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
LAWRENCE AND MARJORIE IVERSON	)	DETERMINATION
	)	
_____	)	Water Right Claim 1

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 16, 1990, LAWRENCE AND MARJORIE IVERSON (Claimants) (PO BOX 97, SILVER LAKE, OR 97601) timely submitted a Statement and Proof of Claim (Claim 1) 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 1 was submitted for irrigation of 157.2 acres by "natural flood irrigation" for an unspecified quantity of water from Jack Creek, tributary to Klamath Marsh, with a season of use March 1 to Nov 1. The claimed priority date is "prior to 1909."

3. LAWRENCE IVERSON AND MARJORIE IVERSON Statement and Proof of Claim for Claim 1 attesting that the information contained in the claim is true.

4. A copy of a letter dated May 20, 1977 from Lawrence and Marjorie Everson to OWRD states in pertinent part: ". . . the water had been applied to a beneficial use on this land since before 1900 (naturally)." (Claim 1, WIP Page 00026).

5. In 1979, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 1. The report also includes the statement: "The Iverson meadow lands in section 2, 13, 24, T 27 S, R 9 E and in section 19, T 27 S, R10 E appear to be kept moist by natural flooding and a high ground water table. . . . The source of this "Natural Irrigation" is from Jack Creek and several of it's unnamed tributaries . . ." (Claim 1, WIP Page 00027).

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 was approved but for fewer acres than claimed and for a shorter 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 3379: 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., 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, the United States of America timely filed Contest 3708 to the Claim and/or Preliminary Evaluation of Claim 1.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4064 to the Claim and/or Preliminary Evaluation of Claim 1.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 100.

11. On March 18, 2002, the Klamath Project Water Users with the exception of Shasta View Irrigation District withdrew from Contest 3379. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTESTS (Mar. 18, 2002).

12. On March 19, 2002, Shasta View Irrigation District withdrew Contest 3379. *See* NOTICE OF WITHDRAWAL OF CERTAIN CONTEST (Mar. 19, 2002).

13. On January 16, 2003, OWRD, the Claimants, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all remaining contests to Claim 1.

14. In the Settlement Agreement, the Claimants voluntarily agreed to limit their claim from natural flood-irrigation and subirrigation to natural subirrigation only. The parties stipulated to the following facts: the source of water is Jack Creek, a tributary to Klamath Marsh; the use is for irrigation of 138.7 acres; the amount beneficially used is 3.47 cfs; and the period of use is March 1 to October 31.

15. On January 21, 2003, the Adjudicator withdrew Case 100 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, 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 Jack Creek. 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 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. The stipulated place of use for acceptance of natural subirrigation is located as follows:

NATURAL SUBIRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	9 E	WM	13	NW SW	10.6
27 S	9 E	WM	13	SW SW	4.2
27 S	9 E	WM	13	SE SW	21.3
27 S	9 E	WM	13	SW SE	9.0
27 S	9 E	WM	24	NE NE	13.8
27 S	10 E	WM	19	NE NW	27.9
27 S	10 E	WM	19	NW NW	35.5
27 S	10 E	WM	19	SE NW	16.4

See OWRD INVESTIGATION MAP – T 27 S, R 9 E, W.M.

3. This privilege to use water under Claim 1 does not constitute a water right; as such, OWRD will not issue a certificate for Claim 1.

4. Based on the file and record herein, IT IS ORDERED that Claim 1 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
JAMES AND HELEN SCHELHAAS	)	DETERMINATION
	)	
_____	)	Water Right Claim 2

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 24, 1990, JAMES AND HELEN SCHELHAAS (Claimants) (RT 2 BOX 92, OMAK, WA 98841) timely submitted a Statement and Proof of Claim (Claim 2) 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 2 was submitted for a total 2.0 cubic feet per second (cfs) from natural overflow of Jack Creek, a tributary of the Williamson River, for irrigation of 218.4 acres, with a "season of use "March 1st thru September 30." The claimed priority date is prior to 1909.

3. JAMES AND HELEN SCHELHAAS signed the Statement and Proof of Claim for Claim 2 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.

5. The Claimants did not file a contest to the Preliminary Evaluation of Claim 2.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3380: 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 3434 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 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.

7. On May 8, 2000, the United States of America timely filed Contest 3709 to the Claim and/or Preliminary Evaluation of Claim 2.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4065 to the Claim and/or Preliminary Evaluation of Claim 2.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 101.

10. On September 12, 2002, the OWRD, and Klamath Project Water Users, the United States of America and the Klamath Tribes executed STIPULATION TO RESOLVE CONTESTS 4065, 3380, AND 3709 (Settlement Agreement) which resolved all contests to Claim 2.

11. On August 6, 2002, the Adjudicator withdrew Case 101 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the OWRD, and Klamath Project Water Users, the United States of America and the Klamath Tribes 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 2 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 the UNITED STATES DEPARTMENT OF INTERIOR, U.S. FISH AND WILDLIFE SERVICE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 3

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 13, 1990, MABEL A. SCHUMACHER timely submitted a Statement and Proof of Claim (Claim 3) 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 3 was submitted for a total of 0.19 cfs of water as follows: 0.10 cfs from Cole Creek, a tributary of the Williamson River, being 0.09 cfs for livestock watering and 0.01 cfs for domestic use; and 0.09 cfs from Three Creek, a tributary of the Williamson River, for livestock watering. The livestock watering claim is for 500 head. The claimed period of use is year-round for domestic use, and "May 1 to Jan. 1" for livestock watering. The claimed priority date is October 14, 1864.

3. MABEL A. SCHUMACHER signed Claim 3 attesting that the information contained in the claim is true.

4. The claim was ultimately transferred to the UNITED STATES DEPARTMENT OF INTERIOR, U. S. FISH AND WILDLIFE SERVICE (USFWS) (Claimant) on April 24, 1998. *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M98, PAGE 16580 (April 24, 1998), (Claim # 3, Pages 007 – 010)].

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 with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, Francis Loving Trust, Hilda Francis Trustee, timely filed Contest 2759 to the Claim and/or Preliminary Evaluation of Claim 3.

7. On May 8, 2000, Thomas William Mallams timely filed Contest 4945 to the Claim and/or Preliminary Evaluation of Claim 3.

8. On May 8, 2000, William J. Rust and Ethel J. Rust timely filed Contest 2760 to the Claim and/or Preliminary Evaluation of Claim 3.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 156.

10. On August 9, 2004, OWRD, USFWS, and contestants Francis Loving Trust, Hilda Francis Trustee, Thomas William Mallams, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust, executed a STIPULATION TO RESOLVE CONTESTS 2759, 2760, AND 4945 (Settlement Agreement) thereby resolving all contests to Claim 3.

11. On August 11, 2004, the Adjudicator withdrew Case 156 from the Office of Administrative Hearings.

12. 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 "May 1 – Jan 1."

13. OWRD finds that livestock watering is limited to a total of 500 head as originally claimed.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, USFWS, and contestants Francis Loving Trust, Hilda Francis Trustee, Thomas William Mallams, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust, 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; the season of use for livestock watering recognized herein is consistent the Claimant's original claim.

2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

3. Livestock watering is limited to a total of 500 head as described in Finding 13, above.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 3

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 29 S, R 9 E

CLAIMANT: UNITED STATES DEPARTMENT OF INTERIOR,
U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232

SOURCE OF WATER:

AN UNNAMED SPRING, tributary to COLE CREEK; and
THREE CREEK, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

DOMESTIC FOR ONE HOUSEHOLD FROM AN UNNAMED SPRING; AND

LIVESTOCK WATERING AN UNNAMED SPRING AND THREE CREEK, LIMITED TO A TOTAL OF 500 HEAD

RATE OF USE:

0.0286 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FROM AN UNNAMED SPRING FOR DOMESTIC USE, MEASURED AT THE POINT OF DIVERSION; AND

0.0186 CFS FOR LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, BEING 0.0093 FROM AN UNNAMED SPRING NOT TO EXCEED 6000 GALLONS PER DAY, AND 0.0093 CFS FROM THREE CREEK, NOT TO EXCEED 6000 GALLONS PER DAY.

PERIOD OF ALLOWED USE:

Use	Period
Domestic	January 1 - December 31
Livestock	May 1 – Jan 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTs OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Remarks
Unnamed Spring	29 S	9 E	WM	15	NW NW	Domestic Use and Livestock Watering
Three Creek	29 S	9 E	WM	28	SW SW	Livestock Watering Only

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Authorized POD**
29 S	9 E	WM	15	SE NW	Unnamed Spring

LIVESTOCK WATERING					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Authorized POD**
29 S	9 E	WM	15	SE NE	Unnamed Spring
29 S	9 E	WM	28	SW SW	Three 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 THOMAS J. SHAW	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 4

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 4 (Claimant: THOMAS J. SHAW) and its associated contests (2039, 3430, 3710, and 4506) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 157.

2. The Office of Administrative Hearings conducted contested case proceedings and issued an AMENDED[1] PROPOSED ORDER ON UNITED STATES' MOTION FOR RECONSIDERATION OF RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S CLAIM for Claim 4 on December 10, 2004. Exceptions were filed to this amended proposed order by Thomas J. Shaw.

3. OWRD referred Claim 4 back to the Office of Administrative Hearings for further proceedings in order to take further evidence in support of or opposition to the Claimant's claim to a Walton right based on beneficial use of water by the method of natural overflow. The Office of Administrative Hearings conducted further proceedings and ultimately issued an AMENDED PROPOSED ORDER AFTER FURTHER PROCEEDINGS (Amended Proposed Order) for Claim 4 on September 11, 2009.

4. The STIPULATION OF FACTS AMONG CLAIMANT AND ALL CONTESTANTS for Claim 4 executed on May 7, 2009 is incorporated in its entirety as if set forth fully herein.

5. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by (1) Thomas J. Shaw, and (2) OWRD.

[1] An earlier Proposed Order was issued on November 8, 2004. This Proposed Order was amended because it was mailed out without the ALJ's signature. No other changes were made to the Proposed Order.

6. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 4. The exceptions are found to be persuasive, and therefore, modifications are made to the Amended Proposed Order as described in Sections A.10, A.11 and A.12, below.

7. The Amended 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.8, below.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issue" is adopted in its entirety.
   d. The "Stipulated Facts" is adopted in its entirety.
   e. The "Findings of Fact" is adopted in its entirety. In addition, Finding of Fact #4 and is added as set forth in Section A.9, below.
   f. A new section entitled "Conclusions of Law" is added to the Amended Proposed Order as set forth in Section A.10, below.
   g. The "Opinion" is replaced in its entirety as set forth under Section A.11, below.
   h. The section titled "Amended Proposed 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 4, which also incorporates any modifications made under Section A.12, below. Consistent with Sections A.9, A.10, A.11, and A.12, below, the outcome of the Order has been modified to recognize a right for irrigation with incidental livestock watering on 54.0 acres.

8. **History of the Case.** Within the section titled "History of the Case" of the Amended Proposed Order, the first sentence within the fifth Paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> On September 13, ~~2007~~ 2004, the United States filed a Motion for Reconsideration of Ruling on Legal Issues.

Reason for Modification: To correct a scrivener's error.

9. **Findings of Fact.** Amended Proposed Order Finding of Fact #4 is added as follows (additions are shown in "underline" text):

> 4. The Claimant claimed 100 head of livestock for livestock watering. (OWRD Ex. 1 at 1.)

Reason for Additional Finding of Fact #4: The facts in the ALJ's Amended Proposed Order failed to fully set forth the evidence on the record.

10. **Conclusions of Law.** The entire section titled "Conclusions of Law" with Conclusions of Law #1-4 is added to the Amended Proposed Order as follows:

Conclusions of Law

1. There is sufficient title information to establish a *Walton* right on the claimed place of use.
2. Beneficial use of water for irrigation with incidental livestock watering (for 100 head) by the method of natural overflow was made on 54 acres within Allotment 550 with reasonable diligence after transfer of the property from Indian ownership to non-Indian ownership.
3. Beneficial use of water for irrigation by the method of natural overflow is a valid basis for a *Walton* water right.
4. Wildlife is not a valid purpose of a *Walton* right derived from the 1864 Klamath Treaty.

Reason for Addition of Conclusions of Law Section: Conclusions of Law were not specified in the ALJ's Amended Proposed Order; 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 these conclusions.

11. **Opinion.** The Amended Proposed Order's "Opinion" section is replaced in its entirety as follows:

OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

In addition, OWRD incorporates into the Opinion section all the paragraphs below which follow after the heading labeled "Application of Walton Elements to the Modified Amended Proposed Order Findings of Fact."

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

The pertinent facts are not in dispute. Allotment 550 was formerly part of the Klamath Indian Reservation and remained under Indian ownership until 1957. During this time, Allotment 550 was seasonally irrigated by natural overflow from the Williamson River. In late fall of each year, Allotment 550 becomes submerged as the waters of the Williamson River rise. As the waters recede in about April, Allotment 550 becomes suitable for cattle grazing.

In 1957, Allotment 550 was transferred to Modoc Lumber Company, the first non-Indian owner. Modoc Lumber Company held the property until 1965. During this approximately eight year period, the property remained irrigated by natural overflow, and Modoc Lumber Company leased Allotment 500 to the members of the Klamath tribes for grazing purposes.

In 1965, Modoc Lumber Company conveyed Allotment 550 to Claimant. Claimant became the second non-Indian owner of Allotment 550. Allotment 550 remains irrigated solely by means of natural overflow from the Williamson River. Claimant continued to lease Allotment 550 for grazing purposes until at least 1991. Claimant stipulates that at this time there is no actual physical diversion of water from its natural source onto Allotment 550.

Claimant seeks a *Walton* right based upon natural overflow from the Williamson River. *Walton* rights require beneficial use of water be made with reasonable diligence after transfer of property from Indian ownership to non-Indian ownership. Claimant has demonstrated beneficial use of water for irrigation with incidental livestock watering by means of natural overflow from the Williamson River onto Allotment 550.

The elements necessary for a *Walton* claim for 54.0 acres in Allotment 550 have been established. Water rights should be granted for irrigation of 54.0 acres with incidental livestock watering for 100 head (the number of head claimed), on the basis of beneficial use of water by the method of natural overflow from the Williamson River.

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, especially pertaining beneficial use of water by the method of natural overflow being made with reasonable diligence; to apply the appropriate legal bases to the Proposed Order's findings of fact.

12. **Amended Proposed Order.** The entire section titled "Amended Proposed Order" is replaced as follows:

1. Beneficial use of water for irrigation by the method of natural overflow is a valid basis for a *Walton* right;

2. Claim 4 is approved for irrigation of 54 acres with incidental livestock watering for 100 head, the number of head claimed.

Reason for Modifications: (1) To provide consistency with Sections A.9, A.10 and A.11.

B. DETERMINATION

1. The Amended 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.8, above.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issue" is adopted in its entirety.
   d. The "Stipulated Facts" is adopted in its entirety.
   e. The "Findings of Fact" is adopted in its entirety. In addition, Findings of Fact #4 is added under Section A.9, above.

f. A new section entitled "Conclusions of Law" is added to the Amended Proposed Order as set forth in Section A.10, above.
g. The "Opinion" is replaced in its entirety as set forth in Section A.11, above.
h. The section titled "Amended Proposed 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 4, which also incorporates any modifications made under Section A.12, below. Consistent with Sections A.9, A.10, A.11, and A.12, above, the outcome of the Order has been modified to recognize a right for irrigation with incidental livestock watering on 54.0 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 is established for 54.0 acres.

4. Based on the file and record herein, IT IS ORDERED that Claim 4 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 4

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 29 S, R 30
CLAIMANT: THOMAS J. SHAW
PO BOX 257
KLAMATH FALLS, OR 97601
SOURCE OF WATER: WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
IRRIGATION OF 54.0 ACRES BY NATURAL OVERFLOW; LIVESTOCK WATERING OF 100 HEAD INCIDENTAL TO IRRIGATION.

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:
NO SPECIFIC POINT OF DIVERSION, NATURAL OVERFLOW FROM THE WILLIAMSON RIVER

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION BY NATURAL OVERLFOW WITH INCIDIENTAL LIVESTOCK WATERING					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
30 S	9 E	WM	5	NW NE	38.8
30 S	9 E	WM	5	NE NW	15.2

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

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

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. THE SEASON OF USE MAY NOT EXCEED DECEMBER 1 TO JULY 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
STAFFORD RANCHES, INC.	)	DETERMINATION
	)	
_____	)	Water Right Claim 5

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 24, 1991, CHARLOTTE M. MATHIS, SURVIVING JOINT TRUSTEE, ON BEHALF OF MATHIS FAMILY TRUST UTA 8/11/87 timely submitted a Statement and Proof of Claim (Claim 5) 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. In a August 26, 1998 letter, OWRD requested clarification of Claim 5, in part, as follows: "Because the law [OAR 690-028-0025(2)] requires that a separate claim must be filed for each non-contiguous property, this claim must be separated into two different claims--one for parcels 1 & 2 [Claim A], and another for parcels 3 through 6 [Claim B]."

3. On June 29, 1999, in response to OWRD's request, CHARLOTTE M. MATHIS, SURVIVING JOINT TRUSTEE, ON BEHALF OF MATHIS FAMILY TRUST UTA 8/11/87 divided Claim 5 by timely submitting additional Statements and Proof of Claim that separated Claim 5 into two parts, being "Claim A" and "Claim B". OWRD retained "Claim A" (Parcels 1 and 2) as Claim 5 and labeled "Claim B" (Parcels 3 – 6) as Claim 708.

4. Claim 5 was submitted for a total of 19.82 cfs of water, being 11.0 cfs from Big Springs Creek, a tributary of the Williamson River, for irrigation of 1543.8 acres; and 8.82 cfs from an unnamed stream (Lenz Creek), a tributary of the Williamson River, for irrigation of 296.8 acres. The duty and rate claimed are 3.0 acre-feet per acre per year and 1/40 of one cubic foot per second per acre, respectively. For instream livestock watering of 2500 head, an additional 0.25 cfs was claimed from each source. The claimed period of use is

year-round for livestock watering, and April 15 through September 15 for irrigation. The claimed priority date is October 14, 1864.

5. J. ANTHONY GIACOMINI, an authorized agent of CHARLOTTE M. MATHIS, MATHIS FAMILY TRUST UTA 8/11/87, signed the original Claim 5 attesting that the information contained in the claim is true. CHARLOTTE M. MATHIS signed the amendments (Claim 5 and Claim 708) attesting that the information contained in the each claim is true.

6. The claim was transferred to STAFFORD RANCHES, INC. (Claimant). *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M00, PAGE 1948 (Jan. 18, 2000), and CHANGE OF OWNERSHIP FORM (Feb. 2, 2000) (Claim # 5, Pages 284-296).

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 for livestock watering and irrigation, but for a larger quantity of water and with a longer irrigation season than claimed.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3431: 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[2], Don Vincent[3], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. On May 8, 2000, the United States of America timely filed Contest 3711 to the Claim and/or Preliminary Evaluation of Claim 5.

10. On May 8, 2000, the Klamath Tribes timely filed Contest 4067 to the Claim and/or Preliminary Evaluation of Claim 5.

11. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2814 to the Claim and/or Preliminary Evaluation of Claim 5.

12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 158.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3431 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3431 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3431 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. On February 18, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2814. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST NO. 2814 (Feb. 18, 2003).

14. On October 11, 2004, Stafford Ranches, Inc., 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 remaining contests to Claim 5.

15. On October 18, 2004, the Adjudicator withdrew Case 158 from the Office of Administrative Hearings.

16. OWRD finds a rate for irrigation of 1/40 of one cubic foot per second per acre, as claimed.

B. DETERMINATION

1. The Settlement Agreement executed between Stafford Ranches, Inc., 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.

3. The rate for irrigation is 1/40 of one cubic foot per second per acre as claimed.

4. Based on the file and record herein, IT IS ORDERED that Claim 5 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 5
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 5 SETTLEMENT MAP (Oct. 13, 2004)

CLAIMANT: STAFFORD RANCHES, INC
1110 NE LAUGHLIN ROAD
PRINEVILLE, OR 97754

SOURCE OF WATER:
An UNNAMED STREAM (LENZ CREEK), tributary to BIG SPRINGS CREEK

PURPOSE OR USE:
IRRIGATION OF 711.6 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 2500 HEAD.

RATE OF USE:
17.8 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:
2.19 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 15 - SEPTEMBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	8 E	WM	15	SW SE	NORTH 4 DEGREES 10 MINUTES EAST, 6546 FEET FROM S¼ CORNER, SECTION 22

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**
30 S	8 E	WM	24	NE NE	2	13.0
30 S	8 E	WM	24	NE NE	3	0.1
30 S	8 E	WM	24	NW NE	1	8.8
30 S	8 E	WM	24	NW NE	4	13.0
30 S	8 E	WM	24	SW NE		39.9
30 S	8 E	WM	24	SE NE	2	17.5
30 S	8 E	WM	24	SE NE	3	22.4
30 S	8 E	WM	24	NE NW	1	0.7
30 S	8 E	WM	24	NE NW	5	26.7

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	8 E	WM	24	NW NW	6	10.9
30 S	8 E	WM	24	SW NW		39.7
30 S	8 E	WM	24	SE NW		39.9
30 S	8 E	WM	24	NE SW		39.9
30 S	8 E	WM	24	NW SW		39.9
30 S	8 E	WM	24	SW SW		39.9
30 S	8 E	WM	24	SE SW		39.9
30 S	8 E	WM	24	NE SE		39.9
30 S	8 E	WM	24	NW SE		39.9
30 S	8 E	WM	24	SW SE		39.9
30 S	8 E	WM	24	SE SE		39.9
30 S	8 E	WM	25	NE NE		39.8
30 S	8 E	WM	25	NW NE		40.0
30 S	8 E	WM	25	NE NW		40.0
30 S	8 E	WM	25	NW NW		40.0

[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
BRENT OWEN	)	DETERMINATION
	)	
_____	)	Water Right Claim 6

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, BRENT OWEN (Claimant) (PO BOX 9992483, REDDING, CA, 96099) timely submitted a Statement and Proof of Claim (Claim 6) 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 6 was submitted for "wildlife and habitat and preservation of natural state" for "all uninterupted [sic] natural water" from springs and an unnamed creek, tributary to the Williamson River, with an unspecified season of use. The claimed priority date is "Prior to 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.

4. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3381: 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 3381 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.

5. On May 8, 2000, the United States of America timely filed Contest 3712 to the Claim and/or Preliminary Evaluation of Claim 6.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4068 to the Claim and/or Preliminary Evaluation of Claim 6.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 102.

8. On June 20, 2002, the Claimant withdrew Claim 6 which thereby rendered all contests moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (June 20, 2002).

9. On June 25, 2002, the Adjudicator withdrew Case 102 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 6 by the Claimant, IT IS ORDERED that Claim 6 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
THE REDDING FOUNDATION	)	DETERMINATION
	)	
_____	)	Water Right Claim 7

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, THE REDDING FOUNDATION (Claimant) (PO BOX 990160, REDDING, CA, 96099) timely submitted a Statement and Proof of Claim (Claim 7) 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 7 was submitted for "wildlife and habitat and preservation of natural state" for "all uninterupted [sic] natural water" from springs and an unnamed creek, tributary to the Williamson River, with an unspecified season of use. The claimed priority date is "Prior to 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.

4. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3382: 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 Prichard, Don Vincent, Randy Walthall,

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3382 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.

5. On May 8, 2000, the United States of America timely filed Contest 3713 to the Claim and/or Preliminary Evaluation of Claim 7.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4069 to the Claim and/or Preliminary Evaluation of Claim 7.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 103.

8. On June 20, 2002, the Claimant withdrew Claim 7 which thereby rendered all contests moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (June 20, 2002).

9. On June 25, 2002, the Adjudicator withdrew Case 103 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 7 by the Claimant, IT IS ORDERED that Claim 7 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 ROYAL CROWN CATTLE CO.; BRUCE EMERY, PRESIDENT	)	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 8

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, BRUCE EMERY AS PRESIDENT OF ROYAL CROWN CATTLE CO. (Claimant) (PO BOX 57, SILVER LAKE, OR 97638) timely submitted a Statement and Proof of Claim (Claim 8) 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 8 was submitted for a total 1.0 cubic feet per second (cfs) of water from three springs, tributary to the Williamson River, for livestock watering of 450 head with a season of use "March to September." The claimed priority date is "1864."

3. BRUCE EMERY AS PRESIDENT OF ROYAL CROWN CATTLE CO. signed Claim 8 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 4, 2000, the Claimant timely filed Contest 1784 to the Preliminary Evaluation of Claim 8.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3432: Klamath Irrigation District, Klamath

Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company[1], Enterprise Irrigation District, Klamath Hills District Improvement Co., 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., 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 3714 to the Claim and/or Preliminary Evaluation of Claim 8.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4070 to the Claim and/or Preliminary Evaluation of Claim 8.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 159.

10. On February 14, 2003, the Claimant withdrew Claim 8 which thereby rendered all contests moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (Feb. 14, 2003).

11. On February 21, 2003, the Adjudicator withdrew Case 159 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 8 by the Claimant, IT IS ORDERED that Claim 8 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

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3432 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

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 JERRY L. NEFF AND LINDA R. NEFF; ROBERT M. COOK - T P C, LLC, AN OREGON LIMITED LIABILITY CO.	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 9

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 9 (Claimants: JERRY L. NEFF AND LINDA R. NEFF[1]; ROBERT M. COOK - T P C, LLC, AN OREGON LIMITED LIABILITY CO.) and its associated contests (2815, 3262, 3715, and 4071) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 160.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 9 on January 19, 2007.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) T P C, LLC, (2) Jerry L. and Linda Neff, and (3) the United States of America.

4. The exceptions filed to the Proposed Order along with opposition and responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 9. 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, A.8, A.9, A.10, 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 with modifications, as set forth in Section A.6, below.
   b. The "Evidentiary Rulings" is adopted in its entirety.

[1] On Nov. 3, 2004, the portion of the property appurtenant to Claim 9 that was previously owned by HART ESTATE INVESTMENT COMPANY was transferred to JERRY L. AND LINDA R. NEFF. *See* CHANGE OF OWNERSHIP FORM and CERTIFICATE OF SERVICE (February 9, 2005.)

c. The "Issues" is adopted in its entirety.
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 adopted with modifications, as set forth under 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 9. Consistent with Sections A.7, A.8, A.9, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 584.7 acres; the season of use for livestock watering is corrected in Findings of Fact A.10.a, and a rate is specified for livestock watering in Section A.10.b, below.

6. **History of the Case.** Within the section titled "History of the Case" of the Proposed Order, the first Paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> Claimants seek a water right as non-Indian successors to Klamath Indian Allottees, claiming an amount of water sufficient to irrigate the allotments' share of the Tribe's "practically irrigable acreage" ("PIA").[2] This *Walton* claim is for ~~589.3~~ 58.3 cubic feet per second (cfs) of water from the Williamson River, Jack Creek, Long Prairie Creek, and commingled water from Long Prairie Creek, Jack Creek and tailwater from the Williamson River, for irrigation of approximately 2333.8 acres of land, and 1 cfs from the Williamson River for livestock use. The claimed period of use is February through October. (OWRD Ex. 1 at 1-3, 7-9, 23-24.)

Reasons for Modification: To correct the amount of cfs claimed – issue raised in exceptions; to add clarification using evidence on the record; to provide additional citations to the record.

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 provide evidence from the record to substantiate beneficial use of water by the method of natural overflow

[2] Such claims are known as *Walton* claims, named after a line of cases culminating in *Colville Confederated Tribes v. Walton*, 752 F2d 397, 402 (9th Circuit, 1985).

– issue raised in exceptions. (2) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership – issue raised in exceptions. (3) 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 – issue raised in exceptions. (4) 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) For all allowed water rights in Claim 9 where the Williamson River is the source of water, the Rate is 1/80th cfs/acre.[2] For all allowed water rights in Claim 9 where the source of water is Long Prairie Creek, the Rate is 1/40 of one cfs per acre. The Duty for all allowed water rights in Claim 9 is 3.5 acre-feet per acre per year. The Period of Use for irrigation is March 1 through October 31. The rate for livestock watering is 12 gallons per head per day from the Williamson River. The Period of Use for livestock watering is February 1 through October 31, as claimed. The Priority date is October 14, 1864.[3] (OWRD Ex. 1 at 23, 59, 131.)

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record, and did not include an irrigation rate from Long Prairie Creek or a rate for livestock watering, each of which need to be included due to other modifications made in this Proposed Order; to provide an additional citation to the record.

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[3] The rate allowed from the Williamson River is based on a certificate of water right obtained by William Kittredge with a priority of April 16, 1930, which specified a rate of 1/80th cfs per acre. (OWRD Ex. 1 at 59.) The rate of 1/40 of one cfs per acre for irrigation from Long Prairie Creek and the duty for all irrigation approved under Claim 9 is based on the rate and duty specified in Appendix A of the Preliminary Evaluation for those cases where a different rate or duty does not apply. (*Id.* at 131.) The rate of 12 gallons per day per head for livestock watering from the Williamson River is based on the rate specified in Appendix A of the Preliminary Evaluation for those cases where a different rate does not apply. (*Id.* at 132. Season of Use is also as specified in Appendix A~~, except as to livestock~~. Claimant did not specify a season of use for livestock only, in the claim document, but only stated that the period of use was "Feb through Oct." (*Id.* at 23.) OWRD asked for clarification of the season of use for livestock, but did not receive a response. Consequently, the season of use for livestock is limited to the season claimed, February through October. Priority date for all allowed rights is October 14, 1864, the date of the treaty creating the Klamath Indian Reservation. **Reasons for modification of footnote:** To correctly apply the irrigation terms rate (a fraction of one cubic foot per second) and duty (a volume expressed in acre-feet per acre); to include the livestock watering rate; season of use *is* specified in Appendix A.

2) Beginning in 1912, William Kittredge began leasing properties that had formerly been part of the Klamath Reservation, and had been allotted to individual Klamath Indians. He later bought a number of the allotments as they became available. The property subject to this claim is part of the property acquired by Kittredge between 1917 and 1931. Beginning in 1917, Kittredge began developing irrigation systems throughout his property, which was, and is still, used for pasture and hay. (Ex. 60138.)[4] In 1918, Kittredge built a diversion dam across the Williamson River called the Big Wire Dam, located in the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. Several ditches were then built upstream from this dam to provide irrigation for much of the property subject to this claim. (Ex. OWRD Ex. 1 at 63; Ex. 60138 at 4.) William Kittredge's map for Williamson River water right Permit 9592 (later certificated as 11956), labeled "Map Showing Kittredge Ditches" within T 30, S, R 10 E, W.M., shows the locations of his ditches, and includes the following footnote:

> "Everything in Twp 30 S. Rge 10 E, under water since year 1922 and the land South of the Williamson River in the SW¼ and in that part of the SW¼ of SW¼ lying between the main River and the fork, all in Section 18, and all of the land in S½ NW¼ and SW¼ Sec 19, and NW¼ and N½ SW¼ Sec. 30 lying Westerly and Northerly of black line was irrigated prior to 1893."

(OWRD Ex. 1 at 59-61, 63.) As a result of the diversions and ditches, by 1921, hay was being cut from three fields named Big Wire, Little Wire, and Timothy. Ex. 60138 at 4, 7.) By 1930, an additional dam had been built downstream on the Williamson River, at the SW¼ ~~SW¼~~ SE¼ Section 18, T 30 S, R 10 E, W.M. (OWRD Ex. 1 at 59, Supplemental Direct Testimony of James P. Lynch, Ex. 1.)

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to correct a scrivener's error.

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[4] Although the exhibits were marked with a 12-digit number, the first seven digits did not change from exhibit to exhibit. For ease of reference only the last five digits of the exhibit numbers will be cited in this order.

(3) Upstream from Kittredge's holdings, George Mayfield acquired a number of non-contiguous properties, also formerly Indian allotments. (Shaw Direct, Ex. 30004 at 16). In 1924, Mayfield built a diversion at Rocky Ford, about 4 miles upstream from the mouth of the Mayfield Ditch ~~and ditch to draw~~ in order to use water from the Williamson River to irrigate some of his properties. (Ex. 60138 at 5; Shaw Rebuttal, Ex. 30003 at 4-5, para 10,11; Shaw Direct, Ex. 30004 at 41, OWRD Ex. 1 @ 25.) This diversion reduced the availability of water for irrigation of Kittredge's holdings downstream. (~~*Id.*~~ Ex. 60138 at 5; Shaw Direct, Ex. 30004 at 41.) ~~A few years later~~ In 1932, William Kittredge bought out Mayfield's holdings, which consisted of Rocky Ford, the Royce place and the Mayfield place,[5] and discontinued the use of this diversion at Rocky Ford. (~~*Id.*~~ Ex. 60138 at 5; Shaw Direct Ex. 30004 at 16-17, 41, 49-50.) Only lands described as the Mayfield place are appurtenant to Claim 9. (OWRD Ex. 1 at 7-12, 36, 39-40; Shaw Direct Ex. 30004 at 49-50.)

At an unknown date, the Mayfield Ditch was constructed across the Mayfield place which originates south of the Mayfield place near the center of Section 14, enters the Mayfield place at the SW Corner of the SE¼ NW¼ Section 11 and ends near the center of Section 9. (OWRD Ex. 1 at 5, 7-8, 25, 36, 58.) The Mayfield Ditch conveys water commingled from Jack Creek, Long Prairie Creek, and tailwater from an upstream user of Williamson River water for irrigation across the Mayfield place. (*Id.* at 5.)

Those portions of land lying above the Mayfield Ditch are subject to natural overflow from two intermittent streams, Jack Creek and Long Prairie Creek. (*Id.* at 5, 25.)

Although in his affidavit Oscar Kittredge states that water from Jack Creek, Long Prairie Creek and tailwater pumped from the Williamson River, in addition to overflow from Jackson Creek was all used for irrigation on the

[5] **Rocky Ford**: Lots 3, 4, 5, and the SW¼ NW¼ ["NW¼"], Section 1; SW¼ Section 1; and the SE¼ Section 2, all within T 31S, R 10 E. **Royce Place**: SE¼, Section 24; NE¼ Section 25; and portion of NW¼ east of the Williamson River, Section 25; all within T 30 S, R 10 E. **Mayfield Place**: E½ and SW¼ , Section 9; all Section 10; and the NW¼, Section 11; all within T 30 S, R 10 E (Shaw Direct Ex. 30004 at 16-17, 41, 49-50; OWRD Ex. 1 at 36, 39-40.) **Reason for addition**

Mayfield place, his statement is ambiguous as to whether this was occurring at or prior to the time when the Kittredge's first took ownership of this parcel in 1932, or use of water from these sources began after the Mayfield place was purchased by the Kittredge's. (Ex. 60138 at 5; Shaw Direct Ex. 30004 at 16-17.)

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to provide additional citations to the record; OWRD has determined that the ALJ's finding that a ditch to draw water from the Williamson River built in conjunction with the 1924 diversion is not supported by a preponderance of evidence on the record.

4) It is possible that before 1918, part of this property was subject to flooding from temporary dams. However, the evidence is not sufficient to establish when this practice was carried out, how often it was done, or what land benefited from the dams.

5) **Allotment 54 (87.6 acres claimed)**

This allotment, composed of 160 acres located in S½ S½ Section 8, T 30 S, R 10 E, W.M., was confirmed to Evangeline Blow, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40013.) In 1910 the property was described as having no improvements except fencing. (*Id.* at 18.) The property was conveyed to William Kittredge, a non-Indian, on July 7, 1926. (Ex 60045.) The property was subsequently conveyed to William Kittredge and Sons, a partnership, on May 20, 1944. (Ex. 60047.)

The claim is for 28.8 acres irrigated from Jack Creek, and ~~57.5~~ 58.8 acres, being 20.8 within the SW¼ SW¼, 34.8 within the SE¼ SW¼, and 3.2 within the SE¼ SE¼ [6] irrigated from the Williamson River with a diversion point at the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (Point of Diversion (POD) north of Big Wire Dam). (OWRD Ex. 1 at 8, 11, 13, 25.)

¶ The 20.8 acres within the SW¼ SW¼ and the 34.8 acres within the SE¼ SW¼ are part of the Timothy Field that was being cut for hay by 1921.

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of footnote: To show support using evidence on the record that the three Mayfield properties were non-contiguous.

(Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) for 67.1 acres in Section 8, T 30 S, R 10 E, W.M. with ~~a~~ points of diversion from the Williamson River located in NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (~~*Id.*~~ OWRD Ex. 1 at 25, 57, 59, 60, 63.) A footnote on a map for Permit 9592[7] (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system since beginning in 1922. (*Id.* at 25, 59, 63.) At hearing, the United States conceded that the Water Right Certificate established the elements of a *Walton* right for irrigation from the Williamson River. (Transcript at 39.) The remaining irrigated acreage claimed was not described in this water right certificate, and was developed at a later date by Kittredge, or a subsequent non-Indian owner.

Beneficial use of water from the Williamson River on 58.8 acres in Allotment 54 was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 58.8 acres, or 0.74 total cfs. The point of diversion is north of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

The record contains no evidence of beneficial use of water from Jack Creek with reasonable diligence on this allotment following transfer from Indian ownership.

Reasons for Modification: To correct the number of acres claimed within this allotment; to add clarification using evidence on the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

6) **Allotment 153 (132.0 acres claimed)**

This allotment, composed of 160 acres located in NE¼ Section 9, T 30 S, R 10 E, W.M., was confirmed to Luty Howard, a Klamath Indian, by instrument

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[6] 57.5 was a typographical error in the Preliminary Evaluation. (*See* Ex. 40004, and *Compare* OWRD Ex. 1 at 11, 25, and 92.) **Reason for addition of footnote:** To show that this scrivener's error was recognized on the record.

[7] The map referred to here is on the record at OWRD Ex. 1 at 63. **Reason for addition of footnote:** To avoid potential confusion with a second map included in the same group of citations, being OWRD Ex. 1 at 25.

dated March 3, 1910. (Ex. 40018.) In 1920, the property was described as having no ditch for irrigation. (*Id.* at 6.) The property was conveyed to George Mayfield, a non-Indian, on August 2, 1923. (Ex. 60057.) The property was subsequently conveyed to William Mayfield, also a non-Indian, on April 19, 1924. (Ex. 60056.)

The claim is for 132 acres irrigated by water diverted from the combined flow of Jack Creek, Long Prairie Creek, and return flow from an upstream user. (OWRD Ex. 1 at 7.) Diversion facilities were built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977. (*Id.* at 5); likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Jack Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian Owner. (OWRD Ex. 1 at 52, 58, 62.) There is no evidence of a diversion of water to this property prior to transfer of ownership, in 1924, to William Mayfield, the second non-Indian owner. Oscar Kittredge's 1978 affidavit establishes that as of 1978, the property was watered for the most part by natural overflow from Jackson Creek, a source not included in this claim, and by return flow from a diversion by an upstream user. (*Id.*)

The record does not contain evidence that the water claimed for irrigation within this allotment was put to beneficial use with reasonable diligence.

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 additional citations to the record.

7) **Allotment 158 (107.2 acres claimed)**

This allotment, composed of 160 acres located in SW¼ Section 9, T 30 S, R 10 E, W.M., was confirmed to Horace Howard, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40022.) In 1920 the property was described as having no ditch. (*Id. at 4.)* The property was conveyed to J.W. McCoy, a non-Indian, on August 6, 1920. (Ex. 60052.) The property was subsequently conveyed to George Mayfield, also a non-Indian, on November 8, 1920. (Ex. 60055.).

This claim is for 107.2 acres irrigated by water diverted from Jack Creek. (OWRD Ex. 1 at 8.) Diversion facilities were built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977. (*Id.* at 5.) ~~A Water Right Permit for this parcel was obtained in 1977, well after conveyance to the second non-Indian Owner. (*Id.* at 62.)~~ There is no evidence of a diversion of water to this property prior to transfer of the property to George Mayfield, the second non-Indian owner. (Ex. 60138 at 5.)

The record does not contain evidence that the water claimed for irrigation within this allotment was put to beneficial use with reasonable diligence.

Reasons for Modification: Lands within the SW¼ Section 9 were not included in Permit 42725. (OWRD Ex. 1 at 52, 62.)

8) **Allotment 154 (108.2 acres claimed)**

This allotment, composed of 160 acres located in SE¼ Section 9, T 30 S, R 10 E, W.M., was confirmed to Eva Howard, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40019.) The property was conveyed to Charles Pitcher, a non-Indian, on November 29, 1918. (Ex. 60053.) The property was subsequently conveyed to George Mayfield, also a non-Indian, on April 20, 1920. (Ex. 60054.).

The claim is for 80.2 acres irrigated from the combined waters of Jack Creek, Long Prairie Creek, and return flow from an upstream user, and 28 acres irrigated from a diversion on Jack Creek. (OWRD Ex. 1 at 7, 8.) Diversion facilities were built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977~~.~~ (*Id.* at 5); likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Jack Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian owner. (*Id.* at 52, 58, 62.) There is no evidence of a diversion of water to this property prior to the date the property was conveyed to George Mayfield, the second non-Indian owner. (Ex. 60138 at 5.)

The record does not contain evidence that the water claimed for irrigation within this allotment was put to beneficial use with reasonable diligence.

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 additional citations to the record.

9) **Allotment 264 (114.8 acres claimed)**

This allotment, composed of 160 acres located in NE¼ Section 10, T 30 S, R 10 E, W.M., was confirmed to Jack Palmer (Kane), a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40025.) The property was conveyed to A.C. Beal and J.W. McCoy, non-Indians, on April 22, 1920. (Ex. 60010.) The property was subsequently conveyed to George Mayfield, also a non-Indian, on November 8, 1920. (Ex. 60014, 60015.).

This claim is for 114.8 acres, being 78 acres irrigated from a diversion in Long Prairie Creek, and 36.8 acres irrigated from the combined waters of Long Prairie Creek, Jack Creek, and return flow from an upstream user. (OWRD Ex. 1 at 7, 8.)

Klamath Indian Jack Palmer, on an application for a Patent in Fee signed by him on May 3, 1919, stated that Allotment 264 was used for grazing or mowing, and that he himself owned cattle and horses. (Ex. 40025.)

¶ Long Prairie Creek naturally floods the lands above the Mayfield Ditch in this allotment (*Id.* at 5, 25.) Diversion facilities were later built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977. (*Id.* at 5); likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Long Prairie Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian owner. (*Id.* at 52, 58, 62.) There is no evidence of a diversion of water to this property prior to the date the property was conveyed to George Mayfield, the second non-Indian owner. (Ex. 60138 at 5.)

As evidenced by the Patent in Fee application, beneficial use of water from Long Prairie Creek by the method of natural overflow was established under

Indian ownership of the parcel. The 78.0 acres within Allotment 264 which were claimed for irrigation from Long Prairie Creek and are located above the Mayfield Ditch should be approved. The rate is 1/40 of one cfs per acre for 78.0 acres, or 1.95 total cfs. The point of diversion is on Long Prairie Creek within the NW¼ NW¼ Section 11, T 30 S, R 10 E, W.M.

The record does not contain evidence that the water from the combined sources for irrigation on 36.8 acres was put to beneficial use with reasonable diligence.

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 additional citations to the record.

10) **Allotment 156 (128.9 acres claimed)**

This allotment, composed of 160 acres located in NW¼ Section 10, T 30 S, R 10 E, W.M., was confirmed to Frank Howard, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40020.) In 1920 the property was described as having no irrigation. (*Id.* at 3.) The property was conveyed to George Mayfield, a non-Indian, on June 13, 1923. (Ex. 60057.) The property was subsequently conveyed to William Mayfield, also a non-Indian, on April 19, 1924. (Ex. 60056.)

This claim is for 128.9 acres, with diversion for 15.6 acres from Long Prairie Creek, and the remainder from combined waters of Long Prairie Creek, Jack Creek and return flow from an upstream user. (OWRD Ex. 1 at 7, 8.) Long Prairie Creek naturally floods the lands above the Mayfield Ditch in this allotment (*Id.* at 5, 25.) At some unknown date prior to 1977 diversions were built on Long Prairie Creek or Jack Creek, which were intermittent creeks, to divert an unknown amount of water. (*Id.* at 5.) Likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Jack Creek and Long Prairie Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian Owner. (*Id.* at 52, 58, 62.) There is no evidence of irrigation on this property prior to its acquisition by the second non-Indian owner. Oscar Kittredge's 1978 affidavit establishes that as of 1978, the

property was watered for the most part by natural overflow from Jackson Creek, not a source under this claim, and by return flow from a diversion by an upstream user. (Ex. 600138 at 5.)

Although there is evidence of natural overflow from Long Prairie Creek on 15.6 acres claimed for irrigation from Long Prairie Creek, as it is situated above of the above the Mayfield ditch, there is no evidence on the record confirming beneficial use of this water being made with reasonable diligence.

