

ATTACHMENT 1 TO STIPULATION OF KLAMATH PROJECT WATER USERS,
KLAMATH TRIBES AND UNITED STATES, BUREAU OF INDIAN AFFAIRS

SELECTED PROVISIONS OF THE KLAMATH BASIN RESTORATION AGREEMENT AS
AGREED TO AMONG THESE PARTIES

SECTIONS 1.5 & 1.6

1.5 Effectiveness.

1.5.1. Initial Effectiveness.

A. Effective Date.

This Agreement shall take effect on ____, 2008 (Effective Date), when executed by the Parties (other than the Federal Agency Parties) as listed in Section 1.1. As provided in Sections 8.4.1 and 39, this Agreement shall be executed concurrently with the Hydropower Agreement.

B. Performance.

When this Agreement has been so executed, the Parties shall perform obligations which are performable under their existing authorities. Until Authorizing Legislation is enacted, the Parties shall not perform, or be expected to perform, any obligations which require new authorities arising from the Authorizing Legislation.

1.5.2. Further Effectiveness.

The Agreement will remain effective for its Term if, by December 30, 2010, the Secretary of the U.S. Department of the Interior publishes a finding that the following events have occurred:

- A.** Authorizing Legislation Consistent with Appendix A has been enacted respectively by Congress and the States of California and Oregon; and
- B.** *Event in Hydropower Agreement, to be specified upon completion of Appendix D.*

The Secretary shall Timely publish the notice upon the occurrence of the above conditions. The Parties may agree, pursuant to Section 7.2, to extend the period during which the Agreement will continue prior to such finding.

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The Agreement will remain effective for its Term if, by December 30, 2010, the Secretary of the U.S. Department of the Interior publishes a finding that the following events have occurred:

- A.** Authorizing Legislation Consistent with Appendix A has been enacted respectively by Congress and the States of California and Oregon; and
- B.** *Event in Hydropower Agreement, to be specified upon completion of Appendix D.*

The Secretary shall Timely publish the notice upon the occurrence of the above conditions. The Parties may agree, pursuant to Section 7.2, to extend the period during which the Agreement will continue prior to such finding.

SECTION 15.3

15.3 Water Rights Assurances Related to Water Diversions to the Klamath Reclamation Project, the Klamath Basin Adjudication, The Klamath Tribes, the Three California Indian Tribes, and the United States as Trustee.

15.3.1. Assurances by the Klamath Reclamation Project Regarding Project Water.

A. Diversion Limitation.

Within twenty days after all of the conditions stated in (i) – (iv) have occurred, the KPWU and the Bureau of Reclamation and Fish and Wildlife Service shall file the document attached hereto as Appendix E-1 with the OWRD or the Circuit Court, as applicable, as part of the ongoing Klamath Basin Adjudication. The filing shall recommend that the Adjudicator or Circuit Court adopt it as part of the Findings of Fact and Order of Determination or Decree, as applicable. If a Decree has been entered in the Klamath Basin Adjudication prior to the time for the filing, the KPWU and the Bureau of Reclamation and Fish and Wildlife Service shall use such processes that are available under Applicable Law to cause the diversion limitations of Appendix E-1 to be enforceable by OWRD. The conditions are:

- i. The Regulatory Approvals related to the Klamath Reclamation Project described in Sections 21.1.2 and 21.2 are issued, provided that Section 21.2 is a condition only if such application under a General Conservation Plan or a Habitat Conservation Plan is submitted to the relevant Regulatory Agency Parties by December 1, 2015; and
- ii. The Klamath Project Water Entities have obtained final judgments from the state courts having jurisdiction confirming or validating this Agreement, as described in sub-section B, below; and
- iii. The applicable deadline in Section 15.3.9.A for implementation of the On-Project Water Plan has passed.
- iv. Timely publication of the notice by the Secretary of the Interior as described in Section 15.3.4 has occurred.

B. Validation.

The Klamath Project Water Entities shall, within 120 days of the Effective Date of this Agreement, file actions in accordance with Applicable Law seeking validation or confirmation of this Agreement, and shall diligently prosecute such actions to final judgment. If requested by KPWU, other Parties shall support the requested judgments as amicus curiae or other appropriate method.

C. Dedication.

Within four years after completion of the events described in Section 15.3.1.A, the Department of the Interior and KPWU shall provide notice to the Parties of whether and to what extent they will transfer to instream use their water rights to the Klamath River and Upper Klamath Lake from the Settlement Points of Diversion identified in Appendix E-1 in amounts that are in excess of the applicable maximum quantities that can be diverted under Appendix E-1.

D. Enforceability of Diversion Limitations.

If Appendix E-1 has been filed with the OWRD or the Circuit Court as applicable pursuant to Section 15.3.1.A and the OWRD is unable to regulate diversion from the Settlement Points of Diversion based on the diversion limitations in Appendix E-1, because no Findings of Fact and Order of Determination has been issued pursuant to Oregon Revised Statutes section 539.130 or because a stay issued pursuant to Oregon Revised Statutes section 539.180 precludes such regulation, or because, prior to the entry of a decree by the Circuit Court, OWRD is required by Applicable Law to regulate based on a Findings of Fact and Order of Determination that does not incorporate the diversion limitations in Appendix E-1, any party may during such period or periods bring an action as necessary to enforce the diversion limitations in Appendix E-1 in any court having jurisdiction.

15.3.2. Assurances Regarding Tribal Water Rights.

A. Certain Klamath Tribal Water Rights Unaffected.

KPWU agree that the water rights in California of the United States Bureau of Indian Affairs, acting in its trustee capacity for the Klamath Tribes, and the Klamath Tribes, whatever they may be, have not been quantified, resolved or determined in any way by this Agreement or any related documents and hereafter will take no Inconsistent position in any administrative context or proceeding, or any judicial proceeding, or otherwise. KPWU also agree to not protest, contest, object, or block any assertion of water rights by these governments that is not Inconsistent with Sections 15.3.3 and 15.3.9 in any future administrative context or proceeding, or judicial proceedings, or otherwise.

B. Resolution of Adjudication Contests Related to Klamath Tribal Water Rights.

KPWU, the Klamath Tribes and the United States Bureau of Indian Affairs have filed the documents in the form attached hereto as Appendix E-6 with the Office of Administrative Hearings (OAH), Klamath Basin Adjudication regarding Adjudication claims 612, 671, 672 and 673 consolidated within case 282 and claims 616 and 622 consolidated within case 286 that:

- i. Provisionally resolve and end the contests filed by KPWU,
- ii. Recognize the tribal water rights at the claimed amounts and with the priority date of time immemorial, and
- iii. Provide for KPWU's exceptions to be fully litigated before the Circuit Court if the Secretarial Notice is not Timely published pursuant to Section 15.3.4, and
- iv. Implement the commitments of the Klamath Tribes and United States as trustee with respect to Sections 15.3.3, 15.3.4, and 15.3.9 as those commitments relate to water rights that are the subject of Adjudication claims 612, 671, 672, 673 consolidated within case 282 and claims 616 and 622 consolidated within case 286.

C. Tribal Rights Unresolved-Unquantified.

[Omitted as unrelated to the Klamath Basin Adjudication]

15.3.3. Assurances of Non-Interference with Klamath Reclamation Project Diversions by the United States Bureau of Indian Affairs and Klamath Tribes.

The United States Bureau of Indian Affairs acting in its trustee capacity, and The Klamath Tribes, hereby provide interim assurance that the two parties will not assert: (i) tribal water or fishing rights theories or tribal trust theories in a manner, or (ii) Klamath tribal water or trust rights in the State of California, whatever they may be, in a manner, that will interfere with the diversion, use or reuse of water for the Klamath Reclamation Project that is not precluded by the limitation on diversions of water as provided in Appendix E-1 in any administrative context or proceeding, or any judicial proceeding, or otherwise, provided, however, that this assurance shall not include, and shall not be construed to extend to, rights under statutes of general applicability, including the Endangered Species Act, Consistent with and subject to Sections 20.3.1.B and 20.4.1. This interim assurance will remain in place concomitant with KWAPA's good faith and diligent efforts (including consideration of whether substantial funding of the Plan has been provided) to develop and implement the On-Project Plan on the schedule found in Section 15.3.4.A and will:

- i. Become permanent upon publication of the notice by the Secretary of the Interior as described in Section 15.3.4; or
- ii. Terminate on December 31, 2012 if the Secretary of the Interior has not Timely published the notice described in Section 15.3.4.

15.3.4. Notice and Publication by the Secretary of the Interior.

The Secretary of the Interior shall publish a notice in the Federal Register within forty-five (45) days of all of the following events occurring:

- A. The On-Project Plan is being implemented on November 1, 2012, consistent with a schedule agreed to by the Tribes, United States, and KWAPA by October 30, 2009, which is based on the schedule in the On-Project Plan and the realized appropriations, *provided that* if the Tribes, United States, and KWAPA cannot agree upon a schedule by October 30, 2009 that the Klamath Basin Coordinating Council shall set one through November 1, 2012; and
- B. The water supply measures found in Sections 17.2.1 and 17.2.2 have been completed; and

- C. The Environmental Impact Statement regarding the proposed project to reconnect the Wood River Ranch to Upper Klamath Lake as described in this Agreement in Section 17.2.3 is completed and any necessary funding to implement the preferred alternative of the EIS is authorized by Congress or that funding is otherwise committed by state, local, tribal or private sources; and
- D. Funding has been authorized for the water rights retirement program established in Section 16.2; and
- E. *Event in Hydropower Agreement, to be specified upon completion of Appendix D;* and
- F. The Drought Plan to be developed in Section 18.2 has been adopted by the lead entity; and
- G. The Oregon Fish and Wildlife Commission has adopted a policy to reintroduce anadromous fish into the upper Klamath Basin, as described in Section 11.1; and
- H. Funding has been authorized and appropriated in the amounts specified in Appendix B-2 for the first four years pertaining to the Klamath Tribes.

If the publication by the Secretary of the Interior occurs before December 31, 2012 (Timely Publication), the assurances in Section 15.3.3 shall become permanent. In the event that the Secretary does not publish the notice required in this section before December 31, 2012, the assurances in Section 15.3.3 shall no longer be effective or binding. In that circumstance, until January 31, 2013, KPWU may assert the water rights contests or exceptions previously filed in the Klamath Basin Adjudication by giving notice that KPWU will assert such contests or exceptions, or, if the deadline for filing exceptions in the Circuit Court has not passed before January 31, 2013, KPWU may file their exceptions on or before the due date. In addition, if the Secretary does not publish the notice by December 31, 2012, KPWU's Assurances in the final sentence of Section 15.3.2.A and the final sentence of Section 15.3.2.C shall no longer be effective or binding.

15.3.5. Klamath Tribes' Waiver of Claims Against the United States.

The Klamath Tribes agree to provide, and to support in the federal Authorizing Legislation contemplated by this Agreement (Appendix A-1), a complete waiver and release of claims against the United States, its agencies, and officers of all claims for damages, losses or injuries to rights to water, claims of interference with, diversion or taking of such water rights, due to water rights related or water

management actions or inaction in the Klamath River Basin above the Oregon-California Border, that first occurred at any time up to and including the Effective Date. This waiver and release shall include, *inter alia*, all claims arising at any time up to and including the Effective Date from the following above the California-Oregon border: interference by others with tribal water rights; loss or damage due to water management actions or water rights related actions, including inaction, to fish, wildlife, land, or other resources; operation of the Klamath Reclamation Project; failure to provide tribal trust water in Upper Klamath Lake or the Klamath River; and failure to properly litigate, negotiate or settle the Klamath Tribes' water rights (including this Agreement). The form of such agreement shall be as attached hereto as Appendix E-7. Such waiver shall be executed by the Tribes within 60 days of the passage of the federal Authorizing Legislation contemplated by this Agreement (see Appendix A-1) but shall not be in force or effect until the following events have taken place, at which time the Secretary shall publish a notice in the Federal Register and the waivers shall be effective from that day forward. Those events are:

- A. The Authorizing Legislation in Appendix A, including authorization for the United States and the Tribes to irrevocably make the assurances stated in Sections 15.3.3 and 15.3.5, has been enacted into law; and
- B. The Secretary has Timely published the notice provided for in Section 15.3.4; and
- C. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with the planning and implementation of Phase I and Phase II of the Fisheries Restoration Plan, Phase I of the Fisheries Reintroduction Plan, the Fisheries Monitoring Plan, the Water Rights Retirement Program, the Interim Flow and Lake-level Program, and the Regulatory Assurances Programs, as specified in Sections 10, 11.3.1, 12, 16.2, 19.4, and 21.2; and
- D. Funding has been authorized and appropriated for the elements of Appendix B-2 associated with Sections 34 and 35; and
- E. *Event in Hydropower Agreement, to be specified upon completion of Appendix D; and*
- F. The petition described in Section 36 has been granted or rendered unnecessary to achieve the purpose of Section 36, or the equivalent benefits contemplated in Section 36.2 are in place and effective.

15.3.6, 15.3.7, 15.3.8 [Omitted as unrelated to the Klamath Basin Adjudication]

15.3.9. Interim Assurances by All of the Tribes and Schedule for Enforceability of Diversion Limitations.

- A. KWAPA shall select a date by December 1, 2012, for the full and complete implementation of the On-Project Plan within five years thereafter, but in any event no later than December 1, 2017. Thereafter, such date may only be modified under the circumstances identified in Section 15.3.9.B.
- B. Commencing on the Effective Date, and after the Publication of the Secretarial Notice described in Section 15.3.4 if such notice is Timely published, the following applies: from the Effective Date until the date selected by KWAPA in Section 15.3.9.A, the Tribes and United States' interim assurances to KPWU are not limited by the applicable DIVERSION amount found in Appendix E-1, as referenced in Sections 15.3.3, 15.3.6.A, 15.3.7.A and 15.3.8.A, and the assurances therein shall extend to all diversion, use and reuse of water for the Klamath Reclamation Project, provided, however, such assurances shall not include, and shall not be construed to extend to, rights under statutes of general applicability, including the Endangered Species Act, Consistent with and subject to Sections 20.3.1.B and 20.4.1. Thereafter, the Tribes and United States may assert or exercise tribal water rights or fishing rights or trust theories in a manner seeking to result in a limitation of diversion identical to that found in Appendix E-1 and as if it were filed and in effect; exercise of water rights includes the right to make a call under any water right that has been determined in an adjudicatory proceeding. This capacity to exercise or assert water rights or fishing or trust rights or obligations is notwithstanding the possible non-fulfillment of the provisions of Section 15.3.1, but recognizes the need for substantial funding of the On-Project Plan during the period after December 1, 2012. In circumstances subject to Sections 7.2.1.B and 7.2.1.C, KWAPA and KPWU, the United States Bureau of Indian Affairs, and the Tribes will in good faith negotiate an alternative deadline and support expeditious funding for completion of full implementation of the On-Project Plan. If KWAPA believes that circumstances exist that justify modification of the date selected under Section 15.3.9.A and the United States Bureau of Indian Affairs, Tribes, KWAPA, and KPWU do not, within 60 days prior to the date

that was selected under Section 15.3.9.A, agree to a modification, the KBCC will determine whether a modification is justified and the new deadline, if any.

- C. If the Secretarial Notice in Section 15.3.4 is not Timely published, the following applies:
- i. [Omitted as unrelated to the Klamath Basin Adjudication.]
 - ii. with respect to the Klamath Tribes and the United States Bureau of Indian Affairs as its trustee and water rights that are the subject of the claims 612, 671, and 673 consolidated within case 282 and claims 616 and 622 consolidated within case 286 of the Klamath Basin Adjudication and KPWU: such Parties rights shall be as stated in Section 15.3.4 and Appendix E-6, and no water right recognized under such claims in an Order of Determination issued pursuant to ORS section 539.130(1) shall, directly or indirectly, be asserted in a manner that interferes with the diversion, use, and reuse of water for the Klamath Reclamation Project until such time as a judgment/decre is entered by a court of competent jurisdiction. Additionally, the Klamath Tribes and the BIA shall meet and confer with KWAPA, KPWU, and the other Tribes as provided in Section 15.3.9.C.i.
 - iii. Section 15.3.9.C.ii applies to the Klamath Tribes, the United States Bureau of Indian Affairs and the KPWU with respect to the water rights in cases 282 and 286 of the Klamath Basin Adjudication, irrespective of whether the Secretarial notice in Section 1.5.2 is published.

15.3.10 Inapplicability of Section 1.6.

Appendix E-1 when filed under Section 15.3.1 and effective, and the assurances triggered by the Secretarial finding described in Section 15.3.4, are permanent and not subject to Section 1.6.

APPENDIX E-1

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.
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, Peter M. Bourdet, Vincent Briggs, J.T.

Lead Case No. 003

Consolidated Cases: 003, 118,
119, 120, 129, 137, 148, ~~149~~, and
~~150~~

Claims: 142, 143, 144, 186, 194,
205, 211, 285, 286, ~~287~~¹, ~~288~~²,
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~~³, 2854, ~~2856~~⁴, 2858, 2859,
~~2860, 2861, 2862, 2863, 2864,~~
~~2865, 2871, 2876, 2880, 2881,~~
~~2882, 2883~~⁵, 3136⁶, 3137⁷,

¹ Claim 287 was voluntarily withdrawn by Oregon Department of Fish and Wildlife on September 26, 2003. *See* Notice of Withdrawal of Claim.

² Claim 288 was voluntarily withdrawn by David P. Henzel on July 1, 2003. *See* Notice Of Withdrawal Of Claim.

³ WaterWatch of Oregon, Inc. voluntarily withdrew from Contest 2851 on February 19, 2003. *See* WaterWatch's Voluntary Withdrawal of Contest 2851.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ 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).

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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 Co.; Pine Grove Irrigation District; Pioneer District Improvement Company; Poe Valley

Ranch Co., Tom Bentley, Thomas Stephens, John Briggs, Wm. Bryant, 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 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. (Running Y Ranch);

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.

¹⁸ 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.

¹⁹ 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.

²⁰ The Klamath Tribes voluntarily withdrew, without prejudice, Contest 4179. *See* Klamath Tribes' Withdrawal of Contest dated September 28, 2006.

²¹ 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.

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~~²², 3228, 3229, 3230, 3231²³, 3302, 3303, 3304, 3305²⁴, 3636, 3637, 3638, 3639²⁵, 3996, 3997, 4226, 4227, 4228 and 4229²⁶

²² 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.

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ 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~~²⁷, ~~3233, 3234, 3235, 3236~~²⁸, 3307, 3308, 3309²⁹, 3641, 3642, 3643³⁰, 3999, 4000, 4231, 4232, and 4233³¹

²⁷ WaterWatch of Oregon, Inc.'s Contests 2877, 2878, and 2879 were dismissed. See Order Dismissing Waterwatch of Oregon, Inc.'s Contests, May 20, 2003.

²⁸ 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.

²⁹ 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 3307-3309 on April 6, 2007.

³⁰ 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.

³¹ 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. 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; 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 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.

b. “DIVERSION” for the purposes of this Stipulation means the sum 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, permitted and certificated 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. This Stipulation, and any Order thereon, shall not be construed as evidence of intent to abandon a water right.

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 in any water rights related to the Settlement Points

of Diversion, including modification or relocation of the points of diversion or change in place of use, so long as the limitations on DIVERSION provided in Attachment A is not exceeded; any Order on this Stipulation will be construed to be consistent with this condition. Further, nothing in this Stipulation or any Order thereon prohibits an increase in the diversions at the Settlement Points of Diversion beyond the DIVERSION limits if such increase is solely the result of a transfer of a non-Settlement Point of Diversion water right.

[Add boilerplate.]

[CASE 3 SIGNATURE BLOCKS]

RONALD R. TENPAS
Assistant Attorney General

DATE: _____

By _____
STEPHEN R. PALMER
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, California 95825
Telephone: (916) 978-5683
Telefax: (916) 978-5694

DATE: _____

By _____
BARBARA SCOTT-BRIER
Special Attorney, U.S. Department of Justice
Office of the Regional Solicitor
U.S. Department of the Interior
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232
Telephone: (503) 231-2139
Telefax: (503) 231-2166

DATE: _____

By _____
BRUCE D. BERNARD
General Litigation Section
Environment & Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
Telephone: (303) 844-1361
Telefax: (303) 844-1350
Email: bruce.bernard@usdoj.gov

GARY RANDALL
General Litigation Section
Environment & Natural Resources Division
U.S. Department of Justice
601 Pennsylvania Avenue, Room 848
P.O. Box 663
Washington, D.C. 20044-0663
Telephone: (202) 305-0444
Telefax: (202) 305-0506

ATTORNEYS FOR THE UNITED STATES OF AMERICA

SOMACH SIMMONS & DUNN
A Professional Corporation

DATE: _____

By _____
Paul S. Simmons, OSB 97138
Daniel Kelly (*Pro Hac Vice*; Cal. Bar No. 215051)
Attorneys for Tulelake Irrigation District

DATE: _____

By _____
William M. Ganong, OSB 78213
Attorney for Klamath Irrigation District,
Malin Irrigation District, Reames Golf and
Country Club, and Modoc Lumber Company

DATE: _____

By _____
Justin E. Throne, OSB 02003
Attorney for Ady District Improvement
Company, Klamath Drainage District,
Klamath Basin Improvement District,
Midland District Improvement Company,
Poe Valley Improvement District, Sunnyside
Irrigation District, Enterprise Irrigation
District, and Pine Grove Irrigation District

DATE: _____

By _____

**B.J. Matzen, OSB 70091
Attorney for Pioneer District Improvement
Company, Don Johnston & Son, Winema
Hunting Lodge, Inc., Bradley S. Luscombe,
Randy Walthall, and Inter-County Title
Company**

RATLIFF & RATLIFF, P.C.

DATE: _____

By _____

**Michael Ratliff, OSB 75313
Attorneys for Van Brimmer Ditch Co.**

BOIVIN, UERLINGS & DIACONI, P.C.

DATE: _____

By _____

**James R. Uerlings, OSB 76030
Attorneys for Shasta View Irrigation District**

[CASE 274 SIGNATURE BLOCKS]

RONALD R. TENPAS
Assistant Attorney General

DATE: _____

By _____
BRUCE D. BERNARD
U.S. Department of Justice
General Litigation Section
Environment & Natural Resources Division
999 – 18th Street, Suite 945
Denver, Colorado 80202
Telephone: (303) 312-7319
Telefax: (303) 312-7379
Email: bruce.bernard@usdoj.gov

DATE: _____

By _____
BARBARA SCOTT-BRIER
Special Attorney
U.S. Department of Justice
Environment & Natural Resources Division
500 NE Multnomah Street, Suite 607
Portland, Oregon 97232
Telephone: (503) 231-2139
Telefax: (503) 231-2166

**ATTORNEYS FOR THE UNITED STATES OF
AMERICA, ON BEHALF OF THE FISH AND
WILDLIFE SERVICE**

SOMACH SIMMONS & DUNN
A Professional Corporation

DATE: _____

By _____
Paul S. Simmons, OSB 97138
Daniel Kelly (*Pro Hac Vice*; Cal. Bar No. 215051)
Attorneys for Tulelake Irrigation District

DATE: _____

By _____
William M. Ganong, OSB 78213
Attorney for Klamath Irrigation District,
Malin Irrigation District, Reames Golf and
Country Club, and Modoc Lumber Company

DATE: _____

By _____
Justin E. Throne, OSB 02003
Attorney for Ady District Improvement
Company, Klamath Drainage District,
Klamath Basin Improvement District,
Midland District Improvement Company,
Poe Valley Improvement District, Sunnyside
Irrigation District, Enterprise Irrigation
District, and Pine Grove Irrigation District

DATE: _____

By _____
B.J. Matzen, OSB 70091
Attorney for Pioneer District Improvement
Company, Don Johnston & Son, Winema
Hunting Lodge, Inc., Bradley S. Luscombe,
Randy Walthall, and Inter-County Title
Company

RATLIFF & RATLIFF, P.C.

DATE: _____

By _____
Michael Ratliff, OSB 75313
Attorneys for Van Brimmer Ditch Co.

BOIVIN, UERLINGS & DIACONI, P.C.

DATE: _____

By _____
James R. Uerlings, OSB 76030
Attorneys for Shasta View Irrigation District

[CASE 275 SIGNATURE BLOCKS]

RONALD R. TENPAS
Acting Assistant Attorney General

DATE: _____

By _____
BRUCE D. BERNARD
U.S. Department of Justice
General Litigation Section
Environment & Natural Resources Division
999 – 18th Street, Suite 945
Denver, Colorado 80202
Telephone: (303) 312-7319
Telefax: (303) 312-7379
Email: bruce.bernard@usdoj.gov

DATE: _____

By _____
BARBARA SCOTT-BRIER
Special Attorney
U.S. Department of Justice
Environment & Natural Resources Division
500 NE Multnomah Street, Suite 607
Portland, Oregon 97232
Telephone: (503) 231-2139
Telefax: (503) 231-2166

**ATTORNEYS FOR THE UNITED STATES OF
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WILDLIFE SERVICE**

SOMACH SIMMONS & DUNN
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DATE: _____

By _____
Paul S. Simmons, OSB 97138
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Attorneys for Tulelake Irrigation District

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Attorney for Klamath Irrigation District,
Malin Irrigation District, Reames Golf and
Country Club, and Modoc Lumber Company

DATE: _____

Justin E. Throne, OSB 02003
Attorney for Ady District Improvement
Company, Klamath Drainage District,
Klamath Basin Improvement District,
Midland District Improvement Company,
Poe Valley Improvement District, Sunnyside
Irrigation District, Enterprise Irrigation
District, and Pine Grove Irrigation District

DATE: _____

B.J. Matzen, OSB 70091
Attorney for Pioneer District Improvement
Company, Don Johnston & Son, Winema
Hunting Lodge, Inc., Bradley S. Luscombe,
Randy Walthall, and Inter-County Title
Company

RATLIFF & RATLIFF, P.C.

DATE: _____

By _____
Michael Ratliff, OSB 75313
Attorneys for Van Brimmer Ditch Co.

BOIVIN, UERLINGS & DIACONI, P.C.

DATE: _____

By _____
James R. Uerlings, OSB 76030
Attorneys for 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.

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 amount, 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 amount 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 amount, 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 amount may increase as specified in such notice as long as within the water rights.

ATTACHMENT B

[Text intentionally omitted.]