HARDY MYERS
Attorney General

PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 3, 2005

TO ALL PARTIES TO KLAMATH ADJUCATION CASE 80, CLAIM 281

Re: Klamath Adjudication – Case No. 80, Claim No. 281, Contest Nos. 1753 and 3560
DOJ File No. 690-600-GN0315-03

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.

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).

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/GENN4511
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; 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 vs. Aaron Smith; Estate of Levina Lalo Smith; Claimants/Contestants.	STIPULATION TO RESOLVE CONTEST 1753 Case No. 80 Claim: 281 Contests: 1753 and ~~3560~~[1]

Claimants/Contestants Aaron Smith and the Estate of Lavina Lalo Smith, 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 281 for a federal reserved Indian water right was filed with OWRD by the Claimants.

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[1] Don Vincent voluntarily withdrew from Contest 3560 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3560 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3560 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3560 on April 7, 2005.

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2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 281.

3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 281, Contest 1753.

4. Claimants/Contestants and OWRD agree that Contest 1753 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 281 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 281, 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 1753 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 281 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 281 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator as a federal reserved Indian water right in accordance with the Description of Water Right Claim 281.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 281 does not conform to the terms set forth in the attached Description of Water Right Claim 281, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 281 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 281.

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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.

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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. Claimants/Contestants 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
Claimant/Contestants Aaron Smith and the Estate of Lavina Lalo Smith

FREDERICKS, PELCYGER & HESTER, LLC

Christopher B. Leahy #251
Christopher B. Leahy
Pro Hac Vice; Colorado Bar 23612

7/15/05
Date

For the Oregon Water Resources Department

HARDY MYERS
Attorney General

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

7/27/05
Date

Michael Reynolds
Agency Representative
Oregon Water Resources Department

8-1-05
Date

KBA_ACFFOD_03519

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 **281**

Name and Address: Aaron Smith
Estate of Lavina Lalo Smith
206 Gage Road
Klamath Falls, OR 97601

Source: Copperfield Creek **Tributary:** Sprague River

Points Of Diversion:

Township	Range	Section	Q/Q:	Lot:
34 S	8 E	34	NESW	
34 S	8 E	34	NWSW	
34 S	8 E	34	SWSW	

(No actual physical point of diversion – stock have direct access to creek.)

Priority: 10/14/1864

Use, Period Of Use and Quantity:

Use:	Period Of Use:	Rate:
Livestock	01-01 to 12-31	240 gpd

Place Of Use:

Township	Range	Section	Q/Q:	Lot:	Acreage:
34 S	8 E	34	NESW		
34 S	8 E	34	NWSW		
34 S	8 E	34	SWSW		

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: Copperfield Creek **Tributary:** Sprague River

Point Of Diversion:	Township	Range	Section	Q/Q:	Lot:
	34 S	8 E	34	SWSW	

Priority: 10/14/1864

Use, Period Of Use and Quantity:	Use:	Period Of Use:	Rate:	Duty:
	Irrigation	03-01 to 10-16	.94 cfs	3.1 AFA

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	34 S	8 E	34	NESW		13.9
	34 S	8 E	34	NWSW		19.4
	34 S	8 E	34	SWSW		18.7
		Total Practicably Irrigable Acreage				52.0

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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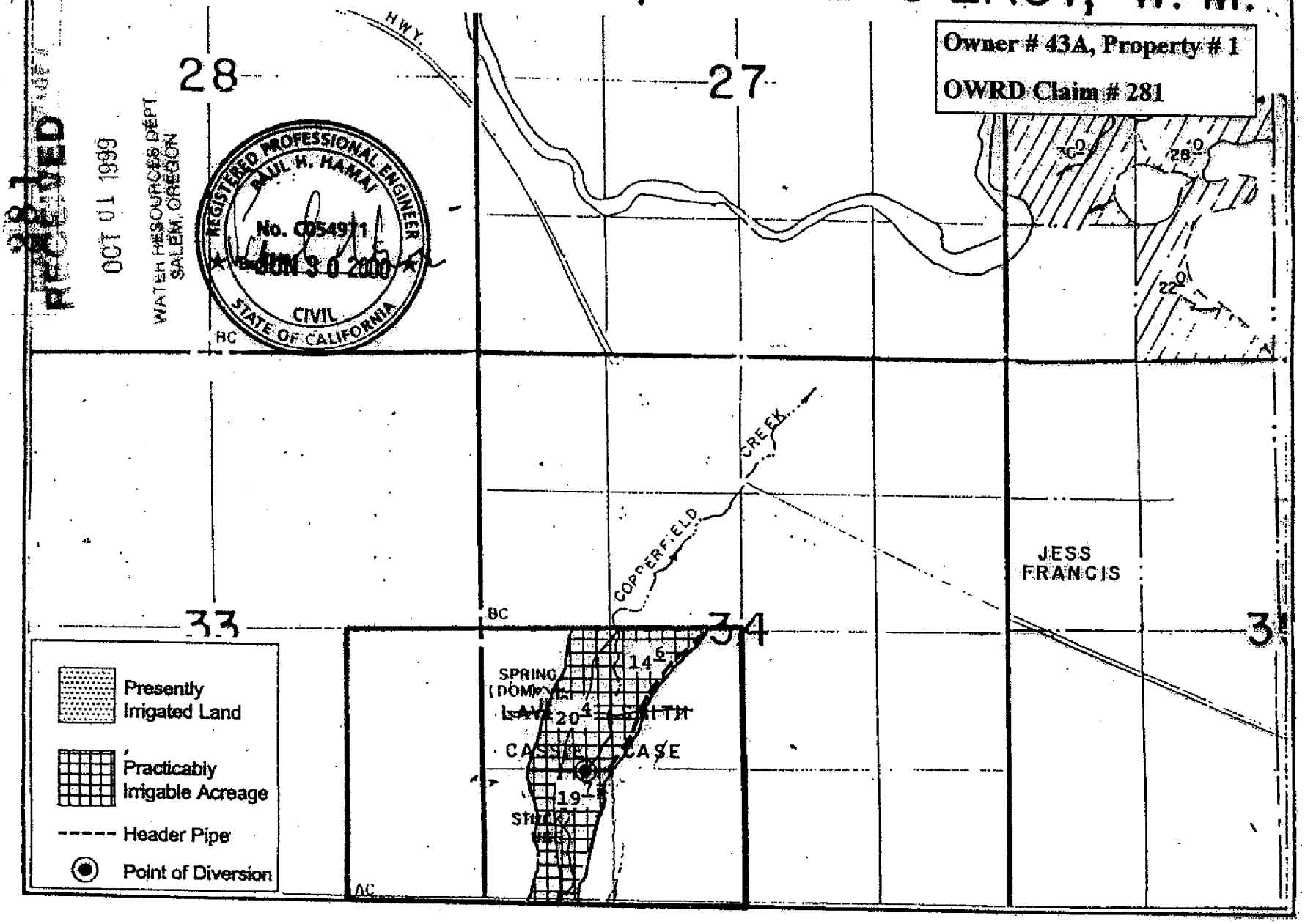
TOWNSHIP 34 SOUTH, RANGE 8 EAST, W. M.



REGISTERED PROFESSIONAL ENGINEER
PAUL H. HAMAI
No. C054971
JUN 30 2000
CIVIL
STATE OF CALIFORNIA

RECEIVED
OCT 01 1999
WATER RESOURCES DEPT
SALEM, OREGON

KLAMATH ADJUDICATION
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Exhibit "B"
Page 1 of 1

By: Natural Resources Consulting Engineers Inc.
1250 Addison St., Suite 204
Berkeley, Ca. 94702

NRCE

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August 2005, I served the within STIPULATION TO RESOLVE CONTESTS AND CERTIFICATE OF SERVICE 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
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teri.k.hranac@wrd.state.or.us

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Assistant Attorneys General

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