HARDY MYERS
Attorney General

PETER D. SHEPHERD
Deputy Attorney General

**DEPARTMENT OF JUSTICE**
GENERAL COUNSEL DIVISION

November 17, 2005

TO ALL PARTIES

Re: Klamath Adjudication – Case No. 68, Claim No. 265, Contest Nos. 1741 and 3546
DOJ File No. 690-600-GN0303-03

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
Stephen E.A. Sanders
Assistant Attorneys General
Natural Resources Section

JDR:tmc/GENO4642
Enclosure
c: Service List

1162 Court Street NE, Salem, OR 97301-4096 Telephone: (503) 947-4500 Fax: (503) 378-3802 TTY: (503) 378-5938

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; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Company; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC,~~
Contestants,

v.

Karen Ray; William Ray,
Claimants/Contestants.

STIPULATION TO RESOLVE CONTESTS

Case No. 68

Claim No. 265

Contest(s) 1741 and ~~3546~~[1]

[1] Don Vincent voluntarily withdrew from Contest 3546 on November 28, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS. Berlva Pritchard voluntarily withdrew from Contest 3546 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

Klamath Hills District Improvement Company voluntarily withdrew, without prejudice, from Contest 3546 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

The following Contestants voluntarily withdrew their Contest No. 3546 on April 7, 2005 - this withdrawal of contest disposes of Contest No. 3546 in its entirety: Tulelake Irrigation District; Klamath Irrigation District; Klamath Drainage 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; Collins Products, LLC. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3546.



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Claimants/Contestants Karen Ray and William Ray, 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 265 for a federal reserved Indian water right was filed with OWRD by the Claimants.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 265.

3. On May 3, 2000, the Claimants filed a Statement of Contest of Preliminary Evaluation of Claim 265, Contest 1741.

4. Claimants/Contestants and OWRD agree that Contest 1741 can be resolved without the need for a hearing pursuant to the following:

## B. TERMS OF STIPULATION

1. Claimants/Contestants and OWRD agree that the Water Right Claim 265 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 265, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

2. Claimants/Contestants agree that pursuant to the terms of this Stipulation, Contest 1741 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.

3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 265 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 265 be approved in the Finding of Fact



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and Order of Determination issued by the Adjudicator as a federal reserved Indian water right in accordance with the Description of Water Right Claim 265.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 265 does not conform to the terms set forth in the attached Description of Water Right Claim 265, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 265 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 265.

5. Claimants/Contestants 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

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

STIPULATED, AGREED, AND APPROVED BY:

For Klamath Allottee Water Users Association Member
Claimants/Contestants Karen Ray; William Ray

FREDERICKS, PELCYGER & HESTER, LLC

Case 68 Claim 265 — 11/10/05

Christopher B. Leahy — Date
*Pro Hac Vice;* Colorado Bar 23612

For the Oregon Water Resources Department

HARDY MYERS
Attorney General

Jesse D. Ratcliffe, #04394
Stephen E.A. Sanders, #85321
Assistant Attorneys General

Date 11/14/05

Michael Reynolds
Agency Representative
Oregon Water Resources Department

Date 11-14-05



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**BEFORE 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 | ) | Description Of Water Right Claim **265** |

**Name and Address:** William Ray
Karen Ray
36789 Modoc Point Road
Chiloquin, OR 97624

**Source:** Agency Lake **Tributary:** Upper Klamath Lake

| **Point Of Diversion:** | Township | Range | Section | Q/Q: | Lot: |
|---|---|---|---|---|---|
| | 35 S | 7 E | 7 | NENW | 3 |

**Priority:** 10/14/1864

| **Use, Period Of Use and Quantity:** | Use: | Period Of Use: | Rate: |
|---|---|---|---|
| | Domestic Use for One Family | 01-01 to 12-31 | .01 cfs |

| **Place Of Use:** | Township | Range | Section | Q/Q: | Lot: | Acreage: |
|---|---|---|---|---|---|---|
| | 35 S | 7 E | 7 | NWNE | 2 | .5 |

**Source:** Agency Lake **Tributary:** Upper Klamath Lake

| **Point Of Diversion:** | Township | Range | Section | Q/Q: | Lot: |
|---|---|---|---|---|---|
| | 35 S | 7 E | 7 | NENW | 3 |

**Priority:** 10/14/1864

| **Use, Period Of Use and Quantity:** | Use: | Period Of Use: | Rate: | Duty: |
|---|---|---|---|---|
| | Irrigation | 03-01 to 10-16 | 0.54 cfs | 4.3 AFA |
| | Livestock | 01-01 to 12-31 | 1020 gpd | |

| **Place Of Use:** | Township | Range | Section | Q/Q: | Lot: | Acreage: |
|---|---|---|---|---|---|---|
| | 35 S | 7 E | 7 | NWNE | 2, 5 | 19.3 |
| | 35 S | 7 E | 7 | NENW | 3, 4 | 2.4 |
| | | | Total Irrigated Acreage | | | 21.7 |



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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.

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## INCHOATE WATER RIGHT CLAIM DESCRIPTION

**Source:** Agency Lake **Tributary:** Upper Klamath Lake

| **Point Of Diversion:** | Township | Range | Section | Q/Q: | Lot: |
|---|---|---|---|---|---|
| | 35 S | 7 E | 7 | NW | 3 |

**Priority:** 10/14/1864

| **Use, Period Of Use and Quantity:** | Use: | Period Of Use: | Rate: | Duty: |
|---|---|---|---|---|
| | Irrigation | 03-01 to 10-16 | 1.04 cfs | 3.1 AFA |

| **Place Of Use:** | Township | Range | Section | Q/Q: | Lot: | Acreage: |
|---|---|---|---|---|---|---|
| | 35 S | 7 E | 7 | NENE | 1, 6 | 38.0 |
| | 35 S | 7 E | 7 | NWNE | 2, 5 | 9.2 |
| | 35 S | 7 E | 7 | SENE | 7 | 6.0 |
| | 35 S | 7 E | 7 | NENW | 3, 4 | 4.7 |
| | | Total Practicably Irrigable Acreage | | | | 57.9 |

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.

Owner # 37, Property # 1

OWRD Claim # 265

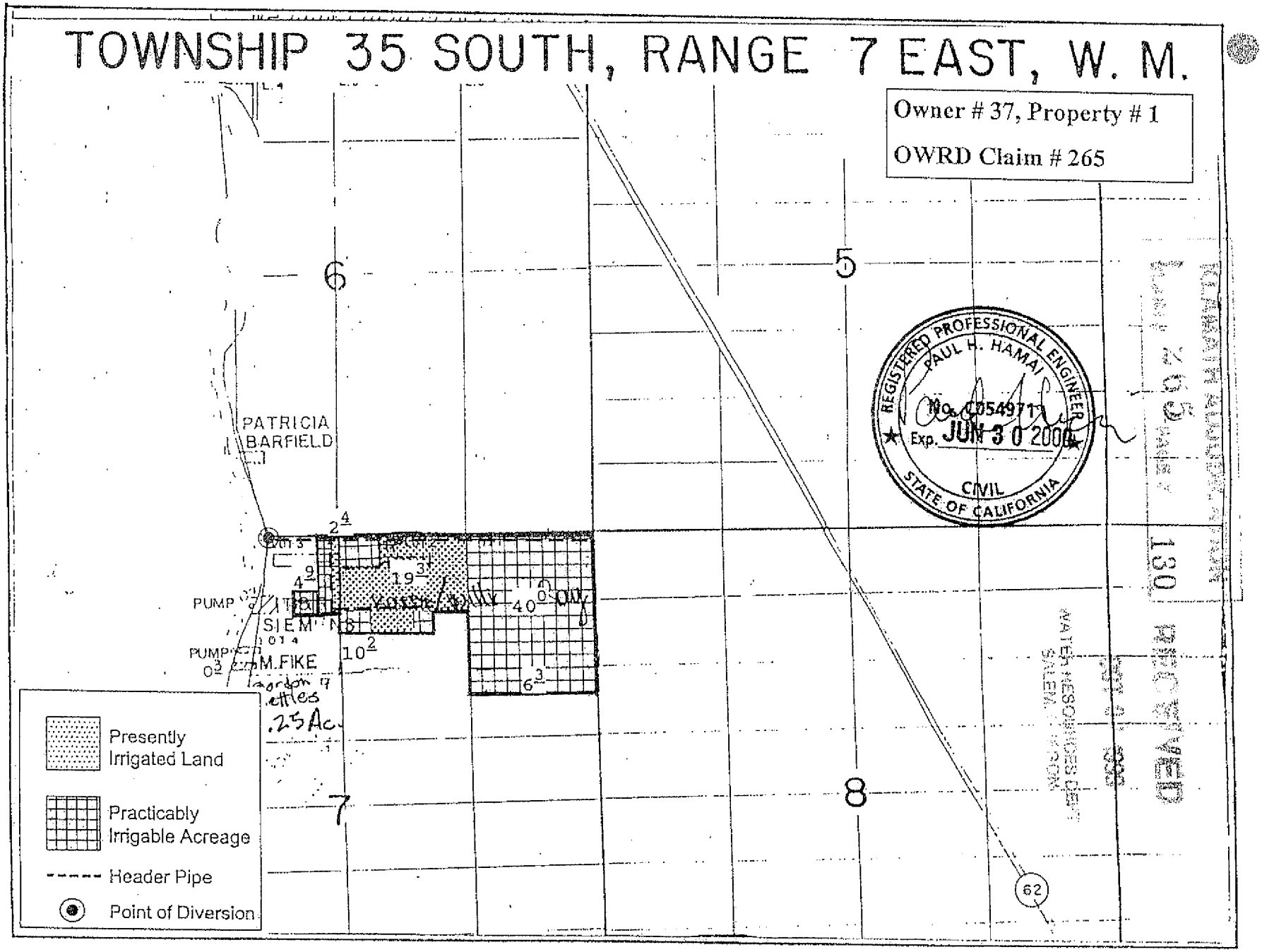


EXHIBIT "B"
Page 1 of 1

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

NRCE

## CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November 2005, I served the within Letter to Parties and STIPULATION TO RESOLVE CONTESTS on the parties hereto by regular first-class mail and by e-mail (where 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 Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@wrd.state.or.us
teri.k.hranac@wrd.state.or.us

Christopher B. Leahy
Fredericks, Pelcyger & Hester, LLC
1900 Plaza Drive
Louisville, CO 80027
cleahy@fphw.com

Jesse D. Ratcliffe, #04394
Stephen E.A. Sanders, #85321
Assistant Attorneys General



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