

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

June 16, 2005

TO ALL PARTIES TO KLAMATH ADJUDICATION CASE 91, CLAIM NOS. 1762  
AND 3572

Re: Klamath Adjudication – Case No. 91, Claim No. 691, Contest Nos. 1762 and  
3572  
DOJ File No. 690-600-GN0326-03

Dear Parties:

Enclosed for your records is a fully executed copy of the Stipulation to Resolve  
Contests, Exhibits A and B, 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/GENM9740  
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

<del>Klamath Irrigation District; Klamath Drainage District; Tulelake 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 &amp; 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;</del>	STIPULATION TO RESOLVE CONTEST 1762
Contestants	Case No. 91
	Claim: 691
	Contests: 1762 and 3572 <sup>1</sup>

vs.

Ernestine S. Kirk; Jerry Parrish;  
Claimants/Contestants.

Claimants/Contestants Jerry A. Parrish and Ernestine S. Kirk, 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:

**A. STIPULATED FACTS**

1. On January 31, 1991, Claim 691 for a federal reserved Indian water right was filed with OWRD by the Claimants.

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<sup>1</sup> Don Vincent voluntarily withdrew from Contest 3572 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3572 on June 24, 2002. Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3572 on January 15, 2004. The remaining entities comprising Klamath Project Water Users voluntarily withdrew Contest 3572 on April 7, 2005.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 691.
3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 691, Contest 1762.
4. Claimants/Contestants and OWRD agree that Contest 1762 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 691 should be approved to the Adjudicator as a federal reserved Indian water right to the extent described in the Description of Water Right Claim 691, 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 1762 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 691 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 691 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 691.
4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 691 does not conform to the terms set forth in the attached Description of Water Right Claim 691, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 691 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 691.

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.

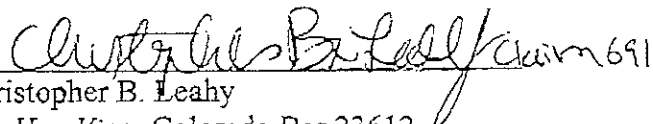
11. Claimants/Contestants and OWRD shall each bear their own costs and attorneys' fees.

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 Jerry A. Parrish and Ernestine S. Kirk

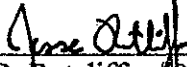
FREDERICKS, PELCYGER & HESTER, LLC

  
Christopher B. Leahy  
*Pro Hac Vice*; Colorado Bar 23612

6/10/05  
Date

For the Oregon Water Resources Department

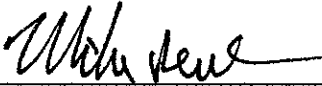
HARDY MYERS  
Attorney General



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

6/15/05

\_\_\_\_\_  
Date



\_\_\_\_\_  
Michael Reynolds  
Agency Representative  
Oregon Water Resources Department

6/15/05

\_\_\_\_\_  
Date

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 Pacific Ocean )  
)  
) Description Of )  
) Water Right Claim 691 )  
)

Name and Address: Jerry A. Parrish  
Ernestine S. Kirk  
PO Box 181  
Beatty, OR 97621

Source: Sprague River

Tributary: Williamson River

Point Of Diversion:	Township	Range	Section	Q/Q:	Lot:
	36 S	12E	8	SESW	30

Priority: 10/14/1864

Use, Period Of Use and Quantity:	Use:	Period Of Use:	Rate:	Duty:
	Irrigation Stockwater	03-01 to 10-16 01-01 to 12-31	.9 cfs	4.3 AFA

Place Of Use:	Township	Range	Section	Q/Q:	Lot:	Acreage:
	36 S	12E	8	NESE	17	16.0
	36 S	12E	8	NESE	24	16.1
	36 S	12E	8	NWSE	18	16.4
	36 S	12E	8	NWSE	23	3.1

Total Irrigated Acreage 51.6

Source: Sprague River

Tributary: Williamson River

Point Of Diversion:	Township	Range	Section	Q/Q:	Lot:
	36 S	12E	8	SE-1/4	

(No specific point of diversion – natural overflow)

Priority: 10/14/1864

<b>Use, Period Of Use and Quantity:</b>	<u>Use:</u> Irrigation Stockwater	<u>Period Of Use:</u> 03-01 to 10-16 01-01 to 12-31	<u>Rate:</u> 1.41 cfs	<u>Duty:</u> 4.3 AFA
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<b>Place Of Use:</b>	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	12E	8	SWSE	26	11.3
	36 S	12E	8	SWSE	31	14.2
	36 S	12E	8	SESE	25	13.1
	36 S	12E	8	SESE	32	17.8

Total Irrigated Acreage 56.4

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

**Other Matters Necessary for Administration of Right:**

The quantity of water under this right for livestock use is limited to 144 gallons per day.



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**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	8	SESW	26

**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	.83 cfs	3.1 AFA

<u>Place Of Use:</u>	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	36 S	12E	8	NESE	24	7.5
	36 S	12E	8	NWSE	18, 23	19.5
	36 S	12E	8	SESE	25	6.9
	36 S	12E	8	SWSE	26	12.1

Total Practicably Irrigable Acreage                    46.0

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

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

Owner # 27, Property # 3  
 OWRD Claim # 691

KLAMATH ADJUDICATION

RECEIVED  
 LOT OF 199

WATER RESOURCES DEPT.  
 SALEM, OREGON



By: Natural Resources Consulting Engineers Inc.  
 1250 Adams St., Suite 204  
 Berkeley, Ca. 94702  
 Berkeley (510) 841-7814

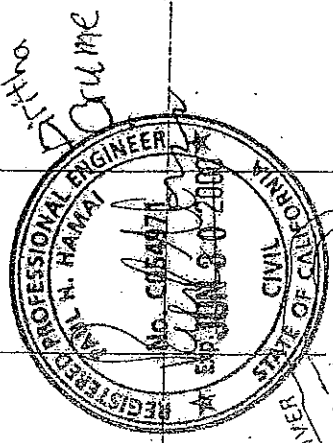
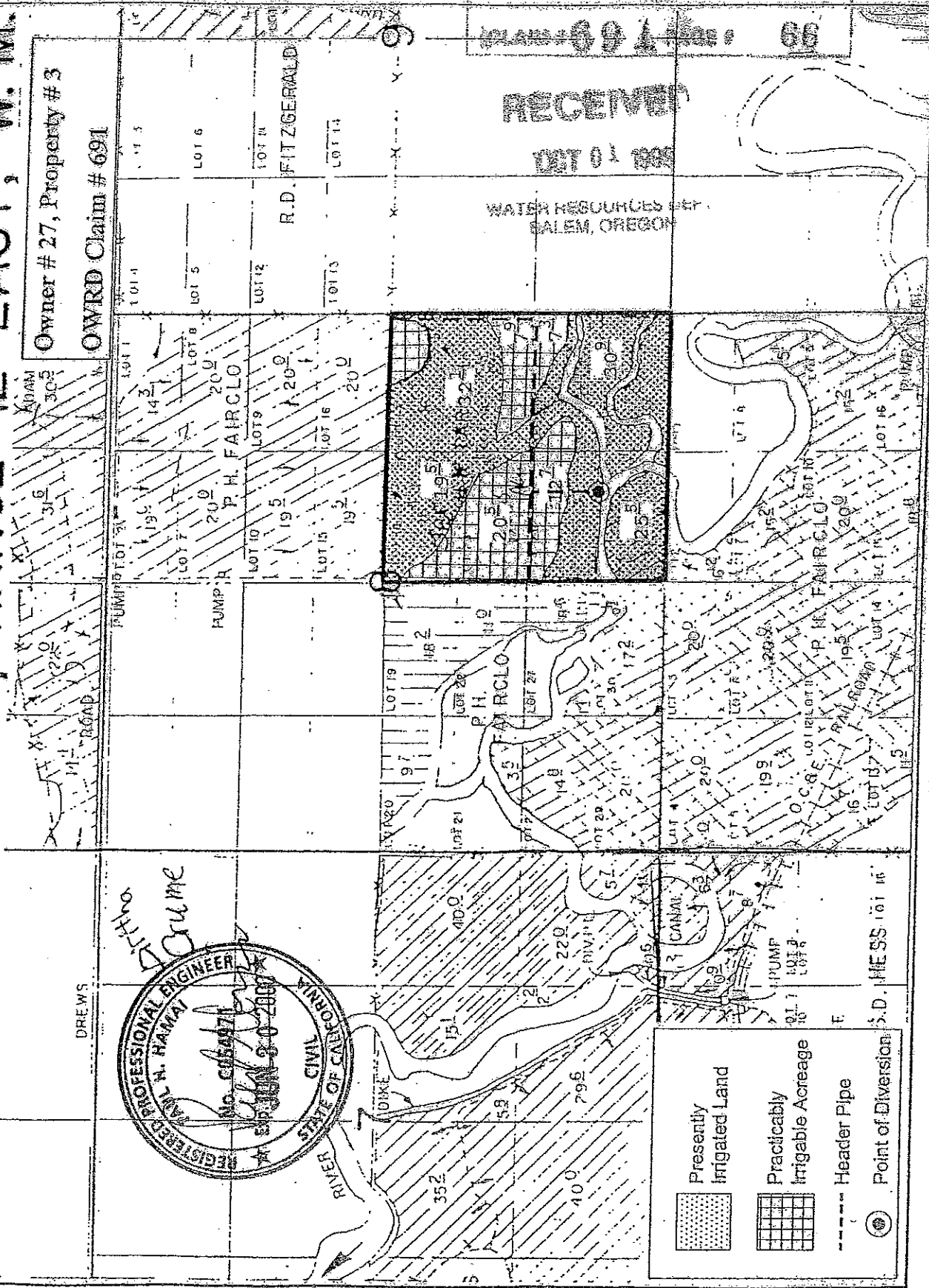


Exhibit B  
 1

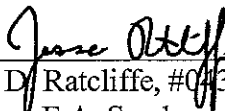
**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of June 2005, I served the within  
STIPULATION TO RESOLVE CONTEST AND EXHIBITS 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:

**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@state.or.us](mailto:dwight.w.french@state.or.us)  
[teri.k.hranac@wrд.state.or.us](mailto:teri.k.hranac@wrд.state.or.us)

Christopher B. Leahy  
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[cleahy@fphw.com](mailto:cleahy@fphw.com)

  
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Jesse D. Ratcliffe, #04394  
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Assistant Attorneys General