

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 17, 2007

TO ALL PARTIES:

Re: Klamath Adjudication – Case No. 118 , Claim No. 142, Contest Nos. 33, 2851,
3136, 3400, 3826 AND 4167
DOJ File No. 690-600-GN0524-01

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve Contests and Certificate of Service in the above-entitled matter. This agreement resolves all the remaining issues in this case. 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,

A handwritten signature in cursive script, appearing to read "Jesse Ratcliffe".

Jesse D. Ratcliffe
Assistant Attorney General
Natural Resources Section

JDR:tmc/GENV3422
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

~~Water Watch of Oregon, Inc.; Horsefly Irrigation District; Langell Valley Irrigation District; Medford Irrigation District; Rogue River Valley Irrigation District; United States of America; The Klamath Tribes; 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 Company; 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 Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC;~~

Contestants,

vs.

Jeld-Wen, Inc. (Running Y Ranch)
Claimant/Contestant.

STIPULATION TO RESOLVE
CONTESTS 33, 3400, and 3826 TO
CLAIM 142

Consolidated Case No. 118

Claim: 142

Contests: 33, 2851,¹ 3136,² 3400,³
3826, and 4167⁴

¹ Water Watch of Oregon, Inc. voluntarily withdrew, without prejudice, Contest 2851 on February 19, 2003.

² Horsefly and Langell Valley Irrigation Districts voluntarily withdrew, without prejudice, from Contest 3136. See VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT dated May 28, 2002. Medford Irrigation District and Rogue River Valley Irrigation District resolved Contest 3136 by stipulation. See STIPULATION TO RESOLVE CONTEST 3136 AGAINST CLAIM NO. 142 dated October 17, 2006.

³ Don Vincent voluntarily withdrew from Contest 3400 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3400 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contest 3400 on January 15, 2004. The remaining entities making up the KPWU agreed to voluntarily withdraw Contest 3400 on April 19, 2007, upon receiving a fully executed copy of this Stipulation.

⁴ The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4167. See KLAMATH TRIBES WITHDRAWAL OF CONTESTS dated August 14, 2006.

INTRODUCTION

JELD-WEN, inc. (“Claimant”) and Contestant the United States of America (the “United States” or “Contestant”) (the Claimant and Contestant collectively, the “Parties”), and the Oregon Water Resources Department (“OWRD”), agree and stipulate as follows:

A. STIPULATED FACTS

1. On January 31, 1991, Claimant’s predecessor-in-interest filed Claim 142 with OWRD. The claimed place of use for Claim 142 is certain real property located in portions of Section 31, Township 37 South, Range 8 East of the Willamette Meridian (“W.M.”), and Sections 5, 6, 7, and 8, Township 38 South, Range 8 East, W.M.
2. On October 4, 1999, OWRD issued its Preliminary Evaluation of Claim 142, preliminarily denying the claim.
3. The following contests were filed to Claim 142: Contest 33, filed by Claimant’s predecessor-in-interest; Contest 2851, filed by WaterWatch of Oregon, Inc.; Contest 3136, filed by Langell Valley, Horsefly, Medford, and Rogue River Valley Irrigation Districts; Contest 3400, filed by the Klamath Project Water Users (“KPWU”)⁵; Contest 3826, filed by the United States; and Contest 4167, filed by the Klamath Tribes. On February 19, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew, without prejudice, Contest 2851. Langell Valley and Horsefly Irrigation Districts voluntarily withdrew from Contest 3136 on May 28, 2002. Medford and Rogue River Valley Irrigation Districts’ Contest 3136 was resolved by stipulation. *See* Stipulation to Resolve Contest 3136 Against Claim 142 dated October 17, 2006. On December 4, 2000, Don Vincent voluntarily withdrew from Contest 3400; on June 24, 2002, Berlva Pritchard voluntarily withdrew from Contest 3400; on January 15, 2004, Klamath Hills District

⁵ KPWU includes 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 Company; 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 Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Coilins Products, LLC.

Improvement Company voluntarily withdrew from Contest 3400; and on April 19, 2007, the remaining entities making up the KPWU agreed to voluntarily withdraw Contest 3400 upon receiving a fully executed copy of this Stipulation. On August 14, 2006, the Klamath Tribes voluntarily withdrew, without prejudice, Contest 4167. Contests 33 and 3826 are collectively referred to hereinafter as the "Contests."

4. On October 18, 2006, Claimant submitted an unopposed motion to supplement the record with an assignment of the claim by Claimant's predecessor-in-interest (Geary Bros. Caledonia Ranch, a co-tenancy) to Claimant dated August 10, 2006.

5. The Parties and OWRD agree the Contests can be resolved without the need for further proceedings, pursuant to the terms below.

B. TERMS AND CONDITIONS

1. The Parties and the OWRD agree that Claim 142 should be approved by the Adjudicator as described below:

- a. **SOURCE:** Upper Klamath Lake, tributary to Klamath River.
- b. **LOCATION OF POINTS OF DIVERSION:** Point of Diversion ("POD") #2 is a headgate located in Lot 3, SESW, Section 31, Township 37 South, Range 8 East, W.M. The approximate location of the headgate is shown on the map included in OWRD Exhibit 1 at pages 57 and 58, a true and correct copy of which map is attached hereto at **Exhibit A** (the "Claim Map"). POD #1 is a headgate located in Lot 5, SESW, Section 6, Township 38 South, Range 8 East, W.M. The approximate location of this second headgate is shown on **Exhibit A**.
- c. **USE:** Irrigation of 766.4 acres (71.4 acres POD #1, 695.0 acres POD #2), and incidental livestock watering of 100 head of cattle.
- d. **DIVERSION RATE:** 19.16 cubic feet per second ("cfs") (766.4 acres x 1/40th cfs per acre) (1.785 cfs POD #1, 17.375 cfs POD #2)
- e. **DUTY:** 3.0 acre-feet/acre

f. **PERIOD OF USE:** April 15 through January 15

g. **PRIORITY DATE:** December 31, 1889

h. **PLACE OF USE:**

Use of water under Claim 142 on the following place of use, when combined with use of water under any other right adjudicated in the Klamath Basin Adjudication for any portion or all of the same place of use, may not exceed the rate and duty necessary for beneficial use as determined in the Klamath Basin Adjudication.

i. **PLACE OF USE FOR DIVERSION FROM POD #1:**

Township 38 South, Range 8 East, W.M.

Section 6: Lot 5, SESW (4.6 acres); SWSE (3.3 acres)

Section 7: Lot 12, NWNE (31.8 acres); Lot 12, SWNE (4.3 acres); Lot 11, NENW (19.4 acres); Lot 10, SENW (7.5 acres); Lot 5, SENW (0.5 acres)

ii. **PLACE OF USE FOR DIVERSION FROM POD #2:**

Township 37 South, Range 8 East, W.M.

Section 31: Lot 1, SWNE (4.0 acres); Lot 1, SENW (2.8 acres); Lot 2, NWSE (27.5 acres); Lot 2, NESW (21.0 acres); Lot 3, SWSE (40.0 acres); Lot 3, SESW (25.8 acres); SESE (14.4 acres)

Township 38 South, Range 8 East, W.M.

Section 5: NWNW (2.9 acres); SWNW (25.0 acres); NESW (13.7 acres); NWSW (40.0 acres); Lot 4, SWSW (36.2 acres); Lot 4, SESW (1.8 acres)

Section 6: NENE (35.4 acres); NWNE (40.0 acres); SWNE (37.4 acres); SENE (37.4 acres); Lot 9, NENW (38.0 acres); Lot 8, NWNW (1.3 acres); Lot 2, SWNW (0.6 acres); Lot 2, SENW (1.0 acres); Lot 7, SENW (35.4 acres); Lot 7, SWNW (1.4 acres); Lot 6, NESW (22.0 acres); Lot 3, NESW (5.7 acres); Lot 5, SESW (2.8 acres); NESE (40.0 acres); NWSE (40.0 acres); SWSE (33.7 acres); SESE (40.0 acres)

Section 7: Lot 1, NENE (0.5 acres); Lot 13, NENE (20.7 acres); Lot 12, NWNE (4.3 acres)

Section 8: Lot 11, NWNW (2.3 acres)

The 766.4 acres are shown more particularly on the Claim Map attached hereto as **Exhibit A.**

2. The Parties and OWRD agree that under the terms and provisions of this Stipulation, the Contests have been satisfactorily resolved, and when viewed in light of the Stipulation to Resolve Contest 3136 Against Claim No. 142, such resolution of the Contests ends the need for further proceedings before the Administrative Law Judge on the Contests.

3. Based on the Stipulation of the Parties that Claim 142 and the Contests can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 142 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 142 be approved in the Findings of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B.1 above, and further in accordance with the Stipulation to Resolve Contest 3136 Against Claim No. 142.

4. If the Findings of Fact and Order of Determination issued by the Adjudicator for Claim 142 does not conform with the terms set forth in paragraph B.1, above, the Parties reserve any rights they may have to file exceptions to the Findings of Fact and Order of Determination as to Claim 142 with the Adjudicator or in the courts, and otherwise reserve any rights they may have to participate in any further proceedings authorized by law concerning Claim 142.

5. The Parties and OWRD agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending administrative action. The Parties and OWRD agree that no offers and/or compromises made in the course of negotiations shall be construed as admissions against interest. The Parties and OWRD agree that this Stipulation shall not be offered as evidence or treated as an admission regarding any matter

and may not be used in proceedings on any other claim or contest whatsoever, except that this Stipulation may be used in any future proceeding to interpret and/or enforce the terms of this Stipulation. Further, the Parties and OWRD 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, and further agree that neither the Stipulation nor any of its terms shall affect the rights or obligations, if any, of the Parties to Contract No. I8r-0814, dated April 21, 1937, at OWRD Exh. 1 (Claim No. 144), pp. 101-107, between the Claimant's predecessor in interest and the United States concerning, among other things, a supply of water from Upper Klamath Lake for a portion or all of the claimed place of use, including the right to seek judicial relief to enforce Contract No. I8r-0814, other than as expressly set forth in this Stipulation.

6. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and OWRD and their respective heirs, executors, administrators, 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.

7. Each signatory 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 signatory and bind that signatory to the terms of the Stipulation.

8. The terms, provisions, conditions, and covenants of this Stipulation are not severable; however, 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. The Stipulation may be executed in several counterparts. 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 the terms of this Stipulation are contractual and not merely a recital.

11. In settling their contests, the Parties do not waive any issue or argument regarding the administration of any water right granted to them in this adjudication.

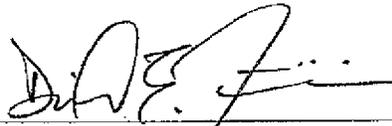
12. The Parties and OWRD agree to each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For Claimant JELD-WEN, inc.:

Dated: 7/21, 2007



David E. Filippi, OSB No. 96509
Stoel Rives LLP
Of Attorneys for Claimant

For Contestant the UNITED STATES OF AMERICA:

RONALD J. TENPAS
Acting Assistant Attorney General

Dated: _____, 2007

Stephen R. Palmer
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
Of Attorneys for Contestant the United States
of America

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STIPULATED, AGREED, AND APPROVED BY:

For Claimant JELD-WEN, inc.:

Dated: _____, 2007

David E. Filippi, OSB No. 96509
Stoel Rives LLP
Of Attorneys for Claimant

For Contestant the UNITED STATES OF AMERICA:

RONALD J. TENPAS
Acting Assistant Attorney General

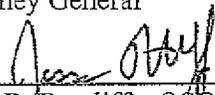
Dated: July 19, 2007

Stephen R. Palmer
Stephen R. Palmer
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
Of Attorneys for Contestant the United States
of America

For OREGON WATER RESOURCES DEPARTMENT:

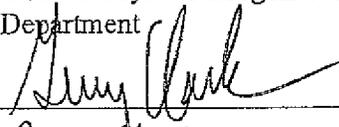
HARDY MEYERS
Attorney General

Dated: August 8, 2007



Jesse D. Ratcliffe, OSB No. 04394
Of Attorneys for Oregon Water Resources
Department

Dated: Aug. 8, 2007



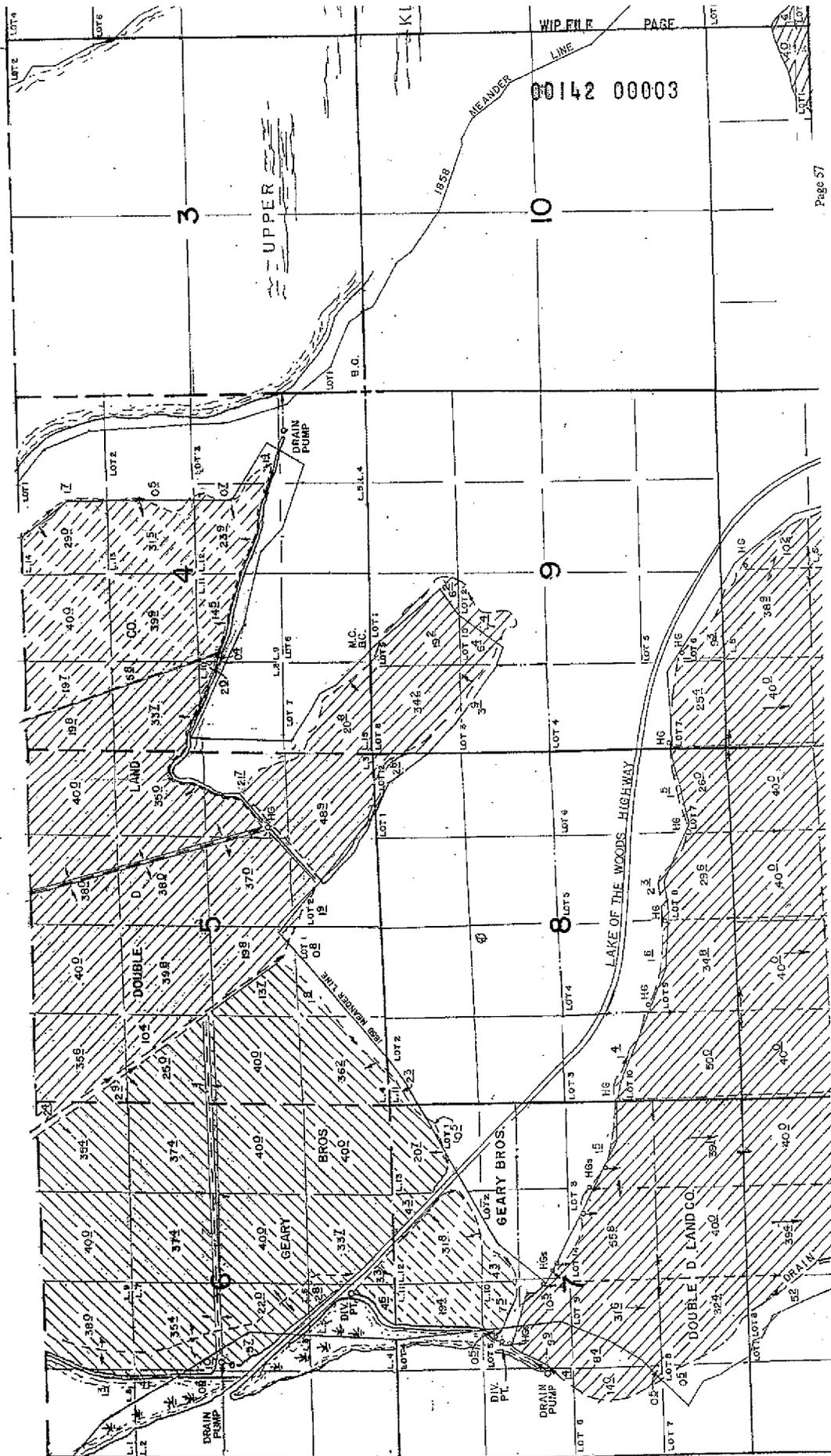
Gerry Clark
Agency Representative for
Oregon Water Resources Department *Staff*

EXHIBIT A

[attached]

TOWNSHIP 38 SOUTH, RANGE 6 EAST, W.M.

5/4/98 JC



00142 00003

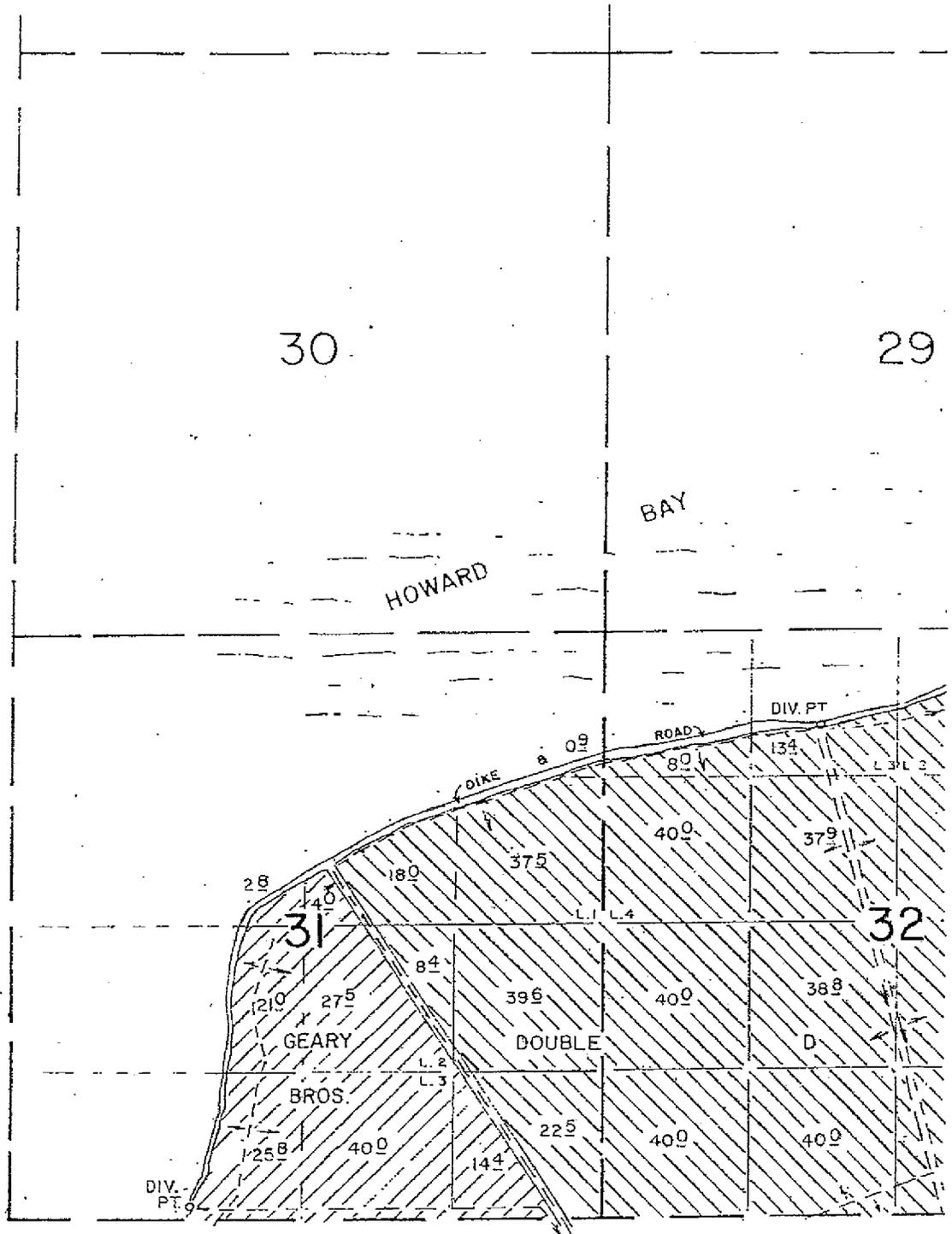
Page 57

EXHIBIT "A"
Page 1 of 2

WIP FILE PAGE

00142 00004

THE 1888 SURVEY BY E.H. FISHER IN SEC 33. THE REMAINDER WAS CL AREA. PARENTLY WAS PATENTED TO BENEFIT OF SURVEY. THE LOTS AND WERE PROTRACTED BASED ON "SWORN OF NOTES THE MEANDER LINE WAS 1 ACRES PER LOT MAY NOT CORRESPON



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5/4/98 JL

CERTIFICATE OF SERVICE

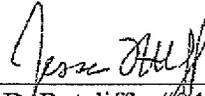
I hereby certify that on the 17th day of September 2007, I served the within
LETTER TO ALL PARTIES AND STIPULATION TO RESOLVE CONTESTS in
CASE 118 on the parties hereto by e-mail and by regular first-class mail (where no
e-mail address is listed below), a true, exact and full copy thereof to:

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@wrđ.state.or.us](mailto:dwright.w.french@wrđ.state.or.us)
teri.k.hranac@wrđ.state.or.us

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US Bureau of Reclamation
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2800 Cottage Way, Room E-1712
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Jesse D. Ratcliffe, #04394
Assistant Attorney General