

**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
ERNESTINE S. KIRK, AND)	DETERMINATION
JERRY ALLEN PARRISH)	
_____)	Water Right Claim 255
)	

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 January 31, 1991, ERNESTINE S. KIRK AND JERRY ALLEN PARRISH (Claimants) timely submitted a Statement and Proof of Claim (Claim 255) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 255 was submitted for a total of 479.5 acre-feet, being 418.8 acre-feet from Unnamed Springs, tributary to the Sycan River for irrigation of 97.4 acres, and 60.7 acre-feet from the Sycan River, a tributary of the Sprague River for irrigation of 19.6 practicably irrigable acres. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 255 attesting that the information contained in the claim is true.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim was approved, but with a longer season of use than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.
5. On May 3, 2000, the Claimant timely filed Contest 1732 to the Preliminary Evaluation of Claim 255.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3537: 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.¹, 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 Pritchard², Don Vincent³, 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 54.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3537. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3537 (Apr. 7, 2005).
9. On June 15, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1732 (Settlement Agreement) thereby resolving the remaining contest to Claim 255.
10. On June 20, 2005, the Adjudicator withdrew Case 54 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.
2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.
3. Beneficial use of water by the method of natural overflow is established.
4. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply to the irrigation of practicably irrigable acreage from the point of diversion.
5. Based on the file and record herein, IT IS ORDERED that Claim 255 is approved as set forth in the following Water Right Claim Description.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3537 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3537 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3537 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

CLAIM NO. 255
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 255, PAGE 290

CLAIMANT: ERNESTINE S. KIRK
JERRY ALLEN PARRISH
PO BOX 181
BEATTY OR 97621

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: UNNAMED SPRINGS, tributary to the SYCAN RIVER

PURPOSE OR USE: IRRIGATION OF 97.4 ACRES BY NATURAL OVERFLOW.

DATE OF PRIORITY: OCTOBER 14, 1864

NO SPECIFIC POINT OF DIVERSION:
NATURAL OVERFLOW FROM THE UNNAMED SPRINGS

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION BY NATURAL OVERFLOW					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	12 E	WM	6	NE SW	25.2
35 S	12 E	WM	6	SE SW	17.5
35 S	12 E	WM	6	NW SE	27.1
35 S	12 E	WM	6	SW SE	27.6

FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. RATE FOR IRRIGATION MAY NOT EXCEED 2.44 CFS. THE SEASON OF USE FOR IRRIGATION MAY NOT EXCEED MARCH 1 TO OCTOBER 16.

INCHOATE PORTION

SOURCE OF WATER: The SYCAN RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE: IRRIGATION OF 19.6 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.35 CUBIC FOOT PER SECOND FROM POD A, 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:

3.1 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

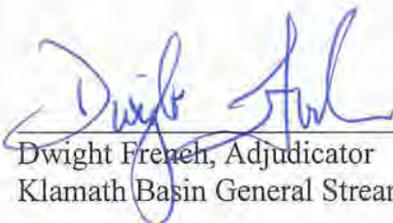
POD Name	Twp	Rng	Mer	Sec	Q-Q
POD A	35 S	12 E	WM	6	SE NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	12 E	WM	6	NE SW	10.4	POD A
35 S	12 E	WM	6	SE SW	1.1	
35 S	12 E	WM	6	NW SE	4.8	
35 S	12 E	WM	6	SW SE	3.3	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication