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**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

June 14, 2006

BY FACSIMILE (503) 378-4067  
BY E-MAIL – [klamath.adj@state.or.us](mailto:klamath.adj@state.or.us) and [ken.l.betterton@state.or.us](mailto:ken.l.betterton@state.or.us)  
AND BY REGULAR MAIL

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

Re: Klamath Adjudication – Case No. 247, Claim No. 270, Contest No. 3551, 3814,  
and 4208  
DOJ File No. 690-600-GN0218-03

Dear Judge Betterton:

Per the Order on Motion to Reset Briefing Schedule, dated April 14, 2006, we are submitting this completed Stipulation to Resolve Contests. OWRD expects to withdraw the case from the OAH within the next few days, upon receipt of the United States' and Klamath Project Water Users' original signatures.

Sincerely,

Jesse D. Ratcliffe  
Walter Perry III  
Assistant Attorneys General  
Natural Resources Section

JDR:WNP:tmc/GENQ4165  
Enclosure  
c: Service List

BEFORE THE HEARING OFFICER PANEL  
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 Company; 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 Co.; Winema Hunting Lodge, Inc.;  
Van Brimmer Ditch Co.; Plevna District Improvement  
Company; Collins Products, LLC;

STIPULATION TO RESOLVE  
CONTESTS

Case No. 247

Claim: 270

Contests: 3551<sup>1</sup>, 3814,  
and 4208<sup>2</sup>

Contestants,

vs

Grant D. Fowler; Janice Fowler,

Claimants.

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Claimants Grant D. Fowler and Janice Fowler ("Claimants"); Contestant the United States of America ("United States"); and, Contestants Klamath Project Water Users<sup>3</sup> ("KPWU"), collectively referenced as "Contestants"; and, the Water Resources Department ("OWRD") hereby agree and stipulate as follows:

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<sup>1</sup>. Don Vincent voluntarily withdrew from Contest 3551 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contest 3551 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contest 3551 on January 15, 2004.

<sup>2</sup>. On February 2, 2005, the Klamath Tribes voluntarily withdrew, without prejudice, their Contest 4208.

<sup>3</sup> The term Klamath Project Water Users includes 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 Company, 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 and Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Reames Golf and Country Club, Plevna District Improvement Company, and Collins Products, LLC.

### A. STIPULATED FACTS

1. On January 31, 1991, Dale White, Attorney for the Klamath Allottee Gladys Shoulderblade filed Claim 270 with OWRD.
2. Mrs. Shoulderblade filed the "Final Statement and Proof of Claim to Use the Waters of the Klamath River and Its Tributaries by Klamath Indian Individual PIA Claimants" on October 29, 1992.
3. Claimant Gladys Shoulderblade was an enrolled member of the Klamath Indian Tribes.
4. The property subject of Claim 270 was purchased in 1996 by C.Earl Parrick, a non-Indian.
5. The current claimants are Grant D. Fowler and Janice Fowler ("Fowler"), who purchased the claimed property in 2004 from Mr. Parrick and are the successors in interest to Mrs Shoulderblade.
6. The property comprising the original claimed place of use ("Claim Lands") is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$  and the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, Township 35 South, Range 12 East, Willamette Meridian.
7. On October 4, 1999, the Adjudicator issued his Preliminary Evaluation of Claim 270, preliminarily approving Claim 270 in part and denying it in part.
8. The following contests were filed to Claim 270 and/or the Preliminary Evaluation of Claim 270: Contest 3551 filed by the KPWU; Contest 3814 filed by the United States; and, Contest 4208 filed by the Klamath Tribes. Contest 4208 has been withdrawn.
9. Claimants, Contestants, and OWRD agree that Contests 3551 and 3814 can be resolved without the need for further proceedings,pursuant to the terms set forth below.

### B. TERMS AND PROVISIONS

1. The Claimants, United States, KPWU, and OWRD agree that Claim 270 should be approved as a "Walton" water right by the Adjudicator as described below:
  - a. POINT OF DIVERSION LOCATION:
    1. Snake Creek Point of Diversion No. 1: lying on the east line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, 1809' North of the section line corner common to Sections 25, 26, 35 & 36, T.35 S., R.12 E., W.M.
    2. Unnamed Spring Point of Diversion No. 2: lying on the west line of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, at a point 721' north of the SW corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 26, T.35

S., R.12 E., W.M.

b. SOURCE:

1. Snake Creek, tributary to the Sycan River, for irrigation on the 36.1 acre parcel shown on the attached map (the "Claim Map"), attached hereto as Exhibit A and incorporated herein by reference;

- a. Use: Irrigation of 36.1 acres.
- b. Diversion Rate: 0.9 cfs (1/40th cubic foot per second per acre).
- c. Duty: 3.1 acre feet/acre for irrigation.
- d. Period of Use: March 1 to October 16 for irrigation.
- e. Priority Date: October 14, 1864.
- f. Place of Use:  
Township 35 South, Range 12 East, W.M.  
Sec. 26: NE¼SE¼

2. Unnamed Spring, tributary to Snake Creek a tributary to the Sycan River, for irrigation on the 4.7 acre parcel shown on the Claim Map.

- a. Use: Irrigation of 4.7 acres.
- b. Diversion Rate: 0.12 cfs/acre (1/40th cubic foot per second per acre).
- c. Duty: 3.1 acre-feet/acre for irrigation.
- d. Period of Use: March 1 to October 16 for irrigation.
- e. Priority Date: October 14, 1864.
- f. Place of Use:  
Township 35 South, Range 12 East, W.M.  
Section 26: SW¼SE¼

2. The Claimants, United States, KPWU, and OWRD agree that pursuant to the terms and provisions of this Stipulation, Contests 3551 and 3814 have been satisfactorily resolved, and such resolution ends the need for further proceedings before the Administrative Law Judge on the contests to Claim 270.

3. Based on the Stipulation of the Claimants, United States, KPWU, and OWRD that Claim 270 and the Contests thereto can be resolved without the need for further proceedings, OWRD adjudication staff hereby recommends to the Adjudicator that Claim 270 be withdrawn from the Office of Administrative Hearings. OWRD adjudication staff further recommends that Claim 270 be approved in the Findings of Fact and Order of Determination issued by the Adjudicator in accordance with the terms of paragraph B.1., above.

4. If the Findings of Fact and Order of Determination issued by the Adjudicator for Claim 270 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 or objections to the Findings of Fact and Order of Determination as to Claim 270 with the Adjudicator and in the courts, and reserve any rights they may have to participate in any future proceedings authorized by law concerning Claim 270.

5. The Claimants, United States, KPWU, and OWRD agree that this Stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The Claimants, United States, KPWU, and OWRD agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. The Claimants, United States, KPWU, and OWRD 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 Stipulation may be used in any future proceeding to interpret and/or enforce the terms of this Stipulation. Further, the Claimants, United States, KPWU, and OWRD 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 Claimants, United States, KPWU, and OWRD 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, or covenants of this Stipulation are not severable, except, if any terms, provision, conditions, or covenant of this Stipulation is held by a court of competent jurisdiction to be valid, 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 shall be as effective as delivery of an original signed counterpart of this Stipulation.

10. This Stipulation comprises the entire agreement between the parties concerning the subject matter hereof, 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 shall be binding and enforceable upon the parties and not

mere recitals.

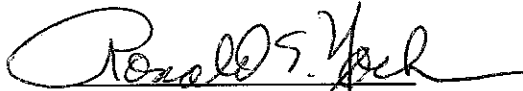
11. The Claimants, United States, KPWU, and OWRD agree to each bear their own costs and attorney fees.

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

STIPULATED, AGREED AND APPROVED BY:

FOR THE CLAIMANTS/CONTESTANTS GRANT FOWLER AND JANICE FOWLER.

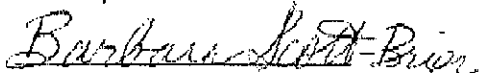
DATED: 6/8, 2006

  
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FOR THE CONTESTANT UNITED STATES OF AMERICA

DATED: June 12, 2006

Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



Barbara Scott-Brier, Special Attorney  
United States Department of Justice  
500 NE Multnomah, Suite 607  
Portland, OR 97232

FOR THE CONTESTANTS KLAMATH PROJECT WATER USERS

DATED: June 13, 2006



Andrew M. Hitchings, Esq.

(*Pro Hac Vice*; Cal. Bar No. 154554)

On Behalf of Klamath Project Water Users

Somach, Simmons & Dunn

Hall of Justice Building

813 Sixth Street, Third Floor

Sacramento, CA 95814-2403

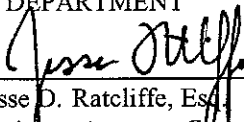
Phone: 916-446-7979

[ahitchings@lawssd.com](mailto:ahitchings@lawssd.com)




FOR THE OREGON WATER RESOURCES DEPARTMENT

DATED: June 13, 2006

  
\_\_\_\_\_  
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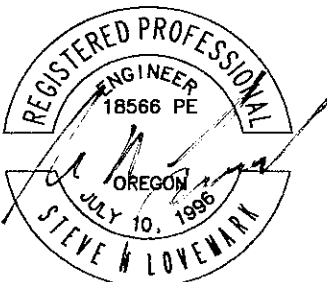
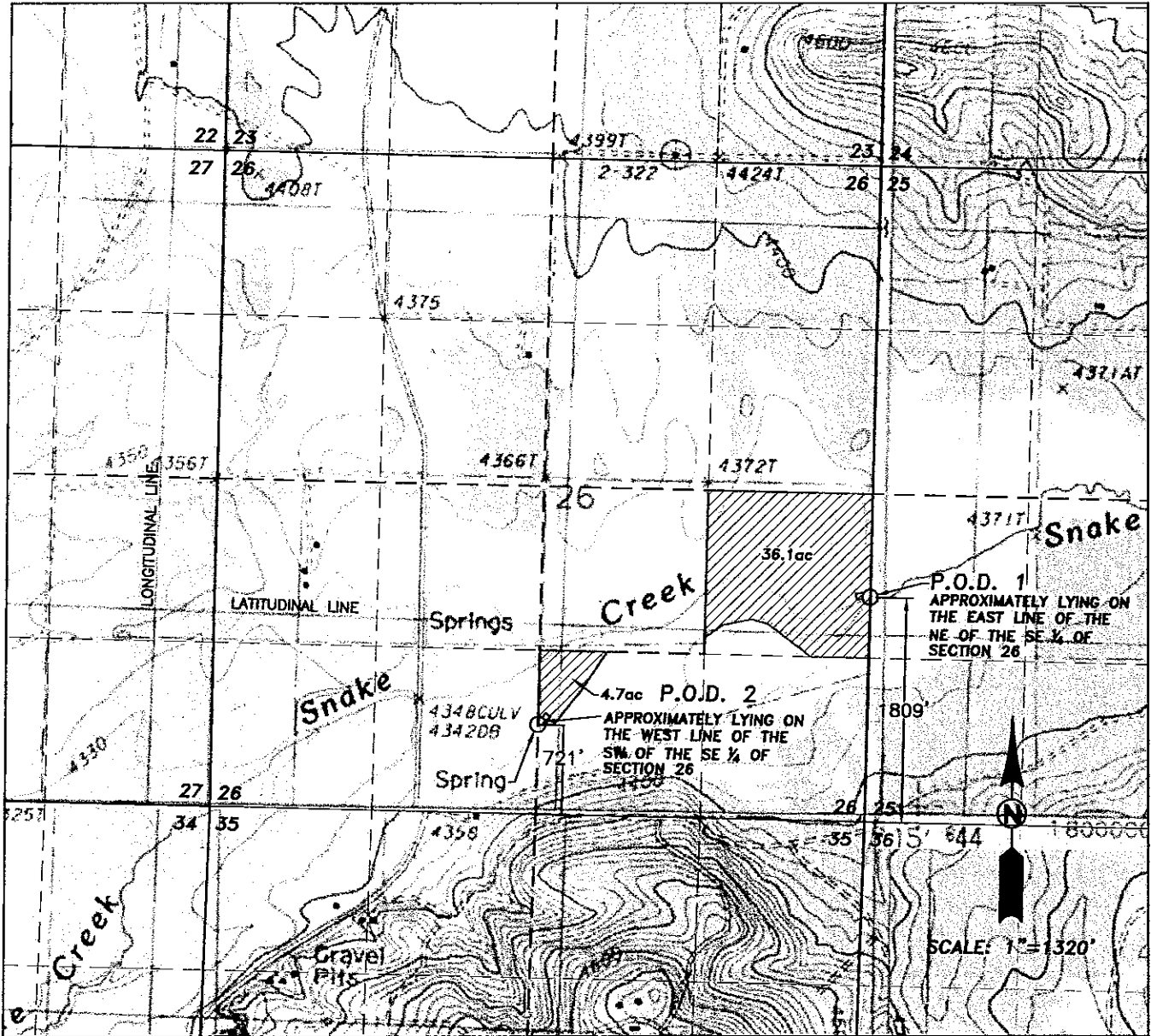
DATED: June 13, 2006

*for*  
  
\_\_\_\_\_  
Michael J. Reynolds  
Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301-1271  
Phone: 503-986-0820  
[mike.j.reynolds@state.or.us](mailto:mike.j.reynolds@state.or.us)

# ADJUDICATION CLAIM 270 MAP

FOR  
GRANT AND JANICE FOWLER  
CASE NO. 247

LOCATED IN SECTION 26,  
T.35S., R.12E, W.M., KLAMATH COUNTY, OR.



EXPIRES: 12/31/2006

\*NOTE:  
BACKGROUND MAP PROVIDED  
THROUGH TERRAIN NAVIGATOR,  
USGS.

- DIVERSION POINT
- IRRIGATED LAND

THE PURPOSE OF THIS MAP IS TO  
IDENTIFY THE LOCATION OF THE  
WATER RIGHT ONLY. THERE IS NO  
INTENT TO PROVIDE DIMENSIONS OR  
LOCATIONS OF PROPERTY LINES.

**i.e.**  
ENGINEERING  
741 SE Jackson Street  
Roseburg, Oregon 97470  
PHONE (541) 673-0166  
FAX (541) 440-9392


PROJECT NO. 2033-01T12

Exhibit "A"  
Page 1 of 1

**CERTIFICATE OF FILING/SERVICE**

I hereby certify that on June 14, 2006, I filed the original of STIPULATION TO WITHDRAW CONTESTS with Ken L. Betterton, Administrative Law Judge, Office of Administrative Hearings, P. O. Box 14020, Salem, OR 97309-4020, by facsimile to (503) 378-4067, by e-mail to [klamath.adj@state.or.us](mailto:klamath.adj@state.or.us) and [ken.l.betterton@state.or.us](mailto:ken.l.betterton@state.or.us), and by first-class mail.

DATED this 14th day of June 2006.

  
\_\_\_\_\_  
Jesse D. Ratcliffe, #04394  
Walter Perry III, #83361  
Assistant Attorneys General

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of June 2006, I served the STIPULATION TO RESOLVE CONTESTS on the parties hereto by e-mail, or by regular first-class mail (where no 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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