

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

Horsefly Irrigation District; Langell Valley  
Irrigation District; Medford Irrigation  
District; Rogue River Valley Irrigation  
District; United States of America; The  
Klamath Tribes; Klamath Irrigation  
District; Klamath Drainage District;  
Tulelake Irrigation District; Klamath Basin  
Improvement District; Ady District  
Improvement Company; Enterprise  
Irrigation District; Klamath Hills 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.; Van Brimmer Ditch Company; Plevna  
District Improvement Company; Collins  
Products, LLC,

STIPULATION TO RESOLVE  
CONTESTS

Case No. 219

Claim No. 107

Contest Nos. 3129<sup>1</sup>, 3485<sup>2</sup>, 3752, and 4139

Contestants,

v.

Jeld-Wen, Inc.,

Claimant/Contestant.

The Oregon Water Resources Department ("OWRD"), Claimant/Contestant

JELD-WEN, inc., ("JELD-WEN"), Contestant the United States of America (the "United

<sup>1</sup> On January 12, 2004, Langell Valley and Horsefly Irrigation Districts voluntarily withdrew, without prejudice, from contest 3129.

<sup>2</sup> Don Vincent voluntarily withdrew from Contest 3485 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3485 on June 24, 2002. On January 15, 2004, Klamath Hills District Improvement Company voluntarily withdrew from Contest 3485. On April 1, 2004, the remaining entities comprising Klamath Project Water Users voluntarily withdrew from Contest 3485.

States”), Contestant the Klamath Tribes (the “Tribes”), and Contestants Medford Irrigation District and Rogue River Valley Irrigation District (the “Irrigation Districts”) (JELD-WEN, the United States, the Tribes, and the Irrigation Districts collectively referred to as the “Parties”) agree and stipulate as follows:

**A. STIPULATED FACTS**

1. On February 1, 1991, JELD-WEN filed Claim 107 with OWRD. Claim 107 involves portions of Government Lots 19, 20, 21 and 22 of Section 15, Township 36 South, Range 7 East, W.M., Klamath County, Oregon (the “Property”). The Property was formerly part of the Klamath Reservation, was allotted to Klamath Tribal members Jake Weeks, Sr. and Lucille Weeks, and was subsequently sold to non-Indian owners who, along with their successors in title, utilized water on the Property for industrial purposes and for fire suppression.

2. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 107, preliminarily denying the claim.

3. The following contests were filed to Claim 107: Contest 3129, filed by the Irrigation Districts; Contest 3752, filed by the United States; and Contest 4139, filed by the Tribes (collectively the “Contests”).

4. The Parties agree that the Contests can be resolved without the need for further proceedings, pursuant to the below terms.

**B. TERMS AND PROVISIONS**

1. The Parties agree that Claim 107 should be approved by the Adjudicator as described below:

POINT OF DIVERSION LOCATION:

NW ¼ SW ¼, Section 15, Township 36 South, Range 7 East, W.M.

SOURCE:

Upper Klamath Lake, tributary to Klamath River

USE:

Industrial Use/Fire Suppression

AMOUNT ACTUALLY BENEFICIALLY USED:

1 cubic foot per second (cfs), measured at the point of diversion

DUTY:

100 Acre-Feet/Year

PERIOD OF USE:

Year Round

PRIORITY DATE:

October 14, 1864

PLACE OF USE:

Lots 20 and 21 (NW ¼ SW ¼) and Lots 19 and 22 (NE ¼ NW ¼),

Section 15, Township 36 South, Range 7 East, W.M.

The place of use is shown more particularly on the attached map, which is incorporated by reference.<sup>3</sup>

2. The Parties agree that the water right identified in this Stipulation (the “Water Right”) may not be transferred to a new Place of Use, either permanently or temporarily, except that part of the Water Right may be transferred, either permanently or temporarily,

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<sup>3</sup> The map attached hereto contains a typographical error, in that it identifies the place of use being located in Range 7 ½ East. However, the place of use is actually located in Range 7 East. The signatories to this Stipulation have corrected this error on the map by striking the “½” from the text of the map, and have initialed the correction on the map.

to an instream use. The Parties stipulate and agree that nothing in the foregoing limitation on transfer of the Water Right to a new Place of Use shall prevent any transfer provisions identifying a new Place of Use to the extent that such provisions are in fact necessary to a transfer of all or part of the Water Right to an instream use. The Parties further agree that the Water Right may be changed to any other type of use on the Place of Use described in paragraph B.1, so long as the consumptive use is not increased, and subject to the requirements of Oregon water law for changes or transfers of use currently found at ORS 540.505 et seq. and any other applicable law.

3. The Irrigation Districts anticipate that it will be necessary at some point in the future to litigate the issue of whether the waters of Fourmile Lake, Cascade Canal, or the tributaries thereto are legally and physically available to satisfy senior downstream calls in the Klamath Basin. JELD-WEN agrees not to seek party status or otherwise voluntarily participate in such legal proceedings, unless the Oregon Water Resources Department asserts that the waters of Fourmile Lake, Cascade Canal, or the tributaries thereto are the only source of water available to satisfy a JELD-WEN call based on the right claimed in Claim 107.

4. The Parties agree that under the terms and provisions of this Stipulation, the Contests have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on the Contests.

5. Based on the Stipulation of the Parties that Claim 107 and the Contests can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 107 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 107

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.

6. If the Finding of Fact and Order of Determination issued by the Adjudicator for Claim 107 does not conform to the terms set forth in paragraph B.1., above, JELD-WEN and Contestants reserve any rights they may have to file exceptions to the Finding of Fact and Order of Determination as to Claim 107 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 107.

7. Upon issuance of the Certificate by OWRD after conclusion of the proceedings in the Circuit Court, any violation of the terms therein shall constitute a violation of the Certificate and shall not give rise to any private cause of action by the United States, the Tribes, or the Irrigation Districts under this Stipulation. Enforcement as to any violation of the Certificate shall occur pursuant to Oregon law.

8. The Parties agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending administrative action. The Parties agree that no offers and/or compromises made in the course of negotiations 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 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 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.

9. 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.

10. 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.

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 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.

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.

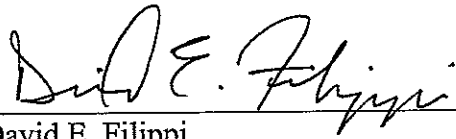
14. The Parties agree to bear their own costs and attorneys' fees.

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

STIPULATED, AGREED, AND APPROVED BY:

For JELD-WEN, inc.:

Dated: Dec. 10, 2004



David E. Filippi  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Ste. 2600  
Portland, OR 97204  
Telephone: (503) 294-9529  
Fax: (503) 220-2480  
Email: *defilippi@stoel.com*

For Contestant, the United States of America:

Dated: \_\_\_\_\_, 2004

Thomas L. Sansonetti  
Assistant Attorney General

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David W. Harder  
Indian Resources Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
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e-mail: *david.harder@usdoj.gov*

For Contestants, the Klamath Tribes:

Dated: \_\_\_\_\_, 2004

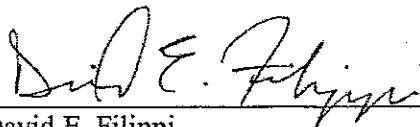
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Native American Rights Fund  
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Fax : (303) 447-7776  
e-mail: *babby@narf.org*

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For JELD-WEN, inc.:

Dated: Dec. 10, 2004



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For Contestant, the United States of America:

Dated: Dec 10, 2004

Thomas L. Sansonetti

Assistant Attorney General



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Indian Resources Section  
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e-mail: [david.harder@usdoj.gov](mailto:david.harder@usdoj.gov)

For Contestants, the Klamath Tribes:

Dated: \_\_\_\_\_, 2004

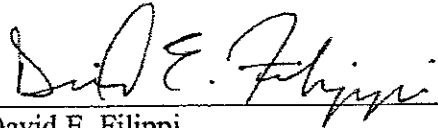
\_\_\_\_\_  
Lorna K. Babby  
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e-mail: [babby@narf.org](mailto:babby@narf.org)



STIPULATED, AGREED, AND APPROVED BY:

For JELD-WEN, inc.:

Dated: Dec. 10, 2004



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For Contestant, the United States of America:

Dated: \_\_\_\_\_, 2004

Thomas L. Sansonetti

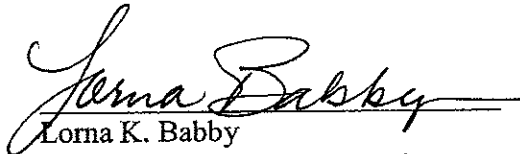
Assistant Attorney General

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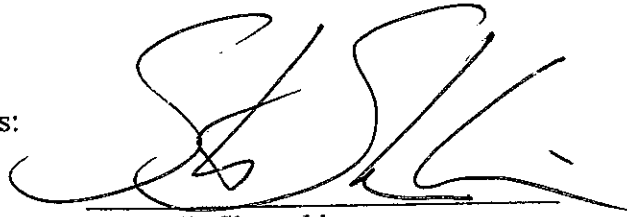
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For Contestants, the Irrigation Districts:

Dated: 12/10, 2004

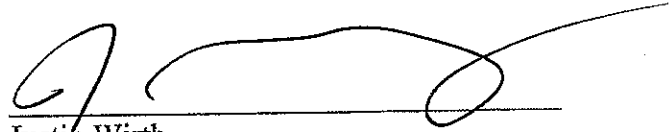


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e-mail:  
*steve.shropshire@jordanschraeder.com*

For the Oregon Water Resources Department:

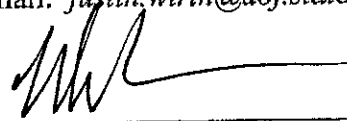
HARDY MEYERS  
Attorney General

Dated: December 17, 2004



Justin Wirth  
Assistant Attorney General  
Oregon Department of Justice  
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Dated: December 14, 2004



Michael Reynolds  
Agency Representative  
Oregon Water Resources Department  
725 Summer St. NE, Suite A  
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e-mail: *michael.j.reynolds@wrp.state.or.us*

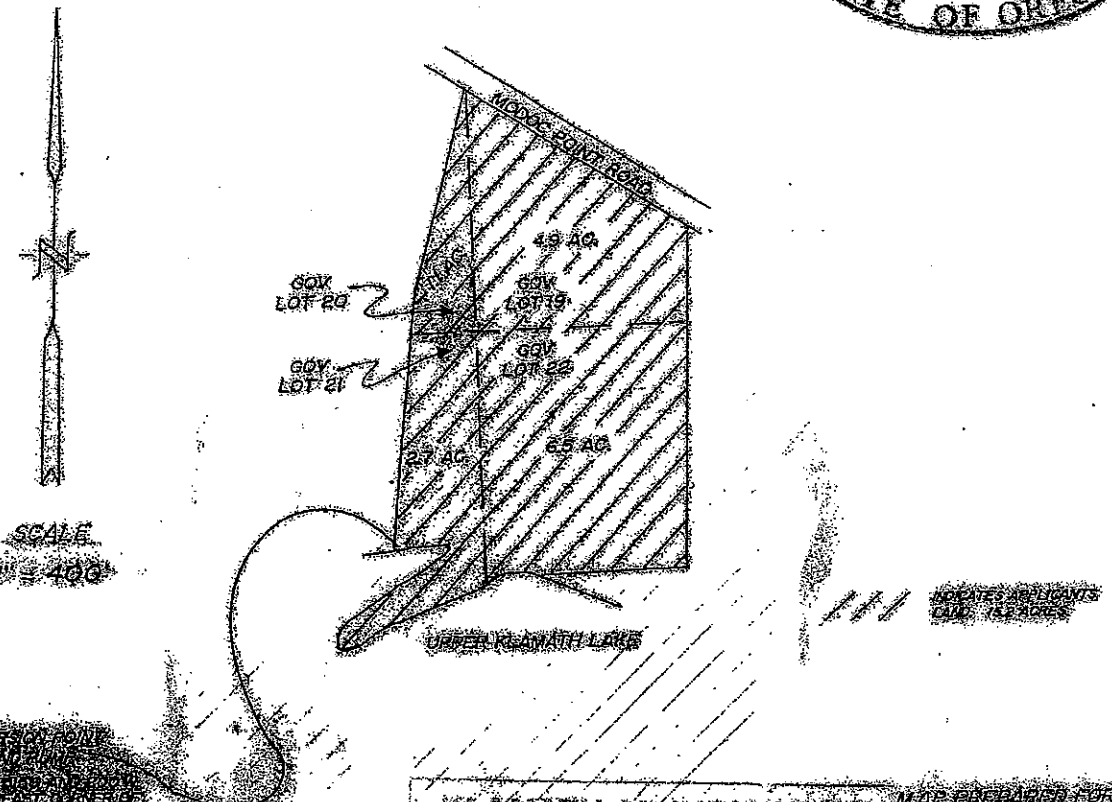
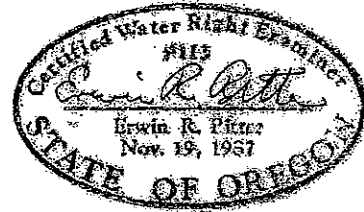
GENK4989

**MAP TO ACCOMPANY  
STATEMENT AND PROOF OF  
CLAIM TO USE OF WATER OF THE  
KLAMATH RIVER AND ITS TRIBUTARIES**

SITUATED IN GOVERNMENT LOTS 19, 20, 21 AND 22 OF  
SECTION 15, T36S, R74EWM, KLAMATH COUNTY, OREGON

Strike-out approved by:

- DE David Filippi, for Jeld-Wen, Inc.
- David Harder, U.S. Department of Justice
- Lorna Babby, for the Klamath Tribes
- Steven Shropshire, for the Irrigation Districts
- SW Justin Wirth, Oregon Department of Justice
- MR Michael Reynolds, Oregon Water Resources Dept.



**KLAMATH ADJUDICATION**  
**CLAIM 107** PAGE # **00023**

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**DEC 24 1998**

**WATER RESOURCES DEPT.**

MAP PREPARED FROM 1965-1968 MAP AND AERIAL PHOTO



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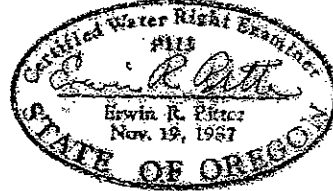
BOUNDARY SURVEYING  
2032 SUMMERS BLVD  
KLAMATH FALLS, OREGON

**MAP TO ACCOMPANY  
STATEMENT AND PROOF OF  
CLAIM TO USE OF WATER OF THE  
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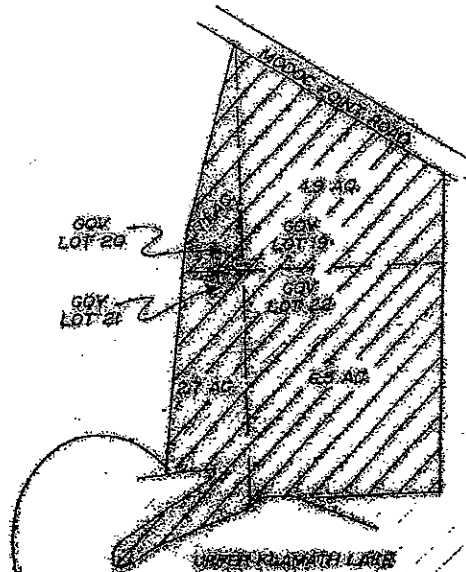
SITUATED IN GOVERNMENT LOTS 19, 20, 21 AND 22 OF  
SECTION 15, T36S, R7E, W2E, KLAMATH COUNTY, OREGON

Strike-out approved by:

-  David Filippi, for Jeld-Wen, Inc.
-  David Harder, U.S. Department of Justice
- \_\_\_\_\_ Lorna Babby, for the Klamath Tribes
- \_\_\_\_\_ Steven Shropshire, for the Irrigation Districts
- \_\_\_\_\_ Justin Wirth, Oregon Department of Justice
- \_\_\_\_\_ Michael Reynolds, Oregon Water Resources Dept.



SCALE  
1" = 400'



KLAMATH ADJUDICATION  
CLAIM # 107 PAGE # 000/20

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DEC 24 1967

WATER RESOURCES DEPARTMENT

MAP PREPARED FROM ADJUDICATION MAP AND RECORDS

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT AS IT APPLIES TO THE LANDS SHOWN ON THIS MAP AND TO THE LOCATION OF PROPERTY OWNERS AND ADJACENTS.

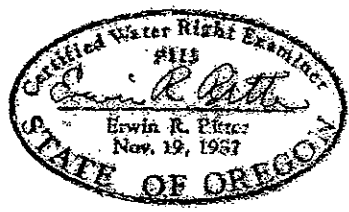
EDWIN R. PITZER  
CERTIFIED WATER RIGHT EXAMINER  
KLAMATH COUNTY, OREGON

**MAP TO ACCOMPANY  
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CLAIM TO USE OF WATER OF THE  
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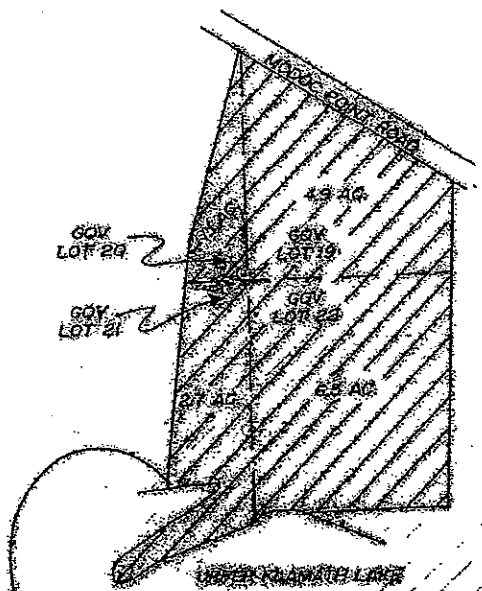
SITUATED IN GOVERNMENT LOTS 19, 20, 21 AND 22 OF  
SECTION 15, T36S, R7W, SEWM, KLAMATH COUNTY, OREGON

Strike-out approved by:

- DF David Filippi, for Jeld-Wen, Inc.
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- JB Lorna Babby, for the Klamath Tribes
- SS Steven Shropshire, for the Irrigation Districts
- JW Justin Wirth, Oregon Department of Justice
- MR Michael Reynolds, Oregon Water Resources Dept.



SCALE  
1" = 400'



**KLAMATH ADJUDICATION  
CLAIM 107 PAGE 1**

**RECEIVED**

**DEC 24 1967**

**WATER RESOURCES DEPT.**

MAP PREPARED FROM CROSSING MAP AND AERIAL PHOTO

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER CLAIM. IT IS NOT INTENDED TO PROVIDE A LEGAL OPINION AS TO THE LOCATION OF PROPERTY BOUNDARIES.

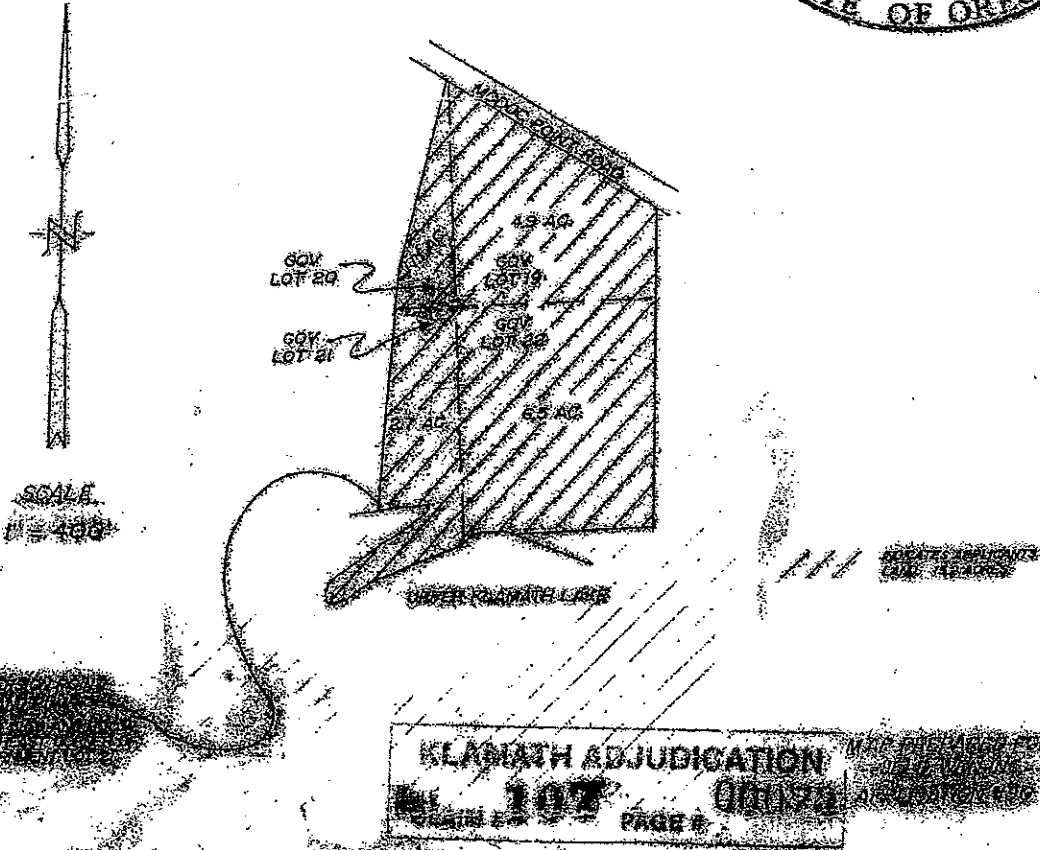
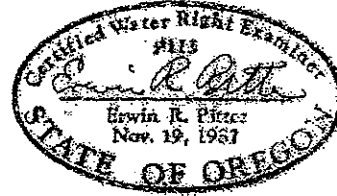
EDWIN R. PITZER  
2335 SHANNON LANE  
KLAMATH FALLS, OREGON 97603

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DEC 24 1967  
WATER RESOURCES DEPT.

MAP PREPARED FROM A REVISION MAP  
AND ADJUDICATION