

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 16, 2005

TO ALL PARTIES TO THE KLAMATH ADJUDICATION CASE NO. 58, CLAIM 259

Re: Klamath Adjudication – Case No. 58, Claim No. 259, Contest Nos. 1736 and
3541
DOJ File No. 690-600-GN0293-03

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve Contests, Exhibits A and B, 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 Attorneys General
Natural Resources Section

JDR:tmc/GENM9808
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

~~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

vs.

Kenneth Knight; R. Ray Johnson; Jacqueline Johnson;

Claimants/Contestants.

Claimants/Contestants Kenneth Knight and Estate of Louis Knight, 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 259 for a federal reserved Indian water right was filed with OWRD by the Claimants.

¹ Don Vincent voluntarily withdrew from Contest 3541 on December 4, 2000. Beriva Pritchard voluntarily withdrew from Contest 3541 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3541 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3541 on April 7, 2005.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 259.

3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary

Evaluation of Claim 259, Contest 1736.

4. Claimants/Contestants and OWRD agree that Contest 1736 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 259 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 259, 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 1736 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 259 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 259 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 259.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 259 does not conform to the terms set forth in the attached Description of Water Right Claim 259, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 259 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 259.

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.

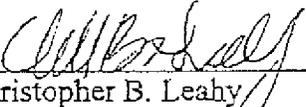
11. Claimants/Contestants and OWRD shall each bear their own costs and attorneys' fees.

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 Kenneth Knight and Estate of Louis Knight

FREDERICKS, PELCYGER & HESTER, LLC



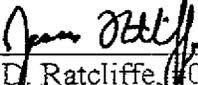
Christopher B. Leahy
Pro Hac Vice; Colorado Bar 23612

6/10/05

Date

For the Oregon Water Resources Department

HARDY MYERS
Attorney General
Assistant Attorneys General



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

6/15/05

Date



Michael Reynolds
Agency Representative
Oregon Water Resources Department

6/15/05

Date

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) Description Of
Pacific Ocean) Water Right Claim **259**
_____)

Name and Address: Kenneth Knight
Estate of Louis Knight
PO Box 362
Chiloquin, OR 97624

Source: Williamson River **Tributary:** Upper Klamath Lake

Point Of Diversion: Township Range Section Q/Q: Lot:
 30 S 10E 19 NWNW 1

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
 Irrigation 03-01 to 10-16 15.07 cfs 4.3 AFA
 Stockwater 01-01 to 12-31 6000 gpd

Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acres:</u>
	30 S	9 E	11	SESE		40.0
	30 S	9 E	12	SWSE		22.4
	30 S	9 E	13	NWNE		38.0
	30 S	9 E	13	SWNE		23.2
	30 S	9 E	13	SWNW		40.0
	30 S	9 E	13	SENE		40.0
	30 S	9 E	13	NESW		40.0
	30 S	9 E	13	NWNW		40.0
	30 S	9 E	13	NESE		0.3
	30 S	9 E	13	NWSE		35.2
	30 S	9 E	13	SWSE		40.0
	30 S	9 E	13	SESE		15.2
	30 S	9 E	14	NENE		40.0
	30 S	9 E	14	SENE		40.0
	30 S	9 E	14	NESE		40.0

30 S	9 E	14	SESE	39.5
30 S	9 E	24	NENE	37.6
30 S	9 E	24	NWNE	1.1
30 S	9 E	24	SENE	37.8

Total Irrigated Acreage 610.3

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.

INCHOATE WATER RIGHT CLAIM DESCRIPTION

Source: Williamson River **Tributary:** Upper Klamath Lake

Point Of Diversion: Township Range Section Q/Q: Lot:
 30 S 10E 18 SWSW 4

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
 Irrigation 03-01 to 10-16 .43 cfs 3.1 AFA

Place Of Use: Township Range Section Q/Q: Lot: Acreage:
 30 S 10E 18 SWSW 4 23.9

Total Practicably Irrigable Acreage 23.9

Source: Williamson River **Tributary:** Upper Klamath Lake

Point Of Diversion: Township Range Section Q/Q: Lot:
 30 S 9 E 13 NWSE

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
 Irrigation 03-01 to 10-16 .66 cfs 3.1 AFA

Place Of Use: Township Range Section Q/Q: Lot: Acreage:
 30 S 9 E 13 NESE 29.5
 30 S 9 E 13 SESE 7.0

Total Practicably Irrigable Acreage 36.5

TOWNSHIP 30 SOUTH, RANGE 9 EAST, W. M.

Owner # 31, Property # 1
 OWRD Claim # 259

RECEIVED

COT 01

With RESERVATION
 USALAN. 17

BLOODY
 POINT.

USA

38-3 - CAP

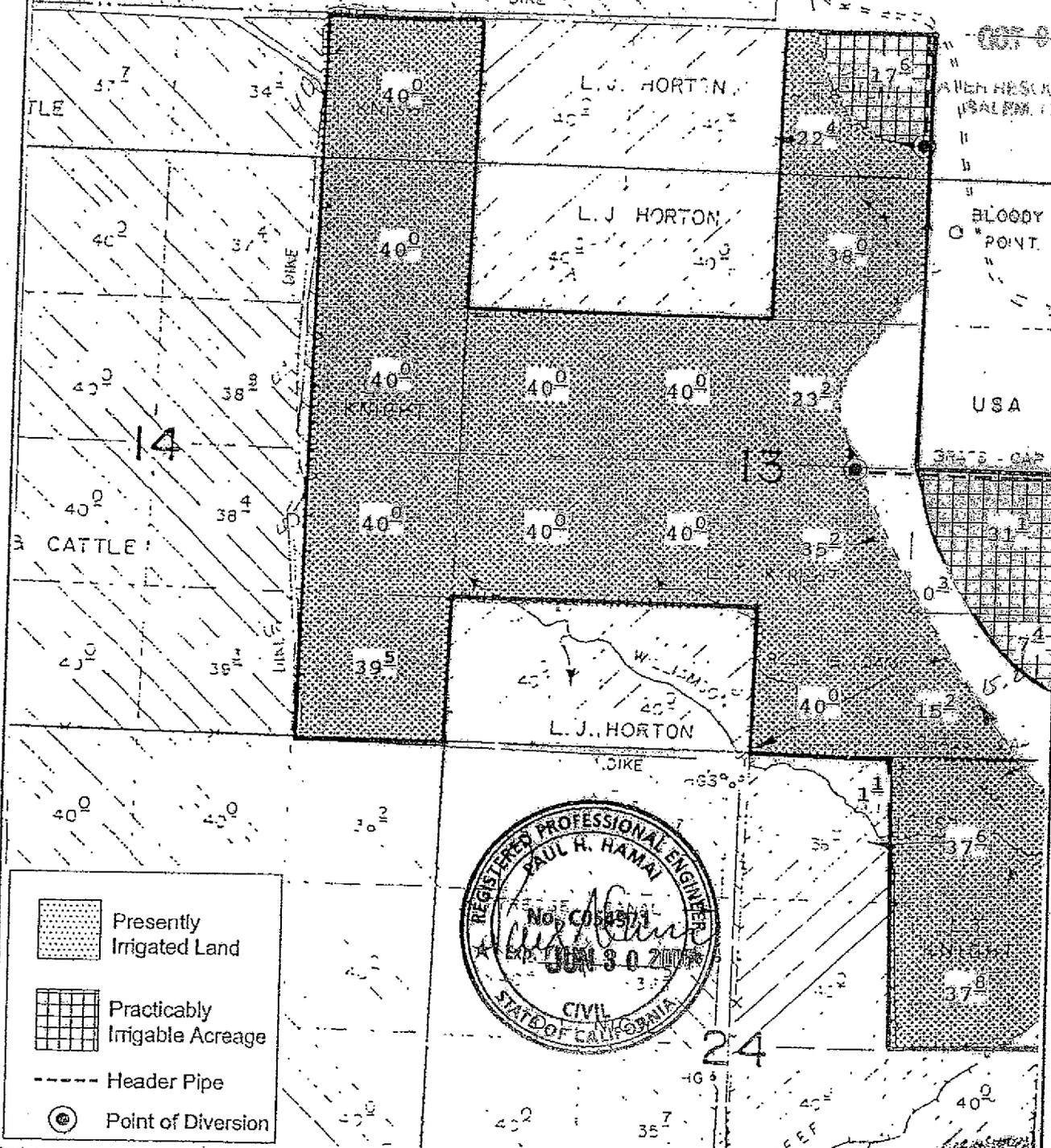
31-1

37-4

15-2

37-6

37-8



	Presently Irrigated Land
	Practically Irrigable Acreage
	Header Pipe
	Point of Diversion



Exhibit B
 Page 1 of 2

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



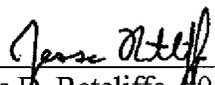
CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June 2005, I served the within
STIPULATION TO RESOLVE CONTEST AND EXHIBITS 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

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

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



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Stephen E.A. Sanders, #85321
Assistant Attorneys General