



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 9, 2007

TO ALL PARTIES

Re: Klamath Adjudication – **Consolidated Case No. 209** -- Case Nos. 51, 59, 62, 63, 69, 71, 88, 98, 209, 243, 244, 250, 252, 269 and 270; Claim Nos. 84, 241, 243, 248, 250, 253, 260, 266, 269, 682, 688, 700, 702, 705 and 706; Contest Nos. 1724, 1725, 1729, 1737, 1742, 1744, 1759, 1769, 1770, 1771, 2839, 3260, 3261, 3278, 3473, 3528, 3529, 3532, 3534, 3542, 3547, 3550, 3565, 3569, 3578, 3580, 3581, 3582, 3635, 3745, 3774, 3775, 3777, 3778, 4129, 4204, 4205, 4239, 4241
DOJ File No. 690-600-GN0276-03

Dear Parties:

Enclosed for your records is a fully executed copy of the STIPULATION TO RESOLVE CONTEST 1742 (Ridenour); STIPULATION TO RESOLVE CONTEST 1729 (Hess); STIPULATION TO RESOLVE CONTEST 1769 (Sheppard-Blair); STIPULATION TO RESOLVE CONTEST 1744 (Sheppard-Blair); STIPULATION TO RESOLVE CONTEST 1737 (Lang); STIPULATION TO RESOLVE CONTEST 3578 (Cauvin, Walch & KPWU); STIPULATION TO RESOLVE CONTEST 1724 (Gallagher); STIPULATION TO RESOLVE CONTEST 1759 (Hicks); and CERTIFICATE OF SERVICE in the above-entitled matter. These agreements resolve all the remaining issues in the case. Accordingly, the Oregon Water Resources Department will withdraw these cases 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/GENV8077
Enclosures
c: Service List

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
WATER RESOURCES DEPARTMENT

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

Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Klamath Hill District Improvement Co.; Malin Irrigation District; Midland District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter County Title Company; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC;	STIPULATION TO RESOLVE CONTEST 1729
Contestants	Case No. 51
	Claim: 248
	Contests: 1729 and 3532 ¹

vs.

Stephen Hess; Melissa Hess;
Claimants/Contestants.

Claimants/Contestants Stephen D. Hess and Melissa Hess, 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:

¹ Don Vincent voluntarily withdrew from Contest 3532 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3532 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3532 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3532 on April 7, 2005.

A. STIPULATED FACTS

1. On January 31, 1991, Claim 248 for a federal reserved Indian water right was filed with OWRD by the Claimants.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 248.
3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 248, Contest 1729.
4. The current point of diversion is the Chiloquin Dam within the NESE of Section 3, Township 35 South, Range 7 East, W.M., with a source from the Sprague River, tributary to the Williamson River.
5. On December 1, 2006, Claimant/Contestant timely filed an Affidavit and Request for Additional or Relocated Point(s) of Diversion pursuant to OAR 690-030-0085, describing an alternate or relocated point of diversion that may be added in the future.
6. The alternate or relocated point of diversion is located on the Williamson River, diverted at a point downstream of the Sprague River as required under OAR 690-030-0085 and is located within Lot 10, NENE of Section 21, Township 35 South, Range 7 East, W.M.
7. Claimants/Contestants and OWRD agree that Contest 1729 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 248 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the attached Description of Water Right Claim 248.
2. Claimant/Contestant and OWRD agree that use of the original (“Chiloquin Dam”) point of diversion is allowed only until the Chiloquin Dam has been removed, at which time the alternate or relocated point of diversion shall be the only point of diversion for Claim 248.

3. The Sprague River is the source of water for this claim whether water is withdrawn from the Sprague River at the original point of diversion or from the Williamson River at the relocated point of diversion.

4. Claimant/Contestant and OWRD agree that use of water from the relocated point of diversion is authorized only if water is available at the original point of diversion.

5. Claimants/Contestants agree that pursuant to the terms of this Stipulation, Contest 1729 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.

6. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 248 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 248 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 248, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.

7. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 248 does not conform to the terms set forth in the attached Description of Water Right Claim 248, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 248 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 248.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Claimants/Contestants and OWRD shall each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

Stephen D. Hess
Stephen D. Hess

10/11/07
Date

Melissa Hess
Melissa Hess

10/11/07
Date

For the Oregon Water Resources Department

HARDY MYERS
Attorney General

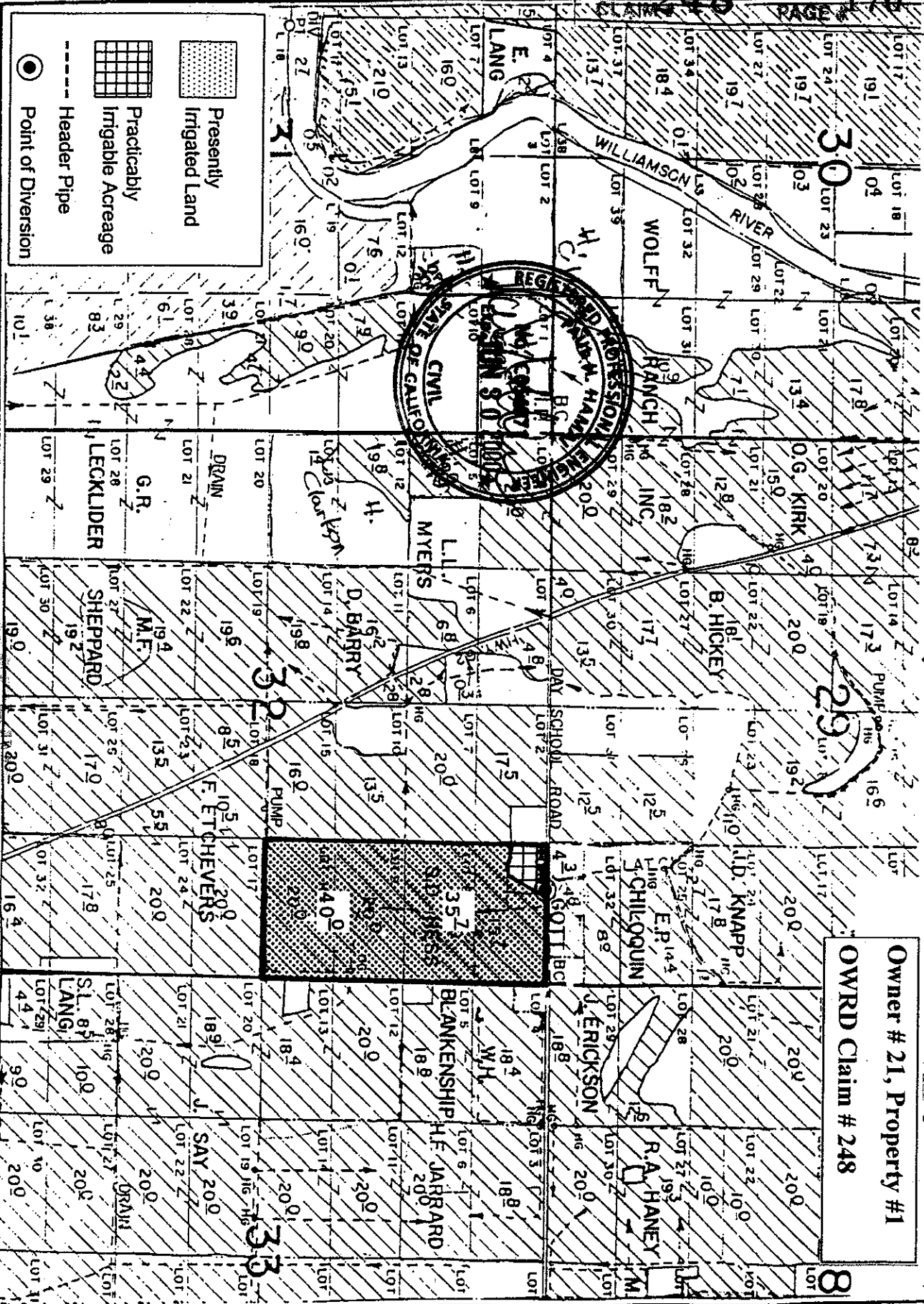
Jesse D. Ratcliffe, #04394
Stephen E.A. Sanders, #85321

Date

Gerry Clark
Gerry Clark, OWRD Staff

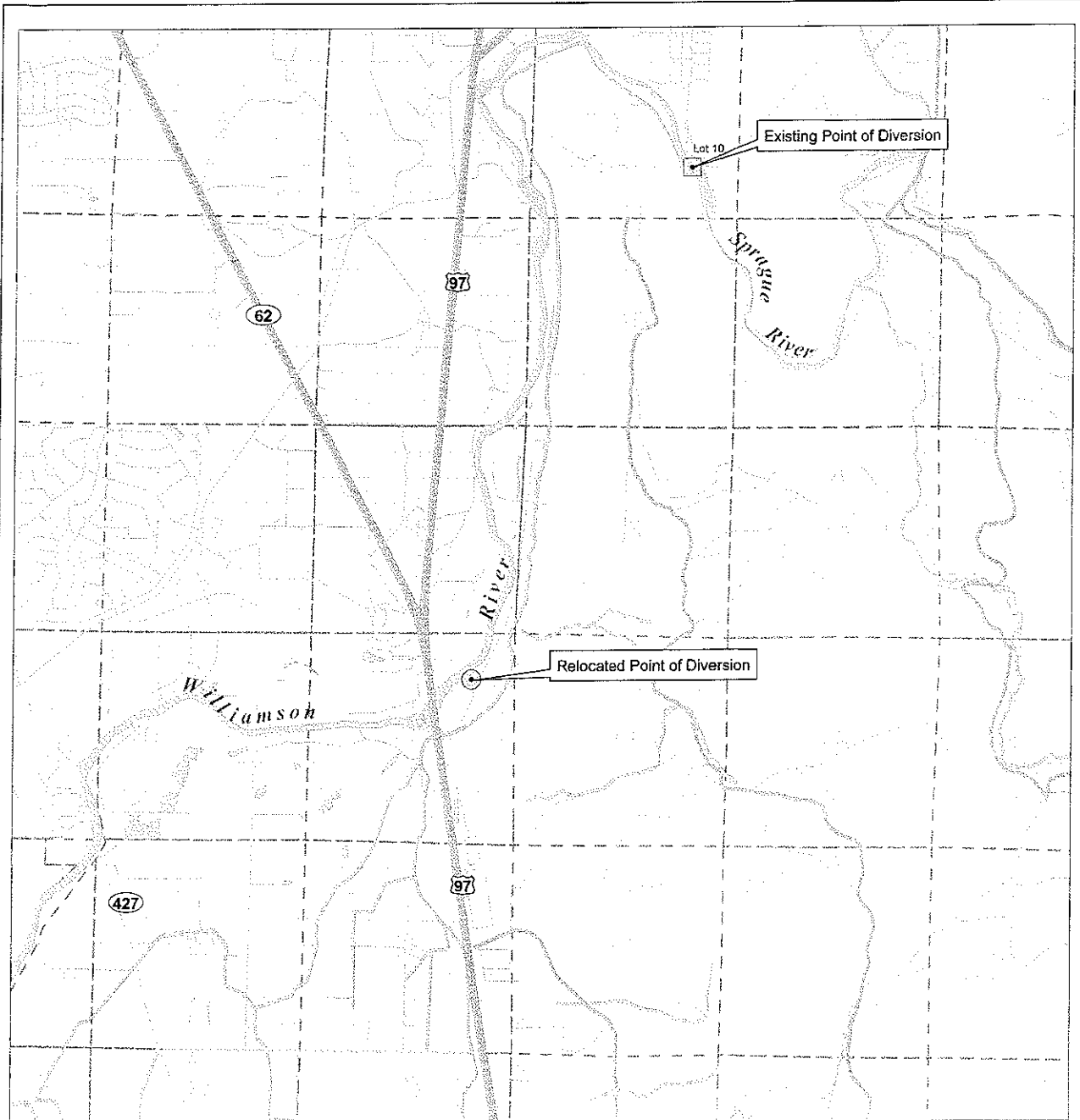
Nov. 5, 2007
Date

TOWNSHIP 35 SOUTH, RANGE 7 EAST, W. M.



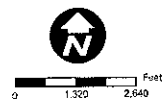
By: Natural Resources Consulting Engineers Inc.
 1250 Addison St., Suite 204
 Berkeley, Ca. 94702
 Berkeley (510)941-7814





EXISTING POINTS OF DIVERSION		
Point of Diversion	T35S R7E S3 SESE	125' East of the NW corner of the SESE of section 3

RELOCATED POINT OF DIVERSION		
Point of Diversion	T35S R7E S21 NENE	180' north and 180' east of the SW corner of the NENE of section 21, Lot 10



Disclaimer:
 This map was prepared for the purpose of identifying the location of a water right only, and is not intended to provide legal dimensions or locators of property ownership lines.

LEGEND	
	Existing Point of Diversion
	Relocated Point of Diversion
	Water Bodies
	Streams and Canals
	Roads
	Sections
	Quarter, Quarter Sections



RECEIVED
 OCT 28 2008
 MAIL ROOM
 67174NRB

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 Portland, Oregon 97204
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Map for Alteration to Water Rights Claim #248
Relocated Point of Diversion
 Klamath Basin Adjudication

Township 35 South, Range 7 East, W.M.
 Klamath County, Oregon

Stephen and Melissa Hess
 P.O. Box 111
 Beatty, OR 97821

HDR HDR Engineering Inc.
 October 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November 2007, I served the within
STIPULATION TO RESOLVE CONTEST 1742 (Ridenour); STIPULATION TO
RESOLVE CONTEST 1729 (Hess); STIPULATION TO RESOLVE CONTEST 1769
(Sheppard-Blair); STIPULATION TO RESOLVE CONTEST 1744 (Sheppard-Blair);
STIPULATION TO RESOLVE CONTEST 1737 (Lang); STIPULATION TO
RESOLVE CONTEST 3578 (Cauvin, Walch & KPWU); STIPULATION TO RESOLVE
CONTEST 1724 (Gallagher); STIPULATION TO RESOLVE CONTEST 1759 (Hicks);
and CERTIFICATE OF SERVICE on the parties hereto by e-mail (if an
e-mail address is listed below), and by regular first-class mail, a true, exact and full copy
thereof to:

VIA STATE SHUTTLE MAIL

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Salem, OR 97301-1271
dwight.w.french@wrд.state.or.us
teri.k.hranac@wrд.state.or.us

COURTESY COPY:

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Administrative Law Judge
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Claim 248

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Melissa Hess
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Beatty, OR 97621

Claim 700

The Nature Conservancy
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Claim 250

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Claim 700

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Agency Representative
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Steven L. Shropshire

Jordan Schrader PC
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Claim 682:

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Gienger Enterprises
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Chiloquin, OR 97624

Claims 269 & 702

Marylyn Sheppard-Blair
P.O. Box 1279
Chiloquin, OR 97624

Claim 260

Stephen and Beverly Lang
29029 Doak Road
Chiloquin, OR 97624

Claim 688

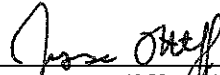
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Klamath Falls, Oregon 97603

Courtesy Copy:

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Claim 241

Cecil Gallagher
P.O. Box 647
Chiloquin, OR 97624



Jesse D. Ratcliffe, #04394
Assistant Attorney General