

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 21, 2006

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 178, Claim No. 34, Contest Nos. 2799,
3445, 3782, 4090, and 4947
DOJ File No. 690-600-GN0149-03

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,

Jesse D. Ratcliffe
Assistant Attorney General
Natural Resources Section

JDR:tmc/GENS3516
Enclosure
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; The Klamath Tribes; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady Ditch Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; 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.; Van Brimmer Ditch Co.; Plevna District Improvement Company; Collins Products, LLC; ~~Thomas W. Mallams~~,
Contestants,

vs.

The Nature Conservancy,
Claimant/Contestant.

**STIPULATION TO RESOLVE
CONTESTS 2799, 3782, and 4090**

Case No. 178
Claim No. 34
Contest Nos. 2799, 3445, 3782, and 4090
and 4947

Claimant The Nature Conservancy ("TNC"), Contestants the United States of America (the "United States") and the Klamath Tribes (collectively, "Parties"), and the Oregon Water Resources Department (the "OWRD") hereby agree and stipulate and request the Adjudicator to resolve the above-captioned Claim and Contests as follows.

A. STIPULATED FACTS

1. On January 31, 1991, TNC filed Claim 34 in the Klamath Basin Adjudication.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 34, preliminarily approving significant portions of the water right sought under Claim 34, subject to certain terms and conditions.

3. On May 3, 2000, Thomas W. Mallams filed contest 4947 to Claim 34. Thomas W. Mallams is not a party to this Stipulation. His contest was dismissed May 1, 2006.

4. On May 4, 2000, the United States filed Contest 3782.

5. On May 5, 2000, the Klamath Tribes filed Contest 4090.

6. On May 8, 2000, TNC filed Contest 2799 to Claim 34 contesting the Adjudicator's Preliminary Evaluation.

7. On May 8, 2000, the Klamath Project Water Users¹ (the "KPWU") filed Contest 3445 to Claim 34. KPWU are not a party to this Stipulation, their Contest 3445 being withdrawn by Stipulated Withdrawal of Contest No. 3445.

8. The Parties and OWRD agree that Contests 2799, 3782 and 4090 can be resolved without need for hearing pursuant to the terms outlined below.

9. The Parties have also agreed to the terms set forth in the "Appendix Agreement of Additional Terms in Case 178, Claim 34" attached hereto and incorporated herein by this reference and made a part hereof. All references to the Stipulation herein shall mean and include the Stipulation together with said Appendix Agreement of Additional Terms, and all Attachments to this Stipulation.

B. TERMS OF THE AGREEMENT

1. TNC, the United States, the Klamath Tribes, and the OWRD agree that the terms of the water right derived from Claim 34 in this Adjudication are as follows:

¹ The KPWU includes each of the Klamath Irrigation District, Klamath Drainage District, Tullake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Co., Enterprise Irrigation District, Klamath Hills District Improvement Company, 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, Modoc Lumber Co., Bradley S. Luscombe, Randy Walthall and Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Company and Collins Products, LLC.

a. POINT OF DIVERSION LOCATIONS: The points of diversion are described and located as follows:

Name of POD Structure	POD Designation on Map	Location of Point of Diversion
1- Sycan River Weir 2 - Reen Ditch	C-2	1810 feet South and 2040 feet West of the NE corner of Section 21, Township 32S, Range 14E, W.M.
2- Sycan River Weir 3	D	380 feet South and 2360 feet West of the NE corner of Section 20, Township 32S, Range 14E, W.M.
3- Sycan River Weir 6	E	2550 feet South and 850 feet West of the NE corner of Section 3, Township 33S, Range 13E, W.M.
4- Long Creek Weir 7	F	920 feet South and 1220 feet East of the NW corner of Section 3, Township 33S, Range 13E, W.M.
5- Dry Creek Weir	G	1310 feet North and 1850 feet East of the SW corner of Section 15, Township 32S, Range 13E, W.M.
6- South Fork Ditch	H	1950 feet South and 1770 feet West of the NE corner of Section 4, Township 32S, Range 13E, W.M.
7- South Fork Step Pool 1	H-1	430 feet South and 2620 feet East of the NW corner of Section 11, Township 32S, Range 13E, W.M. , Township 32S, Range 13E, W.M.
8- South Fork Step Pool 2	H-2	2100 feet North and 1570 feet West of the SE corner of Section 11, Township 32S, Range 13E, W.M.
9- Section Line Ditch	H-3	0 feet North and 1610 feet West of the SE corner of Section 11, Township 32S, Range 13E, W.M.
10- Small's Ditch	H-4	1800 feet South and 1550 feet West of the NE corner of Section 4, Township 32S, Range 13E, W.M.
11- North Fork Main Weir	H-5	1760 feet South and 1620 feet West of the NE corner of Section 4, Township 32S, Range 13E, W.M. , Township 32S, Range 13E, W.M.
12- Coyote Creek South Ditch	I-1	2100 feet North and 1200 feet West of the SE corner of Section 27, Township 31S, Range 13E, W.M.
13- Coyote Creek Main Weir	I-2	2020 feet North and 1300 feet West of the SE corner of Section 27, Township 31S, Range 13E, W.M.
14- Pole Creek Spreader Weir	J	1460 feet North and 640 feet West of the SE corner of Section 23, Township 31S, Range 13E, W.M.

The manner of diversion at each point of diversion shall be as described in Attachment 1 annexed hereto and made a part hereof.

b. SOURCE: The source for each point of diversion is as follows:

Name of Structure	POD Designation on Map	Source
1- Sycan River Weir 2 - Reen Ditch	C-2	Sycan River
2- Sycan River Weir 3	D	Sycan River
3- Sycan River Weir 6	E	Sycan River
4- Long Creek Weir 7	F	Long Creek
5- Dry Creek Weir	G	Dry Creek
6- South Fork Ditch	H	Long Creek
7- South Fork Step Pool 1	H-1	Long Creek
8- South Fork Step Pool 2	H-2	Long Creek
9- Section Line Ditch	H-3	Long Creek
10- Small's Ditch	H-4	Long Creek
11- North Fork Main Weir	H-5	Long Creek
12- Coyote Creek South Ditch	I-1	Coyote Creek
13- Coyote Creek Main Weir	I-2	Coyote Creek
14- Pole Creek Spreader Weir	J	Pole Creek

c. USE: Irrigation of 8,985.2 acres and stockwatering incidental to irrigation.

The Parties understand and agree that irrigation for the purposes hereof includes the artificial application of water to crops or plants to promote growth or nourish crops or plants, including marshlands or wetlands, with or without commercial harvest or grazing. In other contested cases in the Klamath Basin Water Rights Adjudication, OWRD has asserted a definition of "irrigation" that is inconsistent with the above definition of "irrigation" in some aspects. OWRD staff agrees to recommend the above definition of "irrigation" to the Adjudicator for the purposes of this Stipulation to Resolve Contests only, and reserves the right to assert, maintain, or promulgate a definition of "irrigation" inconsistent with the above definition with respect to any other claim or contest in the Klamath Basin Water Rights Adjudication, in any other proceeding, or by statute, regulation, or policy.

d. AMOUNT BENEFICIALLY USED: The amount of water used for the purposes above is limited to a diversion from each point of diversion not to exceed the quantities set forth below, for each acre irrigated during the irrigation season each year, as measured at the

point of diversion, and shall not exceed 3.42 acre-feet per acre for each acre irrigated during the irrigation season of each year:

Name of POD Structure and POD Number	Map Number	Rate of Flow	
		CFS/Acre	Total CFS
1- Sycan River Weir 2 - Reen Ditch	C-2	1/61	2.8
2- Sycan River Weir 3	D	1/70	8.9
3- Sycan River Weir 6	E	Inapplicable for the manner of diversions at these weirs as described in Attachment 1. Diversion limited to 3.42 AF/A/3.42	
4- Long Creek Weir 7	F		
5- Dry Creek Weir	G	1/40	13.4
6- South Fork Ditch	H	1/42	79.8*
7- South Fork Step Pool 1	H-1	1/42	29.0*
8- South Fork Step Pool 2	H-2	1/42	10.8*
9- Section Line Ditch	H-3	1/42	40.0*
10- Small's Ditch	H-4	1/38	13.4
11- North Fork Main Weir	H-5	1/83	6.9
12- Coyote Creek South Ditch	I-1	1/36	5.4
13- Coyote Creek Main Weir	I-2	1/41	16.2
14- Pole Creek Spreader Weir	J	1/86	1.0

* The points and rate of diversion for H are in the alternative to those for H-1 through H-3 as described in the Appendix Agreement of Additional Terms attached hereto. OWRD staff's agreement to recommend to the Adjudicator points of diversion H-1 through H-3 as alternates to point of diversion H is conditioned upon TNC's successful amendment of its claimed points of diversion, pursuant to the process set forth in OAR 690-030-0085.

Note: Applicable rate for areas served by two points of diversion:

(1) Areas Served by POD G and POD H. Acres served by POD G (Dry Creek Weir) and POD H (South Fork Ditch) are shown as Area 1 on Sycan Marsh Preserve Map for T32S, R13E attached hereto, and listed on Attachment 2 annexed hereto. That place of use is served by POD H when water from POD G is not used on such land. When POD H serves such land, its rate on all of its place of use shall be limited to 1/60th cfs (.0167 cfs) per acre.

(2) Areas served by POD F and POD H. Areas served by POD F (Long Creek, Weir 7) and POD H (South Fork Ditch) are shown as Area 3 on Sycan Marsh Preserve Maps for T32S, R13E and T33S, R13E attached hereto, and listed on Attachment 2 annexed hereto. That place of use is served by POD H when water from POD F is not used on such land. When POD H serves such land, its rate on all of its place of use shall be limited to 1/60th cfs (.0167cfs) per acre.

(3) Areas served by POD D and POD H-5. Areas served by POD D (Sycan River, Weir 3) and POD H-5 (North Fork, Main Weir) are shown as Area 2 on Sycan Marsh Preserve

Map for T32S, R13E attached hereto, and listed on Attachment 2 annexed hereto. That place of use is served by POD H-5 when water from POD D is not used on such land. When POD H-5 serves such land, its rate on all of its place of use shall be limited to 1/104 cfs (.0096 cfs) per acre.

e. PERIOD OF USE: March 1 to October 31 for irrigation and stockwatering.

f. PRIORITY DATE: October 14, 1864.

g. PLACES OF USE: A description of the places of use to which this right is appurtenant is set forth in Attachment 3 annexed hereto and made a part hereof. The places of each use are also depicted on Sycan Marsh Preserve Maps for T31S, T32S and T33S, each for R13E, annexed hereto as Attachments 4, 5 and 6, respectively.

C. RESOLUTION BASED ON TERMS OF AGREEMENT

1. Contestant the United States agrees that, pursuant to this agreement, the United States' Contest 3782 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 3782 before the Office of Administrative Hearings.

2. Contestant the Klamath Tribes agree that, pursuant to this agreement, the Klamath Tribes' Contest 4090 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 4090 before the Office of Administrative Hearings.

3. Claimant TNC agrees that TNC's Contest 2799 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 2799 before the Office of Administrative Hearings.

4. OWRD staff hereby recommends to the Adjudicator that Claim 34 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. OWRD staff's agreement to recommend to the Adjudicator points of diversion H-1 through H-3 as alternates to point of diversion H is conditioned upon TNC's successful amendment of its claimed points of diversion, pursuant to the process set forth in OAR 690-030-0085.

5. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for Claim 34 does not accord with the terms set forth in Paragraph B.1 above, all Parties reserve any and all rights they may have to file exceptions to the Findings of Fact and Final Order of Determination as to Claim 34 in the Circuit Court for Klamath County, and reserve all rights such Parties may have to participate in any future proceedings authorized by law.

6. The Parties and OWRD agree not to oppose or object to this Agreement or any of its terms, provisions, conditions, or covenants and to support this Agreement if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

7. This Stipulation is entered into for the purpose of resolving a disputed claim. The Parties and OWRD 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 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, or in any other proceeding.

8. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and OWRD 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.

9. Each Party and OWRD 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 and bind that entity to the terms of the Stipulation.

10. 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.

11. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the Parties and OWRD, notwithstanding that the Parties and OWRD did not sign the same original or the same counterparts.

12. The Parties and OWRD agree and acknowledge that this Stipulation has been drafted after full and arms-length negotiations, and that the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Stipulation

13. All Parties and OWRD shall each bear their own costs and consultants' and attorneys' fees incurred in connection with this Stipulation.

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

For Claimant The Nature Conservancy



Douglas W. MacDougal, OSB #98077 Date
Schwabe, Williamson & Wyatt, P.C., Of Attorneys
for Claimant

SEPT. 18, 2006

For Contestants The Klamath Tribes



Carl Ullman, Oregon State Bar No. 89156 Date
30 AUG 06

For Contestant the United States of America

Barbara Scott-Brier Date
Special Attorney, United States Department of
Justice
Of Attorneys for Contestant the United States of
America

11. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the Parties and OWRD, notwithstanding that the Parties and OWRD did not sign the same original or the same counterparts.

12. The Parties and OWRD agree and acknowledge that this Stipulation has been drafted after full and arms-length negotiations, and that the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Stipulation

13. All Parties and OWRD shall each bear their own costs and consultants' and attorneys' fees incurred in connection with this Stipulation.

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

For Claimant The Nature Conservancy

Douglas W. MacDougal, OSB #98077
Schwabe, Williamson & Wyatt, P.C., Of Attorneys
for Claimant

Date

For Contestants The Klamath Tribes

Carl Ullman, Oregon State Bar No. 89156

Date

For Contestant the United States of America

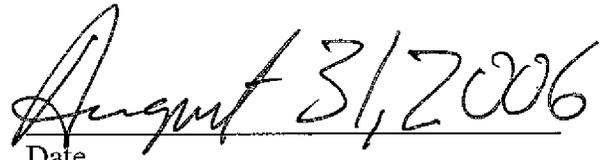

Barbara Scott-Brier
Special Attorney, United States Department of
Justice
Of Attorneys for Contestant the United States of
America

9/15/06
Date



David W. Harder
Attorney, United States Department of Justice
Of Attorneys for Contestant the United States of
America

For Oregon Water Resources Department



Date

Michael Reynolds,
Agency Representative, Oregon Water Resources
Department

Date

HARDY MYERS
Attorney General

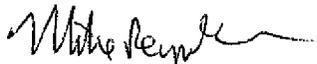
Jesse Ratcliffe, OSB No. 04394
Assistant Attorney General
Of Attorneys for the Oregon Water Resources
Department

Date

David W. Harder
Attorney, United States Department of Justice
Of Attorneys for Contestant the United States of
America

Date

For Oregon Water Resources Department

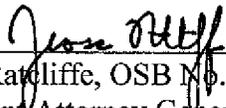


9-13-06

Michael Reynolds,
Agency Representative, Oregon Water Resources
Department

Date

HARDY MYERS
Attorney General



Jesse Ratcliffe, OSB No. 04394
Assistant Attorney General
Of Attorneys for the Oregon Water Resources
Department

Date 9/13/06

ATTACHMENT 1: MANNER OF DIVERSIONS

Name of POD Structure and POD Number	POD Designation on Map	Manner of Diversions with Reference to Map Designation of Diversion
1- Sycan River Weir 2 - Reen Ditch	C-2	Diversions occur by opening the headgates on Reen ditch. Boards will be added at Weir 2 (C-2) until a sufficient water elevation is achieved so as to distribute water into Reen and other ditches and channels. Raising the water elevation is necessary before any diversion can occur because the channel of the Sycan River has been down-cut. The placement of boards in this weir prior to reaching such a water elevation will not be considered a diversion. Boards will be gradually added and removed from this weir so as to minimize erosion and promote fish passage.
2- Sycan River Weir 3	D	Diversions occur only after a sufficient water elevation is achieved by adding boards at Weir 3 (D) so as to distribute water into ditches and other channels. Raising the water elevation is necessary before any diversion can occur because the channel of the Sycan River has been down-cut. The placement of boards in this weir prior to reaching such a water elevation will not be considered a diversion. Boards will be gradually added and removed from this weir so as to minimize erosion and promote fish passage.
3- Sycan River Weir 6	E	Diversions at Weir 6 (E) on the Sycan River and Weir 7 (F) on Long Creek occur by adding boards to the weirs and raising the water elevation so as to spread water across fields. The placement of boards in these weirs prior to reaching such a water elevation will not be considered a diversion.
4- Long Creek Weir 7	F	
5- Dry Creek Weir	G	Diversions at Dry Creek Weir (G) will occur by hummocks splitting the flows into three directions and into downstream channels and across fields.
6- South Fork Ditch	H	Diversions occur by adding boards at the North Fork Main Weir (H-5) or closing the headgate at Small's Ditch (H-4) so as to direct flows into the South Fork Ditch (H) and downstream channels. This point of diversion will be permanently removed upon adjudication of the following alternative points of diversion consisting of two step pools (H-1 and H-2) and of the Section Line Ditch diversion (H-3). At the existing point of diversion to be removed, a new channel will be created so as to allow flows to reach the first alternative point about two miles downstream without intervening diversion.

7- South Fork Step Pool 1 8- South Fork Step Pool 2	H-1 H-2	Diversions will occur by splitting those South Fork flows with a vortex weir at the head of a step pool (H-1 and H-2) and directing them into downstream channels.
9- Section Line Ditch	H-3	Diversions will occur by closing headgates along Section Line Ditch (H-3) and distributing flows east and west, or by opening headgates and directing flows into downstream channels and across fields.
10- Small's Ditch	H-4	Diversions will occur by adding boards at the North Fork Main Weir (H-5) and opening the headgate at Small's Ditch (H-4).
11- North Fork Main Weir	H-5	Diversions will occur by removing boards at the North Fork Main Weir (H-5) so as to distribute water into downstream channels.
12- Coyote Creek South Ditch	I-1	Diversions will occur by adding boards at the Coyote Creek Main Weir (I-2) and opening the headgate for the Coyote Creek South Ditch (I-1).
13- Coyote Creek Main Weir	I-2	Diversions will occur by closing the headgate on the Coyote Creek South Ditch (I-1) and allowing flows to spill over boards, so as to control the timing of flows from Coyote Creek Main Weir (I-2) to the main channel of Coyote Creek and distribute water to downstream channels and across fields.
14- Pole Creek Spreader Weir	J	Diversions will occur by closing the headgate to distribute water around the weir (J) and into downstream channels and across fields.

GENL2130

ATTACHMENT 2: PLACES OF USE SERVED BY TWO POINTS OF DIVERSION

Township 32 South, Range 13 East				
Primary Point of Diversion	Section	Quarter/ Quarter	Overlapping POD/Acreage	
Dry Creek Weir (G)	15	South Fork Ditch (H)		
		NESW	13.1	
		SESW	16.4	
		NESE	13.6	
		NWSE	35.3	
		SWSE	40.0	
	22	SESE	40.0	
		NENE	40.0	
		NWNE	37.8	
		SWNE	38.7	
		SENE	40.0	
		NENW	0.6	
		SENW	1.1	
		NESE	40.0	
	23	NWSE	40.0	
		SWSE	40.0	
		SESE	40.0	
		NESW	1.2	
		NWSW	28.5	
			SWSW	31.5
			Total Acres:	537.8

Primary Point of Diversion	Section	Quarter/Quarter	Overlapping POD/Acreage
Long Creek Weir 7 (F)			South Fork Ditch (H)
	26	SWSW	32.2
		SESW	0.4
	27	SESW	0.6
		NESE	7.5
		NWSE	1.3
		SWSE	35.0
		SESE	40.0
	33	NENE	36.1
		SENE	16.9
		SESE	1.9
	34	NENE	24.8
		NWNE	40.0
		SWNE	40.0
		SENE	20.6
		NENW	38.1
		NWNW	38.4
		SWNW	40.0
		SENW	40.0
		NESW	34.9
		NWSW	39.0
		SWSW	39.8
		SESW	40.0
		NESE	33.8
		NWSE	40.0
		SWSE	37.7
		SESE	8.4
	35	NWNW	0.4
		NWSW	0.9
		Total Acres:	728.7

Primary Point of Diversion	Section	Quarter/Quarter	Overlapping POD/Acreage		
Sycan River Weir 3 (D)	13	North Fork Main Weir (H-5)			
		SWSW	7.0		
		SESW	30.0		
		NESE (Lot 3)	0.1		
		NWSE	2.2		
		SWSE	39.9		
		SESE (Lot 4)	29.2		
	23	SENE	2.5		
		NESE	16.1		
		SESE	7.0		
	24	NENE (Lot 1)	33.5		
		NWNE	40.0		
		SWNE	40.0		
		SENE (Lot 2)	34.5		
		NENW	40.0		
		NWNW	25.6		
		SWNW	36.2		
		SENW	40.0		
		NESW	40.0		
		NWSW	40.0		
		SWSW	36.4		
		SESW	37.6		
		NESE (Lot 3)	6.6		
		NWSE	32.5		
		SWSE	7.4		
				Total Acres:	624.3
		Township 33 South, Range 13 East			
	Primary Point of Diversion	Section	Quarter/Quarter	Overlapping POD/Acreage	
Long Creek Weir 7 (F)	3	South Fork Ditch (H)			
		NWNE (Lot 2)	5.2		
		NENW (Lot 3)	32.1		
		NWNW (Lot 4)	32.7		
		SWNW	1.8		
		SENW	14.3		
		Total Acres:	86.1		

PORT:\11\113003\01\Finals\11300301Claim 34_Overlap.doc

ATTACHMENT 3: PLACES OF USE

Township 31 South, Range 13 East				
Point of Diversion	Section	Quarter/ Quarter	Acres	
Coyote Creek South Ditch (I-1)	26	SWSW	22.4	
		SESW	20.4	
		NESE	3.0	
	27	NWSE	2.0	
		SWSE	3.0	
		SESE	36.5	
		34	NENE	39.6
			NWNE	5.4
			SWNE	23.8
			SENE	40.0
		Total Acres:		
	Coyote Creek Main Weir (I-2)	24	SWSW	4.6
			SESW	25.8
SWSE			31.2	
SESE (Lot 4)			28.5	
25		NENW	40.0	
		NWNW	40.0	
		SWNW	40.0	
		SENW	40.0	
		NESW	40.0	
		NWSW	40.0	
		SWSW	37.1	
		SESW	36.7	
		NWSE	4.8	
		SWSE	3.3	
26		NESW	6.9	
		NWSW	0.7	
		SWSW	12.6	
		SESW	19.6	
		NESE	40.0	
		NWSE	32.3	
		SWSE	40.0	
		SESE	40.0	
27		NESE	6.4	
		SESE	2.6	
36		NENE (Lot 1)	22.6	
		NWNE	3.0	
		SENE (Lot 2)	26.4	
Total Acres:			665.1	

Point of Diversion	Section	Quarter/ Quarter	Acres
Small's Ditch (H-4)	36	NWNE	24.7
		SWNE	38.3
		SENE	3.0
		NENW	37.1
		NWNW	37.1
		SWNW	40.0
		SENW	40.0
		NESW	34.2
		NWSW	39.4
		SWSW	40.0
		SESW	31.8
		NWSE	33.3
		SWSE	37.7
			Total Acres:
Pole Creek Spreader Weir (J)	23	NESE	2.8
		SESE	24.2
	24	NESW	2.4
		NWSW	12.1
		SWSW	35.4
		SESW	9.4
			Total Acres:

Township 32 South, Range 13 East			
Point of Diversion	Section	Quarter/ Quarter	Acres
Dry Creek Weir (G)	15	NESW	13.1
		SESW	16.4
		NESE	13.6
		NWSE	35.3
		SWSE	40.0
		SESE	40.0
	22	NENE	40.0
		NWNE	37.8
		SWNE	38.7
		SENE	40.0
		NENW	0.6
		SENW	1.1
		NESE	40.0
		NWSE	40.0
		SWSE	40.0
		SESE	40.0
	23	NESW	1.2
		NWSW	28.5
		SWSW	31.5
		SESW	0.1
		Total Acres:	537.9

Point of Diversion	Section	Quarter/ Quarter	Acres	
North Fork Main Weir (H-5)	1	SWNE	40.0	
		SENE (Lot 5)	32.3	
		NESW	40.0	
		NWSW	40.0	
		SWSW	38.9	
		SESW	38.7	
		NESE (Lot 6)	30.5	
		NWSE	39.5	
		SWSE	40.0	
		SESE (Lot 7)	32.1	
		3	NWSE	13.5
		13	NENE (Lot 1)	15.6
			NWNE	36.5
			SWNE	12.9
			NENW	8.8
			SENW	6.1
NESW	0.4			
NWSE	0.1			
24	SESW	2.4		
	NESE (Lot 3)	28.9		
	NWSE	7.5		
	SWSE	32.6		
	SESE (Lot 4)	36.4		
		Total Acres:	573.7	
Small's Ditch (H-4)	1	NENE (Lot 1)	32.2	
		NWNE (Lot 2)	35.9	
		Total Acres:	68.1	

Point of Diversion	Section	Quarter/ Quarter	Acres		
South Fork Ditch (H)	10	NESE	9.2		
		NWSE	18.1		
		SWSE	39.7		
		SESE	40.0		
	11	NENE	40.0		
		NWNE	40.0		
		SWNE	40.0		
		SENE	40.0		
		NENW	2.9		
		SENW	20.5		
		NESW	10.5		
		NWSW	1.2		
		SWSW	35.5		
		SESW	19.2		
		NESE	39.7		
		NWSE	29.8		
		SWSE	40.0		
		SESE	40.0		
			12	NENE (Lot 1)	32.0
				NWNE	40.0
	12	SWNE	40.0		
		SENE (Lot 2)	32.1		
		NENW	40.0		
		NWNW	40.0		
		SWNW	40.0		
		SENW	40.0		
		NESW	40.0		
		NWSW	33.4		
		SWSW	35.4		
		SESW	40.0		
		NESE (Lot 3)	31.9		
		NWSE	40.0		
SWSE	40.0				
SESE (Lot 4)	31.7				
	13	NENW	31.2		
		NWNW	40.0		
		SWNW	40.0		
		SENW	33.9		
		NESW	26.8		
		NWSW	40.0		
		SWSW	33.0		
SESW	3.0				
	14	NENE	40.0		
		NWNE	40.0		
		SWNE	40.0		
		SENE	40.0		

Point of Diversion	Section	Quarter/ Quarter	Acres
		NENW	40.0
South Fork Ditch (H) (Continued)		NWNW	40.0
		SWNW	40.0
		SENW	40.0
		NESW	40.0
		NWSW	40.0
		SWSW	40.0
		SESW	40.0
		NESE	38.0
		NWSE	39.2
		SWSE	34.6
		SESE	34.0
	15	NENE	39.7
		NWNE	14.3
		SWNE	11.3
		SENE	36.0
		NENW	0.9
		NESE	26.4
		NWSE	4.2
	23	NENE	38.8
		NWNE	33.3
		SWNE	32.2
		SENE	37.5
		NENW	27.2
	23	NWNW	40.0
		SWNW	40.0
		SENW	14.2
		NESW	19.7
		NWSW	11.4
		SWSW	2.1
		SESW	32.7
		NESE	23.9
		NWSE	38.9
		SWSE	40.0
		SESE	33.0
	24	NWNW	14.4
		SWNW	3.8
		SWSW	3.6
	25	NWNW	16.1
	26	NENE	39.8
		NWNE	40.0
		SWNE	35.1
		SENE	10.2
		NENW	40.0
		NWNW	35.1
		SWNW	40.0

		SENW	40.0
		NESW	35.1
		NWSW	40.0
Point of Diversion	Section	Quarter/ Quarter	Acres
South Fork Ditch (H) (Continued)		SWSW	3.5
		SESW	5.1
		NWSE	4.8
	27	NENE	40.0
		NWNE	40.0
		SWNE	40.0
		SENE	40.0
		NENW	40.0
		NWNW	37.8
		SWNW	15.0
		SENW	40.0
		NESW	15.9
		NESE	32.5
		NWSE	38.7
	28	NENE	4.8
		Total Acres:	3365.5

Point of Diversion	Section	Quarter/ Quarter	Acres
Long Creek Weir 7 (F)	26	SWSW	32.2
		SESW	0.4
	27	SESW	0.6
		NESE	7.5
		NWSE	1.3
		SWSE	35.0
		SESE	40.0
	33	NENE	36.1
		SENE	16.9
		SESE	1.9
	34	NENE	24.8
		NWNE	40.0
		SWNE	40.0
		SENE	20.6
		NENW	38.1
		NWNW	38.4
		SWNW	40.0
		SENW	40.0
		NESW	34.9
		NWSW	39.0
		SWSW	39.8
		SESW	40.0
		NESE	33.8
		NWSE	40.0
	SWSE	37.7	
	35	SESE	8.4
NWNW		0.4	
	NWSW	0.9	
	Total Acres:	728.7	
Sycan River Weir 2 - Reen Ditch (C-2)	13	NENE (Lot 1)	15.7
		NWNE	3.5
		SWNE	27.1
		SENE (Lot 2)	31.2
		NESW	12.8
		SESW	7.0
		NESE (Lot 3)	32.0
		NWSE	37.7
		SWSE	0.1
		SESE (Lot 4)	3.5
	Total Acres:	170.6	

Point of Diversion	Section	Quarter/ Quarter	Acres	
Sycan River Weir 3 (D)	13	SWSW	7.0	
		SESW	30.0	
		NESE (Lot 3)	0.1	
		NWSE	2.2	
			SWSE	39.9
			SESE (Lot 4)	29.2
	23	SENE	2.5	
		NESE	16.1	
		SESE	7.0	
	24	NENE (Lot 1)	33.5	
		NWNE	40.0	
		SWNE	40.0	
		SENE (Lot 2)	34.5	
		NENW	40.0	
		NWNW	25.6	
		24	SWNW	36.2
SENW	40.0			
NESW	40.0			
NWSW	40.0			
SWSW	36.4			
SESW	37.6			
NESE (Lot 3)	6.6			
		NWSE	32.5	
		SWSE	7.4	
		Total Acres:	624.3	

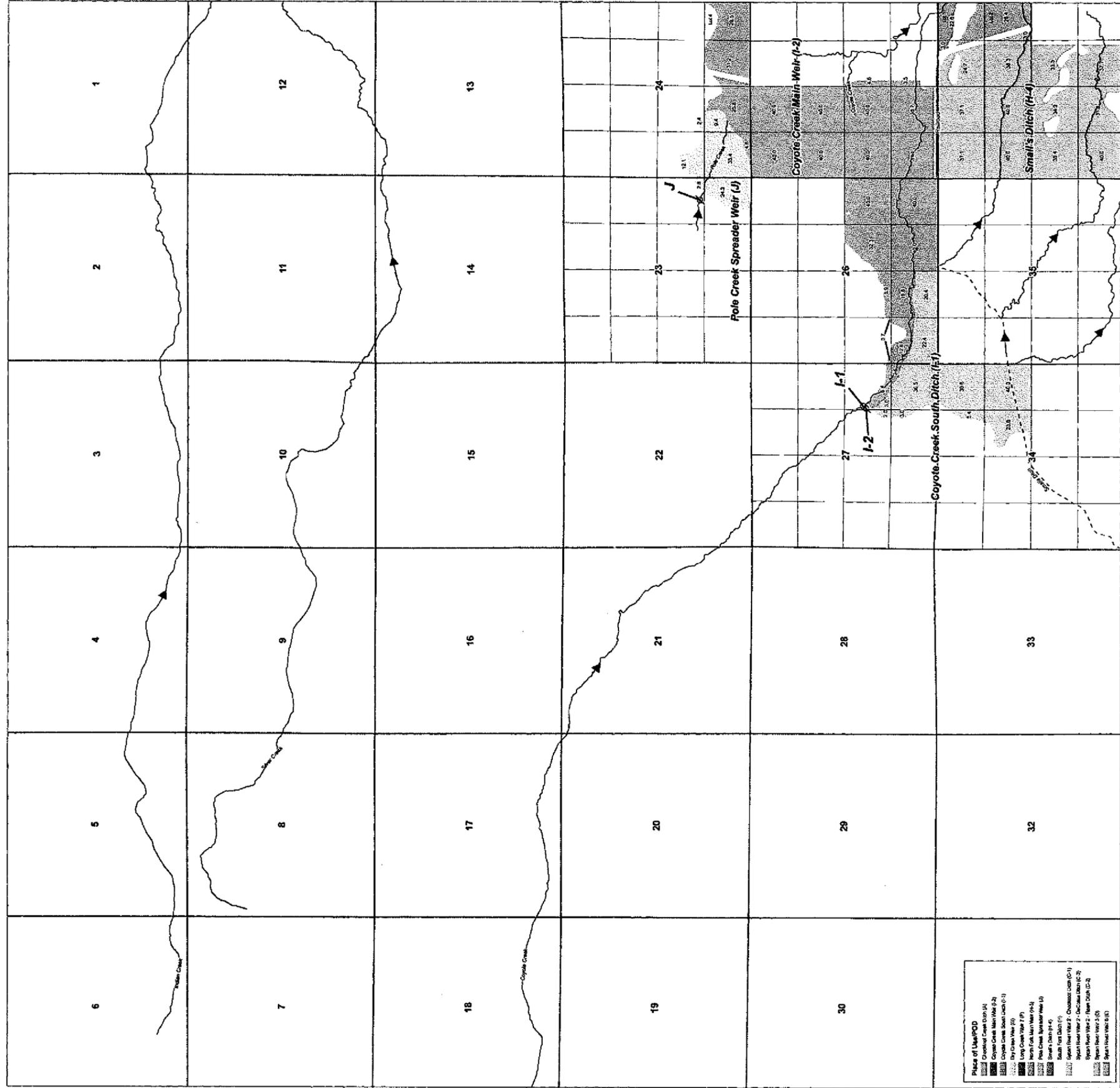
Point of Diversion	Section	Quarter/ Quarter	Acres	
Sycan River Weir 6 (E)	25	NENE (Lot 1)	37.3	
		NWNE	40.0	
		SWNE	39.6	
		SENE (Lot 2)	34.7	
		NENW	40.0	
		NWNW	23.9	
		SWNW	40.0	
		SENW	40.0	
		NESW	39.0	
		NWSW	40.0	
		SWSW	39.2	
		SESW	28.5	
		NESE (Lot 3)	27.9	
		NWSE	30.4	
		SWSE	0.8	
		SESE (Lot 4)	1.6	
		26	NENE	0.2
			SWNE	4.9
			SENE	29.8
			NESW	4.9
SWSW	4.3			
SESW	34.5			
NESE	40.0			
NWSE	35.2			
SWSE	40.0			
SESE	40.0			
34	NENE	15.2		
	SENE	15.9		
	NESE	4.4		
	SWSE	2.3		
	SESE	31.6		
35	NENE	37.1		
	NWNE	39.1		
	SWNE	37.0		
	SENE	19.7		
	NENW	40.0		
	NWNW	39.6		
	SWNW	40.0		
SENW	35.4			

Point of Diversion	Section	Quarter/ Quarter	Acres
Sycan River Weir 6 (E) (Continued)	35	NESW	30.2
		NWSW	39.1
		SWSW	39.1
		SESW	12.1
	36	NENW	4.0
		NWNW	30.5
		Total Acres:	1249.0
Township 33 South, Range 13 East			
Point of Diversion	Section	Quarter/ Quarter	Acres
Long Creek Weir 7 (F)	3	NWNE (Lot 2)	5.2
		NENW (Lot 3)	32.1
		NWNW (Lot 4)	32.7
		SWNW	1.8
		SENW	14.3
		Total Acres:	86.1
Sycan River Weir 6 (E)	2	NENW (Lot 3)	2.1
		NWNW (Lot 4)	28.7
		SWNW	11.3
	3	NENE (Lot 1)	36.7
		NWNE (Lot 2)	36.7
		SWNE	37.6
		SENE	35.3
		NENW (Lot 3)	4.7
		SENW	4.1
		Total Acres:	197.2

PORTA1\1113003\01\Finals\111300301\Claim34.doc

TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.
 CLAIM 34
 Sycan Marsh Preserve
 The Nature Conservancy

RECEIVED
 DEC 13 2006
 TRANSPORTS DEPT
 BUREAU OF LAND MANAGEMENT



NOTES
 1. This map is not intended to provide dimensions or locations of property ownership lines.
 2. Site inspection of points of diversion completed on July 20 and 21, 2006.
 3. The location of the irrigated areas are based on Oregon Water Resources Department maps prepared in the 1970s and documentation provided by The Nature Conservancy, Inc. These data have not been field verified by GeoEngineers, Inc.

POD I-1 is 2100 feet NORTH and 1200 feet WEST of the SE corner of Section 27
 POD I-2 is 2020 feet NORTH and 1300 feet WEST of the SE corner of Section 27
 POD J is 1450 feet NORTH and 640 feet WEST of the SE corner of Section 23

Legend

Point of Diversion (POD)

Railroad

River

Ditch/Drain

Stream

Quarry/Quarier

Section

Area of Overlapping Irrigation

North Fork Main Weir (H-6)

South Fork Ditch (H)

Sycan River Weir 2 - Reen Ditch (C-2)



1 inch = 1,320 feet
 0 1,320 Feet



POD I-1 is 2100 feet NORTH and 1200 feet WEST of the SE corner of Section 27
 POD I-2 is 2020 feet NORTH and 1300 feet WEST of the SE corner of Section 27
 POD J is 1450 feet NORTH and 640 feet WEST of the SE corner of Section 23

POD	Description
I-1	Coyote Creek Main Weir (I-2)
I-2	Coyote Creek South Ditch (I-1)
J	Coyote Creek Spreader Weir (J)
H-4	Small's Ditch (H-4)
H-6	North Fork Main Weir (H-6)
H	South Fork Ditch (H)
C-2	Sycan River Weir 2 - Reen Ditch (C-2)

See map T. 31 S., R. 13 E.

See map T. 32 S., R. 13 E.

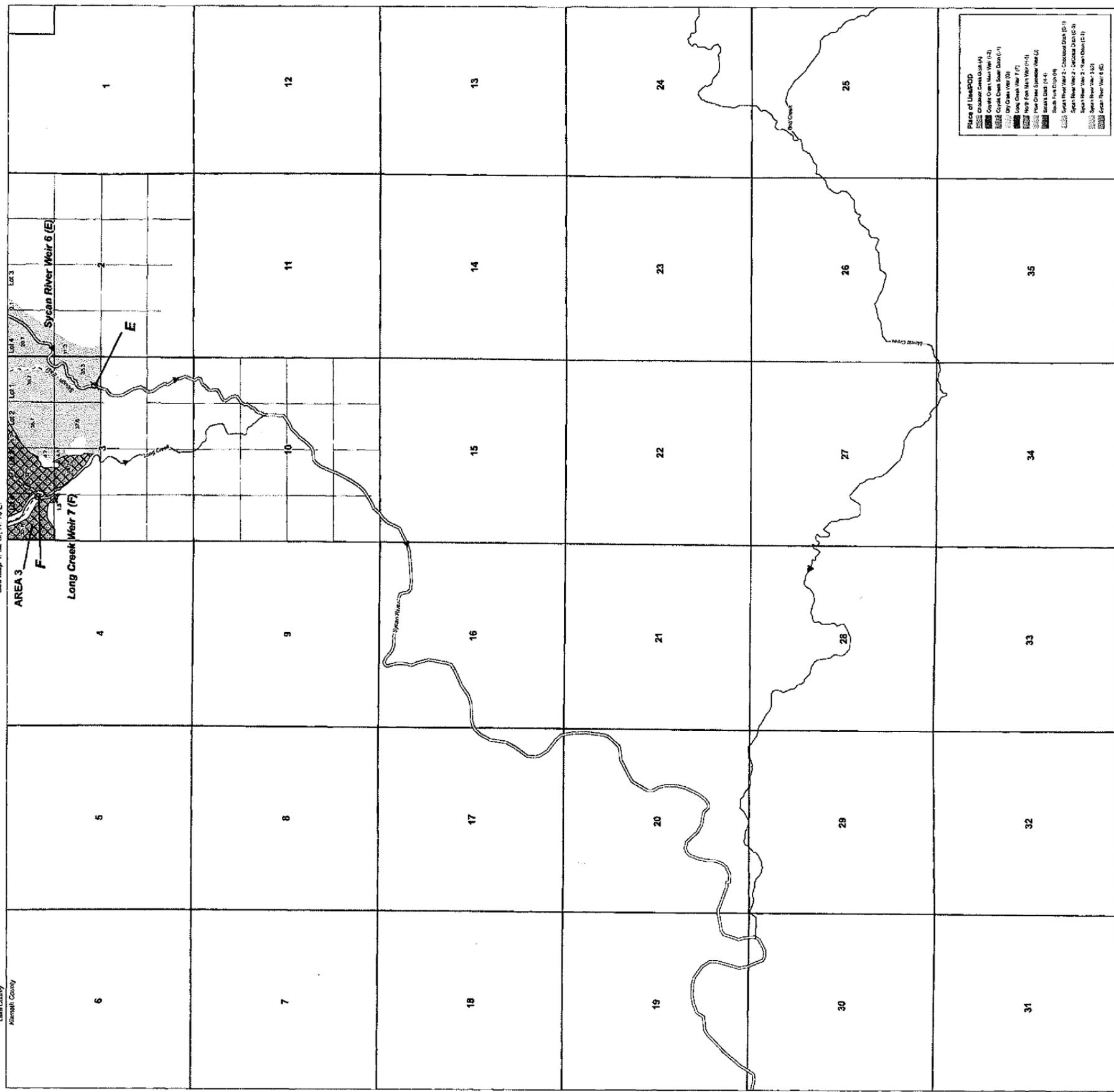
POD I-1 is 2100 feet NORTH and 1200 feet WEST of the SE corner of Section 27
 POD I-2 is 2020 feet NORTH and 1300 feet WEST of the SE corner of Section 27
 POD J is 1450 feet NORTH and 640 feet WEST of the SE corner of Section 23
 Last Modified: December 4, 2006

TOWNSHIP 33 SOUTH, RANGE 13 EAST, W.M.
CLAIM 34
Sycan Marsh Preserve
The Nature Conservancy

RECEIVED
DEC 13 2006
WATER RESOURCES DEPT
SALEM OREGON

Lake County
Klamath County

See map T. 32 S., R. 13 E.



POD E is 2550 feet SOUTH and 850 feet WEST of the NE corner of Section 3
POD F is 920 feet SOUTH and 1220 feet EAST of the NW corner of Section 3

NOTES
1. This map is not intended to provide dimensions or locations of property ownership lines.
2. Site inspection of points of diversion completed on July 20 and 21, 2005.

Handwritten signature and date: H. R. ... 7/20/05

3. The location of the irrigated areas are based on Oregon Water Resources Department maps prepared in the 1970s and documentation provided by The Nature Conservancy. These data have not been field verified by GeoEngineers, Inc.

1 inch = 1,320 feet
0 1,320 feet

GEOENGINEERS

Legend
 Point of Diversion (POD)
 Railroad
 River
 Ditch/Drain
 Stream
 Quarter/Quarter
 Section
 Area of Overlapping Irrigation
 Overlap From:
 North Fork Main Weir (H-5)
 South Fork Ditch (H)
 Sycan River Weir 2 - Reem Ditch (C-2)

Place of Use/POD
 Channel Creek Ditch (A)
 Over Fork Main Weir (H-5)
 Over Fork Ditch (H)
 Dry Creek Weir (D)
 Long Creek Weir (F)
 North Fork Main Weir (H-4)
 Over Fork Main Weir (H-5)
 Sycan River Weir 2
 Sycan River Weir 3 (A)
 Sycan River Weir 4 (B)
 Sycan River Weir 5 (C)
 Sycan River Weir 6 (D)

PORT\1111112005\0705\Sycan_13R13E.mxd
Last Modified: December 4, 2006

APPENDIX AGREEMENT OF ADDITIONAL TERMS IN CASE 178, CLAIM 34

The Nature Conservancy (TNC), Contestants the United States of America (the United States) and the Klamath Tribes (collectively, "Parties") hereby agree and stipulate to the following additional terms to the Stipulation to Resolve contests 2799, 3782, and 4090 ("Stipulation") to which Stipulation this agreement is attached as an appendix and incorporated by reference. The references and designations below have the same meanings as those in the Stipulation.

(1) South Fork Long Creek Points of Diversion. TNC will as soon as is practical remove its point of diversion on the South Fork of Long Creek (diversion H), and upon such removal, utilize alternative points of diversion (diversions H-1 through H-3) from the South Fork downstream starting below the Tall Jim Weir in the North ½ of Section 11. TNC will also remove its Tall Jim Weir upon establishment of these alternative points of diversion. These alternative downstream points will become the permanent points of diversion for TNC from the South Fork, and TNC may not re-establish the upstream points of diversion without the consent of the United States and the Klamath Tribes, not to be unreasonably withheld. Pending establishment and approval of these alternative downstream points of diversion, neither the United States nor the Klamath Tribes will assert that the claimed upstream point in the NE quarter of Section 4 has been abandoned or forfeited, or that establishing the downstream points of diversion constitutes an impermissible or untimely amendment of TNC's claim, or injury to existing water rights. TNC recognizes that, depending upon when the provisions of this paragraph are carried out, it may be necessary to obtain OWRD approval to change points of diversion. TNC agrees to comply with all legal requirements necessary to make such changes.

(2) Long Creek Flows. During the irrigation season from March 1 to October 31, neither the United States nor the Klamath Tribes will make a call to satisfy any instream water rights that may be adjudicated in favor of the United States and/or the Klamath Tribes having the effect of reducing or eliminating TNC's water use on the Sycan Marsh, so long as the flow reaching the downstream terminus of the instream reach equals or exceeds 2.0 cfs or 20% of the available flow, whichever is lower, as measured at TNC's Long Creek gaging station approximately ½ mile upstream of the TNC's Main Weir.

(3) Coyote Creek Flows. During the irrigation season from March 1 to October 31, neither the United States nor the Klamath Tribes will make a call to satisfy any instream water rights that may be adjudicated in favor of the United States and/or the Klamath Tribes having the effect of reducing or eliminating TNC's water use on the Sycan Marsh, so long as the flow in the Main Channel of Coyote Creek bypassing TNC's Coyote Creek Main Weir and reaching the culvert for the U.S. Forest Service (USFS) Road 27 equals or exceeds .5 cfs as measured at TNC's gaging station approximately 0.25 miles upstream of TNC's Main Coyote Creek Weir. Such flows may be distributed by TNC for irrigation purposes below USFS Road 27. Whenever the available flow at TNC's gaging station is less than .5 cfs, TNC will not divert any flow into the Coyote Creek South Ditch.

(4) No Call of Instream Rights. Except as expressly set forth in this Stipulation, neither the United States nor the Klamath Tribes will make a call to satisfy any instream water rights that may be adjudicated in favor of the United States and/or the Klamath Tribes having the effect of reducing or eliminating TNC's water use on the Sycan Marsh. Any dispute about the instream flows provided in this Stipulation shall be a matter between the Parties and shall not be regarded as matter for resolution by the watermaster. Neither the OWRD

nor any watermaster shall be accountable or liable for any person's interpretations or misinterpretations of this provision of the Stipulation. The Parties agree not to join the State of Oregon or any agency, commission, board, or employee thereof in any litigation concerning this provision of the Stipulation, and agree to oppose any such joinder attempts by others in litigation that may occur.

(5) Restriction on Certain TNC Transfers. Other than a change to instream use or to conform its water rights to the definition of irrigation by applicable state laws or regulations, or to conform to the requirements of the Endangered Species Act or other applicable laws, TNC will not change the type of water use or place of water use for irrigation (and incidental stockwatering) at the Sycan Marsh without the consent of the United States and the Klamath Tribes, not to be unreasonably withheld. The Parties recognize that irrigation is currently defined as the artificial application of water to crops or plants to promote growth or nourish crops or plants, and agree that the irrigation of marshlands or wetlands, with or without commercial harvest or grazing is included in this definition. Notwithstanding this covenant not to change the type or place of water use, TNC may elect to discontinue or reduce irrigation at the Sycan Marsh or to transfer points of diversion downstream within the Sycan Marsh, subject to compliance with all legal requirements, including obtaining all necessary OWRD approvals, at the time the change(s) occur or are proposed or occur.

///

///

///

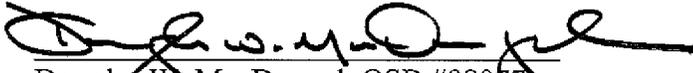
///

///

///

This Appendix Agreement of Additional Terms shall be effective as of the effective date of the Stipulation.

For Claimant The Nature Conservancy


Douglas W. MacDougal, OSB #98017
Schwabe, Williamson & Wyatt, P.C., Of Attorneys
for Claimant

SEPT. 18, 2006
Date

For Contestants The Klamath Tribes

Carl Ullman, Oregon State Bar No. 89156

Date

For Contestant the United States of America


Barbara Scott-Brier
Special Attorney, United States Department of
Justice
Of Attorneys for Contestant the United States of
America

9/15/06
Date

David W. Harder
Attorney, United States Department of Justice
Of Attorneys for Contestant the United States of
America

Date

This Appendix Agreement of Additional Terms shall be effective as of the effective date of the Stipulation.

For Claimant The Nature Conservancy

Douglas W. MacDougal, OSB #98077
Schwabe, Williamson & Wyatt, P.C., Of Attorneys
for Claimant

Date

For Contestants The Klamath Tribes



Carl Ullman, Oregon State Bar No. 89156

30 AUG 06
Date

For Contestant the United States of America

Barbara Scott-Brier
Special Attorney, United States Department of
Justice
Of Attorneys for Contestant the United States of
America

Date

David W. Harder
Attorney, United States Department of Justice
Of Attorneys for Contestant the United States of
America

Date

This Appendix Agreement of Additional Terms shall be effective as of the effective date of the Stipulation.

For Claimant The Nature Conservancy

Douglas W. MacDougal, OSB #98077
Schwabe, Williamson & Wyatt, P.C., Of Attorneys
for Claimant

Date

For Contestants The Klamath Tribes

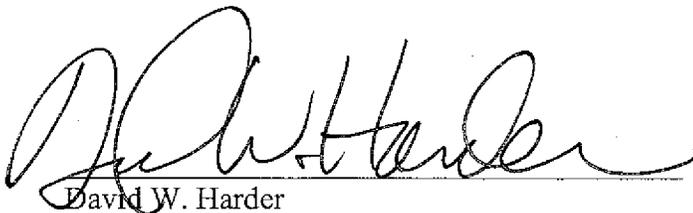
Carl Ullman, Oregon State Bar No. 89156

Date

For Contestant the United States of America

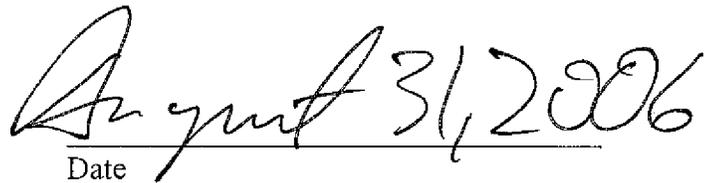
Barbara Scott-Brier
Special Attorney, United States Department of
Justice
Of Attorneys for Contestant the United States of
America

Date



David W. Harder

Attorney, United States Department of Justice
Of Attorneys for Contestant the United States of
America



Date

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December 2006, I served the within Letter to All Parties, STIPULATION TO RESOLVE CONTESTS and Certificate of Service on the parties hereto by regular first-class mail and by e-mail if an 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 Dept.
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@state.or.us
teri.k.hranac@wrdd.state.or.us

Barbara Scott-Brier
Office of the Regional Solicitor
U.S. Department of the Interior
500 NE Multnomah, Suite 607
Portland, OR 97232

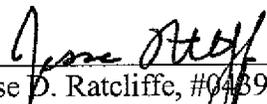
Douglas MacDougal
Schwabe, Williamson & Wyatt, P.C.
1600-1900 PacWest Center
1211 SW 5th Ave.
Portland, OR 97204
dmacdougald@schwabe.com

Paul S. Simmons / Andrew M. Hitchings
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403
psimmons@lawssd.com
ahitchings@lawssd.com

Carl V. Ullman
Water Adjudication Project
The Klamath Tribes
P.O. Box 957
Chiloquin, OR 97624
bullman3@earthlink.net

The Nature Conservancy
821 SE 14th Avenue
Portland, OR 97214

William M. Ganong
Attorney at Law
514 Walnut Street
Klamath Falls, OR 97601
wganong@aol.com



Jesse D. Ratcliffe, #04894
Assistant Attorney General