

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. 106, Claim No. 36, Contest Nos. 2798, 3385,
3784, 4092, and 4948
DOJ File No. 690-600-GN0076-03

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/GENS3507
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 2798, 3784 and 4902**

Case No. 106
Claim No. 36
Contest Nos. 2798, 3385, 3784, and 4902
and 4948

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 (“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 36 in the Klamath Basin Adjudication.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 36, preliminarily approving significant portions of the water right sought under Claim 36, subject to certain terms and conditions.

3. On May 3, 2000, Thomas W. Mallams filed contest 4948 to Claim 36. 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 3784.

5. On May 4, 2000, the Klamath Tribes filed Contest 4092.

6. On May 8, 2000, TNC filed Contest 2798 to Claim 36 contesting the Adjudicator's Preliminary Evaluation.

7. On May 8, 2000, the Klamath Project Water Users¹ (the "KPWU") filed Contest 3385 to Claim 36. KPWU are not a party to this Stipulation, their Contest 3385 being withdrawn by Stipulated Withdrawal of Contest No. 3385.

8. The parties hereto agree that Contests 2798, 3784 and 4902 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 106, Claim 36" 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 OWRD agree that the terms of the water right derived from Claim 36 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- Chocktoot Creek Ditch	A	900 feet North and 1040 feet West of the SE corner of Section 9, Township 32S, Range 14E, W.M.
2- Sycan River Weir 2 - Chocktoot Ditch	C-1	1790 feet South and 2000 feet West of the NE corner of Section 21, Township 32S, Range 14E, W.M.
3- 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.
4- Sycan River Weir 2 - DeCosta Ditch	C-3	1810 feet South and 2120 feet West of the NE corner of Section 21, Township 32S, Range 14E, W.M.
5- 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.
6- 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.
7- 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.
8- 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.
9- Coyote Creek Main Weir	I-2	202 feet North and 1300 feet West of the SE corner of Section 27, 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 POD Structure	POD Designation on Map	Source
1- Chocktoot Creek Ditch	A	Chocktoot Creek
2- Sycan River Weir 2 - Chocktoot Ditch	C-1	Sycan River
3- Sycan River Weir 2 - Reen Ditch	C-2	Sycan River
4- Sycan River Weir 2 - DeCosta Ditch	C-3	Sycan River
5- Sycan River Weir 3	D	Sycan River
6- Small's Ditch	H-4	Long Creek
7- North Fork Main Weir	H-5	Long Creek

8- Coyote Creek South Ditch	I-1	Coyote Creek
9- Coyote Creek Main Weir	I-2	Coyote Creek

c. USE: Irrigation of 9,009.8 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 2.34 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Name of POD Structure	POD Designation on Map	Rate	
		CFS/Acre	Total CFS
1- Chocktoot Creek Ditch	A	1/38	28.9
2- Sycan River Weir 2 - Chocktoot Ditch	C-1	1/52	15.8
3- Sycan River Weir 2 - Reen Ditch	C-2	1/58	52.7
4- Sycan River Weir 2 - DeCosta Ditch	C-3	1/44	7.5
5- Sycan River Weir 3	D	1/70	18.4
6- Small's Ditch	H-4	1/38	2.3
7- North Fork Main Weir	H-5	1/83	23.3
8- Coyote Creek South Ditch	I-1	1/36	2.8
9- Coyote Creek Main Weir	I-2	1/41	5.9

Note: Applicable rate for acres served by POD C-1 and POD C-2. Acres served by both POD C-1 (Sycan River Weir 2 – Chocktoot Ditch) and POD C-2 (Sycan River Weir 2 -- Reen Ditch)

are shown as Area 4 on Sycan Marsh Preserve Map for T32S, R14E attached hereto and listed on Attachment 2 annexed hereto. That place of use is served by POD C-2 when water from POD C-1 is not used on such land. When POD C-2 serves such land, its rate on all of its place of use shall be limited to 1/75 cfs (.013 cfs) per acre.

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

f. PRIORITY DATE: October 8, 1879.

