

2. Claimants/Contestants agree that pursuant to the terms of this Stipulation, Contest 1714 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.

3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 226 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 226 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator as a federal reserved Indian water right in accordance with the Description of Water Right Claim 226.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 226 does not conform to the terms set forth in the attached Description of Water Right Claim 226, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 226 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 226.

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5. Claimants/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. 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. Each entity or person entering into 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 entity or person and bind that entity or person to the terms of the Stipulation.

8. 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.

9. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the signatories, notwithstanding that the signatories 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.

10. This Stipulation comprises the entire agreement 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 are contractual and not merely a recital.

11. Claimants/Contestants and OWRD shall each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For Klamath Allottee Water Users Association Member
Claimant/Contestants Herman Anderson and Deborah Anderson

FREDERICKS, PELCYGER & HESTER, LLC

Christopher B. Leahy
Pro Hac Vice; Colorado Bar 23612

Date 7/6/05

For the Oregon Water Resources Department

HARDY MYERS
Attorney General

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

Date 7/6/05

Michael Reynolds
Agency Representative
Oregon Water Resources Department

Date 7-7-05

BEFORE 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	)	Description Of Water Right Claim **226**

Name and Address: Herman Anderson
Deborah Anderson
PO Box 333
Beatty, OR 97621

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion:	Township	Range	Section	Q/Q:	Lot:
	36 S	12 E	13	NENW	6

Priority: 10/14/1864

Use, Period Of Use and Quantity:	Use:	Period Of Use:	Rate:	Duty:
	Irrigation	03-01 to 10-16	1.27 cfs	4.3 AFA
	Stockwater	01-01 to 12-31	1560 gpd	

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	36 S	12 E	13	NENW	3, 6	14.4
	36 S	12 E	13	NWNW	4, 5	36.0
	36 S	12 E	13	SENW	11	1.7
	36 S	12 E	13	SWNW	12	8.4
	36 S	12 E	14	NENE	1, 8	22.3
	36 S	12 E	14	NWNE	2	12.4
	Total Irrigated Acreage					95.2

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

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INCHOATE WATER RIGHT CLAIM DESCRIPTION

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion:	Township	Range	Section	Q/Q:	Lot:
	36 S	12E	13	NESW	22

Priority: 10/14/1864

Use, Period Of Use and Quantity:	Use:	Period Of Use:	Rate:	Duty:
	Irrigation	03-01 to 10-16	.19 cfs	3.1 AFA

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	36 S	12E	13	SENW		.8
	36 S	12E	13	NESW		9.7
		Total Practicably Irrigable Acreage				10.5

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion:	Township	Range	Section	Q/Q:	Lot:
	36 S	12E	13	NENW	6

Priority: 10/14/1864

Use, Period Of Use and Quantity:	Use:	Period Of Use:	Rate:	Duty:
	Irrigation	03-01 to 10-16	.33 cfs	3.1 AFA

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	36 S	12E	13	NENW	3, 6	18.2
		Total Practicably Irrigable Acreage				18.2

Source: Sprague River **Tributary:** Williamson River

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	Township	Range	Section	Q/Q:	Lot:
Point Of Diversion:	36 S	12E	13	NESW	19

Priority: 10/14/1864

	Use:	Period Of Use:	Rate:	Duty:
Use, Period Of Use and Quantity:	Irrigation	03-01 to 10-16	1.91 cfs	3.1 AFA

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	36 S	12E	13	NWNW	5	.7
	36 S	12E	13	SENW		19.4
	36 S	12E	13	SWNW	12, 13	23.4
	36 S	12E	13	NESW		3.6
	36 S	12E	13	NWSW	20	1.6
	36 S	12E	14	NENE	8	13.0
	36 S	12E	14	NWNE		9.4
	36 S	12E	14	SENE	9, 16	26.6
	36 S	12E	14	SWNE		8.8
		Total Practicably Irrigable Acreage				106.5

Source: Sprague River **Tributary:** Williamson River

	Township	Range	Section	Q/Q:	Lot:
Point Of Diversion:	36 S	12E	14	SWNE	10

Priority: 10/14/1864

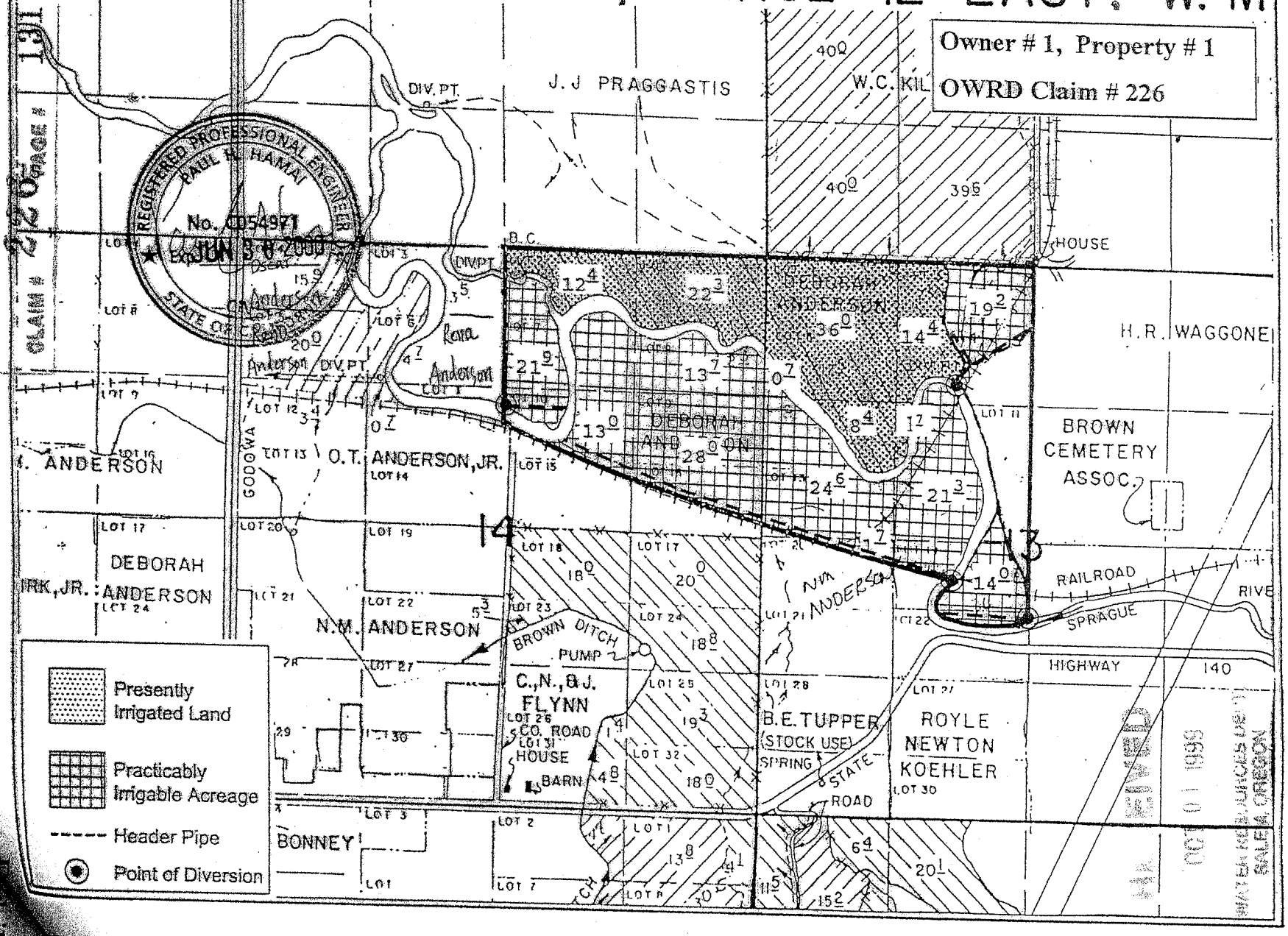
	Use:	Period Of Use:	Rate:	Duty:
Use, Period Of Use and Quantity:	Irrigation	03-01 to 10-16	.36 cfs	3.1 AFA

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	36 S	12E	14	NWNE		11.4
	36 S	12E	14	SWNE		3.6
		Total Practicably Irrigable Acreage				15.0

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

TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M

Owner # 1, Property # 1
OWRD Claim # 226



By: Natural Resources Consulting Engineers Inc.
1250 Addison St., Suite 204
Berkeley, Ca. 94702
Berkeley (510)841-7814

NRCE

OWRD EXHIBIT 1

KLAMATH ADJUDICATION
CLAIM # 226 PAGE # 131

Exhibit B

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July 2005, I served the within STIPULATION TO RESOLVE CONTEST 1714 on the parties hereto by e-mail, and 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
Teri Hranac
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
teri.k.hranac@wrd.state.or.us

Christopher B. Leahy
Fredericks, Pelcyger & Hester, LLC
1075 S. Boulder Road, Suite 305
Louisville, CO 80027
cleahy@fphw.com

Jesse D. Ratcliffe, #04394
Assistant Attorney General

Jesse D. Ratcliffe for
Stephen E.A. Sanders, #85321
Assistant Attorney General

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