

**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
PHIL TUPPER;)	DETERMINATION
RAYSON C. TUPPER;)	
RACHEL TUPPER; AND)	
HI ROBBINS CORPORATION)	
_____)	Water Right Claim 274

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, PHIL TUPPER (ON BEHALF OF HIMSELF, RAYSON C. TUPPER, RACHEL TUPPER, AND HI ROBBINS CORPORATION) (Claimants) timely submitted a Statement and Proof of Claim (Claim 274) 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 274 was submitted for a total of 587.3 acre-feet of water: 375.8 acre-feet from unnamed creeks, tributary to the Sprague River, being 371.1 acre-feet for irrigation of 86.3 acres, and 4.7 acre-feet for instream livestock watering of 350 head; and 211.5 acre-feet for irrigation of 68.3 practicably irrigable acres from the Sprague River, tributary to the Williamson River. 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 year-round for livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 274 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 for livestock watering and irrigation was approved, but

with a longer irrigation season 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 Claimants timely filed Contest 1748 to the Preliminary Evaluation of Claim 274.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3509: 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., 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 75.
8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3509. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3509 (Apr. 7, 2005).
9. On August 1, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1748 (Settlement Agreement) thereby resolving the remaining contest to Claim 274.
10. On August 4, 2005, the Adjudicator withdrew Case 75 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.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3509 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3509 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3509 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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 274 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 274
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 274, PAGE 118

CLAIMANTS: PHIL TUPPER;
RAYSON C. TUPPER;
RACHEL TUPPER; AND
HI ROBBINS CORPORATION
PO BOX 1797
KLAMATH FALLS OR 97601

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: An UNNAMED STREAM, tributary to the SPRAGUE RIVER

PURPOSE OR USE:
IRRIGATION OF 86.3 ACRES FROM POD 1; AND
INSTREAM LIVESTOCK WATERING OF 350 HEAD

RATE OF USE:
2.1365 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

2.13 CFS FROM POD 1 FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION;
AND

0.0065 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF
USE, NOT TO EXCEED 4200 GALLONS PER DAY.

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 16
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Remarks
POD 1	36 S	10 E	WM	13	SW NE	Irrigation Only
Unnamed Stream	36 S	10 E	WM	13	NE NE	Livestock Watering Only– No specific point of diversion, livestock drink directly from the Unnamed Stream
	36 S	10 E	WM	13	NW NE	
	36 S	10 E	WM	13	SW NE	
	36 S	10 E	WM	13	SE NE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	10 E	WM	13	NE NE	1	9.1	POD 1
36 S	10 E	WM	13	NE NE	8	10.0	
36 S	10 E	WM	13	NW NE	2	8.2	
36 S	10 E	WM	13	NW NE	7	13.1	
36 S	10 E	WM	13	SW NE	10	15.8	
36 S	10 E	WM	13	SW NE	15	14.7	
36 S	10 E	WM	13	SE NE	9	8.1	
36 S	10 E	WM	13	SE NE	16	7.3	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
36 S	10 E	WM	13	NE NE
36 S	10 E	WM	13	NW NE
36 S	10 E	WM	13	SW NE
36 S	10 E	WM	13	SE NE

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 68.3 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

1.23 CUBIC FEET 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:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

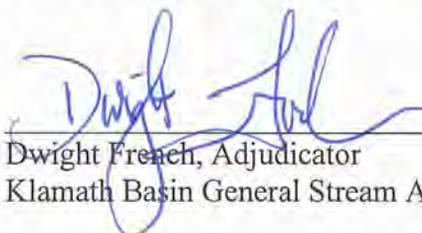
POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	36 S	10 E	WM	12	SE SE	330 FEET NORTH FROM SE¼ CORNER, SECTION 12

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
36 S	10 E	WM	13	NE NE	18.1	POD A
36 S	10 E	WM	13	NW NE	17.8	
36 S	10 E	WM	13	SW NE	9.0	
36 S	10 E	WM	13	SE NE	23.4	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication