

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. Lusecombe; 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;	STIPULATION TO RESOLVE CONTEST 1742
Contestants	Case No. 69
	Claim: 266
	Contests: 1742 and 3547 ¹

vs.

Nancy Ridenour;
Claimant/Contestant.

Claimant/Contestant Nancy Ridenour, 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 266 for a federal reserved Indian water right was filed with OWRD by the Claimant.

¹ Don Vincent voluntarily withdrew from Contest 3547 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3547 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3547 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3547 on April 7, 2005.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 266.
3. On May 3, 2000, the Claimant filed a Statement of Contest of Preliminary Evaluation of Claim 266, Contest 1742.
4. The current point of diversion is the Chiloquin Dam within the NESE of Section 3, Township 35 South, Range 7 East, W.M., with a source from the Sprague River, tributary to the Williamson River.
5. On December 1, 2006, Claimant/Contestant timely filed an Affidavit and Request for Additional or Relocated Point(s) of Diversion pursuant to OAR 690-030-0085, describing an alternate or relocated point of diversion that may be added in the future.
6. The alternate or relocated point of diversion is located on the Williamson River, diverted at a point downstream of the Sprague River as required under OAR 690-030-0085 and is located within Lot 10, NENE of Section 21, Township 35 South, Range 7 East, W.M.
7. Claimant/Contestant and OWRD agree that Contest 1742 can be resolved without the need for a hearing pursuant to the following:

B. TERMS OF STIPULATION

1. Claimant/Contestant and OWRD agree that the Water Right Claim 266 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the attached Description of Water Right Claim 266.
2. Claimant/Contestant and OWRD agree that use of the original (“Chiloquin Dam”) point of diversion is allowed only until the Chiloquin Dam has been removed, at which time the alternate or relocated point of diversion shall be the only point of diversion for Claim 266.

3. The Sprague River is the source of water for this claim whether water is withdrawn from the Sprague River at the original point of diversion or from the Williamson River at the relocated point of diversion.

4. Claimant/Contestant and OWRD agree that use of water from the relocated point of diversion is authorized only if water is available at the original point of diversion.

5. Claimant/Contestant agrees that pursuant to the terms of this Stipulation, Contest 1742 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.

6. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 266 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 266 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 266, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

7. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 266 does not conform to the terms set forth in the attached Description of Water Right Claim 266, Claimant/Contestant reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 266 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 266.

8. Claimant/Contestant agrees 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Claimant/Contestant and OWRD shall each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:


Nancy Ridenour

10-9-07
Date

For the Oregon Water Resources Department

HARDY MYERS
Attorney General

Jesse D. Ratcliffe, #04394

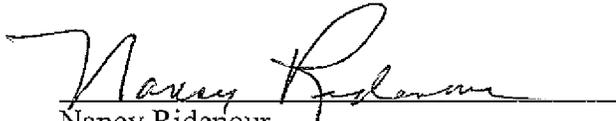
Date


Gerry Clark, OWRD Staff

Nov 5, 2007
Date

14. Claimant/Contestant and OWRD shall each bear their own costs and attorneys' fees.
15. This Stipulation shall be effective as of the date of the last signature hereto.

STIPULATED, AGREED, AND APPROVED BY:



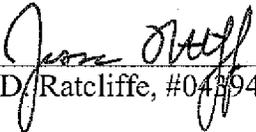
Nancy Ridenour

10-9-07

Date

For the Oregon Water Resources Department

HARDY MYERS
Attorney General



Jesse D. Ratcliffe, #041194

November 9, 2007

Date

Gerry Clark, OWRD Staff

Date

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

Original

Point Of Township Range Section Q/Q: Lot:
Diversion: 35 S 7 E 3 NESE

Alternate/Relocated

Point Of Township Range Section Q/Q: Lot:
Diversion: 35 S 7 E 21 NENE 10

Once the Chiloquin Dam has been removed, no water may be diverted from the Original Point of Diversion.

Rediversion (Water is rediverted from Modoc Point Irrigation District ditch at:)
Point 35 S 7 E 32 SENE 10

Priority: 10/14/1864

Use, Period Of Use: Period Of Use: Rate: Duty:
Use and Irrigation 03-01 to 10-16 .70 cfs 4.3 AFA
Quantity: Stockwater 03-01 to 10-16 480 gpd

The total quantity of water diverted from any combination of the original and alternate/relocated points of diversion may not exceed the quantity set forth above.

Place Of	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
Use:	35 S	7 E	32	SWNE	10	13.5
	35 S	7 E	32	SWNE	15	16.0
	Total Irrigated Acreage					29.5

INCHOATE WATER RIGHT CLAIM DESCRIPTION

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

Original

Point Of Township Range Section Q/Q: Lot:
Diversion: 35 S 7 E 3 NESE

Alternate/Relocated

Point Of Township Range Section Q/Q: Lot:
Diversion: 35 S 7 E 21 NENE 10

Once the Chiloquin Dam has been removed, no water may be diverted from the Original Point of Diversion.

Rediversion Point (Water is rediverted from Modoc Point Irrigation District ditch at:
35 S 7 E 32 SENE 10

Priority: 10/14/1864

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

The total quantity of water diverted from any combination of the original and alternate/relocated points of diversion may not exceed the quantity set forth above.

Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	35 S	7 E	32	SWNE	10, 15	8.5
	Total Practicably Irrigable Acreage					8.5

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 35 SOUTH, RANGE 7 EAST, W. M.

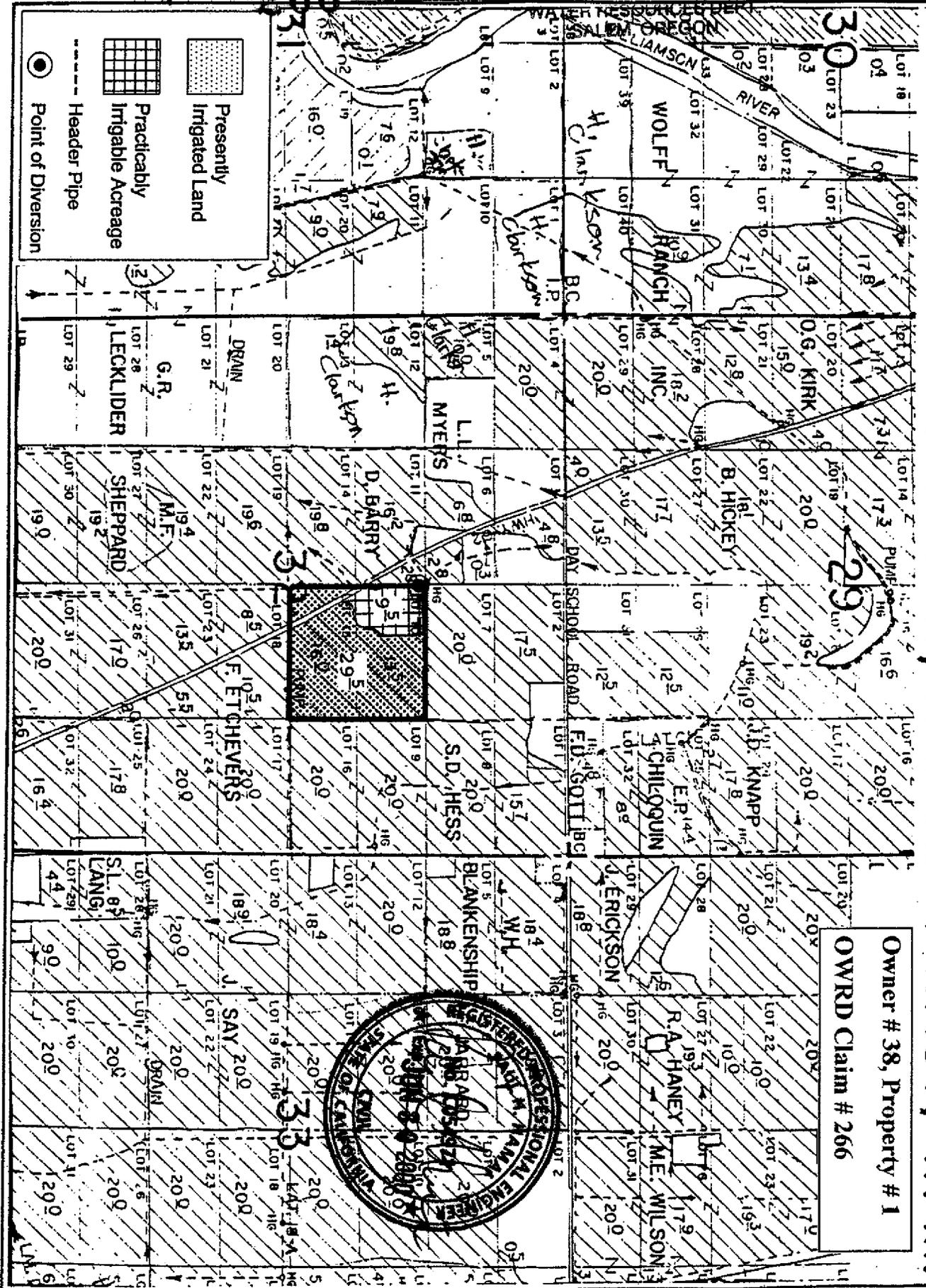
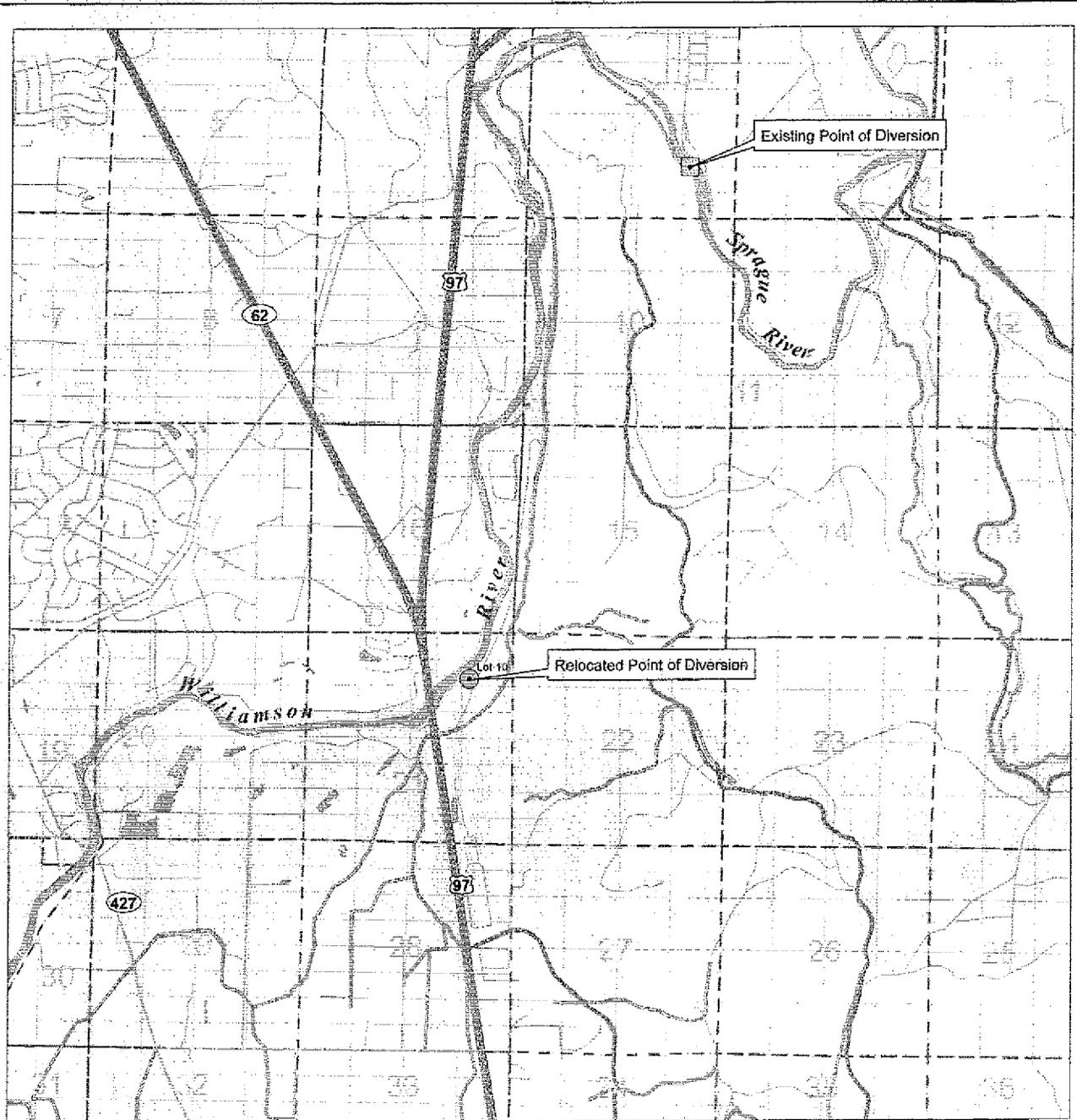


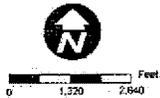
EXHIBIT "B" Page 1 of 2

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





EXISTING POINTS OF DIVERSION		
Point of Diversion	T35S R7E S3 SESE	126' East of the NW corner of the SESE of section 3
RELOCATED POINT OF DIVERSION		
Point of Diversion	T35S R7E S21 NENE	180' north and 180' east of the SW corner of the NENE of section 21, Lot 10



Disclaimer
 This map was prepared for the purpose of identifying the location of a water right only, and is not intended to provide legal dimensions or locations of property ownership lines.

LEGEND	
	Existing Point of Diversion
	Relocated Point of Diversion
	Water Bodies
	Streams and Canals
	Roads
	Sections
	Quarter Quarter Sections



Certified Water Right Examiner
Ronan Iglozia, PE CWRE
 2001 SW 57th Ave. Suite 1800
 Portland, Oregon 97224
 Oregon Certificate Number: 67274008

RECEIVED
 OCT 02 2008
 WATER RESOURCES DIV
 3024 N. 10th St.

Map for Alteration to Water Rights Claim #266
Relocated Point of Diversion
 Klamath Basin Adjudication
 Township 36 South, Range 7 East, W.M.
 Klamath County, Oregon
Nancy Aldenour
 22857 Moroc Point Road
 Chiloque, OR 97624

