

**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
LETA MAE JOHNSON	)	DETERMINATION
)	
_____	)	Water Right Claim 100

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 December 7, 1990, LETA MAE JOHNSON (Claimant) (10440 HILL ROAD, KLAMATH FALLS, OR 97603) timely submitted a Statement and Proof of Claim (Claim 100) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 100 was submitted for a total of 8.5 cfs of water from the an unnamed stream, a tributary of the Sprague River, for flood irrigation of 340.0 acres with a rate of 1/40 of one cubic foot per second per acre. The claimed period of use is March 1 to July 31. The claimed priority date is October 14, 1864.
3. LETA MAE JOHNSON signed Claim 100 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 required elements for a Walton right were not established.
5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3481: 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.

6. On May 8, 2000, the United States of America timely filed Contest 3750 to the Claim and/or Preliminary Evaluation of Claim 100.
7. On May 8, 2000, the Klamath Tribes timely filed Contest 4135 to the Claim and/or Preliminary Evaluation of Claim 100.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 215.
9. On January 21, 2004, the Klamath Tribes withdrew Contest 4135. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 21, 2004).
10. On March 15, 2005, the Claimant, OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 100.
11. On March 17, 2005, the Adjudicator withdrew Case 215 from the Office of Administrative Hearings.
12. Based on the Claimants map (*See* Claim # 100, Page 48) , OWRD finds the 160.0 acres described in the Settlement Agreement as being 104.0 acres within Section 21, and 56.0 acres within Section 22 is incorrect; the correct description of the location of the 160.0 acres is 27.9 acres within Section 21, and 132.1 acres within Section 22.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with the following exception: a scrivener's error in the location of the 160.0 acres as described in Finding 12, above; the location of the 160.0 acres is corrected to 27.9 acres within Section 21, and 132.1 acres within Section 22, and

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3481 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3481 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

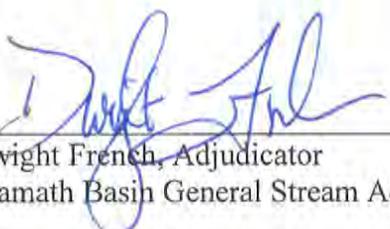
³ Don Vincent voluntarily withdrew from Contest 3481 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

2. The claimed place of use is subject to natural overflow from an unnamed stream, tributary to the Sprague River. The Settlement Agreement states that the privilege to use water as described herein does not constitute a water right. OWRD will not issue a certificate Claim 20. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property, and may not be altered by the use of any physical means to modify the manner in which natural overflow occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural overflow. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. The stipulated place of use for acceptance of natural overflow is located as follows:

IRRIGATION BY NATURAL OVERFLOW					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	11 E	WM	21	NE NE	24.0
35 S	11 E	WM	21	SE NE	3.9
35 S	11 E	WM	22	NW NW	39.0
35 S	11 E	WM	22	SW NW	37.1
35 S	11 E	WM	22	NE SW	33.7
35 S	11 E	WM	22	NW SW	22.3

3. Based on the file and record herein, IT IS ORDERED that Claim 100 is acknowledged only as a privilege.

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
JELD-WEN, INC.	)	DETERMINATION
)	
_____	)	Water Right Claim 101

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 February 1, 1991, JELD-WEN, INC. (Claimant) timely submitted a Statement and Proof of Claim (Claim 101) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 101 was submitted for instream livestock watering of 150 head for a total 1.0 cubic feet per second (cfs) of water from the Sycan River, a tributary of the Sprague River with a “year round” season of use. The claimed priority date is 1864. The evidence in the record supports the number of head and season of use claimed.
3. Item 14 on the Statement and Proof of Claim states, “Livestock have and continue to water directly from the river upon Claimant’s property since such property passed from Indian ownership.”
4. MATTHEW W. BEDDOE, corporate counsel for JELD-WEN, INC., signed the Statement and Proof of Claim for Claim 101 attesting that the information contained in the claim is true.
5. In 1991, a field inspection report, including a map (“Claimants Map”), was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 101 (Claim # 101, Pages 067 and 068).
6. On June 25, 1998, the claimant supplemented information to Claim 101 by providing a place of use listing by quarter-quarter (Claim # 101, Page 00247).

- The place of use list includes the SENW, Section 5. The Claimant's Map referenced in Finding 6, above, shows the Sycan River flows through the SWNW, Section 5, not the SENW. OWRD finds that the place of use in Section 5 is the SWNW.
 - The place of use list also includes the SENW, Section 21. The Claimant's Map shows the SENW, Section 21 is not within the boundaries of the Claimant's land, and furthermore, is not included in the Claimant's chains of title for lands appurtenant to Claim 101. OWRD finds that the place of use does not include the SENW, Section 21.
7. 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 approved, but for a larger quantity of water and more head than claimed.¹
 8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 101.
 9. Based on the sworn statements in Claim 101, along with the field inspection report, the following findings are made:
 - a. The claimed water use is on former Klamath Indian Reservation Land.
 - b. The claimed water use is on land that was transferred from Indian ownership.
 - c. Beneficial use of water for the claimed purpose was not made prior to transfer from Indian ownership.
 - d. Beneficial use of water for the claimed purpose has been made with reasonable diligence following the transfer from Indian ownership.

¹ The Preliminary Evaluation included two errors: (1) the number of head claimed and approved was stated as 1500 instead of 150, and (2) the amount of beneficially used water was stated as 18,000 gallons per day instead of 1800.

B. DETERMINATION

1. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
2. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
3. The total rate of water for livestock use is based on 150 head, the number of head claimed by the Claimant.
4. Based on the file and record herein, IT IS ORDERED that Claim 101 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 101

CLAIM MAP REFERENCE: CLAIM # 101, PAGE 68

CLAIMANT: JELD-WEN, INC.
401 HARBOR ISLES BLVD
KLAMATH FALLS OR 97601

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

PURPOSE or USE: INSTREAM LIVESTOCK WATERING FOR 150 HEAD

RATE OF USE:
0.003 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1800 GALLONS PER DAY

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Instream Livestock Watering
35 S	12 E	WM	5	SW NW	No specific point of diversion - livestock drink directly from the Sycan River
35 S	12 E	WM	5	NE SW	
35 S	12 E	WM	5	NW SW	
35 S	12 E	WM	5	SW SW	
35 S	12 E	WM	5	SE SW	
35 S	12 E	WM	6	NE NE	
35 S	12 E	WM	6	SE NE	
35 S	12 E	WM	8	NW NW	
35 S	12 E	WM	8	SW NW	
35 S	12 E	WM	8	NE SW	
35 S	12 E	WM	8	NW SW	
35 S	12 E	WM	8	NE SE	
35 S	12 E	WM	8	NW SE	
35 S	12 E	WM	9	NW SW	
35 S	12 E	WM	9	SW SW	
35 S	12 E	WM	16	NW NW	
35 S	12 E	WM	16	SW NW	
35 S	12 E	WM	16	NE SW	
35 S	12 E	WM	16	NW SW	
35 S	12 E	WM	16	SE SW	
35 S	12 E	WM	21	NE NW	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
35 S	12 E	WM	5	SW NW
35 S	12 E	WM	5	NE SW
35 S	12 E	WM	5	NW SW
35 S	12 E	WM	5	SW SW
35 S	12 E	WM	5	SE SW
35 S	12 E	WM	6	NE NE
35 S	12 E	WM	6	SE NE
35 S	12 E	WM	8	NW NW
35 S	12 E	WM	8	SW NW
35 S	12 E	WM	8	NE SW
35 S	12 E	WM	8	NW SW
35 S	12 E	WM	8	NE SE
35 S	12 E	WM	8	NW SE
35 S	12 E	WM	9	NW SW
35 S	12 E	WM	9	SW SW
35 S	12 E	WM	16	NW NW
35 S	12 E	WM	16	SW NW
35 S	12 E	WM	16	NE SW
35 S	12 E	WM	16	NW SW
35 S	12 E	WM	16	SE SW
35 S	12 E	WM	21	NE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
MARVIN DEAN WALKER	)	DETERMINATION
_____)	
	)	Water Right Claim 102

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 30, 1991, MARVIN DEAN WALKER (Claimant) timely submitted a Statement and Proof of Claim (Claim 102) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication as follows:
 - a. as a non-Indian successor to allotted Klamath Reservation lands claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707; and
 - b. as a non-Indian successor to unallotted Klamath Indian Reservation lands claiming a vested Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707, pursuant to the Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. (Klamath Termination Act claim).
2. Claim 102 was submitted for a total of 7.2 cfs of water, being 5.2 cfs from Snake Creek, a tributary of the Sycan River, and 2.0 cfs from the Sycan River, a tributary of the Sprague River, for irrigation of approximately 280 acres. The claimed period of use is April through October. The claimed priority date is "1864."
3. MARVIN DEAN WALKER signed Claim 102 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 approved for subirrigation and irrigation, but for a smaller quantity of water and fewer acres than claimed, and with a longer season of use than claimed on a portion of the property.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3482: 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.
6. On May 8, 2000, the United States of America timely filed Contest 3808 to the Claim and/or Preliminary Evaluation of Claim 102.
7. On May 8, 2000, the Klamath Tribes timely filed Contest 4136 to the Claim and/or Preliminary Evaluation of Claim 102.
8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 216.
9. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3482. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3482 (Apr. 8, 2004).
10. On April 22, 2005, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 102.
11. On April 26, 2005, the Adjudicator withdrew Case 216 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.
2. Portions of the claimed place of use are subject to natural subirrigation from Snake Creek, tributary to the Sycan River. The use of water by natural subirrigation is a privilege only, and does not constitute a water right. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3482 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3482 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3482 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

may not be transferred to any other property, and may not be altered by the use of any physical means to modify the manner in which natural subirrigation occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural subirrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. This privilege as described herein does not constitute a water right; as such, OWRD will not issue a water right certificate for this privilege described in this paragraph. The stipulated place of use for acceptance of natural subirrigation is located as follows:

NATURAL SUBIRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	12 E	WM	34	NE NE	20.0
35 S	12 E	WM	34	SE NE	34.3
35 S	12 E	WM	35	NW NW	4.2
35 S	12 E	WM	35	SW NW	1.0

3. Based on the file and record herein, IT IS ORDERED that Claim 102 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 102
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 102, PAGE 39

CLAIMANT: MARVIN DEAN WALKER
PO BOX 190
BEATTY OR 97621

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

PURPOSE OR USE:
IRRIGATION OF 143.7 ACRES, BEING 21.9 ACRES FROM THE SYCAN RIVER, AND
121.8 ACRES FROM SNAKE CREEK.

RATE OF USE:
3.59 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION,
BEING 0.55 CFS FROM THE SYCAN RIVER AND 3.04 FROM SNAKE CREEK.

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

PERIOD OF ALLOWED USE: APRIL 1 – OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Sycan River	35 S	12 E	WM	34	SE SW	5 FEET SOUTH AND 45 FEET EAST FROM NW CORNER, SESW, SECTION 34
Snake Creek	35 S	12 E	WM	34	SW SE	530 FEET NORTH AND 2110 FEET WEST FROM SE CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	12 E	WM	34	NE SW	22.3	Snake Creek
35 S	12 E	WM	34	SE SW	17.2	Sycan River
35 S	12 E	WM	34	NW SE	36.4	Snake Creek
35 S	12 E	WM	34	SW SE	4.7	Sycan River
35 S	12 E	WM	34	SW SE	25.6	Snake Creek
35 S	12 E	WM	34	SE SE	37.5	Snake Creek

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
JOHN KRONENBERGER	)	DETERMINATION
)	
_____	)	Water Right Claim 103

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 9, 1990, RUSSELL J. WALSH AND EDITH WALSH timely submitted a Statement and Proof of Claim (Claim 103) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 103 was submitted for a total of 6.0 cfs of water from the Sycan River, a tributary of the Sprague River for irrigation of 240 acres. The claimed period of use is April 15 through September 30. The claimed priority date is "1864."
3. RUSSELL J. WALSH and EDITH WALSH signed Claim 103 attesting that the information contained in the claim is true.
4. On May 12, 1998, the Claim 103 was amended to (1) increase the quantity of water claimed, (2) increase the number of acres claimed, and (3) include Brown Creek as an additional source of water, and (4) add an additional point of diversion at the Sycan River.
5. The property appurtenant to Claim 103 was ultimately transferred to JOHN KRONENBERGER (Claimant). See REQUEST FOR ASSIGNMENT (May 12, 1998) (Claim # 103, Page 00036).
6. 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 for was approved as amended on May 12, 1998, but with a longer season of use than claimed.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3483: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3809 to the Claim and/or Preliminary Evaluation of Claim 103.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4137 to the Claim and/or Preliminary Evaluation of Claim 103.
10. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2842 to the Claim and/or Preliminary Evaluation of Claim 103.
11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 217.
12. On May 20, 2003, WaterWatch’s Contest 2842 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.’S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
13. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3483. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3483 (Apr. 8, 2004).
14. On March 4, 2005, the Klamath Tribes withdrew Contest 4137. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (March 4, 2005).
15. On July 21, 2005, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving the remaining contest to Claim 103.
16. On July 21, 2005, the Adjudicator withdrew Case 217 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3483 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3483 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3483 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, and the United States of America is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 103 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 103
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 103 SETTLEMENT MAP (July 21, 2005)

CLAIMANT: JOHN KRONENBERGER
13673 SPRAGUE RIVER RD
CHILOQUIN OR 97624

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

PURPOSE OR USE: IRRIGATION OF 71.4 ACRES.

RATE OF USE:
1.79 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 15 - SEPTEMBER 30

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	12 E	WM	28	SE SE	800 FEET WEST AND 25 FEET NORTH FROM SE CORNER, SECTION 28

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	12 E	WM	28	SE SE	16.0
35 S	12 E	WM	34	NW NW	38.2
35 S	12 E	WM	34	SW NW	17.2

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
MYRON E. YADON	)	DETERMINATION
_____)	
	)	Water Right Claim 104

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 8, 1990 1, 1991, MYRON E. YADON (Claimant) timely submitted a Statement and Proof of Claim (Claim 104) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 104 was submitted for a total 0.015 cubic feet per second (cfs) of water from the Ponina Creek, a tributary of Snake Creek, being 0.01 cfs for irrigation of 2.0 acres and 0.005 for domestic use. The claimed season of use is “year around” for both irrigation and domestic use. The claimed priority date is 1864.
3. MYRON E. YADON signed the Statement and Proof of Claim for Claim 104 attesting that the information contained in the claim is true.
4. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 104 (Claim 104, WIP, Page 00029).
5. On April 29, 1999, the Claimant supplemented information to Claim 104 by providing a signed statement, stating in pertinent part: “Walton Right Claim: Developed with reasonable diligence after the land passed into non Indian hands. Changed from Indian ownership to Yaden family ownership May 23, 1960 [DEED, COUNTY OF KLAMATH, VOLUME 321, PAGE 402 (May 25, 1960)].” (Claim #104, Pages 00011 and 00012).

6. A NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE for Oregon Water Right Permit S-31279 was submitted to OWRD by A.C. Yadon on March 25, 1969 stating, “The use of water has been complete and continuous since about 1959.” (Claim # 104, WIP, Page 0008). Certificate 37208 was issued for Permit S-31279 on December 22, 1970 (Claim #104, WIP, Page 000240). Certificate 37208 is for irrigation and domestic use on 0.6 acres within the claimed place of use, with a duty of 3.0 acre-feet/acre. Both the permit and the certificate describe irrigation as “for use during the irrigation season.”
7. On April 29, 1999, the Claimant submitted a copy of the Final Poof Survey Map for Permit No. 31279. (Claim #104, page 00014) The map depicts 0.6 irrigated acres within the claimed place of use. Based on this map and on Certificate 37208, OWRD finds that development for irrigation on the claimed place of use is limited to the 0.6 acres depicted on this map.
8. Based on Certificate 37208, the appropriate duty for irrigation use is 3.0 acre-feet/acre. Based on the Statement and Proof of Claim, the rate for irrigation may not exceed 0.01 cfs.
9. Based on the statement that water use began sometime in 1959 (Finding 5, above), and the transfer of land from Indian ownership occurred in 1960 (Finding 6, above), OWRD finds the beneficial use of water for the claimed purposes was established prior to transfer from Indian ownership.
10. 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 approved but for fewer acres than claimed, and a shorter of season of use for irrigation than claimed.
11. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 104.
12. Based on the sworn statements in Claim 104, along with the field inspection report, the following findings are made:
 - a. The claimed water use is on former Klamath Indian Reservation Land.
 - b. The claimed water use is on land that was transferred from Indian ownership.
 - c. Beneficial use of water for the claimed purposes was established prior to transfer from Indian ownership.

B. DETERMINATION

1. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
2. Based on the evidence provided by Certificate 37208, a duty of 3.0 acre-feet per acre and a rate of 1/40 of one cubic foot per second per acre will apply; provided, that the total rate for irrigation use may not exceed 0.01 cfs, the rate claimed.
3. Based on Certificate 37208, water for irrigation was limited to use during the “irrigation season.” Because there is no evidence on the record to the contrary, the standard season of use for irrigation, being March 1 through October 31 of each year 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 104 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 104

CLAIM MAP REFERENCE: CLAIM # 104, PAGE 00014

CLAIMANT: MYRON E. YADON
519 FULTON ST
KLAMATH FALLS OR 97601

SOURCE OF WATER: PONINA CREEK, tributary to SNAKE CREEK

PURPOSE or USE: DOMESTIC; IRRIGATION OF 0.6 ACRES.

RATE OF USE:

0.015 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.005 CFS FOR DOMESTIC USE AND 0.01 CFS FOR IRRIGATION.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Domestic	January 1 - December 31
Irrigation	March 1 - October 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	12 E	WM	1	SE NE	5

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	12 E	WM	1	SE NE	5

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	12 E	WM	1	SE NE	5	0.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
FIVE MILE RANCH, LLC	)	DETERMINATION
)	
_____	)	Water Right Claim 105

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

A. FINDINGS OF FACT

1. Claim 105 (Claimant: FIVE MILE RANCH, LLC¹) and its associated contests (3484, 3751, and 4138) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 218.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 105 on November 10, 2004. No exceptions were filed to the Proposed Order.
3. On July 21, 2011, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify the outcome of the original Proposed Order to recognize (1) development with reasonable diligence by non-Indian successors, and (2) the appropriate standard for determining loss of a right through nonuse. The Amended Proposed Order replaced the 2004 Proposed Order in its entirety.
4. Exceptions were jointly filed to the Amended Proposed Order within the exception filing deadline by the United States of America and the Klamath Tribes.
5. The exceptions filed to the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 105, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.
6. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

¹ Five Mile Ranch, LLC, successor in interest to Rodney N. Murray

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 105 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 105

CLAIM MAP REFERENCE:

CLAIM # 105, PAGE 14; OWRD INVESTIGATION MAP – T 35 S, R 13 E

CLAIMANT: FIVE MILE RANCH, LLC
DAVID P. MASTAGNI
KATHLEEN R. MASTAGNI
3827 MARSHALL AVE
CARMICHAEL, CA 95608

SOURCE OF WATER:

FIVEMILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

PURPOSE or USE:

IRRIGATION OF 69.7 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 200 HEAD

RATE OF USE:

1.74 CUBIC FEET PER SECOND, BEING 0.94 CFS FROM POD 1 AND 0.80 CFS FROM POD 2

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:

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

PERIOD OF ALLOWED USE: APRIL 1 - NOVEMBER 1

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 1	35 S	13 E	WM	27	SW SE	30 FEET NORTH AND 3640 FEET EAST FROM SW CORNER, SECTION 27
POD 2	35 S	13 E	WM	34	NW NE	480 FEET SOUTH AND 3180 FEET EAST FROM NW CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	13 E	WM	27	NE SW	1.7	POD 1
35 S	13 E	WM	27	NW SW	26.7	
35 S	13 E	WM	27	SW SW	0.2	
35 S	13 E	WM	28	NE SE	8.9	
35 S	13 E	WM	27	SE SW	6.3	POD 2
35 S	13 E	WM	27	SW SE	3.3	
35 S	13 E	WM	34	NW NE	20.4	
35 S	13 E	WM	34	SW NE	2.2	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
JOHN AND ROSEMARY YOUNG,	)	DETERMINATION
TRUSTEES FOR THE YOUNG FAMILY)	
TRUST)	
_____	)	Water Right Claim 106

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 30, 1991, JOHN AND ROSEMARY YOUNG, TRUSTEES FOR THE YOUNG FAMILY TRUST (Claimants) timely submitted a Statement and Proof of Claim (Claim 106) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming an inchoate Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 106 was submitted for domestic use including watering of 1 acre of lawn and garden, and livestock watering for 10 head, for a total 0.25 cubic feet per second (cfs) of water from Fivemile Creek, a tributary of the Sprague River, with a season of use "April 1 to December 1." The claimed priority date is 1864.
3. The Claimants did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.
4. GREGORY S. YOUNG, an authorized agent of JOHN AND ROSEMARY YOUNG, TRUSTEES FOR THE YOUNG FAMILY TRUST, signed the Statement and Proof of Claim for Claim 106 attesting that the information contained in the claim is true.
5. On February 15, 1991, the Claimants clarified by letter that they were not claiming "stock usage."
6. On May 1, 1991, the Claimant supplemented information to Claim 106 by providing a affidavit signed by Jack Bishop, stating in pertinent part, "As a former employee of Weyerhaeuser and then the owner of the subject property, I certify that water was being used within five years of the sale of the property from the Sconchin's [Donald Lloyd

Schonchin, listed on the NOVEMBER 21, 1957 FEDERAL REGISTER FOR MEMBERS OF KLAMATH TRIBE OF INDIANS, Page 9319] to Weyerhaeuser and has been used continuously since I acquired the property to serve my cabin and water the 1-3 acres around the cabin.” (Claim # 106, Page 00018).

7. In 1991, a field inspection report was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 106 (Claim # 106, Page 11).
8. 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 approved for domestic use including 1 acre of lawn and garden, but for a smaller quantity of water and with a longer season of use than claimed.
9. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 106.
10. Based on the sworn statements in Claim 106, along with the field inspection report, the following findings are made:
 - a. The claimed water use is on former Klamath Indian Reservation Land.
 - b. The claimed water use is on land that was transferred from Indian ownership.
 - c. Beneficial use of water for the claimed purpose was not made prior to transfer from Indian ownership.
 - d. Beneficial use of water for the claimed purpose has been made with reasonable diligence following the transfer from Indian ownership.

B. DETERMINATION

1. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
2. Because there is no evidence on the record to the contrary, standard rate for domestic use, being 0.01 cfs per dwelling as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
3. Because there is no evidence on the record to the contrary, the domestic rate for watering 1.0 acre of lawn and garden is calculated based on 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 106 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 106

CLAIM MAP REFERENCE: CLAIM # 106, PAGE 43

CLAIMANT: JOHN AND ROSEMARY YOUNG, TRUSTEES FOR THE YOUNG FAMILY TRUST
26 ARASTRADERO ROAD
PORTOLA VALLEY, CA 94028

SOURCE OF WATER: FIVEMILE CREEK, tributary to the SPRAGUE RIVER

PURPOSE or USE:
DOMESTIC INCLUDING WATERING OF 1.0 ACRE OF LAWN AND GARDEN.

RATE OF USE:
0.035 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION,
BEING 0.01 CFS FOR ONE DWELLING AND 0.025 CFS FOR DOMESTIC (NON-
COMMERCIAL) WATERING OF 1.0 ACRE OF LAWN AND GARDEN.

PERIOD OF ALLOWED USE: APRIL 1 - DECEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	13 E	WM	1	NE SE	SOUTH 57 DEGREES 5 MINUTES 57 SECONDS WEST, 1321 FEET FROM EAST 1/4 CORNER, SECTION 1

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC INCLUDING WATERING OF 1.0 ACRE OF LAWN AND GARDEN				
Twp	Rng	Mer	Sec	Q-Q
35 S	13 E	WM	1	NE SE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
JELD-WEN, INC.	)	DETERMINATION
)	
_____	)	Water Right Claim 107

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 February 1, 1991, JELD-WEN, INC (Claimant) timely submitted a Statement and Proof of Claim (Claim 107) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 107 was submitted for a total of 1.0 cfs of water from Upper Klamath Lake, tributary to the Klamath River, for industrial use and fire suppression. The claimed period of use is year-round. The claimed priority date is "1864."
3. MATTHEW W. BEDDOE, corporate counsel for JELD-WEN, INC., signed Claim 107 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 claimed use is not a primary purpose for which the reservation was established."
5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3485: 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,

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3485 on January 16, 2004. See VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS 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.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3129 to the Claim and/or Preliminary Evaluation of Claim 144.
7. On May 8, 2000, the United States of America timely filed Contest 3752 to the Claim and/or Preliminary Evaluation of Claim 107.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4139 to the Claim and/or Preliminary Evaluation of Claim 107.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 219.
10. On January 12, 2004, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3139. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY AND HORSEFLY IRRIGATION DISTRICTS (Jan. 12, 2004).
11. On April 1, 2004, the Klamath Project Water Users withdrew Contest 3485. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3485 (Apr. 1, 2004).
12. On December 14, 2004, the Claimant, OWRD, the United States of America, the Klamath Tribes, and Rogue River Valley Irrigation District and Medford Irrigation District executed a STIPULATION TO RESOLVE CONTEST 1714 (Settlement Agreement) thereby resolving the remaining contests to Claim 107.
13. On December 27, 2004, the Adjudicator withdrew Case 219 from the Office of Administrative Hearings.
14. Based on the Claimant's map (Claim # 107, Page 73)⁴ OWRD finds Government Lots 19 and 22 described in the Settlement Agreement (Page 3) as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ is incorrect; the correct location of the Government Lots 19 and 22 is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$.

² Berlva Pritchard voluntarily withdrew from Contest 3485 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3485 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

⁴ This original Mylar map contains an error in the legal description, whereby the range is incorrectly listed as 7.5 East. Although this was corrected to 7.0 East in the Settlement Agreement, this correction is not shown on the claimant's original Mylar map at Claim # 107, Page 73.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, the Klamath Tribes, and Rogue River Valley Irrigation District and Medford Irrigation District is adopted and incorporated as if set forth fully herein, with the exception of a scrivener's error in the location of Government Lots 19 and 22 as described in Finding 14, above; the location of Government Lots 19 and 22 is corrected to the NE¼ SW¼.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 107 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 107
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 107, PAGE 73

CLAIMANT: JELD-WEN, INC
401 HARBOR ISLES BLVD
KLAMATH FALLS, OR 97601

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to KLAMATH RIVER

PURPOSE OR USE: INDUSTRIAL USE AND FIRE SUPPRESSION

RATE OF USE:
1.0 CUBIC FOOT PER SECOND, MEASURED AT THE POINT OF DIVERSION, NOT TO EXCEED 100.0 ACRE FEET PER YEAR

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	7 E	WM	15	NW SW	21	515 FEET SOUTH AND 200 FEET WEST FROM NE CORNER, GOV'T LOT 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

INDUSTRIAL USE and FIRE SUPPRESSION					
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	7 E	WM	15	NE SW	19
36 S	7 E	WM	15	NE SW	22
36 S	7 E	WM	15	NW SW	20
36 S	7 E	WM	15	NW SW	21

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
THOMAS WALL GRIFFITH,	)	DETERMINATION
LISA GAYE GRIFFITH,)	
DOUGLAS EUGENE PARKER, AND)	
JUDY ANN PARKER	)	Water Right Claim 108
_____)	
)	

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 30, 1991, STEVEN N. BECK timely submitted a Statement and Proof of Claim (Claim 108) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 108 was submitted for a total of 11.0 cfs of water from the Sprague River, a tributary of the Williamson River for irrigation of 440.0 acres with incidental livestock watering of 350 head. The claimed period of use is May 1 to October 1. The claimed priority date is "1864."
3. STEVEN N. BECK signed Claim 108 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 approved for irrigation but for a smaller quantity of water and fewer acres than claimed, and with a longer season of use than claimed.
5. The property appurtenant to Claim 108 was ultimately transferred to THOMAS WALL GRIFFITH, LISA GAYE GRIFFITH, DOUGLAS EUGENE PARKER, AND JUDY ANN PARKER (Claimants). *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M98, PAGE 13305 (April 20, 1998) (Claim # 108, Page 96).

6. On May 8, 2000, the Claimants timely filed Contest 3105 to the Preliminary Evaluation of Claim 108.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3486: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3753 to the Claim and Preliminary Evaluation of Claim 108.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4140 to the Claim and Preliminary Evaluation of Claim 108.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 220.
11. On November 17, 2005, the Claimants, OWRD, the United States of America, the Klamath Tribes and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all contests to Claim 108.
12. On November 21, 2005, the Adjudicator withdrew Case 220 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, the Klamath Tribes and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3486 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3486 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3486 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 108 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 108
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 108 SETTLEMENT MAP (Nov. 14, 2005)

CLAIMANT: THOMAS WALL GRIFFITH
LISA GAYE GRIFFITH
DOUGLAS EUGENE PARKER
JUDY ANN PARKER
4582 FRESHWATER RD
WILLIAMS, CA 95987

SOURCE OF WATER:
A SLOUGH on the SPRAGUE RIVER, a tributary of the WILLIAMSON RIVER

PURPOSE OR USE: IRRIGATION OF 150.0 ACRES.

RATE OF USE:
3.75 CUBIC FEET PER SECOND (CFS) FOR IRRIGATION 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	10 E	WM	3	SW SE	1060 FEET NORTH AND 2200 FEET WEST FROM SE CORNER, SECTION 3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	10 E	WM	2	SW NW	24.8
36 S	10 E	WM	2	SE NW	17.4
36 S	10 E	WM	2	NE SW	31.4
36 S	10 E	WM	2	NW SW	40.0
36 S	10 E	WM	2	SW SW	10.4
36 S	10 E	WM	3	SE SE	26.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
LYNNE R. CABRAL, AND	)	DETERMINATION
D. G. AND JEAN RICHARDSON)	
_____)	
	)	Water Right Claim 109

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 22, 1991, RICHARD CABRAL timely submitted a Statement and Proof of Claim (Claim 109) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 109 was submitted for a total of 12.2 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of approximately 500 acres. The claimed period of use is April 15 to October 15. The claimed priority date is "1864."
3. RICHARD J. CABRAL signed Claim 109 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 109 was transferred to LYNNE R. CABRAL, and D. G. AND JEAN RICHARDSON (Claimants) from RICHARD J. CABRAL. *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M93, PAGE 12026 (April 29, 1993) (Claim # 109, Page 0025).
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 approved, but for a smaller quantity of water and fewer acres than claimed, and with a longer season of use than claimed.
6. On May 1, 2000, the Claimants timely filed Contest 42 to the Preliminary Evaluation of Claim 109.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3487: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3754 to the Claim and Preliminary Evaluation of Claim 109.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4141 to the Claim and Preliminary Evaluation of Claim 109.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 221.
11. On March 15, 2005, the Claimants, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all contests to Claim 109.
12. On March 17, 2005, the Adjudicator withdrew Case 221 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3487 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

² Berlva Pritchard voluntarily withdrew from Contest 3487 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3487 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 109 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 109
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 109, PAGE 60

CLAIMANT: LYNNE R. CABRAL
D. G. AND JEAN RICHARDSON
21910 SPRAGUE RIVER ROAD
CHILOQUIN, OR 97624

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

PURPOSE OR USE: IRRIGATION OF 312.8 ACRES FROM PUMP #2.

RATE OF USE:

7.82 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:

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

PERIOD OF ALLOWED USE: APRIL 15 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	10 E	WM	3	NW SW	SOUTH 9 DEGREES 50 MINUTES EAST, 3480 FEET FROM NW CORNER, SECTION 3

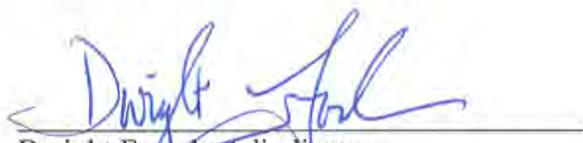
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM PUMP #2					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	10 E	WM	3	NW SW	2.0
36 S	10 E	WM	4	SW NE	20.0
36 S	10 E	WM	4	SW NW	14.7
36 S	10 E	WM	4	SE NW	37.0

IRRIGATION FROM PUMP #2					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	10 E	WM	4	NE SW	40.0
36 S	10 E	WM	4	NW SW	35.0
36 S	10 E	WM	4	SW SW	35.0
36 S	10 E	WM	4	SE SW	36.0
36 S	10 E	WM	4	NE SE	16.1
36 S	10 E	WM	4	NW SE	39.0
36 S	10 E	WM	4	SW SE	20.0
36 S	10 E	WM	4	SE SE	18.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
RICHARD M. BROWN	)	DETERMINATION
_____)	
	)	Water Right Claim 110

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 110 and its associated contests (3488, 3755, and 4142) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 222.
2. The property appurtenant to Claim 110 was transferred on September 30, 1999, to RICHARD M. BROWN (Claimant) (PO BOX 1078, CRESCENT CITY, CA 95531) from the original claimant, GLORIA E. CAMPBELL [See LETTER dated January 4, 2000, (Claim # 110, Page 68)].
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR LEGAL RULING AND FOR PROPOSED ORDER DENYING CLAIM on August 31, 2004 (Proposed Order).
4. No exceptions were filed to the Proposed Order.
5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.6, below, and (2) the "Opinion" is adopted with modifications, as set forth in Section A.7, below.

6. **Findings of Fact.**

- a. Within Footnote #3 of Proposed Order Finding of Fact #11, OWRD removed the ALJ's discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

Reason for Modification: To correct and clarify the elements of a Walton water right.

- b. Proposed Order Finding of Fact #11 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~striketrough~~" text):

(11) Through Mr. Brown's deemed admissions, he has admitted, among other things, that: (1) he has not provided sufficient title information regarding Indian ownership of the claimed place of use and/or transfer of the property to non-Indian ownership (*See* Ex. A, p. 5-6, RFA Nos. 2-4; Ex. B, p. 4-5, RFA Nos. 1-2.); (2) the claimed place of use was not irrigated by the last Indian owner (*See* Ex. A, p. 6, RFA No. 5; Ex. B, p. 5, RFA Nos. 3 & 5.); (3) the claimed place of use was not developed for irrigation by the first non-Indian owner within a reasonable period of time (*See* Ex. A, p. 6, RFA No. 6; Ex. B, p. 5, RFA No. 4.); and (4) the claimed place of use has not been continually irrigated since it was first owned by a non-Indian (*See* Ex. A, p. 6, RFA No. 7.); ~~and (5) Claim 110 fails to meet all the basic elements of a Walton claim. ²; elements three through five.³~~

Reason for Modification: The deleted text is a conclusion of law derived from the Mr. Brown's deemed admissions, but is not itself a deemed admission. The failure to establish elements of a *Walton* claim is dealt with in the Proposed Order's "Opinion" section, as modified below.

7. **Opinion.**

- a. The third and fourth paragraphs of the Proposed Order's "Opinion Section is modified as follows (additions are shown in "underline" text, deletions are shown in "~~striketrough~~" text):

Mr. Brown is deemed to have admitted, among other things, that he has not provided sufficient title information regarding Indian ownership of the claimed place of use and/or transfer of the property to non-Indian, that the

claimed place of use was not irrigated by the last Indian owner, that the claimed place of use was not developed for irrigation by the first non-Indian owner within a reasonable period of time, and that the claimed place of use has not been continually irrigated since it was first owned by a non-Indian, ~~and that~~ As a result, Claim 110 fails to meet certain of the required ~~basic~~ elements of a Walton claim, ~~elements three through five~~.

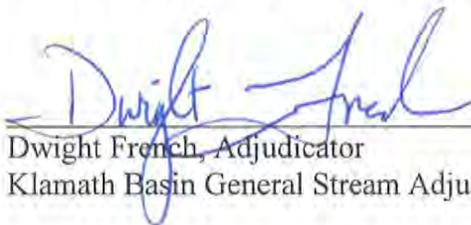
The United States and the Klamath Tribes, who seek denial of Mr. Brown's claim in its entirety on the basis that he has admitted that he cannot establish ~~the basic~~ certain required elements of a Walton claim, ~~elements three through five~~, are entitled to the ruling they seek.

Reason for Modification: To conform the "Opinion" to the modified "Findings of Fact" and to the incorporated GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above, and (2) the "Opinion" is adopted with modifications, as set forth in Section A.7, above
2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 110 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

**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
C. B. CHAPLINE AND	)	DETERMINATION
JO I. CHAPLINE)	
_____	)	Water Right Claim 111

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 February 1, 1991, C. B. CHAPLINE AND JO I. CHAPLINE (Claimants) (PO BOX 1263, ELY, NV 89301) timely submitted a Statement and Proof of Claim (Claim 111) 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 111 was submitted for an “unknown” quantity of water from the Sprague River, for irrigation of 40 acres and livestock watering of 3 head, with a season of use “April – June.” The claimed priority date is prior to February 24, 1909.
3. 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.
4. The Claimants did not file a contest to the Preliminary Evaluation of Claim 111.
5. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3392: 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 Pritchard, Don Vincent, Randy Walthall,

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3392 on January 16, 2004. See VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

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.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 11.
7. On March 28, 2002, the OWRD and Klamath Project Water Users executed STIPULATION TO RESOLVE CONTEST 3392 (Settlement Agreement) which resolved the only contest to Claim 111.
8. On March 27, 2002, the Adjudicator withdrew Case 11 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. 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.
3. Based on the file and record herein, IT IS ORDERED that Claim 111 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

**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
SARAH A. DEXTER,	)	DETERMINATION
ALTA M. VAN SICKLE, AND)	
LLOYD D. VAN SICKLE)	
_____	)	Water Right Claim 112

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, SARAH A. DEXTER, ALTA M. VAN SICKLE, AND LLOYD D. VAN SICKLE (Claimants) timely submitted a Statement and Proof of Claim (Claim 112) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 112 was submitted for 2.76 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 110.4 acres, plus 900 gallons per day for livestock watering of 58 head. The claimed period of use is year-round for livestock watering, and May 1 to October 1 for irrigation. The claimed priority date is "1864."
3. SARAH A. DEXTER and ALTA M. VAN SICKLE signed Claim 112 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 for livestock watering and irrigation was approved, but for a smaller quantity of water than claimed and with a longer irrigation season than claimed.
5. On May 8, 2000, the United States of America timely filed Contest 3756 to the Claim and Preliminary Evaluation of Claim 112.
6. On May 8, 2000, the Klamath Tribes timely filed Contest 4143 to the Claim and Preliminary Evaluation of Claim 112.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 223.
8. On July 19, 2004, the Claimants, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all contests to Claim 112.
9. On July 27, 2004, the Adjudicator withdrew Case 223 from the Office of Administrative Hearings.
10. OWRD finds that livestock watering is limited to 58 head, the number originally claimed.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein exception of paragraph B.2.; this paragraph is not pertinent to the determination of a water right claim.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Livestock watering is limited to 58 head as described in Finding 10, above. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
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.
5. Based on the file and record herein, IT IS ORDERED that Claim 112 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 112
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 112, PAGE 8

CLAIMANT: SARAH A. DEXTER
ALTA M. VAN SICKLE
LLOYD D. VAN SICKLE
PO BOX 375
SPRAGUE RIVER OR 97639

SOURCE OF WATER:
A SLOUGH on the SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 110.4 ACRES AND LIVESTOCK WATERING OF 58 HEAD.

RATE OF USE:
2.7614 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

2.76 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.0014 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 900 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	May 1 - October 1
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

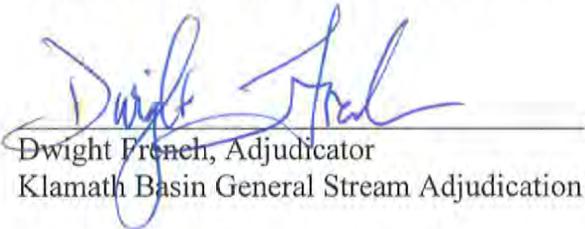
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	10 E	WM	3	SW SE	1580 FEET SOUTH AND 2200 FEET WEST FROM EAST 1/4 CORNER, SECTION 3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	10 E	WM	3	SW NE	19.7
36 S	10 E	WM	3	SE NE	40.0
36 S	10 E	WM	3	NE SE	16.4
36 S	10 E	WM	3	NW SE	26.3
36 S	10 E	WM	3	SW SE	8.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
HICKEY RANCHES, INC	)	DETERMINATION
)	
_____	)	Water Right Claim 113

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 December 7, 1990, HICKEY RANCHES, INC (Claimant) timely submitted a Statement and Proof of Claim (Claim 113) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 113 was submitted for a total of 17.3 cfs of water as follows: 11.06 cfs from the Whiskey Creek, a tributary of the Sprague River, being 11.0 cfs for irrigation and 0.06 cfs for livestock watering; and 6.24 cfs from the Sprague River, a tributary of the Williamson River, being 6.19 cfs for irrigation and 0.05 cfs for livestock watering. The claim did not specify the number of acres claimed for irrigation. The number of head claimed for livestock watering is "600-1000." The claimed period of use is April 1 to October 15. The claimed priority date is "1864."
3. ANDY HICKEY, as secretary of HICKEY RANCHES, INC signed Claim 113 attesting that the information contained in the claim is true.
4. On June 28, 1991, Claim 113 was amended to specify the number of acres irrigated as 370.
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 portion of the claim from Whiskey Creek was approved for irrigation and livestock watering, but for but for a smaller quantity of water and fewer acres than claimed for irrigation, and with a longer season of use than claimed for irrigation and livestock watering.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3489: 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. On May 8, 2000, the United States of America timely filed Contest 3757 to the Claim and Preliminary Evaluation of Claim 113.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4144 to the Claim and Preliminary Evaluation of Claim 113.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 224.
10. On December 8, 2004, the Office of Administrative Hearings issued an ORDER ON RECONSIDERATION which limited the Claimant to a total of 186.9 acres based on payment of filing fees.
11. On January 28, 2005, the Klamath Tribes withdrew Contest 4144. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 28, 2005).
12. On October 10, 2005, the Claimant, OWRD, the United States of America, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 113.
13. On October 11, 2005, the Adjudicator withdrew Case 224 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3489 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3489 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3489 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. The ORDER ON RECONSIDERATION (Dec. 8, 2004), referenced in Finding 10, above, is adopted and incorporated as if set forth fully herein.
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.
5. Based on the file and record herein, IT IS ORDERED that Claim 113 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 113
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 113 SETTLEMENT MAP (Oct. 4, 2005)

CLAIMANT: HICKEY RANCHES, INC.
PO BOX 67
MERRILL OR 97633

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

PURPOSE OR USE: IRRIGATION OF 186.9 ACRES.

RATE OF USE:
4.67 CUBIC FEET PER SECOND (CFS) FOR IRRIGATION 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	11 E	WM	11	NE SE	24	1691 FEET NORTH AND 56 FEET WEST FROM SE CORNER, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	11 E	WM	11	NE SE	24	16.2
36 S	11 E	WM	11	SW SE	26	4.5
36 S	11 E	WM	11	SE SE	25	18.8
36 S	11 E	WM	14	NE NE	1	14.3
36 S	11 E	WM	14	NE NE	8	18.8
36 S	11 E	WM	14	NW NE	2	18.5
36 S	11 E	WM	14	NW NE	7	20.0
36 S	11 E	WM	14	SW NE	10	17.3
36 S	11 E	WM	14	SE NE	9	12.0
36 S	11 E	WM	14	NW NW	5	12.5
36 S	11 E	WM	14	SW NW	12	11.0
36 S	11 E	WM	14	SE NW	11	18.8
36 S	11 E	WM	14	SE NW	14	4.2

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
DUANE MARTIN	)	DETERMINATION
_____)	
	)	Water Right Claim 114

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 114 (Claimant: DUANE MARTIN) and its associated contests (3106, 3490, 3758, and 4145) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 225.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 114 on March 23, 2006.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Duane Martin.
4. The exceptions to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 114. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.6, A.7, and A.8, below.
5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Issues" is adopted in its entirety.
 - c. The "Evidentiary Rulings" is adopted in its entirety.
 - d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, below.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, below.

- f. The “Opinion” is adopted with modifications, as set forth in Section A.8, below.
- g. The “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 114. Consistent with Sections A.6, A.7 and A.8, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 45.6 acres.

6. **Findings of Fact.** The Proposed Order’s “Findings of Fact” section is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strike through~~” text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding. A summary of the general reasons for modification is provided here.

Summary of Reasons for Modification of Findings of Fact: (1) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, an issue raised in exceptions. (3) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership, an issue raised in exceptions. (4) To provide evidence from the record to substantiate beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions. (5) To provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions. (6) In each instance where this Partial Order of Determination modifies historical findings of fact made by the ALJ, the Adjudicator has determined that the ALJ’s original finding was not supported by a preponderance of evidence in the record.

Modified Proposed Order Findings of Fact

(1) On or before January 31, 1991, Duane Martin (Claimant) filed a Statement and Proof of Claim as a non-Indian successor to a Klamath Indian Allottee for water from the Sprague River, a tributary of the Williamson River, which is a tributary of the Klamath River. His claim is No.114 for an Indian reserved right for ~~practicably irrigable~~ aereage irrigation of 781.4 acres from three points of diversion with a season of use April 1 through October 31. (OWRD Ex. 1 at 1-7.) His claim consists of 13 allotments he owns, which have been consolidated under Claimant’s ownership after his purchase in 1987 or 1988. (Book Direct at 5, 8; Ex. U2; Ex. C56 at 9.) All the land included in this claim is within the former boundaries of the Klamath Indian Reservation. All the land included in Claim 114 was allotted by the United States to members of the Klamath Tribes. (Book Direct at 5.) The location of the claim is detailed in OWRD Ex. 1 at ~~6-7~~ 70-71.

Reason for Modification: To correct and provide additional citations to the record; using evidence on the record, to provide more specific information with reference to what was claimed.

(2) The claimed purposes is irrigation for pasture and grass hay. ~~The claim is for less than 1.80 acre-feet per acre for irrigation. (Book Direct Testimony at 4 OWRD Ex. 1 at 1.)~~ Claimant has state water rights on the majority of the claimed lands, with priority dates of 1921 (Permit No. 5184 from Whiskey Creek), 1927 (Permit No. 7908 from the Sprague River), ~~or~~ and 1951 (Permit No. 21236 from the Sprague River) for surface water rights, and 1947 (Permit U-216) or 1948 (Permit U-254) for ground water rights. (OWRD Ex. 1 at 13-18, Ex. U22-U24.) Only two of the water right permits are for irrigation from the Sprague River, and were submitted in abstract form to accompany the Statement and Proof of Claim. (OWRD Ex. 1 at 8, 9, 13, 15.) Of these, only Permit No. 21236 specified any rate and duty, being 1/40 of one cfs for each acre irrigated, and 3.0 acre-feet per acre for each acre irrigated during the irrigation season. (OWRD Ex. 1 at 13, 15.) This provides the only evidence of the claimed rate and duty of water. Claimant seeks the reservation's priority date for his allotments. (~~OWRD Ex. 1 at 13 to 19 1, 4.)~~ ; ~~Book Direct, at 15 to 17 Ex. U22-U23.~~)

Reason for Modification: To correct and provide additional citations to the record; using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. The statement that the claim is for less than 1.80 acre-feet per acre was stricken because it is not supported by a preponderance of the evidence on the record; furthermore, no such statement is found in Book's Direct Testimony at 4.

(3) Claimant's claim is based in good part on natural overflow of the Sprague River on his allotments. (Martin Direct at 3-5; Ex. C56 at 21-28, 62-64, 68-72.) He also has asserted that artificial irrigation in his allotments was developed by the first non-Indian owners and the developed irrigation has been continuous since. In addition to natural overflow, the historic artificial irrigation, prior to development of the existing system, was supplied by a ditch diverting water from Whiskey Creek, on a portion of the claimed area, and a pump and ditch diverting from the Sprague River in Allotment 426. Two Six wells were also developed in the mid-1940s, and used for irrigation to on part of the claimed area. (Book Direct at 5, Ex. U22-U24.)

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In the last sentence, two wells was corrected to

six wells, because the finding that only two wells were developed for irrigation on part of the claimed area is not supported by a preponderance of the evidence on the record.

(4) Claimant's claim covers 13 allotments along the south side of the Sprague River in Range 11 East, Township 36 South. Irrigation in this area occurred in three areas—land east of Council Butte in Sections 10 and 11 (“east section,” see Book Direct, Ex. U15), land in Sections 7 and 18 (“west section,” see Book Direct, Ex. U16), and land in Sections 8 and 9 (“middle section”, see Book Direct, Ex. U17). (Book direct at 5.)

(5) The claim in the “east section” is for 152.9 acres in two allotments from Diversion Point No. 3 on the Sprague River. It is about 1.5 miles upstream of the “middle section” of the claim and is not contiguous with the other sections. (Ex. U2; OWRD Ex. 1 at 70-71.) The “east section” is subject to natural overflow from the Sprague River (Martin Direct at 3-5, Ex. C56 at 21-28) and is covered by a state water right from Whiskey Creek with a priority date of 1921. (OWRD Ex. 1 at 17-18.) ~~The Whiskey River~~ Creek joins the Sprague River about one mile upstream from the “east section.” Early development of the “east section” was supplied with water diverted from Whiskey Creek. Irrigation occurred along the Creek prior to 1923. (Book Direct at 17-18.)

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to correct a scrivener's error in the name of Whiskey Creek.

(6) The claim in the “west section” is for 284.3 acres in six allotments from Diversion Point Nos. 1 and 2 on the Sprague River. (Ex. U2; OWRD Ex. 1 at 70-71.) Portions of this section are subject to natural overflow from the Sprague River (Martin Direct at 3-5; Ex. C56 at 68-72) and were irrigated ~~by a~~ under the authority of a 1927 surface water right from the Sprague River and supplemented with a 1948 ground water rights. (Book Direct at 18, Ex. U22; OWRD Ex. 1 at 89.)

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

(7) The claim in the “middle section” is for 344.2 acres in five allotments from Diversion Point No. 2 on the Sprague River. (Ex. U2; OWRD Ex. 1 at 70-71.) Portions of this section are subject to natural overflow from the Sprague River (Martin Direct at 3-

5; Ex. C56 at 62-64, 68-72) and were developed for irrigation in the 1940s using water supplied from ~~with one of~~ the Drew wells and a diversion ~~from~~ on the Sprague River. The Drew wells have a 1947 priority date, ~~and~~ The Sprague diversion has a 1951 water right, which was issued on April 30, 1954, for primary irrigation and for supplemental irrigation on lands otherwise irrigated by the Drew wells. (Book Direct at 18, Ex. U24; OWRD Ex. 1 at 90-91.)

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

(8) The prior ownership, ~~developed~~ beneficial use of water for irrigation, and water priority dates of the allotments are summarized as follows:

Allotment 279 (Sect. 17, T. 36 S, R. 11 E., N½ NE¼, N½ NW¼, "middle section")

Acres 12.2

Allottee: Roxie Barkley (Rosie)

Conveyed to her in 1910. (Ex. U4 at 3; Ex. C3.)

Conveyed to her heir, Clifford Barkley, December 15, 1955. (OWRD Ex. 1 at 102.)

Conveyed from Barkley's heir, Clifford Barkley, to Pierre Dick on December 19, 1955. (OWRD Ex. 1 at 104-105.) Pierre Dick is not listed on the Klamath Tribe Final Roll published in the 1957 Federal Register (Ex. U9).

Conveyed from Dick to Frank Goularte in 1958. (OWRD Ex. 1 at 106-107.)

A Certificate of Appraisement (from an onsite inspection made April 19, 1955) indicates irrigated and/or irrigable acreage within Allotment 279 while under Indian ownership; 140 acres were characterized as agricultural, and 20 acres as grazing. (Ex. C82.)

The ~~irrigation of the~~ 12.2 acres claimed on this allotment appear irrigated from the ditch crossing the northwest corner of the allotment in aerial photos in 1960, after the purchase by Goularte. (Book Direct at 31, Ex. U3.)

Beneficial use of water from the Sprague River was made on this parcel within five years of transfer from Indian ownership.

The point of diversion (POD 1) for this parcel is located in the SW¼ SE¼ Section 7, Township 35 S, Range 11 E, W.M. The claimed water use on this property is at a rate of 1/40 of one cfs per acre, with a duty of 3.0 acre-feet per acre, from April 1 through October 31, with a priority date of October 14, 1864.

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

Allotment 280 (Sect. 8, T. 36 S, R. 11 E., SE¼, "middle section")

Acres 116.1

Allottee: William Barkley

Conveyed to Barkley in 1917. (Ex. U4 at 12; Ex. C112.) Conveyed from William Barkley to non-Indian Charles E. Drew on April 28, 1919. (Id.) On May 27 20, 1927, non-Indians Charles E. Drew and Ida Drew issued a right of way deed to Oregon-California & Eastern Railway Company (OCERC). (Ex. C59-C60; Book Rebuttal at 2.)

The right of way agreement between Drew and OCERC stipulated that the railway company, upon construction of the railway, was to provide suitable passage for cattle under the railroad and install pit cattle guards unless the right of way became fenced. (Ex. C59-C60.) This occurred eight years after the land passed out of Indian ownership.

Based on permits granted with priority dates in 1947 (Permit U-216 to Charles Drew for five groundwater wells) and 1951 (Permit 21236 to Drew to divert surface water), wells were developed for irrigation, and an irrigation system that utilized water from the Sprague River development started was developed. (Book Direct at ~~30~~, 23, 28, and 31; Ex. U3; OWRD Ex. 1 at 90-91.) Application of water under the permit could not have occurred until at least twenty-four years following transfer from Indian ownership.

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To provide additional citations to the record; to correct the date of the right of way deed with the railroad company; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 281 (Sect. 9, T. 36 S, R. 11 E., SW¼, “middle section”)

Acres 22.4

Allottee: Hattie Barkley

Conveyed to her in 1910. (Ex. U6 at 1; Ex. C79.)

Conveyed from US to Charles Drew in 1927. (Ex. U4 at 14; Ex. C79.)

Charles C. E. Drew is listed as a non-Indian purchaser of ~~in~~ Allotment 413 and so designated by Claimant. (Ex. U11 at 3.) The next owner is unknown.

Based on permits ~~granted~~ with priority dates in 1947 (Permit U-216 to Charles Drew for five groundwater wells) and 1951 (Permit 21236 to Drew to divert surface water), irrigation development and application of water to beneficial use did not occur until at least twenty-four years following transfer from Indian ownership. started. (Book Direct, at ~~30~~ 23; Ex. U3; U24; OWRD Ex. 1 at 90-91)

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To correct and provide additional citations to the record; to add clarification using evidence on the record.

Allotment 413 (Sect. 18, T. 36 S, R. 11 E., N½ NE¼, “west section”)

Acres 78.8

Allottee: Julia Jefferson

Conveyed to her in 1910. (Ex. U6 at 2.) She died on July 2, 1923. (Ex. U6 at 4.)

Conveyed from US to non-Indian Charles Drew on October 19, 1920. (Ex. U6 at 3; U-11 at 3; Ex. C75.)

Conveyed from Charles Drew to Fred Haworth on September 14, 1927. (Ex. C113.)

The first irrigation development occurred after the Haworth water rights application was filed in 1927; A certificate based on this application was issued on November 28, 1930. This means that beneficial use was made sometime between the filing of the application and the issuance of the certificate. Beneficial use was therefore made between seven and ten years after it passed from Indian ownership. (Book Direct at 29; OWRD Ex. 1 at 89.)

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 423 (Sect. 8, T. 36 S, R. 11 E., SW¼, "middle section")

Acres 144.6

Allottee: Sarah John

Conveyed to her in 1910. (Ex. U6 at 5.)

Conveyed from US to non-Indian Luke Walker in 1919. (Book Direct, Ex. U4 at 13; Ex. C77-C78; OWRD Ex. 1 at 96; Ex. U11 at 7.)

On May 20, 1927, non-Indians Charles E. Drew and Ida Drew issued a right of way deed to Oregon-California & Eastern Railway Company (OCERC). (Ex. C59-C60; Book Rebuttal at 2.) The right of way agreement between Drew and OCERC stipulated that the railway company, upon construction of the railway, was to provide suitable passage for cattle under the railroad and install pit cattle guards unless the right of way became fenced. (Yockim Affidavit, Ex. 59-60.) This occurred eight years after the land passed out of Indian ownership.

Irrigation development using ground water occurred in 1947 (Permit U-216 to Charles Drew for five groundwater wells), and In 1951 an irrigation system that utilized water from the Sprague River was developed (Permit 21236 to Drew to divert surface water). (Book Direct at ~~30~~ 31; Ex. U3; OWRD Ex. 1 at 90-91.) Application of water under the permit could not have occurred until at least thirty-two years following transfer from Indian ownership.

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 424 (Sect. 8, T. 36 S, R. 11 E., S½ N½, “middle section”)

Acres 48.9

Allottee: Alonzo Weeks

Conveyed to him in 1910. (Ex. U6 at 6.)

Conveyed from US to non-Indian Charles Drew in 1927. (Ex. U4 at 10; Ex. C89.)

Irrigation development using ground water occurred in 1947 (Permit U-216 to Charles Drew for five groundwater wells), and In 1951 an irrigation system that utilized water from the Sprague River was developed (Permit 21236 to Drew to divert surface water). (Book Direct at ~~30~~ 31; Ex. U3; OWRD Ex. 1 at 90-91.) Application of water to beneficial use did not occur until at least twenty-four years following transfer from Indian ownership.

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To correct and provide additional citations to the record; to add clarification using evidence on the record.

Allotment 426 (Sect. 18, T. 36 S, R. 11 E., N½ NW¼, SW¼ NW¼, “west section”)

Acres 67.2

Allottee: Duffie Tupper

Conveyed to him in 1910 (Ex. U6 at 7; Ex. C2.)

Conveyed from US to Watson “Duffy” Tupper in 1918. (Ex. U6 at 8, Ex.U4 at 2; Ex. C2, Ex. C62.)

Conveyed from non-Indian Charles Drew to Fred Haworth on September 14, 1927. (Ex. C113.)

There is insufficient evidence on the record of the date of conveyance from Indian ownership. Irrigation development using water from the Sprague River started with the 1927 Haworth water right. (Book Direct at 29; Ex. U3; OWRD Ex. 1 at 89.) Based on the last known date of ownership by a Klamath Indian (1918), as many as nine years could have passed following transfer of the parcel from Indian ownership until development began, and as many as twelve years could have passed until water was applied to

beneficial use (based on the issuance of a certificate for this application on November 28, 1930).

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 428 (Sect. 18, T. 36 S, R. 11 E., E½ SW¼, SE¼ SW¼, "west section")

Acres 0.6

Allottee: Duffie Tupper

Conveyed to him as a trust patent in 1910 (Ex. U6 at 9; Ex. C61.)

Conveyed from USA to Watson Duffy Tupper, an heir of Duffie Tupper, as a fee patent in 1927. (Ex. U6 at 10.)

Conveyed from US to Bly Lumber Co. ~~in~~ on January 25, 1957 (OWRD Ex. 1 at ~~100~~ 110), to Esther ~~Duffy~~ Tupper Wilson (a Klamath Indian) ~~in~~ on August 29, 1957 (OWRD Ex. 1 at 111), and to ~~Martin~~ Marlin Dale Wilson ~~in~~ on March 26, 1959 (OWRD Ex. 1 at 112). Marlin Dale Wilson is listed on the Klamath Tribe 1957 Final Roll. ~~but no Martin Dale Wilson.~~ (Ex. U9.)

This allotment received water on the claimed area of 0.6 acres from the Hess Wells, put in place in the 1950s. (Book Direct at 30; Ex. U3.)

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In addition, the names "Ester Duffy Wilson" and "Martin Dale Wilson" were changed/corrected to reflect the names as they appear on the deeds; a BARGAIN AND SALE DEED dated August 29, 1957 lists a Esther Tupper Wilson as the grantee (OWRD Ex. 1 at 111), and a DEED, COUNTY OF KLAMATH, VOL 311, PAGE 21, dated March 26, 1959 (OWRD Ex. 1 at 112) lists a Esther Tupper Wilson as the grantor conveying the property to a Marlin Dale Wilson.

Allotment 439 (Sect. 7, T. 36 S, R. 11 E., S½ SE¼, “west section”)

Acres 31.5

Allottee: Bill Wild (Wild Bill Squire)

Conveyed to him as a trust patent in 1910. (Ex. U6 at ~~10~~ 11.)

Conveyed to Fred Haworth as a fee patent in 1927. (Ex. U6 at ~~11~~ 12; Ex. C11.)

Haworth is not listed on the Klamath Tribe 1957 Final Roll (Ex. U9) and Claimant considers him to be the first non-Indian owner. (Ex. U10.) Haworth owned it until at least 1956.

A Certificate of Appraisalment (from an onsite inspection made on January 25, 1926) shows that, while under Indian ownership, Allotment 439 was being used for grazing; 80 acres were characterized as grazing land with wire fence improvements in place. (Ex. C68.)

At the time of conveyance from Indian ownership, Haworth filed for Sprague River water rights and claimed land on this and Allotment 440 as part of the area served. He received state water Permit 7908 and after perfecting the permit, Certificate 8896 was issued. (Book Direct at 21; Ex. U3; OWRD Ex. 1 at 89.) Book testified that except for 27.1 acres, aerial photographs taken in 1940 or 1941, 1953, and 1960 show no irrigation, or limited irrigation, on this allotment. (Book Direct at 26, 27, 30; Exs. U29-U32.) ~~these two allotments were not continuously irrigated after the Haworth irrigation system was developed, based on aerial photographs from 1940 to 1969.~~ After 1969, this area received water from the system in Section 8, with water diverted from Diversion Point No. 2, consistent with the current operation on the claim. (Book Direct at ~~21, 30, Ex. U3;~~ OWRD Ex. 1 at 89.)

Beneficial use of water from the Sprague River by the method of natural overflow was made on this parcel prior to transfer from Indian ownership.

The points of diversion for this parcel are located in the SW¼ SE¼ Section 7, Township 35 S, Range 11 E, W.M. (POD 1) for 3.6 acres, and the NW¼ SE¼ Section 8, Township 35 S, Range 11 E, W.M. (POD 2) for 27.9 acres. The claimed water use on this property is at a rate of 1/40 of one cfs per acre, with a duty of 3.0 acre-feet per acre, from April 1 through October 31, with a priority date October 14, 1864.

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 440 (Sect. 7, T. 36 S, R. 11 E., N½ SE¼, "west section")

Acres 28.4

Allottee: Minnie Smithson

Conveyed to her as a trust patent in 1910. (Ex. U6 at 13; Ex. C70.)

A fee patent conveyed from the US to non-Indian Fred Haworth in 1927. (Ex. U4 at 4; Ex. C74.) Haworth owned it until at least 1956.

A Certificate of Appraisement (from an onsite inspection made on February 9, 1921) shows that, while under Indian ownership, Allotment 440 was being used for grazing, and that there were established fences. (Ex. C71.) A subsequent inspection made on January 25, 1926 characterized 80 acres as grazing land. (Ex. C73.)

At the time of conveyance from Indian ownership, Haworth filed for Sprague River water rights and claimed land on this and Allotment 439 as part of the area served. He received state water Permit 7908 and after perfecting the permit, Certificate 8896 was issued. (Book Direct at 21; Ex. U3; OWRD Ex. 1 at 89.) Book testified that, except for 27.1 acres, aerial photographs taken in 1940 or 1941, 1953, and 1960 show no irrigation, or limited irrigation, on this allotment. (Book Direct at 26, 27, 30; Exs. U29-U32.) ~~these two allotments were not continuously irrigated after the Haworth irrigation system was developed, based on aerial photographs from 1940 to 1969.~~ After 1969, this area received water from the system in Section 8, with water diverted from Diversion Point No. 2, consistent with the current operation on the claim. (Book Direct at 21, 30; ~~Ex. U3; OWRD Ex. 1 at 89.~~)

Beneficial use of water from the Sprague River by the method of natural overflow was made on this parcel prior to transfer from Indian ownership

The point of diversion (POD 2) for this parcel is located in the NW¼ SE¼ Section 8, Township 35 S, Range 11 E, W.M. The claimed water use on this property is at a rate of 1/40 of one cfs per acre, with a duty of 3.0 acre-feet per acre, from April 1 through October 31, with a priority date October 14, 1864.

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 865 (Sect. 10, T. 36 S, R. 11 E., SE¼, "east section")

Acres 72.9

Allottee: Horace Taylor

Conveyed to him as a trust patent in 1910. (Ex. U6 at 15; Ex. C92.)

A fee patent conveyed from the USA to Charles Snelling in 1914. (OWRD Ex. 1 at 97; Ex. C92.) The transaction is listed as "Indian Lands Sold to White Men." (Ex. U11 at 6.) and Claimant considers Snelling to be the first non-Indian owner of the allotment. The property was later conveyed to Marvin Cross (OWRD Ex. 1 at 98) and then to Charles E. Drew (OWRD Ex. 1 at 99). No evidence that Snelling or Cross, the first two non-Indian owners, developed an irrigation system on this allotment.

Although this allotment is also located at the end of the Turner-George Ditch, which diverted water from Whiskey Creek, with a priority date of 1921- (Book Direct at 28-29; Ex. U3), the claimed source of water for Claim 114 is the Sprague River. There is no evidence on the record of beneficial use of water from the Sprague River being made with reasonable diligence after transfer from Indian ownership. Irrigation from Whiskey Creek on this allotment started after 1921, as developed by Charles E. Drew. (Book Direct at 28-29.) The earliest evidence of development of irrigation from Whiskey Creek comes from a Notice of Prosecution of Work with Diligence, dated September 22, 1922. In the document, Mr. Drew states that he "enlarged old ditch and constructed new ditch" between August 15, 1921, and August 15, 1922, in order to serve the property. (Book Direct at Ex. U14.) Only a portion of the claimed area has been irrigated since development, about 100 acres from the old ditch and 60 acres from the Sprague River. (Book Direct at 28-29; Ex. U3.)

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 867 (Sect. 11, T. 36 S, R. 11 E., W½ SW¼, “east section”)

Acres 80.0

Allottee: Emma Taylor

Conveyed to her as a trust patent in 1910. (Ex. U6 at 16.)

A fee patent conveyed from the US to B.S. Grigsby in 1914. (OWRD Ex. 1 at 100; Ex. U4 at 6; Ex. C6, Ex. C93.) The transaction is listed as “Indian Lands Sold to White Men.” (Ex. U11 at 6.) and Claimant considers Grigsby to be the first non-Indian owner of the allotment. In 1914, the property was conveyed from Grigsby and Emma Grigsby to Charles Snelling. No evidence that Snelling or Grigsby, the first two non-Indian owners, developed an irrigation system on this allotment. (OWRD Ex. 1 at 101.)

Although this allotment is located at the end of the Turner-George Ditch, which diverted water from Whiskey Creek, with a priority date of 1921- (Book Direct at 28-29; Ex. U3), the claimed source of water for Claim 114 is the Sprague River. There is no evidence on the record of beneficial use of water from the Sprague River being made with reasonable diligence after transfer from Indian ownership. Irrigation from Whiskey Creek on this allotment started after 1921, as developed by Charles E. Drew. (Book Direct at 28-29; ~~Ex. U3.~~) The earliest evidence of development of irrigation from Whiskey Creek comes from a Notice of Prosecution of Work with Diligence, dated September 22, 1922. In the document, Mr. Drew states that he “enlarged old ditch and constructed new ditch” between August 15, 1921, and August 15, 1922, in order to serve the property. (Book Direct at Ex. U14.)

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: To provide additional citations to the record; the ALJ’s proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

Allotment 1562 (Sect. 18, T. 36 S, R. 11 E., S½ NE¼, SE¼ NW¼, NE¼ SW¼, “west section”)

Acres 77.8

Allottee: Samuel Clinton

A fee patent conveyed from the US to Samuel Clinton ~~in~~ on March 25, 1918. (Ex. U4 at 1.) The property was then conveyed to B.E. Wolford ~~in~~ on June 18, 1918. (Ex. U5 at ¶ 2.) B.E. Wolford is not listed on the Klamath Tribe Final Roll and Claimant considers Wolford the first non-Indian owner of the allotment. Wolford conveyed the property to John and Emma Jackson ~~in~~ on August 7, 1918. (Ex. U5 at ¶ 1.) A John Jackson is listed on the 1914 census of the Klamath Tribe. Charles and Iva Drew conveyed the property to Fred Haworth on September 14, 1927. (Ex. C113.) There is a broken chain of title between the Jacksons and the Drews.

Development of six acres of this allotment occurred in conjunction with the 1927 Haworth water right. Given the broken chain of title between the Jacksons and the Drews, August 7, 1918 is the last known date of Indian ownership. As many as nine years could have passed following transfer of the parcel from Indian ownership until development began, and as many as twelve years could have passed until water was applied to beneficial use (based on the issuance of a certificate for this application on November 28, 1930). Additional land was brought into irrigation after 1947, some 30 years after conveyance from Indian ownership. (Book Direct at 30; Ex. U3; OWRD Ex. 1 at 89.)

Beneficial use of water from the Sprague River with reasonable diligence has not been demonstrated on this parcel.

Reason for Modification: The ALJ’s proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

(9) USA Witness Dale Book has a master’s degree in civil engineering, with specialty in water resources planning and management. He has been self-employed as a water rights analyst since 1984. (Ex. U1.) He is qualified as an expert pursuant to Rule 702 in civil engineering and aerial photography interpretation. (Stipulated record of the hearing on May 4, 2005, cross-exam of Book.)

(10) Based on his professional opinion and expertise, Book makes the following factual conclusions, which are supported by a preponderance of the evidence, in reference to Claimant's claim, ~~pursuant to various *Walton* holdings:~~

~~653.7 acres in Allotments 279, 280, 281, 413, 423, 424, 865, 867, and 1562 did not meet the *Walton* standards because they were not developed by original Indian allottees or *first* non-Indian owners.~~

~~32.8 acres in allotments 439 and 440 may have met the initial *Walton* criteria, but were not in continuous use.~~

~~The first conveyance to a non-Indian owner was not established with respect to 67.2 acres in Allotment 426, did not meet the *Walton* standards because the date of the first conveyance to a non-Indian owner was not established.~~

27.1 acres in Allotments 439 and 440 meet the *Walton* standards. Allotments 439 and 440 passed out of Indian ownership in 1927 and have been authorized for irrigation from the Sprague River with a state water right since 1930. Except for 27.1 acres, aerial photographs taken in 1940 or 1941, 1953, and 1960 show no irrigation, or limited irrigation, on Allotments 439 and 440. (Book Direct at 26, 27, 30; Exs. U29-U32.) The season of use is April 1 through October 31, as requested by Claimant. (Book Direct at 32; Affidavit and Rebuttal of Book at 3.)

Reason for Modification: The ALJ qualified Book as an expert in civil engineering and aerial photography, and his testimony pertaining to these subjects is entitled to significant weight. Book also gave his opinions as to whether the claimed lands were eligible for *Walton* rights. This involves an application of fact to law, and is the province of the decision maker, not the witness. The Department has removed the ALJ's incorporation of Book's "findings" with respect to eligibility for *Walton* rights, since these constitute conclusions of law rather than statements of fact. In addition, the ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

(11) Book further opined the following regarding duty of water: For the claim area covered by Allotments 279, 413, 426, 428, 439, 440, 865, 867, and 1562, Book's testimony supports the application of water not to exceed 3.5 acre-feet/acre. ~~the water diverted from the *Walton* right should be limited such that the total water delivered to the approved acreage, in combination with water delivered from the well, does not exceed 3.5 acre-feet/acre, the standard duty for the Klamath Basin. (Book Direct at 33.) The Claimant claimed only 3.0 acre-feet per acre.~~

Reason for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record. In addition, a duty of 3.5 acre-feet per acre as opined by Book is not supported by a preponderance of the evidence on the record. Furthermore, the method of determining the duty of surface water use in combination with groundwater use involves an issue of law, not fact, and is not the appropriate subject of a finding of fact.

(12) Book finally opined the following regarding rate of diversion:

The rate of discharge should be based on the measured pumping rate for the facilities in place documented in the record at OWRD Ex. 1 at 69. According to Book, the rate should be prorated to the amount of acreage approved for the *Walton* right. (Book Direct at 33.) However, for any of the parcels where the elements of a *Walton* claim are established, the rate should be based on 1/40 of one cfs per acre as claimed, not to exceed the claimed pumping rate.

Reason for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record. In addition, the non-standard method of determining rate by prorating acreage according to a measured pumping rate involves an issue of law, not fact, and is not the appropriate subject of a finding of fact.

7. **Conclusions of Law.** The Proposed Order's "Conclusions of Law" section is modified as follows (additions are shown in "underline" text, deletions are shown in "~~striketrough~~" text):

1. Beneficial use of water by the method of natural overflow ~~does not constitute~~ is a valid basis for a *Walton* water right. However, except for Allotments 439 and 440, the evidence on the record does not establish beneficial use of water by the method of natural overflow.

2. Claimant has not provided sufficient title information to establish a *Walton* water right in Allotment 426.

3. Claimant has not provided sufficient evidence of the reasonably diligent development and/or continuous use of beneficial use of water for irrigation needed to establish a *Walton* water right in Allotments 279, 280, 281, 413, 423, 424, 428, 865, 867, and 1562. and 32.8 acres in allotments 439 and 440. Claimant has established a *Walton* water right for ~~27.1~~ 59.9 acres in Allotments 439 and 440, and 12.2 acres in Allotment 279.

Reasons for Modification: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the record, as described in the modified opinion section, below, supports conclusions other than those in the 2006 Proposed Order.

8. **Opinion.** The Proposed Order's "Opinion" section is modified as described herein.

OWRD has removed the ALJ's discussions regarding the elements of a *Walton* claim, including the first non-Indian purchaser rule, and regarding natural overflow and subirrigation of water as a basis for a *Walton* claim. The deleted paragraphs are noted below as "*****". In their place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

The remaining portions of the Opinion section of the ALJ's Proposed Order have been labeled "Application of Walton Elements to the Modified Proposed Order Findings of Fact." Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

Application of Walton Elements to the Modified Proposed Order Findings of Fact

Claimant has the burden of establishing his claim for a *Walton* water right by a preponderance of the evidence. ORS 539.110;¹ ORS 183.450(2);² OAR 690-028-0040(1).³ See also *Cook v. Employment Div.*, 47 Or App 437 (1980) (In the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact-finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). As explained below, Claimant did not meet this burden, except for Allotment 279 and a portion of Allotments 439 and 440.

¹ " * * * The evidence in the proceedings shall be confined to the subjects enumerated in the notice of contest. The burden of establishing the claim shall be upon the claimant whose claim is contested."

² " * * * The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position."

³ "Each claim or registration statement for existing beneficial uses shall be compared to all information submitted for consistency regarding settlement of the area and general development of projects. The burden of proof to establish a claim by a preponderance of relevant evidence rests on the claimant."

1. Natural flooding/ natural overflow

There is no dispute that the land in Claim 114 was formerly part of the Klamath Indian Reservation, that the land was allotted to Klamath tribal members, and that the land was transferred to non-Indians. Claimants assert a water right of ~~less than 1.8 acre-feet per acre~~ for irrigation of 781.4 acres used for grass hay and pasture for livestock, based in good part on natural overflow of the Sprague River. As evidenced by permit abstract No. 21236 submitted by the Claimant to accompany the Statement and Proof of Claim, the claimed rate is 1/40 of one cfs per acre and duty is 3.0 acre-feet per acre during a season of use April 1 through October 31.

2. Sufficient title information

Claimant has not provided sufficient title information to establish a *Walton* water right in Claimant's Allotment 426. Specifically, Claimant has provided no evidence of the date of the first non-Indian purchase of the allotment, ~~and the purchaser's name.~~ Therefore, the Claimant has not established that ~~the additional~~ beneficial use of water use was developed made with reasonable diligence, ~~by the first purchaser of land from an Indian owner or that, after initial development, the water claimed must have been continuously used by the first non-Indian successor and all subsequent successors.~~

3. Sufficient information of the ~~development or continuous use~~ beneficial use of water with reasonable diligence

The evidence for some of the allotments raises a question of ~~diligent development~~ beneficial use of water being made with reasonable diligence. Claimant argues that there should be ~~no time limit~~ a reasonable time period without unreasonable delay within which to exercise due diligence. The United States argues ~~more persuasively that,~~ because there is no applicable federal law, state law should be consulted and that, based on state law, five years is a reasonable time limit, unless Claimant shows good cause reasons for a longer period of time. ~~Oregon has adopted this time limit in~~ Caselaw has established that five years is sufficient for reasonably diligent development in at least some factual circumstances. See *Seaward v. Pacific Livestock Co.*, 49 Or 157, 160-162 (1907). In addition, five years is the default period for application of water to a beneficial

~~use under the Water Rights Act, unless an extension is granted. ORS 537.230(1) for pre-1909 claims and it is the time limit used by Oregon in ORS 537.230(1)⁴ for completion of works necessary to put water to beneficial use. Moreover, five years of non-use creates a “rebuttable presumption of forfeiture” of a water right. However, the period for reasonably diligent development is ultimately a fact-dependent determination. The time period to make beneficial use of water with reasonable diligence for a *Walton* claim is that which does not require unusual or extraordinary effort, absent extraordinary circumstances. ORS 540.610(1) (Oregon Administrative Rule 690-028-0045).⁵ Therefore, generally five years is considered the an appropriate time length for reasonable due diligence, absent evidence of extenuating circumstances. good cause reasons to rebut this presumption. Claimant offered no evidence of good cause reasons to demonstrate that more than five years was reasonably necessary to put water to beneficial use for any of the area claimed. As a result, the determinations made below as to diligent development on individual claimed allotments are based on a five-year development period. rebut this presumption. Any evidence of diligence by subsequent owners is only relevant regarding continuous use. *Walton III* at 402.~~

Based on ~~Book’s expert opinion~~ evidence on the record, Claimant has failed to provide sufficient evidence of the ~~development~~ beneficial use of water by the Indian seller, or beneficial use of water having been made with reasonable diligence by the first non-Indian purchaser within five years of purchase successors for portions of the claim. Claimant has also failed in some cases to establish the continuous use of water since development to establish a *Walton* water right on the basis of water use made with reasonable diligence in Allotments 279, 280, 281, 413, 423, 424, 428, 865, 867 and 1562.

⁴ ~~“The construction of any proposed irrigation or other work shall be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.”~~

⁵ ~~“Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.” OAR 690-028-0045 provides that reasonable diligence in the construction of the system of works necessary to fully accomplish appropriation of the water does not require unusual or extraordinary effort. Reasonable diligence is that which is usual and ordinary with persons performing similar projects. The water user must demonstrate a genuine intent to complete the appropriation in a timely manner. The question is one of fact, to be determined from the circumstances on case-by-case basis.~~

and 32.8 acres in allotments 439 and 440. Claimant has established a *Walton* water right for ~~59.9~~ 31.5 acres in Allotments 439, and 28.4 acres in Allotment 440, and 12.2 acres in Allotment 279. Each allotment is considered separately below.

Allotment 279 (middle section)

Beneficial use of water was made on this parcel within five years of transfer from Indian ownership. The first non-Indian purchaser was Pierre Dick, on December 19, 1955, and he conveyed it to Frank Goularte in 1958. ~~There is no evidence of reasonable development of irrigation by Dick, the first non-Indian purchaser.~~ The artificial irrigation of the 12.2 acres on this allotment began by 1960, in 1958 after the purchase by Goularte, the second non-Indian purchaser. This constitutes reasonably diligent development of the acres claimed within Allotment 279.

Allotment 280 (middle section)

On May ~~27~~ 20, 1927, non-Indians Charles E. Drew and Ida Drew issued a right of way deed to Oregon-California & Eastern Railway Company. The terms of the contract suggest that grazing may have been occurring on this allotment at the time the deed was issued. Beneficial use of water under Permit 21236 (issued in 1951 for diversion from the Sprague River) could not have occurred until at least twenty-four years following transfer from Indian ownership. ~~Based on permits granted in 1947 (Permit U-216 to Drew for five groundwater wells) and 1951 (Permit 21236 to Drew to divert surface water), groundwater irrigation started at least 20 years after purchase by the Drews. It is unnecessary to determine whether the right of way deed is sufficient, on its own, to establish evidence of beneficial use of water. Even assuming that it did, the eight-year gap between transfer from Indian ownership and the issuance of the deed is too long under the facts in this case to establish beneficial use of water with reasonable diligence with respect to the *Walton* claim. This irrigation was not diligent development even if groundwater wells are considered development.~~

Allotment 281 (middle section)

In 1927, non-Indian Charles Drew purchased the property from the allottee. ~~Based on A permits granted in 1947 (Permit U-216 to Charles Drew for five groundwater wells) and was issued in 1951 (Permit 21236 to Drew to divert surface water from the~~

Sprague River), twenty-four years after transfer from Indian ownership. groundwater irrigation started about 20 years after purchase. This irrigation was not diligent development, does not demonstrate beneficial use of water with reasonable diligence with respect to the *Walton* claim, even if groundwater wells are considered development.

Allotment 413 (west section)

The first non-Indian purchaser was Charles Drew, on October 19, 1920. The first irrigation development occurred after the Haworth water rights application was filed in 1927, seven years after it passed from Indian ownership. As explained above, five years is a reasonable time limit for due diligence, unless Claimant establishes good cause reasons to rebut this presumption. Claimant has not claimed that the time limit should be extended due to good cause reasons beyond the purchaser's control. Therefore, beneficial use of water for irrigation was not diligently developed made with reasonable diligence by Drew, the first non-Indian purchaser after transfer from Indian ownership.

Allotment 423 (middle section)

The first non-Indian purchaser was Luke Walker, in 1919. On May 27, 1927, non-Indians Charles E. Drew and Ida Drew issued a right of way deed to Oregon-California & Eastern Railway Company. The terms of the contract suggest that grazing may have been occurring on this allotment at the time the deed was issued. Beneficial use of water under Permit 21236 (issued in 1951 for diversion from the Sprague River) could not have occurred until at least thirty-two years following transfer from Indian ownership.

It is unnecessary to determine whether the right of way deed is sufficient, on its own, to establish evidence of beneficial use of water. Even assuming that it did, the eight-year gap between transfer from Indian ownership and the issuance of the deed is too long, under the facts in this case, to establish beneficial use of water with reasonable diligence.

Based on permits granted in 1947 (Permit U-216 to Charles Drew for five groundwater wells) and 1951 (Permit 21236 to Drew to divert surface water), groundwater irrigation started about 28 years after purchase. This irrigation, eight was not diligent development even if groundwater wells are considered development. Moreover, the development was not by Luke Walker, the first non-Indian purchaser.

Allotment 424 (middle section)

The first non-Indian purchaser was Charles Drew, in 1927. ~~Based on A permits granted in 1947 (Permit U-216 to Charles Drew for five groundwater wells) and was issued in 1951 (Permit 21236 to Drew to divert surface water from the Sprague River), twenty-four years after transfer from Indian ownership. groundwater irrigation began about 20 years after purchase. This irrigation was not diligent development, does not demonstrate beneficial use of water with reasonable diligence, even if groundwater wells are considered development.~~

Allotment 426 (west section)

As explained above ~~in section two~~, Claimant has the burden of establishing his claim and he has not provided sufficient evidence of the date of conveyance from Indian ownership and the purchaser's name. Irrigation development started with the 1927 Haworth water right, but without the required evidence, Claimant cannot establish whether ~~the first~~ non-Indian purchasers ~~developed this~~ made beneficial use of water for irrigation with reasonable diligence. ~~or whether the development was diligent or continuously maintained.~~

Allotment 428 (west section)

This allotment was conveyed from USA to Watson Duffy Tupper, an heir of Duffie Tupper, as a fee patent in 1927. The first non-Indian purchaser was Bly Lumber Co. in January 1957, who sold it to Esther Duffy Tupper Wilson (a Klamath Indian) in August 1957. There is insufficient evidence of the beneficial use of water from the Sprague River on this allotment, either prior to or after transfer from Indian ownership. ~~Claimant has the burden of establishing his claim and has not provided sufficient evidence of any irrigation development by Bly Lumber Co.~~

Allotment 439 (west section)

Beneficial use of water by the method of natural overflow was made on this parcel while still under Indian ownership. The first non-Indian purchaser was Fred Haworth in 1927. He owned it until at least 1956. At the time of conveyance, Haworth filed for Sprague River water rights and claimed land on this and Allotment 440 as part of

the area served. He received state water permit 7908 which was later perfected. Use of water from is still authorized under this Certificate 8896. The aerial photographs submitted by the United States are insufficient to establish abandonment of the developed Walton right. The photographs show limited or no irrigation occurring on a portion of this allotment, but only on three days in three separate years since 1940 or 1941. Except for 27.1 acres for which the United States concedes that Claimant has established a Walton water right, these two allotments were not continuously irrigated after the Haworth irrigation system was developed, based on aerial photographs from 1940 to 1969. Beneficial use of water was established on 31.5 acres in this allotment under Indian ownership prior to transfer to a non-Indian owner.

Allotment 440 (west section)

Beneficial use of water by the method of natural overflow was made on this parcel while still under Indian ownership. The first non-Indian purchaser was Fred Haworth in 1927, who owned it until at least 1956. At the time of conveyance, Haworth filed for Sprague River water rights and claimed land on this and Allotment 439 as part of the area served. He received state water permit 7908 which was later perfected. Use of water is still authorized under this Certificate 8896. The aerial photographs submitted by the United States are insufficient to establish abandonment of the developed Walton right. The photographs show limited or no irrigation occurring on a portion of this allotment, but only on three days in three separate years since 1940 or 1941. Except for 27.1 acres for which the United States concedes that Claimant has established a Walton water right, these two allotments were not continuously irrigated after the Haworth irrigation system was developed, based on aerial photographs from 1940 to 1969. Beneficial use of water was established on 28.4 acres in this allotment under Indian ownership prior to transfer to a non-Indian owner.

Allotment 865 (east section)

This allotment is located at the end of the Turner-George Ditch, which diverted water from Whiskey Creek, with a priority date of 1921. Irrigation on this allotment started after 1921, as developed by Charles E. Drew.

The first non-Indian purchaser was Charles Snelling in 1914. The property was later conveyed to Marvin Cross and then Charles E. Drew. Claimant has provided no evidence that Snelling or Cross, the first two non-Indian owners, ~~developed an irrigation system~~ beneficially used water from the Sprague River on this allotment.

Claimant alleged that irrigation in this allotment and Allotment 867 occurred in 1916, based on a 1921 letter from C.T. Darley (Ex. RS-26.) As explained in the Evidentiary Rulings above, the evidence for this allegation is not reliable and not admitted. ~~Moreover, Claimant has failed to establish that, even if there were such Indian irrigation, the non-Indian purchasers of Allotments 865 and 867 continued such irrigation.~~

Irrigation from Whiskey Creek on this allotment started after 1921, as developed by Charles E. Drew. (Book Direct at 28-29.) The evidence indicates that development of irrigation works for the service of this allotment started in 1921, seven years after transfer from Indian ownership. This irrigation does not establish beneficial use of water with reasonable diligence with respect to the *Walton* claim.

Allotment 867 (east section)

This allotment is located at the end of the Turner-George Ditch, which diverted water from Whiskey Creek, with a priority date of 1921. Irrigation on this allotment started after 1921, as developed by Charles E. Drew.

The first non-Indian purchaser was B.S. Grigsby in 1914. The property was later conveyed to Marvin Cross and then to Charles E. Drew. In 1914, the property was conveyed from Grigsby and Emma Grigsby to Charles Snelling. Claimant provided no evidence that Snelling or Grigsby, the first two non-Indian owners, ~~developed an irrigation system~~ beneficially used water from the Sprague River on this allotment.

Claimant alleged that irrigation in this allotment and Allotment 865 occurred in 1916, based on a 1921 letter from C.T. Darley (Ex. RS-26.) As explained above for Allotment 865, this allegation is not accepted. ~~Moreover, Claimant has failed to establish that, even if there were such Indian irrigation, the non-Indian purchasers of Allotments 865 and 867 continued such irrigation.~~

Irrigation from Whiskey Creek on this allotment started after 1921, as developed by Charles E. Drew. (Book Direct at 28-29.) The evidence indicates that development of

irrigation works for the service of this allotment started in 1921, seven years after transfer from Indian ownership. This irrigation does not establish beneficial use of water with reasonable diligence with respect to the *Walton* claim.

Allotment 1562 (west section)

The first non-Indian purchaser was B.E. Wolford in 1918. Wolford conveyed the property to Indian owners, John and Emma Jackson in 1918. ~~Claimant has not established that irrigation was developed by Wolford, the first non-Indian owner. Furthermore, Development of six acres of this allotment was in conjunction with the 1927 Haworth water right, which is beyond the five-year deadline for reasonable development that is applicable to this case. As explained above, five years is a reasonable time limit for due diligence, unless Claimant establishes good cause reasons to rebut this presumption. Claimant has not claimed that the time limit should be extended due to good cause reasons beyond the purchaser's control. Additional land was brought into irrigation after 1947, some 30 years after conveyance from Indian ownership.~~

Reasons for Modification: To correct and clarify the elements of a *Walton* right; to provide clarity of evidence on the record and provide further support for the conclusions reached herein; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Issues" is adopted in its entirety.
 - c. The "Evidentiary Rulings" is adopted in its entirety.
 - d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, above.
 - f. The "Opinion" is adopted with modifications, as set forth in Section A.8, above.
 - g. The "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 114. Consistent with Sections A.6, A.7 and A.8, above, the outcome of the Order has been modified to recognize a right for irrigation on an additional 45.6 acres.

2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Beneficial use of water by the method of natural overflow was established prior to the development of specific points of diversion.
4. Based on the file and record herein, IT IS ORDERED that Claim 114 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 114

CLAIM MAP REFERENCE: CLAIM # 114, PAGES 69-70

CLAIMANT: DUANE MARTIN
 2021 HWY 88
 IONE, CA 95640-9113

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

PURPOSE OR USE:

IRRIGATION OF 72.1 ACRES, BEING 15.8 ACRES FROM POD 1 AND 56.3 ACRES FROM POD 2.

RATE OF USE:

1.80 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.39 CFS FROM POD 1 AND 1.41 CFS FROM POD 2.

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:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

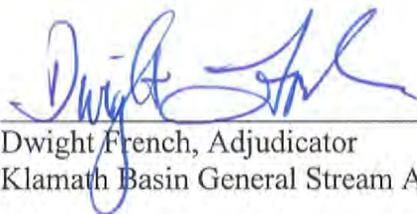
POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	11 E	WM	7	SW SE	31	540 FEET NORTH FROM S¼ CORNER, SECTION 7
POD 2	36 S	11 E	WM	8	NW SE	18	375 FEET SOUTH AND 1675 FEET WEST FROM E¼ CORNER, SECTION 8

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	11 E	WM	7	NE SE	24	13.2	POD 2
36 S	11 E	WM	7	NE SE	17	15.2	
36 S	11 E	WM	7	SE SE	32	9.7	
36 S	11 E	WM	7	SE SE	25	18.2	
36 S	11 E	WM	7	SE SE	32	3.6	POD 1
36 S	11 E	WM	17	NE NW		1.0	
36 S	11 E	WM	17	NW NW		11.2	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
RICHARD H. SMITH AND	)	DETERMINATION
VICTOR S. SMITH)	
_____)	
	)	Water Right Claim 115

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 29, 1991, LULA M. SMITH timely submitted a Statement and Proof of Claim (Claim 115) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 115 was submitted for a total of 5.71 cfs of water from Whiskey Creek, a tributary of the Sprague River, being 4.71 cfs for irrigation of 188.1 acres and 1.0 cfs for livestock watering of "150 pair or 225 yearlings." The claimed period of use is year-round for livestock watering, and April 1 to October 1 for irrigation. The claimed priority date is "1864."
3. LULA M. SMITH signed Claim 115 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 approved, but for a smaller quantity of water and fewer acres than claimed, and with a longer irrigation season than claimed.
5. The property appurtenant to Claim 115 was transferred to RICHARD H. SMITH AND VICTOR S. SMITH (Claimants) from LULA M. SMITH. *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M00, PAGE 4147 (Feb.1, 2000) (Claim # 115, Page 59).
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3491: 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 266.
8. On March 6, 2003, the Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST 3491 (Settlement Agreement) thereby resolving the only contest to Claim 115.
9. On March 10, 2003, the Adjudicator withdrew Case 266 from the Office of Administrative Hearings.
10. Based on the place of use listing for irrigation in Paragraph B.1.g in the Settlement Agreement, and OWRD's Investigation Map (T 36 S, R 11 E, W.M.), OWRD finds that the irrigation of "179.5" acres listed in Paragraph B.1.c is incorrect; the correct number of irrigated acres is 179.6.
11. OWRD finds that the season of use for irrigation, March 1 to October 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed a season of use "April 1 – October 1."

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. a scrivener's error in the number of irrigated acres as described in Finding 10, above; the total number of irrigated acres is corrected to 179.6 acres;
 - b. the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 11, above; the season of use for livestock watering recognized herein is consistent the Claimant's original claim.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3491 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

² Berlva Pritchard voluntarily withdrew from Contest 3491 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3491 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
5. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 115 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 115
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 11 E

CLAIMANT: RICHARD H. SMITH
VICTOR S. SMITH
11725 HAZEL GREEN RD NE
SILVERTON, OR 97381

SOURCE OF WATER: WHISKEY CREEK, tributary to the SPRAGUE RIVER

PURPOSE OR USE:
IRRIGATION OF 179.6 ACRES; LIVESTOCK WATERING OF 300 HEAD.

RATE OF USE:
4.4956 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

4.49 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.0056 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 3600 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE

FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

Use	Period
Irrigation	April 1 - October 1
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

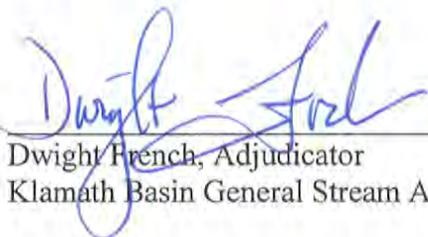
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	11 E	WM	13	NW SE	18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	11 E	WM	12	NW SW	21	1.6
36 S	11 E	WM	12	SW SW	28	15.9
36 S	11 E	WM	12	SW SW	29	16.6
36 S	11 E	WM	12	SE SW	27	9.7
36 S	11 E	WM	12	SE SW	30	15.5
36 S	11 E	WM	13	NW NE	2	7.8
36 S	11 E	WM	13	NW NE	7	16.9
36 S	11 E	WM	13	SW NE	10	13.7
36 S	11 E	WM	13	SW NE	15	10.5
36 S	11 E	WM	13	NE NW	3	19.8
36 S	11 E	WM	13	NE NW	6	20.0
36 S	11 E	WM	13	NW NW	4	9.0
36 S	11 E	WM	13	NW NW	5	5.5
36 S	11 E	WM	13	SW NW	12	2.0
36 S	11 E	WM	13	SE NW	11	15.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
HUGH D. STEVENSON	)	DETERMINATION
)	
_____	)	Water Right Claim 116

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 116 (Claimant: HUGH D. STEVENSON, 7906 HWY 140 E, KLAMATH FALLS, OR 97603) and its associated contests (3492, 3759, and 4146) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 226.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR SUMMARY JUDGMENT; PROPOSED ORDER DENYING CLAIM on November 5, 2004 (Proposed Order).
3. No exceptions were filed to the Proposed Order.
4. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.5, below.
5. **Opinion.** Within the subsection titled "Walton Water Right Claim" OWRD removed the ALJ's discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

In addition, OWRD has modified the final paragraph of the Opinion section as follows: (additions are shown in "underline" text):

Claimant is deemed to have admitted, among other things, that he has not provided sufficient title information regarding Indian ownership of the claimed place of use and/or transfer of the property to a non-Indian, that the claimed place of use was not irrigated by the last Indian owner, that the claimed place of use

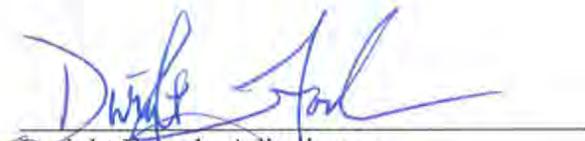
was not developed for irrigation by the first non-Indian owner within a reasonable period of time, and that the claimed place of use has not been continually irrigated since it was first owned by a non-Indian. In addition, considering the record in a manner most favorable to the non-moving party, the record does not establish that water was beneficially used on the lands appurtenant to Claim 116 by any Indian owner of the claimed place of use. Therefore, Claimant in Claim 116 has failed to prove the basic elements of a *Walton* water right. Consequently, Claim 116 should be denied.

Reason for Modifications: To correct and clarify the elements of a Walton water right; to provide additional detail concerning the bases for denial of the claim.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.5, above.
2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 116 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

**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
BRUCE S. TOPHAM	)	DETERMINATION
)	
_____	)	Water Right Claim 117

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 December 5, 1990, BRUCE S. TOPHAM (Claimant) timely submitted a Statement and Proof of Claim (Claim 117) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 117 was submitted for a total of 6.69 cfs of water from Whiskey Creek and an Unnamed Spring, tributaries of the Sprague River, being .01 cfs for domestic use, 6.66 cfs for irrigation of 229.5 acres, and 0.02 cfs for livestock watering of 600 head. The claimed period of use is year-round for domestic use and livestock watering, and May 1 through October 15 for irrigation. The claimed priority date is October 14, 1864.
3. BRUCE S. TOPHAM signed Claim 117 attesting that the information contained in the claim is true.
4. On February 1, 1991, Claim 117 was amended by payment of additional filing fees to increase the number of acres claimed.
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 approved for all claimed uses, but for fewer acres than claimed, for a smaller quantity of water for irrigation and livestock watering than claimed and with a longer irrigation season than claimed.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3493: 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. On May 8, 2000, the United States of America timely filed Contest 3760 to the Claim and Preliminary Evaluation of Claim 117.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4147 to the Claim and Preliminary Evaluation of Claim 117.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 227.
10. On April 1, 2004, the Klamath Project Water Users withdrew Contest 3493. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3493 (Apr. 1, 2004).
11. On May 28, 2004, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 117.
12. On June 14, 2004, the Adjudicator withdrew Case 227 from the Office of Administrative Hearings.
13. Based on OWRD's Investigation Map (T 36 S, R 11 E, W.M.), OWRD finds that the acreages listed in the Settlement Agreement within Section 13, Township 36 South, Range 11 East, W.M. can be more precisely described as certain acreages within certain Government Lots, as listed below:
 - a. 26.6 acres listed within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, is more precisely described as 6.9 acres within Government Lot 27, and 19.7 acres within Government Lot 30;
 - b. 22.9 acres listed within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, is more precisely described as 12.3 acres within Government Lot 18, and 10.6 acres within Government Lot 23; and
 - c. 29.6 acres listed within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, is more precisely described as 11.1 acres within Government Lot 26, and 18.5 acres within Government Lot 31;

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3493 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3493 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3493 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

- d. 32.4 acres listed within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, is more precisely described as 15.6 acres within Government Lot 25, and 16.8 acres within Government Lot 32.
14. Based on OWRD's Investigation Map (T 36 S, R 11 E, W.M.), OWRD finds that the points of diversion on Whiskey Creek referenced in the Settlement Agreement are within certain Government Lots as listed below:
 - a. the point of diversion within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ is within Government Lot 18, and
 - b. the point of diversion within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ is within Government Lot 32.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception that Government Lots are assigned as described in Findings 13 and 14, above.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
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.
5. Based on the file and record herein, IT IS ORDERED that Claim 117 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 117
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T36 S, R 11 E;
CLAIM # 117 SETTLEMENT MAP (May 28, 2004) (WIP FILE, Page 32)

CLAIMANT: BRUCE S. TOPHAM
35133 SPRAGUE RIVER RD
SPRAGUE RIVER, OR 97639

SOURCES OF WATER:
An UNNAMED SPRING, tributary to WHISKEY CREEK, and
WHISKEY CREEK, tributary to the SPRAGUE RIVER

PURPOSE OR USE:

DOMESTIC FOR ONE HOUSEHOLD FROM AN UNNAMED SPRING (POD 1);
IRRIGATION OF 225.3 ACRES, AND LIVESTOCK WATERING OF 600 HEAD FROM
WHISKEY CREEK (POD 2 AND POD 3).

RATE OF USE:

5.651 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FROM AN UNNAMED SPRING (POD 1) FOR DOMESTIC USE MEASURED AT
THE POINT OF DIVERSION;

5.63 CFS FROM WHISKEY CREEK (POD 2 AND POD 3) FOR IRRIGATION MEASURED
AT THE POINTS OF DIVERSION; AND

0.011 CFS FROM WHISKEY CREEK (POD 2 AND POD 3) INCLUDING ITS DITCHES FOR
LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 7200
GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH
HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY
NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE
FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF
THE IRRIGATION SEASON.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Domestic	January 1 - December 31
Irrigation	May 1 - October 15
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	Unnamed Spring	36 S	11 E	WM	13	SE SE	32	40 FEET NORTH AND 275 FEET WEST FROM SE CORNER, SECTION 13
POD 2	Whiskey Creek	36 S	11 E	WM	13	NW SE	18	2080 FEET NORTH AND 930 FEET EAST FROM S 1/4 CORNER, SECTION 13
POD 3	Whiskey Creek	36 S	11 E	WM	13	SE SE	32	180 FEET NORTH AND 2340 FEET EAST FROM S 1/4 CORNER, SECTION 13

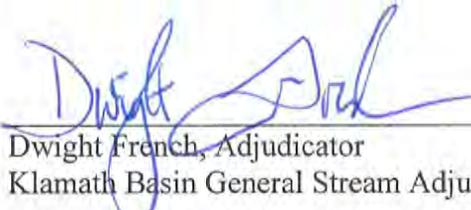
THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC FROM POD 1				
Twp	Rng	Mer	Sec	Q-Q
36 S	11 E	WM	24	NE NE

IRRIGATION and LIVESTOCK WATERING FROM WHISKEY CREEK							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	11 E	WM	13	SE SW	27	6.9	POD 2 AND POD 3
36 S	11 E	WM	13	SE SW	30	19.7	
36 S	11 E	WM	13	NW SE	18	12.3	
36 S	11 E	WM	13	NW SE	23	10.6	
36 S	11 E	WM	13	SW SE	26	11.1	
36 S	11 E	WM	13	SW SE	31	18.5	
36 S	11 E	WM	13	SE SE	25	15.6	
36 S	11 E	WM	13	SE SE	32	16.8	
36 S	11 E	WM	24	NE NE		4.00	
36 S	11 E	WM	24	NW NE		39.10	
36 S	11 E	WM	24	SW NE		23.60	
36 S	11 E	WM	24	SE NE		17.00	
36 S	11 E	WM	24	NE NW		28.80	
36 S	11 E	WM	24	SE NW		1.30	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
GEORGE DOUGAN, AND	)	DETERMINATION
RUTH DOUGAN)	
_____	)	Water Right Claim 118

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 118 and its associated contests (1694, 3494, 3761, and 4148) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 228.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM on March 28, 2005 (Proposed Order).
3. No exceptions were filed to the Proposed Order.
4. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with three exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.5.a, below. In addition, Proposed Order Findings of Facts #11 is added as set forth in Section A.5.b, below; and (2) the "Opinion" is adopted with modifications, as set forth in Section A.6, below.
5. **Findings of Fact.**
 - a. Proposed Order Finding of Fact #4 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~striketrough~~" text):
 4. On November 18, 2003, Administrative Law Judge (ALJ) William D. Young held a prehearing conference, pursuant to written notice sent to participants. (See Order Requiring Prehearing Statements, Case 228, Claim 118, dated August 15, 2003.) Claimant George Dougan participated in the prehearing conference, ~~but~~ and did not file a prehearing statement with the

Office of Administrative Hearings on November 3, 2003. (See Letter to Parties and Counsel, Case 228, Claim 118, dated November 19, 2003, and Letter to William D. Young from George Dougan, dated October 31, 2003.)

Reason for Modification: The ALJ's finding with respect to the Claimant not filing a prehearing statement is not supported by a preponderance of evidence on the record.

b. Proposed Order Findings of Facts #11 is added as follows (additions are shown in "underline" text):

11. Water was not applied to beneficial use during Indian ownership of the claimed lands.

Reasons for Additional Findings of Facts: The ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

6. **Opinion.**

a. Within the subsection titled "Walton Water Right Claim" OWRD removed the ALJ's discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

b. Within the subsection titled "Walton Water Right Claim" the last paragraph is modified as follows (additions are shown in "underline" text):

Claimants are deemed to have admitted, among other things, that the claimed place of use has not been irrigated every year since the property left Indian ownership; that Claimants failed to provide sufficient chain of title documentation regarding ownership of the claimed place of use after it left Indian ownership; and that Claimants failed to provide sufficient information to show the amount of land irrigated by the first non-Indian owner within five years after owning the allotments in issue. In addition, considering the record in a manner most favorable to the non-moving party, the record does not establish that water was beneficially used on the lands appurtenant to Claim 118 prior to the transfer from Indian ownership. When combined with the deemed admission that Claimants have not provided sufficient chain of title documents to determine the first non-Indian owner for each allotment within the claimed place of use, ~~Therefore,~~ Claimants cannot establish each element

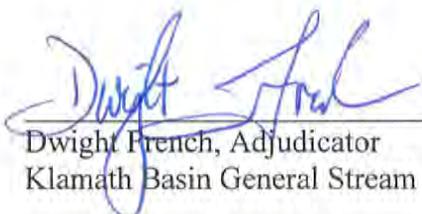
of a Walton water right. Consequently, Claimants in Claim 118 have failed to prove the basic elements of a Walton water right and Claim 118 should be denied.

Reasons for Modifications: To correct and clarify the elements of a Walton water right and to provide clarity of the basis for the denial based on evidence on the record.

B. DETERMINATION

1. The Proposed Order adopted and incorporated in its entirety as if set forth fully herein, with three exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.5.a, above. In addition, Proposed Order Findings of Facts #11 is added as set forth in Section A.5.b, above; and (2) the "Opinion" is adopted with modifications, as set forth in Section A.6, above.
2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 118 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

**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
ANDY R. DOMENIGONI AND	)	DETERMINATION
CINDY G. DOMENIGONI)	
_____	)	Water Right Claim 119
)	

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 October 19, 1990, F. M. S. SHORTHORN RANCH timely submitted a Statement and Proof of Claim (Claim 119) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 119 was submitted for 5.0 cfs of water from a spring, tributary to the Sprague River, for irrigation of 96.5 acres. Additionally, 5 gallons per minute is claimed for domestic use, and 3000 gallons per day is claimed for livestock watering. The claimed period of use is April 1 to September 15. The claimed priority date is "1864."
3. HOWARD THOMPSON, as partner and owner of F. M. S. SHORTHORN RANCH, signed Claim 119 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 required elements for a Walton right were not established.
5. On May 8, 2000, F. M. S. SHORTHORN RANCH / RIMFIRE5, INC. timely filed Contest 3107 to the Preliminary Evaluation of Claim 119.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3495: 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. On May 8, 2000, the United States of America timely filed Contest 3762 to the Claim and Preliminary Evaluation of Claim 119.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4149 to the Claim and Preliminary Evaluation of Claim 119.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 229.
10. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3495. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3495 (Apr. 8, 2004).
11. On January 26, 2005, the Klamath Tribes withdrew Contest 4149. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 26, 2005).
12. The property appurtenant to Claim 119 was ultimately transferred to ANDY R. DOMENIGONI AND CINDY G. DOMENIGONI (Claimants). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M04, PAGE 87207 (Dec. 17, 2004) and CHANGE OF OWNERSHIP FORM (April 26, 2005).
13. On April 14, 2005, the Claimants, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 119.
14. On April 18, 2005, the Adjudicator withdrew Case 229 from the Office of Administrative Hearings.
15. OWRD finds that the season of use for livestock watering, January 1 to December 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed a season of use April 1 to September 15.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3495 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3495 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3495 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, and the United States of America is adopted and incorporated as if set forth fully herein, with the exception of the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 15, above); the season of use for livestock watering recognized herein is consistent the Claimant's original claim.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
5. 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.
6. Based on the file and record herein, IT IS ORDERED that Claim 119 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 119
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 12 E

CLAIMANT: ANDY R. DOMENIGONI
CINDY G. DOMENIGONI
31851 WINCHESTER RD
WINCHESTER CA 91596

SOURCE OF WATER: A SPRING, tributary to SPRING CREEK

PURPOSE OR USE:
IRRIGATION OF 96.5 ACRES AND LIVESTOCK WATERING OF 200 HEAD.

RATE OF USE:

2.4137 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

2.41 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.0037 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2400 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER.

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:

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

PERIOD OF ALLOWED USE: APRIL 1 - SEPTEMBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

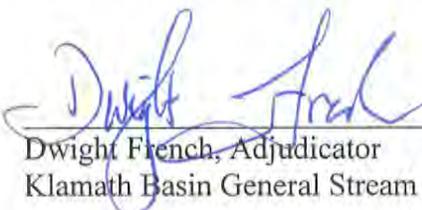
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	12 E	WM	23	SE NE	9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	12 E	WM	23	NE NE	1	17.9
36 S	12 E	WM	23	NE NE	8	19.0
36 S	12 E	WM	23	NW NE	2	4.4
36 S	12 E	WM	23	NW NE	7	5.3
36 S	12 E	WM	23	SW NE	10	11.5
36 S	12 E	WM	23	SW NE	15	5.1
36 S	12 E	WM	23	SE NE	9	17.5
36 S	12 E	WM	23	SE NE	16	2.7
36 S	12 E	WM	24	NW NW		11.5
36 S	12 E	WM	24	SW NW		1.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
CON J. FLYNN, NORA P. FLYNN,	)	DETERMINATION
JOHN C. FLYNN, AND)	
THE FLYNN BROTHERS)	
_____	)	Water Right Claim 120
)	

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 December 6, 1990, CON J. FLYNN (ON BEHALF OF HIMSELF, NORA P. FLYNN, JOHN C. FLYNN, AND THE FLYNN BROTHERS) (Claimants) timely submitted a Statement and Proof of Claim (Claim 120) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 120 was submitted for a total of 6.63 cfs of water from a spring at the head of Spring Creek, and Brown Creek, tributaries of the Sprague River, for irrigation of 265 acres. The claimed period of use is March 15 through October 15. The claimed priority date is October 14, 1864.
3. CON J. FLYNN signed Claim 120 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 required elements for a Walton right were not established.
5. On May 3, 2000, the Claimants timely filed Contest 1691 to the Preliminary Evaluation of Claim 120.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3496: 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. On May 8, 2000, the United States of America timely filed Contest 3763 to the Claim and Preliminary Evaluation of Claim 120.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4150 to the Claim and Preliminary Evaluation of Claim 120.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 230.
10. On January 26, 2005, the Klamath Tribes withdrew Contest 4150. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 26, 2005).
11. On November 21, 2005 the United States of America filed an amendment to Contest 3763. *See* UNITED STATES' CONTEST AMENDMENT (Nov. 21, 2005).
12. On May 11, 2006, the Claimants, OWRD, the United States of America, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 120.
13. On May 15, 2006, the Adjudicator withdrew Case 230 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3496 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3496 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3496 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Based on the file and record herein, IT IS ORDERED that Claim 120 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 120
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 120 SETTLEMENT MAP (May 4, 2006)

CLAIMANT: CON J. FLYNN
NORA P. FLYNN
JOHN C. FLYNN
THE FLYNN BROTHERS
421 SOUTH G ST
LAKEVIEW OR 97630

SOURCE OF WATER:
A SPRING VIA SPRING CREEK AND/OR BROWN CREEK, tributary to the SPRAGUE RIVER

PURPOSE OR USE: IRRIGATION OF 151.1 ACRES

RATE OF USE:
NOT TO EXCEED 3.78 CUBIC FEET PER SECOND (CFS) FROM ANY COMBINATION OF WATER FROM SPRING CREEK POD 1 AND/OR BROWN CREEK POD 2, MEASURED AT THE POINTS 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MARCH 15 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Spring Creek POD 1	36 S	12 E	WM	23	SW NE	10	1742 FEET SOUTH AND 316 FEET WEST FROM NE CORNER, SECTION 23
Brown Creek POD 2	36 S	12 E	WM	23	SE NE	9	1632 FEET SOUTH AND 2205 FEET WEST FROM NE CORNER, SECTION 23

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	10	SE SW	30	2.6	Spring Creek POD 1 and Brown Creek POD 2
36 S	12 E	WM	10	SW SE	26	7.1	
36 S	12 E	WM	10	SW SE	31	20.0	
36 S	12 E	WM	10	SE SE	25	4.2	
36 S	12 E	WM	10	SE SE	32	19.3	
36 S	12 E	WM	15	NE NE	1	19.5	
36 S	12 E	WM	15	NE NE	8	19.5	
36 S	12 E	WM	15	SE NE	9	1.0	
36 S	12 E	WM	15	NE NW	3	15.7	
36 S	12 E	WM	15	NE NW	6	19.9	
36 S	12 E	WM	15	NW NW	4	1.1	
36 S	12 E	WM	15	NW NW	5	8.4	
36 S	12 E	WM	15	SW NW	12	7.8	
36 S	12 E	WM	15	SE NW	11	5.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
CON J. FLYNN, NORA P. FLYNN,	)	DETERMINATION
JOHN C. FLYNN, AND)	
THE FLYNN BROTHERS)	
_____	)	Water Right Claim 121

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 December 6, 1990, CON J. FLYNN, NORA P. FLYNN, AND JOHN C. FLYNN, (ON BEHALF OF THEMSELVES AND THE FLYNN BROTHERS) (Claimants) timely submitted a Statement and Proof of Claim (Claim 121) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 121 was submitted for a total of 2.64 cfs of water from a spring at the head of Spring Creek, and Brown Creek, tributaries of the Sprague River, for irrigation of 105.6 acres. The claimed period of use is March 15 through October 15. The claimed priority date is "1864."
3. CON J. FLYNN, NORA P. FLYNN, and JOHN C. FLYNN signed Claim 121 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 required elements for a Walton right were not established.
5. On May 3, 2000, the Claimants timely filed Contest 1690 to the Preliminary Evaluation of Claim 121.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3497: 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. On May 8, 2000, the United States of America timely filed Contest 3764 to the Claim and Preliminary Evaluation of Claim 121.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4151 to the Claim and Preliminary Evaluation of Claim 121.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 230.
10. On January 26, 2005, the Klamath Tribes withdrew Contest 4151. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 26, 2005).
11. On November 21, 2005 the United States of America filed an amendment to Contest 3764. *See* UNITED STATES' CONTEST AMENDMENT (Nov. 21, 2005).
12. On May 11, 2006, the Claimants, OWRD, the United States of America, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 121.
13. On May 15, 2006, the Adjudicator withdrew Case 230 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3497 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3497 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3497 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Based on the file and record herein, IT IS ORDERED that Claim 121 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 121
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 121 SETTLEMENT MAP (May 4, 2006)

CLAIMANT: CON J. FLYNN
NORA P. FLYNN
JOHN C. FLYNN
THE FLYNN BROTHERS
421 SOUTH G
LAKEVIEW OR 97630

SOURCE OF WATER:
A SPRING VIA SPRING CREEK AND/OR BROWN CREEK, tributary to the SPRAGUE RIVER

PURPOSE OR USE: IRRIGATION OF 86.2 ACRES.

RATE OF USE:
NOT TO EXCEED 2.16 CUBIC FEET PER SECOND (CFS) FROM ANY COMBINATION OF WATER FROM SPRING CREEK POD 1 AND/OR BROWN CREEK POD 2, MEASURED AT THE POINTS 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MARCH 15 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Spring Creek POD 1	36 S	12 E	WM	23	SW NE	10	1742 FEET SOUTH AND 316 FEET WEST FROM NE CORNER, SECTION 23
Brown Creek POD 2	36 S	12 E	WM	23	SE NE	9	1632 FEET SOUTH AND 2205 FEET WEST FROM NE CORNER, SECTION 23

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM POD 1							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	14	NE SE	17	12.7	Spring Creek POD 1 and Brown Creek POD 2
36 S	12 E	WM	14	NE SE	24	14.0	
36 S	12 E	WM	14	NW SE	18	12.3	
36 S	12 E	WM	14	NW SE	23	3.7	
36 S	12 E	WM	14	SW SE	26	1.4	
36 S	12 E	WM	14	SW SE	31	4.8	
36 S	12 E	WM	14	SE SE	25	19.3	
36 S	12 E	WM	14	SE SE	32	18.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
THE FLYNN BROTHERS	)	DETERMINATION
)	
_____	)	Water Right Claim 122

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 14, 1990, THE FLYNN BROTHERS (Claimants) timely submitted a Statement and Proof of Claim (Claim 122) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 122 was submitted for a total of 14.47 cfs of water, being 5.77 cfs from a Brown Creek, a tributary of the Sprague River, and 8.7 cfs from an Unnamed Stream, a tributary of Brown Creek, for irrigation of 553.2 acres. The claimed period of use is March 15 through October 15. The claimed priority date is "1864."
3. CON J. FLYNN on behalf of THE FLYNN BROTHERS signed Claim 122 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 required elements for a Walton right were not established.
5. On May 3, 2000, the Claimants timely filed Contest 1689 to the Preliminary Evaluation of Claim 122.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3498: 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. On May 8, 2000, the United States of America timely filed Contest 3765 to the Claim and Preliminary Evaluation of Claim 122.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4152 to the Claim and Preliminary Evaluation of Claim 122.
9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2843 to the Claim and/or Preliminary Evaluation of Claim 122.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 230.
11. On May 20, 2003, WaterWatch's Contest 2843 was dismissed. *See ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS NOS. 2820, ET AL.* (May 20, 2003).
12. On January 26, 2005, the Klamath Tribes withdrew Contest 4151. *See KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST* (Jan. 26, 2005).
13. On May 11, 2006, the Claimants, OWRD, the United States of America, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 122.
14. On May 15, 2006, the Adjudicator withdrew Case 230 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3498 on January 16, 2004. *See VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY*

² Berlva Pritchard voluntarily withdrew from Contest 3498 on June 24, 2002. *See NOTICE OF WITHDRAWAL OF CLAIMANT.*

³ Don Vincent voluntarily withdrew from Contest 3498 on November 29, 2000. *See NOTICE OF WITHDRAWAL OF CLAIMANTS.*

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 122 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 122
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 120 SETTLEMENT MAP (May 4, 2006)

CLAIMANT: THE FLYNN BROTHERS
421 SOUTH G ST
LAKEVIEW OR 97630

SOURCE OF WATER:
BROWN CREEK, tributary to SPRAGUE RIVER, and
An Unnamed Stream, tributary to BROWN CREEK

PURPOSE OR USE: IRRIGATION OF 331.5 ACRES.

RATE OF USE:
8.29 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION,
BEING 5.68 CFS FROM POD 1 AND 2.61 CFS FROM POD 2.

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

PERIOD OF ALLOWED USE: MARCH 15 - AUGUST 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	Brown Creek	36 S	12 E	WM	36	SW NW		1780 FEET SOUTH AND 150 FEET EAST FROM NW CORNER, SECTION 36
POD 2	Unnamed Stream	37 S	12 E	WM	3	NE NE	I	230 FEET SOUTH AND 450 FEET WEST FROM NE CORNER, SECTION 3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
36 S	12 E	WM	26	NE SW	21.5	POD 1
36 S	12 E	WM	26	NW SW	5.2	
36 S	12 E	WM	26	SW SW	5.9	
36 S	12 E	WM	26	SE SW	38.2	
36 S	12 E	WM	26	NW SE	6.2	
36 S	12 E	WM	26	SW SE	40.1	
36 S	12 E	WM	26	SE SE	5.8	
36 S	12 E	WM	35	NE NE	32.7	
36 S	12 E	WM	35	NW NE	38.5	
36 S	12 E	WM	35	SW NE	0.2	
36 S	12 E	WM	35	SE NE	2.7	
36 S	12 E	WM	35	NE NW	27.1	
36 S	12 E	WM	35	NW NW	1.6	
36 S	12 E	WM	36	NW NW	1.4	
36 S	12 E	WM	26	NW SW	1.5	POD 2
36 S	12 E	WM	26	SW SW	2.2	
36 S	12 E	WM	35	NW NE	0.4	
36 S	12 E	WM	35	NE NW	9.1	
36 S	12 E	WM	35	NW NW	7.3	
36 S	12 E	WM	35	SW NW	13.5	
36 S	12 E	WM	35	SE NW	30.4	
36 S	12 E	WM	35	NE SW	17.0	
36 S	12 E	WM	35	NW SW	23.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
TAYLOR HYDE AND	)	DETERMINATION
BECKY HATFIELD-HYDE)	
_____	)	Water Right Claim 123

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 October 19, 1990, CHARLES A. GUNN timely submitted a Statement and Proof of Claim (Claim 123) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 123 was submitted for a total of 8.7 cfs of water from the Sycan River, a tributary of the Sprague River for irrigation of 415 acres. The claimed period of use is April 1 through October 1. The claimed priority date is "1864."
3. CHARLES A. GUNN signed Claim 123 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 123 was transferred to JOHN KRONENBERGER from CHARLES A. GUNN. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M94, PAGE 5813 (Feb. 22, 1994) (Claim # 123, Pages 33 – 34).
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 elements for a Walton right were not established.
6. On May 4, 2000, John Kronenberger timely filed Contest 1788 to the Preliminary Evaluation of Claim 123.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3499: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3810 to the Claim and Preliminary Evaluation of Claim 123.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4153 to the Claim and Preliminary Evaluation of Claim 123.
10. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2844 to the Claim and/or Preliminary Evaluation of Claim 123.
11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 231.
12. The property appurtenant to Claim 123 was transferred to TAYLOR HYDE AND BECKY HATFIELD-HYDE (Claimants) from JOHN S. KRONENBERGER AND WALTER H. KRONENBERGER. *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M03, PAGE 18332 (April 26, 2003) and CHANGE OF OWNERSHIP FORM (Aug. 4, 2003).
13. On May 20, 2003, WaterWatch’s Contest 2844 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.’S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
14. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3499. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3499 (Apr. 8, 2004).
15. On March 13, 2007, the Claimants, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 123.
16. On March 14, 2007, the Adjudicator withdrew Case 231 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3499 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3499 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3499 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON 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 123 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 123
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 123 SETTLEMENT MAP (Dec. 27, 2006)

CLAIMANT: TAYLOR HYDE AND BECKY HATFIELD-HYDE
PO BOX 894
CHILOQUIN, OR 97624

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

PURPOSE OR USE:
IRRIGATION OF 277.06 ACRES, BEING 22.89 ACRES FROM POD 1, 45.84 ACRES FROM POD 2, 23.53 ACRES FROM POD 3, 86.47 ACRES FROM POD 4, AND 98.33 ACRES FROM POD 5.

RATE OF USE:
6.93 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.57 CFS FROM POD 1, 1.15 CFS FROM POD 2, 0.59 CFS FROM POD 3, 2.16 CFS FROM POD 4, AND 2.46 CFS FROM POD 5.

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	12 E	WM	3	NW NE	2	SOUTH 73 DEGREES 6 MINUTES 18 SECONDS WEST, 2048.7 FEET FROM NE CORNER, SECTION 3
POD 2	36 S	12 E	WM	3	SE SE		SOUTH 17 DEGREES 15 MINUTES 53 SECONDS WEST, 4397.2 FEET FROM NE CORNER, SECTION 3
POD 3 ^a	36 S	12 E	WM	3	NE NE	1	SOUTH 65 DEGREES 47 MINUTES 51 DEGREES WEST, 1408.7 FEET FROM NE CORNER, SECTION 3
POD 4 ^a	36 S	12 E	WM	3	NE NE	1	SOUTH 65 DEGREES 47 MINUTES 51 DEGREES WEST, 1408.7 FEET FROM NE CORNER, SECTION 3
POD 5	36 S	12 E	WM	10	NE NE	1	SOUTH 4 DEGREES 1 MINUTES 20 DEGREES WEST, 5909.6FEET FROM NE CORNER, SECTION 3

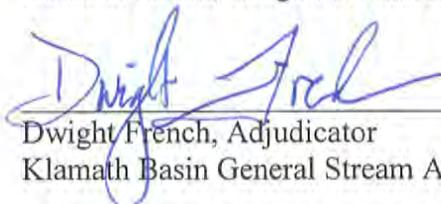
^a POD 3 and POD 4 are adjacent to each other

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	3	NE NE	1	9.54	POD 4
36 S	12 E	WM	3	NE NE	1	23.53	POD 3
36 S	12 E	WM	3	NW NE	2	6.95	POD 4
36 S	12 E	WM	3	NW NE	2	11.96	POD 1
36 S	12 E	WM	3	SW NE		0.15	POD 4
36 S	12 E	WM	3	SW NE		10.93	POD 1
36 S	12 E	WM	3	SE NE		31.54	POD 4
36 S	12 E	WM	3	NE SE		4.50	POD 2
36 S	12 E	WM	3	NE SE		24.30	POD 4
36 S	12 E	WM	3	NW SE		2.14	POD 2
36 S	12 E	WM	3	SW SE		3.10	POD 2
36 S	12 E	WM	3	SE SE		14.35	POD 2
36 S	12 E	WM	3	SE SE		13.99	POD 4
36 S	12 E	WM	10	NE NE	8	13.15	POD 5
36 S	12 E	WM	10	NE NE	1	12.67	POD 2
36 S	12 E	WM	10	NE NE	1	1.20	POD 5
36 S	12 E	WM	10	NW NE	2	9.08	POD 2
36 S	12 E	WM	10	NW NE	7	10.07	POD 5
36 S	12 E	WM	10	SW NE	15	16.11	POD 5
36 S	12 E	WM	10	SW NE	10	19.50	POD 5
36 S	12 E	WM	10	SE NE	16	19.70	POD 5
36 S	12 E	WM	10	SE NE	9	18.60	POD 5

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
RICHARD DUARTE AND	)	DETERMINATION
SPRAGUE RIVER CATTLE COMPANY)	
_____	)	Water Right Claim 124

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 124 (Claimants: RICHARD DUARTE AND SPRAGUE RIVER CATTLE COMPANY¹) and its associated contests (2845, 3500, 3766, and 4154) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 232.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 124 on February 20, 2007.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Richard Duarte, (2) Claude Taylor, and (3) the United States of America.
4. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 124. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8, and A.9, below.
5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.6, below.
 - c. The “Issues” is adopted in its entirety.

¹ Sprague River Cattle Company, successor in interest to Claude Taylor.

- d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.7, below.
- e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.8, below.
- f. The “Opinion” is replaced in its entirety as set forth in Section A.9, below.
- g. The “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 124. Consistent with Sections A.7, A.8 and A.9, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 248.9 acres, and to increase the rate and duty allowed on 10.3 acres to the full value claimed.

6. **Evidentiary Rulings.** Within the section titled “Evidentiary Rulings” of the Proposed Order, the first paragraph is modified as follows:

- a. Corrections are made to the following two items on the list of Evidentiary Rulings (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):
 - i. ~~Paul~~ Richard Fairclo’s Rebuttal Testimony on behalf of Claimants
 - ii. ~~Richard~~ Paul Fairclo’s Direct and Rebuttal Testimony on behalf of Claimants
- b. The REBUTTAL TESTIMONY OF RICHARD DUARTE dated February 7, 2006, is added to the list of items that were admitted into the record.
- c. The AFFIDAVIT OF RONALD S. YOCKIM IN REBUTTAL dated February 10, 2006, is added to the list of items that were admitted into the record.

Reasons for Modification: To correct scrivener’s errors and omissions from the list of Evidentiary Rulings.

7. **Findings of Fact.** The Proposed Order’s “Findings of Fact” section is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text. Reasons for the modification of each modified finding of fact are provided beneath the modified finding. A summary of the general reasons for modification is provided here.

Summary of Reasons for Modification of Findings of Fact: (1) To correct scrivener’s errors and provide clarity of evidence in the record. (2) To provide evidence from Duarte’s Rebuttal Testimony which was omitted from the list of evidentiary rulings. (3) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, an issue raised in exceptions by the Claimants. (4) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership, an issue raised in exceptions by the Claimants. (5) To provide evidence from the record to substantiate beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (6) To provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (7) To provide evidence from

the record for establishing the appropriate rate, duty, and season of use on 10.3 acres within Allotments 314(S) and 316, an issue raised in exceptions by the Claimants. (8) In each instance where this Partial Order of Determination modifies historical findings of fact made by the ALJ, the Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record.

The Modified Proposed Order Findings of Fact

(1) On December 3, 1990, John House filed Claim 124 with OWRD for a water right in the Klamath Basin. (OWRD Ex. 1 at 1- ~~10~~ 9.) The claimed lands cover eight former Indian allotments that were allotted to individual Indian allottees as well as 8.2 acres of unallotted tribal lands. (Book Direct at 7.) The property to which Claim 124 is appurtenant was subsequently purchased by Richard Duarte and Claude Taylor² (Claimants). (Book Direct at 4; OWRD Ex. 1 at 21, 28-30, 51.) Richard Duarte owns 307.3 acres located north of the Sprague River (North Parcel) within Allotments 314(N)³, 449, and 1126, including 8.2 acres within an unallotted tribal parcel. Claude Taylor owns 387.8 acres located south of the Sprague River (South Parcel) within allotments 314(S)⁴, 315, 316, 317, 318, and 447. (Book ~~Rebuttal~~ Direct at 7 4-5, Ex. U2; OWRD Ex. 1 at 64.)

Reasons for Modification: To provide corrected and additional citations to the record.

(2) Claimants are asserting a *Walton* claim for water from the Sprague River as non-Indian successors to a Klamath Indian Allottees, and a Klamath Termination Act claim for water from the Sprague River as non-Indian successors to unallotted Klamath Indian Reservation lands, claiming sufficient water to irrigate each allotment's share of the Tribe's "practically ~~practically~~ irrigable acreage" (PIA). Claim 124 is for diversion of 17.34 cubic feet per second (cfs) from the Sprague River, tributary to the Williamson River, to irrigate 695.1 acres of hay and pasture grass. (~~Id.~~ OWRD Ex. 1 at 1-9.) The claimed place of use is located in Section 5, Section 8, and Section ~~13~~ 17 in Township 36 South, Range 12 East, W.M. (OWRD Ex. 1 at 4-5, 63.) The claimed point of diversion for the North Parcel is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8 and for the South Parcel is located in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17. (OWRD Ex. 1 at 3, 63.) The claimed period of use is March 10 through November 10. (OWRD Ex. 1 at 8.) The claimed priority date is

² Sprague River Cattle Company, successor in interest to Claude Taylor

³ 314(N) refers to that portion of Allotment 314 north of the Sprague River.

⁴ 314(S) refers to that portion of Allotment 314 south of the Sprague River.

October 14, 1864, the date the Klamath Indian Reservation was created. Claimants have state water rights on all of the claimed lands with priority dates ~~ranging from November 26, 1963 for Certificate 48537 (Allotments 314, 315, 316, 317, 318, 447), to and November 10, 1967 for Certificate 49275 (Allotments 449, 1126, 8.2 acres of unallotted lands)~~ for surface water rights authorizing use of water from the Sprague River. and They also have one ground water certificate for supplemental irrigation on a portion of the claimed lands with a priority date of 1966. (OWRD Ex. 1 at 88-96.) The locations of the claimed points of diversions are the same locations as the points of diversions listed on these surface water certificates. (OWRD Ex. 1 at 3, 63, 88-93.) The claimed point of diversion which serves the North Parcel is still used on the Duarte lands, and the claimed point of diversion which serves the South Parcel is still used on the Taylor lands. (Book Direct at 16-17.) The United States concedes that Claimant Taylor has established *Walton* water rights to 366.4 of his acres and Claimant Duarte to 58.4 of his acres. (Book Rebuttal at 7.)

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record; to correct a scrivener's error (Section 13 is corrected to Section 17).

(3) On October 4, 1999, the Adjudicator of the Klamath Basin Adjudication issued a Preliminary Evaluation, recommending approval of this claim for a smaller quantity than originally claimed, and for a period of use of March 1 through October 31. (OWRD Ex. 189-193.)

North Parcel Allotments (Duarte) (total claimed 307.3 acres)

Allotment 449 (152.3 acres claimed)

(4) Allotment 449 is located within the NE¼, Section 8, Township 36 South, Range 12 East, W.M. and includes 152.3 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) Allotment 449 of the North Parcel was originally allotted to Thomas G. Smith, a Klamath Indian, and conveyed to him from the United States in fee simple on ~~November 15, 1920~~ August 13, 1920. (Book Direct at 11; Ex. U3; Ex. U6 at 7.) On July 30, 1927, Klamath County filed a Complaint against Mr. Smith for failure to pay

taxes from 1921 through 1925. (Klamath County Complaint, Paragraph IV; Ex. U18 at 5.) In its Complaint, Klamath County requested a “judgment, order and decree” against Mr. Smith’s property for “the amount of taxes, interest and penalties and costs due and charged against said property.” (*Id.* at Paragraph VIII; Ex. U18 at 6.) The sheriff was directed to sell each tract and parcel of Mr. Smith’s land in a public sale. (*Id.*) The allotment was sold by auction on June 2, 1928. (Sheriff’s Deed, Ex. U18 at 9.) Klamath County submitted the only bid and acquired the property on October 20, 1930. (~~Sheriff’s Return of Sale~~ Sheriff’s Deed, Ex. U18 at 9.) In 1935 (on October 16), Klamath County sold the property to George A. Default, a Klamath Indian. (Bargain Sale Deed, Ex. U18 at 22; Ex. C25, C29.) Allotment 449 remained in Indian ownership until 1966, when it was sold by Klamath Indian Effie Driscoll to Paul Fairclo. (Ex. C15.)

¶ Lands within Allotment 449 are subject to natural overflow from the Sprague River. (Ex. C45; Fairclo Direct at 2.) While under Indian ownership, a Certificate of Appraisalment (from an onsite inspection made May 20, 1920) characterized the land within Allotment 449 as river bottom land best adapted for grazing. (Ex. C45.) Beneficial use of water occurred under Indian ownership, beginning no later than 1941, as evidenced by the presence of fields and haying activity in 1941 and 1953 (Book Direct at 22), and cattle grazing by Indian owners (Ex. C55 at 47). Paul Fairclo leased Allotment 449 from Indian owners for the purpose of grazing cattle prior to his purchase of the property in 1966. (Fairclo Direct at 2; Ex. C55 at 15-16.) Paul Fairclo established a state water right on this parcel with a priority date of November 10, 1967. (Book Direct at 47 19; OWRD Ex. 1 at 92.) The 152.3 acres of claimed lands within Allotment 449 have been continuously authorized for irrigation from the Sprague River under Permit S-32737 / Certificate 49275 since 1967 (OWRD Ex. 1 at 92) and have continued to be irrigated as claimed. (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2; Duarte Rebuttal at 1-4.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 30, SE¼ SW¼, Section 8, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 93.)

The elements necessary for a *Walton* claim for 152.3 acres in Allotment 449 have been established. The water rights granted for the 152.3 acres within this allotment

should have the following attributes: the rate of diversion should be 3.81 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modifications: Using evidence on the record, to provide more specific information with reference to what was claimed; to correct the date the allotment was conveyed from the United States to the allottee; to correct the date that Klamath County sold the property to George Default; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record.

Allotment 314(N) (48.3 acres claimed)

(5) Allotment 314(N) (north of the Sprague River) is located within the NE¼ SW¼, NW¼ SW¼, and SE¼ SW¼, Section 8, Township 36 South, Range 12 East, W.M. and includes 48.3 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) Regarding Allotment 314(N) of the North Parcel, a fee simple patent was granted to Margaret David Johnson, an Indian, on September 12, 1958. (Ex. U6 at 1.) On February 14, 1962, the first non-Indians, Paul and Ann Fairclo, purchased it. (Book Direct at 10; OWRD Ex. 1 at 52.)

¶ Lands within Allotment 314(N) are subject to natural overflow from the Sprague River. (OWRD Ex. 1 at 47, 73; Fairclo Direct at 2; C34 at 4-6.) Beneficial use of water began prior to transfer from Indian ownership to non-Indian successors. In 1910, a lease approved farming and grazing for Allotment 314 (North and South). (Ex. C36.) A 1957 appraisal report asserted that the “Sprague River flows through the subject [Allotment 314] dividing it into four or more segments, all of which are subject to flooding each year until late in June. This flooding helps to produce good pasturage and cattle are able to wade the river when flood waters recede to normal flow.” (Ex. C34 at 4.) Fairclo leased the property from Indian owners for the purpose of grazing cattle prior to his purchase in 1962. (OWRD Ex. 1 at 47; Ex. C55 at 15-16; Fairclo Direct at 2). In addition to natural overflow from the Sprague River, drain water from artesian wells was delivered to this parcel through a drain ditch along the south line of Allotment 449 prior to transfer of Indian ownership to non-Indian successor Fairclo. (Fairclo Direct at 4; Ex. C55 at 36-38.) Water from this drain ditch was cut off from Allotment 314(N) when Paul Fairclo constructed a north-south canal along the west sides of Allotments 447 and 449. This

canal was part of a new irrigation system for a diversion from the Sprague River (authorized under Permit S-29348 / Certificate 48537). (Fairclo Direct at 4; C55 at 37-39; OWRD Ex 1 at 88-91.) Paul Fairclo has unsuccessfully attempted irrigation in this Allotment. (Id. at 18.) Paul Fairclo has admitted that, after a the drain ditch was severed; irrigation “we took water from this irrigation system across there [to Allotment 314(N)] but I’ve got to tell you that it wasn’t too successful because the pipe wasn’t always in good shape and ~~that~~ we didn’t always irrigate it.” (Book Rebuttal at 6; C55 at 39 - quotes from Paul Fairclo’s deposition.) During the time when irrigation “wasn’t too successful,” Fairclo testified that he continued to run cattle in this allotment. (Ex. C55 at 42.) When using the Sprague River irrigation system on Allotment 314(N), Fairclo describes how he used a (northern) pump at Drew Road to pull water into the [north-south] ditch. Then he could turn water out onto the allotment through a series of head gates and culverts. (Fairclo Direct at 4.) A 1986 OWRD Field Investigation Report noted that the northern pump was missing as it was used to replace a pump on a different parcel that year, and that there were no means to irrigate this land other than the spring-time overflow. (Book Direct at 22.) (OWRD Ex. 1 at 73.) The 48.3 acres of claimed lands within Allotment 314(N) have been continuously authorized for irrigation from the Sprague River under Permit S-29348 / Certificate 48537 since the early 1960s (OWRD Ex. 1 at 48, 88-90) and have continued to be irrigated as claimed. (OWRD Ex. 1 at 47-48; Fairclo Direct at 4; Duarte Rebuttal at 1-4.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 16, SE¼ NE¼, Section 17, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 90.)

The elements necessary for a *Walton* claim for 48.3 acres in Allotment 314(N) have been established. The water rights granted for the 48.3 acres within this allotment should have the following attributes: rate of diversion of 1.21 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ’s proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record.

Allotment 1126 (98.5 acres claimed)

(6) Allotment 1126 is located within the S½ S½, Section 5, Township 36 South, Range 12 East, W.M. and includes 98.5 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) Regarding Allotment 1126 of the North Parcel, the first non-Indian owners, Paul and Ann Fairclo, acquired the property in 1966. (Book Direct at 12; Ex. U3.)

¶ Starting in 1967, a the claimed portion of Allotment 1126 started being irrigated from the Sprague River via Paul Fairclo's diversion under Permit S-32737, which was certificated in 1980 (Certificate 49275). (Book Direct at 19; OWRD Ex. 1 at 92.) Water from this diversion did not reaches the 15.9 acres of Allotment 1126 lying north of the functioning ditch. (~~Id.~~ at 23.) The Sprague River did not continuously reach and the 24.5 acres in the northeastern portion of the allotment using spreader ditches and handlines (pipe). (~~Id.~~) (OWRD Ex. 1 at 92-94; Fairclo Direct at 5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 2.) These 24.5 acres have been authorized for supplemental irrigated irrigation with well water pursuant to Certificate 49274, starting in 1966. (Book Direct at 19-20, OWRD Ex. 1 at 31.) This groundwater certificate for supplemental irrigation covers all the claimed portion of Allotment 1126, and was perfected on the same day as its primary water right Certificate 49275. (Book at 19-20; Ex. U19; OWRD Ex. 1 at 31-34.) At times the well water authorized under this supplemental certificate has been utilized for irrigation. (Ex. U17.) The United States concedes that Claimants and Paul Fairclo have met their burden of establishing *Walton* water rights for 58.1 acres within Allotment 1126 because these acres were reasonably developed by the first non-Indian owner, Paul Fairclo, from a Sprague River diversion with a state water right Certificate 49275. (~~Id.~~; Book Direct at 23; Book Rebuttal at 6-7.) However, the remaining 40.4 acres of claimed lands within Allotment 1126 have also been developed with reasonable diligence for irrigation from the Sprague River, with irrigation beginning within a year following transfer from Indian ownership. This development is reflected in Permit S-32737 / Certificate 49275. (OWRD Ex. 1 at 92). All 98.5 acres claimed have continued to be irrigated. (Fairclo Direct at 4-5; Duarte Rebuttal at 1-4.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is

located in Government Lot 30, SE¼ SW¼, Section 8, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 93.)

The elements necessary for a *Walton* claim for 98.5 acres in Allotment 1126 have been established. The water rights granted for the 98.5 acres within this allotment should have the following attributes: rate of diversion of 2.46 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record. In addition, OWRD has determined that the ALJ's finding that the diversion did not reach the 15.9 acres or continuously reach the 24.5 acres is not supported by a preponderance of evidence on the record.

Unallotted Lands (8.2 acres claimed)

(7) The unallotted tribal lands claimed in the Northern Parcel include 8.2 acres within the N½ SE¼, Section 5, Township 36 South, Range 12 East, W.M. (Ex. U2; OWRD Ex. 1 at 63.) Regarding the 8.2 acres of the unallotted tribal part in the Northern Parcel, the first non-Indian owners were Paul and Ann Fairclo in 1966. (Book Direct at 13.)

¶ This unallotted parcel is located in the far northeastern portion of Claim 124, ~~and does not appear irrigated in most aerial photographs. (Book Direct at 23-24.)~~⁵ ~~The acres that do appear to be irrigated are covered by the groundwater from the well subject to Certificate 49274 (Id.; Ex. U20).~~ Paul Fairclo established a diversion for irrigation on this parcel from the Sprague River under a state water right with a priority date of November 10, 1967 (Permit S-32737 / Certificate 49275. (Book Direct at 17; OWRD Ex. 1 at 92-93.) According to Book, only 0.3 acres of the 8.2 acres in the unallotted parcel appear to receive Sprague River water from the Fairclo diversion; under Certificate

⁵ In the Affidavit and Testimony of Dale Book (Book Direct), no such statement is made at pages 23 or 24, or in Section 16 of the testimony, where Book summarizes his analysis of aerial photographs for the North Parcel/Duarte Lands.

49275, and the remaining 7.9 acres are irrigated only by the well (Certificate 49274) or have not been continuously irrigated. (Id. at 23-24; Ex. U3.) The United States concedes that Claimants and Fairclo have established Walton water rights for these 0.3 acres. (Book Rebuttal at 7.) The remaining 7.9 acres are mostly irrigated by groundwater. (Id.; Ex. U20.) However, Fairclo irrigated the lands in the N½ S½ of Section 5 from the Sprague River point of diversion with the use of pumps and hand lines (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; OWRD Ex. 1 at 94), and these lands have continued to be irrigated (Duarte Rebuttal at 1-4). The 8.2 acres of claimed lands have been continuously authorized for irrigation from the Sprague River under Permit S-32737 / Certificate 49275 since 1967. (OWRD Ex. 1 at 92.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 30, SE¼ SW¼, Section 8, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 93.)

The elements necessary for a Klamath Termination Act claim for 8.2 acres of unallotted lands have been established. The water rights granted for the 8.2 acres within this allotment should have the following attributes: rate of diversion of 0.20 cfs with a limit of 1/40 cfs per acre and a water duty of 3.0 acre-feet per acre during an irrigation season. The irrigation season should be March 10 to November 10, as claimed.

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide corrected and additional citations to the record. In addition, the statement that the unallotted parcel does not appear irrigated in most aerial photographs is stricken because OWRD finds that no such statement is made in the Affidavit and Testimony of Dale Book (Book Direct) at 23 or 24, nor in paragraph 16 where Book summarizes his analysis of aerial photographs for the North Parcel/Duarte Lands. The statement that 7.9 acres are mostly irrigated by ground water was stricken because OWRD finds that it is not supported by a preponderance of the evidence on the record.

South Parcel Allotments (Taylor)(total claimed 387.8 acres)

Allotments 314(S), 315, 316, 317, 318, 447

(8) Allotment 314(S) (south of the Sprague River) is located within the NW¼ SW¼ and S½, Section 8, and includes 56.9 acres of claimed lands. Allotment 315 is

located within the NE¼, Section 17, and includes 98.2 acres of claimed lands. Allotment 316 is located within the NW¼, Section 17, and includes 146.1 acres of claimed lands. Allotment 317 is located within the N½ S½, Section 17, and includes 69.5 acres of claimed lands. Allotment 318 is located within the N½ S½ S½ Section 17, and includes 6.0 acres of claimed lands. These allotments are all located within Township 36 South, Range 12 East, W.M (Ex. U2; OWRD Ex. 1 at 63.) Allotments 314(S), 315, 316, 317, 318 of the South Parcel (all of the south parcel allotments except for Allotment 447) were first purchased by a non-Indian, Paul Fairclo, in 1962. (Book Direct at 8-11; Ex. U3.)

¶ (9) Allotment 447 is located within the SE¼, Section 8, Township 36 South, Range 12 East, W.M. and includes 11.1 acres of claimed lands. (Ex. U2; OWRD Ex. 1 at 63.) The record contains no deed evidence to identify the first non-Indian purchaser of Allotment 447 of the South Parcel. (Book Direct at 10-11.) The elements necessary for a Walton claim have not been established for Allotment 447.

¶ (10) Lands within the south parcel allotments are subject to natural overflow from the Sprague River. (OWRD Ex. 1 at 47; Paul Fairclo Direct at 2; Ex. C34 at 4-16.) Beneficial use of water began prior to transfer from Indian ownership to non-Indian successors. In 1910, farming and grazing leases were approved for Allotments 314(S), 316 (Ex. C36), and 315 (Ex. C38). While under Indian ownership, a Certificate of Appraisal (from an onsite inspection made September 25, 1945) characterized 720 acres within Allotments 314-5-6-7-8 as grazing land. (Ex. C32.) Fairclo leased the property from Indian owners for the purpose of grazing cattle prior to his purchase in 1962. (OWRD Ex. 1 at 47; Ex. C55, page 15; Fairclo Direct at 2). In 1963, Paul Fairclo developed an irrigation system in the South Parcel. (Book Direct at 16.) He secured state water right Certificate 48537. (Book Direct at 20; Ex. U19.) Based on his analysis of aerial photos of the South Parcel Allotments, Book opined that 366.4 acres within Allotments 314(S), 315, 316, 317, 318 have been continuously irrigated. (Id. at 21-22.) Book opined that 10.3 acres within Allotments 314(S), 315, 316, 317, 318 have not been continuously irrigated because the area has been under water in repeated aerial photographs. (Book Rebuttal at 3-4.) Although according to Book, the latest photo during a year was in late July and revealed flooding in the area- (Id. at 4-), the area dries

~~up later in the season (Direct Testimony of Taylor Direct at 2). This flooding is typical, and is due in part to irrigation water that collects in areas of natural depressions. Such areas dry out in late summer and are grazed. (Taylor Direct at 2, Ex. 1; Ex. C55 at 34-35.) The water duty should be reduced by at least one-half to account for the limited period of growth and the season limited to August and September. (Book Rebuttal at 4.) The 376.7 acres of claimed lands within Allotments 314(S), 315, 316, 317, 318 have been continuously authorized for irrigation from the Sprague River under Permit S-29348 / Certificate 48537 since the early 1960s. (OWRD Ex. 1 at 48, 88-90.) Irrigation on these lands is currently authorized from the same point of diversion as claimed, which is located in Government Lot 16, SE¼ NE¼, Section 17, Township 36 North, Range 12 East, W.M. (OWRD Ex 1 at 3-5, 63, 90.)~~

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; to provide clarification to a citation to the record. In addition, OWRD has determined that the ALJ's finding with respect to the statement that the water duty on 10.3 acres should be reduced by at least one-half to account for the limited period of growth is not supported by a preponderance of the evidence on the record. OWRD has determined that the ALJ's proposal to limit the season of use to August and September on these 10.3 acres is not supported by a preponderance of the evidence on the record and therefore has been stricken; OWRD finds that no evidence of any statement made about the season of use on this 10.3 acres in the rebuttal testimony of Book at 4.

¶ (11) ~~The elements necessary for a Walton claim for 376.7 acres in the South Parcel have been established. The water rights granted for the 366.1 376.7 acres within these allotments (314(S), 315, 316, 317, 318) should have the following attributes: the a rate of diversion should be 1/cfs per 40 acres of 9.42 cfs with a limit of 1/40 cfs per acre during an irrigation season, and the a water duty should be of 3.0 acre-feet per acre; during an irrigation season. and The irrigation season should be March 10 to October 31 November 10, as claimed. (Book Direct at 24-25.) Claimants did not contest these attributes.~~

Reasons for Modification: To add clarification using evidence on the record. In addition, OWRD has determined that the ALJ's proposed season of use March 1 to October 31 is not supported by a preponderance of the evidence on the record. Note: The 366.1 acres noted in the ALJ's proposed order (second sentence) is a scrivener's error; it should have been 366.4 acres as referenced in Proposed Order Findings of Facts 2 and 9.

8. **Conclusions of Law.** The Proposed Order's "Conclusions of Law" section is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

1. ~~The first purchaser rule, as defined in the *Walton* line of cases, dictates that Klamath County was the first non-Indian owner of Allotment 449, which was acquired initially through foreclosure and subsequently through Sheriff's public auction, was held by Klamath County for less than five years before being returned to Indian ownership.~~

2. Beneficial use of water by the method of natural overflow cannot establish is a valid basis for a *Walton* water right, and is established on Allotments 314(S), 315, 316, 317, 318 in the South Parcel, and on Allotments 314(N) and 449 in the North Parcel.

3. Irrigation has continued on the claimed portions ~~of part~~ of Allotments 314(N), 1126, and the unallotted portion of the Northern Parcel. ~~has been continuous.~~

4. Claimants' *Walton* water right is not reduced for ~~areas of open water in any~~ portions of Allotments 314(S) and 316, ~~but the water duty for these areas is reduced by one-half.~~

5. Claimants have not provided sufficient title information to establish a *Walton* water right in Allotment 447.

6. The Klamath Tribes Termination Act is a valid basis for the portion of the claim covering unallotted, former Klamath Indian Reservation land.

Reason for Modifications: To ensure that final conclusions reflect the evidence in the record and the application of the appropriate legal bases to the evidence in the record.

9. **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 WALTON CLAIMS and the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

In addition, OWRD incorporates into the Opinion section all the paragraphs below:

Application of Walton Elements to the Modified Proposed Order Findings of Fact

The burden of proof to establish a claim is on the claimant. ORS 539.110; OAR 690-028-0040. All facts must be shown to be true by a preponderance of the evidence. *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999); *Cook v. Employment Division*, 47 Or App 437 (1980); *Metcalf v. AFSD*, 65 Or App 761, (1983), *rev den* 296 Or 411 (1984); *OSCI v. Bureau of Labor and Industries*, 98 Or App 548 *rev den* 308 Or 660 (1989). Thus, if, considering all the evidence, it is more likely than not that the facts necessary to establish the claim are true, the claim must be allowed. The proponent of a fact or position has the burden of presenting evidence to support that fact or position. ORS 183.450(2).

The issues in contention are listed above for the 270.3 acres in dispute. The issues are considered separately below.

1. Klamath County as a non-Indian successor of Allotment 449

Claimants assert *Walton* water rights for 152.3 acres within Allotment 449 located in the North Parcel of this claim. (Book Direct, Ex. U3.) They concede that Klamath County is the first non-Indian owner of Allotment 449, purchased in a foreclosure sale of the property.⁶ They argue that such ownership should not count as the first non-Indian purchaser because Klamath County acquired the allotment through foreclosure and public auction. (See Claimants' Closing Brief at 22-28.)

Claimants advance a number of arguments in support of their position. First, they assert that the *Walton* line of cases is distinguishable on their facts from the present case with respect to the limitation on the appropriation of water by the first non-Indian appropriator. They suggest that the court in the *Walton* cases was not confronted by the situation presented in this case, where the property was acquired in foreclosure. Second, Claimants argue that Klamath County should not be treated as the first non-Indian purchaser because of Klamath County's alleged inability to develop the property it purchased. Claimants rely on the language that "a non-Indian purchaser, under no competitive disability vis-à-vis other water users, may not retain the right to that quantity of water despite non-use." *Walton II*, 647 F.2d at 51 (emphasis by Claimants). Claimants argue that Klamath County was not a user of water and was at a competitive disability because it had no legal right to develop irrigation. Third, Claimants argue that such rights cannot be lost by inaction by a governmental entity.

It is unnecessary to address the effects of Klamath County's purchase of the property, whether due to Klamath County's status as a government entity or due to the particular circumstances in which Klamath County acquired the property. OWRD declines to do so.

⁶ Claimants argued that Klamath County acquired the property through foreclosure, which seems to imply that it was only foreclosing on a note it held. Such was not the case. Klamath County acquired the land at a public auction as any other purchaser could.

In *United States v. Anderson*, the Ninth Circuit addressed the effect on *Walton* rights of reacquisition by an Indian tribe after a period of non-Indian ownership. The court held that:

a non-Indian successor acquires a right to that quantity of water being utilized at the time title passes, plus that amount of water which the successor puts to beneficial use with reasonable diligence following the transfer of title. Where “the full measure of the Indian's reserved water right is not acquired by this means and maintained through continued use, it is lost to the non-Indian successor.” Consequently, on reacquisition the Tribe reacquires only those rights which have not been lost through nonuse and those rights will have an original, date-of-the-reservation priority.

736 F2d 1358, 1362 (1984). As is discussed in greater detail in the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS, “reasonable diligence” is the measure of whether a *Walton* right has been timely developed after transfer from Indian ownership. Per *Anderson*, if the period for reasonably diligent development expired prior to reacquisition of the property by a member of the Klamath Tribes, reacquisition by the member cannot revitalize the right. However, if the period for reasonably diligent development has not expired by the time of reacquisition of the property by a member of the Klamath Tribes, then an inchoate right remains appurtenant to the property. If the inchoate right has returned intact to Indian ownership, the Indian owner retains the right to hold the inchoate right indefinitely, so long as the property remains within Indian ownership.

In the case of Allotment 449, the property was in non-Indian ownership between October 20, 1930 and October 16, 1935, a period just short of five years. The period for reasonably diligent development of a water right is dependent on a number of circumstances, and may vary in length. Generally, though, within a five year period an inchoate right will not be considered to have expired for failure to diligently develop. The five-year period is the default period for diligent development under Oregon’s Water Rights Act. ORS 537.230(1). Given this general rule, and the considerable size of the allotment, we conclude that the inchoate *Walton* right had not expired by the time it re-entered Indian ownership on October 16, 1935, and therefore remained eligible for development.⁷

2. Natural flooding/ natural overflow

There is no dispute that the land in Claim 124 was formerly part of the Klamath Indian Reservation, that the land was allotted to Klamath tribal members, and that the land was transferred to non-Indians. Claimants claim a water right for grass and pasture for livestock, based in good part on natural overflow of the Sprague River.

⁷ Oregon Administrative Rule 690-028-0026(3) provides that in a filing for Practicably Irrigable Acreage a claimant shall document through a chain of title statement that the lands have never had more than *five consecutive years* of non-Indian ownership since the date of the reservation (emphasis added). We interpret this rule to pertain only to the documentation accompanying a claim, and not to set a fixed period for reasonably diligent development of Practicably Irrigable Acreage (inchoate acreage).

Allotment 449 is subject to natural overflow, and beneficial use of water by natural overflow was established under Indian ownership no later than 1941, after the period of non-Indian ownership described above. Allotments 314 (North and South), 315, 316, 317, and 318 are subject to natural overflow, and beneficial use of water by natural overflow on these allotments was established under Indian ownership prior to transfer to non-Indian successors. Beneficial use of water by natural overflow in Allotment 314(N) continued under non-Indian ownership during times when an irrigation system was not utilized.

3. Reasonable diligence

Allotment 449

Lands within Allotment 449 are subject to natural overflow from the Sprague River. Beneficial use of water by the method of natural overflow from the Sprague River was established no later than 1941, as evidenced by the presence of fields and haying activity in 1941 and 1953 (Book Direct at 22), and cattle grazing by Indian owners (Ex. C55 at 47.) Paul Fairclo leased Allotment 449 from Indian owners for the purpose of grazing cattle prior to his purchase of the property in 1966. (Fairclo Direct at 2; Ex. C55 at 15-16.) Paul Fairclo developed an irrigation system for these lands under the authority of a state water right (Permit S-32737 / Certificate 49275) with a priority date of November 10, 1967. Beneficial use of water has continued as claimed. (Fairclo Direct at 4; Paul Fairclo Rebuttal at 1-2; Duarte Rebuttal at 1-4.) Because the right was not lost as to Allotment 449 during Klamath County's ownership, from 1930 to 1935, beneficial use under subsequent Indian ownership is sufficient to establish reasonably diligent development.

Allotment 314(N)

Lands within this allotment are subject to natural overflow from the Sprague River. Beneficial use of water by the method of natural overflow from the Sprague River was established while still in Indian ownership. (Ex. C34 at 4-6, C36, C55 at 15-16; OWRD Ex. 1 at 47, Fairclo Direct at 2.) In addition to natural overflow from the Sprague River, tailwater from an artisan well(s) was delivered to this allotment through an east-west drain ditch prior to transfer of Allotment 314(N) from Indian ownership to non-Indian successors. The first non-Indian successors were Paul and Ann Fairclo in 1962. Fairclo cut off the water supply from the east-west drain ditch when establishing a new irrigation system from the Sprague River; the drain ditch was severed during the construction of a north-south canal designed to utilize Sprague River water. Dale Book, who was qualified as an expert and whose testimony was not rebutted by expert testimony, has opined that, based on aerial photographs, no irrigation has occurred within Allotment 314(N) because the parcel appears dry in aerial photographs after a tailwater ditch at the south end of Allotment 449 was severed prior to 1968. (Book Direct at 17-18.) Book's conclusion is based on his analysis of photographs from five days taken over a 32-year span (1968 – 2000). This is not an adequate assessment of whether beneficial use of water was made with reasonable diligence or continued. During limited periods of time when Allotment 314(N) was not irrigated using an irrigation system, Fairclo

continued to graze cattle on this allotment, making beneficial use of Sprague River water by the method of natural overflow. (Ex. C55 at 42; OWRD Ex. 1 at 73.) Fairclo perfected the use of irrigation water from the Sprague River to this allotment by 1979 as evidenced by the issuance of a water right certificate including these lands. (OWRD Ex. 1 at 88-91.) Beneficial use of water has continued as claimed. (OWRD Ex. 1 at 47-48; Fairclo Direct at 4; Duarte Rebuttal at 1-4.)

Allotment 1126

The first non-Indian successors of this allotment were Paul and Ann Fairclo in 1966. The United States concedes that Claimants and Paul Fairclo have met their burden of establishing *Walton* water rights for 58.1 acres within Allotment 1126 because these acres were reasonably developed and continuously irrigated by Fairclo. (Book Direct at 23.) Book opined that 15.9 acres located within Allotment 1126 are above the functioning ditch and have not been continuously irrigated (*Id.*). Further, he stated that the well authorized by Certificate 49274 is the only source of irrigation for the 24.5 acres east of the draw located in Allotment 1126. (Book Direct at 17; Ex. U20.) A groundwater certificate covers the claimed lands in Allotment 1126, and at times these lands have been irrigated under the groundwater certificate. However, this ground water right is supplemental to Certificate 49275 which specifically authorizes primary irrigation from the Sprague River. The claimed portion of Allotment 1126 started being irrigated from the Sprague River in 1967 via Paul Fairclo's diversion under Permit S-32737. (Book Direct at 19; OWRD Ex. 1 at 92.) Fairclo perfected use of irrigation water from the Sprague River on all the claimed lands within Allotment 1126 as evidenced by the issuance of water right Certificate 49275 in 1980. (OWRD Ex. 1 at 92.) The record establishes that water from the Sprague River diversion reaches these 40.8 acres using spreader ditches and handlines (pipe). (OWRD Ex. 1 at 94; Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.) Beneficial use of water was made with reasonable diligence on 98.5 acres within Allotment 1126 after transfer from Indian ownership to non-Indian successors. Beneficial use of water on the claimed acres in Allotment 1126, including the 15.9 acres north of the ditch, and the 24.5 acres in the northeastern portion of the allotment, has continued as claimed. (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.)

Unallotted Lands in Section 5

The first non-Indian successors of these parcels of land were Paul and Ann Fairclo in 1966. The United States concedes that Claimants and Fairclo have established *Walton* water rights for these 0.3 acres of the 8.2 acres within the unallotted parcel. Book opined that 7.9 acres are served only by well water or have not been continuously irrigated. (Book at 24.) A groundwater certificate covers the claimed unallotted lands in Section 5, and at times these lands have been irrigated under the groundwater certificate. However, this groundwater right is supplemental to Certificate 49275, which specifically authorizes primary irrigation from the Sprague River. The claimed unallotted lands in Section 5 started being irrigated from the Sprague River in 1967 via Paul Fairclo's diversion under Permit S-32737. (Book Direct at 19; OWRD Ex. 1 at 92.) Fairclo perfected use of irrigation water from the Sprague River on 8.2 acres of unallotted lands in Section 5 as evidenced by the issuance of water right Certificate 49275 in 1980.

(OWRD Ex. 1 at 92.) The record establishes that water from the Sprague River diversion reaches these 8.2 acres using spreader ditches and handlines (pipe). (OWRD Ex. 1 at 94; Fairclo Direct at 5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.) Beneficial use of water was made with reasonable diligence on the 8.2 acres of unallotted lands in Section 5 after transfer from Indian ownership. Beneficial use has continued as claimed. (Fairclo Direct at 4-5; Paul Fairclo Rebuttal at 1-2, Ex. A, B; Duarte Rebuttal at 1-4.)

Allotments 314(S), 315, 316, 317, and 318

Lands within these allotments are subject to natural overflow from the Sprague River. Beneficial use of water by the method of natural overflow from the Sprague River was established under Indian ownership prior to transfer to non-Indian successors (Ex. C32, C34, C36, C38). Paul Fairclo leased the property from Indian owners for the purpose of grazing cattle prior to his purchase of the land in 1962. (OWRD Ex. 1 at 47; Ex C55 at 15; Fairclo Direct at 2). After becoming the non-Indian successor to these allotments, Paul Fairclo developed an irrigation system for these lands under an established a state water right with a priority date of November 26, 1963 (Permit S-29348 / Certificate 48537). Beneficial use of water has continued as claimed. (OWRD Ex. 1 at 47-48; Fairclo Direct at 3-4; Taylor Direct at 1-3.)

Allotment 447

Claimants have not established *Walton* water rights for the 11.1 acres in Allotment 447 because the first non-Indian purchaser is not identified. Furthermore, the Claimants have provided no evidence of the date when the property left Indian ownership.

4. Open water surface, Allotments 314(S) and 316

Book opined that 10.3 acres within Allotments 314(S) and 316 have not been irrigated because the area has been under water in repeated aerial photographs. (Book Rebuttal at 3-4.) Photographic evidence taken sparsely throughout the growing season once revealed flooding in the area as late as July. At issue is whether or not beneficial use of water has been made on these 10.3 acres within Allotments 314(S) and 316. Testimony on behalf of Claimants establishes that this flooding recedes later in the season. Furthermore, testimony establishes that the flooding is typical, and is due in part to the irrigation water that collects in areas of natural depressions. Given that these lands are grazed in late summer, beneficial use of water has been demonstrated on these 10.3 acres. Therefore, Claimants have established *Walton* water rights.

The water rights granted for the 10.3 acres within these allotments should have attributes which are consistent with the appurtenant state water right certificates: rate of diversion of 0.26 cfs with a limit of 1/40 cfs per acre, and a water duty of 3.0 acre-feet per acre. The record supports the irrigation season as claimed and should be March 10 to November 10.

5. Continued Use

As described in the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS, a *Walton* claimant need not establish continuous beneficial use of water following initial development of the right. Instead, a contestant has the burden to prove that a claimant has abandoned the right after development. In this case, Book's testimony tends to show non-use of water on certain allotments on five specific days over a 32-year period, based on analysis of aerial photographs. The sporadic nature of this evidence is insufficient to establish abandonment of any portion of the developed rights. In addition, there is testimony that groundwater may have been used to irrigate portions of certain allotments during certain periods of time, and that Fairclo's ditch system may not have provided water to portions of certain allotments during certain periods of time. Again, this evidence of non-use is too sporadic to establish abandonment. In addition, Fairclo continued to graze cattle and make beneficial use of natural overflow during periods when the ditch system was unable to serve portions of certain allotments. The developed water rights have not been abandoned.

6. Summary

North Parcel:

Claimants have established *Walton* water rights for 299.1 acres within Allotments 314(N), 449, and 1126, as explained above.

Claimants have established Klamath Termination Act water rights for 8.2 acres of unallotted lands within Section 5, as explained above.

The water rights granted for the 307.3 acres within these allotments should have attributes which are consistent with the appurtenant state water right certificates: the rate of diversion should be 7.68 cfs with a limit of 1/40 cfs per acre, and the water duty should be 3.0 acre-feet per acre. The record supports the irrigation season as claimed and should be March 10 to November 10.

South Parcel:

Claimants have established *Walton* water rights for 376.7 acres within Allotments 314(S), 315, 316, 317, and 318, as explained above.

The water rights granted for the 376.7 acres within these allotments should have attributes which are consistent with the appurtenant state water right certificates: the rate of diversion should be 9.42 cfs with a limit of 1/40 cfs per acre, and the water duty should be 3.0 acre-feet per acre. The record supports the irrigation season as claimed and should be March 10 to November 10.

Reasons for Modification: (1) To correct and clarify the elements of a *Walton* water right. (2) To provide clarity of evidence in the record and further substantiate approval of the claim, especially pertaining to beneficial use of water prior to transfer from Indian ownership and beneficial use of water being made with reasonable diligence after transfer to non-Indian successors. (3) To correct the basis used to evaluate a period of non-Indian

ownership in Allotment 449. (4) To apply the appropriate legal bases to the Proposed Order's modified findings of fact.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.6, above.
 - c. The "Issues" is adopted in its entirety.
 - d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
 - f. The "Opinion" is replaced in its entirety as set forth in Section A.9, above.
 - g. The "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 124. Consistent with Sections A.7, A. 8 and A.9, above, the outcome of the Order has been modified to recognize a right for irrigation on an additional 248.9 acres, and to increase the rate and duty allowed on 10.3 acres to the full value claimed.
2. The elements of a Walton claim are established for the acres described in the Water Right Claim Description, below. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. 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 a portion of this claim. The elements of a Klamath Termination Act claim are established for 1.1 acres within the SE¼ SW¼, and 7.1 acres within the SE¼ SE¼, SECTION 5, TOWNSHIP 36 SOUTH, RANGE 12 EAST, W.M. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.
4. Beneficial use of water by the method of natural overflow is shown to be established prior to the development of specific points of diversion for portions of this claim.
5. Based on the file and record herein, IT IS ORDERED that Claim 124 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 124

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 12 E

CLAIMANT: RICHARD DUARTE
9701 HARVEY RD
GALT, CA 65632

SPRAGUE RIVER CATTLE COMPANY
35000 SPRAGUE RIVER ROAD
SPRAGUE RIVER, OR 97639

SOURCE OF WATER: The SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE OR USE:

IRRIGATION OF 684.0 ACRES, BEING 307.3 ACRES FROM THE NORTH (DUARTE) POD, AND 376.7 ACRES FROM THE SOUTH (TAYLOR) POD

RATE OF USE:

17.10 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 7.68 CFS FROM THE NORTH (DUARTE) POD AND 9.42 CFS FROM THE SOUTH (TAYLOR) POD

DUTY:

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

LIMIT:

1/40 CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: MARCH 10 - NOVEMBER 10

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
North (Duarte) POD	36 S	12 E	WM	8	SE SW	30	475 FEET NORTH AND 50 FEET WEST FROM S¼ CORNER, SECTION 8
South (Taylor) POD	36 S	12 E	WM	17	SE NE	16	460 FEET NORTH AND 25 FEET WEST FROM E¼ CORNER, SECTION 17

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	5	SW SW		14.4	North (Duarte) POD
36 S	12 E	WM	5	SE SW		22.0	
36 S	12 E	WM	5	NE SE		7.1	
36 S	12 E	WM	5	NW SE		1.1	
36 S	12 E	WM	5	SW SE		31.6	
36 S	12 E	WM	5	SE SE		30.5	
36 S	12 E	WM	8	NE NE	1	14.3	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	8	NE NE	8	20.0	North (Duarte) POD
36 S	12 E	WM	8	NW NE	2	19.0	
36 S	12 E	WM	8	NW NE	7	20.0	
36 S	12 E	WM	8	SW NE	10	19.5	
36 S	12 E	WM	8	SW NE	15	19.5	
36 S	12 E	WM	8	SE NE	9	20.0	
36 S	12 E	WM	8	SE NE	16	20.0	
36 S	12 E	WM	8	NE SW	19	18.2	
36 S	12 E	WM	8	NE SW	22	11.0	
36 S	12 E	WM	8	NW SW	20	9.7	
36 S	12 E	WM	8	SE SW	27	8.6	
36 S	12 E	WM	8	SE SW	30	0.8	
36 S	12 E	WM	8	NW SW	21	3.5	South (Taylor) POD
36 S	12 E	WM	8	SW SW	28	14.8	
36 S	12 E	WM	8	SW SW	29	20.0	
36 S	12 E	WM	8	SE SW	27	1.4	
36 S	12 E	WM	8	SE SW	30	17.2	
36 S	12 E	WM	17	NE NE	8	5.1	
36 S	12 E	WM	17	NW NE	2	6.2	
36 S	12 E	WM	17	NW NE	7	15.2	
36 S	12 E	WM	17	SW NE	10	20.0	
36 S	12 E	WM	17	SW NE	15	18.8	
36 S	12 E	WM	17	SE NE	9	15.2	
36 S	12 E	WM	17	SE NE	16	17.7	
36 S	12 E	WM	17	NE NW	3	20.0	
36 S	12 E	WM	17	NE NW	6	20.0	
36 S	12 E	WM	17	NW NW	4	20.0	
36 S	12 E	WM	17	NW NW	5	19.9	
36 S	12 E	WM	17	SW NW	12	16.7	
36 S	12 E	WM	17	SW NW	13	11.5	
36 S	12 E	WM	17	SE NW	11	19.5	
36 S	12 E	WM	17	SE NW	14	18.5	
36 S	12 E	WM	17	NE SW	19	12.7	
36 S	12 E	WM	17	NW SW	20	0.8	
36 S	12 E	WM	17	NE SE	17	17.5	
36 S	12 E	WM	17	NE SE	24	17.5	
36 S	12 E	WM	17	NW SE	18	17.5	
36 S	12 E	WM	17	NW SE	23	3.5	
36 S	12 E	WM	17	SE SE	25	6.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
THE MORGANA HUNTER LOVING	)	DETERMINATION
TRUST)	
_____	)	Water Right Claim 125

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 December 3, 1990, BETTIE L. HUNTER timely submitted a Statement and Proof of Claim (Claim 125) 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 an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 125 was submitted for a total of 450 gallons per minute from the Sprague River, a tributary of the Williamson River, for irrigation of 37 practicably irrigable acres. The claimed period of use is "normal irrigation season." The claimed priority date is "1864."
3. BETTIE L. HUNTER signed Claim 125 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 125 was subsequently transferred to the MORGANA HUNTER LOVING TRUST (Claimant) (PO BOX 1907, NEWPORT, OR 97365) (Claim # 125, Page 23).
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 elements for a practicably irrigable acreage right were not established.

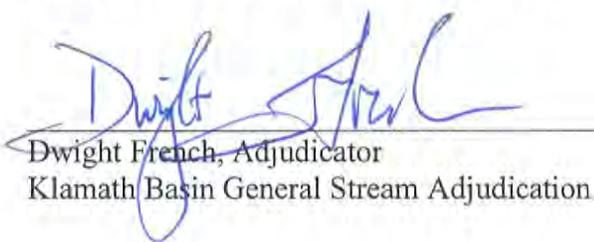
6. The Claimant did not file a contest to the Preliminary Evaluation of Claim 125.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3516: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, 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 Pritchard, Don Vincent, 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. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3130 to the Claim and/or Preliminary Evaluation of Claim 125.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 267.
10. On February 3, 2003, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3130. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Feb. 3, 2003).
11. On April 24, 2003, OWRD and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST 3516 (Settlement Agreement) thereby resolving the remaining contest to Claim 125.
12. On April 28, 2003, the Adjudicator withdrew Case 267 from the Office of Administrative Hearings.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3516 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 125 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

**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
ADA MATNEY	)	DETERMINATION
)	
_____	)	Water Right Claim 126

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 December 6, 1990, C. A. MATNEY¹ AND ADA R. MATNEY (Claimant) (14981 MATNEY RD, KLAMATH FALLS, OR 97603) timely submitted a Statement and Proof of Claim (Claim 126) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 126 was submitted for a total 1.0 cubic feet per second (cfs) of water from an unnamed stream, a tributary of the Sprague River, for irrigation of an unspecified number of acres with a season of use "April through September." The claimed priority date is "1864."
3. CHARLES A. MATNEY AND ADA R. MATNEY signed Claim 126 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 required elements for a Walton right were not established.
5. The Claimant did not file a contest to the Preliminary Evaluation of Claim 126.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3501: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady

¹ Deceased March 2, 1995.

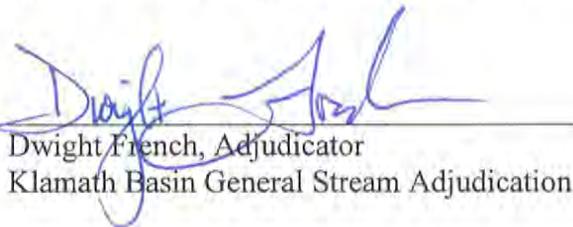
District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.², Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard³, Don Vincent⁴, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. On May 8, 2000, the United States of America timely filed Contest 3767 to the Claim and/or Preliminary Evaluation of Claim 126.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4155 to the Claim and/or Preliminary Evaluation of Claim 126.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 233.
10. On October 29, 2003, the Claimant withdrew Claim 126 which thereby rendered all contests to Claim 126 moot. (See LETTER from Jeanette Humphrey dated Oct. 29, 2003).
11. On November 10, 2003, the Adjudicator withdrew Case 233 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 126 by the Claimant, IT IS ORDERED that Claim 126 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

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3501 on January 16, 2004. See VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

³ Berlva Pritchard voluntarily withdrew from Contest 3501 on June 24, 2002. See NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3501 on November 29, 2000. See NOTICE OF WITHDRAWAL OF CLAIMANTS.

**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
ADA MATNEY	)	DETERMINATION
)	
_____	)	Water Right Claim 127

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 December 6, 1990, C. A. MATNEY¹ AND ADA R. MATNEY (Claimant) (14981 MATNEY RD, KLAMATH FALLS, OR 97603) timely submitted a Statement and Proof of Claim (Claim 127) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 127 was submitted for a total 1.0 cubic feet per second (cfs) of water from Brown Spring, tributary to the Sprague River, for irrigation of 40 acres with a season of use "April through September." The claimed priority date is "1864."
3. CHARLES A. MATNEY AND ADA R. MATNEY signed Claim 127 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 required elements for a Walton right were not established.
5. The Claimant did not file a contest to the Preliminary Evaluation of Claim 127.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3502: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady

¹ Deceased March 2, 1995.

District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.², 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 Pritchard³, Don Vincent⁴, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. On May 8, 2000, the United States of America timely filed Contest 3768 to the Claim and/or Preliminary Evaluation of Claim 127.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4156 to the Claim and/or Preliminary Evaluation of Claim 127.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 234.
10. On October 29, 2003, the Claimant withdrew Claim 127 which thereby rendered all contests to Claim 127 moot. (*See* LETTER from Jeanette Humphrey dated Oct 29, 2003).
11. On November 10, 2003, the Adjudicator withdrew Case 234 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 127 by the Claimant, IT IS ORDERED that Claim 127 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

² Klamath Hills District Improvement Company voluntarily withdrew from Contest 3502 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

³ Berlva Pritchard voluntarily withdrew from Contest 3502 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

⁴ Don Vincent voluntarily withdrew from Contest 3502 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

**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
WILLIAM L. GALLAGHER AND	)	DETERMINATION
WHISKEY CREEK RANCH)	
_____)	
	)	Water Right Claim 128

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 16, 1991, WHISKEY CREEK RANCH AND WILLIAM L. GALLAGHER (Claimants) timely submitted a Statement and Proof of Claim (Claim 128) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 128 was submitted for a total of 16.25 cfs of water from Lola-K-Wast Spring, Modoc Billy Creek, and an unnamed spring, tributaries of Whiskey Creek, and Whiskey Creek and Whiskey Creek springs, tributaries of the Sprague River; being .01 cfs for domestic use, and 16.24 cfs for irrigation of 724.7 acres with incidental livestock watering of 1200 head. The claimed period of use is April 1 to November 15 for irrigation. The claimed priority date is October 14, 1864.
3. WILLIAM L. GALLAGHER signed Claim 128 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 approved, but for a smaller quantity of water and fewer acres than claimed, and with longer seasons of use than claimed.
5. On April 28, 2000, the Claimants timely filed Contest 37 to the Preliminary Evaluation of Claim 128.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3503: 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. On May 8, 2000, the United States of America timely filed Contest 3769 to the Claim and Preliminary Evaluation of Claim 128.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4157 to the Claim and Preliminary Evaluation of Claim 128.
9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2846 to the Claim and/or Preliminary Evaluation of Claim 128.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 235.
11. On May 20, 2003, WaterWatch’s Contest 2846 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.’S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
12. On February 2, 2005, the Klamath Tribes withdrew Contest 4157. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (Feb. 2, 2005).
13. On October 26, 2005, the Claimants, OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 128.
14. On October 31, 2005, the Adjudicator withdrew Case 235 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3503 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3503 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3503 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON 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 128 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 128
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 128 SETTLEMENT MAP (October 8, 2005)

CLAIMANT: WHISKEY CREEK RANCH
WILLIAM L. GALLAGHER
PO BOX 309
BEATTY, OR 97621

SOURCE OF WATER:
WHISKEY CREEK, tributary to the SPRAGUE RIVER,
WHISKEY CREEK SPRINGS, tributary to WHISKEY CREEK,
MODOC BILLY CREEK, tributary to WHISKEY CREEK,
An UNNAMED SPRING, tributary to WHISKEY CREEK, and
LOLA-K-WAST SPRING, tributary to WHISKEY CREEK

PURPOSE OR USE: IRRIGATION OF 619.4 ACRES.

RATE OF USE MEASURED AT THE POINT OF DIVERSION IS AS FOLLOWS:

POD Name(s)	Rate (CFS)	Authorized Place of Use	Authorized Number of Acres
POD 1	3.09	Areas # 1 and # 2	123.7
POD 2	2.04	Area # 3	81.7
POD 3	3.20	Area # 4	232.1
POD 4	0.52	Area # 5	20.7
POD 5	1.00	Area # 6	45.8
POD 6	1.73	Area # 10	69.2
POD 1 and/or POD 5	0.17	Area # 7	6.7
POD 1 and/or POD 3	0.56	Area # 8	22.2
POD 3 and/or POD 4	0.43	Area # 9	17.3
TOTALS for WATER RIGHT	12.74 CFS		619.4 Acres

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:

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

PERIOD OF ALLOWED USE: APRIL 1 - NOVEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Source(s)	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	Whiskey Creek and Whiskey Creek Springs	36 S	12 E	WM	30	SE SW	
POD 2	Modoc Billy Creek	36 S	12 E	WM	30	NE NW	
POD 3	Modoc Billy Creek	36 S	11 E	WM	36	NE SE	
POD 4	Unnamed Spring	37 S	11 E	WM	1	NW NE	2
POD 5	Lola-K-Wast Spring	36 S	12 E	WM	30	SW NE	
POD 6	Whiskey Creek and Whiskey Creek Springs	36 S	12 E	WM	31	SW NW	2

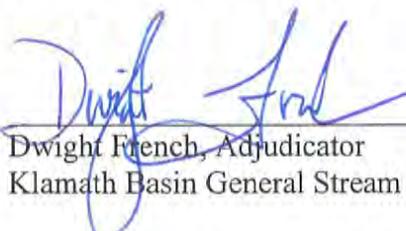
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized Place of Use Area #	Authorized POD
36 S	11 E	WM	25	NE SE		31.4	Area # 2	POD 1
36 S	11 E	WM	25	NW SE		25.4	Area # 2	POD 1
36 S	11 E	WM	25	SW SE		20.5	Area # 2	POD 1
36 S	11 E	WM	25	SW SE		0.6	Area # 4	POD 3
36 S	11 E	WM	25	SW SE		14.9	Area # 8	POD 1 and/or POD 3
36 S	11 E	WM	25	SE SE		6.5	Area # 2	POD 1
36 S	11 E	WM	25	SE SE		1.9	Area # 8	POD 1 and/or POD 3
36 S	11 E	WM	36	NE NE		26.1	Area # 4	POD 3
36 S	11 E	WM	36	NW NE		12.0	Area # 4	POD 3
36 S	11 E	WM	36	NW NE		5.4	Area # 8	POD 1 and/or POD 3
36 S	11 E	WM	36	SW NE		0.3	Area # 4	POD 3
36 S	11 E	WM	36	SE NE		29.7	Area # 4	POD 3
36 S	11 E	WM	36	SE NE		5.9	Area # 9	POD 3 and/or POD 4
36 S	11 E	WM	36	NE SE		15.6	Area # 4	POD 3
36 S	11 E	WM	36	NE SE		7.2	Area # 5	POD 4
36 S	11 E	WM	36	NE SE		11.4	Area # 9	POD 3 and/or POD 4
36 S	11 E	WM	36	SE SE		2.0	Area # 4	POD 3
36 S	11 E	WM	36	SE SE		13.5	Area # 5	POD 4
36 S	12 E	WM	30	SW NE		13.8	Area # 6	POD 5
36 S	12 E	WM	30	SW NE		1.4	Area # 7	POD 1 and/or POD 5
36 S	12 E	WM	30	NW NW	1	37.2	Area # 3	POD 2
36 S	12 E	WM	30	SW NW	2	44.5	Area # 3	POD 2
36 S	12 E	WM	30	NE SW		26.6	Area # 1	POD 1
36 S	12 E	WM	30	NE SW		1.8	Area # 4	POD 3
36 S	12 E	WM	30	NW SW	3	44.4	Area # 4	POD 3
36 S	12 E	WM	30	SW SW	4	44.5	Area # 4	POD 3
36 S	12 E	WM	30	SE SW		13.3	Area # 1	POD 1
36 S	12 E	WM	30	SE SW		7.2	Area # 4	POD 3
36 S	12 E	WM	30	NW SE		32.0	Area # 6	POD 5

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized Place of Use Area #	Authorized POD
36 S	12 E	WM	30	NW SE		5.3	Area # 7	POD 1 and/or POD 5
36 S	12 E	WM	30	SW SE		36.3	Area # 10	POD 6
36 S	12 E	WM	30	SE SE		6.1	Area # 10	POD 6
36 S	12 E	WM	31	NW NE		5.5	Area # 10	POD 6
36 S	12 E	WM	31	NE NW		4.1	Area # 4	POD 3
36 S	12 E	WM	31	NE NW		21.1	Area # 10	POD 6
36 S	12 E	WM	31	NW NW		43.8	Area # 4	POD 3
36 S	12 E	WM	31	NW NW		0.2	Area # 10	POD 6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
PIERRE A. KERN	)	DETERMINATION
_____)	
	)	Water Right Claim 129

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 December 7, 1990, TOTTISIE W. J. LORENZ *ET AL.* timely submitted a Statement and Proof of Claim (Claim 129) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 129 was submitted for a total of 6.02 cfs of water from Fivemile Creek, a tributary of the North Fork Sprague River, for irrigation of 246.9 acres with incidental livestock watering of approximately 355 head. The claimed period of use is April 1 to November 1. The claimed priority date is "1864."
3. TOTTISIE W. J. LORENZ signed Claim 129 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 129 was transferred to PIERRE A. KERN (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M93, PAGE 1199 (Jan. 15, 1993) (Claim # 129, Pages 22-24).
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 claim is for a source which has been previously adjudicated."
6. On May 8, 2000, the Claimant timely filed Contest 3108 to the Preliminary Evaluation of Claim 129.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3504: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3770 to the Claim and Preliminary Evaluation of Claim 129.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4158 to the Claim and Preliminary Evaluation of Claim 129.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 236.
11. On May 6, 2003, Claim 129 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
12. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
13. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 12, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
14. On April 15, 2005, the Klamath Tribes withdrew Contest 4158. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (April 15, 2005).

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3504 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3504 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3504 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On February 16, 2006, the Claimant, OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 129.
16. On March 2, 2006, the Adjudicator withdrew Case 236 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON 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 129 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 129
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 129 SETTLEMENT MAP (Mar. 3, 2006)

CLAIMANT: PIERRE A. KERN
2730 AVENIDA CABALLO
SANTA YNEZ, CA 93460

SOURCE OF WATER: FIVEMILE CREEK, tributary to the NORTH FORK SPRAGUE RIVER

PURPOSE OR USE: IRRIGATION OF 150.0 ACRES.

RATE OF USE:
3.75 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:

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

PERIOD OF ALLOWED USE: APRIL 1 - NOVEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	13 E	WM	7	NW NW	SOUTH 51 DEGREES 10 MINUTES EAST, 285 FEET FROM NW CORNER, SECTION 7

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	13 E	WM	13	NE NE	0.7
36 S	13 E	WM	13	SW NE	31.7
36 S	13 E	WM	13	SE NE	35.9
36 S	13 E	WM	13	NE NW	0.7
36 S	13 E	WM	13	NE SE	40.0
36 S	13 E	WM	13	SE SE	40.0
36 S	13 E	WM	24	NE NE	1.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
RIVER SPRINGS RANCH CO.	)	DETERMINATION
)	
	)	Water Right Claim 130

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, RIVER SPRINGS RANCH CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 130) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 130 was submitted for a total of “3.5 acre-feet” [per acre] of water from the Sprague River, a tributary of the Williamson River for irrigation of 424 acres with incidental livestock watering of 500 cow-calf pairs and incidental wildlife use. The claimed period of use is April 15 to November 15. The claimed priority date is October 14, 1864.
3. PIERRE A. KERN as president of RIVER SPRINGS RANCH CO. signed Claim 130 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 approved for irrigation with incidental livestock watering, but for fewer acres than claimed, and with longer irrigation season than claimed.
5. On May 8, 2000, the Claimant timely filed Contest 3109 to the Preliminary Evaluation of Claim 130.

6. On May 8, 2000, the United States of America timely filed Contest 3771 to the Claim and Preliminary Evaluation of Claim 130.
7. On May 8, 2000, the Klamath Tribes timely filed Contest 4159 to the Claim and Preliminary Evaluation of Claim 130.
8. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2847 to the Claim and/or Preliminary Evaluation of Claim 130.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 237.
10. On May 20, 2003, WaterWatch's Contest 2847 was dismissed. *See* ORDER DISMISSING WATER WATCH OF OREGON INC.'S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
11. On March 24, 2005, the Klamath Tribes withdrew Contest 4159. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Mar. 24, 2005).
12. On September 29, 2005, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 130.
13. On October 10, 2005, the Adjudicator withdrew Case 237 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, and the United States of America is adopted and incorporated as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON 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 130 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 130
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 130 SETTLEMENT MAP (Sept. 28, 2005)

CLAIMANT: RIVER SPRINGS RANCH CO.
2730 AVENIDA CABALLO
SANTA YNEZ, CA 93460

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

PURPOSE OR USE:
IRRIGATION OF 336.5 ACRES, BEING 124.5 ACRES FROM POD 1 AND 212.0 ACRES FROM POD 2.

RATE OF USE:
8.41 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 3.11 CFS FROM POD 1 AND 5.3 CFS FROM POD 2.

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

PERIOD OF ALLOWED USE: APRIL 15 - NOVEMBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	36 S	13 E	WM	22	NE NW	25 FEET SOUTH AND 3930 FEET WEST FROM NE CORNER, SECTION 22
POD 2	36 S	13 E	WM	14	SE SW	650 FEET NORTH AND 2250 FEET EAST FROM SW CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
36 S	13 E	WM	15	NE SW	9.6	POD 1
36 S	13 E	WM	15	SE SW	13.9	
36 S	13 E	WM	15	NE SE	1.2	
36 S	13 E	WM	15	NW SE	11.2	
36 S	13 E	WM	15	SW SE	36.7	
36 S	13 E	WM	15	SE SE	30.5	
36 S	13 E	WM	22	NE NE	5.2	
36 S	13 E	WM	22	NW NE	10.1	
36 S	13 E	WM	22	NE NW	6.1	

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
36 S	13 E	WM	14	SW SW	30.7	POD 2
36 S	13 E	WM	14	SE SW	19.0	
36 S	13 E	WM	14	SW SE	11.9	
36 S	13 E	WM	14	SE SE	20.5	
36 S	13 E	WM	15	SE SE	3.5	
36 S	13 E	WM	22	NE NE	3.7	
36 S	13 E	WM	23	NE NE	37.0	
36 S	13 E	WM	23	NW NE	22.9	
36 S	13 E	WM	23	NE NW	31.3	
36 S	13 E	WM	23	NW NW	31.5	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
GREGORY B. BULKLEY;	)	DETERMINATION
JACKQUELINE R. GRAHAM; LLOYD)	
POWELL; LLOYD POWELL)	
DEVELOPEMNT CO.; RODNEY	)	Water Right Claim 131
MURRAY; RIVER SPRINGS RANCH CO.)	

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

A. FINDINGS OF FACT

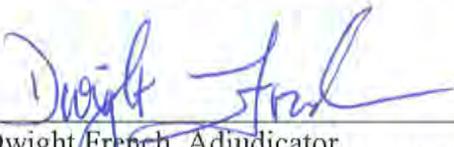
1. Claim 131 was submitted by the original claimant, BERNARD L. SIMONSEN, on February 8, 1991, eight days past the February 1, 1991 deadline for submitting claims.
2. Claim 131 (Claimants: GREGORY B. BULKLEY AND JACKQUELINE R. GRAHAM, 701 EAST BELFAST RD., SPARKS, MD 21152; LLOYD POWELL, POWELL DEVELOPEMNT CO., 737 MARKET ST. KIRKLAND, WA 98033; RODNEY MURRAY, 1945 PAINTER ST, KLAMATH FALLS, OR 97601; AND RIVER SPRINGS RANCH CO. (C/O PIERRE KERN), 2730 AVENIDA CABALLO, SANTA YNEZ, CA 93460) and its associated contests (2848, 3110, 3505, 3772, and 4160) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 238.
3. On May 6, 2003, Claim 131 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
4. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.
5. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 3, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

6. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING UNITED STATES' MOTION FOR LEGAL RULING AND PROPOSED ORDER DENYING CLAIM (Proposed Order) on November 18, 2005, denying Claim 131.
7. Exceptions were filed to the Proposed Order within the exception filing deadline by claimants Gregory B. Bulkley, Jacqueline R. Graham and River Springs Ranch Co.
8. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 131, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
9. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
2. Based on the file and record herein, including the original claimant's failure to submit the claim on or before the required deadline, IT IS ORDERED that Claim 131 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

**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.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.

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).

¹ 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.

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

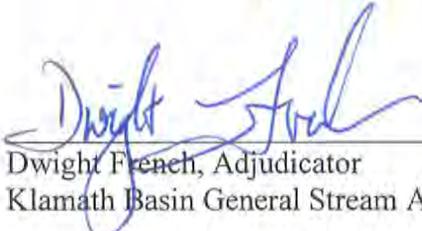
³ Don Vincent voluntarily withdrew from Contest 3393 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

**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 133

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 AMENDED PROPOSED ORDER**

1. Claim 133 (Claimant: CAMERON A. CURTISS) and its associated contests (2849, 3131, 3394, and 4161) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 112.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an AMENDED PROPOSED ORDER¹ (Amended Proposed Order) for Claim 133 on October 15, 2003.
3. Exceptions were filed to the Amended Proposed Order within the exceptions filing deadline by (1) Cameron A. Curtiss, (2) the United States of America, and (3) the Klamath Tribes.
4. The exceptions filed to the Amended Proposed Order along with any opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 133. Except for the item addressed in Section A.7.a., below, the exceptions filed to the Amended Proposed Order for Claim 133 are found to be unpersuasive.
5. The Amended Proposed Order is adopted and incorporated as if set forth fully herein, with the following three exceptions: (1) the section titled "Conclusions of Law" is adopted in its entirety except as modified under Finding of Fact A.6, below, (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, below, and (3) 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 133. Except as identified in Section A.8, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

¹ This Amended Proposed Order corrected a typographical error in the Proposed Order issued September 30, 2003.

6. **Conclusions of Law.** Within the section titled “Conclusions of Law” of the Amended Proposed Order the following modifications are made:

a. The third conclusion of law is corrected as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

“The irrigation season regarding this pre-1909 water right runs from
~~April~~ March 1 to September 30 of each year.

Reason for Modification: To correct an error. The “Order” section of the Amended Proposed Order recommends that the Adjudicator order that the season of use be March 1 – September 30 of each year. This recommendation is consistent with the Opinion in the Amended Proposed Order, which in the “Season of Use and Priority Date” subsection explains that when Mr. Curtiss filled out his Statement of Proof of Claim he was asked the question “When does the irrigation season begin and end[,]” and that he answered “March – September.” Modifying the third Conclusion of Law as set forth above corrects the inconsistency between the “Opinion” and “Order” sections of the Amended Proposed Order and the “Conclusions of Law” section and is supported by the evidence.

7. **Opinion.** Within the section titled “Opinion” of the Amended Proposed Order the following modifications are made:

a. The first line of the quote on page 8 (subsection ‘Continuity of Use’) is corrected as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

“The Alexander Ranch (formerly known as the Doak Ranch) has been
irrigated from [Rock Creek] since ~~1998~~ 1887.” (Claimant’s Ex. 4.)

Reason for Modification: To correct a scrivener’s error - raised in exceptions.

b. The last paragraph of the opinion section is modified as follows (additions are shown in “underline” text):

No participant actively contested or presented evidence on the appropriate rate, duty, or season regarding Mr. Curtiss’ livestock watering. Appendix A is the only evidence regarding the appropriate season (year round), or rate (twelve gallons per day per head for non-dairy livestock. The evidence shows that Mr. Curtiss’ waters 2,500 head of livestock from his irrigation and drainage ditches at a rate of 0.05 cfs (OWRD Ex. 1 at 83, 88.) This amount may be added to his

rate, but does not affect his duty. The record supports the claimed year around season of use for livestock watering.

Reason for Modification: Although the Amended Proposed Order states that no participant actively contested or presented evidence on the appropriate rate, duty, or season regarding Mr. Curtiss' livestock watering, the recommendation under the "Order" section of the Amended Proposed Order listed the period of use as March 1 to September 30 of each year. (Amended Proposed Order at 12.) This oversight is corrected to include a period of use for livestock watering of January 1 – December 31. This is consistent with the "year round" season of use for livestock watering claimed for Claim 133.

8. **Order.** Within the section titled "Order" of the Amended Proposed Order, the Place of Use for the 6.4 acres listed within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, Township 36 South, Range 7 East, W.M. is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

~~LOT 4~~ LOT 6 SE $\frac{1}{4}$ SE $\frac{1}{4}$ 6.4 ACRES IRRIGATION AND LIVESTOCK

Reason for Modification: To correct an error. OWRD finds that the 6.4 acres listed within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, Township 36 South, Range 7 East, W.M. are located within Government Lot 6; these acres were incorrectly identified as being within Government Lot 4. (OWRD Ex. 1 at 106.)

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated as if set forth fully herein, with the following three exceptions: (1) the section titled "Conclusions of Law" is adopted in its entirety except as modified under Finding of Fact A.6, above, (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, above, and (3) 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 133. Except as identified in Section A.8, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a pre-1909 claim are established regarding Rock Creek (Denny Creek).
3. The elements of a pre-1909 claim are not established regarding Upper Klamath Lake.
4. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

5. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water, and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
6. Based on the file and record herein, IT IS ORDERED that Claim 133 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 133

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 7 E / T 37 S, R 7 E

CLAIMANT: CAMERON A. CURTISS
21051 HWY 140 WEST
KLAMATH FALLS OR 97601

SOURCE OF WATER: ROCK CREEK (DENNY CREEK), tributary to KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 936.6 ACRES; LIVESTOCK WATERING OF 2,500 HEAD.

RATE OF USE:

13.550 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

13.5 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.05 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 30,000 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACES OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - September 30
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: JANUARY 25, 1909

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
37 S	7 E	WM	9	NW SE

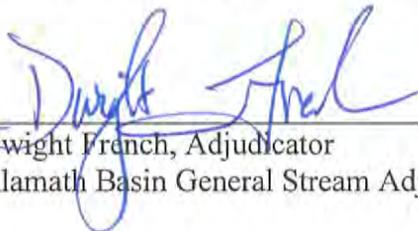
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	7 E	WM	32	NE SE	7	15.6
36 S	7 E	WM	32	SE SE	6	6.4
36 S	7 E	WM	33	SW NE	4	16.0
36 S	7 E	WM	33	SW NE	2	2.0
36 S	7 E	WM	33	SE NE	4	2.4
36 S	7 E	WM	33	SE NE	2	1.0
36 S	7 E	WM	33	SE NW	7	11.8
36 S	7 E	WM	33	NE SW		40.0
36 S	7 E	WM	33	NW SW		34.4
36 S	7 E	WM	33	SW SW		39.8
36 S	7 E	WM	33	SE SW		40.0
36 S	7 E	WM	33	NE SE	3	36.0
36 S	7 E	WM	33	NW SE		40.0
36 S	7 E	WM	33	SW SE		40.0
36 S	7 E	WM	33	SE SE		40.0
36 S	7 E	WM	34	NE SW		0.6
36 S	7 E	WM	34	NW SW	1	6.5
36 S	7 E	WM	34	NW SW	12	4.3
36 S	7 E	WM	34	SW SW	2	22.4
36 S	7 E	WM	34	SW SW	11	15.3
36 S	7 E	WM	34	SE SW		1.4
37 S	7 E	WM	3	NW NW		30.4
37 S	7 E	WM	3	NW NW	3	0.2
37 S	7 E	WM	4	NE NE	11	32.0
37 S	7 E	WM	4	NE NE	4	8.0
37 S	7 E	WM	4	NW NE		40.0
37 S	7 E	WM	4	SW NE	10	40.0
37 S	7 E	WM	4	SE NE	10	9.9
37 S	7 E	WM	4	SE NE	5	19.7
37 S	7 E	WM	4	NE NW		40.0
37 S	7 E	WM	4	NW NW	12	28.4
37 S	7 E	WM	4	SW NW	12	10.8
37 S	7 E	WM	4	SE NW		39.1
37 S	7 E	WM	4	NE SW	13	37.0
37 S	7 E	WM	4	NW SW	13	1.2
37 S	7 E	WM	4	SW SW	14	2.0
37 S	7 E	WM	4	SE SW	14	38.6
37 S	7 E	WM	4	NE SE	6	2.8
37 S	7 E	WM	4	NW SE	6	4.7

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
37 S	7 E	WM	4	NW SE	9	26.1
37 S	7 E	WM	4	SW SE	8	17.4
37 S	7 E	WM	4	SW SE	7	5.6
37 S	7 E	WM	9	NW NE	5	3.0
37 S	7 E	WM	9	NW NE	6	17.4
37 S	7 E	WM	9	SW NE	7	6.0
37 S	7 E	WM	9	SW NE	4	9.8
37 S	7 E	WM	9	NE NW	9	35.8
37 S	7 E	WM	9	SE NW	8	12.8
37 S	7 E	WM	9	NW SE		2.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
GLEND A. J. BUCHANAN	)	DETERMINATION
_____)	
	)	Water Right Claim 134

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 134 (Claimant: GLEND A. J. BUCHANAN, 13851 ALGOMA ROAD, KLAMATH FALLS, OR 97601) and its associated contests (3132, 3395, 3821, and 4162) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 113.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on July 30, 2003, denying Claim 134.
3. Exceptions were filed to the Proposed Order by the Klamath Tribes which adopted by reference the United States' Exceptions to the Proposed Order. The United States did not file exceptions to the Proposed Order for Claim 134, thus the Klamath Tribes' exceptions are moot.
4. The Proposed Order as it pertains to Claim 134 is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the portion of the "Opinion" as it pertains to Claim 134 is adopted with modifications, as set forth in Section A.5, below.
5. **Opinion.** Within the section titled "Opinion" of the Proposed Order, the following sentence (shown in "underline" text) is added to the first paragraph:

One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the proprietor of the land accepts the gift made by nature and garners the

produce of the irrigation by harvesting or utilizing the crops grown on the land***.” *In re Silvies River*, 115 Or 27, 66 (1925).

Reason for Modification: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right.

B. DETERMINATION

1. The Proposed Order as it pertains to Claim 134 is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the portion of the “Opinion” as it pertains to Claim 134 is adopted with modifications, as set forth in Section A.5, below.
2. 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.
3. Based on the file and record herein, IT IS ORDERED that Claim 134 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

**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
ROBERT BUCHANAN	)	DETERMINATION
)	
_____	)	Water Right Claim 135

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 135 (Claimant: ROBERT BUCHANAN) and its associated contests (3133, 3396, 3822, 4163) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 114.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 135 on July 30, 2003.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the United States of America and (2) the Klamath Tribes.
4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 135 and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. The Proposed Order as it pertains to Claim 135 is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" adopted in its entirety.
 - b. The "Evidentiary Rulings" adopted in its entirety.
 - c. The "Issues" is adopted in its entirety.
 - d. The "Findings of Fact" adopted in its entirety.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.6, below.
 - f. The "Opinion" is adopted with modifications, as set forth in Section A.7, below.

- g. The “Summary” is adopted in its entirety.
- h. The “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 135. Except as identified in Section A.8, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

6. **Conclusions of Law.**

- a. Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #3 is modified as follows (deletions are shown in “~~striketrough~~” text):

The record supports the rate, duty, actual use, points of diversion, ~~seasonal limitations~~, and/or acreage stated in the Preliminary evaluation of Claims 135 and 136.

- b. Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #6 is modified as follows (additions are shown in “underline” text):

The period of use for irrigation in the preliminary evaluation exceeds the period of use claimed in Claims 135 and 136. The record supports a period of use April 1 to November 1 for irrigation and year around for livestock watering, as claimed.

Reason for Modifications: Conclusion of Law #6 of the Proposed Order states: “[t]he period of use for irrigation in the preliminary evaluation exceeds the period of use claimed in Claim 135 and 136.” (Proposed Order at 5.) However, the recommendation contained within the section titled “Order” states: “[t]he claim shall be as stated in the Preliminary Evaluation [P.E.]” except for the priority date.” (Proposed Order at 8.) The P.E. approved an irrigation season of March 1 – October 31. The claimed season of use is April 1 to November 1. The season of use listed in the P.E. exceeds the claimed irrigation season. Thus, Conclusions of Law #3 and #6 are modified to confirm the irrigation season of use to that which was claimed, being April 1 to November 1.

- 7. **Opinion.** Within the section titled “Opinion” of the Proposed Order, the following sentence (shown in “underline” text) is added to the first paragraph:

One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the “proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***.” *In re Silvies River*, 115 Or 27, 66 (1925).

Reason for Modification: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right.

8. **Order.** The following portion pertaining to Claim 135 of the section titled “Order” of the Proposed Order is modified as follows (additions are shown in “underline” text):

Claim 135:

The claim shall be as stated in the Preliminary Evaluation, except as follows:

PRIORITY DATE: May 25, 1908.

SEASON OF USE: April 1 to November 1.

Reason for Modification: To provide consistency with Findings of Fact 6, above.

B. DETERMINATION

1. The Proposed Order as it pertains to Claim 135 is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” adopted in its entirety.
 - b. The “Evidentiary Rulings” adopted in its entirety.
 - c. The “Issues” is adopted in its entirety.
 - d. The “Findings of Fact” adopted in its entirety.
 - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.6, above.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.7, above.
 - g. The “Summary” is adopted in its entirety.
 - h. The “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 135. Except as identified in Section A.8, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 135 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 135

CLAIM MAP REFERENCE: CLAIM # 135, PAGE 41

CLAIMANT: ROBERT BUCHANAN
13490 ALGOMA ROAD
KLAMATH FALLS, OR 97601

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 78.0 ACRES

RATE OF USE:
1.74 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: APRIL 1 - NOVEMBER 1

DATE OF PRIORITY: MAY 25, 1908

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	8 E	WM	13	SW NE	2	1725 FEET SOUTH AND 2400 FEET WEST FROM NE CORNER, SECTION 13

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	9 E	WM	7	NW SE	39.0
37 S	9 E	WM	7	SW SE	39.0

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
DOROTHY BUCHANAN, GLENDA J.	)	DETERMINATION
BUCHANAN, ROBERT BUCHANAN,)	
LEWIS HAGELSTEIN, RUTH)	
HAGELSTEIN, AND C. MARIE SUITER)	
_____	)	Water Right Claim 136
)	

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 136 (Claimants: DOROTHY BUCHANAN, GLENDA J. BUCHANAN, ROBERT BUCHANAN, LEWIS HAGELSTEIN, RUTH HAGELSTEIN, AND C. MARIE SUITER) and its associated contests (3134, 3397, 2823, and 4164) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 115.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 136 on July 30, 2003.
3. Exceptions were filed to the Proposed Order by the Klamath Tribes which adopted by reference the United States' Exceptions to the Proposed Order. The United States did not file exceptions to the Proposed Order for Claim 136, thus the Klamath Tribes' exceptions are moot.
4. The Proposed Order as it pertains to Claim 136 is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Evidentiary Rulings" is adopted in its entirety.
 - c. The "Issues" is adopted in its entirety.
 - d. The "Findings of Fact" adopted in its entirety.
 - e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.5, below.

- f. The “Opinion” is adopted with modifications, as set forth in Section A.6, below.
- g. The “Summary” is adopted in its entirety.
- h. The “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 136. Except as identified in Section A.7, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

5. **Conclusions of Law.**

- a. Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #3 is modified as follows (deletions are shown in “~~strike through~~” text):

The record supports the rate, duty, actual use, points of diversion, ~~seasonal limitations~~, and/or acreage stated in the Preliminary evaluation of Claims 135 and 136.

- b. Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #6 is modified as follows (additions are shown in “underline” text):

The period of use for irrigation in the preliminary evaluation exceeds the period of use claimed in Claims 135 and 136. The record supports a period of use April 1 to November 1 for irrigation and year around for livestock watering, as claimed.

Reason for Modifications: Conclusion of Law #6 of the Proposed Order states: “[t]he period of use for irrigation in the preliminary evaluation exceeds the period of use claimed in Claim 135 and 136.” (Proposed Order at 5.) However, the recommendation contained within the “Order” section states: “[t]he claim shall be as stated in the Preliminary Evaluation [P.E.]” except for the priority date.” (Proposed Order at 8.) The P.E. approved an irrigation season of March 1 – October 31. The claimed season of use is April 1 to November 1. The season of use listed in the P.E. exceeds the claimed irrigation season. Thus, Conclusions of Law #3 and #6 are modified to confirm the irrigation season of use to that which was claimed, being April 1 to November 1.

- 6. **Opinion.** Within the section titled “Opinion” of the Proposed Order, the following sentence (shown in “underline” text) is added to the first paragraph:

One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the “proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***.” *In re Silvies River*, 115 Or 27, 66 (1925).

Reason for Modification: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right.

7. **Order.** The following portion pertaining to Claim 136 of the section titled “Order” of the Proposed Order is modified as follows (additions are shown in “underline” text):

Claim 136:

The claim shall be as stated in the Preliminary Evaluation, except as follows:

PRIORITY DATE: May 25, 1908.

SEASON OF USE: April 1 to November 1.

Reason for Modification: To provide consistency with Section A.5, above.

B. DETERMINATION

1. The Proposed Order as it pertains to Claim 136 is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” is adopted in its entirety.
 - b. The “Evidentiary Rulings” is adopted in its entirety.
 - c. The “Issues” is adopted in its entirety.
 - d. The “Findings of Fact” adopted in its entirety.
 - e. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.5, above.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.6, above.
 - g. The “Summary” is adopted in its entirety.
 - h. The “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 136. Except as identified in Section A.7, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 136 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 136

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 37 S, R 8 E and T 37 S, R 9 E

CLAIMANT: DOROTHY BUCHANAN
GLEND A. BUCHANAN
ROBERT BUCHANAN
LEWIS HAGELSTEIN
RUTH HAGELSTEIN
C. MARIE SUITER
13851 ALGOMA RD
KLAMATH FALLS, OR 97601

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER

PURPOSE OR USE:

IRRIGATION OF 305.4 ACRES, BEING 227.2 ACRES FROM POD 1, AND 78.2 ACRES FROM POD 2; AND LIVESTOCK WATERING OF 300 HEAD

RATE OF USE:

4.6456 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION AS FOLLOWS:

4.64 CFS FOR IRRIGATION, BEING 2.68 FROM POD 1 AND 1.96 FROM POD 2; AND

0.0056 CFS FOR LIVESTOCK WATERING NOT TO EXCEED 3600 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - November 1
Livestock	January 1 - December 31

DATE OF PRIORITY: MAY 25, 1908

THE POINTS OF DIVERSION IS LOCATED AS FOLLOWS:

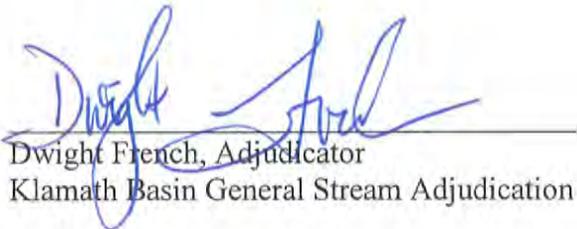
POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	37 S	9 E	WM	18	SE NW		1500 FEET SOUTH AND 500 FEET WEST FROM N1/4 CORNER, SECTION 18
POD 2	37 S	8 E	WM	13	SW NE	2	2950 FEET NORTH AND 2400 FEET WEST FROM SE CORNER, SECTION 13

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
37 S	8 E	WM	13	SW NE	2	14.6	POD 2
37 S	8 E	WM	13	SE NE		19.4	
37 S	8 E	WM	13	NE SE		18.8	
37 S	8 E	WM	13	NW SE	3	25.4	
37 S	8 E	WM	13	NE SE		15.0	POD 1
37 S	8 E	WM	13	NW SE	3	3.0	
37 S	9 E	WM	17	SW NW		20.1	
37 S	9 E	WM	18	SW NE		6.5	
37 S	9 E	WM	18	SE NE		18.9	
37 S	9 E	WM	18	SW NW	2	28.0	
37 S	9 E	WM	18	SE NW		32.6	
37 S	9 E	WM	18	NE SW		36.6	
37 S	9 E	WM	18	NW SW	3	31.1	
37 S	9 E	WM	18	SE SW		6.0	
37 S	9 E	WM	18	NW SE		11.9	
37 S	9 E	WM	18	SW SE		17.5	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
JAMES ROBERT MUELLER	)	DETERMINATION
)	
_____	)	Water Right Claim 137

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 137 (Claimant: JAMES ROBERT MUELLER) and its associated contests (3398, 3824, and 4165) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 116.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 137 on September 11, 2003.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the United States of America and (2) the Klamath Tribes.
4. The exceptions to the Proposed Order along with any opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 137. The exceptions are found to be persuasive, and therefore, modifications are made to the Proposed Order as described in Sections A.6, A.7, A.8.b, and, A.9 below.
5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted in its entirety.
 - b. The "Procedural Matters" is adopted in its entirety.
 - c. The "Evidentiary Rulings" is adopted in its entirety.
 - d. The "Issues" is adopted in its entirety.
 - e. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, below.

- f. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.7, below.
- g. The “Opinion” is adopted with modifications, as set forth in Section A.8, below.
- h. The “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 137. Except as identified in Section A.9, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

6. **Findings of Fact.**

- a. The last sentence in the Proposed Order Finding of Fact #2 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

Actual use totals ~~0.71~~ 0.08 cfs (0.07 for irrigation and 0.01 for domestic use).

(OWRD Exhibit 1, pgs. 27-33.)

Reason for Modification: To correct an addition error.

- b. The Proposed Order Finding of Fact #5 is deleted as follows (deletions are shown in “~~strikethrough~~” text):

~~(5) The standard for the season of use has been determined by the Adjudicator as a result of an analysis of historical descriptions of irrigation use and previous adjudications within the Klamath Basin. Irrigation seasons within the Klamath Basin typically end October 31 of each year. (OWRD Exhibit 1, pgs. 82-83.)~~

Reason for Deletion of Finding of Fact: The season of use is established by the record; the claimed season of use is April 1 to November 1.

- 7. **Conclusions of Law.** Within the section titled “Conclusions of Law” of the Proposed Order, Conclusion #2 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

The acreage, ~~rate~~, duty, actual use, points of diversion, and seasonal limitations of Claim 137 are as ~~set out in the Preliminary Evaluation~~ claimed. The rate for irrigation is limited to the actual use of 35 gallons per minute (0.07 cfs), and 0.01 cfs for domestic use.

Reason for Modifications: To base the conclusion using the evidence on the record rather than referencing the Preliminary Evaluation, an issue raised in exceptions.

8. **Opinion.**

- a. Within the section titled “Opinion” of the Proposed Order, the following sentence (shown in “underline” text) is added to the first paragraph:

One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the “proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***.” *In re Silvies River*, 115 Or 27, 66 (1925).

Reason for Modification: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right

- b. Within the section titled “Opinion” of the Proposed Order, the following two paragraphs are modified to read as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

Amount of Water Beneficially Used. Mr. Mueller's ~~claim~~ claimed usage of 0.7 cfs for irrigation and 0.01 cfs for domestic use. As stated in the Adjudicator's Preliminary Evaluation, ~~found~~ the record shows that he was entitled to a lesser amount, ~~0.07~~ 0.08 cfs, being .07 for irrigation and .01 for domestic use, measured at the point of diversion. The field inspection performed in April 1987 showed actual use for irrigation totaling ~~0.71~~ (0.07 ~~for irrigation and 0.01 for domestic use~~) up to 35 gallons per minute (the equivalent of 0.07 cfs). (OWRD Exhibit 1, pgs 27-33.) Mr. Mueller did not contest that finding and provided no other evidence regarding his use.

Considering the commercial nature of their homestead gardens and livestock, as well as gardens and livestock for their own use, it is not unreasonable to believe that the Hagelsteins utilized the spring waters in much the same manner and in the same amount as is currently used. The greater weight of the evidence established that Mr. Mueller applies water to beneficial use in the amount of ~~0.071~~ 0.08 cfs and that that is an historical rate going back to the original settlement.

Reason for Modifications: To correct scrivener’s and addition errors. To apply the appropriate basis for establishing the rate, an issue raised in exceptions.

9. **Order.** Within the section titled “Order” of the Proposed Order, the following paragraph is modified to read as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

The record establishes the elements of a pre-1909 right ~~are established~~ for Claim 137. ~~and~~ Except for the seasons of use, the claim is approved for beneficial use as set forth in the October 4, 1999, Summary Preliminary Evaluation of Claim, a copy of which is attached hereto and incorporated as if fully set out in this order. The seasons of use for domestic use and irrigation are April 1 through November 1.

Reason for Modifications: To provide consistency with Sections A.6, A.7 and A.8.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” is adopted in its entirety.
 - b. The “Procedural Matters” is adopted in its entirety.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Issues” is adopted in its entirety.
 - e. The “Findings of Fact” is adopted with modifications, as set forth in Section A.6, above.
 - f. The “Conclusions of Law” is adopted with modifications, as set forth in Section A.7, above.
 - g. The “Opinion” is adopted with modifications, as set forth in Section A.8, above.
 - h. The “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 137. Except as identified in Section A.9, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. Based on the file and record herein, IT IS ORDERED that Claim 137 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 137

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 37 S, R 9 E

CLAIMANT: JAMES ROBERT MUELLER
16087 ALGOMA RD.
KLAMATH FALLS, OR 97601

SOURCE OF WATER: An UNNAMED SPRING, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD; AND
IRRIGATION OF 27.6 ACRES.

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

0.01 CFS FOR DOMESTIC USE; AND

0.07 CFS FOR IRRIGATION 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:

Use	Period
Domestic	April 1 – November 1
Irrigation	April 1 – November 1

DATE OF PRIORITY: JUNE 21, 1894

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
37 S	9 E	WM	7	NW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
37 S	9 E	WM	7	NW NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	9 E	WM	7	NW NE	2.5
37 S	9 E	WM	7	SW NE	25.1

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
LINDSAY LUMBER CO.	)	DETERMINATION
)	
_____	)	Water Right Claim 138

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 28, 1991, LINDSAY LUMBER CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 138) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based on use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 138 was submitted for an unspecified quantity of water for livestock watering of 250 head from Blake Spring and an Unnamed Spring, both tributary to Grizzly Creek, and for an unspecified quantity of water for domestic use from Blake Spring. The claimed season of use is “year around” for both livestock watering and domestic use. The claimed priority date is 1887.
3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as “1887 . . . by use of the water.” (Claim # 138, Page 001).
4. The Claimants did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.
5. ROLAND LINDSAY as agent of LINDSAY LUMBER CO. signed the Statement and Proof of Claim for Claim 138 attesting that the information contained in the claim is true.
6. In 1981, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 138 (Claim # 138, WIP, Page 00009). The report also includes the statement, “The Lindsays explained that this spring [Blake Spring] is on land that was homesteaded before 1887 by a man named Blake. There was a timber in the old barn with the names, and the date 1887, of the builders.”

7. 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 approved.
8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 138.
9. Based on the sworn statements in Claim 138, along with the field inspection report, the following findings are made:
 - a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.
 - b. The Claimant created a diversion, where necessary, to divert water from its natural source.
 - c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING CLAIMS BASED PRE-1909 CLAIMS is incorporated as if set forth fully herein.
2. Because there is no evidence on the record to the contrary, standard rate for domestic use, being 0.01 cfs per dwelling as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
3. Claimants' claim for a separate right of use for livestock watering is denied, because Claimants failed to timely submit fees for livestock use. ORS 539.210 provides that "it shall be the duty of all claimants . . . to appear and submit proof of their respective claims, *at the time and in the manner required by law.*" (Emphasis added) Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings." ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For Claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. Because OWRD did not receive payment for a separate right of use for livestock watering by the deadline, this portion of Claimants' claim must be denied.
4. Based on the file and record herein, IT IS ORDERED that Claim 138 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 138

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 38 S, R 3 E

CLAIMANT: LINDSAY LUMBER CO.
525 N BARNEBURG RD
MEDFORD OR 97504

SOURCE OF WATER:
BLAKE SPRING, tributary to GRIZZLY CREEK

PURPOSE or USE:
DOMESTIC FOR ONE DWELLING.

RATE OF USE:
0.01 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION.

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: DECEMBER 31, 1887

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	14	SW SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	14	SW SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
IRIS, GENE, HALEY, AND CODY	)	DETERMINATION
TEMPLE)	
_____)	
	)	Water Right Claim 139

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 October 19, 1990, JAMES MILLER timely submitted a Statement and Proof of Claim (Claim 139) 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 139 was submitted for a total 20 gallons per minute (gpm) of water, being 10 gpm for domestic use and 10 gpm for livestock watering of 920 head from an unnamed spring, tributary to the Klamath River, with a “year around” season of use. The claimed priority date is April 20, 1882.
3. JAMES C. MILLER signed the Statement and Proof of Claim for Claim 139 attesting that the information contained in the claim is true.
4. In 1981, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 139 (*See* Claim 139, Page 039).
5. Item 12 of the Statement and Proof of Claim incorporates “Attachment 1,” which is LAND GRANT CERTIFICATE 4532, COUNTY OF JACKSON, VOL. 9, PAGE 318 dated April 20, 1882.
6. Item 13 of the Statement and Proof of Claim incorporates “Attachment 2,” a statement signed by Henry Enders, Hugh Barron, James Ray Clary and John Murphy which states in pertinent part, “The SE ¼ of the SE ¼ Sec 32, T 38 S, R 3 E was homesteaded and

[the] document of such [was] recorded January 7, 1895, Vol. 23 page 268 of Jackson County, State of Oregon Deed of Records. The property had a cabin, barn and corrals. The water was use [sic] for stock; some irrigation and for human drinking water.”
(Claim # 139, Page 006).

7. 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 approved, but for a smaller quantity of water than claimed.
8. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3135 to the Claim and/or Preliminary Evaluation of Claim 139.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 24.
10. On January 10, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3135. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 10, 2002).
11. On February 13, 2002, Contest 3135 was dismissed from the Office of Administrative Hearings. *See* AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).
12. On January 26, 2010, Claim 139 was transferred to IRIS, GENE, HALEY, AND CODY TEMPLE (Claimants) from JAMES C. MILLER. *See* CHANGE OF OWNERSHIP FORM FOR PROPERTY CLAIMED IN THE KLAMATH BASIN RIVER BASIN ADJUDICATION (Jan. 26, 2010).
13. Based on the sworn statements in Claim 139, along with the field inspection report, the following findings are made:
 - a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.
 - b. The Claimant created a diversion, where necessary, to divert water from its natural source.
 - c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
2. Because there is no evidence on the record to the contrary, standard rate for domestic use, being 0.01 cfs per dwelling as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
3. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
4. The total rate of water for livestock use is based on 920 head, the number of head claimed by the Claimant.
5. Based on the file and record herein, IT IS ORDERED that Claim 139 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 139

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 38 S, R 3 E

CLAIMANT: IRIS, GENE, HALEY, AND CODY TEMPLE
3138 NW HWY 20
ALBANY, OR 97321

SOURCE OF WATER: AN UNNAMED SPRING, tributary to KEENE CREEK

PURPOSE or USE:

DOMESTIC FOR ONE HOUSEHOLD; LIVESTOCK WATERING FOR 920 HEAD.

RATE OF USE:

0.027 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FOR DOMESTIC USE MEASURED AT THE POINT OF DIVERSION, AND

0.017 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 11,040 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER.

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: APRIL 20, 1882

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	32	NE SE

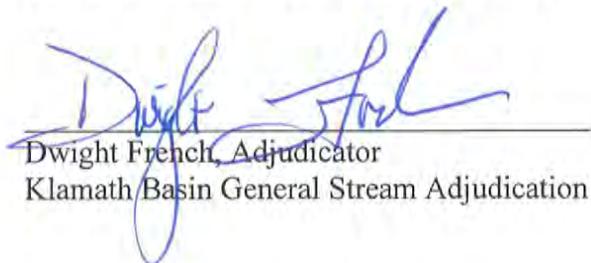
THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	32	SE SE

LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
38 S	3 E	WM	32	SE SE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
LEE BRADSHAW	)	DETERMINATION
)	
_____	)	Water Right Claim 140

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 28, 1991, LINDSAY LUMBER CO. timely submitted a Statement and Proof of Claim (Claim 140) 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 138 was submitted for a total of 3800 gallons per day of water from Meyers Springs and Kingsbury Spring, both tributaries of Hoxie Creek, for livestock watering of approximately 250 head with a “year around” season of use. The claimed priority date is 1890.
3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as “1890 . . . by use of the water for livestock.” (Claim # 140, Page 001).
4. ROLAND LINDSAY as agent of LINDSAY LUMBER CO. signed the Statement and Proof of Claim for Claim 140 attesting that the information contained in the claim is true.
5. The property appurtenant to Claim 140 was subsequently acquired by LEE BRADSHAW (Claimant) (Claim #140, Page 010).
6. In 1981, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 140 (Claim # 140, WIP, Page 11). The report also includes the statements: “The Linsays told me that their family has owned this land [Meyers Spring at NW ¼ NW ¼, Section 20, Township 38 South, Range 4 East, W.M.] since about 1910. It was a homestead that their family acquired.” The field inspection report also states: The Linsays told me that this land [Kinsbury Spring at NE

¼ SW ¼ , Section 20, Township 38 South, Range 4 East, W.M.] is an old homestead that their family has owned since about 1910.”

7. 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 approved.
8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 140.
9. Based on the location of Meyer Spring being in the NWNW, Section 20, Township 38 South, Range 4 East, and the statements made in the 1981 OWRD field inspection report, “there is no pipe or ditch from the spring,” and, “there is flow, at times, from the spring which causes a natural overflow and flooding of *a small area below the spring*” [emphasis added], OWRD finds that the place of use for livestock watering does not include the NENE, Section 19, Township 38 South, Range 4 East. W.M.
10. Based on the sworn statements in Claim 138, along with the field inspection report, the following findings are made:
 - a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.
 - b. The Claimant created a diversion, where necessary, to divert water from its natural source.
 - c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
2. The rate of water per head for livestock use is measured at the place of use. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
3. Based on the file and record herein, IT IS ORDERED that Claim 140 is approved as claimed and as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 140

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 38 S, R 4 E

CLAIMANT: LEE BRADSHAW
10275 HWY 140
EAGLE POINT, OR 97524

SOURCE OF WATER:

MEYERS SPRINGS and KINGSBURY SPRING, tributary to HOXIE CREEK

PURPOSE or USE: LIVESTOCK WATERING FOR APPROXIMATELY 250 HEAD

RATE OF USE:

0.006 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 3800 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER.

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: DECEMBER 31, 1890

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Source	Twp	Rng	Mer	Sec	Q-Q
Meyers Springs	38 S	4 E	WM	20	NW NW
Kingsbury Spring	38 S	4 E	WM	20	NE SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 E	WM	20	NW NW
38 S	4 E	WM	20	NE SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
NANCY CHARLEY FAMILY, LLC	)	DETERMINATION
)	
_____	)	Water Right Claim 141

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 141 (Claimants: NANCY CHARLEY FAMILY, LLC¹) and its associated contests (2, 2850, 3399, 3825, and 4166) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 117.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 141 on July 9, 2003.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the United States of America and (2) the Klamath Tribes.
4. The exceptions to the Proposed Order along with any opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 141. Except for the scrivener's error addressed in Section A.6, below, the exceptions filed to the Proposed Order for Claim 141 are found to be unpersuasive.
5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The "History of the Case" is adopted with modifications, as set forth in Section A.7, below.
 - b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.8, below.

¹ Ownership was updated to Nancy Charley Family, LLC from Nancy Charley/Nancy Charley, Trustee of the Nancy Charley Family Trust dated March 26, 1997. See CHANGE OF OWNERSHIP FORM and Certificate of Service (May 16, 2002)

- c. The “Issues” is adopted in its entirety.
- d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.9, below.
- e. The “Conclusions of Law” is adopted in its entirety.
- f. The “Opinion” is adopted with modifications, as set forth in Section A.10, below.
- g. The “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 141. Except as identified in Section A.11, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

6. **Caption.** In the case caption on page 1, the contestant’s name, United States Bureau of Reclamation, is corrected to the United States of America.

Reason for Modification: To correct a scrivener’s error raised in exceptions.

7. **History of the Case.** Within the section titled “History of the Case,” of the Proposed Order, the first sentence in Paragraph 7, page 2, is modified as follows (additions are shown in “underline” text, deletions are shown in “~~striketrough~~” text):

On May 8, 2000, the Klamath Tribes filed ~~Claim~~ Contest Number 4166

Reason for Modification: To correct a scrivener’s error.

8. **Evidentiary Rulings.** Within the section titled “Evidentiary Rulings” of the Proposed Order, the first paragraph is modified as follows:

The AFFIDAVIT OF VINCE BODNER, JR. dated April 9, 2004, is added to the list of items that were admitted into the record.

Reason for Modification: To correct an omission from the list of Evidentiary Rulings.

9. **Findings of Fact.**

a. Proposed Order Finding of Fact #2 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~striketrough~~” text):

2. Buck Lake was transferred by the United States to the State of Oregon pursuant to the Swamp Act of ~~1960~~ 1860. The State of Oregon transferred title to 1531.97 acres of lands describing the location of Buck Lake that are appurtenant to Claim 141 to various four individuals ~~between 1880 and 1889~~ on August 17, 22, 23, 1888, and July 29, 1889, for one dollar per each acre by State of Oregon deeds designating the land as “swamp”. (Ex. 117E00006017, pages 1-4; Ex. 117E00006018.)

Reasons for Modification: To correct a scrivener's error in the date of the Swamp Act - by the act of March 12, 1860, the swamp-land act of 1850 was extended over Oregon (Ex. 117E00006010 at 5); the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

b. The citation for Proposed Order Finding of Fact # 3, page 6 is corrected to (E117E00002002 at 6.)

Reason for Modification: To provide a corrected citation to the record.

c. Proposed Order Finding of Fact #13 is added as follows (additions are shown in "underline" text):

13. Claim 141 was submitted for a total of 36.3 cubic feet per second (cfs) of water, being 9.0 cfs from an unnamed stream, 18.0 cfs from unnamed springs, 9.0 cfs from Tunnel Creek, and 0.3 cfs from an unnamed spring, all tributaries of Spencer Creek, for irrigation of 1448.9 acres with a season of use June 1 to October 1. The claimed priority date is November 14, 1901. (E117E00002002 at 1-9.)

Reasons for Additional Finding of Fact: Using evidence on the record, to provide more specific information with reference to what was claimed; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

d. Proposed Order Findings of Facts #14 through #16 are added as follows (additions are shown in "underline" text):

14. On April 6, 1888, the governor for the State of Oregon "request[ed] a patent to be issued to the said state as required in the aforesaid Acts [Swamp Land Acts of 1850 and 1860]" for 1316.13 acres of land appurtenant to Buck Lake. (Ex. 117E00006015, pages 1-4.)

15. On April 10, 1888, a letter of certification from the Department of Interior, General Land Office was sent to the Swamp Land Division of the General Land Office, stating "[t]his certifies that the tracts of land described in the foregoing list [appurtenant to Buck Lake], containing thirteen hundred and sixteen acres and thirteen hundredths of an acre, have been selected as swamp and overflowed land . . . that the character of the same as swamp and overflowed land is established by the joint report of Charles Shackelford,

special agent of this office, and Alex Smeek, agent of the State of Oregon, made under oath November 17, 1887. . . .” (Ex. Ex. 117E00006014, pages 4-7; 10.)

16. On June 1, 1888, the lands describing the location of Buck Lake were made patent by the United States “in consideration of the premises, and in conformity with the Acts of Congress [swamp land Acts of 1850 and 1860] aforesaid,” and granted to the State of Oregon: “Have Given and Granted, and by these presents do Give and Grant unto the said state of Oregon . . . the tracts of land above described [Buck Lake].” (Ex. E117E00006015, pages 1-4.)

Reasons for Additional Findings of Facts: The ALJ’s proposed finding of fact failed to fully set forth the evidence on the record in regards to the designation of lands appurtenant to Buck Lake as swamp lands subject to the Swamp Act which were granted to the State of Oregon; to add clarification using evidence on the record.

10. **Opinion.** Within the section titled “Opinion” of the Proposed Order, the fourth paragraph is deleted and replaced as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

a. The following sentence (shown in “underline” text) is added to the first paragraph of the “Opinion” section:

One exception to these elements is that where the claim is based on natural overflow, the appropriation may be established by evidence that the “proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***.” *In re Silvies River*, 115 Or 27, 66 (1925).

b. The fourth paragraph is deleted and replaced as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

~~The evidence concerning the application of the Swamp Act of 1850 to this property is not conclusive. Claimant asserts that the transfer of the property compels the conclusion that the property was reclaimed. The United States has presented evidence that this was not always the case. While the evidence on this point may show that the property had been reclaimed, it is not evidence that, as early as the 1880s, the property was being irrigated.~~

It is unnecessary to consider the effect of the swamp act deeds in this case. The claimed priority date is 1901, based on an act of appropriation occurring in 1901. A preponderance of the evidence supports the conclusion that the 1901 appropriation was successfully completed with reasonable diligence. Under these circumstances, the consideration of efforts to develop the land or appropriate water prior to 1901 is unnecessary.

Reasons for Modifications: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right; to clarify the necessity of considering the effect of swamp land deeds entered into evidence in this proceeding.

11. **Order.** Within the section titled “Order” of the Proposed Order, Item #1 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

Point of Diversion: Commingled Water from various sources, located in Section ~~14~~ 14, Township 38 S, Range 5 E., W.M. (OWRD Ex. 1 at 15-16.)

Reason for Modifications: To correct a scrivener’s error; to provide an additional citation to the record.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of the Case” is adopted with modifications, as set forth in Section A.7, above.
 - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.8, above.
 - c. The “Issues” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.9, below.
 - e. The “Conclusions of Law” is adopted in its entirety.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.10, above.
 - g. The “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 141. Except as identified in Section A.11, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 141 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 141

CLAIM MAP REFERENCE:

CLAIM # 141, PAGE 16 and OWRD INVESTIGATION MAP – T 38 S, R 5 E

CLAIMANT: NANCY CHARLEY FAMILY, LLC

493 STRAIT WAY
CENTRAL POINT, OR 97502

SOURCE OF WATER:

UNNAMED STREAM, tributary to SPENCER CREEK,
UNNAMED SPRING, tributary to SPENCER CREEK,
TUNNEL CREEK, tributary to SPENCER CREEK, and
UNNAMED SPRINGS, tributary to TUNNEL CREEK

PURPOSE OR USE:

IRRIGATION OF 1448.9 ACRES

RATE OF USE:

UP TO 36.3 CFS OF COMMINGLED WATER FROM ALL SOURCES FROM A SINGLE POD, NOT TO EXCEED 9.0 CFS FROM THE UNNAMED STREAM, 0.3 CFS FROM THE UNNAMED SPRING, 9.0 CFS FROM TUNNEL CREEK, AND 18.0 CFS FROM THE UNNAMED SPRINGS.

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: JUNE 1 - OCTOBER 1

DATE OF PRIORITY: NOVEMBER 14, 1901

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	5 E	WM	14	SE NW	7	Single POD for commingled waters from all sources

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 E	WM	11	NE SW	6	3.2
38 S	5 E	WM	11	SE SW	5	13.6
38 S	5 E	WM	11	NE SE	8	16.8
38 S	5 E	WM	11	NW SE	7	19.2
38 S	5 E	WM	11	SW SE		40.0
38 S	5 E	WM	11	SE SE		40.0
38 S	5 E	WM	12	NE SW	3	1.8
38 S	5 E	WM	12	NW SW	5	8.8
38 S	5 E	WM	12	SW SW		40.0
38 S	5 E	WM	12	SE SW	6	39.5
38 S	5 E	WM	12	SW SE	7	23.1
38 S	5 E	WM	12	SW SE	2	2.6
38 S	5 E	WM	12	SE SE	1	0.5
38 S	5 E	WM	13	NE NE	6	16.0
38 S	5 E	WM	13	NW NE		40.0
38 S	5 E	WM	13	SW NE		40.0
38 S	5 E	WM	13	SE NE	5	35.2
38 S	5 E	WM	13	SE NE	2	1.6
38 S	5 E	WM	13	NE NW		40.0
38 S	5 E	WM	13	NW NW		40.0
38 S	5 E	WM	13	SW NW		40.0
38 S	5 E	WM	13	SE NW		40.0
38 S	5 E	WM	13	NE SW		40.0
38 S	5 E	WM	13	NW SW		40.0
38 S	5 E	WM	13	SW SW		40.0
38 S	5 E	WM	13	SE SW		40.0
38 S	5 E	WM	13	NE SE		40.0
38 S	5 E	WM	13	NW SE		40.0
38 S	5 E	WM	13	SW SE	7	35.2
38 S	5 E	WM	13	SE SE	4	10.6
38 S	5 E	WM	13	SE SE	3	3.3
38 S	5 E	WM	14	NE NE		40.0
38 S	5 E	WM	14	NW NE		39.9
38 S	5 E	WM	14	SW NE		40.0
38 S	5 E	WM	14	SE NE		40.0
38 S	5 E	WM	14	NE NW	8	6.4
38 S	5 E	WM	14	SE NW	7	10.4
38 S	5 E	WM	14	NE SW	6	20.0
38 S	5 E	WM	14	SW SW	4	2.5
38 S	5 E	WM	14	SW SW	5	4.2
38 S	5 E	WM	14	SE SW		32.0
38 S	5 E	WM	14	NE SE		40.0
38 S	5 E	WM	14	NW SE		40.0
38 S	5 E	WM	14	SW SE		40.0
38 S	5 E	WM	14	SE SE		40.0
38 S	5 E	WM	23	NE NE	6	36.8
38 S	5 E	WM	23	NW NE	7	16.5
38 S	5 E	WM	23	SE NE	5	5.6
38 S	5 E	WM	23	NE NW	8	24.0

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 E	WM	23	NW NW	9	4.8
38 S	5 E	WM	24	NW NE	4	16.8
38 S	5 E	WM	24	NE NW	5	40.0
38 S	5 E	WM	24	NW NW		40.0
38 S	5 E	WM	24	SW NW	6	24.0
38 S	5 E	WM	24	SE NW	5	14.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
RLF RUNNING Y RANCH, LLC	)	DETERMINATION
)	
)	
_____	)	Water Right Claim 142

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, GEARY BROS. CALEDONIA RANCH, A CO-TENANCY, by MARTHA D. SMITH (original Claimant) timely submitted a Statement and Proof of Claim (Claim 142) 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 142 was submitted for uses of irrigation, livestock watering of 50 pairs, recreation and wildlife. The amount of water claimed is “3 acre-feet per year for irrigation – no additional water is diverted for other uses” from the Upper Klamath Lake, a tributary of the Klamath River, The claimed season of use is “April 15 through January 15.” The claimed priority date is 1866.
3. MARTHA D. SMITH signed the Statement and Proof of Claim for Claim 142 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 required pre-1909 elements were not established for the claim.
5. On May 8, 2000, the original Claimant timely filed Contest 33 to the Preliminary Evaluation of Claim 142.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3136 to the Claim and/or Preliminary Evaluation of Claim 142.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3400: 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.
8. On May 8, 2000, the United States of America timely filed Contest 3826 to the Claim and/or Preliminary Evaluation of Claim 142.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4167 to the Claim and/or Preliminary Evaluation of Claim 142.
10. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2851 to the Claim and/or Preliminary Evaluation of Claim 142.
11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 118 and subsequently consolidated with Case 3. The consolidation with Case 3 was reversed by INTERIM ORDER (Jan 12, 2006) at 31⁴.
12. On May 28, 2002, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3136. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT (May 28, 2002).
13. On February 19, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2851. *See* WATERWATCH’S VOLUNTARY WITHDRAWAL OF CONTEST 2851 (Feb. 19, 2003).

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3400 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3400 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3400 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

⁴ This Interim Order was amended by an AMENDED INTERIM ORDER (May 24, 2006) issued *sua sponte* by the Administrative Law Judge to provide clarification of certain matters raised in correspondence and to correct typographical errors noted since the original order was issued.

14. On August 10, 2006, Claim 142 was assigned to the JELD-WEN INC. *See* JELD-WEN, INC.'s UNOPPOSED MOTION TO SUPPLEMENT THE RECORD IN CLAIM 142, CASE 118 (Oct. 18, 2006).
15. On August 14, 2006, the Klamath Tribes withdrew without prejudice Contest 4167. *See* KLAMATH TRIBES' WITHDRAWAL OF CONTESTS (Aug. 14, 2006).
16. On October 17, 2006, OWRD, JELD-WEN, INC, Rogue River Valley Irrigation District, and Medford Irrigation District, executed a STIPULATION TO RESOLVE CONTEST 3136 AGAINST CLAIM NO. 142 thereby resolving Contest 3136.
17. On August 16, 2007, the Klamath Project Water Users withdrew Contest 3400. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3400 (Aug. 16, 2007).
18. On September 17, 2007, OWRD, JELD-WEN, INC, and the United States of America, executed a STIPULATION TO RESOLVE CONTESTS 33, 3400, AND 3826 TO CLAIM 142 (Settlement Agreement) thereby resolving all remaining contests to Claim 142.
19. On September 19, 2007, the Adjudicator withdrew Case 118 from the Office of Administrative Hearings.
20. On June 1, 2011, a portion of the property appurtenant to Claim 142, being 71.4 acres, was transferred to RLF RUNNING Y RANCH, LLC from JELD-WEN, INC. *See* SPECIAL WARRANTY DEED, dated May 17, 2011, and CHANGE OF OWNERSHIP FORM (June 1, 2011).
21. On July 18, 2011, the remaining portion of the property appurtenant to Claim 142, being 695.0 acres, was transferred to RUNNING Y DEVELOPMENT, LLC. *See* SPECIAL WARRANTY DEED, dated January 18, 2011 and CHANGE OF OWNERSHIP FORM (July 18, 2011). On July 18, 2011, this same property was then transferred to CALEDONIA PROPERTIES, LLC. *See* CHANGE OF OWNERSHIP FORM (July 18, 2011).
22. As described in Findings 20 and 21, above, Claim 142 has been divided into two separate ownership groups, being (1) RLF RUNNING Y RANCH, LLC, and (2) CALEDONIA PROPERTIES, LLC. Therefore, OWRD finds it practical to bifurcate Claim 142; OWRD has retained the designation of Claim 142 for the portion of the claim pertaining to RLF RUNNING Y RANCH, LLC, and has designated the portion of the claim pertaining to CALEDONIA PROPERTIES, LLC as Claim 733.
23. Section B.1.c. of the Settlement Agreement specifies incidental livestock watering of 100 head of cattle. OWRD prorated the 100 head for incidental livestock watering, based on grazing acres available within the two bifurcated portions of Claim 142⁵. OWRD finds the number of head for incidental livestock watering is limited to 9 head for Claim 142, and 91 head for Claim 733.

⁵ 71.4 acres / 766.4 acres = 9% for Claim 142; and 695.0 acres / 766.4 acres = 91% for Claim 733

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, JELD-WEN, INC, and the United States of America is adopted and incorporated as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 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 142 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 142

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP –T 38 S, R 8 E

CLAIMANT: RLF RUNNING Y RANCH, LLC
619 N CASCADES AVE, SUITE 200
COLORADO SPRINGS, CO 80903

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to the KLAMATH RIVER

PURPOSE or USE:
IRRIGATION OF 71.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 9 HEAD

RATE OF USE:
1.785 CUBIC FEET PER SECOND (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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 15 - JANUARY 15

DATE OF PRIORITY: DECEMBER 31, 1889

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	38 S	8 E	WM	6	SE SW	5

THE PLACE OF USE IS LOCATED AS FOLLOWS:

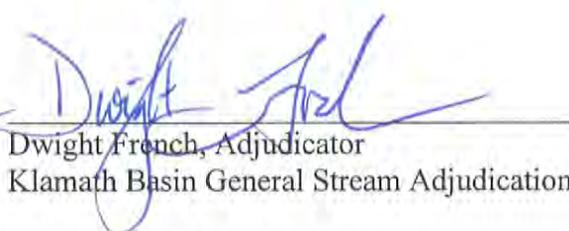
IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	8 E	WM	6	SE SW	5	4.6
38 S	8 E	WM	6	SW SE		3.3
38 S	8 E	WM	7	NW NE	12	31.8
38 S	8 E	WM	7	SW NE	12	4.3
38 S	8 E	WM	7	NE NW	11	19.4
38 S	8 E	WM	7	SE NW	10	7.5
38 S	8 E	WM	7	SE NW	5	0.5

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
MARTA C. CARPENTER	)	DETERMINATION
)	
_____	)	Water Right Claim 143

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 143 (Claimant: MARTA C. CARPENTER) and its associated contests (3137, 3827, and 4168) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 119, and subsequently consolidated with Case 3. The consolidation with Case 3 was reversed by INTERIM ORDER (Jan 12, 2006) at 31.¹
2. On August 8, 2007, the Claimant, OWRD, and the United States of America executed a Stipulation to Resolve Contest (Settlement Agreement) thereby resolving the all matters with the exception of diversion rate. The Settlement Agreement resolved the source of water, location of the point of diversion, use of water, duty of water, period of use, priority dates, and the place of use for irrigation and livestock watering. The Settlement Agreement did not specify a diversion rate; however, it did define the upper and lower limits for the rate of diversion.
3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 143 on November 20, 2007.
4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Marta C. Carpenter, and (2) Medford Irrigation District and Rogue River Valley Irrigation District.

¹ This Interim Order was amended by an AMENDED INTERIM ORDER (May 24, 2006) issued *sua sponte* by the Administrative Law Judge to provide clarification of certain matters raised in correspondence and to correct typographical errors noted since the original order was issued.

5. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 143. Except for the items addressed in Sections A.7, and A.8, and A.9, below, the exceptions filed to the Proposed Order for Claim 143 are found to be unpersuasive.
6. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of Consolidated Cases 118, 119, and 120” is adopted in its entirety.
 - b. The “History of Case 119” is adopted with modifications, as set forth in Section A.7, below.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Issue” is adopted in its entirety.
 - e. The “Findings of Fact,” is adopted with modifications, as set forth in Section A.8.a, below. In addition, Proposed Order Finding of Fact 10 is added as set forth in Section A.8.b, below.
 - f. The “Conclusions of Law” is adopted in its entirety.
 - g. The “Opinion” is adopted in its entirety.
 - h. The “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 143. Except as identified in Section A.9, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

7. **History of Case 119.** Within the section titled “History of Case 119” of the Proposed Order the following modifications are made (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

- a. The last sentence within the first Paragraph is modified as follows:

As a result of the divorce, Claimant became the sole owner of the property, ~~and was the sole claimant in Case 119 until the property was purchased by Jeld-Wen.~~

- b. The second and third sentences within Paragraph 6 are modified as follows:

Attorney David ~~Filipi~~ Filippi represented Claimant, Marta C. Carpenter, and successor in interest, Jeld-Win. Attorney ~~Andrew Hitchings~~ Steven L. Shropshire represented Rogue River Irrigation District and Medford Irrigation District.

Reasons for Modifications: To make corrections raised in exceptions; the ALJ’s statement that Jeld-Wen is a successor in interest is not supported by a preponderance of the evidence; to correct a scrivener’s error in the last name Filippi.

8. **Findings of Fact.**

- a. The last sentence in Proposed Order Finding of Fact #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

As a result of the divorce, Claimant became the sole owner of the property, ~~and was the sole claimant in Case 119 until the property was purchased by Jeld-Wen.~~

Reason for Modification: To make corrections raised in exceptions; the ALJ's finding that Jeld-Wen purchased the property is not supported by a preponderance of the evidence.

- b. Proposed Order Finding of Fact #10 is added as follows (additions are shown in "underline" text):

10. Because there is no evidence on the record to the contrary, the standard rate for irrigation is 1/40 of one cubic foot per second per acre as outlined in Appendix A of the Preliminary Evaluation of Claims (OWRD Ex. 1 at 92) and the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Proposed Order Finding of Fact #10 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard rate for irrigation.

Reason for Additional Finding of Fact: To include a finding regarding a standard rate for irrigation based on the number of acres that should be irrigated with one cubic foot of water per second.

9. **Order.** Within the section titled "Order" of the Proposed Order, the diversion rate of 8.47 cfs of irrigation is further clarified as follows (additions are shown in "underline" text):

The diversion rate for the 439 acres with a December 31, 1989 priority date is 7.0 cfs and the diversion rate for the 58.9 acres with a December 31, 1907 priority date is 1.47 cfs.

Reason for Modification: To add clarification using evidence on the record.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.

2. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
 - a. The “History of Consolidated Cases 118, 119, and 120” is adopted in its entirety.
 - b. The “History of Case 119” is adopted with modifications, as set forth in Section A.7, above.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Issue” is adopted in its entirety.
 - e. The “Findings of Fact,” is adopted with modifications, as set forth in Section A.8.a, above. In addition, Proposed Order Finding of Fact 10 is added as set forth in Section A.8.b, above.
 - f. The “Conclusions of Law” is adopted in its entirety.
 - g. The “Opinion” is adopted in its entirety.
 - h. The “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 143. Except as identified in Section A.9, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.
3. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
4. Based on the file and record herein, IT IS ORDERED that Claim 143 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 143

CLAIM MAP REFERENCE: SETTLEMENT MAP (AUG. 23, 2007)

CLAIMANT: MARTA C. CARPENTER
PO BOX 1810
KLAMATH FALLS, OR 97601

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 497.9 ACRES AND LIVESTOCK WATERING OF 500 HEAD

RATE OF USE:
8.4793 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

8.47 CFS FOR IRRIGATION OF 497.9 ACRES MEASURED AT THE POINT OF DIVERSION, BEING 7.0 CFS FOR IRRIGATION OF 439.0 ACRES, AND 1.47 CFS FOR IRRIGATION OF 58.9 ACRES, AND

0.0093 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 6000 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE

FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:

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

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATES OF PRIORITY:

DECEMBER 31, 1889: LIVESTOCK WATERING AND IRRIGATION OF 439.0 ACRES (AS LISTED BELOW) FOR A TOTAL OF 7.00 CFS OF WATER

DECEMBER 31, 1907: LIVESTOCK WATERING AND IRRIGATION OF 58.9 ACRES (AS LISTED BELOW) FOR A TOTAL OF 1.47 CFS OF WATER

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
38 S	8 E	WM	14	SW NW	2

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING							Priority Date
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	
38 S	8 E	WM	14	SW NW	3	22.6	DECEMBER 31, 1889
38 S	8 E	WM	14	SE NW	4	3.9	
38 S	8 E	WM	14	SE NW		1.7	
38 S	8 E	WM	14	NE SW	5	20.0	
38 S	8 E	WM	14	NE SW		7.6	
38 S	8 E	WM	14	NW SW		40.0	
38 S	8 E	WM	14	SW SW		40.0	
38 S	8 E	WM	14	SE SW		2.1	
38 S	8 E	WM	14	SE SW	6	36.8	
38 S	8 E	WM	14	SW SE		1.5	
38 S	8 E	WM	15	SE NE	6	7.0	
38 S	8 E	WM	15	NE SE		40.0	
38 S	8 E	WM	15	NW SE	7	16.2	
38 S	8 E	WM	15	SW SE	8	0.4	
38 S	8 E	WM	15	SW SE	5	1.5	
38 S	8 E	WM	15	SE SE	8	31.1	
38 S	8 E	WM	22	NE NE	9	1.3	
38 S	8 E	WM	23	NW NE	8	13.1	
38 S	8 E	WM	23	SW NE	7	9.6	
38 S	8 E	WM	23	NE NW		40.0	
38 S	8 E	WM	23	NW NW	9	34.4	
38 S	8 E	WM	23	SW NW	9	24.9	
38 S	8 E	WM	23	SW NW	1	2.4	
38 S	8 E	WM	23	SE NW	10	39.7	
38 S	8 E	WM	23	NE SW	2	1.2	

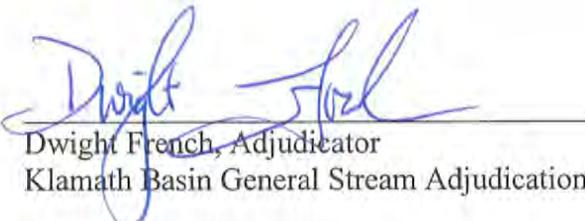
IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Priority Date
38 S	8 E	WM	14	NW NW	1	1.4	DECEMBER 31, 1907
38 S	8 E	WM	14	SW NW	2	13.5	
38 S	8 E	WM	15	NE NE		4.0	
38 S	8 E	WM	15	SW NE		5.7	
38 S	8 E	WM	15	SE NE	1	31.9	
38 S	8 E	WM	15	NW SE	2	2.4	

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
RLF RUNNING Y RANCH, LLC	)	DETERMINATION
)	
)	
_____	)	Water Right Claim 144

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 15, 1991, SHAMROCK HOLDINGS OF CALIFORNIA, DBA RUNNING Y RANCH timely submitted a Statement and Proof of Claim (Claim 144) 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 144 was submitted for a total 77.0 cubic feet per second (cfs) of water from Upper Klamath Lake, a tributary of the Klamath River, for irrigation of 5572.6 acres and livestock watering of 4500 head, each with a “Continuous Year Around” season of use. The claimed priority date is 1866.
3. An authorized agent of SHAMROCK HOLDINGS OF CALIFORNIA, DBA RUNNING Y RANCH signed the Statement and Proof of Claim for Claim 144 attesting that the information contained in the claim is true.
4. On April 7, 1994, the title to the property appurtenant to Claim 144 was transferred from SHAMROCK HOLDINGS OF CALIFORNIA, DBA RUNNING Y RANCH. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL. M94, PAGE 10525 (Claim #144, Page 079). RUNNING Y, INC. is a subsidiary of JELD-WEN, INC. (Claim #144, Page 081).
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 approved, but for a smaller quantity of water than claimed for livestock use, and for a shorter season of use than claimed for irrigation.
6. On May 5, 2000, JELD-WEN, INC. (RUNNING Y RANCH) timely filed Contest 2044 to the Preliminary Evaluation of Claim 144.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3138 to the Claim and/or Preliminary Evaluation of Claim 144.
8. On May 8, 2000, the United States of America timely filed Contest 3828 to the Claim and/or Preliminary Evaluation of Claim 144.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4169 to the Claim and/or Preliminary Evaluation of Claim 144.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 120. Case 120 was consolidated with Case 118. Case 118 was subsequently consolidated with Case 3. The consolidation with Case 3 was reversed by INTERIM ORDER (Jan 12, 2006) at 31.¹
11. On March 21, 2003, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew from Contest 3138. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY IRRIGATION DISTRICT AND HORSEFLY IRRIGATION DISTRICT (Mar. 21, 2003).
12. On August 15, 2006, the Klamath Tribes withdrew without prejudice Contest 4169. *See* KLAMATH TRIBES' WITHDRAWAL OF CONTESTS (Aug. 15, 2006).
13. On March 23, 2006, OWRD, JELD-WEN, INC. (RUNNING Y RANCH), Rogue River Valley Irrigation District, and Medford Irrigation District, executed a STIPULATION TO RESOLVE CONTEST 3138 AGAINST CLAIM NO. 144 thereby resolving Contest 3138.
14. On August 27, 2007, OWRD, JELD-WEN, INC. (RUNNING Y RANCH), and the United States of America, executed a STIPULATION TO RESOLVE CONTESTS 2044 AND 3828 TO CLAIM 144 (Settlement Agreement) thereby resolving all remaining contests to Claim 144.
15. On August 29, 2007, the Adjudicator withdrew Case 120 (portion of Consolidated Case 118) from the Office of Administrative Hearings.
16. Jeld-Wen, Inc. (Running Y Ranch), OWRD and the United States stipulated, in part, to irrigation of 5569.5 acres.
17. On June 1, 2011, a portion of the property appurtenant to Claim 144, being 3480.6 acres, was transferred to RLF RUNNING Y RANCH, LLC from JELD-WEN, INC. *See* SPECIAL WARRANTY DEED, dated May 17, 2011 and CHANGE OF OWNERSHIP FORM (June 1, 2011).

¹ This Interim Order was amended by an AMENDED INTERIM ORDER (May 24, 2006) issued *sua sponte* by the Administrative Law Judge to provide clarification of certain matters raised in correspondence and to correct typographical errors noted since the original order was issued.

The location of the 3480.6 acres was clearly identified on a copy of the 2007 Settlement Map submitted with the ownership update.

18. Of the 2088.9 remaining stipulated acres appurtenant to Claim 144, most of the acreage was transferred to RUNNING Y DEVELOPMENT, LLC. *See* SPECIAL WARRANTY DEED, dated January 18, 2011 and CHANGE OF OWNERSHIP FORM (July 18, 2011). On July 18, 2011, this same portion of the property appurtenant to Claim 144 was then transferred to CALEDONIA PROPERTIES, LLC. *See* CHANGE OF OWNERSHIP FORM (July 18, 2011). Based on the map submitted with the July 18, 2011 ownership update for Claim 144, JELD-WEN, INC (RUNNING Y RANCH) retains an interest in a small portion of the property within the NW¼ and SW¼ SW¼ of Section 4, and the NE¼ and SE¼ of Section 5, Township 38 South, Range 8 East, W.M. A place of use listing did not accompany the transfer to Caledonia Properties, LLC. Furthermore, in the quarter quarters where there is joint ownership, OWRD cannot discern from the map submitted with the ownership change precisely how the claimed acreage should be divided between CALEDONIA PROPERTIES, LLC and JELD-WEN, INC (RUNNING Y RANCH). Therefore CALEDONIA PROPERTIES, LLC and JELD-WEN, INC (RUNNING Y RANCH) are Co-claimants.
19. As described in Findings 17 and 18, above, Claim 144 has been divided into two ownership groups, being (1) RLF RUNNING Y RANCH, LLC, and (2) CALEDONIA PROPERTIES, LLC and JELD-WEN, INC (RUNNING Y RANCH). Therefore, OWRD finds it practical to bifurcate Claim 144; OWRD has retained the designation of Claim 144 for the portion of the claim pertaining to RLF RUNNING Y RANCH, LLC (Claimant) and has designated the portion of the claim pertaining to CALEDONIA PROPERTIES, LLC and JELD-WEN, INC (RUNNING Y RANCH) (Co-claimants) as Claim 734.
20. Section B.1.c. of the Settlement Agreement specifies incidental livestock watering of 4500 head of cattle. OWRD prorated the 4500 head for incidental livestock watering, based on grazing acres available within the two bifurcated portions of Claim 144². OWRD finds the number of head for incidental livestock watering is limited to 2813 head for Claim 144, and 1687 head for Claim 734.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, JELD-WEN, INC. (RUNNING Y RANCH), and the United States of America is adopted and incorporated as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

² 3480.6 acres / 5569.5 acres = 62.5% for Claim 144; and 2088.9 acres / 5569.5 acres = 37.5% for Claim 734

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

[Beginning of Water Right Claim Description]

CLAIM NO. 144

CLAIM MAP REFERENCE: CLAIM # 144 SETTLEMENT MAP (Mar. 21, 2007)

CLAIMANT: RLF RUNNING Y RANCH, LLC
619 N CASCADES AVE, SUITE 200
COLORADO SPRINGS, CO 80903

SOURCE OF WATER: UPPER KLAMATH LAKE, tributary to KLAMATH RIVER

PURPOSE or USE:

IRRIGATION OF 3480.6 ACRES FROM POD 3; LIVESTOCK WATERING OF 2813 HEAD.

RATE OF USE:

43.562 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

43.51 CFS FOR IRRIGATION FROM POD 3 MEASURED AT THE POINT OF DIVERSION

0.052 CFS FOR LIVESTOCK WATERING FROM POD 3, MEASURED AT THE PLACES OF USE; NOT TO EXCEED A TOTAL OF 33,756 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER AND TO PREVENT THE DITCHES AND CHANNELS FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	January 1 - December 31
Livestock	January 1 - December 31

DATE OF PRIORITY: DECEMBER 31, 1889

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 3	38 S	8 E	WM	7	SE NW	5

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION AND LIVESTOCK WATERING FROM POD 3						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	8 E	WM	7	SW NW		1.4
38 S	8 E	WM	7	SE NW	5	9.9
38 S	8 E	WM	7	SE NW	10	10.5
38 S	8 E	WM	7	NE SW	6	8.4
38 S	8 E	WM	7	NE SW	9	31.6
38 S	8 E	WM	7	NW SW	9	0.5
38 S	8 E	WM	7	NW SW	6	14.0
38 S	8 E	WM	7	SW SW	8	0.5
38 S	8 E	WM	7	SE SW	8	32.4
38 S	8 E	WM	7	NE SE	3	1.5
38 S	8 E	WM	7	NE SE	14	55.8
38 S	8 E	WM	7	NW SE		
38 S	8 E	WM	7	SW SE		40.0
38 S	8 E	WM	7	SE SE		39.1
38 S	8 E	WM	8	NW SW	3	1.4
38 S	8 E	WM	8	NW SW	10	50.0
38 S	8 E	WM	8	SW SW		
38 S	8 E	WM	8	SE SW	4	1.6
38 S	8 E	WM	8	SE SW	9	34.8
38 S	8 E	WM	8	SW SE	8	29.6
38 S	8 E	WM	8	SW SE	5	2.3
38 S	8 E	WM	8	SE SE	6	1.5
38 S	8 E	WM	8	SE SE	7	26.0
38 S	8 E	WM	9	SW SW	7	25.4
38 S	8 E	WM	9	SE SW	6	9.3
38 S	8 E	WM	15	SW SW	9	4.8
38 S	8 E	WM	16	NW NE	6	10.2
38 S	8 E	WM	16	SW NE	5	30.1
38 S	8 E	WM	16	NE NW	6	38.9
38 S	8 E	WM	16	NW NW		40.0
38 S	8 E	WM	16	SW NW		40.0
38 S	8 E	WM	16	SE NW		40.0
38 S	8 E	WM	16	NE SW		40.0
38 S	8 E	WM	16	NW SW		40.0
38 S	8 E	WM	16	SW SW		40.0
38 S	8 E	WM	16	SE SW		40.0
38 S	8 E	WM	16	NE SE	4	13.5
38 S	8 E	WM	16	NW SE		39.0
38 S	8 E	WM	16	SW SE		39.0
38 S	8 E	WM	16	SE SE		38.5
38 S	8 E	WM	17	NE NE		40.0
38 S	8 E	WM	17	NW NE		40.0
38 S	8 E	WM	17	SW NE		40.0
38 S	8 E	WM	17	SE NE		40.0
38 S	8 E	WM	17	NE NW		40.0
38 S	8 E	WM	17	NW NW		40.0
38 S	8 E	WM	17	SW NW		40.0

IRRIGATION AND LIVESTOCK WATERING FROM POD 3						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	8 E	WM	17	SE NW		40.0
38 S	8 E	WM	17	NE SW		40.0
38 S	8 E	WM	17	NW SW		40.0
38 S	8 E	WM	17	SW SW	2	34.3
38 S	8 E	WM	17	SE SW		39.0
38 S	8 E	WM	17	NE SE		40.0
38 S	8 E	WM	17	NW SE		40.0
38 S	8 E	WM	17	SW SE		40.0
38 S	8 E	WM	17	SE SE		40.0
38 S	8 E	WM	18	NE NE		40.0
38 S	8 E	WM	18	NW NE		39.4
38 S	8 E	WM	18	SW NE	7	26.1
38 S	8 E	WM	18	SE NE		40.0
38 S	8 E	WM	18	NE NW	8	5.2
38 S	8 E	WM	18	NE SE		38.2
38 S	8 E	WM	18	NW SE	6	7.5
38 S	8 E	WM	18	SE SE	5	9.7
38 S	8 E	WM	20	NE NE		37.5
38 S	8 E	WM	20	NW NE		37.5
38 S	8 E	WM	20	SW NE		40.0
38 S	8 E	WM	20	SE NE		40.0
38 S	8 E	WM	20	NE NW		37.9
38 S	8 E	WM	20	NW NW	10	9.4
38 S	8 E	WM	20	SE NW	9	30.2
38 S	8 E	WM	20	NE SW	8	14.4
38 S	8 E	WM	20	NE SE		38.0
38 S	8 E	WM	20	NW SE		37.6
38 S	8 E	WM	20	SW SE	6	10.2
38 S	8 E	WM	20	SE SE	6	36.2
38 S	8 E	WM	21	NE NE		37.0
38 S	8 E	WM	21	NW NE		37.0
38 S	8 E	WM	21	SW NE		39.0
38 S	8 E	WM	21	SE NE		39.0
38 S	8 E	WM	21	NE NW		37.5
38 S	8 E	WM	21	NW NW		37.5
38 S	8 E	WM	21	SW NW		40.0
38 S	8 E	WM	21	SE NW		40.0
38 S	8 E	WM	21	NE SW		37.5
38 S	8 E	WM	21	NW SW		37.5
38 S	8 E	WM	21	SW SW		40.0
38 S	8 E	WM	21	SE SW		40.0
38 S	8 E	WM	21	NE SE		37.5
38 S	8 E	WM	21	NW SE		37.0
38 S	8 E	WM	21	SW SE		40.0
38 S	8 E	WM	21	SE SE		40.0
38 S	8 E	WM	27	NE NE	1	1.6
38 S	8 E	WM	27	NW NE	1	2.6
38 S	8 E	WM	27	NW NE	11	29.8
38 S	8 E	WM	27	SW NE	10	29.0
38 S	8 E	WM	27	SW NE	2	9.4

IRRIGATION AND LIVESTOCK WATERING FROM POD 3						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	8 E	WM	27	SE NE	2	3.6
38 S	8 E	WM	27	NE NW		40.0
38 S	8 E	WM	27	NW NW		40.0
38 S	8 E	WM	27	SW NW		40.0
38 S	8 E	WM	27	SE NW		39.0
38 S	8 E	WM	27	NE SW		38.4
38 S	8 E	WM	27	NW SW		37.2
38 S	8 E	WM	27	SW SW	6	6.2
38 S	8 E	WM	27	SW SW	7	31.5
38 S	8 E	WM	27	SE SW	8	14.0
38 S	8 E	WM	27	SE SW	5	24.3
38 S	8 E	WM	27	NE SE		2.5
38 S	8 E	WM	27	NW SE	3	15.5
38 S	8 E	WM	27	NW SE	9	19.6
38 S	8 E	WM	27	SW SE	4	14.9
38 S	8 E	WM	28	NE NE		40.0
38 S	8 E	WM	28	NW NE		40.0
38 S	8 E	WM	28	SW NE		36.6
38 S	8 E	WM	28	SE NE		40.0
38 S	8 E	WM	28	NE NW		40.0
38 S	8 E	WM	28	NW NW	8	31.6
38 S	8 E	WM	28	SW NW	8	0.4
38 S	8 E	WM	28	SE NW	7	13.0
38 S	8 E	WM	28	NE SE	5	24.8
38 S	8 E	WM	28	NW SE	6	1.5
38 S	8 E	WM	28	SE SE	5	2.9
38 S	8 E	WM	29	NE NE	8	4.4
38 S	8 E	WM	34	NE NW		3.9
38 S	8 E	WM	34	NW NW		16.1

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
DAVID A. BALTAZOR; AND	)	DETERMINATION
PACIFICORP, DBA PACIFIC POWER)	
AND LIGHT CO.)	
_____	)	Water Right Claim 145

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

A. FINDINGS OF FACT

1. Claim 145 (Co-Claimants: DAVID A. BALTAZOR; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3139) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 145 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.
4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 145, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.
6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scrivener's error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "strikethrough" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.
3. Based on the file and record herein, IT IS ORDERED that Claim 145 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 145

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: DAVID A. BALTAZOR
318 RIVERSIDE DR.
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.1 ACRES

RATE OF USE:
0.01 CUBIC FOOT 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: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

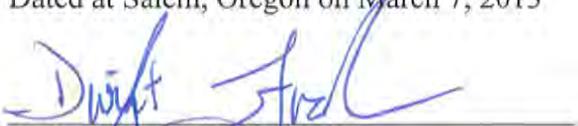
THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	NE SW	0.1	200 (318 Riverside Drive)	S½ Lot 9 in Block 4 of West Klamath Falls Addition

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication

**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
KATHLEEN BOIVIN; AND PACIFICORP,	)	DETERMINATION
DBA PACIFIC POWER AND LIGHT CO.)	
)	
	)	Water Right Claim 146

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

A. FINDINGS OF FACT

1. Claim 146 (Co-Claimants: KATHLEEN BOIVIN; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3140 and 3376) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 146 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.
4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 146, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.
6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scrivener's error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "~~striketrough~~" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 146, 152, 153, 155, 156, 157, 158, 146, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.
3. Based on the file and record herein, IT IS ORDERED that Claim 146 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 146

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: KATHLEEN BOIVIN
120 WHALEVIEW COURT
CRESCENT CITY, CA 95331

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.2 ACRES

RATE OF USE:
0.02 CUBIC FOOT 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: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.2	2800	612 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
CHARLES M. CLINE; AND PACIFICORP,	)	DETERMINATION
DBA PACIFIC POWER AND LIGHT CO.)	
)	
	)	Water Right Claim 147

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

A. FINDINGS OF FACT

1. Claim 147 (Co-Claimants: CHARLES M. CLINE; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3141) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 147 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.
4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 147, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.
6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scrivener's error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "strikethrough" text):

Additional Finding of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.
3. Based on the file and record herein, IT IS ORDERED that Claim 147 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 147

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: CHARLES M. CLINE
29760 JOE DAY WAY
GRANDE RONDE, OR 97347

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.2 ACRES

RATE OF USE:
0.01 CUBIC FOOT 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: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

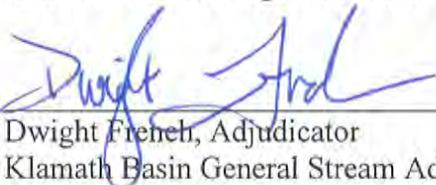
Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lots	Remarks
38 S	9 E	WM	32	NE SW	12	0.2	8000 (238 Riverside Drive)	Lot 8 and N½ Lot 9 in Block 4 of West Klamath Falls Addition
							8100 (300 Riverside Drive)	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
ALBERT J. CONFORTI; AND	)	DETERMINATION
PACIFICORP, DBA PACIFIC POWER)	
AND LIGHT CO.)	
_____	)	Water Right Claim 148

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

A. FINDINGS OF FACT

1. Claim 148 (Co-Claimants: ALBERT J. CONFORTI; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3142) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 148 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.
4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 148, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.
6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scrivener's error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "strikethrough" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 161, 163

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific finding of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.
3. Based on the file and record herein, IT IS ORDERED that Claim 148 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 148

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 CA-CD

CLAIMANTS: ALBERT J. CONFORTI
PO BOX 1406
(204 S. RIVERSIDE)
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:
IRRIGATION OF 0.3 ACRES

RATE OF USE:
0.01 CUBIC FOOT 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: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: DECEMBER 11, 1891

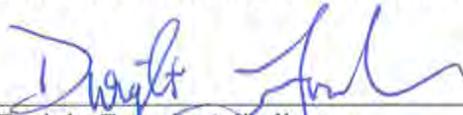
THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH WESTSIDE "KENO" CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	NE SW	12	0.3	7700 (204 Riverside Drive)	Lot 5 in Block 4 of West Klamath Falls Addition

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

**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
SCOTT C. KELLSTROM; AND	)	DETERMINATION
PACIFICORP, DBA PACIFIC POWER)	
AND LIGHT CO.)	
_____	)	Water Right Claim 149

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

A. FINDINGS OF FACT

1. Claim 149 (Co-Claimants: SCOTT C. KELLSTROM; AND PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (3143) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 08.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 149 on December 12, 2002, and on February 10, 2003, issued an ADDENDUM TO PROPOSED ORDER (Addendum) to include the summary of Claim 156.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Medford and Rogue River Valley Irrigation Districts.
4. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 149, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
5. On February 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order.
6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order contains a scrivener's error in the section "Modifications to the 'Findings of Fact'" and is corrected as follows (deletions are shown in "strikethrough" text):

Additional Findings of Fact

Findings of Fact #25 through #38 are added as follows (additions are shown in "underline" text): ~~Need to add findings for all claims that the ALJ did not make findings for, specifically: Claims 149, 150, 149, 152, 153, 155, 156, 157, 158, 149, 161, 163~~

Reasons for Correction: Findings of Facts #25 and #26 apply to all claims, and Findings of Facts #27 through #38 apply to specific claims as noted in these specific findings of facts. The deleted portion was an internal reminder and should have been deleted from the text before the Amended Proposed Order was issued.

8. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Proposed Order and Addendum, as modified by the Amended Proposed Order (as corrected by Finding of Fact #7, above), is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein. To the extent that there are any inconsistencies between the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS and the conclusions of law or opinion in the AMENDED PROPOSED ORDER, the GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS control.
3. Based on the file and record herein, IT IS ORDERED that Claim 149 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 149

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 38 S, R 9 E, INSERT PAGE 32 BC-BD

CLAIMANTS: SCOTT C. KELLSTROM

622 CONGER AVE
KLAMATH FALLS, OR 97601

PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The LINK RIVER, tributary to the KLAMATH RIVER

PURPOSE OR USE:

IRRIGATION OF 0.5 ACRES

RATE OF USE:

0.02 CUBIC FOOT 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: APRIL 1 – OCTOBER 30

DATE OF PRIORITY: NOVEMBER 1, 1895

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
38 S	9 E	WM	30	NW SE	4	DIVERSION AT LINK RIVER DAM THROUGH EASTSIDE CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Tax Lot	Remarks
38 S	9 E	WM	32	SW NW	8	0.5	2200	622 Conger Avenue

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication