

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

June 30, 2005

TO ALL PARTIES TO THE KLAMATH ADJUDICATION CASE NO. 55, CLAIM 256

Re: Klamath Adjudication – Case No. 121, Claim No. 160, Contest Nos. 2043, 3154,  
3401, 3829 and 4170  
DOJ File No. 690-600-GN0092-03

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:jrs/GENN1324  
Enclosure  
c: Service List

STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204  
Main (503) 224-3380 Fax (503) 220-2480

1 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
2 STATE OF OREGON  
3 for the  
4 WATER RESOURCES DEPARTMENT

5 In the Matter of the Determination of the Relative Rights of the Waters of the Klamath River,  
6 a Tributary of the Pacific Ocean

7 Horsefly Irrigation District; Langell Valley  
8 Irrigation District; Medford Irrigation  
9 District; Rogue River Valley Irrigation  
10 District; United States Bureau of  
11 Reclamation; The Klamath Tribes; Klamath  
12 Irrigation District; Klamath Drainage  
13 District; Tulelake Irrigation District;  
14 Klamath Basin Improvement District; Ady  
15 Ditch Improvement Company; Enterprise  
16 Irrigation District; Klamath Hills District  
17 Improvement Co.; Malin Irrigation District;  
18 Midland District Improvement Company;  
19 Pine Grove Irrigation District; Pioneer  
20 District Improvement Company; Poe Valley  
21 Improvement District; Shasta View  
22 Irrigation District; Sunnyside Irrigation  
23 District; Don Johnston & Son; Bradley S.  
24 Luscombe; Berlva Prichard; Don Vincent;  
25 Randy Walthall; Inter-County Title Co.;  
26 Winema Hunting Lodge, Inc.; Reames Golf  
and Country Club; Van Brimmer Ditch Co.;  
Plevna District Improvement Company; and  
Collins Products, LLC,

Contestants,

v.

JELD-WEN, inc.,

Claimant/Contestant.

**STIPULATION TO RESOLVE  
CONTESTS 2043, 3154, 3401, 3829, and  
4170**

Case No. 121

Claim No. 160

Contest Nos. 2043, 3154<sup>1</sup>, 3401<sup>2</sup>, 3829 and  
4170

<sup>1</sup> On June 4, 2002, Horsefly Irrigation District and Langell Valley Irrigation Districts withdrew from participation in Contest No. 3154.

<sup>2</sup> On November 28, 2000, Contestant Don Vincent informed the Adjudicator that he had sold his interest in the property giving rise to his claims and this contest and was no longer a participant in this contested case. On June 24, 2002, Contestant Berlva Prichard informed the Office of Administrative Hearings that she had sold her interest in the property giving rise to her claims and contests and was no longer a participant in this contested case.

1 The Oregon Water Resources Department (“OWRD”), Claimant/Contestant JELD-  
2 WEN, inc. (“Claimant”), Contestant Klamath Project Water Users (“KPWU”), Contestant  
3 Medford Irrigation District (“MID”), Contestant Rogue River Valley Irrigation District  
4 (“RRVID”), Contestant United States of America, and Contestant The Klamath Tribes  
5 (collectively, “Contestants”) hereby agree and stipulate as follows:

6 **A. STIPULATED FACTS**

7 1. On February 1, 1991, Claimant filed Claim 160 in the Klamath Adjudication,  
8 claiming a total of 16.62 cubic feet per second from Upper Klamath Lake and drainage into a  
9 canal for irrigation of 37 acres, industrial use, and fire suppression; with a claimed period of  
10 use of May 1 through October 1 for irrigation, and a claimed period of year-round use for  
11 industrial use and fire suppression; and with a claimed priority date of 1905.

12 2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of  
13 Claim 160, finding that use of water or construction of works for the application of water  
14 under the Claim occurred in 1905, but finding that the record did not contain evidence of  
15 completion of works within a reasonable time after commencement of construction or use of  
16 water. On this latter basis, the Adjudicator preliminarily denied the Claim.

17 3. On May 5, 2000, Claimant filed contest 2043 to Claim 160, and raised the  
18 issue in said contest of whether there was sufficient evidence to support the right as claimed.

19 4. On May 8, 2000, the KPWU filed Contest 3401 to Claim 160, and raised the  
20 issue in said contest of whether there was sufficient evidence to support the right as claimed  
21 and whether the required elements were established for this Claim.

22 5. On May 8, 2000, Horsefly Irrigation District (“HID”), Langell Valley  
23 Irrigation District (“LVID”), RRVID, and MID, as trustees for their affected patrons, filed  
24 Contest 3154, and raised the issue of whether waters from Four Mile Lake and Fish Lake  
25 should be “water available” for appropriation in the Klamath Adjudication. On June 4, 2002,  
26 HID and LVID withdrew from participation in Contest No. 3154.

1           6.       On May 8, 2000, the United States of America filed Contest 3829, and raised  
2 the issue in said contest of whether there was sufficient evidence to support the right as  
3 claimed, whether there was sufficient information on the development of water on the  
4 claimed place of use prior to February 24, 1909 to establish a vested pre-1909 water right,  
5 and whether the claimed diversion rate was too large for the valid number of irrigated acres  
6 within the place of use.

7           7.       On May 8, 2000, The Klamath Tribes filed Contest 4170, and raised the issue  
8 in said contest of whether there was sufficient evidence to support the right as claimed,  
9 whether there was sufficient information on the development of water on this place of use  
10 prior to February 24, 1909 to establish a vested pre-1909 water right, and whether the  
11 claimed diversion rate was too large for the valid number of irrigated acres within the place  
12 of use.

13          8.       On November 12, 2002, Claimant filed a response to United States First Set of  
14 Interrogatories and Request for Production of Documents Propounded to Claimant JELD-  
15 WEN, inc., and a response to Klamath Project Water Users' Interrogatories and Requests for  
16 Production of Documents to Claimant JELD-WEN, inc. The responses included materials  
17 responsive to the earlier finding by the Adjudicator that the record at the time of the  
18 Preliminary Evaluation did not contain evidence of completion of works within a reasonable  
19 time after commencement of construction or use of water. In addition to these materials, the  
20 Claimant has submitted additional materials into the official record for this case.

21          9.       OWRD, Claimant, and Contestants agree that Contests 2043, 3154, 3401,  
22 3829, and 4170 can be resolved without the need for a hearing pursuant to the terms outlined  
23 below.

24 **B.       TERMS OF THE AGREEMENT**

25          1.       OWRD, Claimant, and Contestants agree that Claim 160 should be approved  
26 by the Adjudicator as described below:

1 a. POINT OF DIVERSION LOCATION: Government Lot 6 (NE 1/4, NW 1/4),  
2 Section 19, T38S, R9E, W.M.

3 b. SOURCE: Upper Klamath Lake and drainage into diversion canal.

4 c. USE: Industrial and fire suppression.

5 d. AMOUNT ACTUALLY BENEFICIALLY USED: For industrial use, rate of  
6 0.15 cfs, and for industrial use for the purpose of the maintenance of a fire suppression  
7 system, rate of 13.13 cfs, for total rate of 13.28 cfs, measured at the point of diversion.

8 e. PERIOD OF USE: Year-round.

9 f. PRIORITY DATE: December 31, 1905.

10 g. PLACE OF USE: Government Lots 1, 5, and 6 of Section 18, and  
11 Government Lots 4, 5, 6, and 7 of Section 19, T38S, R9E W.M.

12 h. OTHER: The use of water for the purpose of the maintenance of a fire  
13 suppression system cannot be transferred to any other use.

14 2. MID and RRVID anticipate that it will be necessary at some point in the  
15 future to litigate the issue of whether the waters of Fourmile Lake, Cascade Canal, or the  
16 tributaries thereto are legally and physically available to satisfy senior downstream calls in  
17 the Klamath Basin. Claimant agrees not to seek party status or otherwise voluntarily  
18 participate in such legal proceedings, unless the OWRD asserts that the waters of Fourmile  
19 Lake, Cascade Canal, or the tributaries thereto are the only source of water available to  
20 satisfy a call by Claimant based on the right claimed in Claim 160. The United States of  
21 America, The Klamath Tribes, and the KPWU take no position on this provision of the  
22 stipulation and such provision is not binding on the United States of America, KPWU, or The  
23 Klamath Tribes.

24 3. OWRD, Claimant, and Contestants agree that under the terms and provisions  
25 of this Stipulation, Contests 2043, 3154, 3401, 3829, and 4170 have been satisfactorily

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1 resolved, and such resolution ends the need for further proceedings before the Administrative  
2 Law Judge on the Contests.

3           4.       Based on the Stipulation of the Parties that Claim 160 and the Contests can be  
4 resolved without the need for further proceedings, OWRD adjudication staff hereby  
5 recommends to the Adjudicator that Claim 160 be withdrawn from the Office of  
6 Administrative Hearings. OWRD adjudication staff further recommends that Claim 160 be  
7 approved in the Finding of Fact and Order of Determination issued by the Adjudicator in  
8 accordance with the terms of paragraph B.1., above.

9           5.       If the Finding of Fact and Order of Determination issued by the Adjudicator  
10 for Claim 160 does not conform to the terms set forth in paragraph B.1., above, Claimant and  
11 Contestants reserve any rights they may have to file exceptions to the Finding of Fact and  
12 Order of Determination as to Claim 160 in the Circuit Court for Klamath County, and reserve  
13 any rights they may have to participate in any future proceedings authorized by law  
14 concerning Claim 160.

15           6.       Upon issuance of the Certificate by OWRD after conclusion of the  
16 proceedings in the Circuit Court, any violation of the terms therein shall constitute a violation  
17 of the Certificate and shall not give rise to any private cause of action by the Contestants.  
18 Enforcement as to any violation of the Certificate shall occur pursuant to Oregon law

19           7.       The Parties agree that this Stipulation has been reached through good faith  
20 negotiations for the purpose of resolving legal disputes, including pending administrative  
21 action. The Parties agree that no offers and/or compromises made in the course of  
22 negotiations shall be construed as admissions against interest. The Parties agree that this  
23 Stipulation shall not be offered as evidence or treated as an admission regarding any matter  
24 and may not be used in proceedings on any other claim or contest whatsoever, except that the  
25 Stipulation may be used in any future proceeding to interpret and/or enforce the terms of this  
26 Stipulation. Further, the Parties agree that neither the Stipulation nor any of its terms shall be

1 used to establish precedent with respect to any other claim or contest in the Klamath Basin  
2 Water Rights Adjudication.

3 8. This Stipulation shall be binding upon and shall inure to the benefit of the  
4 Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries,  
5 predecessors, successors, affiliated and related entities, officers, directors, principals, agents,  
6 employees, assigns, representatives and all persons, firms, associations, and/or corporations  
7 connected with them.

8 9. Each Party to this Stipulation represents, warrants, and agrees that the person  
9 who executed this Stipulation on its behalf has the full right and authority to enter into this  
10 Stipulation on behalf of that party and bind that party to the terms of the Stipulation.

11 10. The terms, provisions, conditions, and covenants of this Stipulation are not  
12 severable, except, if any term, provision, condition, or covenant of this Stipulation is held by  
13 a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the  
14 terms, provisions, conditions, and covenants shall remain in full force and effect and shall in  
15 no way be affected, impaired, or invalidated.

16 11. This Stipulation may be executed in several counterparts and all documents so  
17 executed shall constitute one Stipulation, binding on the Parties, notwithstanding that the  
18 Parties did not sign the same original or the same counterparts. Delivery of an executed  
19 signature page to this Stipulation by facsimile transmission shall be as effective as delivery of  
20 an original signed counterpart of this Stipulation.

21 12. This Stipulation comprises the entire agreement and no promise, inducement,  
22 or representation other than herein set forth has been made, offered, and/or agreed upon, and  
23 the terms of this Stipulation are contractual and not merely a recital.

24 13. The Parties agree to bear their own costs and attorneys' fees.  
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For Contestant United States of America

Kelly A. Johnson  
Acting Assistant Attorney General

Stephen R. Palmer June 16, 2005  
Stephen R. Palmer Date

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

For Contestant The Klamath Tribes

Carl V. Ullman for June 20, 2005  
Carl V. Ullman, #39156 Date  
Of Attorneys for Contestant The Klamath Tribes

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For Oregon Water Resources Department



6-20-05

Michael J. Reynolds  
Agency Representative for  
Oregon Water Resources Department

Date

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## CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June 2005, I served the within LETTER TO ALL PARTIES with STIPULATION TO RESOLVE CONTESTS 2043, 3154, 3401, 3829, AND 4170 on the parties hereto by regular first-class mail (with a courtesy copy by e-mail where an e-mail address is listed below), a true, exact and full copy thereof to:

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