

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

July 23, 2004

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WATER RESOURCES DEPT  
SALEM, OREGON

**ALL PARTIES TO KLAMATH ADJUDICATION CASE 172, CLAIM 127**

Re: Klamath Adjudication – Case No. 172, Claim No. 27, Contest Nos. 3264, 3440,  
3725, and 4084  
DOJ File No. 690-600-GN0143-03

Dear Parties:

Enclosed please find a fully executed copy of the Stipulation to Resolve Contest in the above-entitled matter. This agreement resolves all the remaining issues in this case.

Since all of the issues in the contest have been resolved, there is no need to hold a hearing on this contest. Accordingly, the Oregon Water Resources Department will withdraw this case from the Office of Administrative Hearings pursuant to OAR 137-003-0515(4).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Wirth".

Justin Wirth  
Assistant Attorney General  
Natural Resources Section

JXW:tml/GENJ7603  
Enclosure  
c: Service List

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SALEM OREGON

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR 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**

United States of America; The Klamath Tribes; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Co.; Enterprise Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Co.; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Co.; Plevna District Improvement Co.; and Collins Products, LLC;

**STIPULATION TO RESOLVE  
CONTEST**

Contestants;

vs.

Case No. 172  
Claim No. 27

Alvin R. Marengo and Peggy A. Marengo;

Contests 3264, 3440, 3725, and 4084

Claimants/Contestants.

The Oregon Water Resources Department (hereinafter "OWRD"),  
Claimants/Contestants Alvin R. Marengo and Peggy A. Marengo (hereinafter  
"Claimants"), Contestant the United States of America (hereinafter "United States"),  
Contestants Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation  
District; Klamath Basin Improvement District; Ady District Improvement Co.; Enterprise

JUL 26 2004

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Irrigation District; Klamath Hills District Improvement Co.; Malin Irrigation District; Midland District Improvement District; Pine Grove Irrigation District; Pioneer District Improvement Co.; Poe Valley Improvement District; Shasta View Irrigation District; Sunnyside Irrigation District; Don Johnston & Son; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Co.; Plevna District Improvement Co.; and Collins Products, LLC (hereinafter collectively "Klamath Project Water Users"), and Contestant the Klamath Tribes (hereinafter "Tribes") hereby agree and stipulate as follows:

**A. STIPULATED FACTS**

1. On December 3, 1990, the Claimants filed Claim 27 with OWRD.
2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 27 preliminarily denying the claim.
3. The following contests were filed to Claim 27: Contest 3264, filed by the Claimants; Contest 3440, filed by the Klamath Project Water Users; Contest 3725, filed by the United States; and Contest 4084, filed by the Tribes (hereinafter collectively "Contestants").
4. Claimants, Contestants, and OWRD agree that Contests 3264, 3440, 3725, and 4084 can be resolved without the need for further proceedings, pursuant to the terms set forth below.

**B. TERMS AND PROVISIONS**

1. Claimants, Contestants, and OWRD agree that Claim 27 should be approved by the Adjudicator as described below:

POINT OF DIVERSION LOCATION: SW ¼ SE ¼, Section 25, Township 32 South,  
Range 7 East, W.M.

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SOURCE: Williamson River, tributary to Upper Klamath Lake.

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USE: Irrigation of 238.2 acres.

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AMOUNT ACTUALLY BENEFICIALLY USED FOR IRRIGATION: 5.95 cubic feet  
per second (cfs) measured at the point of diversion.

DUTY: 3.5 Acre-Feet/Acre/Year.

IRRIGATION PERIOD OF USE: April 15 through October 31.

PRIORITY DATE: October 14, 1864.

PLACE OF USE:

NE ¼ NE ¼	32.3	ACRES IRRIGATION
NW ¼ NE ¼	38.3	ACRES IRRIGATION
SW ¼ NE ¼	30.3	ACRES IRRIGATION
SE ¼ NE ¼	37.8	ACRES IRRIGATION
NE ¼ SE ¼	37.8	ACRES IRRIGATION
NW ¼ SE ¼	22.2	ACRES IRRIGATION
SW ¼ SE ¼	22.4	ACRES IRRIGATION
SE ¼ SE ¼	17.1	ACRES IRRIGATION

SECTION 25

TOWNSHIP 32 SOUTH, RANGE 7 EAST, W.M.

The place of use is shown more particularly on the map attached hereto, which is incorporated by reference as if set forth fully herein.

2. Claimants, Contestants and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contests 3264, 3440, 3725, and 4084 have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on these contests to Claim 27.

3. Based on the Stipulation of Claimants, Contestants and OWRD that Claim 27 and the Contests thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 27 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 27 be approved in the Finding of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B.1., above.

4. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 27 does not conform to the terms set forth in paragraph B.1., above, Claimants and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 27 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 27.

5. The Parties agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. The parties agree that this 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

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Stipulation may be used in any future proceeding to interpret and/or enforce the terms of this Stipulation. Further, the parties 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.

6. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives and all persons, firms, associations, and/or corporations connected with them.

7. Each Party to 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 party and bind that party 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 Parties, notwithstanding that the Parties 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.

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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. The Parties agree to bear their own costs and attorneys' fees.

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

STIPLULATED, AGREED AND APPROVED BY:

CLAIMANTS/CONTESTANTS:

Dated: July 19, 2004

  
ALVIN R. MARENCO  
8475 Marenco Ranch Dr.  
Red Bluff, CA 96080

  
PEGGY A. MARENCO  
8475 Marenco Ranch Dr.  
Red Bluff, CA 96080

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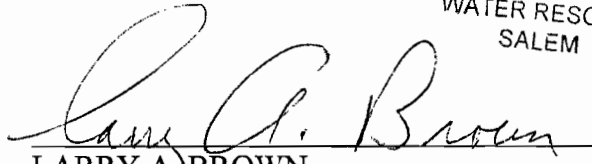
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For Contestant, the United States of America:

Dated: July 12, 2004



LARRY A. BROWN

General Litigation Section

Environment & Natural Resources Division

U.S. Department of Justice

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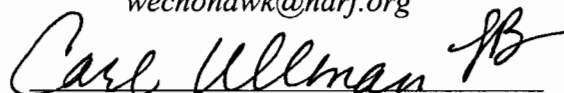
WATER RESOURCES DEPT  
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For Contestants, the Klamath Tribes:

Dated: July 3 2004



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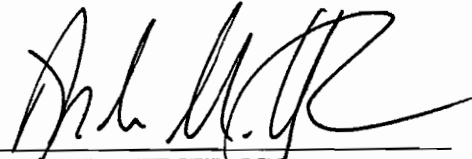
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For Contestants, the Klamath Project Water Users:

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Dated: July 14, 2004



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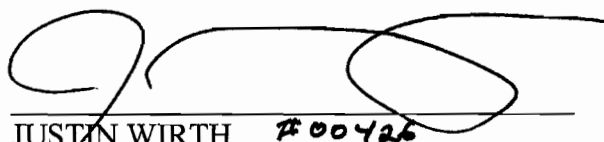
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For the Oregon Water Resources Department:


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Dated: July 23, 2004

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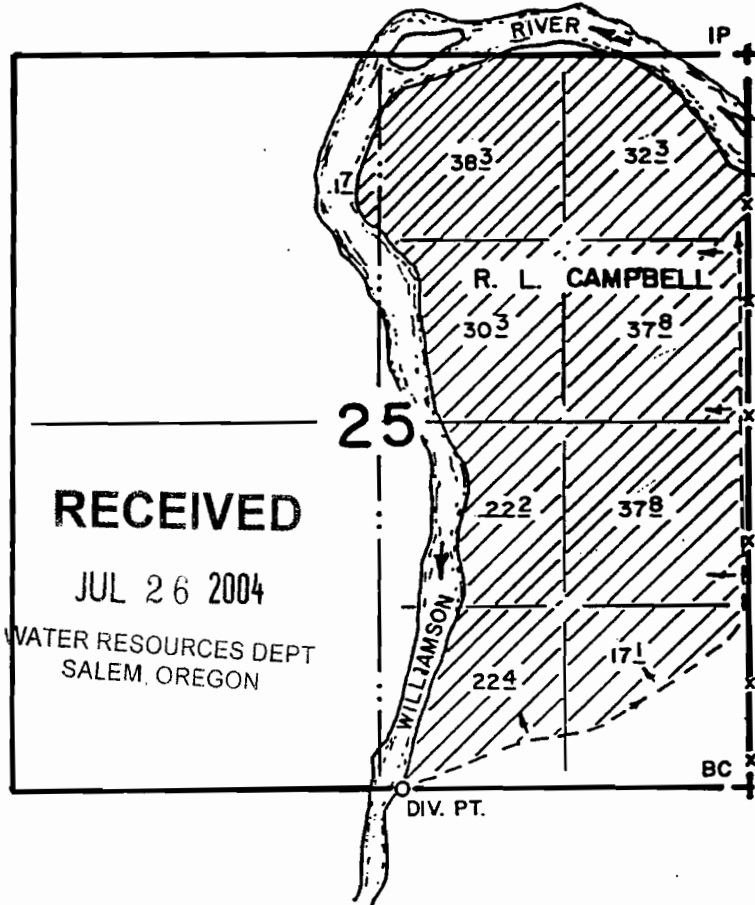
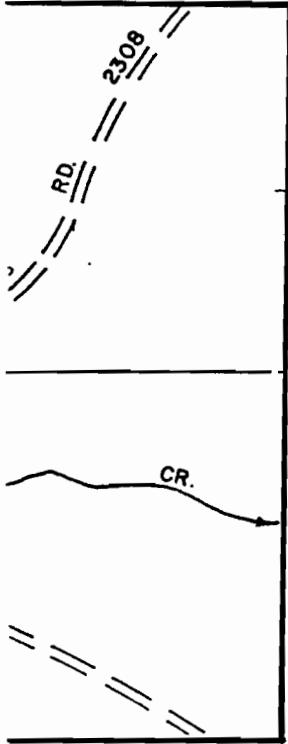


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AGENCY REPRESENTATIVE FOR  
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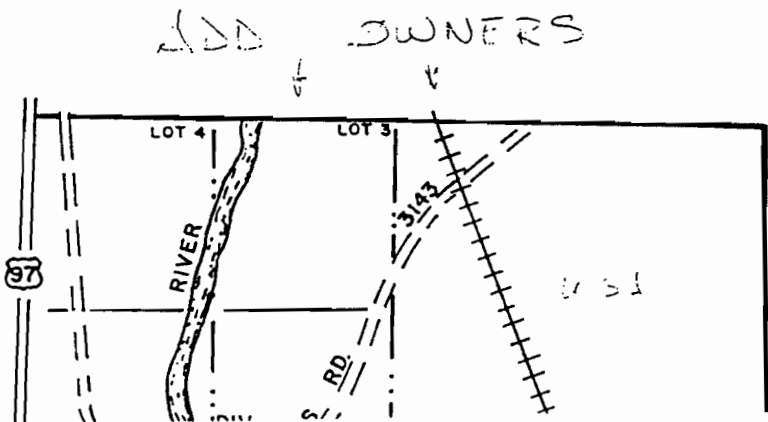
SOUTH,  
AST, W.M.

TOWNSHIP 32 SOUTH,  
RANGE 7 EAST, W. M.



SOUTH,  
ST, W.M.

TOWNSHIP 33 SOUTH, RA



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July 2004, I served the within LETTER TO PARTIES with STIPULATION TO RESOLVE CONTEST 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**

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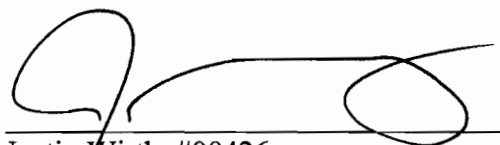
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