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 use are also depicted on Sycan Marsh Preserve Maps for T31S and T32S, each for R14E, attached hereto, annexed hereto as Attachments 4 and 5, respectively.

C. RESOLUTION BASED ON TERMS OF AGREEMENT

1. Contestant the United States agrees that, pursuant to this agreement, the United States' Contest 3784 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 3784 before the Office of Administrative Hearings.

2. Contestant the Klamath Tribes agree that, pursuant to this agreement, the Klamath Tribes' Contest 4092 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 4092 before the Office of Administrative Hearings.

3. Claimant TNC agrees that TNC's Contest 2798 has been satisfactorily resolved and such resolution vitiates the need for a hearing on Contest 2798 before the Office of Administrative Hearings.

4. OWRD staff hereby recommends to the Adjudicator that Claim 36 be approved in the Findings of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of Claim 36 as described in Paragraph B.1, above.

5. If the Findings of Fact and Final Order of Determination issued by the Adjudicator for Claim 36 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 36 in the Circuit Court for Klamath County, and reserves 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.

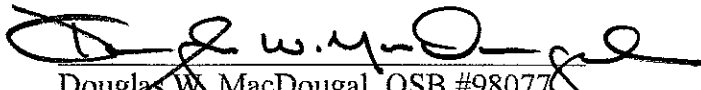
11. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the Parties and OWRD, notwithstanding that the Parties and OWRD did not sign the same original or the same counterparts.

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
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

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

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For Claimant The Nature Conservancy

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


Date

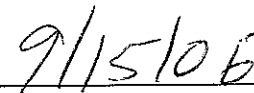
For Contestants The Klamath Tribes

Carl Ullman, Oregon State Bar No. 89156

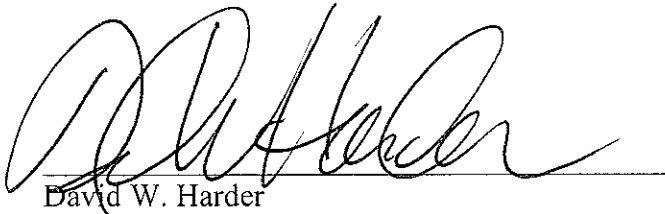
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For Contestant the United States of America

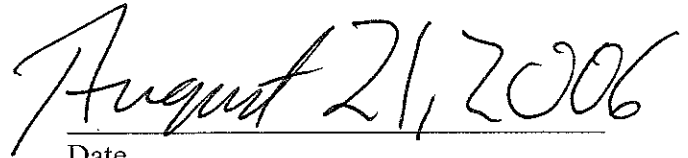

Barbara Scott-Brier
Special Attorney, United States Department of
Justice
Of Attorneys for Contestant the United States of
America



Date



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



Date

For Oregon Water Resources Department

Michael Reynolds,
Agency Representative, Oregon Water Resources
Department

Date

HARDY MYERS
Attorney General

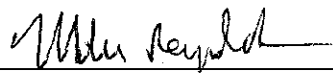
Jesse Ratcliffe, OSB No. 04394
Assistant Attorney General
Of Attorneys for the Oregon Water Resources
Department

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

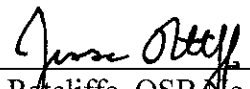


Michael Reynolds,
Agency Representative, Oregon Water Resources
Department

9-13-06

Date

HARDY MYERS
Attorney General



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

Date

5/13/06

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- Chocktoot Creek Ditch	A	Diversions will occur by opening the headgates (A) to distribute water to downstream channels and across fields.
2- Sycan River Weir 2 - Chocktoot Ditch	C-1	Diversions will occur by opening the headgates of each of the ditches (C-1, C-2 and C-3). Boards will be added at Weir 2 until a sufficient water elevation is achieved so as to distribute water into Chocktoot (C-1), Reen (C-2) and DeCosta (C-3) 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.
3- Sycan River Weir 2 - Reen Ditch	C-2	
4- Sycan River Weir 2 - DeCosta Ditch	C-3	
5- 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.
6- 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).
7- 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.
8- 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).
9- 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.

GENL2134

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

Township 32 South, Range 14 East

Primary Point of Diversion	Section	Quarter/ Quarter	Overlapping POD/Acreage
Sycan River Weir 2 - Chocktoot Ditch (C-1)	8	NENE	21.9
		SENE	40.0
		SESW	20.0
		NESE	40.0
		NWSE	38.9
		SWSE	38.8
		SESE	38.8
	9	NWNE	16.3
		NENW	39.3
		NWNW	39.2
		SWNW	40.0
		SENW	40.0
		NESW	40.0
		NWSW	40.0
	16	SWSW	38.8
		SESW	38.8
		NWNE	26.4
		SWNE	6.6
		NENW	20.6
	17	NWNW	16.0
		NESE	1.1
NENE		11.4	
NWNE		6.9	
		NENW	2.3
Total Acres:			662.1

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ATTACHMENT 3: PLACES OF USE

Township 31 South, Range 14 East

Point of Diversion	Section	Quarter/ Quarter	Acres
Coyote Creek South Ditch (I-1)	29	NESW	39.2
		NWSW	40.0
		NWSE	20.5
Total Acres:			99.7

Coyote Creek Main Weir (I-2)	30	SENE	3.9
		NESW	0.9
		SWSW (Lot 4)	26.1
		SESW	34.6
		NESE	36.6
		NWSE	16.5
		SWSE	39.3
		SESE	40.0
	31	NENW	6.2
	NWNW (Lot 1)	37.4	
	SWNW (Lot 2)	1.4	
Total Acres:			242.9

North Fork Main Weir (H-5)	29	SWSW	40.0
		SESW	29.6
	31	NENE	40.0
		NWNE	39.7
		SWNE	39.8
		SENE	40.0
		SWNW	0.3
		SENW	24.3
		NESW	37.7
		NWSW (Lot 3)	38.8
		SWSW (Lot 4)	39.3
		SESW	37.8
	NESE	40.0	
	NWSE	40.0	
	SWSE	40.0	
	SESE	40.0	
	32	NWNE	4.7
		SWNE	3.6
		NENW	36.3
		NWNW	39.4
		SWNW	39.8
SENW		39.3	
NESW		39.0	
NWSW		40.0	
SWSW		40.0	
SESW	38.3		
NESE	3.1		
SESE	11.0		

Point of Diversion	Section	Quarter/ Quarter	Acres
North Fork Main Weir (H-5) (Continued)	33	NESW	24.3
		NWSW	26.0
		SWSW	40.0
		SESW	40.0
		NWSE	18.4
		SWSE	33.1

Total Acres: 1083.6

Small's Ditch (H-4)	31	NENW	33.8
		NWNW	5.9
		SWNW (Lot 2)	34.2
		SENW	14.2

Total Acres: 88.1

Sycan River Weir 2 - Reen Ditch (C-2)	29	SESW	8.4
		NESE	40.0
		NWSE	16.7
		SWSE	39.8
		SESE	40.0
	32	NENE	38.5
		NWNE	33.8
		SWNE	36.1
		SENE	37.3
		NENW	2.6
		NESE	32.4
		NWSE	40.0
		SWSE	40.0
		SESE	24.0

Total Acres: 429.6

Township 32 South, Range 14 East

Point of Diversion	Section	Quarter/ Quarter	Acres
Chocktoot Creek Ditch (A)	3	NWNE (Lot 2)	4.2
		SWNE	1.1
		NENW (Lot 3)	30.0
		SENW	23.2
		NESW	22.3
		NWSW	19.6
		SWSW	40.0
	3	SESW	22.1
	4	SWSW	30.0
		SESW	33.7
		NESE	11.2
		NWSE	3.0
		SWSE	39.9
		SESE	40.0
	5	NESW	4.7
		SWSW	2.4
		SESW	34.4
		NWSE	5.5
		SWSE	38.5
		SESE	28.2
	7	NENE	0.3
		SENE	20.6
		SESW	6.4
		NESE	39.8
		NWSE	13.1
		SWSE	36.8
	8	SESE	38.4
NENE		18.1	
		NWNE	40.0

Point of Diversion	Section	Quarter/ Quarter	Acres	
Chocktoot Creek Ditch (A) (Continued)		SWNE	22.4	
		NENW	40.0	
		NWNW	27.9	
		SWNW	40.0	
		SENW	40.0	
		NESW	32.3	
		NWSW	40.0	
		SWSW	15.1	
		SESW	0.6	
		NWSE	1.1	
	9	NENE	40.0	
		NWNE	23.7	
		SWNE	3.4	
		SENE	40.0	
		NENW	0.7	
		NWNW	0.8	
		NESE	28.4	
	10	SESE	4.9	
		NENW	0.7	
		NWNW	27.8	
	18	SWNW	4.2	
		NENE	1.4	
		NWNE	2.0	
			NENW	1.2
	Total Acres:			1086.1

Point of Diversion	Section	Quarter/ Quarter	Acres
Sycan River Weir 2 - Chocktoot Ditch (C-1)	4	SWSW	1.9
		SESW	2.2
	8	NENE	21.9
		SWNE	17.6
		SENE	40.0
		NESW	4.8
		SESW	20.0
		NESE	40.0
		NWSE	38.9
		SWSE	38.8
		SESE	38.8
		9	NWNE
	SWNE		36.6
	NENW		39.3
	NWNW		39.2
	SWNW		40.0
	SENW		40.0
	NESW		40.0
	NWSW		40.0
	SWSW		38.8
	SESW		38.8
	NWSE		40.0
	SWSE		37.9
	SESE	2.4	
	16	NENE	0.5
		NWNE	26.4
		SWNE	6.6
		SENE	8.4
		NENW	20.6
		NWNW	16.0
	17	NESE	1.1
		NENE	11.4
NWNE		6.9	
		NENW	2.3
Total Acres:			814.4

Sycan River Weir 2 - DeCosta Ditch (C-3)	19	SESE	1.8
	20	SWNE	31.7
		SENE	28.8
		SWNW	12.1
		SENW	32.7
		NESW	40.0
		NWSW	37.0
		SWSW	12.9
		SESW	9.6
		NESE	40.0
		NWSE	40.0
		SWSE	23.8
		SESE	16.8
Total Acres:			327.2

Point of Diversion	Section	Quarter/ Quarter	Acres
North Fork Main Weir (H-5)	4	NWNE (Lot 2)	9.1
		NENW (Lot 3)	35.2
		NWNW (Lot 4)	38.0
		SWNW	25.8
		SENW	4.7
	5	NENE (Lot 1)	24.1
		NWNE (Lot 2)	0.2
		SWNE	34.1
		SENE	37.8
		NENW (Lot 3)	14.3
	6	NWNW (Lot 4)	33.6
		NENE (Lot 1)	38.4
		NWNE (Lot 2)	38.8
		SWNE	40.0
		SENE	39.6
		NENW (Lot 3)	39.3
		NWNW (Lot 4)	18.0
		SWNW (Lot 5)	39.1
		SENW	37.8
		NESW	31.3
NWSW (Lot 6)	33.6		
SWSW (Lot 7)	36.5		
SESW	38.8		
NESE	40.0		
NWSE	40.0		
SWSE	40.0		
SESE	34.7		

Total Acres: 842.8

Sycan River Weir 2 - Reen Ditch (C-2)	3	NENW (Lot 3)	6.5
		NWNW (Lot 4)	37.6
		SWNW	40.0
		SENW	4.9
		NESW	2.6
		NWSW	18.1
		4	NENE (Lot 1)
	NWNE (Lot 2)		29.5
	SWNE		40.0
	SENE		40.0
	NENW (Lot 3)		3.1
	SWNW		14.2
	SENW		35.3
	NESW		37.1
	NWSW		37.1
	SWSW		8.1
	SESW	4.1	
NESE	25.9		

Point of Diversion	Section	Quarter/ Quarter	Acres
Sycan River Weir 2 - Reen Ditch (C-2) (Continued)		NWSE	34.1
		SWSE	0.1
	5	NENE (Lot 1)	10.8
	5	NWNE (Lot 2)	37.6
		SWNE	0.6
		SENE	2.0
		NENW (Lot 3)	23.5
		NWNW (Lot 4)	4.6
		SWNW	40.0
		SENW	40.0
		NESW	32.5
		NWSW	40.0
		SWSW	35.3
		SESW	3.6
		NESE	37.1
		NWSE	30.7
		SWSE	1.5
		SESE	11.8
	6	SESE	5.3
	7	NENE	38.7
		NWNE	40.0
		SWNE	39.9
		SENE	14.2
		NENW	40.0
		NWNW (Lot 1)	38.7
		SWNW (Lot 2)	38.3
		SENW	40.0
		NESW	40.0
		NWSW (Lot 3)	37.9
		SWSW (Lot 4)	37.6
		SESW	29.1
		NWSE	21.9
		SWSE	0.8
		SESE	0.4
	8	NWNW	8.2
		NESW	2.9
		SWSW	23.7
		SESW	18.2
	16	NENW	7.8
		NWNW	22.8
	SWNW	39.5	
	SENW	2.1	
	NESW	38.0	
	NWSW	40.0	
	SWSW	40.0	
	SESW	40.0	
	NESE	3.4	

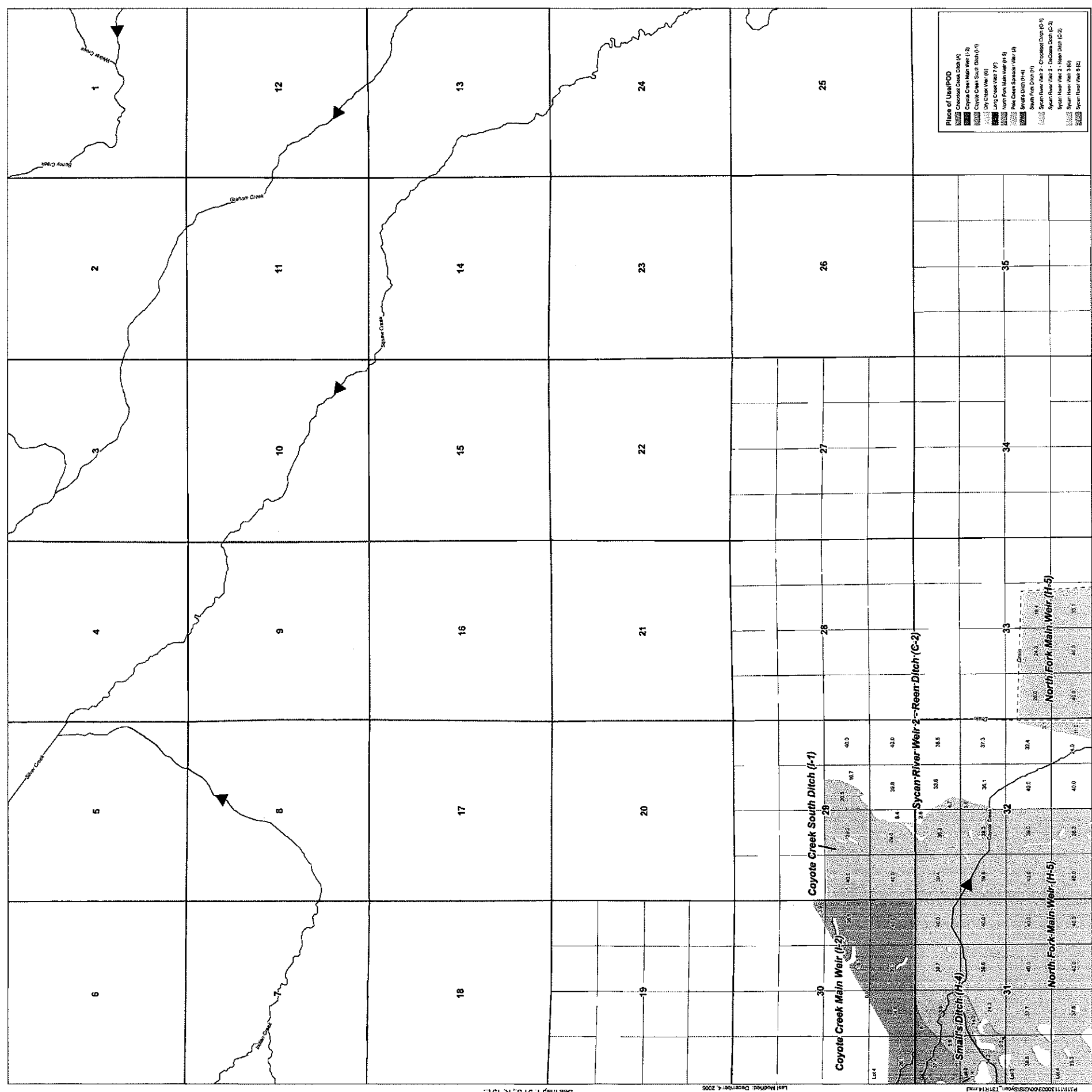
Point of Diversion	Section	Quarter/ Quarter	Acres	
Sycan River Weir 2 - Reen Ditch (C-2) (Continued)		NWSE	34.7	
		SWSE	33.1	
		NWNE	9.1	
		SWNE	33.4	
		NENW	10.4	
		SWNW	0.5	
		SENW	37.9	
		NESW	2.0	
		NWSE	3.4	
		17	NENE	27.4
			NWNE	31.9
			SWNE	40.0
			SENE	40.00
		17	NWSE	36.5
			NWNW	38.8
			SWNW	40.0
			SENW	40.0
			NESW	40.0
			NWSW	37.6
			SESW	1.7
			NESE	40.0
			NWSE	40.0
			SWSE	38.0
			SESE	40.0
		18	NENE	37.4
			NWNE	36.8
			SWNE	40.0
			SENE	40.0
			NENW	36.2
			NWNW (Lot 1)	34.3
			SWNW (Lot 2)	34.1
			SENW	40.0
			NESW	26.3
		NWSW (Lot 3)	21.0	
		NESE	33.8	
		NWSE	30.1	
	20	NENE	25.1	
		NWNE	17.4	

Total Acres: 2705.5

Point of Diversion	Section	Quarter/ Quarter	Acres	
Sycan River Weir 3 (D)	17	NWSW	2.4	
		SWSW	40.0	
		SESW	38.3	
		SWSE	1.9	
	18	NESW	13.7	
		NWSW (Lot 3)	15.9	
		SWSW (Lot 4)	36.6	
		SESW	40.0	
		NESE	6.2	
		NWSE	9.9	
		SWSE	40.0	
		SESE	40.0	
		19	NENE	40.0
	NWNE		40.0	
	SWNE		40.0	
	SENE		39.9	
	NENW		40.0	
	NWNW (Lot 1)		37.1	
	SWNW (Lot 2)		36.9	
	SENW		40.0	
	NESW		40.0	
	NWSW (Lot 3)		36.8	
	SWSW (Lot 4)		36.6	
	19		SESW	39.4
			NESE	38.2
		NWSE	39.3	
		SWSE	38.2	
		SESE	36.8	
	20	NENE	12.4	
		NWNE	20.8	
		SWNE	8.3	
		SENE	11.2	
		NENW	37.6	
		NWNW	39.5	
		SWNW	26.0	
		SENW	7.3	
		NWSW	3.0	
		SWSW	0.1	
	30	NENE	24.1	
		NWNE	38.4	
		SWNE	0.8	
		NENW	38.1	
		NWNW (Lot 1)	34.6	
		SWNW (Lot 2)	37.3	
SENW		19.3		
NWSW (Lot 3)		25.3		
SWSW (Lot 4)		1.7		
Total Acres:			1289.9	

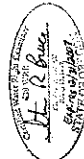
TOWNSHIP 31 SOUTH, RANGE 14 EAST, W.M.
CLAIM 36
Sycan Marsh Preserve
The Nature Conservancy

RECEIVED
DEC 13 2005
WATER RESOURCES DEPT
SALEM OREGON



See map T. 32 S., R. 14 E.

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

Place of Use/POD

[Symbol]	Coyote Creek Ditch (A)
[Symbol]	Coyote Creek Main Weir (H-2)
[Symbol]	Coyote Creek South Ditch (I-1)
[Symbol]	Dry Creek Weir (G)
[Symbol]	Long Creek Weir (F)
[Symbol]	North Fork Main Weir (H-5)
[Symbol]	North Fork Main Weir (H-4)
[Symbol]	Reen Ditch (G-2)
[Symbol]	Small's Ditch (H-4)
[Symbol]	Sycan River Weir 2 - Reen Ditch (G-2)
[Symbol]	Sycan River Weir 3 (G)
[Symbol]	Sycan River Weir 4 (G)

Legend

[Symbol]	Point of Diversion (POD)
[Symbol]	Railroad
[Symbol]	River
[Symbol]	Ditch/Drain
[Symbol]	Stream
[Symbol]	Quarter/Quarter
[Symbol]	Section

Areas of Overlapping Irrigation

[Symbol]	Overlap From: North Fork Main Weir (H-5)
[Symbol]	South Fork Ditch (H)
[Symbol]	Sycan River Weir 2 - Reen Ditch (G-2)

APPENDIX AGREEMENT OF ADDITIONAL TERMS IN CASE 106, CLAIM 36

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 2798, 3784, and 4902 ("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) Sycan Dredging/Channel. The United States and the Klamath Tribes recognize that currently there is no continuous, single channel of the Sycan River through the Sycan Marsh below Weir 3 and that TNC is not obligated to dredge such a channel to supply the United States/Klamath Tribes instream rights.

(2) Sycan River Flows. From March 1 to June 30, 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 or the Klamath Tribes having the effect of reducing or eliminating TNC's use of water on the Sycan Marsh, so long as the flow in the Sycan River between Weirs 2 and 3 equals or exceeds 25% of the available flow measured at the Sycan River gaging station, approximately 1.5 miles upstream of TNC's Weir 2. From July 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 or the Klamath Tribes, and TNC will not be obligated to bypass any flows at Weir 2 during that period.

(3) 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 or the Klamath Tribes

having the effect of reducing or eliminating TNC's use of water 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.

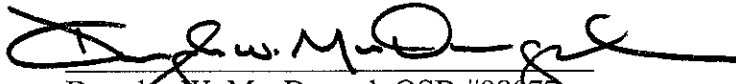
(4) Restriction on Certain TNC Transfers. Other than a change to instream use or to conform its water rights to the definition of irrigation by applicable state laws or regulations, or to conform to the requirements of the Endangered Species Act or other applicable laws, TNC will not change the type 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.

///

///

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

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

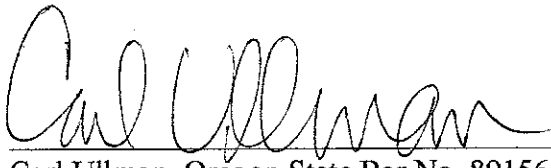
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Douglas W. MacDougal, OSB #98077
Schwabe, Williamson & Wyatt, P.C., Of Attorneys
for Claimant

Date

For Contestants The Klamath Tribes



Carl Ullman, Oregon State Bar No. 89156

25 Sep 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

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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

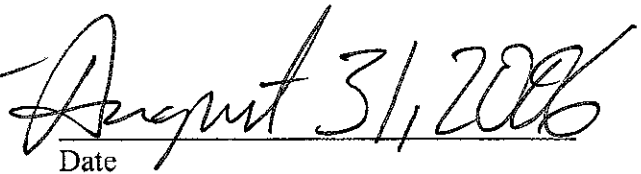
For Contestant the United States of America

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 (address is listed below), a true, exact and full copy thereof to:

VIA STATE SHUTTLE MAIL

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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

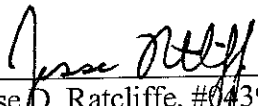
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