

Appendix E
Implementing Documents Related to Klamath Reclamation Project and other Water
Resource Matters

Appendix E-1
Klamath Reclamation Project Diversion Limitations

(Filing to Establish Limitation on Specified Diversion Associated
with the Klamath Reclamation Project)

Preface: The form of Appendix E-1 as follows reflects the current state of the Klamath River Adjudication being conducted in the State of Oregon. It is likely that the deadline established under the Klamath Basin Restoration Agreement for filing Appendix E-1 will occur after the issuance of the Findings of Fact and Order of Determination in the Adjudication. As appropriate, the caption and other terms not affecting the substantive consequence of the following will be revised based on the forum and context in which the filing occurs.

BEFORE THE ADJUDICATOR
WATER RESOURCES DEPARTMENT
FOR THE
STATE OF OREGON

In the Matter of the Determination of the Relative Rights of the Waters of the
Klamath River, a Tributary of the Pacific Ocean

Edward & Marilyn Livingston, Sylvia G. Bruce,
~~WaterWatch of Oregon, Inc.~~, Horsefly Irrigation District,
Langell Valley Irrigation District, Rogue River Valley
Irrigation District, Medford Irrigation District, Roger
Nicholson, Richard Nicholson, AgriWater, LLC; Maxine
Kizer, Ambrose McAuliffe, Susan McAuliffe, Kenneth L.
Tuttle and Karen L. Tuttle dba Double K Ranch, ~~Dave
Wood, Kenneth Zamzow~~, Nicholson Investments, LLC;
Wm. S. Nicholson, John B. Owens, Kenneth Owens, Wm.
L. Brewer, Mary Jane Danforth, ~~Jane M. Barnes, Franklin
Lockwood Barnes, Jr.~~, Jacob D. Wood, Elmore E.
Nicholson, Mary Ann Nicholson, Gerald H. Hawkins,
Hawkins Cattle Co., Owens & Hawkins, Harlowe Ranch,
Terry M. Bengard, Tom Bengard, Dwight T. Mebane,
Helen Mebane, ~~Sevenmile Creek Ranch, LLC~~; James
Wayne, Jr.; Clifford Rabe, Tom Griffith, William
Gallagher, Thomas William Mallams, River Springs
Ranch, Pierre A. Kern Trust, William V. Hill, Lillian M.
Hill, Carolyn Obenchain, Lon Brooks, ~~William C.
Knudtson~~, Wayne Jacobs, Margaret Jacobs, Robert Bartell,
Rodney Z. James, Hilda Francis for Francis Loving Trust,
David M. Cowan, James R. Goold for Tillie Goold Trust,
Duane F. Martin, Peter M. Bourdet, Vincent Briggs, J.T.

Lead Case No. 003

Consolidated Cases: 003, 118,
119, 120, 129, 137, 148, ~~449~~, and
~~450~~

Claims: 142, 143, 144, 186, 194,
205, 211, 285, 286, ~~287~~², ~~288~~³,
289, 290, 291, 292, 293, 294,
295, 296, 297, 298, 299, 312,
317, 321, 322, 323, and 324

Contests: 0005, 0006, 0007,
0008, 0033, 0039, 0040, 0047,
0281, 0516, 0986, 1221, 1455,
1804, 2044, 2048, 2049, 2050,
2051, 2052, ~~2256~~, 2491,
~~2492~~, ~~2761~~, 2778, 2788, 2789,
~~2851~~⁴, ~~2854~~, ~~2856~~⁵, ~~2858~~, ~~2859~~,
~~2860~~, ~~2861~~, ~~2862~~, ~~2863~~, ~~2864~~,
~~2865~~, ~~2871~~, ~~2876~~, ~~2880~~, ~~2881~~,
~~2882~~, ~~2883~~⁶, 3136⁷, 3137⁸,

² Claim 287 was voluntarily withdrawn by Oregon Department of Fish and Wildlife on September 26, 2003. *See* Notice of Withdrawal of Claim.

³ Claim 288 was voluntarily withdrawn by David P. Henzel on July 1, 2003. *See* Notice Of Withdrawal Of Claim.

⁴ WaterWatch of Oregon, Inc. voluntarily withdrew from Contest 2851 on February 19, 2003. *See* WaterWatch's Voluntary Withdrawal of Contest 2851.

⁵ By an Order dated May 20, 2003, WaterWatch of Oregon, Inc. was dismissed as a party contestant from all proceedings in the Klamath Basin Adjudication. *See* Order Dismissing WaterWatch Of Oregon, Inc.'s Contest Nos. 2820 et al.

⁶ Klamath Project Water Users' Renewed Motion to Strike Contest Nos. 2858, 2859-2865, 2871, 2876, and 2880-2883, and Dismiss WaterWatch as a Party was Granted on 4/03/03. *See* Order on Renewed Motion to Strike Contests and Dismiss WaterWatch as a Party and Motion to Reconsider.

⁷ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3136 on May 28, 2002. *See* Voluntary Withdrawal of Contest by Langell Valley Irrigation District and Horsefly Irrigation District.

⁸ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3137 on August 21, 2002. *See* Voluntary Withdrawal Of Contest By Langell Valley Irrigation District And Horsefly Irrigation District.

⁹ Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3138 on March 21, 2003. *See* Voluntary Withdrawal Of Contest By Langell Valley Irrigation District And Horsefly Irrigation District.

¹⁰ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contest 3176 on December 5, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹¹ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contests 3184 and 3197 on February 25, 2003. *See* Voluntary Withdrawal Of Contests 3197 And 3215 [*sic*] By Horsefly And Langell Valley Irrigation Districts. Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3184 and 3197 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹² Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3191 on May 1, 2003. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹³ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3208 on February 25, 2003. *See* Voluntary Withdrawal Of Contest 3208 By Horsefly And Langell Valley Irrigation Districts. Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3208 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁴ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contest 3209. *See* Voluntary Withdrawal of Contest 3209 by Medford Irrigation District and Rogue River Valley Irrigation District (Nov. 17, 2005).

¹⁵ Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3214 on February 25, 2003. *See* Voluntary Withdrawal Of Contest 3214 By Horsefly And Langell Valley Irrigation Districts. Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contest 3214 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁶ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew, without prejudice, from Contests 3212, 3213, 3215-3222, 3227, 3232, and 3237-3240 on September 30, 2002. *See* Voluntary Withdrawal Of Contest By Medford And Rogue River Valley Irrigation Districts.

¹⁷ William Bryant voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on October 31, 2003. Dave Wood voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on October 26, 2004. Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Walter Seput to James Wayne, Jr. (5/2/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3282-3288, 3301, 3306, and 3310-3313 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on September 2, 2005. Kenneth Zamzow voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on September 2, 2005. William C. Knudtsen voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on September 13, 2005. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on March 1, 2007. Franklin Lockwood Barnes, Jr., and Jane M. Barnes voluntarily withdrew from Contests 3282-3288, 3301, 3306, and 3310-3313 (Claims 293-299, 312, 317, and 321-324) on April 6, 2007.

¹⁸ Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland

Ranch Co., Tom Bentley, Thomas Stephens, John Briggs, ~~Wm. Bryant~~, Klamath Irrigation District, Klamath Drainage District, Tulalake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co., Malin Irrigation District, Midland District Improvement District, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Thomas J. Shaw/Modoc Lumber Co., Bradley S. Luscombe, Randy Walthal and Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Company, Travis Huntly/Collins Products, LLC, The Klamath Tribes, Leland Woods Trust, Gary Griffith, Marjorie Divine, Victor Divine, David Griffith, Nora Griffith, John V. Lilly, Edna B. Lilly, Earl Martin Kerns, Shirley F. Kerns, Phyllis Vincent, Don Buffington, Ralph Sterns, Rich Flink/Reams Golf and Country Club, Inc.; Leonard Baio; Gary Strong,
Contestants,

v.

Marta C. Carpenter; Flowers Bros. Inc.; Robert Flowers; Klamath Sprig and Honker Club, Inc.; Martin Scull; Karen Tucker; Sandral Tucker,

Claimants,

and

United States of America, Bureau of Reclamation; Geary Bros. Caledonia Ranch, a Co-Tenancy; Jeld-Wen, Inc.

3138⁹, 3176¹⁰, 3184¹¹, 3191¹²,
~~3197, 3208¹³, 3209¹⁴, 3210,~~
~~3211, 3212, 3213, 3214¹⁵, 3215,~~
3216, 3217, 3218, 3219, 3220,
3221, 3222, 3227, 3232, 3237,
3238, 3239, 3240¹⁶, 3282, 3283,
3284, 3285, 3286, 3287, 3288,
3301, 3306, 3310, 3311, 3312,
3313¹⁷, 3377, 3378, 3400, 3407,
~~3408, 3417, 3424, 3425, 3426,~~
~~3427, 3428, 3429, 3624, 3625,~~
3626, 3627, 3628, ~~3629¹⁸~~, 3630,
3635, 3640¹⁹, 3826, 3827, 3828,
3837, 3839, 3843, 3846, 3851,
3858, 3859, ~~3860, 3861~~, 3862,
3863, 3864, 3865, 3866, 3867,
3868, 3869, 3870, 3871, 3872,
3873, 3874, 3875, 3876, 3995,
3998, ~~4167, 4168, 4169²⁰~~,
~~4179²¹~~, 4181, 4188, 4193, 4210,
4211, ~~4212, 4213~~, 4214, 4215,
4216, 4217, 4218, 4219, 4220,
4221, 4222, 4223, 4224, 4225,
4230²², 4234, 4235, 4236, 4237,
4951, and ~~4952~~

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; and Collins Products, LLC voluntarily withdrew from Contests 3408, 3417, 3424, 3428 and 3629 on April 7, 2004. *See* Notice of Withdrawal of Contest Nos. 3408, 3417, 3424, 3428 and 3629.

¹⁹ Don Vincent voluntarily withdrew from Contests 2048, 2050, 2051, 3400, 3407, 3408, 3417, 3424-3429, 3624-3630, 3635, and 3640 on November 28, 2000. *See* Notice Of Withdrawal Of Claimants. Berlva Pritchard voluntarily withdrew from Contests 3400, 3407, 3408, 3412, 3417, 3424-3429, 3624-3630, 3635, and 3640 on June 24, 2002. *See* Notice Of Withdrawal Of Claimant. Klamath Hills District Improvement Company voluntarily withdrew, without prejudice, from Contests 2048, 2050, 2051, 3400, 3407, 3408, 3417, 3424-3429, and 3624-3630 on January 16, 2004. *See* Voluntary Withdrawal Of Contest By Klamath Hills District Improvement Company.

²⁰ The Klamath Tribes withdrew from Contests 4167, 4168, and 4169 on August 14, 2006, after Consolidation of Cases 118, 119 and 120 was reversed by the Interim Order issued in this Case 003. *See* Klamath Tribes' Withdrawal of Contests dated August 14, 2006.

²¹ The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4179. *See* Klamath Tribes' Withdrawal of Contest dated September 28, 2006.

²² The Klamath Tribes withdrew from Contests 4218, 4219, 4220, 4221, 4222, 4223, 4224, 4225, and 4230 on December 3, 2002. *See* Contest Dismissal Agreement And Stipulation Between Klamath Project Water Users, The Klamath Tribes, And The United States; [Proposed] Order of the Hearing Officer in Case 003.

(Running Y Ranch);
Claimants/Contestants.

~~Horsefly Irrigation District; Langell Valley Irrigation District; Medford Irrigation District; Rogue River Valley Irrigation District; Roger Nicholson; Richard Nicholson; Agri Water, LLC; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood; Kenneth Zamzow; Anita Nicholson; William S. Nicholson; John B. Owens; William L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins; Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane; Helen Mebane; Sevenmile Creek Ranch, LLC; James G. Wayne Jr.; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; Lillian M. Hill; Carolyn Obenchain; Lon Brooks; Newman Enterprise; William C. Knudtsen; Wayne Jacobs; Margaret Jacobs; Robert Bartell; Rodney Z. James; Hilda Francis for Francis Loving Trust; David M. Cowan; James R. Goold for Tillie Goold Trust; Duane F. Martin; Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District~~

Case No. 274

Claim Nos. 313, 314, 315 and 316

Contest Nos. ~~2872, 2873, 2874, 2875~~²³, ~~3228, 3229, 3230, 3231~~²⁴, 3302, 3303, 3304, 3305²⁵, 3636, 3637, 3638, 3639²⁶, 3996, 3997, ~~4226, 4227, 4228 and 4229~~²⁷

²³ WaterWatch of Oregon, Inc.'s Contests 2872, 2873, 2874 and 2875 were dismissed. See Order Dismissing WaterWatch of Oregon, Inc.'s Contests, May 20, 2003.

²⁴ Medford and Rogue River Valley Irrigation Districts voluntarily withdrew from Contests 3228, 3229, 3230 and 3231 on March 3, 2003. Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contests 3228, 3229, 3230 and 3231 on April 22, 2005.

²⁵ Dave Wood voluntarily withdrew from Contests 3302-3305 on October 26, 2004. Change of Title Interest for Contests 3302-3305 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3302-3305 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3302-3305 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3302-3305 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contests 3302-3305 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3302-3305 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3302-3305 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3302-3305 on September 2, 2005. William Knudtsen voluntarily withdrew from Contests 3302-3305 on September 13, 2005. A Change of Ownership was filed on June 15, 2006, reflecting that William V. Hill is deceased and ownership of his rights transferred to Lillian M. Hill. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3302-3305 on March 1, 2007. Jane M. Barnes and Franklin Lockwood Barnes, Jr. voluntarily withdrew from Contests 3302-3305 on April 6, 2007.

²⁶ Don Vincent voluntarily withdrew from Contests 3636, 3637, 3638 and 3639 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3636, 3637, 3638 and 3639 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3636, 3637, 3638 and 3639 on January 16, 2004.

²⁷ The Klamath Tribes voluntarily withdrew from Contests 4226, 4227, 4228 and 4229 on February 13, 2003.

Improvement Company; Enterprise Irrigation District; ~~Klamath Hills District Improvement Company~~; 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; Modoc Lumber Co.; Bradley S. Luscombe; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Gold and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC,

Contestants,

vs.

United States Department of Interior, Fish and Wildlife Service,

Claimant/Contestant.

John M. Mosby; Marilyn Mosby; Boyd P. Braren; Boyd P. Braren Trust; Roger Nicholson; Richard Nicholson; Agri Water, LLC; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; ~~Dave Wood~~; ~~Kenneth Zamzow~~; Nicholson Investments, LLC; Nicholson; William S. Nicholson; John B. Owens; William L. Brewer; Mary Jane Danforth; ~~Jane M. Barnes~~; ~~Franklin Lockwood Barnes, Jr.~~;

Case No. 275

Claim Nos. 318, 319 and 320

Contest Nos. ~~2877, 2878, 2879~~²⁸, ~~3233, 3234, 3235, 3236~~²⁹, 3307, 3308, 3309³⁰, 3641, 3642, 3643³¹, 3999, 4000, 4231, 4232, and 4233³²

²⁸ WaterWatch of Oregon, Inc. 's Contests 2877, 2878, and 2879 were dismissed. *See* Order Dismissing Waterwatch of Oregon, Inc. 's Contests, May 20, 2003.

²⁹ Medford Irrigation District and Rogue River Valley Irrigation District voluntarily withdrew from Contests 3233, 3234, 3235, and 3236 on March 3, 2003. Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contests 3233, 3234, 3235, and 3236 on April 22, 2005.

³⁰ Dave Wood voluntarily withdrew from Contests 3307-3309 on October 26, 2004. Change of Title Interest for Contests 3307-3309 from Roger Nicholson Cattle Co. to AgriWater, LLC (2/4/05). Change of Title Interest for Contests 3307-3309 from Dorothy Nicholson Trust and Lloyd Nicholson Trust to Roger and Richard Nicholson (2/4/05). Change of Title Interest for Contests 3307-3309 from William and Ethel Rust to David Cowan (3/9/05). Change of Title Interest for Contests 3307-3309 from Walter Seput to Wayne James, Jr. (5/2/05). Change of Title Interest for Contests 3307-3309 from Jim McAuliffe, McAuliffe Ranches, and Joe McAuliffe Co. to Dwight and Helen Mebane (7/8/05). Change of Title Interest for Contests 3307-3309 from Anita Nicholson to Nicholson Investments, LLC (7/8/05). Change of portion of Title Interest for Contests 3307-3309 from Dwight and Helen Mebane to Sevenmile Creek Ranch, LLC (8/15/05). Kenneth Zamzow voluntarily withdrew from Contests 3307-3309 on September 2, 2005. William Knudtsen voluntarily withdrew from Contests 3307-3309 on September 13, 2005. Sevenmile Creek Ranch, LLC voluntarily withdrew from Contests 3307-3309 on March 1, 2007. Jane M. Barnes and Franklin Lockwood Barnes, Jr. voluntarily withdrew from Contests 33307-3309 on April 6, 2007.

³¹ Don Vincent voluntarily withdrew from Contests 3641, 3642, and 3643 on December 4, 2000. Berlva Pritchard voluntarily withdrew from Contests 3641, 3642, and 3643 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3641, 3642, and 3643 on January 16, 2004.

³² The Klamath Tribes voluntarily withdrew Contests 4231, 4232, and 4233 on February 13, 2003.

Jacob D. Wood; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins; Hawkins Cattle Co.; Owens & Hawkins; Harlow Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane; Helen Mebane; ~~Sevenmile Creek Ranch, LLC~~; James G. Wayne, Jr.; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams, River Springs Ranch, Pierra A. Kern Trust, William V. Hill, Lillian M. Hill, Carolyn Obenchain; Lon Brooks; Newman Enterprise; ~~William C. Knudtsen~~; Wayne Jacobs; Margaret Jacobs; Robert Bartell; Rodney Z. James; Hilda Francis for Francis Loving Trust; David M. Cowan; James R. Goold for Tillie Goold Trust; Duane F. Martin; 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; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; and Collins Products, LLC,

Contestants,

vs.

United States Department of Interior, Fish and Wildlife Service,

Claimant/Contestant.

**STIPULATION IN
IMPLEMENTATION OF THE
KLAMATH BASIN
RESTORATION AGREEMENT
AND ORDER THEREON**

Claimants and Contestants, the United States on behalf of the Bureau of Reclamation (Reclamation) and Fish and Wildlife Service, and Klamath Irrigation District (KID), Tulelake Irrigation District (TID), Klamath Drainage District (KDD), Klamath Basin Improvement District (KBID), Ady District Improvement Company (ADIC), Enterprise Irrigation District (EID), Malin Irrigation District (MID), Midland District Improvement Company (MDIC), Pine Grove Irrigation District (PGID), Pioneer District Improvement Company (PDIC), Poe Valley Improvement District (PVID), Shasta View Irrigation District (SVID), Sunnyside Irrigation

District (SID), Don Johnston & Son (Johnston), Modoc Lumber Co. (Modoc), Bradley S. Luscombe (Luscombe), Randy Walthall and Inter-County Title Co. (Walthall and Inter-County Title), Reames Golf and Country Club (Reames), Winema Hunting Lodge, Inc. (Winema), and Van Brimmer Ditch Co. (VBDC) (collectively, the Claimants or Parties) hereby agree and stipulate as follows.

RECITALS

1. The United States on behalf of the Bureau of Reclamation and Fish and Wildlife Service has filed Claims 293-299, 312, 317, 313, 314, 315, 316, 318, 319, and 320.

2. KID, TID, KDD, KBID, ADIC, EID, MID, MDIC, PGID, PDIC, PVID, SVID, SID, Johnston, Modoc, Luscombe, Walthall and Inter-County Title, Reames, Winema, and VBDC are claimants under Claims 321-324, including the sub-claims 321-1 through 321-18, 322-1 through 322-3, 323-1 through 323-3, and 324. In addition, KDD holds Permit No. 43334.

3. The parties described in paragraphs 1 and 2 of the Recitals are known collectively as “Claimants.”

4. The claims described in Paragraphs 1 and 2 of the Recitals include among their points of diversion the following locations: A Canal, Station 48, Number 1 Drain Gate, Miller Hill Pumping Plant, KID Pumping Plants 1-10, North Canal (having point of rediversion and control at North Canal Control Structure), Ady Intake Channel (having point of rediversion and control at Ady Intake Control Structure for the Ady Canal System and Ady ##6 and 7 for the ADIC system), Ady District ##1-5, Johnston Intake Channel (having point of rediversion and control at Johnston Pumping Plant), Modoc Culvert, Pioneer Intake Channel (having point of rediversion and control at Pioneer Pumping Facility), and Reames Pumping Plant. Other points

of diversion associated with any claims identified in Paragraphs 1 and 2 of the Recitals are not affected by this Stipulation or the Order thereon.

5. The Claimants have entered into the Klamath Basin Restoration Agreement (KBRA). Pursuant to the KBRA, the Claimants identified in Paragraphs 1 and 2 of the Recitals have agreed to limit diversions from the points of diversion listed in Paragraph 4 of the Recitals as determined by the terms herein, to the amounts stated in Attachment A to this Stipulation and Order. The limitations as expressed were developed in a settlement context and for the purposes of settlement. This Stipulation, including Attachments A, B, and C attached hereto and incorporated by reference, substantively constitutes Appendix E-1 of the KBRA.

6. Section 15.1.2 of the KBRA, attached hereto as Attachment B, identifies and defines the “Refuge Allocation” and provides terms and conditions related to the Refuge Allocation and related to water deliveries for Tule Lake and Lower Klamath National Wildlife Refuges. The Refuge Allocation is provided in Section 15.1.2.E-H of Attachment B.

7. Deliveries of water diverted from the Settlement Points of Diversion to the area identified as the “On-Project Plan Area,” as defined in Section 1.7 of the KBRA will continue, subject to Attachment A and the On-Project Plan identified in Section 15.2 of the KBRA.

TERMS OF THE AGREEMENT

1. Definitions. The following terms have the following meanings for the purposes of this Stipulation and any Order thereon and for purposes of the KBRA:

a. “Settlement Points of Diversion” means: A Canal, Station 48, Number 1 Drain Gate, Miller Hill Pumping Plant, KID Pumping Plants 1-10, North Canal (having point of redirection and control at North Canal Control Structure), Ady Intake Channel (having point of

rediversion and control at Ady Intake Control Structure for the Ady Canal System and Ady ##6 and 7 for the ADIC system), Ady District ##1-5, Johnston Intake Channel (having point of rediversion and control at Johnston Pumping Plant), Modoc Culvert, Pioneer Intake Channel (having point of rediversion and control at Pioneer Pumping Facility), and Reames Pumping Plant.

b. “DIVERSION” for the purposes of this Stipulation means the sum of the quantity of:

- (1) diversion at A Canal;
- (2) diversion for North Canal, measured at North Canal Control Structure;
- (3) diversion for Ady Canal system, measured at Ady Intake Control Structure;
- (4) combined diversion from KID Pumping Plants 1-10;
- (5) combined diversion for ADIC system, at ADIC ##1-7;
- (6) diversion for Johnston system, at Johnston Pumping Plant;
- (7) diversion for Pioneer system, at Pioneer Pumping Facility;
- (8) diversion at Modoc Culvert;
- (9) diversion at Reames Pumping Plant; and
- (10) Klamath Diversion via Lost River Diversion Channel.

Locations of Settlement Points of Diversion and points of control are as specified in Attachment C attached hereto.

c. “Klamath Diversion via Lost River Diversion Channel” means the result of the following: Station 48 Diversions plus Miller Hill Pumping Plant diversions, minus Miller Hill spill returns, minus releases from Wilson Dam to the Lost River Diversion Channel.

d. “Refuge Allocation” means the quantity of water identified in Attachment A and Section 15.1.2.E-H of Attachment B for water uses for the Lower Klamath National Wildlife Refuge other than Area K lands and for other uses described in Section 15.1.2.E of Attachment B. The Refuge Allocation shall be provided through water diverted under the DIVERSION identified in Attachment A or from sources used by or available to the Klamath Reclamation Project and delivered through Klamath Reclamation Project facilities as provided in Sections 15.1.2.E-H of Attachment B.

e. “Refuge Points of Delivery” shall be the points of measurement as provided in Section 15.1.2.E.iv. of Attachment B and means: Ady/South Canal at State Line, D Plant (minus use by private P-Canal water users), North Canal at State Line, and any location identified in Section 15.2.E.(iii)(5) of Attachment B; Sumps 1A and 1B when refilled after draining or lowering at the direction of the refuge manager; refuge-approved “walking wetlands,” as further described in Section 15.1.2.A(i) of Attachment B; and conveyance losses as described in Section 15.1.2.E(iv)(4).

f. “Station 48 Diversions” means combined diversions at Station 48 and Number 1 Drain Gate.

2. Limitation on DIVERSION. The DIVERSION as defined herein at the Settlement Points of Diversion under all claimed or permitted water rights identified in Paragraphs 1 and 2 of the Recitals shall not exceed the values in Attachment A.

In addition, diversion of water for the purpose of the Refuge Allocation is restricted to those points of diversion as claimed in Klamath Basin Adjudication Claims 293, 312, 317, 313, 314, 315, 316, 318, 319, and 320, 321, and 323.

The Claimants shall monitor the DIVERSION as defined herein at the Settlement Points of Diversion, during any period when diversions are occurring at the Settlement Points of Diversion, and report such quantities to the Oregon Water Resources Department (OWRD) in accordance with any valid Order of Determination or Decree upon which such diversions are based. Consistent with applicable law, the OWRD shall regulate the points of diversion or control based on DIVERSION as defined herein for the purpose of enforcing this Stipulation and any Order thereon, and otherwise on the basis of water rights of record.

3. For purposes of this Stipulation and any Order thereon, the diversion at each of the following facilities shall be presumed to equal the following amounts during the period March – October unless it is demonstrated to the OWRD that a lesser amount is diverted during such period:

<u>Facility</u>	<u>Presumed diversion Mar – Oct (AF)</u>
KID Pumping Plants 1-10 Combined	2600
Ady ##1-7 Combined	2031
Johnston Pumping Plant	678
Pioneer Pumping Facility	1495
Modoc Culvert	217
Reames Pumping Plant	417

4. If new monitoring devices are installed at any of the Settlement Points of Diversion that currently have monitoring devices, a correlation will be developed between the historical measurement and the newer measurement device. The Claimants agree that the methodology used to develop this correlation will follow USGS protocol for surface water data

collection. The quantities in Attachment A will thereafter be adjusted, up or down, such that use of the new device does not change the actual volume of water that can be diverted.

5. This Stipulation, and any Order thereon, shall not be construed as an admission or determination on any issue of fact or law, including, without limitation, the legal characterization of water as to source; *provided*, that for purposes of the KBRA, water diverted at Station 48 Diversions or Miller Hill Pumping Plant not within the definition of Klamath Diversion via Lost River Diversion Channel shall not be considered water of Upper Klamath Lake or the Klamath River, and diversion of any such water is not limited by the terms of this Stipulation or any Order thereon. Nor shall the Stipulation or any Order thereon limit diversion or use from any location or source not identified herein.

6. By this Stipulation, the Claimants do not intend to abandon any water right or portion thereof.

7. The applicable DIVERSION in Attachment A reflects the Refuge Allocation as provided in the KBRA and Attachment B. DIVERSION quantities in Attachment A will provide the applicable Refuge Allocation, measured at the Refuge Points of Delivery, as provided in Section 15.1.2 of Attachment B, subject to and consistent with the provisions in Sections 15.1.2.E-H, including but not limited to the first paragraph of section 15.1.2.E, and Sections 15.1.2.D, 15.1.2.E(ii), and 15.1.2.F, of Attachment B. Consistent with Section 15.1.2, nothing in this Stipulation or any Order thereon precludes the use of any water diverted within the total applicable DIVERSION quantity in Attachment A for any authorized Klamath Reclamation Project purpose, so long as the total quantity of water equal to the applicable Refuge Allocation is delivered to the Refuge Points of Delivery, consistent with Sections 15.1.2.G(v) and (vi) and H(i) and (ii) of Attachment B. Enforcement by OWRD of the water rights related to the

DIVERSION including the water rights related to the Refuge Allocation shall be consistent with applicable law

8. By entering and filing of this Stipulation, the Claimants identified in the Recitals are not foregoing any rights to seek changes, consistent with applicable law, in such water rights as exist under the claimed or permitted water rights described in paragraphs 1 and 2 of the Recitals,, including modification or relocation of the points of diversion or change in place of use, so long as the change does not result in an increase in the quantity of water diverted from Upper Klamath Lake and the Klamath River under such permitted or claimed rights as limited by Attachment A; any Order on this Stipulation will be construed to be consistent with this condition.

9. Each signatory to this Stipulation represents that he or she is authorized to execute this Stipulation and to legally bind the Claimant he or she represents.

[CASE 3 SIGNATURE BLOCKS]

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Assistant Attorney General

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Attorneys for Van Brimmer Ditch Co.

DATE: _____

By _____
Claude Hagerty
President, Shasta View Irrigation District

IT IS SO ORDERED.

DATED: _____

ATTACHMENT A

As used herein, “Forecast” means the March 1 Natural Resources Conservation Service 50 percent exceedance forecast for net inflow to Upper Klamath Lake during the period April 1 – September 30. The limitations identified in this Attachment apply to the claimed or permitted rights identified in paragraphs 1 and 2 of the Recitals of the Stipulation in Implementation of the Klamath Basin Restoration Agreement and Order Thereon (Stipulation of the Claimants).

PHASE 1

The following limitations on DIVERSION, as defined in the Stipulation of the Claimants, shall be applicable immediately upon issuance of Order on Stipulation in Implementation of the Klamath River Basin Restoration Agreement and until the commencement of Phase 2. The Refuge Allocation as identified in section 15.1.2.E-H of Attachment B, which is within each applicable DIVERSION quantity, is reflected below, and is to be subject to and consistent with section 15.1.2.E-H of Attachment B.

A. During the Period March – October:

1. If the Forecast is 287,000 acre-feet or less: 378,000 acre-feet, including Refuge Allocation of 48,000 acre-feet.
2. If the Forecast is more than 287,000 acre-feet but less than 569,000 acre-feet, the quantity in thousands of acre-feet resulting from application of the following equation: $378 + \{42.64 \times [(Forecast - 287) \div 282]\}$, including Refuge Allocation that results from application of the following equation: $48 + (7.64 \times [(Forecast - 287) \div 282])$.
3. If the Forecast is 569,000 acre-feet or more: 445,000 acre-feet, including Refuge Allocation of 60,000 acre-feet.

B. During the Period November – February: 80,000 acre-feet, including Refuge Allocation of 35,000 acre-feet, *provided*, that if the OWRD receives notice from the Klamath Basin Coordinating Council that additional diversion is acceptable, the quantity may increase as specified in such notice as long as within the water rights.

PHASE 2

The following limitations on DIVERSION, as defined in the Stipulation of the Claimants, shall become applicable when the OWRD receives appropriate notice from the Klamath Basin Coordinating Council. The Refuge Allocation as identified in section 15.1.2.E-H of Attachment B, which is within each applicable DIVERSION quantity, is reflected below, and is to be subject to and consistent with Section 15.1.2.E-H of Attachment B.

A. During the Period March – October:

1. If the Forecast is 287,000 acre-feet or less, 388,000 acre-feet, including Refuge Allocation of 48,000 acre-feet.

2. If the Forecast is more than 287,000 acre-feet but less than 569,000 acre-feet, the quantity in thousands of acre-feet resulting from application of the following equation: $388 + \{42.64 \times [(Forecast - 287) \div 282]\}$, including Refuge Allocation that results from application of the following equation: $48 + (7.64 \times [(Forecast - 287) \div 282])$.

3. If the Forecast is 569,000 acre-feet or more, 445,000 acre-feet, including Refuge Allocation of 60,000 acre-feet.

B. During the Period November – February: 80,000 acre-feet, including Refuge Allocation of 35,000 acre-feet, *provided*, that if the OWRD receives notice from the Klamath Basin Coordinating Council that additional diversion is acceptable, the quantity may increase as specified in such notice as long as within the water rights.