

**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	)	CORRECTED PARTIAL ORDER OF
JESS KIRK, JR.	)	DETERMINATION
_____	)	
	)	Water Right Claim 257

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, JESS KIRK, JR. (Claimant) timely submitted a Statement and Proof of Claim (Claim 257) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee 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 257 was submitted for a total of 117.8 acre-feet of water from Brown Creek, a tributary of the Sprague River, for domestic use and for irrigation of 38.0 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year around for domestic use, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 257 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 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 1734 to the Preliminary Evaluation of Claim 257.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3539: 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 56.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3539. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3539 (Apr. 7, 2005).
9. On June 15, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1734 (Settlement Agreement) thereby resolving the remaining contest to Claim 257.
10. On June 20, 2005, the Adjudicator withdrew Case 56 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD and the Claimant 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. 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 257 is approved as set forth in the following Water Right Claim Description.

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3539 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3539 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3539 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

**CLAIM NO. 257**  
FOR A VESTED AND INCHOATE WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 257, PAGE 78

**CLAIMANT:** JESS KIRK, JR.  
PO BOX 68  
BEATTY OR 97621

**VESTED (DEVELOPED) PORTION**

**SOURCE OF WATER:** BROWN CREEK, tributary to the SPRAGUE RIVER

**PURPOSE or USE:**  
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED) FROM POD 1.

**RATE OF USE:**  
0.01 CUBIC FOOT PER SECOND (CFS) FROM POD 1 FOR DOMESTIC EXPANDED, MEASURED AT THE POINT OF DIVERSION.

**PERIOD OF ALLOWED USE:**

Use	Period
Domestic Expanded	January 1 - December 31

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	36 S	12 E	WM	15	SE NE	16

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	Authorized POD
36 S	12 E	WM	15	NW SE	23	POD 1

**INCHOATE PORTION**

**SOURCE OF WATER:** BROWN CREEK, tributary to the SPRAGUE RIVER

**PURPOSE or USE:** IRRIGATION OF 37.5 PRACTICABLY IRRIGABLE ACRES FROM POD 1.

**RATE OF USE:**

0.68 CFS FROM POD 1, 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:**

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**

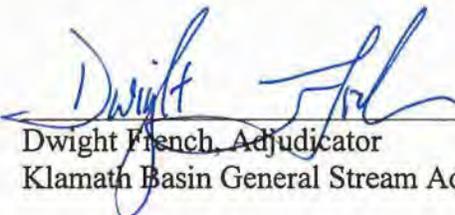
POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	36 S	12 E	WM	15	SE NE	16

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	15	NW SE	18	19.0	POD 1
36 S	12 E	WM	15	NW SE	23	18.5	

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
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 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication