

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

John M. Mosby; Marilyn Mosby; Boyd P. Braren;
Boyd P. Braren Trust; Roger Nicholson; Richard
Nicholson; Agri Water, LLC; Maxine Kizer;
Ambrose McAuliffe; Susan McAuliffe; Kenneth L.
Tuttle and Karen L. Tuttle dba Double K Ranch;
~~Dave Wood; Kenneth Zamzow~~; Nicholson
Investments, LLC; William S. Nicholson; John B.
Owens; William L. Brewer; Mary Jane Danforth;
Jane M. Barnes; Franklin Lockwood Barnes, Jr.;
Jacob D. Wood; Elmore E. Nicholson; Mary Ann
Nicholson; Gerald H. Hawkins; Hawkins Cattle
Co.; Owens & Hawkins; Harlow Ranch; Terry M.
Bengard; Tom Bengard; Dwight T. Mebane; Helen
Mebane; Sevenmile Creek Ranch, LLC; James G.
Wayne, Jr.; Clifford Rabe; Tom Griffith; William
Gallagher; Thomas William Mallams, River
Springs Ranch, Pierre A. Kern Trust, William V.
Hill, Lillian M. Hill, Carolyn Obenchain; Lon
Brooks; Newman Enterprise; ~~William C. Knudtsen~~;
Wayne Jacobs; Margaret Jacobs; Robert Bartell;
Rodney Z. James; Hilda Francis for Francis Loving
Trust; David M. Cowan; James R. Goold for Tillie
Goold Trust; Duane F. Martin; Klamath Irrigation
District; Klamath Drainage District; Tulelake

PROPOSED ORDER

Case No. 271

Claim: 300

Contests: 2866¹, 3112, 3289², 3660³,
and 3992

¹ WaterWatch of Oregon, Inc.'s Contest 2866 was dismissed. See ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTESTS, May 20, 2003

² William Bryant voluntarily withdrew from Contest 3289 on October 31, 2003. Dave Wood voluntarily withdrew from Contest 3289 on October 26, 2004. Kenneth Zamzow voluntarily withdrew from Contest 3289 on July 8, 2005. Change of Title Interest for Contest 3289 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contest 3289 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contest 3289 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contest 3289 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contest 3289 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contest 3289 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contest 3289 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). William Knudtsen voluntarily withdrew from Contest 3289 on September 13, 2005.

³ Don Vincent voluntarily withdrew from Contest 3660 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3660 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contest 3660 on January 16, 2004.

Irrigation 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; Modoc Lumber Co.; 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; and Collins Products, LLC;
Contestant(s)

vs.

United States Department of Interior, Fish and Wildlife Service
Claimant/Contestant.

This proceeding, under the provisions of ORS Chapter 539, is part of a general stream adjudication to determine the relative rights of the parties to waters of the various streams and reaches within the Klamath Basin.

On April 30, 1997, the United States of America, Department of the Interior, Fish and Wildlife Service (Claimant or United States) filed Claim No. 300 for an implied federal reserved water right in and for the Klamath Marsh National Wildlife Refuge (Refuge). On May 4, 1999, the United States filed an amended claim for the same water right. On October 1, 1999, Claimant submitted additional documentation in support of Claim 300.

On October 4, 1999, Richard D. Bailey, the Adjudicator of the Klamath Basin General Adjudication, issued a Preliminary Evaluation, which only took into account information available as of August 4, 1999, and recommended denying the claim due to inconsistency between the deeds submitted and the claimed priority date.

On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2866 in support of the water right claimed. On May 20, 2003, WaterWatch was dismissed as a party contestant from all proceedings in the Klamath Basin General Adjudication.

On May 8, 2000, John M. Mosby and Marilyn Mosby filed Contest 3112, opposing the water right claimed. These Contestants appeared through their attorney, Ronald S. Yockim.

Contest 3112 was also filed on behalf of Boyd P. Braren and the Boyd P. Braren Trust ("Braren"). The water rights identified in Contest 3112 as the basis of Braren's interest in contesting Claim 300 were subsequently sold to Robert M. Cook, TPC, LLC ("TPC"), and TPC appeared through its attorney, Carol DeHaven Skerjanec.

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On May 8, 2000, the Nicholson Group⁴ filed Contest 3289, opposing the water right claimed. The Nicholson Group appeared through its attorney, Carol DeHaven Skerjanec.

On May 8, 2000, the Klamath Project Water Users⁵ (KPWU) filed Contest 3660, opposing the water right claimed. KPWU appeared through its attorney, William M. Ganong.

The United States filed Contest 3992 on May 8, 2000.

The Oregon Water Resources Department (OWRD) referred this matter to the Office of Administrated Hearings for a contested case hearing. A prehearing conference was held February 25, 2003. Participants filed prehearing statements and appeared at the prehearing conference, at which the participants agreed to a schedule of further proceedings and to dates for hearing.

The United States filed a Motion for Ruling on Legal Issues on September 26, 2003. The Nicholson Group filed a Response, and the United States filed a Reply. On July 15, 2004, Administrative Law Judge Rick D. Barber issued an Order on the Motion for Ruling on Legal Issues.

Pursuant to a Hearing Notice mailed September 3, 2004, a hearing was convened on October 5, 2004, beginning at 9:00 a.m., with Administrative Law Judge Daina Upite presiding. All parties appeared by telephone. The following individuals participated: Justin Wirth representing the Oregon Water Resources Department (OWRD); Barbara Scott-Brier and Bruce Bernard representing the United States; Carol DeHaven Skerjanec representing the Nicholson Group; and William Ganong representing KPWU. John and Marilyn Mosby, Boyd Braren, and the Boyd Braren Trust did not participate. Documents were admitted into evidence, but no witnesses testified.

Following the hearing, the record remained open for the parties to pursue settlement, or to submit written closing argument if settlement could not be accomplished. A briefing schedule

⁴ The Nicholson Group was comprised of Contestants Roger Nicholson, Roger Nicholson Cattle Co., Lloyd Nicholson Trust, Dorothy Nicholson Trust, Richard Nicholson, Jim McAuliffe, McAuliffe Ranches, Maxine Kizer, Ambrose McAuliffe, Susan McAuliffe, Joe McAuliffe Company, Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch, Dave Wood, Kenneth Zamzow, Anita Nicholson, Wm. S. Nicholson, John B. Owens, Kenneth Owens, Wm. L. Brewer, Mary Jane Danforth, Jane M. Barnes, Franklin Lockwood Barnes, Jr., Jacob D. Wood, Elmore E. Nicholson, Mary Ann Nicholson, Gerald H. Hawkins, Hawkins Cattle Co., Owens & Hawkins, Harlowe Ranch, Terry M. Bengard, Tom Bengard, Dwight T. Mebane, Helen Mebane, Walter Seput, Clifford Rabe, Tom Griffith, William Gallagher, Thomas William Mallams, River Springs Ranch, Pierre A. Kern Trust, William V. Hill, Lillian M. Hill, Carolyn Obenchain, Lon Brooks, Newman Enterprise, William C. Knudsen, Wayne Jacobs, Margaret Jacobs, Robert Bartell, Rodney Z. James, Hilda Francis for Francis Loving Trust, William J. Rust, Ethel J. Rust, James R. Goold for Tillie Goold Trust and Duane F. Martin.

⁵ Klamath Project Water Users include 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, Berlva Pritchard, Don Vincent, Randy Walthall, Inter-County Title Company, Winema Hunting Lodge, Inc., Van Brimmer Ditch Company, Plevna District Improvement Company, and Collins Products, LLC. Subsequently, Berlva Pritchard, Don Vincent, and Klamath Hills District Improvement Company withdrew from Contest 3660.

was established, but no party submitted closing argument. On February 1, 2005, the United States filed a suggested Proposed Order with Attachments 1, 2 and 3, to which virtually all Contestants, as well as OWRD, had stipulated. The following members of the Nicholson Group did not sign the stipulation: Dave Wood, Mary Jane Danforth, Jacob D. Wood, Dwight Mebane, Helen Mebane, William Knudtsen, William Rust, and Ethel Rust.

EVIDENTIARY RULINGS

Exhibit 1, submitted by OWRD, was admitted into evidence without objection. Exhibit Nos. 271 E 000 40001 through 271 E 000 40024, submitted by the United States, were admitted into evidence without objection.⁶ None of the Contestants submitted any evidence. No participant identified any witnesses for cross-examination.

The United States' exhibits include the affidavits and testimony of Timothy D. Mayer, Dr. Bertie Josephson Weddell, and Walter E. Ford. At the hearing, the United States requested that Mr. Mayer be considered an expert witness in hydrology, water resources, and water quality; that Dr. Waddell be considered an expert in plant and wildlife ecology; and that Mr. Ford be considered an expert in refuge and wildlife management. Having reviewed the testimony, I grant the United States' request and accept these three witnesses as expert witnesses in the above-described fields of expertise. Therefore, they are qualified to offer testimony in the form of opinion in those subject areas in this case.

ISSUE

Does the United States have an implied federal reserved water right as claimed in Claim No. 300 and, if so, what is the amount of that water right?

UNDISPUTED FINDINGS OF FACT

Pursuant to the ALJ Barber's July 15, 2004 Order on Motion for Ruling on Legal Issues, the following facts are undisputed:

(1) Congress authorized the creation of the Klamath Marsh National Wildlife Refuge in 1958,⁷ the intent being to have the Refuge administered by the United States as a migratory bird sanctuary. Transfer of the lands in the Marsh occurred on September 7, 1960, at which time United States Fish and Wildlife Service began to manage the area. Congress' 1958 act occurred pursuant to the Migratory Bird Conservation Act of 1929 and the Migratory Bird Hunting Stamp Act of 1934. The earlier legislation created a comprehensive program of protection for migratory birds, while the later legislation provided a method of funding to enable the acquisition of designated areas as bird sanctuaries.

(2) The United States later acquired other lands which it added to the Refuge. In 1972, landowners named Lampe transferred approximately 200 acres to the United States. The

⁶ The Nicholson group reserved objections to relevance and weight, but it did not submit any post-hearing argument addressing these objections.

⁷ Congress authorized the Refuge in the 1958 amendment to the 1954 Klamath Termination Act, Public Law No. 83-731, § 28, 72 Stat. 816 (1958).

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deed stated in part that the "lands are acquired for administration by the Secretary of the Interior through the United States Fish and Wildlife Service." (Motion, Attachment 12). On February 21, 1977, the principals of Nicol Land and Cattle deeded 40 acres to the United States. The deed specifically referred to the Migratory Bird Hunting Stamp Act of 1934. (Motion, Attachment 13). On January 22,⁸ 1980, John Horton deeded approximately 240 acres to the United States, again to be administered by Fish and Wildlife. (Motion, Attachment 14).

(3) On July 23, 1985, the United States filed a Second Amended Complaint in the *United States v. Adair* matter, in the United States District Court. On October 16, 1986, District Judge Solomon issued a Supplemental Declaratory Judgment and Stipulation of Consent which included (among others) the following provision: "The plaintiff, United States of America (hereinafter Government) has a water right of a quantity of water for the proper mix of free water surfaces, emerging vegetation, and meadow essential to the operation of the Refuge for the purposes set forth in the Orders and Laws creating the Klamath Forest National Wildlife Refuge." It was concluded that, as to the parties to the *Adair* litigation, the priority date of the water right is July 23, 1985, but the United States reserved the right to argue for an earlier date of priority with regard to any parties not in the *Adair* litigation. (Motion, Attachment 4). The quantity of the actual water right was left for the Klamath adjudication.

LEGAL RULINGS

ALJ Barber made the following legal rulings in the Order on Motion for Ruling on Legal Issues:

(1) The parties to *United States v. Adair* are bound by the U.S. District Court's Supplemental Declaratory Judgment and Stipulation of Consent which decreed that the United States has a reserved water right for the Klamath Marsh National Wildlife Refuge to maintain the Refuge as a marsh consisting of the proper mix of free water surfaces, emerging vegetation, and meadow for protection of migratory birds and their habitat.

(2) When the United States established the Refuge, it impliedly reserved the water necessary to fulfill the specific purposes of the Refuge, *i.e.*, providing a refuge for the protection of migratory birds and their habitat.

(3) The priority dates for the reserved water rights of the Refuge are the dates of creation of the Refuge and of addition of lands to the Refuge and, as to parties to *United States v. Adair*, the date set forth in the Supplemental Judgment entered by the U.S. District Court in that case:

(a) the priority date for the reserved water right for the original area of the Refuge is September 7, 1960;

⁸ ALJ Barber's order incorrectly identified the transfer date as January 20, 1980. As shown in OWRD Exhibit 1 at 23 and Attachment 14 to the United States' Motion for Ruling on Legal Issues, the date of transfer was January 22, 1980.

(b) the priority dates for the portion of the water right pertaining to the lands subsequently added to the Refuge are the dates of those respective additions, August 10, 1972, February 21, 1977, and January 22, 1980;

(c) as to the parties to *United States v. Adair*, the priority date is July 23, 1985, for the entire Refuge.

ADDITIONAL FINDINGS OF FACT

Based on my review of the record, I make the following additional findings of fact, which were established by a preponderance of the evidence:

(4) Claim 300, as amended May 7, 1999, is for the use of water from the Williamson River on that portion of the Klamath Marsh National Wildlife Refuge identified in Attachments 1⁹ and 2¹⁰ hereto. (OWRD Ex 1 at 76-78, 115-21.)

(5) The period of use for Claim 300 is year-round, with a diversion period of October 1 through June 30. (OWRD Ex. 1 at 76.)

(6) The water uses for the Klamath Marsh National Wildlife Refuge include both the consumptive use requirements; i.e., evapotranspiration and evaporation, and the freshening flow requirements for maintenance of seasonal marsh, permanent marsh, and open water areas. (Ex. 40 0001 at 8-10.)

(7) The total water use under Claim 300 for the portion of the Klamath Marsh National Wildlife Refuge identified in Attachment 1 is 59,549.4 acre-feet per year with the following priority dates:

September 7, 1960 is the priority date for the original area of the Refuge, as identified in Part A of Attachment 1.

August 10, 1972; February 21, 1977; and January 22, 1980 are the priority dates for that portion of the water right pertaining to the lands subsequently added to the Refuge, as identified in Parts B, C and D of Attachment 1, respectively.

July 23, 1985 is the priority date for the entire portion of the Refuge identified in Attachment 1, Parts A through D, as to the parties to the *United States v. Adair* decision.¹¹

(Ex. 40 0001 at 10-11; OWRD Ex. 1 at 123-33.)

⁹ Attachment 1 is the Place of Use identified by legal descriptions. The legal descriptions in Attachment 1 are consistent with, but more specific than, the legal descriptions of the Place of Use that accompanied the amended claim. Attachment 1 accompanies this Proposed Order for ease of reference.

¹⁰ Attachment 2 is a map of the Klamath Marsh National Wildlife Refuge that illustrates the legal descriptions contained in Attachment 1. Attachment 2 is consistent with, but more specific than, Ex. 40 0004, which accompanies the affidavit and testimony of Dr. Timothy D. Mayer (Ex. 40 0001). Attachment 2 accompanies this Proposed Order for ease of reference.

¹¹ Attachment 3, attached hereto for ease of reference, identifies the parties to *United States v. Adair*.
Proposed Order – Case 275, Claim 300

(8) The place of use of the federal reserved water right for Klamath Marsh National Wildlife Refuge is the 15,594 acres of the Refuge identified in Attachments 1 and 2. (Ex. 40 0001 at 5; Ex. 40 004; OWRD Ex. 1 at 115-20.)

OPINION

In addition to the rulings made in ALJ Barber's Ruling on Legal Issues, set forth above, I conclude as follows:

The implied federal reserved water right for the Klamath Marsh National Wildlife Refuge reserves the amount of water which reasonably meets the purposes of the reservation, and no more. There being no evidence to the contrary, I relied upon the direct testimony and exhibits received from the United States and the documents in OWRD Exhibit 1. On this record, the preponderance of the evidence establishes the following:

(1) The United States has an implied reserved water right for the Klamath Marsh National Wildlife Refuge in Oregon, with the priority dates described herein;

(2) The amount claimed for the implied reserved water right is the amount of water which reasonably meets the purposes of the reservation – providing a refuge for the protection of migratory birds and their habitat – and no more;

(3) Habitat for migratory birds reasonably includes seasonal marsh, permanent marsh, and open water areas; and

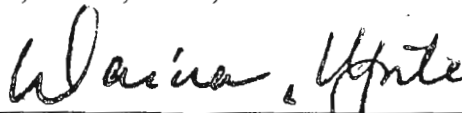
(4) The water reasonably necessary to maintain these habitats on the Refuge includes both the consumptive water requirements – evapotranspiration and evaporation – and the freshening flow requirements of these habitats.

Accordingly, I recommend that the Adjudicator for the Klamath Basin Adjudication enter a Final Order, which adopts the Findings of Fact and Conclusions herein, and which approves Claim No. 300, as amended, as follows:

PROPOSED ORDER

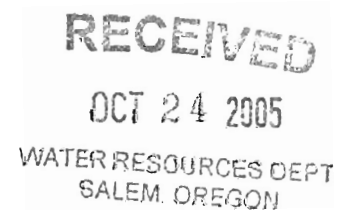
1. **Basis of Right:** Federal reserved water right.
2. **Source:** Williamson River.
3. **Use:** Providing water for the purposes of the refuge, including maintenance of seasonal marsh, permanent marsh, and open water areas by providing both the consumptive water requirements; i.e., evapotranspiration and evaporation, and the freshening flow requirements of these habitats.
4. **Quantity:** 59,549.4 acre-feet per year.

- a. 55,621.9 acre-feet per year with a priority date of September 7, 1960, for the original area of the Refuge, as identified in Part A of Attachment 1;
 - b. 202.4 acre-feet per year with a priority date of August 10, 1972, for the portion of the Refuge added on that date, as identified in Part B of Attachment 1.
 - c. 87.8 acre-feet per year with a priority date of February 21, 1977, for the portion of the Refuge added on that date, as identified in Part C of Attachment 1.
 - d. 3,637.3 acre-feet per year with a priority date of January 22, 1980, for the portion of the Refuge added on that date, as identified in Part D of Attachment 1.
 - e. The entire 59,549 acre-feet per year with a priority date of July 23, 1985, for the entire portion of the Refuge identified in Attachment 1 (Parts A through D), as to the parties to *United States v. Adair* identified in Attachment 3.
5. **Period of Use:** Year-round use, with a diversion period of October 1 through June 30.
6. **Priority Dates:**
- a. September 7, 1960, for the original area of the Refuge, as identified in Part A of Attachment 1;
 - b. August 10, 1972, for the portion of the water right pertaining to the lands added to the Refuge on that date, as identified in Part B of Attachment 1;
 - c. February 21, 1977, for the portion of the water right pertaining to the lands added to the Refuge on that date, as identified in Part C of Attachment 1;
 - d. January 22, 1980, for the portion of the water right pertaining to the lands added to the Refuge on that date, as identified in Part D of Attachment 1;
 - e. As to the parties to *United States v. Adair*, as identified in Attachment 3, July 23, 1985, for the entire portion of the Refuge identified in Attachment 1 (Parts A through D).
7. **Place of Use:** Lands within the Klamath Marsh National Wildlife Refuge as identified in Attachment 1 (Parts A through D) and in Attachment 2.
8. **Point of Diversion:** No point of diversion as of date of this Order; however, water right includes the right to utilize, at the discretion of the United States a control structure in the NW ¼ NE ¼, Section 33, T 31 S, R 8 E, W.M.



Daina Upite, Administrative Law Judge
Office of Administrative Hearings

Date: October 21, 2005



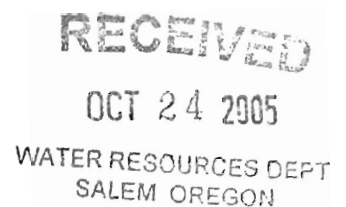
NOTICE TO THE PARTIES: If you are not satisfied with this Order you may:

EXCEPTIONS: Parties may file exceptions to this Order with the Adjudicator within 30 days of service of this Order. OAR 137-003-0650.

Exceptions may be made to any proposed finding of fact, conclusions of law, summary of evidence, or recommendations of the Administrative Law Judge. A copy of the exceptions shall also be delivered or mailed to all participants in this contested case.

Exceptions must be in writing and must clearly and concisely identify the portions of this Order excepted to and cite to appropriate portions of the record to which modifications are sought. Parties opposing these exceptions may file written arguments in opposition to the exceptions within 45 days of service of the Proposed Order. Any exceptions or arguments in opposition must be filed with the Adjudicator at the following address:

Dwight W. French
Klamath Basin Adjudication
Oregon Water Resources Dept
725 Summer Street N.E., Suite "A"
Salem OR 97301



ATTACHMENT 1
Place of Use Table

PART A (9/7/1960)

Township	Range	Section	Subdivision
30	8	25	SESE
30	8	36	NESE
30	8	36	LOT 4 (SESE)
30	8	36	LOT 5 (SESE)
30	9	29	Lot 1
30	9	29	Lot 5
30	9	31	ALL
30	9	32	ALL
30	9	33	Lot 7
30	9	33	Lot 8
30	9	33	LOT 9
30	9	33	LOT 10
30	9	33	LOT 11
30	9	33	NWSW
31	8	11	SE 1/4
31	8	12	ALL
31	8	13	ALL
31	8	14	LOT 1
31	8	14	LOT 7
31	8	14	LOT 8
31	8	14	SENE
31	8	14	S 1/2
31	8	22	SE 1/4
31	8	23	ALL
31	8	24	ALL
31	8	25	N 1/2
31	8	25	SW 1/4
31	8	25	LOT 4 (NESE)
31	8	25	NWSE
31	8	25	LOT 3
31	8	25	LOT 2

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Township	Range	Section	Subdivision
31	8	26	ALL
31	8	27	ALL
31	8	28	SE 1/4
31	8	33	LOT 2 (NENE)
31	8	33	LOT 3 (NENE)
31	8	33	LOT 1 (NENE)
31	8	33	LOT 4 (NENE)
31	8	34	LOT 1 (NENE)
31	8	34	LOT 8 (NENE)
31	8	34	LOT 2 (NENE)
31	8	34	LOT 7 (NENE)
31	8	34	LOT 3 (NENE)
31	8	34	LOT 6 (NENE)
31	8	34	LOT 4 (NENE)
31	8	34	LOT 5 (NENE)
31	8	35	NE 1/4
31	8	35	NENE
31	8	35	LOT 1 (NENE)
31	8	35	LOT 10 (NENE)
31	8	35	LOT 11 (NENE)
31	8	35	LOT 9
31	8	35	LOT 3 (NENE)
31	8	35	LOT 12 (NENE)
31	8	35	NESE
31	8	35	LOT 8 (NENE)
31	8	35	LOT 7
31	8	36	LOT 8
31	8	36	LOT 7 (NENE)
31	8	36	W 1/2
31	8	36	LOT 5
31	8	36	LOT 6
31	9	4	LOT 9 (NENE)
31	9	4	LOT 10 (NENE)
31	9	4	SWNW
31	9	4	LOT 11

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Township	Range	Section	Subdivision
31	9	4	SW 1/4
31	9	4	LOT 12
31	9	4	SWSE
31	9	4	LOT 13 (SESE)
31	9	5	ALL
31	9	6	ALL
31	9	7	ALL
31	9	8	N 1/2
31	9	8	SW 1/4
31	9	8	LOT 3 (NESE)
31	9	8	NWSE
31	9	8	SWSE
31	9	8	LOT 2 (SESE)
31	9	9	LOT 21 (NENE)
31	9	9	NWNE
31	9	9	LOT 19 (SWNE)
31	9	9	LOT 20 (SENE)
31	9	9	N 1/2 NW 1/4
31	9	9	LOT 17 (SOWN)
31	9	9	LOT 18 (SENW)
31	9	9	LOT 16
31	9	9	LOT 14
31	9	9	LOT 13
31	9	9	LOT 12
31	9	9	LOT 15
31	9	9	LOT 5
31	9	9	LOT 6
31	9	9	LOT 4
31	9	17	LOT 8 (NENE)
31	9	17	NWNE
31	9	17	LOT 7
31	9	17	W 1/2
31	9	17	LOT 6
31	9	17	LOT 5 (SWSE)
31	9	18	ALL

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Township	Range	Section	Subdivision
31	9	19	ALL
31	9	20	LOT 8 (NWNE)
31	9	20	LOT 7 (SWNE)
31	9	20	W 1/2
31	9	20	LOT 6 (NWSE)
31	9	20	LOT 5
31	9	29	LOT 10
31	9	29	SWNE
31	9	29	LOT 9 (SENE)
31	9	29	NW 1/4
31	9	30	N 1/2 NE 1/4
31	9	30	LOT 10 (SWNE)
31	9	30	SENE
31	9	30	NENW
31	9	30	LOT 8 (NWNW)
31	9	30	LOT 7
31	9	30	LOT 9 (SENW)
32	8	1	LOT 7 (SWNW)
32	8	1	LOT 8
32	8	1	LOT 9
32	8	1	LOT 10
32	8	1	LOT 11
32	8	1	LOT 12
32	8	1	N 1/2 NW 1/4
32	8	1	SE NW
32	8	2	LOT 7 (NENE)
32	8	2	LOT 6 (SENE)

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PART B (8/10/1972)

Township	Range	Section	Subdivision
31	8	36	LOT 2
31	8	36	LOT 3 (NESE)
31	8	36	LOT 4 (SESE)
32	8	1	LOT 1 (NENE)
32	8	1	LOT 2
32	8	1	LOT 13

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PART C (2/21/1977)

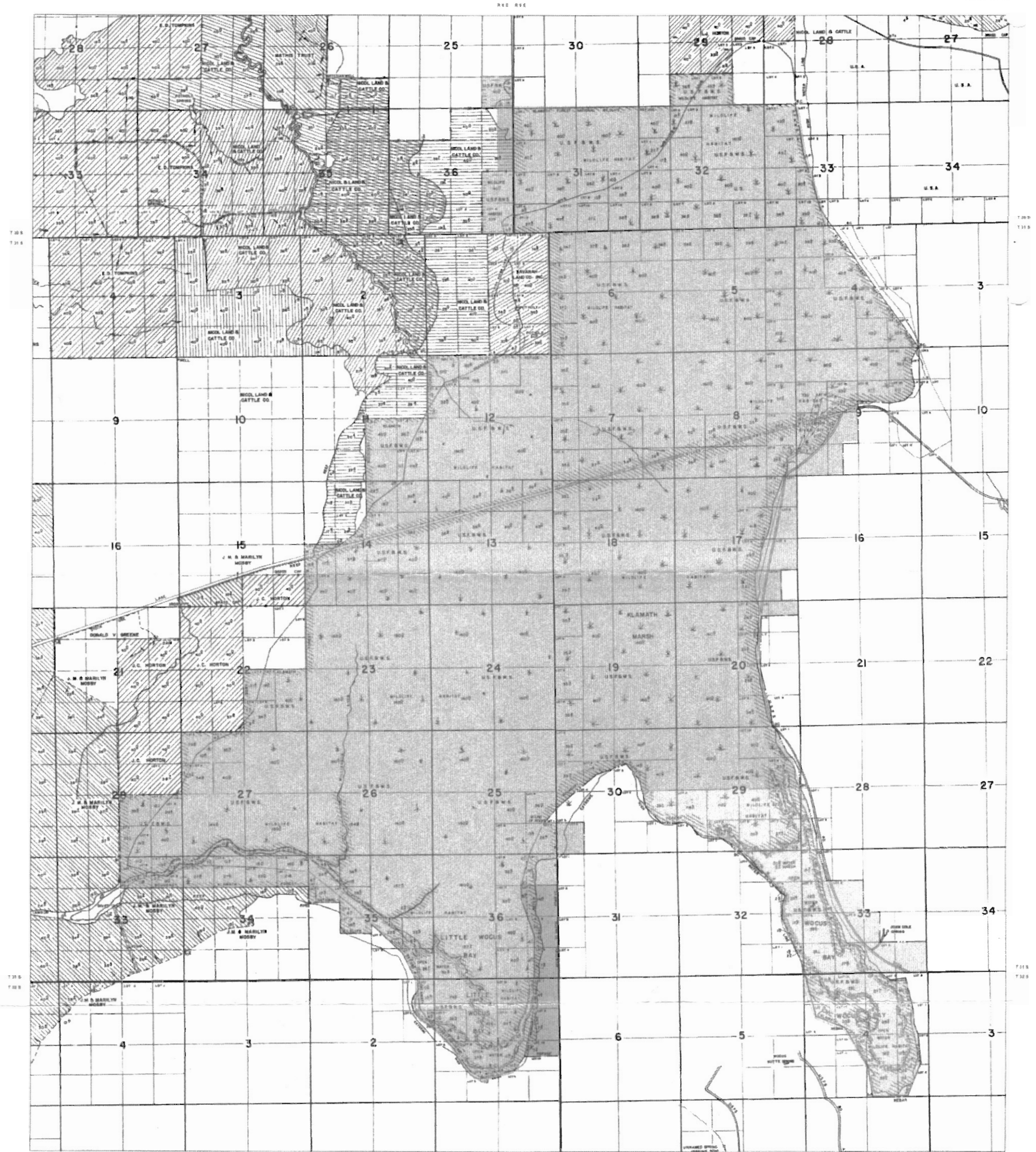
Township	Range	Section	Subdivision
30	8	36	E 1/2 E 1/2 NE 1/4

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PART D (1/22/1980)

Township	Range	Section	Subdivision
32	9	4	LOT 15 (NWNW)
32	9	4	LOT 16 (SWNW)
32	9	4	LOT 14 (NENW)
32	9	4	LOT 17 (SEW)
32	9	4	LOT 20 (NESW)
32	9	4	LOT 13 (NWNE)
32	9	4	SWNE
32	9	4	NWSE
32	9	4	LOT 21 (SWSE)
32	9	4	LOT 12 (NENE)
32	9	4	LOT 18 (SENE)
32	9	4	LOT 19 (NESE)
32	9	4	LOT 22 (SESE)
31	9	30	LOT 11
31	9	28	LOT 4 (NWSW)
31	9	28	LOT 3 (SWSW)
31	9	29	LOT 4
31	9	29	NESW
31	9	29	LOT 5 (SESW)
31	9	29	NWSE
31	9	29	LOT 6 (SWSE)
31	9	29	LOT 8 (NESE)
31	9	29	LOT 7 (SESE)
31	9	32	LOT 5
31	9	32	LOT 6 (SENE)
31	9	32	LOT 7 (NESE)
31	9	32	LOT 8 (SESE)
31	9	33	LOT 8 (NWNW)
31	9	33	LOT 7
31	9	33	LOT 6
31	9	33	SWSW
31	9	33	LOT 5

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Source: Oregon Water Resources Department
File: REF_ADA_Clam300_Acquisition.MXD
Plot: 12/16/04 by Dan Craver

Water Resources Branch
31 Division of Engineering
911 NE 11th Avenue
Portland, OR 97232-4191
(503) 881-4261

SCALE: 1:14,000
0 1/2 1 1 1/2 2 Miles
0 1/2 1 1 1/2 2 Kilometers

Adair Lands by Priority Date

- 9/7/1960
- 8/10/1972
- 2/21/1977
- 1/22/1980

ATTACHMENT 2



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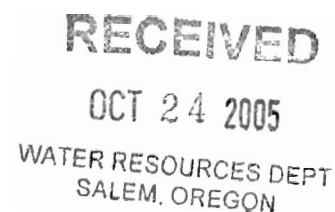
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ATTACHMENT 3

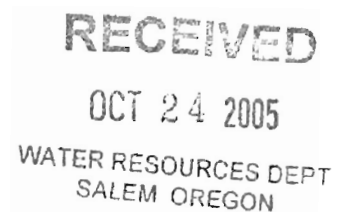
Parties to United States v. Adair

The parties to *United States v. Adair* are listed below for purposes of administering the water rights adjudicated in Case No. 271, Claim No. 300. The priority date of July 23, 1985 shall apply to these parties and their successors-in-interest.

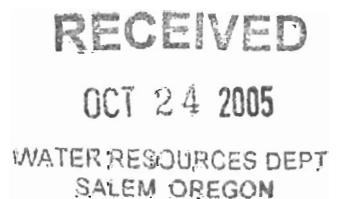
Klamath County
Jeld-Wen, Inc.
Marion B. Pinneo
Mary Ann Robinson
Richard W. Robinson
Brian Daniel Sherrill
Gregory Clay Sherrill
Leslie Ann Sherrill
Cavenham Forest Industries, Inc.
Celine Kapiolani Souza, fka Celine Kapiolani Toledo
Yamsey Duck Club, Inc.
Lura Martin
Hilda Francis
Jesse F. Francis
Ida Givan (Cunningham)
Grupe Company
Howard Lightner (deceased)
Darlene Lightner (Wolff), Trustee
Clifford Osborn
Jeannie Riffey
Sand Creek Ranch
Maureen Smith (Harrison)
James Glessner
Estate of Harry Clarkson (deceased)
David E. Wyman
Max H. Wyman
Weyerhaeuser Company, a Washington Corporation
Cliff L. Ambers, Jr.
Dorothy G. Bell
Estate of Hugh T. Bell (deceased)
Kristine Bush
Jack R. Chapman
James L. Chapman, Trustee
Sandra L. Chapman, Trustee
Donal H. Dean



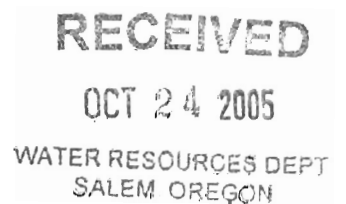
Donal M. Dean
Ernest E. Dennis
Everett R. Dennis (deceased)
Frances M. Dennis
Bruce Emery
Dorothy Emery
Kenneth Lester Emery
Tina Kay Emery
Ehrman Danell Giustina
Viola M. Gouldin
Estate of Viola M. Gouldin
John C. Horton, Trustee
Dayton O. Hyde
Gerda V. Hyde
Carolyn J. Johnson
James B. Lawrence
Steven E. Lawrence
Lloyds Bank of California, Trustee (Mathis Trust)
John M. Mosby
Marilyn J. Mosby
The Bank of California, Trustee (Mt. Scott Properties)
Richard A. Myers, Trustee
Dana Marie (Nicol) Morasch
Donovan L. Nicol
Mark Edward Nicol
Nicol Land and Cattle Company
Oscar Nicol Kittredge
William A. Pingley
Diane F. Taylor
Margie B. Runels
Scott Lee Runels
Edward Donal Tompkins, Trustee (under the Will of H. Willis Tompkins)
Willis Stanley Tompkins, Trustee (under the Will of H. Willis Tompkins)
Mabel L. Tompkins
Edward D. Tompkins
Merrie Linda Tompkins
Willis Stanley Tompkins
Jose T. Agustin
Ana B. Agustin
Joselito B. Agustin
Erlinda A. Agustin
Miriam Bicoy
Rannier Prynne Bicoy



William Davies
Constance Wolverton
State of Oregon
Byron J. Gardner
Aloysius J. Zoeller
Bitty L. Zoeller
Shane D. Hostbjor
Debora A. Hostbjor
Steven Brooks Anderson
Terri Lynn Anderson
C. E. Asher, Jr.
Glenna M. Asher
G. P. Beauchaine
Lois J. Beauchaine
Sandra J. Beeman
Thomas M. Beeman
Petra G. Bendele
Ronald W. Bendele
Dennis Betzer
Earlynn Betzer
Lucy A. Breeden
William L. Breeden
Estrella E. Bright
R. C. Bright
J. N. Brogger
Michael J. Brown
Rodney G. Bybee
Jill Anne Cable
Alfredo S. Callo
Ida G. Callo
Lina M. Cardinal
Thomas C. Cardinal
Grant A. Christiansen
Anna S. Clark
Janice E. Clark
R. J. Clark
Russell Clark, Jr.
Patrick J. Cooper
Vickie L. Cooper
Margaret A. Cozart
R. W. Cozart
Elva M. Creel
John B. Creel



Sunday N. Dargel
Thomas K. Dargel
Lauren M. De Laura
Richard A. De Laura
Charlene A. DeWeese
Paul M. DeWeese
James P. Dunn
Thelma M. Dunn
Darrell A. Elliot
Margorie H. Elliot
B. Esquerra
Vicencia Esquerra
Anita P. Friday
Kenneth E. Friday
Barrie O. Fyfe
J. K. Fyfe
J. E. Gilbert
Charles K. Giudice
R. G. Hodges
Earle N. Jones, Jr.
Lianne P. Jones
Becky L. Kersch
Dan O. Kersch
C. Kircher
Yu Cha Kircher
Russel P. La Guardia
Terry La Guardia
Glennia G. Lomoine
Alecia Liles
Curt Liles
A. U. Manibusan
Ramona C. Manibusan
Jennifer F. Means
Deborah J. Meisner
Thomas J. Mich
Donna Morton
Donald R. Mulkey
Mary F. Mulkey
Peter E. Muller
Lynne M. Patton
Micheal L. Patton
Melvin J. Perricone
J. R. Power



Marsha Ann Power
Clayton Franklin Putman, Jr.
O. Reams
Quelle Reams
F. J. Rising
Terry A. Rising
B. J. Roethle
Conni L. Roethle
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Julia A. Ruane
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Rebecca E. Runne
Gary D. Runyan
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R. W. Ruska
Johnny R. Smith
Katherine L. Smith
Lydia F. Stifle
Richard L. Stifle
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Kirk E. Troen
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Thomas B. Vergne
Daniel J. West
Bonnie L. Wilson
Steven R. Wilson
Marian E. Yancey
R. T. Yancey
E. R. Young
Rose Young
Nobuo Suzuki

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2005, I served by a true copy of the following: **PROPOSED ORDER and ATTACHMENTS 1-3**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

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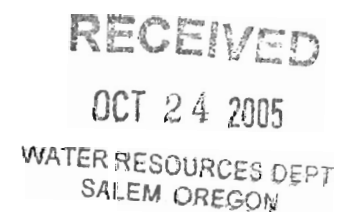
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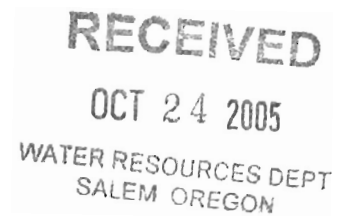
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Dairy, OR 97625

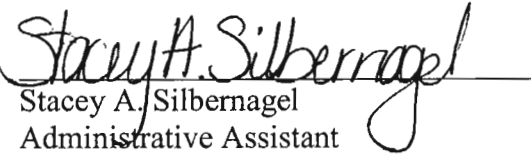
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Administrative Assistant

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