

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

January 13, 2006

TO: ALL PARTIES IN KLAMATH BASIN ADJUDICATION OAH CASE 254

Re: Klamath Adjudication – Case No. 254, Claim No. 708, Contest Nos. 2746, 2747, 2748, 2749, 2757, 3075, 3513, 3819 and 4244
DOJ File No. 690-600-GN0225-03

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).

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse D. Ratcliffe".

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

JR1:tmc/GENO9670
Enclosures
c: Service List

**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; Klamath
Irrigation District; Klamath Drainage
District; Tulelake Irrigation District;
Klamath Basin Improvement District; Ady
District Improvement Co.; Enterprise
Irrigation District; Malin Irrigation District;
Midland District Improvement District;
Pine Grove Irrigation District; Pioneer
District Improvement Co.; 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 Co.; and Collins Products,
LLC,

**STIPULATION TO RESOLVE
CONTESTS**

Case No. 254

Claim No. 708

Contests 2746, 2747, 2748, 2749,
2757¹, 3075², 3513³, 3819, and 4244⁴

Contestants,

vs.

LaPaloma Enterprises, LP⁵,

Claimant/Contestant.

¹ Ambrose W. McAuliffe, Dwight Mebane, Elmore Nicholson, Richard Nicholson, and William Nicholson filed contest 2757 on May 8, 2000. Contest 2757 was withdrawn by Stipulation signed March 11, 2002.

² Water Watch of Oregon, Inc.'s Contest 3075 was dismissed. See ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTESTS, May 20, 2003.

³ Don Vincent voluntarily withdrew from Contest 3513 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3513 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contest 3513 on January 15, 2004.

⁴ The Klamath Tribes voluntarily withdrew Contest 4244, without prejudice. See KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (February 8, 2005).

⁵ Change of Ownership forms from the Mathis Family Trust to LaPaloma Enterprises, LP were submitted December 17, 1999 and December 23, 1999.

The Oregon Water Resources Department (hereinafter “OWRD”), Claimant/Contestant LaPaloma Enterprises, LP (hereinafter “Claimant”), Contestant the United States of America (hereinafter “United States”), and Contestant Klamath Project Water Users⁶ hereby agree and stipulate as follows:

A. STIPULATED FACTS

1. On January 24, 1991, the Claimant’s predecessor, the Mathis Family Trust, filed Claim 708 with OWRD. On December 17 and 24, 1999, the land designated as places of use in Claim 708 was conveyed to the Claimant.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 708 which denied the claim because the source had been previously adjudicated.
3. The following contests were filed to Claim 708: Contests 2746 (Parcel 3), 2747 (Parcel 4), 2748 (Parcel 5), and 2749 (Parcel 6) filed by Mathis Family Trust; Contest 3513, filed by the Klamath Project Water Users and Contest 3819, filed by the United States (hereinafter collectively “Contestants”). Contest 4209, filed by the Klamath Tribes, was voluntarily withdrawn on August 3, 2004.
4. On June 17, 2005, Administrative Law Judge Daina Upite (the “ALJ”) granted the United States’ and KPWU’s motions for ruling on the legal issues and deleted places of use from Claim 708 designated as Parcel 3 and Parcel 6 because those portions of Claim 708 were precluded by a prior adjudication. ORDER ON MOTION FOR RULING ON

⁶ Klamath Irrigation District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Co.; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Co.; Poe Valley Improvement District; Shasta View 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 Co.; and Collins Products, LLC, (hereinafter collectively “Klamath Project Water Users”).

LEGAL ISSUES, Case 254, Claim 708 (June 17, 2005). The ALJ's Order resolved Contests 2746 (Parcel 3) and 2749 (Parcel 6) by deleting Parcels 3 and 6 from Claim 708.

5. Claimants, Contestants, and OWRD agree that Contests 2747, 2748, 3513 and 3819 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

B. TERMS AND PROVISIONS

1. Claimant, Contestants, and OWRD agree that Claim 708 should be approved by the Adjudicator as described below:

PARCEL 4

POINT OF DIVERSION LOCATION: NW ¼ NW ¼, Section 26, Township 33 South, Range 7 ½ East, W.M.

SOURCE: Fort Creek, tributary to the Wood River

USE: Irrigation of 105.8 acres and stockwater use as incidental to irrigation

RATE OF DIVERSION FOR IRRIGATION AND LIVESTOCK: 1.48 cubic feet per second ("cfs") measured at the point of diversion

DUTY: 4.0 Acre-Feet/Acre

PERIOD OF USE FOR IRRIGATION AND LIVESTOCK: April 1 through October 1

PRIORITY DATE: October 14, 1864

PLACE OF USE:

NE ¼ NE ¼	6.5	ACRES IRRIGATION AND LIVESTOCK
NW ¼ NE ¼	20.0	ACRES IRRIGATION AND LIVESTOCK
SW ¼ NE ¼	40.0	ACRES IRRIGATION AND LIVESTOCK
SE ¼ NE ¼	12.1	ACRES IRRIGATION AND LIVESTOCK

Lot 9 (NE ¼ NW ¼) 6.6 ACRES IRRIGATION AND LIVESTOCK

Lot 10 (SE ¼ NW ¼) 20.6 ACRES IRRIGATION AND LIVESTOCK

SECTION 3

TOWNSHIP 34 SOUTH, RANGE 7 ½ EAST, W.M.

PARCEL 5

POINTS OF DIVERSION LOCATION:

Fort Creek: NW ¼ NW ¼, Section 26, Township 33 South, Range 7 ½ East,
W.M.

Crooked Creek: NW ¼ NE ¼, Section 26, Township 33 South, Range 7 ½ East,
W.M.

SOURCE: Crooked Creek and Fort Creek, tributary to the Wood River

USE: Irrigation of 99.6 acres and livestock.

RATE OF DIVERSION FOR IRRIGATION:

0.58 cfs from Crooked Creek measured at the point of diversion

0.42 cfs from Fort Creek measured at the point of diversion

AMOUNT ACTUALLY BENEFICIALLY USED FOR LIVESTOCK: 20,400 gallons
per day measured at the place of use; livestock drink directly from all sources and
ditches. The 20,400 gallons per day set forth herein is separate from the Rate of
Diversion for Irrigation, set forth above, and shall not be measured as a portion of the
Rate of Diversion for Irrigation.

DUTY: 4.0 Acre-Feet/Acre for irrigation

PERIOD OF USE FOR IRRIGATION: April 1 through October 1

PERIOD OF USE FOR LIVESTOCK: January 1 through December 31

PRIORITY DATE: October 14, 1864

PLACE OF USE:

SERVED FROM FORT CREEK

NW ¼ SW ¼	21.1	ACRES IRRIGATION AND LIVESTOCK
SW ¼ SW ¼	18.7	ACRES IRRIGATION AND LIVESTOCK
SE ¼ SW ¼	28.1	ACRES IRRIGATION AND LIVESTOCK
NE ¼ SW ¼	2.7	ACRES IRRIGATION AND LIVESTOCK

SERVED FROM CROOKED CREEK

SE ¼ SW ¼	8.7	ACRES IRRIGATION AND LIVESTOCK
NE ¼ SW ¼	20.3	ACRES IRRIGATION AND LIVESTOCK

SECTION 35

TOWNSHIP 33 SOUTH, RANGE 7 ½ EAST, W.M.

The place of use is shown more particularly on the map attached hereto, which is incorporated by reference as if set forth fully herein.

2. The parties other than OWRD agree that the maximum number of stock permitted for livestock watering under this right shall not exceed 1,700 head.

3. Claimant, Contestants, and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contests 2747, 2748, 3513 and 3819 have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on these contests to Claim 708.

4. Based on the Stipulation of Claimant, Contestants, and OWRD that Claim 708 and the Contests thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 708 be

withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 708 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B.1., above.

5. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 708 does not conform to the terms set forth in paragraph B.1., above, Claimant and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 708 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 708.

6. The Parties agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. The parties agree that this 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 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. This Stipulation shall be binding upon and shall inure to the benefit of the Parties 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.

8. Each Party to 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 party and bind that party to the terms of the Stipulation.

9. 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.

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

11. 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.

12. The Parties agree to bear their own costs and attorney fees.\

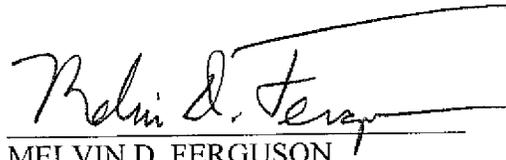
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13. This Stipulation shall be effective as of the date of the last signature hereto.

STIPULATED, AGREED AND APPROVED BY:

For Claimant/Contestant LaPaloma Enterprises, LP:

Dated: January 10, 2006



MELVIN D. FERGUSON

Attorney

514 Walnut Ave.

Klamath Falls, OR 97601

Phone: 541-850-2828

Fax: 541-883-1923

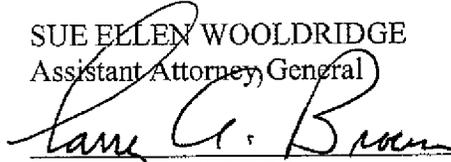
e-mail: *MelvinDFerguson@aol.com*

ATTORNEY FOR LAPALOMA
ENTERPRISES, LP

For Contestant, the United States of America:

Dated: January _____, 2006

SUE ELLEN WOOLDRIDGE
Assistant Attorney General



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Attorney

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ATTORNEYS FOR THE UNITED
STATES OF AMERICA

For Contestants, the Klamath Project Water Users:

Dated: January 10, 2006



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Attorney

ANDREW M. HITCHINGS

Attorney

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e-mail: ahitchings@lawssd.com

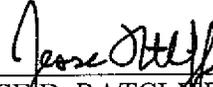
psimmons@lawssd.com

ATTORNEYS FOR KLAMATH PROJECT
WATER USERS

For the Oregon Water Resources Department:

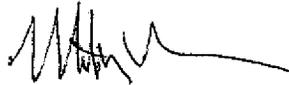
Dated: January 12, 2006

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Attorney General



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Assistant Attorneys General
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steve.sanders@doj.state.or.us

Dated: January 12, 2006



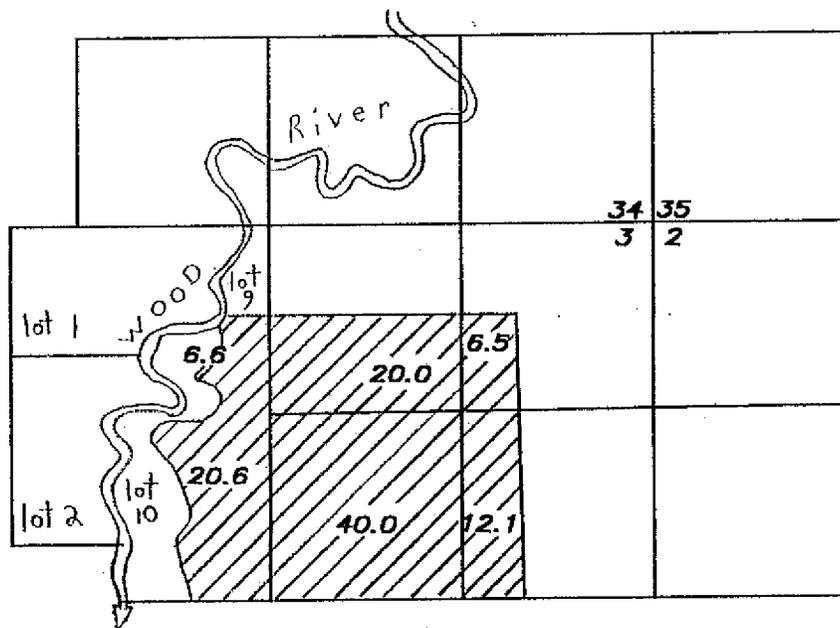
MICHAEL J. REYNOLDS
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725 Summer Street, NE, Suite A
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Telephone: (503) 986-0820
Telefax: (503) 986-0901
e-mail: mike.j.reynolds@wrp.state.or.us

MAP TO ACCOMPANY STATEMENT AND PROOF OF CLAIM TO USE OF WATER OF THE KLAMATH RIVER AND ITS TRIBUTARIES

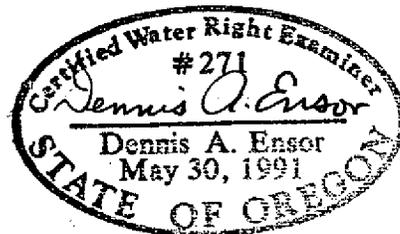
SITUATED IN THE N1/2 OF SECTION 3, T34S, R71/2 EWM
KLAMATH COUNTY, OREGON
JANUARY, 2006

MAP PREPARED FROM
FINAL PROOF SURVEY MAP
UNDER APPLICATION # 39084,
PERMIT # 29099

MAP PREPARED FOR
--LaPALOMA ENTERPRISES L.P.--



SCALE
1' = 1320'



EXPIRES 12/31/07

CLAIM NUMBER
PARCEL 4 OF CLAIM # 708

TOTAL AREA
--105.8 ACRES--

DIVERSION POINT:
NW1/4 NW1/4, SECTION 26, T33S, R7 1/2 EWM

SOURCE:
FORT CREEK, TRIBUTARY TO THE WOOD RIVER

THE PURPOSE OF THIS MAP IS TO IDENTIFY
THE LOCATION OF THE WATER RIGHT. IT IS NOT
INTENDED TO PROVIDE INFORMATION RELATIVE TO
THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY
LINES.

TRU-LINE SURVEYING, INC.
2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603

Exhibit "A"
Page 1 of 1

**MAP TO ACCOMPANY
STATEMENT AND PROOF OF
CLAIM TO USE OF WATER OF THE
KLAMATH RIVER AND ITS TRIBUTARIES**

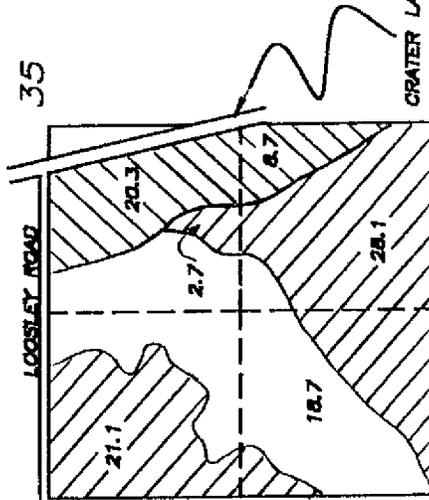
SITUATED IN THE SW1/4
OF SECTION 35, T33S, R7 1/2EWM,
KLAMATH COUNTY, OREGON
JANUARY, 2008

MAP PREPARED FOR
-LaPALOMA ENTERPRISES L.P.-

MAP PREPARED FROM
--HKM ENGINEERING--
--AERIAL PHOTOGRAPH--

TOTAL AREA
99.6 ACRES
CROOKED CREEK--29.0 ACRES
FORT CREEK--70.6 ACRES
AS SHOWN ON THE 9/8/1993 AERIAL
AND LETTER FROM HKM ENGINEERING
DATED AUGUST 30, 2005

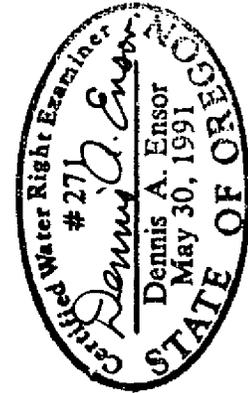
CLAIM NUMBER
PARCEL 5 OF CLAIM # 708
CRATER LAKE HIGHWAY NO. 82



/// IRRIGATED LANDS - CROOKED CREEK
/// IRRIGATED LANDS - FORT CREEK



SCALE
1' = 1320'



DIVERSION POINT:
FORT CREEK: NW1/4 NW1/4, CROOKED CREEK; NW1/4
NE1/4, BOTH FROM THE NW CORNER OF SECTION 26,
T33S, R7 1/2 EWM, IN THE COUNTY OF KLAMATH

TRU-LINE SURVEYING, INC.
2333 SUMMERS LANE
KLAMATH FALLS, OREGON 97603

EXPIRES 12-31-07

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE
LOCATION OF THE WATER RIGHT APPLICATION. IT IS NOT INTENDED
TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF
PROPERTY OWNERSHIP BOUNDARY LINES.

Exhibit "B"
Page 1 of 1

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2006, I served the within STIPULATION TO RESOLVE CONTESTS on the parties hereto 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
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The Klamath Tribes
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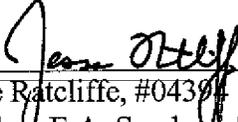
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