

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 3, 2005

TO ALL PARTIES TO KLAMATH ADJUCATION CASE 87, CLAIM 685

Re: Klamath Adjudication – Case No. 87, Claim No. 685, Contest Nos. 1758 and
3568
DOJ File No. 690-600-GN0322-03

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve Contests and Certificate of Service in the above-entitled matter. This agreement resolves all the remaining issues in this case.

Since all issues in this case have been resolved, there is no need to hold a hearing. Accordingly, the Oregon Water Resources Department will withdraw this case from the Office of Administrative Hearings, pursuant to OAR 137-033-0515(4).

Thank you very much for your courtesies and cooperation in resolving this matter.

Sincerely,

Jesse D. Ratcliffe
Stephen E.A. Sanders
Assistant Attorneys General
Natural Resources Section

JDR:tmc/GENN4512
Enclosure
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; Tulalake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter County Title Company; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC;	STIPULATION TO RESOLVE CONTEST 1758
Contestants	Case No. 87
	Claim: 685
	Contests: 1758 and 3568 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 3568 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3568 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3568 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3568 on April 7, 2005.

A. STIPULATED FACTS

1. On January 31, 1991, Claim 685 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 685.
3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 685, Contest 1758.
4. Claimants/Contestants and OWRD agree that Contest 1758 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 685 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 685, attached hereto as Exhibit A, and which is incorporated by reference as if set forth fully herein.
2. Claimants/Contestants agree that pursuant to the terms of this Stipulation, Contest 1758 has been satisfactorily resolved, and such resolution vitiates the need for a hearing before the Administrative Law Judge.
3. The OWRD adjudication staff hereby recommends to the Adjudicator that Claim 685 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 685 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 685.
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 685 does not conform to the terms set forth in the attached Description of Water Right Claim 685, Claimants/Contestants reserve any rights they may have to file exceptions to the

Finding of Fact and Order of Determination as to Claim 685 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 685.

5. Claimants / Contestants agree not to oppose or object to this Agreement or any of its terms, provisions, conditions, or covenants and to support this Agreement if it is challenged in the administrative or judicial phases of the Adjudication or any appeals thereof.

6. The signatories to this Stipulation agree that the Stipulation shall not be offered as evidence or treated as an admission regarding any matter herein and may not be used in proceedings on any other claim or contest whatsoever, except that the Stipulation may be used in any future proceeding to interpret and/or enforce the terms of this Stipulation. Further, the signatories to this Stipulation agree that neither the Stipulation nor any of its terms shall be used to establish precedent with respect to any other claim or contest in the Klamath Basin Water Rights Adjudication.

7. Each entity or person entering into this Stipulation represents, warrants, and agrees that the person who executed this Stipulation on its behalf has the full right and authority to enter into this Stipulation on behalf of that entity or person and bind that entity or person to the terms of the Stipulation.

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

9. This Stipulation may be executed in several counterparts and all documents so executed shall constitute one Stipulation, binding on the signatories, notwithstanding that the

signatories did not sign the same original or the same counterparts. Delivery of an executed signature page to this Stipulation by facsimile transmission shall be as effective as delivery of an original signed counterpart of this Stipulation.

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

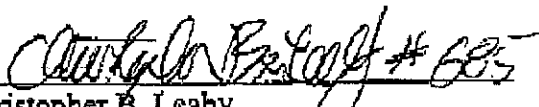
11. Claimants/Contestants and OWRD shall each bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For Klamath Allottee Water Users Association Member
Claimant/Contestants Stephen D. Hess and Melissa Hess

FREDERICKS, PELCYGER & HESTER, LLC

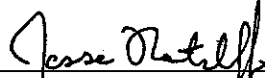


Christopher B. Leahy
Pro Hac Vice; Colorado Bar 23612

7/21/05
Date

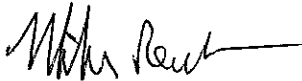
For the Oregon Water Resources Department

HARDY MYERS
Attorney General



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

Date 7/27/05



Michael Reynolds
Agency Representative
Oregon Water Resources Department

Date 8-1-05

BEFORE THE STATE OF OREGON
WATER RESOURCES DEPARTMENT

In the Matter of the Determination of)	
the Relative Rights of the Waters of)	
the Klamath River, a Tributary of the)	Description Of
Pacific Ocean)	Water Right Claim
_____)		685

Name and Address: Stephen and Melissa Hess
PO Box 111
Beatty, OR 97621

Source: Unnamed Spring **Tributary:** N/A
Point Of Diversion: Township Range Section Q/Q: Lot:
36 S 12E 18 NWNE 7

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate:
Domestic Use 01-01 to 12-31 .01 cfs
for One Family

Place Of Use: Township Range Section Q/Q: Lot: Acreage:
36 S 12E 18 NWNE 7 .5

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion: Township Range Section Q/Q: Lot:
36 S 12E 7 SESE

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
Irrigation 03-01 to 10-16 4.25 cfs 4.3 AFA
Stockwater 01-01 to 12-31 ***

Place Of Use: Township Range Section Q/Q: Lot: Acreage:
36 S 12E 7 NESW 35.2

36 S	12E	7	NWSW	3	16.8
36 S	12E	7	SWSW	4	40.7
36 S	12E	7	SESW		40.0
36 S	12E	7	NWSE		5.8
36 S	12E	7	SWSE		30.2
36 S	12E	7	SESE		1.2
36 S	12E	18	NENE	1	6.3
36 S	12E	18	NENE	8	8.7
36 S	12E	18	NWNE	2	17.6
36 S	12E	18	NWNE	7	11.6
36 S	12E	18	SWNE	10	1.5
36 S	12E	18	NENW	3	20.0
36 S	12E	18	NENW	6	18.2
36 S	12E	18	NWNW	4	21.2
36 S	12E	18	NWNW	5	21.2
36 S	12E	18	SWNW	12	13.2
36 S	12E	18	SWNW	13	14.6
36 S	12E	18	SENW	11	15.7
36 S	12E	18	SENW	14	11.3

Total Irrigated Acreage 351.0

Source: Whiskey Creek **Tributary:** Sprague River

Point Of Diversion: Township 36 S Range 11 E Section 13 Q/Q: SWNE Lot: 10

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Irrigation Period Of Use: 03-01 to 10-16 Rate: 2.44 cfs Duty: 4.3 AFA
Stockwater 01-01 to 12-31 ***

Place Of Use: Township 36 S Range 11 E Section 13 Q/Q: NENE Lot: 1 Acreage: 20.2
36 S 11 E 13 NENE 8 20.2
36 S 11 E 13 SENE 9 11.8
36 S 12 E 18 SWNW 12 4.5
36 S 12 E 18 SWNW 13 6.3
36 S 11 E 12 NESE 17 19.2

36 S	11 E	12	NESE	24	20.2
36 S	11 E	12	NWSE	18	6.5
36 S	11 E	12	NWSE	23	13.6
36 S	11 E	12	SESE	25	20.2
36 S	11 E	12	SESE	32	20.2
36 S	11 E	12	SWSE	26	19.9
36 S	11 E	12	SWSE	31	19.9

Total Irrigated Acres 202.7

The Place of Use is set forth more particularly in the maps attached hereto as Exhibit B, and which are incorporated by reference as if set forth fully herein.

INCHOATE WATER RIGHT CLAIM DESCRIPTION

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	
	36 S	12E	7	NESW		
Priority:	10/14/1864					
Use, Period Of Use and Quantity:	<u>Use:</u>		<u>Period Of Use:</u>	<u>Rate:</u>	<u>Duty:</u>	
	Irrigation		03-01 to 10-16	.41 cfs	3.1 AFA	
	Stockwater		01-01 to 12-31	***		
Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	12E	7	NESW		.9
	36 S	12E	7	NWSW	3	22.0
	Total Practicably Irrigable Acreage					22.9

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	
	36 S	12E	7	NWSE		
Priority:	10/14/1864					
Use, Period Of Use and Quantity:	<u>Use:</u>		<u>Period Of Use:</u>	<u>Rate:</u>	<u>Duty:</u>	
	Irrigation		03-01 to 10-16	.23 cfs	3.1 AFA	
	Stockwater		01-01 to 12-31	***		
Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	12E	7	NWSE		8.0
	36 S	12E	7	SWSE		5.0
	Total Practicably Irrigable Acreage					13.0

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion: Township Range Section Q/Q: Lot:
 36 S 12 E 7 NWSE

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
 Irrigation 03-01 to 10-16 1.42 cfs 3.1 AFA
 Stockwater 01-01 to 12-31 ***

Place Of Use: Township Range Section Q/Q: Lot: Acreage:
 36 S 12 E 7 NESE 38.0
 36 S 12 E 7 NWSE 16.7
 36 S 12 E 7 SWSE 2.0
 36 S 12 E 7 SESE 22.2

Total Practicably Irrigable Acreage 78.9

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion: Township Range Section Q/Q: Lot:
 36 S 12 E 7 SESE

Priority: 10/14/1864

Use, Period Of Use and Quantity: Use: Period Of Use: Rate: Duty:
 Irrigation 03-01 to 10-16 .09 cfs 3.1 AFA
 Stockwater 01-01 to 12-31 ***

Place Of Use: Township Range Section Q/Q: Lot: Acreage:
 36 S 12 E 7 SESE 5.2

Total Practicably Irrigable Acreage 5.2

Source: Sprague River **Tributary:** Williamson River

Point Of Diversion: Township Range Section Q/Q: Lot:
 36 S 12 E 18 NENE 1

Priority: 10/14/1864

Use, Period Of Use and Quantity:	<u>Use:</u> Irrigation Stockwater	<u>Period Of Use:</u> 03-01 to 10-16 01-01 to 12-31	<u>Rate:</u> .16 cfs ***	<u>Duty:</u> 3.1 AFA
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Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	12E	7	SESE		3.2
	36 S	12E	18	NENE	1	5.6
	Total Practicably Irrigable Acreage					8.8

Source: Sprague River Tributary: Williamson River

Point Of Diversion:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>
	36 S	12E	18	NENE	8

Priority: 10/14/1864

Use, Period Of Use and Quantity:	<u>Use:</u> Irrigation Stockwater	<u>Period Of Use:</u> 03-01 to 10-16 01-01 to 12-31	<u>Rate:</u> .13 cfs ***	<u>Duty:</u> 3.1 AFA
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Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	12E	18	NENE		5.5
	36 S	12E	18	NWNE	7	.7
	36 S	12E	18	SENE	9	1.0
	Total Practicably Irrigable Acreage					7.2

The Place of Use is set forth more particularly in the maps attached hereto as Exhibit B, and which are incorporated by reference as if set forth fully herein.

*****Other Matters Necessary to Define the Right:**

The quantity of water under this right for livestock use is limited to 4800 gallons per day.

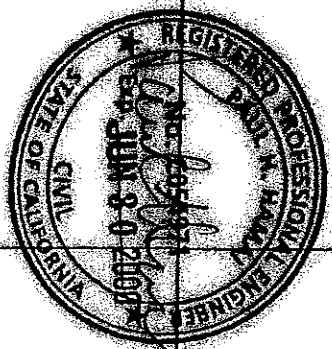
Owner # 21, Property # 2
OVERD Claim # 685





TOWNSHIP 36 SOUTH, RANGE 11 EAST, W.M.

RECEIVED

OCT 01 1999

WATER RESOURCES DEPT.
SALEM, OREGON



 Presently Irrigated Land
 Practicably Irrigable Acreage
 Header Pipe
 Point of Diversion

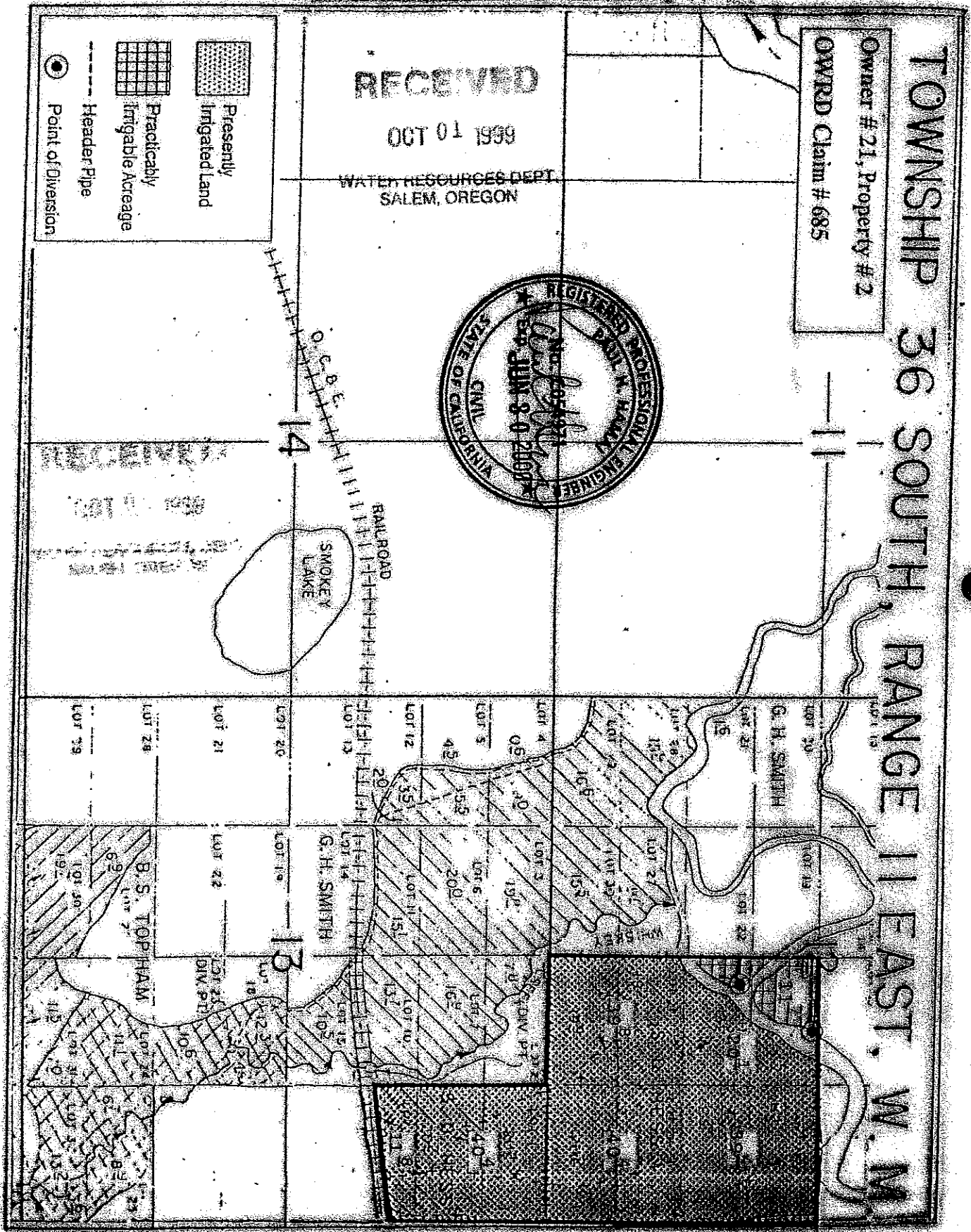
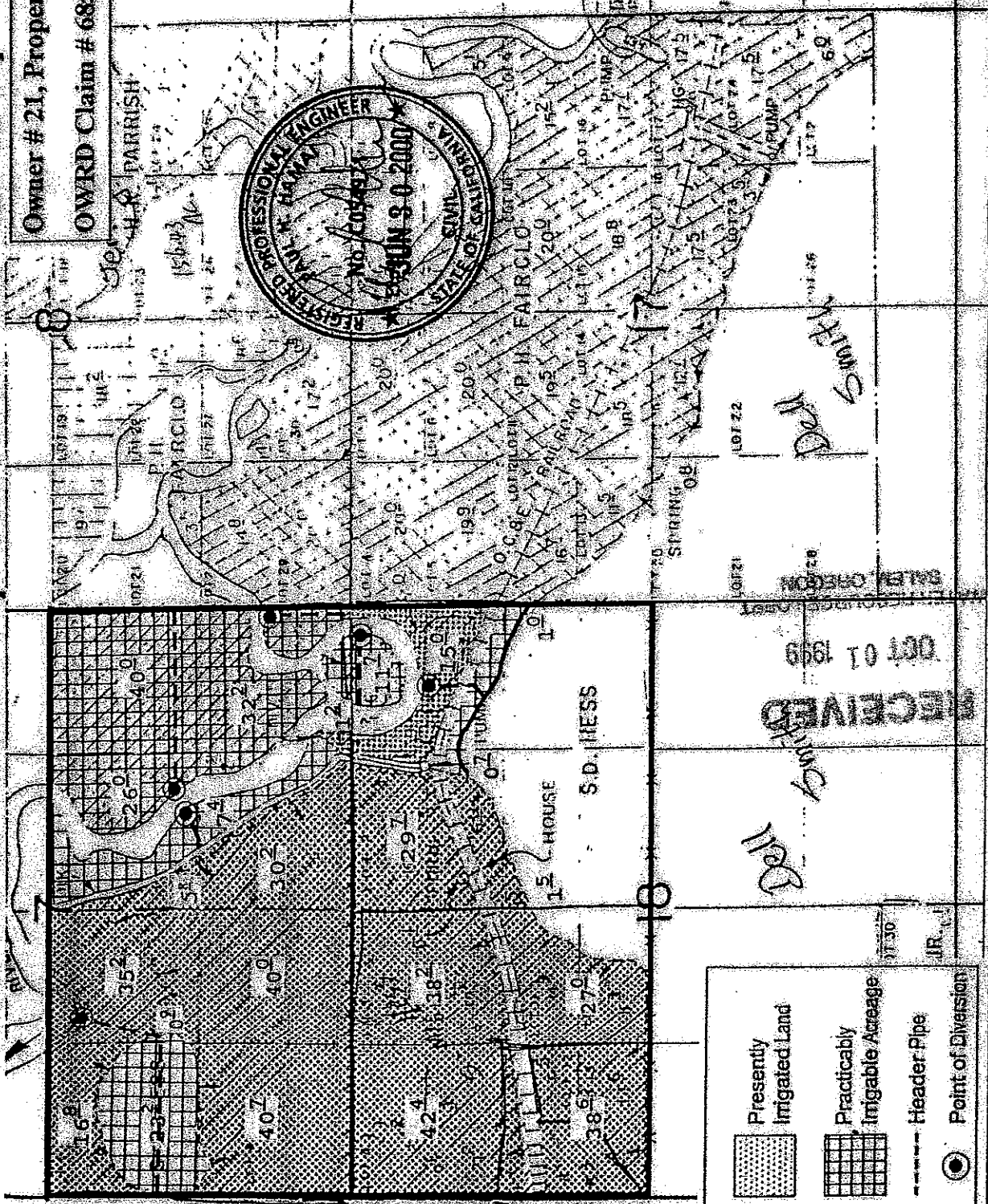
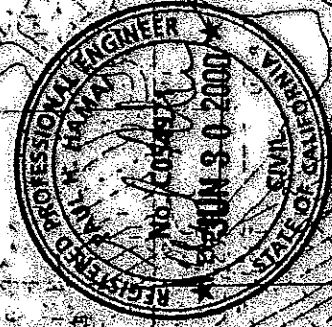


Exhibit B
Page 1 of 2

Dy: Natural Resources Consulting Engineers Inc.
1150 Addison St., Suite 204
Berkeley, Ca. 94702
Tel: (510) 841-7114

TOWNSHIP 36 SOUTH, RANGE 12 EAST, W. M.

Owner # 21, Property # 2
 OWRD Claim # 685



KLANKIN ADDICATION
 685
 77

By: Natural Resources Consulting Engineers Inc.
 1250 S. 10th St., Suite 206
 Berkeley, Ca. 94702
 Telephone: (510) 841-0814

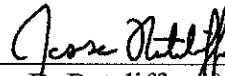
CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August 2005, I served the within
STIPULATION TO RESOLVE CONTESTS AND CERTIFICATE OF SERVICE on the
parties hereto by regular first-class mail and by e-mail (where an e-mail address is listed
below), a true, exact and full copy thereof to:

VIA STATE SHUTTLE MAIL

Dwight W. French / Teri Hranac
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
dwight.w.french@wrд.state.or.us
teri.k.hranac@wrд.state.or.us

Christopher B. Leahy / Niccole Brennan
Fredericks, Pelcyger & Hester, LLC
1075 S. Boulder Road, Suite 305
Louisville, CO 80027
cleahy@fphw.com
nsacco@fphw.com



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