

**BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of)	PARTIAL ORDER OF
CECIL SAXON)	DETERMINATION
)	
_____)	Water Right Claim 26

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS
TO THE PROPOSED ORDER**

1. Claim 26 (Claimant: CECIL SAXON) and its associated contests (3439, 3781, 4083, and 5655) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 171.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER ON STIPULATION (Proposed Order) for Claim 26 on August 30, 2005.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States of America.
4. The exceptions filed to the Proposed Order along with any responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 26. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Section A.6, below.
5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is replaced in its entirety as set forth in Section A.6, below, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 26. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

6. **Opinion.** The section titled “Opinion” of the Proposed Order is replaced in its entirety as follows:

OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

In addition, OWRD incorporates into the Opinion section the following segment titled “Application of Klamath Termination Act Elements to the Modified Proposed Order Findings of Fact.”

Application of Klamath Termination Act Elements to the Modified Proposed Order Findings of Fact

The property appurtenant to Claim 26 was formerly part of the Klamath Reservation, and was held in trust by the United States. While the property was still in trust, in 1953, irrigation works were developed on the land. It has continued to be irrigated since that time.

Pursuant to the provisions of the Klamath Termination Act, these findings are sufficient to establish a vested federal reserved water right, and to conclude that the established right passed with the land when the land was conveyed out of trust.¹

¹ Although this appears to be a question of first impression in Oregon, it is apparent that federal reserved water rights can be transferred pursuant to the Klamath Termination Act when the reserved lands pass into private ownership. Similar treatment occurred with the Ute termination process. *Hackwork v. Babbitt*, 14 F.3d 1457 (10th Cir. 1994) (express Congressional determination that the transfer of the former tribal lands included right to use water.)

Reason for Modification: To clarify the transfer of water rights pursuant to the Klamath Termination Act - issue raised in exceptions.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “Opinion” is replaced in its entirety as set forth in Section A.6, above, and (2) the section titled “Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 26. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 26 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 26

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 31 S, R 13 E and T 32 S, R 13 E

CLAIMANT: CECIL SAXON
4740 MAIN ST SUITE A
SPRINGFIELD, OR 97477

SOURCE OF WATER: LONG CREEK, tributary to the SYCAN RIVER

PURPOSE OR USE:
IRRIGATION OF 57.2 ACRES

RATE OF USE:
1.43 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
3.5 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
32 S	13 E	WM	4	SW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
31 S	13 E	WM	36	NE SE	3	28.4
31 S	13 E	WM	36	SE SE	4	28.8

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication