



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;~~

Contestants

vs.

Marylyn Sheppard; Mary Sheppard;
Claimants/Contestants.

STIPULATION TO RESOLVE
CONTEST 1769

Case No. 98

Claim: 702

Contests: 1769 and 3580¹

Claimants/Contestants Mary Sheppard and Marylyn Sheppard, 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 702 for a federal reserved Indian water right was filed with OWRD by the Claimants.

¹ Don Vincent voluntarily withdrew from Contest 3580 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3580 on June 24, 2002. On September 16, 2003, all other Contestants to Contest 3580 voluntarily withdrew.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 702.

3. On May 3, 2000, the Claimants filed A Statement of Contest of Preliminary Evaluation of Claim 702, Contest 1769.

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 1769 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 702 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 702.

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 702.

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 1769 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 702 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 702 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 702, 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 702 does not conform to the terms set forth in the attached Description of Water Right Claim 702, Claimants/Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 702 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 702.

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.

**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 **702**
_____)

Name and Address: Mary Sheppard
Marylyn Sheppard
P.O. Box 1279
Chiloquin, OR 97624

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

Original

Point Of Diversion:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>
	35 S	7 E	3	NESE	

Alternate/Relocated

Point Of Diversion:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>
	35 S	7 E	21	NENE	10

Once the Chiloquin Dam has been removed, no water may be diverted from the Original Point of Diversion.

Rediversion Point: (Water is rediverted from Modoc Point Irrigation District ditch at:)
35 S 7 E 32 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	1.91 cfs	4.3 AFA
	Livestock	03-01 to 10-16	840 gpd	

The total quantity of water diverted from any combination of the original and alternate/relocated points of diversion may not exceed the quantity set forth above.

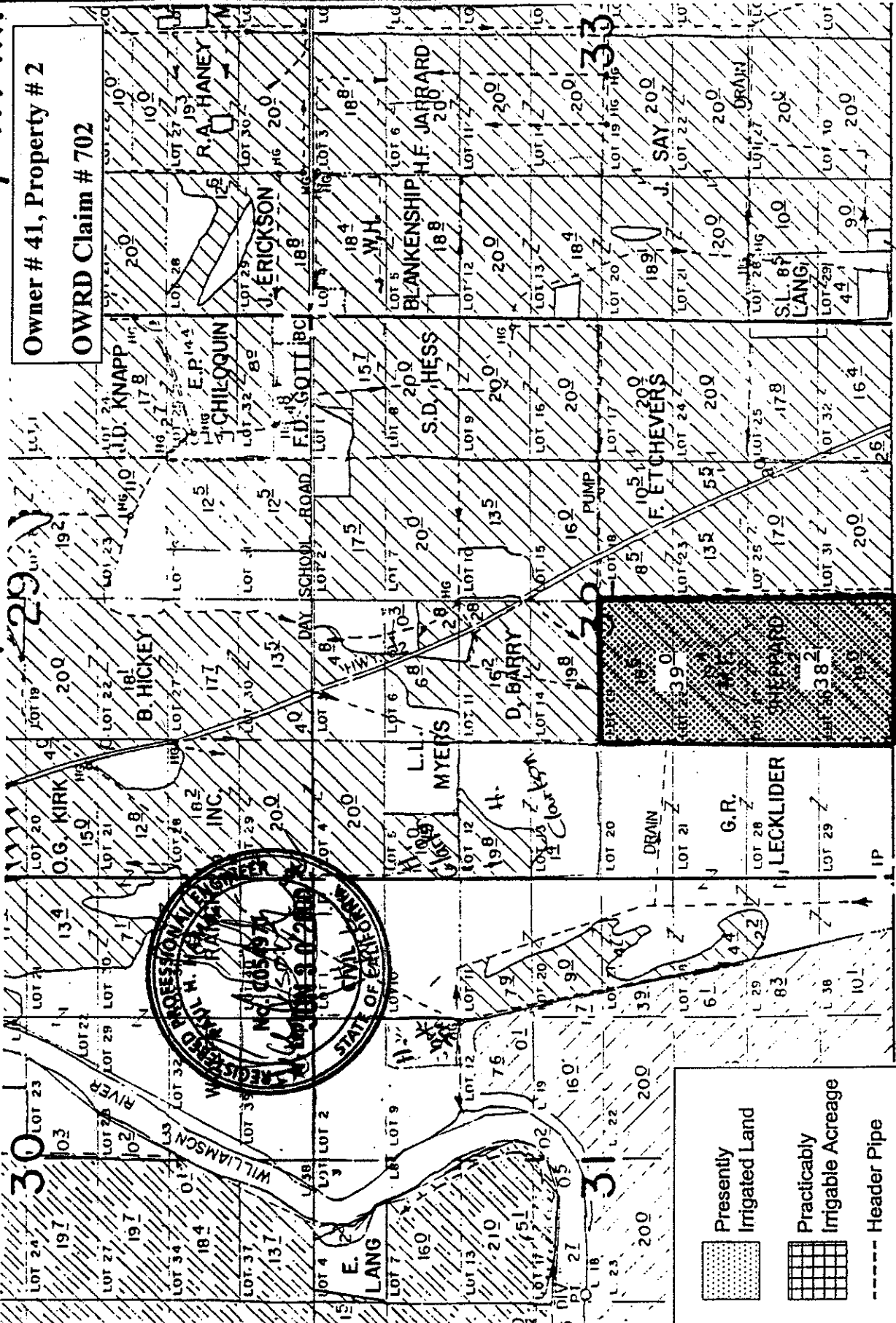
Place Of Use:	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Q/Q:</u>	<u>Lot:</u>	<u>Acreage:</u>
	35 S	7 E	32	NESW	19	19.6
	35 S	7 E	32	NESW	22	19.4
	35 S	7 E	32	SESW	27	19.2
	35 S	7 E	32	SESW	30	19.0





Total Irrigated Acreage 77.2

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 35 SOUTH, RANGE 7 EAST, W. M.

Owner # 41, Property # 2
 OWRD Claim # 702



-  Presently Irrigated Land
-  Practically Irrigable Acreage
-  Header Pipe
-  Point of Diversion

KLAMATH ADJUDICATION

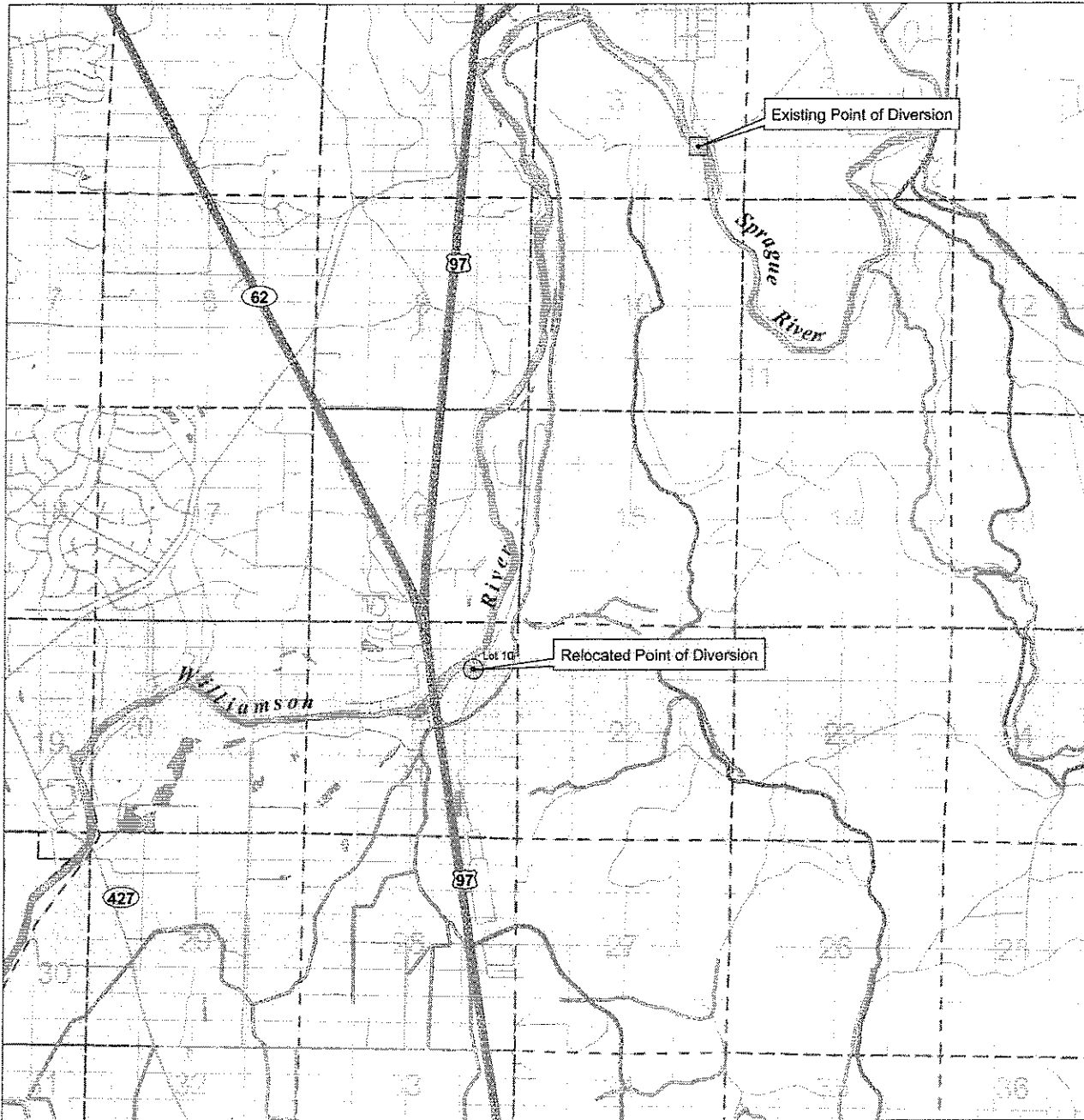
OCT 01 1988

CLAIM # 702 PAGE # 35

WATER RESOURCES CONSULTING ENGINEERS INC.
 BERKELEY, CA

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





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 locations of property ownership lines.

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



RECEIVED
 Ronan Igleria, PE, CWR
 110 N. 20th
 3951 SW 37th Ave., Suite 1800
 Beaverton, Oregon 97004
 WATER RESOURCES DEPT Oregon Permit Number: 07174NR2
 MADM DELOOH

Map for Alteration to Water Rights Claim #782
Relocated Point of Diversion
 Klamath Basin Adjudication

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

Mary Shappard/Marilyn Sheppard
 P.O. Box 1279
 Chiloquin, OR 97624

HDR HDR Engineering Inc.
 November 22, 2006

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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Oregon Water Resources Dept.
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Somach, Simmons & Dunn
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ahitchings@lawssd.com

Carl V. Ullman
Water Adjudication Project
The Klamath Tribes
P.O. Box 957
Chiloquin, OR 97624
bullman3@earthlink.net

COURTESY COPY:

Maurice L. Russell
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020

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Vanessa Boyd Willard
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Claim 248

Stephen Hess
Melissa Hess
P.O. Box 111
Beatty, OR 97621

Claim 700

The Nature Conservancy
821 S.E. 14th Avenue
Portland, OR 97214-2537

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mike@brandsnessrudd.com

James R. Uerlings
Boivin, Uerlings & DiIaconi, PC
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Claim 253

Edward and Cindy Coombs
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Chiloquin, OR 97624

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bjmatzen@msn.com

Claim 250

Brian E. & Sharon Allen
37291 Agency Lake Loop Road
Chiloquin, OR 97624

Claim 700

Melinda Cauvin / Loren C. Walsh
P.O. Box 519
Chiloquin, OR 97624-0519

Linda Long-Bourdet
Modoc Point Irrigation District
Agency Representative
24444 Modoc Point Road
Chiloquin, OR 97624
crterlk@aol.com

Claim 243

Peter M. Bourdet
P.O. Box 803
Chiloquin, OR 97624
linda@craterlakerealtyinc.com

Steven L. Shropshire

Jordan Schrader PC
P.O. Box 230669
Portland, OR 97281
steve.shropshire@jordanschrader.com

Claim 682:

L.A. and Pauline Gienger
Gienger Investments, Inc.
Gienger Enterprises
25050 Modoc Point Road
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

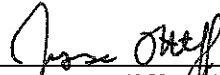
Emmitt W. Hicks
1836 Wiard Street
Klamath Falls, Oregon 97603

Courtesy Copy:

John M. Keller
Keller & Keller P.C.
P.O. Box 14746
Portland, OR 97293

Claim 241

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



Jesse D. Ratcliffe, #04394
Assistant Attorney General