

**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
CAMERON A. CURTISS	)	DETERMINATION
	)	
_____	)	Water Right Claim 132

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

**A. FINDINGS OF FACT**

1. On November 30, 1990, CAMERON A. CURTISS AND DEANNA E. CURTISS timely submitted a Statement and Proof of Claim (Claim 132) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 132 was submitted for a total 13.5 cubic feet per second (cfs) of water, being 1.5 cfs from Moss Creek and 12.0 cfs from Denny Creek (Rock Creek), both tributary to Upper Klamath Lake, for "power generation" with a "year round" season of use. The claimed priority date is January 25, 1909.
3. CAMERON A. CURTISS AND DEANNA E. CURTISS signed the Statement and Proof of Claim for Claim 132 attesting that the information contained in the claim is true.
4. On June 12, 1998, Claim 132 was transferred to solely CAMERON A. CURTISS (Claimant) (21051 HWY 140 WEST, KLAMATH FALLS, OR 97601) from CAMERON A. CURTISS AND DEANNA E. CURTISS (Claim # 32, Page 016). *See also* BARGAIN AND SALE OF DEED, COUNTY OF JACKSON, July 29, 1992.
5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the required pre-1909 elements were not established.
6. The Claimants did not file a contest to the Preliminary Evaluation of Claim 132.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3393: 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.<sup>1</sup>, 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, Berlva Pritchard<sup>2</sup>, Don Vincent<sup>3</sup>, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 12.
9. On February 8, 2002, Tulelake Irrigation District, Klamath Drainage District, Ady District Improvement Company, Klamath Hills District Improvement Co., Midland District Improvement Company, Sunnyside Irrigation District, and Poe Valley Improvement District, withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (Feb. 8, 2002).
10. On February 12, 2002, Klamath Irrigation District, Malin Irrigation District, and Reames Golf and Country Club withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (Feb. 12, 2002).
11. On February 14, 2002, Don Johnston & Son, Pioneer District Improvement Company, Bradley S. Luscombe, Winema Hunting Lodge, Inc., Randy Walthall, and Inter-County Title Co. withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (Feb. 14, 2002).
12. On February 22, 2002, Van Brimmer Ditch Co. withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTEST (Feb. 22, 2002).
13. On June 4, 2002, Klamath Basin Improvement District and Shasta View Irrigation District, withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (June 4, 2002).
14. On June 17, 2002, Plevna District Improvement Co. and Collins Products, LLC withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (June 17, 2002).
15. On June 20, 2002, Enterprise Irrigation District and Pine Grove Irrigation District, withdrew from Contest 3393. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (June 20, 2002).

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3393 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3393 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

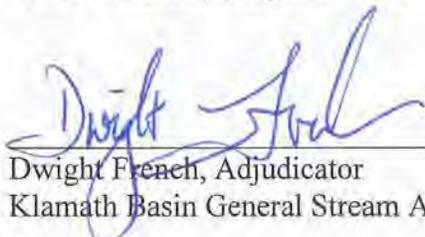
<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3393 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

16. As shown in Findings 9 through 15, above, all of the parties who had participated in Contest 3393 have withdrawn.
17. On June 25, 2002, the Adjudicator withdrew Case 12 from the Office of Administrative Hearings.
18. OWRD finds there was intent to apply water from Rock Creek to beneficial use prior to February 4, 1909 (Claim # 132, Page 007, Exhibit B). A notice of appropriation applicable to this claim was posted for Rock Creek on January 25, 1909.
19. With respect to Rock Creek, OWRD finds a diversion has been created to divert water from its natural source.
20. The earliest evidence on the record establishes application of water to beneficial use from Rock Creek on June 30, 1923 (Claim # 132, WIP, Page 0002). Based on the facts on this case, the fourteen-year gap between notice of intent to appropriate and completion of the appropriation does not constitute reasonably diligent application of water to beneficial use.
21. There is no evidence in the record as to the date of development of the Moss Creek diversion. Without this information, it is not possible to find that water was applied to a beneficial use with reasonable diligence. Furthermore, according to the Claimants Statement and Proof of Claim (Claim # 132, Page 004, Item 14), "Moss Creek water has not been used because of access problems at the site of the diversion."

## **B. DETERMINATION**

1. The elements of a pre-1909 claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
2. Based on the file and record herein, IT IS ORDERED that Claim 132 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication