

COPY

BEFORE
THE HEARING OFFICER PANEL
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;
Klamath Hills District Improvement Co.;
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; and Collins Products, LLC,

**STIPULATION TO RESOLVE
CONTESTS 1740, 2068 AND 3545**

Case No. 268

Claim: 264

Contest: 1740,² 2068, and 3545

Contestants,

v.

~~Gerald Page; Louise Page;~~¹ James Root; and
Valerie Root,

Claimants and Contestants.

¹ James and Valerie Root acquired the property underlying Claim 264 from Gerald and Louise Page in 1995 and 2002, and accordingly filed the Oregon Water Resource Department's "Change of Ownership Form for Property Claimed in the Klamath Basin Adjudication" on July 30, 2004. This form requested that James and Valerie Root be substituted as claimants for Claim 264 and as contestants for Contest 1740. Attached to the form were copies of the deeds transferring the property.

² Gerald and Louise Page originally filed Contest 1740, but James and Valerie Root have requested that they be substituted as contestants as per footnote 1 above.

1 Claimants/Contestants James and Valerie Root (“Claimants”); the Oregon Water
2 Resources Department (the “OWRD”); and Klamath Irrigation District, Klamath Drainage
3 District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District
4 Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement
5 Co., Malin Irrigation District, Midland District Improvement Co., Pine Grove Irrigation
6 District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta
7 View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S.
8 Luscombe, Randy Walthall, Inter-County Title Company, Winema Hunting Lodge, Inc.,
9 Reames Golf and Country Club, Van Brimmer Ditch Company, Plevna District Improvement
10 Company, and Collins Products, LLC (collectively “Contestants”) hereby agree and stipulate
11 as follows:

12 **A. Stipulated Facts**

- 13 I. This Stipulation is supported by evidence contained in the OWRD’s Exhibit 1
14 (“OWRD Exhibit 1”), both generally and where specifically cited herein.
- 15 II. During the period of the Wood River, Crane Creek, Sevenmile Creek, and Fourmile
16 Creek Adjudication, the property underlying Claim 264 (the “Claim 264 Property”)
17 was owned or held in trust by the Klamath Tribe and/or the U.S. government. In
18 March 1959, the U.S. government transferred the Claim 264 Property to the United
19 States National Bank of Oregon as Trustee for the Klamath Tribe. In April 1978,
20 Gerald and Louise Page purchased the Claim 264 Property from the United States
21 National Bank of Oregon. Louise Page, an enrolled member of the Klamath Tribe,
22 received the property as her allotment from the Klamath Indian Reservation. *See*
23 OWRD Exhibit 1 at 29, 30-32; Bargain and Sale Deed from United States National
24 Bank of Oregon to Gerald and Louise Page (attached as Exhibit A).
- 25 III. Gerald and Louise Page filed a statement and proof of allottee claim with OWRD on
26 January 16, 1991. The claim sought 6 cubic feet per second (“cfs”) from Agency

1 Creek, tributary to Crooked Creek, for irrigation of approximately 150 acres. The
2 claimed period of use for irrigation was March 1 to November 1 each year, and year
3 round for livestock. The priority date claimed was October 14, 1864, as per the date
4 of the Klamath Tribe's treaty with the United States. This Claim was assigned Claim
5 No. 65. *See* Exhibit B.

6 IV. Gerald and Louise Page later filed a statement and proof of allottee claim with the
7 OWRD that was assigned Claim No. I-40. *See* Exhibit C. Claim I-40 was
8 subsequently renamed Claim 264.

9 V. By letter dated March 14, 1994, Gerald and Louise Page withdrew Claim 65 pursuant
10 to a stipulation with OWRD that Claim I-40 (later renamed Claim 264) would
11 supercede claim 65, and that their water right claim would be fully preserved. *Id.*

12 VI. The report authored by Natural Resources Consulting Engineers, Inc. dated
13 November 1, 1992 and filed with OWRD in support of Claim 264 described the water
14 use on the Claim 264 Property at that time as follows: 144.7 irrigated acres, about
15 180 cattle, and 9.7 acres of practicably irrigable acres ("PIA") (of which 9.2 were net
16 irrigable acres). Of the 9.7 PIA (net 9.2 irrigable acres), the 6.1 net irrigable acres on
17 the north of the property were described as suitable for irrigated tree production, and
18 the 3.1 net irrigable acres on the east of the property, to the east of Agency Creek,
19 were deemed suitable for alfalfa crops. The report includes maps and a chart
20 identifying irrigated acres and PIA by section and quarter. *See* OWRD Exhibit 1 at
21 16-28.

22 VII. In 1995, Gerald and Louise Page sold the majority of the Claim 264 Property, known
23 as Parcel 2 of Land Partition 63-94 (including the northern 6.1 net irrigable acre
24 section of PIA but not including the eastern 3.1 net irrigable acre section of PIA) to
25 Valerie Root. Valerie Root then transferred such property to James and Valerie Root
26 later in 1995. The Pages retained 10 acres, known as Parcel 1 of Land Partition 63-

- 1 94. *See* OWRD Exhibit 1 at 63-65; Land Partition 63-94 (attached as Exhibit D).
- 2 VIII. On April 4 and 14, 1999, Claimants requested that the OWRD add a fish and wildlife
3 use to Claim 264. *See* OWRD Exhibit 1 at 97, 98, 104.
- 4 IX. On July 18, 1999, Adkins Consulting filed a report with the OWRD that confirmed
5 the installation and use of an irrigation system serving the northern section of PIA,
6 and included detailed information on the irrigation system.³ The report further
7 described the irrigation system for the portion of the Claim 264 Property owned by
8 Claimants, and noted improvements that Claimants had made to the irrigation system
9 since 1995. Additionally, the report described that the northern section of PIA had
10 been irrigated and planted with trees and that the non-PIA portion of the property to
11 the south contained livestock. The report also explained why the northern section of
12 PIA had not historically been irrigated: unlike the historically irrigated 144.7 acres,
13 which was lower and capable of flood irrigation, the northern section of PIA was
14 elevated. *See* OWRD Exhibit 1 at 128-37.
- 15 X. On October 4, 1999, the Adjudicator issued his preliminary evaluation of Claim 264
16 in which he preliminarily denied the claim on the grounds that the claimed source was
17 previously adjudicated as part of the Wood River, Crane Creek, Sevenmile Creek,
18 and Fourmile Creek Adjudication. *See* OWRD Exhibit 1 at 246-47.
- 19 XI. On May 3, 2000, Gerald and Louise Page filed Contest 1740 to the preliminary
20 evaluation, and on May 5, 2000 Claimants filed Contest 2068 to the preliminary
21 evaluation. Both contests alleged that Claim 264 was not subject to the previous
22 adjudications identified in the preliminary evaluation.
- 23 XII. On May 23, 2000, Contestants filed Contest 3545 alleging (1) insufficient evidence to
24

25 ³ Note that a map accompanying the Adkins report mistakenly located the northern
26 section of PIA at T34S, R7.5E, Sec. 24, NE ¼ NE ¼, whereas that property is actually
located at T34S, R7.5E, Sec. 24, SE ¼ NE ¼. These lands are correctly mapped on the map
attached hereto as Exhibit H.

1 support the right claimed, (2) that the required elements had not been established for
2 an allottee water right with a priority date of October 14, 1864, and (3) that the
3 claimed source was previously adjudicated.

4 XIII. On March 14, 2002, Gerald and Louise Page sold their remaining interest in the
5 Claim 264 Property, known as Parcel 1 of Land Partition 63-94 (including the eastern
6 3.1 net irrigable acre section of PLA east of Agency Creek) to Claimants. *See Exhibit*
7 *D*; 2002 deed regarding Parcel 1 (attached as Exhibit E).

8 XIV. After Claimants acquired the eastern 3.1 net irrigable acre section of PLA in March
9 2002, that acreage has been irrigated for use as stock pasture. *See Declaration of*
10 *James Root* (attached as Exhibit F).

11 XV. Following the prehearing conference on July 19, 2004, Contestants, Claimants, and
12 the OWRD discussed settlement of Claim 264 and the contests thereto. Claimants,
13 Contestants, and the OWRD agree that the issues raised in the contests are resolved
14 solely pursuant to the terms outlined below, and that Contests 1740, 2068 and 3545
15 can be resolved without the need for hearing pursuant to the terms outlined below.

16 **B. Terms of the Agreement**

17 1. The terms of Claim 264 and any water right that may be derived therefrom in this
18 Adjudication are as follows:

- 19 a) Location of point of diversion: SW ¼ SW ¼, Section 18, Township 34 South,
20 Range 7 East, W.M.
- 21 b) Source: Agency Spring, Agency Creek, tributary to Crooked Creek
- 22 c) Uses: Irrigation of 153.9 acres and 180 head of livestock
- 23 d) Amount beneficially used: for irrigation, 3.84 cfs, measured at the point of
24 diversion and further limited to a diversion not to exceed 3.5 acre-feet per acre
25 per year; for livestock, 12 gallons/day per head of livestock, measured at the
26 point of diversion and further limited to a diversion not to exceed 2.4 acre-
feet per year
- e) Irrigation Period of Use: March 1 – October 16 of each year

- 1 f) Livestock Period of Use: year round each year
- 2 g) Priority Date: October 14, 1864
- 3 h) Place of Use:

PLACE (W.M.)	ACRES OF IRRIGATION	MAP DEPICTING*
T 34 S, R 7 E, Sec. 19, Lot 4 (SW ¼ SW ¼)	21.5	Exhibit G
T34S, R7.5E, Sec. 24, SE ¼ NE ¼	26.6	Exhibit H
T34S, R7.5E, Sec. 24, SW ¼ NE ¼	0.9	Exhibit H
T34S, R7.5E, Sec. 24, NE ¼ SE ¼	41.7	Exhibit H
T34S, R7.5E, Sec. 24, NW ¼ SE ¼	11.8	Exhibit H
T34S, R7.5E, Sec. 24, SE ¼ SE ¼	40.2	Exhibit H
T34S, R7.5E, Sec. 24, SW ¼ SE ¼	3.4	Exhibit H
T34S, R7.5E, Sec. 25, Lot 12 (NE ¼ NE ¼)	3.7	Exhibit I
T34S, R7.5E, Sec. 25, Lot 13 (NE ¼ NE ¼)	2.9	Exhibit I
T34S, R7.5E, Sec. 25, NW ¼ NE ¼	1.2	Exhibit I

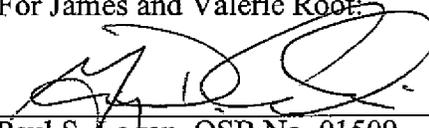
12 *Each map depicts the place of use more particularly; these maps are attached hereto as Exhibits G, H, and I, and are incorporated by reference herein.

- 13 2. Claimants withdraw, abandon, and waive any and all rights to assert whatever claim
- 14 or rights may have accrued from their April 4 and 14, 1999 requests that the OWRD
- 15 add a fish and wildlife use to Claim 264.
- 16 3. Claimants and Contestants agree that pursuant to this Stipulation Contests 1740,
- 17 2068, and 3545 have been satisfactorily resolved and agree that a hearing on Contests
- 18 1740, 2068, and 3545 before the Office of Administrative Hearings is not required.
- 19 4. Based on the stipulation of the parties that Claim 264 can be resolved without the
- 20 need for further proceedings, OWRD staff recommends to the Adjudicator that Claim
- 21 264 be withdrawn from the Office of Administrative Hearings. OWRD staff further
- 22 recommends that the Adjudicator's Findings of Fact and Order of Determination
- 23 approve Claim 264 as described above in paragraph B.1.
- 24 5. Claimants and Contestants reserve the right to file exceptions to the Findings of Fact
- 25 and Order of Determination as to Claim 264 in Klamath County Circuit Court, and
- 26

1 reserve any rights Claimants and Contestants may have to participate in any future
2 proceedings authorized by law, only if the Findings of Fact and Order of
3 Determination issued by the Adjudicator for Claim 264 do not accord with the terms
4 listed in paragraph B.1 above.

5 6. The parties agree that neither this Stipulation nor any of its terms shall be used to
6 establish precedent with respect to any other claim or contest in the Klamath Basin
7 Water Rights Adjudication.

8
9 For James and Valerie Root:

10 
11 _____
12 Paul S. Logan, OSB No. 01509
13 Greg D. Corbin, OSB No. 00033
14 STOEL RIVES LLP
15 Of Attorneys for James and Valerie Root

12/22/04
Date _____

14 For Contestants:

15
16 _____
17 Andrew M. Hitchings Date _____
18 (Pro Hac Vice; CA Bar No. 154554)
19 Somach, Simmons & Dunn
20 Of Attorneys for Tule Lake Irrigation District and on behalf of Contestants Klamath Project
21 Water Users

19 For Oregon Water Resources Department

20
21 HARDY MYERS
22 Attorney General

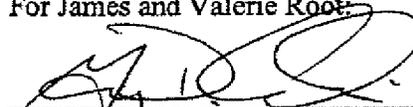
23 _____
24 Justin Wirth, OSB No. 00426 Date _____
25 Assistant Attorney General
26 Of Attorneys for the
Oregon Water Resources Department

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

1 reserve any rights Claimants and Contestants may have to participate in any future
2 proceedings authorized by law, only if the Findings of Fact and Order of
3 Determination issued by the Adjudicator for Claim 264 do not accord with the terms
4 listed in paragraph B.1 above.

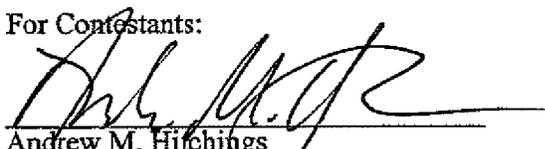
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11 Paul S. Logan, OSB No. 01509
12 Greg D. Corbin, OSB No. 00033
13 STOEL RIVES LLP
14 Of Attorneys for James and Valerie Root

12/22/04
Date

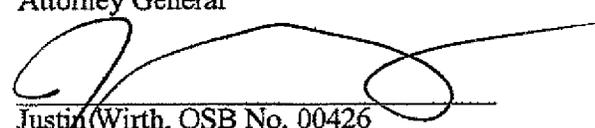
14 For Contestants:

15 
16 Andrew M. Hitchings
17 (Pro Hac Vice; CA Bar No. 154554)
18 Somach, Simmons & Dunn
19 Of Attorneys for Tule Lake Irrigation District and on behalf of Contestants Klamath Project
20 Water Users

2/24/04
Date

19 For Oregon Water Resources Department

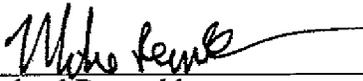
21 HARDY MYERS
22 Attorney General

23 
24 Justin Wirth, OSB No. 00426
25 Assistant Attorney General
26 Of Attorneys for the
Oregon Water Resources Department

March 4, 2005
Date

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Michael Reynolds
Agency Representative for the
Oregon Water Resources Department

3-4-05

Date

Exhibit A

4-43575

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38-13985

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Vol. ^M 78 Page 7775

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS that UNITED STATES NATIONAL BANK OF OREGON, a national banking association, Trustee, Grantor, for and in consideration of the sum of One Hundred Sixteen Thousand One Hundred (\$116,100) Dollars, to it paid, has bargained and sold and by these presents does bargain, sell and convey to GERALD A. PAGE and LOUISE L. PAGE, husband and wife, as tenants by the entirety, Grantees, the following described premises situated in Klamath County, Oregon, to-wit:

A parcel of land situated in Section 24 and Section 25, Township 34 South, Range 7-1/2 East and Section 19, Township 34 South, Range 7 East, Willamette Meridian, more particularly described as follows:

Beginning at a point on the East line of said Section 24 from which the Southeast corner of said Section 24 bears South 00°03'24" East, 1322.18 feet; thence from said point of beginning North 00°01'24" West along the East line of said Section 24 1322.19 feet to the East 1/4 corner of said Section 24; thence continuing along the East line of said Section 24 North 00°03'20" West 1194.78 feet to a 1/2" iron pin in a fence; thence Westerly and Southerly along said fence the following bearings and distances: South 82°39'36" West 280.19 feet to a 1/2" iron pin, South 85°18'24" West 267.93 feet to a 36" pine tree, South 01°51'47" West 357.64 feet to a 1/2" iron pin, South 8°37'38" West 161.18 feet to a 32" pine tree, South 02°03'27" East 145.18 feet to a 1/2" iron pin, South 77°39'34" West 560.05

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feet more or less to the center of Crooked Creek; thence Southerly along the center of Crooked Creek 3200.00 feet more or less to a point from which the Northeast corner of said Section 25 bears North 87°29'52" East 1591.77 feet; thence leaving Crooked Creek South 27°52'51" East 301.82 feet more or less to a 5/8" iron pin in the centerline of a road; thence Northeasterly along the centerline of said road the following bearings and distances: North 83°51'34" East 869.25 feet to a 5/8" iron pin, North 60°36'37" East 1799.44 feet to a 5/8" iron pin on the Westerly line of Highway 427; thence North 05°32'32" West along the West line of said Highway 427, 668.74 feet to a 5/8" iron pin on the North line of Govt. Lot 4 of said Section 19; thence North 88°57'13" West along said North line of Govt. Lot 4, 919.88 feet to the point of beginning.

Containing 148 acres more or less.

TOGETHER WITH:

A right of way along the "Klamath Agency Farm Irrigation Canal" varying in width from 40 feet to 20 feet of which the centerline is more particularly described as follows:

Beginning at a point on the North line of Govt. Lot 4, Section 19, Township 34 South, Range 7 East, Willamette Meridian, and the centerline of said "Klamath Agency Farm Irrigation Canal", from which the Northwest corner of said Govt. Lot 4 bears WEST 483 feet more or less; thence Northerly along the centerline of said "Klamath Agency Farm Irrigation Canal" the following bearings and distances: North 21°21' West 153.3 feet to a point, from this point Southerly the right of way is 40 feet in width, from this point Northerly the right of way is 20 feet in width; thence continuing along the centerline of said "Klamath Agency Farm Irrigation Canal"

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North 04°24' East 600.2 feet, North
03°37' West 315.5 feet, North 18°14'
West 517.7 feet, North 11°28' West 264.3
feet, North 24°26' West 246.1 feet,
North 10°46' East 231.7 feet, North
22°30' East 432.0 feet, North 04°40'
West 503.9 feet, North 21°28' East
302.4 feet, North 26°58' West 376.6
feet, North 05°20' West 253.2 feet,
North 01°47' West 439.4 feet, North-
easterly along the arc of a 154 feet
radius curve to the right (Delta =
55°42', Long Chord = North 26°04' East
143.9 feet) 149.7 feet, North 53°55'
East 351.5 feet, North 58°55' East
158.1 feet to the head gate at a
water reservoir at Agency Spring, from
which the Northwest corner of said
Section 19 bears South 40°53' West
1129.7 feet more or less.

306.6

And a ten foot right of way along an
existing irrigation ditch of which the
centerline is described as follows:

Beginning at a point on the East line of
Section 24, Township 34 South, Range
7-1/2 East, Willamette Meridian, and the
centerline of an existing irrigation
ditch from which the East 1/4 corner of
said Section 24 bears South 00°03'24"
East 729.6 feet more or less; thence
from said point of beginning Easterly
along the centerline of an existing
irrigation ditch the following bearings
and distances: South 40°46' East 69.0
feet, South 32°46' East 50.0 feet,
South 55°19' East 137.0 feet, North
85°09' East 32.0 feet more or less to
the centerline of "Klamath Agency Farm
Irrigation Canal".

And a ten foot right of way along an
existing irrigation ditch of which the
centerline is described as follows:

Beginning at a point on the East line of
Section 24, Township 34 South, Range
7-1/2 East, Willamette Meridian, and the
centerline of an existing irrigation

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ditch, from which the East 1/4 corner of said Section 24 bears North 00°03'24" West 63.2 feet more or less; thence from said point of beginning North 86°25' East along the centerline of an existing irrigation ditch 386.2 feet more or less to the centerline of the "Klamath Agency Farm Irrigation Canal".

And a ten foot right of way along an existing irrigation ditch of which the centerline is described as follows:

Beginning at a point on the East line of Section 24, Township 34 South, Range 7-1/2 East, Willamette Meridian, and the centerline of an existing irrigation ditch, from which the East 1/4 corner of said Section 24 bears North 00°03'24" West 1095 feet more or less; thence from said point of beginning Easterly along the centerline of an existing irrigation ditch the following bearings and distances: North 82°03' East 392.4 feet, South 16°57' East 23.3 feet, South 80°41' East 33.3 feet more or less to the centerline of the "Klamath Agency Farm Irrigation Canal".

SUBJECT TO:

Easements and right of ways of record and those apparent upon the land.

And a fifty feet wide easement for purposes of ingress and egress of which the centerline is described as follows:

Beginning at a point on the West right of way line of Highway 427, from which the Northwest corner of Govt. Lot 4, Section 19, Township 34 South, Range 7 East, Willamette Meridian, bears the following two bearings and distances: North 05°32'32" West 25.17 feet, North 88°57'13" West 919.88 feet; thence from said point of beginning North 88°57'13" West parallel to and 25 feet Southerly at right angles to the North

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7 line of said Govt. Lot 4, 947.30 feet; thence North $00^{\circ}03'24''$ West parallel to and 25 feet Westerly at right angles to the East line of Section 24, Township 34 South, Range 7-1/2 East, Willamette Meridian, the following two bearings and distances: North $00^{\circ}03'24''$ West 1346.71 feet, North $00^{\circ}03'20''$ West 1191.59 feet to a point on the North line of Parcel No. 1.

And a twenty foot wide right of way along an existing irrigation ditch of which the centerline is described as follows:

Beginning at a point on the North line of Govt. Lot 4, Section 19, Township 34 South, Range 7 East, Willamette Meridian, and on the centerline of an existing irrigation ditch, from which the northwest corner of said Govt. Lot 4 bears WEST 483 feet more or less; thence from said point of beginning Southerly along the centerline of an existing irrigation ditch to a point that is located the following three bearings and distances from the Northwest corner of said Govt. Lot 4: South $88^{\circ}57'13''$ East 919.88 feet, South $05^{\circ}32'32''$ East 668.74 feet, South $60^{\circ}36'37''$ West 51.3 feet.

And that certain indenture recorded Deed Volume 358 at page 471, Klamath County Deed Records.

SUBJECT TO:

A fifty feet wide easement for purposes of ingress and egress described as follows:

Beginning at a point on the North line of Govt. Lot 4, Section 19, Township 34 South, Range 7 East, Willamette Meridian, and the Westerly right of way line of Highway No. 427, from which the Northwest corner of Govt. Lot 4 bears

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North 88°57'13" West 919.88 feet; thence from said point of beginning South 05°32'32" East along the Westerly right of way line of said Highway No. 427, 668.74 feet; thence South 50°36'37" West 54.67 feet; thence North 05°32'32" West parallel to and 50.0 feet Westerly at right angles to the Westerly right of way line of said Highway No. 427, 696.62 feet to a point on the North line of said Govt. Lot 4; thence South 88°57'13" East along the North line of said Govt. Lot 4, 50.33 feet to the point of beginning.

AND FURTHER SUBJECT TO:

1. Rights of the public in and to any portion of said premises lying within the limits of roads and highways.
2. An easement created by instrument, including the terms and provisions thereof:

Dated : November 15, 1960

Recorded : November 29, 1960
Book 325, Page 507

In Favor of: California Oregon Power
Company

For : Transmission lines

3. Unrecorded Trust Agreement, including the terms and provisions thereof, and such other exceptions as may appear necessary upon the recording thereof, as disclosed by Deed of Tribal Property recorded March 5, 1959 in Book 310 at page 324, Deed Records.

4. Subject to an access road as set forth on Exhibit "A" of instrument dated December 28, 1964, recorded January 6, 1965 in Book 358 at page 471, Deed Records, to Tulana Farms, an Oregon Corporation.

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5. Rights of the public and of government bodies in that portion of the above described property lying below the high water mark of Wood River and the ownership of the State of Oregon in that portion lying below the high water mark thereof.

TO HAVE AND TO HOLD the said premises with their appurtenances unto the said GERALD A. PAGE and LOUISE L. PAGE, their heirs and assigns forever.

Until a change is requested, all tax statements are to be sent to the following address:

GERALD A. PAGE
3341 LAMARADA
KLAMATH FALLS, ORE 97601.

IN WITNESS WHEREOF, United States National Bank of Oregon has hereunto set its association name by its duly authorized officer this 14th day of April, 1978.

UNITED STATES NATIONAL BANK
OF OREGON, a National Banking
Association

By

R. W. Messer
Trust Officer

STATE OF OREGON)
) ss.
County of Klamath)

On this 14 day of April, 1978, before me, a Notary Public in and for said County and State, appeared R. W. Messer, to me personally known who, being duly sworn, did say that he, the said R. W. Messer, is a Trust Officer of UNITED STATES NATIONAL BANK OF OREGON,

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Trustee, the within named association, and that the said instrument was signed in behalf of said association by authority of its Board of Directors, and said R. W. Metzger acknowledged the said instrument to be the free act and deed of said association.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.



Buendaly R. Schumborn

Notary Public for Oregon
My Commission Expires: 7/21/81

STATE OF OREGON; COUNTY OF KLAMATH; ss.
I hereby certify for record at request of Transamerica Title Co.
on 21st day of April A. D. 1978 at 2:13 clock P.M., and
fully recorded in Vol. 878, of Deeds on Page 7775
W. D. MILNE, County Clerk

Buendaly R. Schumborn

Return to 7 A 1

Fee \$24.00

Exhibit B

COPY

State of Oregon
Water Resources Department

RECEIVED

JAN 16 1991

WATER RESOURCES DEPT
SALEM, OREGON

STATEMENT AND PROOF OF CLAIM
TO USE OF WATERS OF THE KLAMATH RIVER AND ITS TRIBUTARIES

Claimant: GERALD A. & LOUISE L. PAGE

Mailing address: P.O. Box 429
street

FORT KLAMATH OREGON 97626 783-2460
City or town State Zip Phone

I, the undersigned am a water user within the Klamath River basin and:

(Check A or B:)

A. I wish to claim a water use vested prior to February 24, 1909, or a federal reserved water right, or a right derived from a federal reserved water right: (Yes/No) YES

B. I wish to participate in the proceedings for the purpose of contesting the claims of others (Yes/No). Water right permit # _____ Certificate # _____

If yes to B and you have no claim under A, go to back page for signature.

I CLAIM A RIGHT AS DESCRIBED BELOW:

1. Sources of water AGENCY SPRINGS RESERVOIR & CROOKED CREEK

Tributary to WOOD RIVER
PRIMAIRLY AGENCY SPRINGS

2. Purpose(s) for which water is used or claimed IRRIGATION, STOCK PIA'

irrigation, power, mining, domestic, stock, etc.

If for irrigation, crop(s) PASTURE

If for livestock, number of head _____

{ IRRIGATION = 5 CFS
PIA = 1 CFS

3. Amount of water used or necessary for each claimed use: 6
cubic feet per second

4. Date of the initiation of the water right TREATY OF 1864

What is basis of the right? FEDERAL RESERVATION
appropriation or claim prior to 1909, federal reservation

system and any enlargements:

A) DITCH:

Material DIRT
dirt, concrete, etc.

Top width 16 Bottom width 16 Depth 2

Grade or fall per 1000 feet 2.0 Capacity 12
cubic feet per second

B) PIPELINE:

Size at intake _____ Size and distance at changes _____

Total fall between intake and place of use _____ Capacity _____
feet cubic feet per second

C) PUMP:

Make _____ Type _____

No. _____ Intake size _____ Discharge size _____

Suction head _____ Discharge head _____

Rating: G.P.M. _____ R.P.M. _____ Pressure _____

D) MOTOR:

Type _____ Make _____

H.P. Rating _____ R.P.M. _____

E) CONNECTION:

Direct connected unit _____

If belt driven: Size of drive pulley _____ Driven pulley _____

F) DISTRIBUTION SYSTEM:

Main line: Size _____ Length _____ Kind of pipe _____

Lateral lines: Size _____ Length _____ Kind of pipe _____

Size _____ Length _____ Kind of pipe _____

G) SPRINKLER HEADS:

Make _____ Size of nozzles _____
 Number of heads used _____ Capacity of each _____ G.P.M.
 Operating pressure _____ lbs.

6. Area of land which your distribution system, as originally constructed, was intended to irrigate:

150 acres

7. Location of the area irrigated, or place of use if other than for irrigation:

County of KLAMATH

Township	Range	Section	1/4. 1/4 Section	No. of acres irrigated
34S	7 1/2 E	25	} ←	150
34S	7 1/2 E	24		
34S	7 E	19		

SEE ATTACHMENT

TOTAL ACRES 150

The lands may have been surveyed and may be shown on a plat of the Water Resources Department, which you may examine at the time of submitting your claim. Your answer to this question should conform to those maps, unless you object to those and submit maps showing new information. (See item 10.) No proof will be accepted which does not answer this question in detail. Attach separate sheet if necessary.

8. Location of the point of diversion:

SW 1/4 SW 1/4, Section 18, T 34 S, R 7 E.

9. If the water use is for power, please state:

A) Gross Head _____ feet

B) Developed THP _____

C) Describe the type of water wheel or turbine and generator used: _____

D) If there is a water power claim, please state the filing number: _____

E) Where is water returned to stream? _____

_____ 1/4 _____ 1/4, Section _____, T _____ S, R _____ E.

10. When does the irrigation season begin and end, and if water is used for other purposes, during what months is it used? BEGIN 3/1, END 11/1 -

STOCK WATER MAY BE YEAR ROUND.

11. Do you accept the maps which were prepared by the Water Resources Department as they relate to your claim? Do they show correctly the location of the diversion point, the ditch, or pipe line and the lands irrigated, or other uses as shown? NO EXHIBIT "A"

NOTE: In case there is objection to the official plat or a part of the plat the parties objecting must, when giving proof, file a written statement of the reasons, and must, within ninety days, file with the Water Resources Department a map covering the part objected to, with affidavit of surveyor, engineer or certified water rights examiner. Such map should preferably be on a scale of four inches to the mile and should have marked, within each 40-acre legal subdivision, the area of land which is irrigated. Such map should correspond in size to 8 1/2 x 11 inches so as to be easily filed with the claim.

12. Description of your land as it appears in your deed. (Attach separate sheet if necessary.)

ATTACHED) EXHIBIT "B"

13. What additional evidence have you attached or submitted?

(If your claim includes lands that derive from a federal reserved right to practicably irrigable acres, please include chain of title documenting Indian ownership and the time lands may have passed from Indian ownership.)

SEE EXHIBIT "C" DEED FROM USNB (TRUSTEE FOR KLAMATH TRIBE) TO LOUISE L PAGE (KLAMATH TRIBE MEMBER, ROLL # 795) EXHIBIT "D" (FOR)

14. Remarks: FILING UNDER PRACTICABLY IRRIGABLE ACRES, UNDER LOUISE L PAGE, KLAMATH INDIAN ROLL # 795

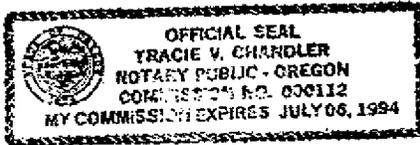
(If the space provided is insufficient to properly answer any question, attach a separate sheet or sheets. A corporation supplying water for irrigation to lands not its own should attach to its proof a complete list of the persons owning the lands with the correct description of the lands owned by each such person in each smallest legal subdivision. Persons claiming rights derived from a federal reserved right should attach copies of the reservation documents. Certified copies of records and such evidence as the claimant may desire to submit should be attached to this proof and marked for identification as exhibit "A", "B", "C", etc...)

I certify that the water use described in this claim has been used continuously without a five year interruption within the past fifteen years.

I hereby certify upon oath that the foregoing statement and answers are true to the best of my knowledge and belief.

Louise J. Page
Signature of Claimant, or Agent making proof

Subscribed and sworn to before me this 25th day of October, 1990



Tracie V. Chandler
Notary Public for Oregon.

Notary Public for Oregon.

My commission expires 7-6-94

AUTHORIZATION OF AGENT

I, _____ of _____

State of _____, do make and appoint _____

of _____, my agent and attorney for me and in my name, place and stead, to make and submit this Statement and Proof of Claim.*

I designate this agent as the proper party upon whom lawful and valid service may be made of all process and notices in any contest commenced by or against me, in this matter. This agent is duly authorized to appear in any and all such contests as my true and lawful agent and attorney. I grant to my attorney full power and authority to do and perform all and every act necessary and requisite to be done in the premises, as fully as I might or could do if personally present. I ratify and confirm all my agent shall lawfully do by virtue of this power.

*Claimant should cross out the second paragraph of the Authorization if he does not desire the agent to appear for him in the proceeding after the filing of this claim.

Signature of Claimant

Fees paid: Irrigation 1423 = FEA 11.4 = acres, \$ 243. =
12 =

Power _____ H.P., \$ _____

Filed JAN 17, 1991.

Other use _____, \$ _____

CREDIT PERMIT FEES € 2755

Receipt No. 70375 Total, \$ 22748

Donald E. Franer
For Water Resources Department

PERMIT
30301

Exhibit C

Gerald/Louise Page
P.O. Box 543
Klamath Falls, OR 97601

March 14, 1994

C.C. Wright

RECEIVED

MAR 16 1994

WATER RESOURCES DEPT.
SALEM, OREGON

A. Reed Marbut, Administrator
Water Rights/Adjudication Division
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, Oregon 97310

KLAMATH ADJUDICATION

BEAM # 65

PAGE #

010

Re: Request to Withdraw Regular Claim
and Refund Filing Fee

Dear Mr. Marbut:

On or before February 1, 1991, we filed a water rights claim in the Klamath Basin Adjudication as a "regular claimant" (File ID No. 155) and paid a filing fee of \$227.45. Subsequently we have filed a claim as part of the Klamath Allottees Water Users Association (File ID No. I-40) pursuant to the Stipulation entered into with your Department and have paid the required filing fee for our claim and have complied with all of the filing deadlines pursuant to the Stipulation.

Pursuant to your letter of August 31, 1993 to the Klamath Allottees Water Users Association's Attorney Dale T. White, Fredericks, Pelcyger, Hester & White, you indicated that other Klamath Indian claimants similarly situated may obtain a refund of the filing fee that was paid as a regular claimant by requesting that the claim be officially withdrawn and that the fee be returned. This letter will serve as our request that our regular claim be withdrawn and that the filing fee be returned. It is our understanding that once the regular claim is withdrawn it will be superseded by the claim that we filed pursuant to the Stipulation entered into with your Department so that our claim to our water right will be fully preserved.

We trust that this letter will comply with the information that you have required in your August 31, 1993 letter. If you need any additional information, please advise.

Sincerely,

Gerald Page
Gerald Page
Louise Page
Louise Page

DTW/jt

cc: Dale T. White, Fredericks, Pelcyger, Hester & White
Beverly Lang

JUN 10 1994

k\m#arbut.gip

Exhibit D

Exhibit E

HN

Vol M02 Page 15419
STATE OF OREGON, } ss.

TL 401

GERALD & LOUISE PAGE
42000 HODOC POINT RD.
CHILLOQUIN, OR 97624

Grantor's Name and Address

Grantor's Name and Address

After recording, return to (Name, Address, Zip)

02 MAR 15 PM 3:12

Until requested otherwise, send all tax statements to (Name, Address, Zip)

SPACE RESERVED
FOR
RECORDERS USE

State of Oregon, County of Klamath

Recorded 03/15/2002 3:12 p in

Vol M02, Pg 15419-26

Linda Smith, County Clerk

Fee \$ 26.00 # of Pgs 2

:puty.

me 55875-

SPECIAL WARRANTY DEED

KNOW ALL BY THESE PRESENTS that GERALD A. PAGE and LOUISE L. PAGE

hereinafter called grantor, for the consideration hereinafter stated, to grantor paid by JAMES M. ROOT and VALERIE G. ROOT, husband and wife

hereinafter called grantee, does hereby grant, bargain, sell and convey unto the grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, situated in Klamath County, State of Oregon, described as follows, to-wit:

Parcel 1 of Land Partition 63-94 situated in the E1/2 of Section 24 and the N1/2 NE1/4 of Section 25, Township 34 South, Range 7 1/2 East of the Willamette Meridian, and the SW1/4 of Section 19, Township 34 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, as filed in the Klamath County Engineers Office.

IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE

To Have and to Hold the same unto grantee and grantee's heirs, successors and assigns forever.

And grantor hereby covenants to and with grantee and grantee's heirs, successors and assigns, that the real property is free from encumbrances created or suffered thereon by grantor and that grantor will warrant and defend the same and every part and parcel thereof against the lawful claims and demands of all persons claiming by, through, or under the grantor.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 290,000.00

actual consideration consists of or includes other property or value given or promised which is the whole part of the (indicate which) consideration.

In construing this deed, where the context so requires, the singular includes the plural, and all grammatical changes shall be made so that this deed shall apply equally to corporations and to individuals.

In witness whereof, the grantor has executed this instrument on March 14, 2002; if grantor is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLENTION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE GRANTING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACCEPTING THE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.000.

Gerald A. Page
GERALD A. PAGE

Louise L. Page
LOUISE L. PAGE

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on

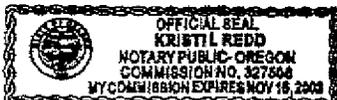
by Gerald A. Page and Louise L. Page

This instrument was acknowledged before me on

by _____

as _____

of _____



Kristin L. Redd
Notary Public for Oregon
My commission expires 11/16/2003

26.03 W

EXHIBIT A
TO
SPECIAL WARRANTY DEED

15420

The real property described in this Special Warranty Deed is

SUBJECT TO:

An easement created by instrument, subject to the terms and provisions thereof;

Dated: November 15, 1960
Recorded: November 29, 1960
Volume: 325, page 507, Deed Records of Klamath County, Oregon
In favor of: California Oregon Power Company
For: Transmission lines

(Affects Lot 4, Section 19; Lot 1, W 1/2 NE 1/4 NW 1/4 Section 10, Township 34 South, Range 7 East of the Willamette Meridian; SE 1/4 SW 1/4 Section 12; N 1/2 NW 1/4, SE 1/4 NW, NE 1/4 SW 1/4, W 1/2 SE 1/4 Section 13, N 1/2 NE 1/4, SE 1/4 NE 1/4, E 1/2 SE 1/4, Section 24, Township 34 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon)

Subject to an access road as set forth on Exhibit "A" of instrument dated December 28, 1964, recorded January 6, 1965 in Book 338 at page 471, Deed Records of Klamath County, Oregon, to Tulana Farms, an Oregon Corporation.

(Affects SW 1/4 SW 1/4 Section 19, Township 34 South, Range 7 East of the Willamette Meridian; SE 1/4 SE 1/4 Section 24, and N 1/2 Section 25, Township 34 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon)

Reservations, restrictions and easements as contained in Deed from United States National Bank of Oregon, a National Banking Association, Trustee, as grantor, to Gerald A. Page and Louise L. Page, husband and wife, as grantees, recorded April 20, 1978 in Volume M78, page 7775, Microfilm Records of Klamath County, Oregon.

In the matter of C.U.P. 105-94 and L.P. 63-94 recorded November 21, 1994 in Volume M94, page 35695, Microfilm Records of Klamath County, Oregon, to wit:

"Therefore, it is ordered the request of PAGE for C.U.P. 105-94 and L.P. 63-94 is approved subject to the following conditions: 1. The applicant shall file a restrictive covenant with the County Clerk prohibiting the permit holder and their successors in interest from filing complaint concerning accepted resource management practices that may occur on nearby lands.

A 60-foot easement for ingress and egress as evidenced by Land Partition 63-94.

Utility easement as created by Bargain and Sale Deed, subject to the terms and provisions thereof;

Dated: April 7, 1995
Recorded: April 7, 1995
Volume: M95, page 8257, Microfilm Records of Klamath County, Oregon
Grantor: Gerald A. Page and Louise L. Page
Grantee: Valerie K. Root

X JLP
X JLP

Exhibit F

SIOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

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BEFORE THE HEARING OFFICER PANEL
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;
Klamath Hills District Improvement Co.;
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; and Collins Products, LLC,

Contestants,

v.

Gerald Page; Louise Page;¹ James Root; and
Valerie Root,

Claimants and Contestants.

I, James Root, declare as follows:

1. I am a claimant in Case No. 268, Claim 264 in the Klamath River Basin

DECLARATION OF JAMES ROOT

Case No. 268

Claim: 264

Contest: 1740,² 2068, and 3545

¹ James and Valerie Root acquired the property underlying Claim 264 from Gerald and Louise Page in 1995 and 2002, and accordingly filed the Oregon Water Resource Department's "Change of Ownership Form for Property Claimed in the Klamath Basin Adjudication" on July 30, 2004. This form requested that James and Valerie Root be substituted as claimants for Claim 264 and as contestants for Contest 1740. Attached to the form were copies of the deeds transferring the property.

² Gerald and Louise Page originally filed Contest 1740, but James and Valerie Root have requested that they be substituted as contestants as per footnote 1 above.

1 Adjudication. I am competent to testify to the matters set forth below.

2 2. A report authored by Natural Resources Consulting Engineers, Inc. dated
3 November 1, 1992 and filed with the Water Resources Department in support of Claim 264
4 identified 3.1 net irrigable acres of a total 3.3 practicably irrigable acres ("PIA") on the east
5 of the property appurtenant to Claim 264. The report locates the 3.1 net irrigable acres east
6 of Agency Creek, at T34S, R7E, Sec. 19, SW ¼, SW ¼.

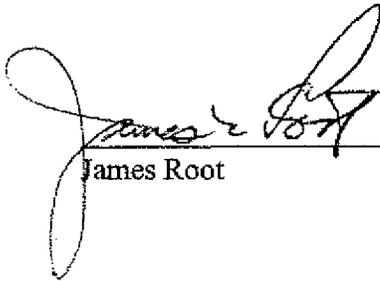
7 3. In 1995, my wife Valerie Root and I acquired the majority of the property
8 appurtenant to Claim 264, known as Parcel 2 of Land Partition 63-94 (but not including the
9 eastern 3.1 net irrigable acre section of PIA) from Gerald and Louise Page. The Pages
10 retained 10 acres, known as Parcel 1 of Land Partition 63-94, that included the eastern 3.1 net
11 irrigable acre section of PIA.

12 4. On March 14, 2002, my wife Valerie Root and I acquired the remainder of the
13 property appurtenant to Claim 264, known as Parcel 1 of Land Partition 63-94 (including the
14 eastern 3.1 net irrigable acre section of PIA) from Gerald and Louise Page.

15 5. Since acquiring the eastern 3.1 net irrigable acre section of PIA in March
16 2002, that acreage has been irrigated for use as stock pasture.

17 6. I declare that the foregoing is true and correct to the best of my information
18 and belief.

19 DATED: Oct. 14, 2004.

20
21 
22 James Root
23
24
25
26

TOWNSHIP 34 SOUTH, RANGE 7 EAST, W. M.

Owner # 35, Property # 1

3-1- (acreage corrected by interlineations)

Paul S. Logan, for James and Valerie Root

Andrew M. Hitchings, for TuleLake Irrigation District and on behalf of the Klamath Project Water Users

Justin Wirth, Oregon Department of Justice

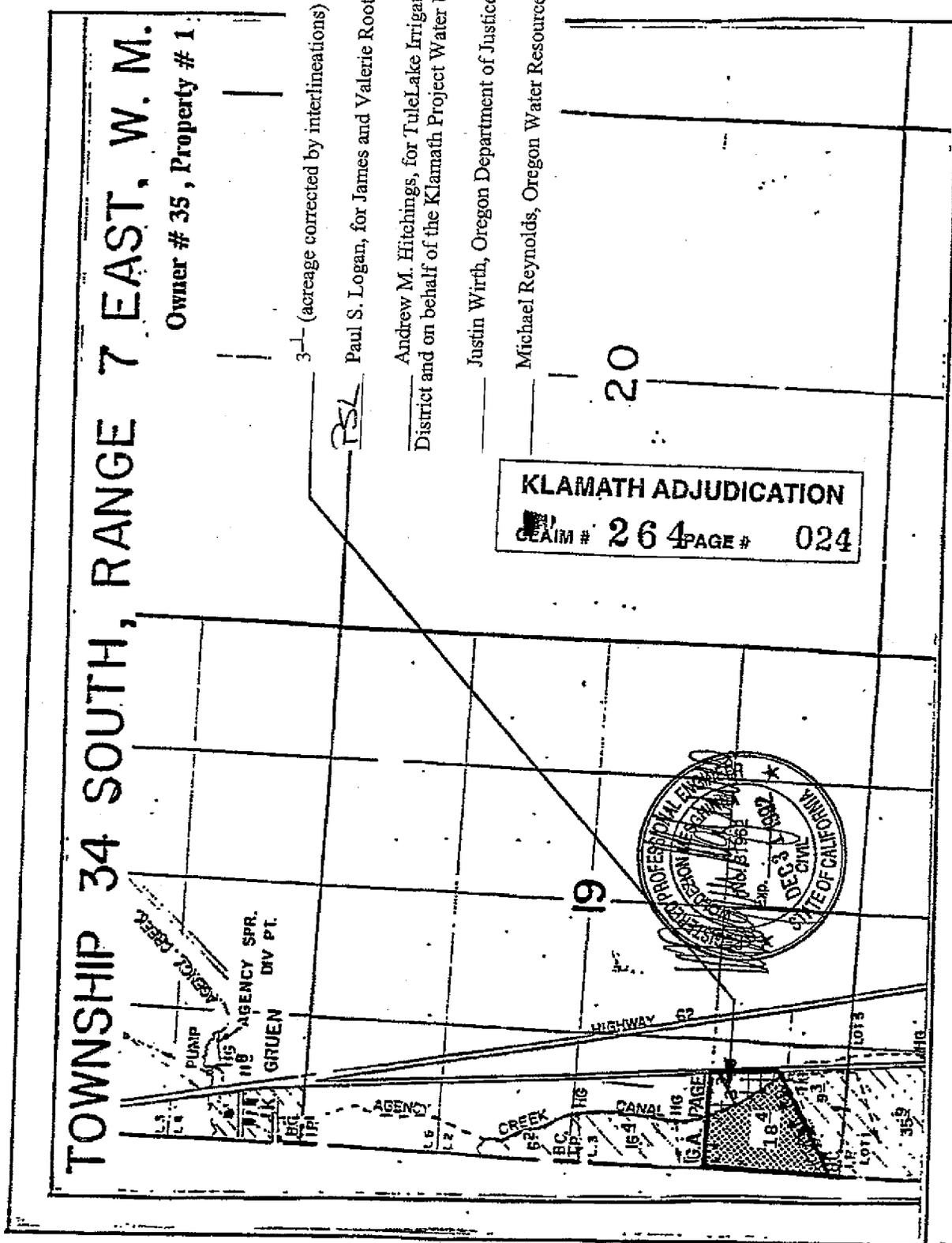
Michael Reynolds, Oregon Water Resources Dept.

20

KLAMATH ADJUDICATION
CLAIM # 264 PAGE # 024



19



Presently Irrigated Land

Practically Irrigable Acreage



By: Natural Resources Consulting Engineers Inc
1150 Addison St., Suite 204
Berkeley, Ca. 94702
Professional Engineers No. 10874



TOWNSHIP 34 SOUTH, RANGE 7 EAST, W. M.

Owner # 35, Property # 1.

3-1 (acreage corrected by interlineations)

PSL Paul S. Logan, for James and Valerie Root

AMK Andrew M. Hitchings, for TulicLake Irrigation District and on behalf of the Klamath Project Water Users

JW Justin Wirth, Oregon Department of Justice

MR Michael Reynolds, Oregon Water Resources Dept.

KLAMATH ADJUDICATION
CLAIM # 264 PAGE # 024



OWRD EXHIBIT 1

Exhibit G
Case 268, Claim 264

PAGE 24
Case 268

Predictably Irrigable Acreage

 Previously Irrigated Land

 By: National Resources Consulting Engineers Inc.

 1228 Addison St., Suite 204

 Berkeley, Ca. 94702

 NRC

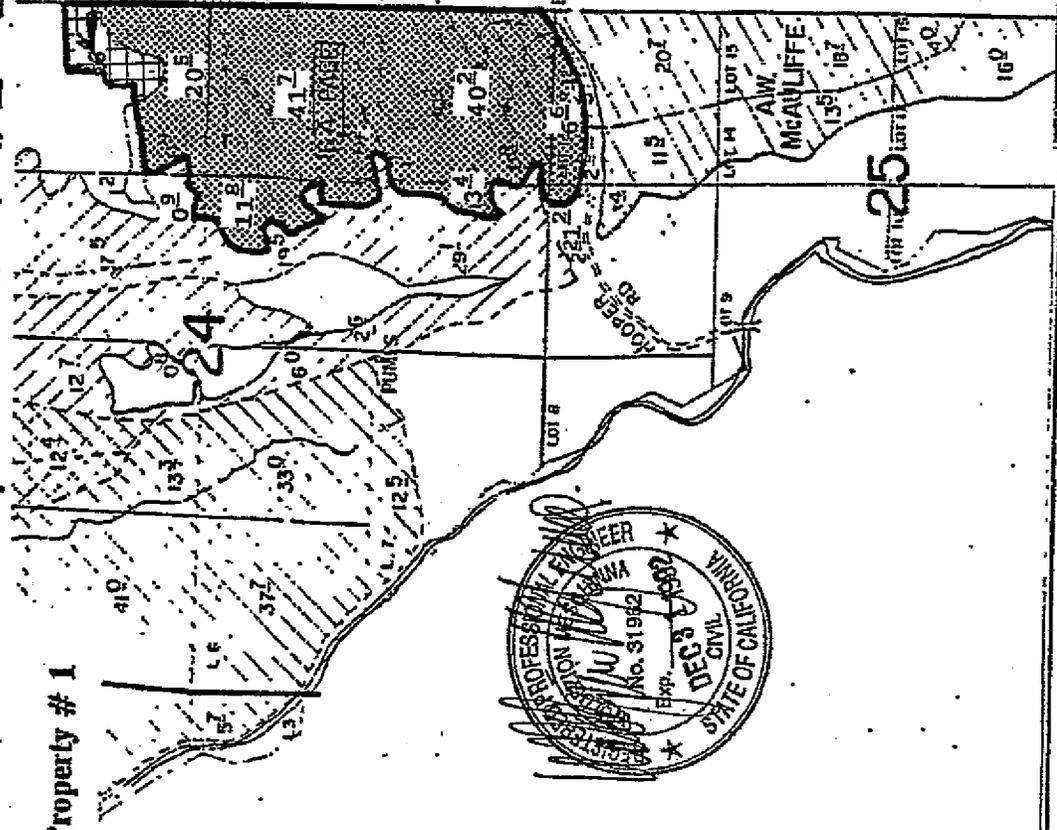
Professional Engineer No. 1014

TOWNSHIP 34 SOUTH, RANGE 7 1/2 EAST W.M.

Owner # 35, Property # 1

6¹ (acreage corrected by interlineation)

PSL Paul S. Logan, for James and Valerie Root
 Andrew M. Hitchings, for TuleLake Irrigation District and on behalf of the Klamath Project Water Users
 Justin Wirth, Oregon Department of Justice
 Michael Reynolds, Oregon Water Resources Dep



KLAMATH ADJUDICATION
 AIM # 264 PAGE # 023



By: Natural Resources Consulting Engineers Inc.
 1250 Addison St., Suite 204
 Berkeley, Ca. 94702
 (415) 841-7500

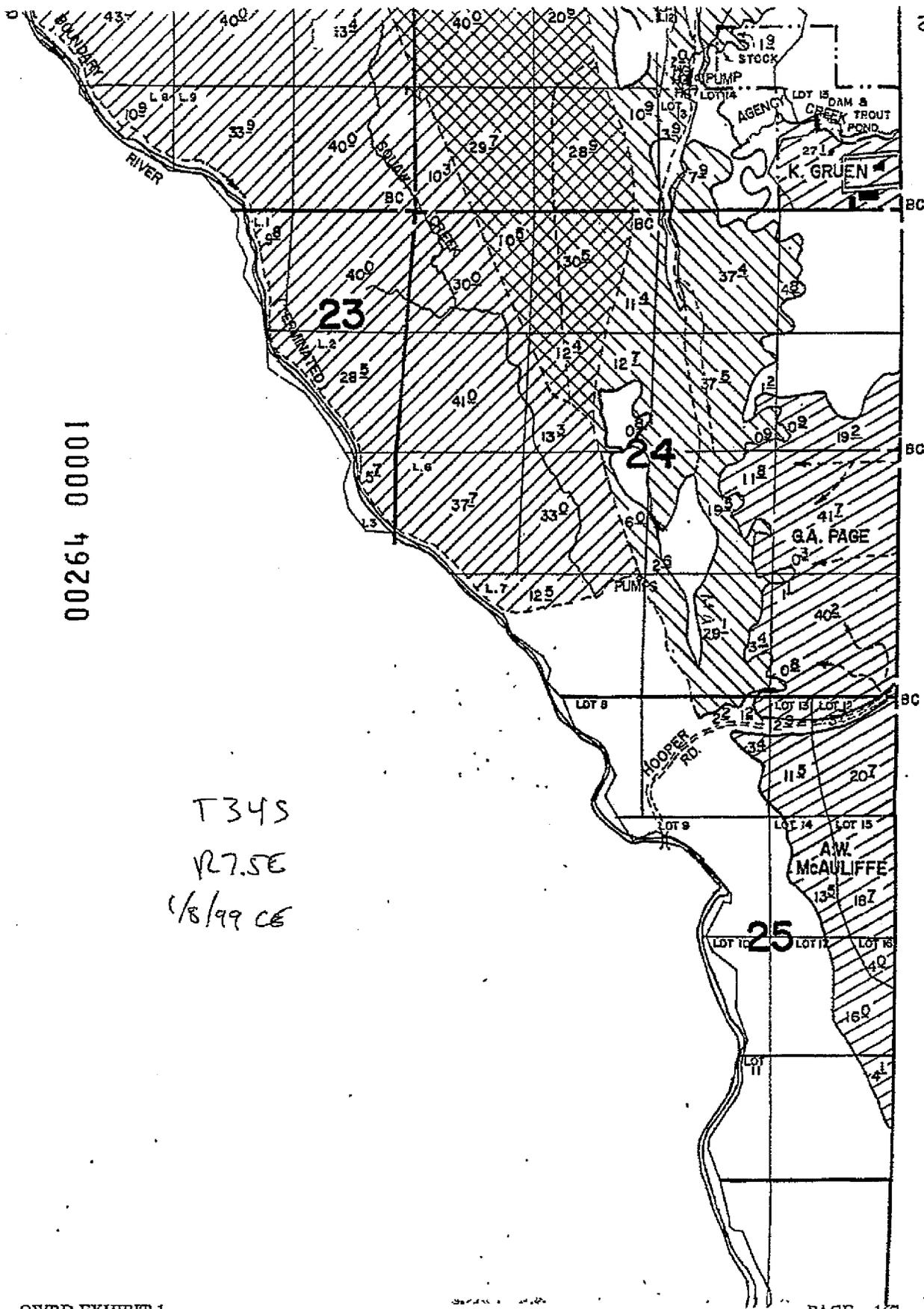
Practically Irrigable Acreage

Presently Irrigated Land

WIP FILE PAGE

00264 00001

T34S
R7.5E
1/8/99 CE



OWRD EXHIBIT 1

Exhibit I
Case 268, Claim 264

PAGE 167
Case 268