The record does not contain evidence that the water from the combined sources for irrigation on 113.3 acres was put to beneficial use with reasonable diligence.

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 additional citations to the record.

11) **Allotment 157 (136.8 acres claimed)**

This allotment, composed of 160 acres located in SW¼ Section 10, T 30 S, R 10 E, W.M., was confirmed to Hampton Howard, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40021.) This property was described in 1920 as having no ditches. (*Id.* at 4.) The property was conveyed to A.C. Beal, a non-Indian, on August 13, 1920. (Ex. 60009.) The property was subsequently conveyed to George Mayfield, also a non-Indian, on November 8, 1920. (Ex. 60014.).

The claim is for 136.8 acres irrigated from the combined waters of Long Prairie Creek, Jack Creek and return flow from an upstream user. (OWRD Ex. 1 at 8.) Diversion facilities were built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977. (*Id.* at 5); likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Jack Creek and Long Prairie Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian owner. (*Id.* at 52, 58, 62.) There is no evidence of a diversion of water to this property prior to the date the property was conveyed to George Mayfield, the second non-Indian owner. (Ex. 60138 at 5.)

The record does not contain evidence that the water claimed for irrigation within this allotment was put to beneficial use with reasonable diligence.

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 additional citations to the record.

12) **Allotment 265 (159.3 acres claimed)**

This allotment, composed of 160 acres located in SE¼ Section 10, T 30 S, R 10 E, W.M., was confirmed to Lillie Palmer (Kane), a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40026.) The property was conveyed to Klamath Cattle Co. a non-Indian, on August 25, 1926. (Ex. 60018.) The property was subsequently conveyed to George Mayfield, also a non-Indian, on November 3, 1927. (Ex. 60006.)

The claim is for 159.3 acres irrigated from the combined waters of Jack Creek, Long Prairie Creek, and return flow from an upstream user. (OWRD Ex. 1 at 7, 8.) Diversion facilities were built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977. (*Id.* at 5); likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Long Prairie Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian Owner. (*Id.* 1 at 52, 58, 62.) There is no evidence as to when water was first diverted to this property.

The record does not contain evidence that the water claimed for irrigation within this allotment was put to beneficial use with reasonable diligence.

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 additional citations to the record.

13) **Allotment 152 (79.5 acres claimed)**

This allotment, composed of 160 acres located in NW¼ Section 11, T 30 S, R 10 E, W.M., was confirmed to Jason Howard, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40017.) In 1916 this property was described as having no irrigation and no water supply. The property was mostly

in wild grass, uncultivated and without a water right. (*Id.* at 8 through 11.) The property was conveyed to George Mayfield, a non-Indian, on April 4, 1924. (Ex. 60002.) The property was subsequently conveyed to William Mayfield, also a non-Indian, on November 19, 1924. (Ex. 60056.).

While still in Indian ownership, Allotment 152 was leased to William Mayfield for the purpose of grazing cattle in 1909. William Mayfield was characterized as a "stockman of good reputation." (*See* FARMING AND GRAZING LEASE, dated May 15, 1909, Ex. 40017.)

The claim is for ~~82.5~~ 79.5 acres irrigated from ~~the combined waters of Jack Creek,~~ Long Prairie Creek. ~~, and return flow from an upstream user.~~ (OWRD Ex. 1 at 7-11.) Diversion facilities were built on Long Prairie Creek and Jack Creek, both intermittent streams, to divert an unknown amount of water, at an unknown date prior to 1977. (*Id.* at 5); likewise, the Mayfield Ditch was constructed at an unknown date. (*Id.* at 25, 52, 62.) A Water Right Permit (#42725) for irrigation from Long Prairie Creek on this parcel was obtained in 1977, well after conveyance to the second non-Indian Owner. (Id. at 52, 58, 62.) Oscar Kittredge's 1978 affidavit establishes that as of 1978, the property was watered for the most part by natural overflow from Jackson Creek, and by return flow from a diversion by an upstream user. (Ex. 60138 at 5.)

As evidenced by a grazing lease, beneficial use of water from Long Prairie Creek by the method of natural overflow on this parcel was established under Indian ownership. Beneficial use of water with reasonable diligence has been shown on the 79.5 acres within Allotment 152 which were claimed for irrigation from Long Prairie Creek and are located above the Mayfield Ditch. The rate is 1/40 cfs per acre for 79.5 acres, or 1.99 total cfs. The point of diversion is on Long Prairie Creek within the NW¼ NW¼ Section 11, T 30 S, R 10 E, W.M.

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to correct the source of water that was claimed; to show the correct number of acres claimed within this allotment; to add clarification using evidence on the record; to provide additional citations to the record.

14) **Allotment 18 (115.2 acres claimed)**

This allotment, composed of 160 acres located in NW¼ Section 16, T 30 S, R 10 E, W.M., was confirmed to Logan Pompey, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40006.) The property was conveyed to William Kittredge, a non-Indian, on January 29, 1923. (Ex. 60017.) The property was subsequently conveyed to William Kittredge and Sons, a partnership, also a non-Indian, on May 20, 1944. (Ex. 60047.).

The claim is for 101.2 acres irrigated from two points of diversion on the Williamson River (94.4 acres, being 12.4 acres within the NE¼ NW¼, 17.6 within the NW¼ NW¼, 40.0 within the SW¼ NW¼, and 24.4 within the SE¼ NW¼, from a diversion on the South side of the river [POD south of Big Wire Dam], and 6.8 acres within the NW¼ NW¼, from a diversion on the North side of the river [POD north of Big Wire Dam], both located in NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.); and 14 acres irrigated from Jack Creek. (OWRD Ex. 1 at 8, 9, 11, 13, 25.)

¶ The 12.4 acres within the NE¼ NW¼, 17.6 within the NW¼ NW¼, 40.0 within the SW¼ NW¼, and 24.4 within the SE¼ NW¼, are part of the Big Wire Field that was being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) to irrigate 118 acres in NW¼ Section 16, T 30 S, R 10 E, W.M. from ~~two~~ diversions ~~from~~ on the Williamson River in NE¼ NW¼, and NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.) The acreage claimed to be watered from Jack Creek was not described in this water right certificate, and may have been developed at a later date by Kittredge, or a subsequent non-Indian owner.

Beneficial use of water from the Williamson River on 101.2 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 101.2 acres, or 1.27 total cfs. The point of diversion for 6.8 acres within the NW¼ NW¼ Section 16 is north of

Big Wire Dam, and the point of diversion for the remaining 94.4 acres is south of Big Wire Dam, both diversions being located within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

The record contains no evidence of beneficial use of water from Jack Creek with reasonable diligence on this allotment following transfer from Indian ownership.

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 additional citations to the record.

15) **Allotment 20 (129.6 acres claimed)**

This allotment, composed of 160 acres located in the SW¼ Section 16, T 30 S, R 10 E, W.M., was confirmed to Grover Pompey, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40007.) In 1921 the property was described as having no irrigation. (*Id.* at 5.) The property was conveyed to William Kittredge, a non-Indian, on May 31, 1921. (Ex. 60001.) The property was subsequently conveyed to William Kittredge and Sons, a partnership, also a non-Indian, on May 20, 1944. (Ex. 60047.)

The claim is for irrigation of 129.6 acres from the Williamson River with a diversion point within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (POD south of Big Wire Dam). (OWRD Ex. 1 at 9, 13, 25.)

¶ The 129.6 acres are part of the Big Wire field that was being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) to irrigate 128.1 acres in SW¼ Section 16, T 30 S, R 10 E, W.M. from ~~one~~ diversion points on the Williamson River in the NE¼ NW¼ and NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (~~*Id.*~~ OWRD Ex. 1 at 55, 57, 60, 63.) The additional 1.5 acres, not included on the certificate may have been developed subsequently. A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 128.1 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 128.1 acres, or 1.60 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

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 additional citations to the record.

16) **Allotment 52 (152.1 acres claimed)**

This allotment, composed of 160 acres located in NE¼ Section 17, T 30 S, R 10 E, W.M., was confirmed to Jennie Blow (Blew), a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40011.) In 1914 the property was described as having no improvements. (*Id.* at 11.) The property was sold on contract to Alex Davis, a non-Indian, in 1916. On March 9, 1920 a patent was issued in Davis' name. (Ex. 60022.) Prior to this patent, William Kittredge, also a non-Indian, had apparently agreed to purchase the property, and was making Davis' payments on the contract as early as May 1917. (Ex. 40011 at 4, 5.) William Kittredge received title to the property on October 2, 1922. (Ex. 60027.)

The claim is for 152.1 acres, being 148.5 acres irrigated from the Williamson River (117.4 acres from the POD north of Big Wire Dam, and 31.1 acres irrigated from the POD south of Big Wire Dam, both located ~~from the Williamson River~~ within the NW¼ NW¼ Section 16, T 30 S, R 10 E); and 3.6 acres irrigated from Jack Creek. (OWRD Ex. 1 at 9, 11, 13, 25.)

¶ The 0.3 acres within the NE¼ NE¼, the 10.8 acres within the SW¼ NE¼, and the 20.0 acres within the SE¼ NE¼, are part of the Big Wire Field that was being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) to irrigate 151 acres in NE¼ Section 17, T 30 S, R 10 E, W.M. from ~~two~~ diversion points on the Williamson River in the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60, 63.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates

acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* 25, 59, 63.) The diversion from Jack Creek may have been developed by a subsequent owner.

Beneficial use of water from the Williamson River on 148.5 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The is 1/80th cfs per acre for 148.5 acres, or 1.85 cfs. The point of diversion for 31.1 acres [0.3 acres within the NE¼ NE¼, 10.8 acres within the SW¼ NE¼, and 20 acres within the SE¼ NE¼ Section 17] is south of Big Wire Dam, and the point of diversion for the remaining 117.4 acres is north of Big Wire Dam, both diversions being located within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

The record contains no evidence of beneficial use of water from Jack Creek with reasonable diligence within this allotment following transfer from Indian ownership.

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 additional citations to the record.

17) **Allotment 53 (154.4 acres claimed)**

This allotment, composed of 160 acres located in NW¼ Section 17, T 30 S, R 10 E, W.M., was confirmed to Elvira Blow (Blew), a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40012.) The property was conveyed to William Kittredge, a non-Indian, on June 26, 1920. (Ex. 60024, 60026.) The property was subsequently conveyed to Donovan Nicol, also a non-Indian, on September 21, 1955. (Ex. 60049.).

The claim is for ~~148.4~~ 154.4 acres irrigated from the Williamson River~~.~~, being 148.4 acres from the POD north of Big Wire Dam, and 6.0 acres irrigated from the POD south of Big Wire Dam. (OWRD Ex. 1 at 9, 11, 13, 25.)

¶ The acres claimed within this allotment are either a part of the Timothy (154.4 acres) or the Little Wire (6.0 acres) fields that were being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) to irrigate

160 acres in NW¼ Section 17, T 30 S, R 10 E, W.M. from ~~one~~ diversion points on the Williamson River in the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60, 63.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 154.4 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 154.4 acres, or 1.93 total cfs. The point of diversion for 6.0 acres [2.4 acres within the SW¼ NW¼ and 3.6 acres within the SE¼ NW¼ Section 17] is south of Big Wire Dam, and the point of diversion for the remaining 148.4 acres is north of Big Wire Dam, both diversions being located within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to show the correct the number of acres claimed within this allotment – the ALJ's proposed order did not include the 2.4 acres claimed within the SW¼ NW¼ or the 3.6 acres within the SE¼ NW¼; to add clarification using evidence on the record; to provide additional citations to the record.

18) **Allotment 78 (150.2 acres claimed)**

This allotment, composed of 160 acres located in SW¼ Section 17, T 30 S, R 10 E, W.M., was confirmed to Golliep Elksnat, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40016.) The property was conveyed to George Mayfield, a non-Indian, on August 9, 1920. (Ex. 60023.) The property was subsequently conveyed to William Kittredge, also a non-Indian, on October 30, 1920. (Ex. 60025.).

The claim is for 150.2 acres irrigated from the POD south of Big Wire Dam, located within the NW¼ NW¼ Section 16, T 30 S, R 10 E on the Williamson River. (OWRD Ex. 1 at 9, 13, 25.)

¶ The acres claimed within this allotment are part of the Little Wire field that was being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) Kittredge obtained a Certificate of Water Right (#11956) to irrigate 152.4 acres in SW ¼ Section 17, T 30 S, R 10 E, W.M.

from ~~one~~ diversion points in the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60, 63.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 150.2 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 150.2 acres, or 1.88 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

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 additional citations to the record.

19) **Allotment 174 (159.8 acres claimed)**

This allotment, composed of 160 acres located in SE¼ Section 17, T 30 S, R 10 E, W.M., was confirmed to Silas Jackson, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40024.) In 1916 the property was described as having no irrigation installed. (*Id.* at 3.) The property was conveyed to William Kittredge, a non-Indian, on November 11, 1917. (Ex. 60013.) The property was subsequently conveyed to Donovan Nicol, also a non-Indian, on September 2, 1955. (Ex. 60049.).

The claim is for 159.8 acres irrigated from the POD south of Big Wire Dam, located within the NW¼ NW¼ Section 16, T 30 S, R 10 E on the Williamson River. (OWRD Ex. 1 at 10, 13, 25.)

¶ The acres claimed within this allotment are part of the Big Wire field that was being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) to irrigate 160 acres in SE¼ Section 17, T 30 S, R 10 E, W.M.. from ~~one~~ diversion points in the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60, 63.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages

[appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.*, 59, 63.)

Beneficial use of water from the Williamson River on 159.8 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 159.8 acres, or 2.0 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

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 additional citations to the record.

20) **Allotment 24 (54.4 acres claimed)**

The total allotment is located in several parcels, only 80 acres of which is subject to this claim. That portion is located in E½ NE¼ Section 18, T 30 S, R 10 E, W.M., and was confirmed to Fannie Ball, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40009.) In 1918 the property was described as subject to "some private wild flooding" but having no constructed irrigation ditches. (*Id.* at 8, 9.) The property was conveyed by Fannie Ball (under the name "Mrs. Lion Hart") to William Kittredge, a non-Indian, on April 29, 1921. (Ex. 60032.) The property was subsequently conveyed to Donovan Nicol, also a non-Indian, on September 2, 1955. (Ex. 60049.).

The claim is for 54.4 acres irrigated from the POD north of Big Wire Dam located on the Williamson River within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.. (OWRD Ex. 1 at 11, 13, 25.)

¶ The 54.4 acres are part of the Timothy field that was being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) to irrigate 52.7 acres in E½ NE¼ Section 18, T 30 S, R 10 E, W.M. from ~~one~~ diversion points in the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60, 63.) The additional 1.7 acres not included on the certificate may have been developed subsequently. A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages

[appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 52.7 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 52.7 acres, or 0.66 total cfs. The point of diversion is north of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

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 additional citations to the record.

21) **Allotment 25 (24.2 acres claimed)**

The total allotment is composed of 160 acres, only 80 of which are subject to this claim. That portion, located in W½ SE¼ Section 18, T 30 S, R 10 E, W.M., was confirmed to Eddie Ball, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40010.) The property was conveyed to A.A. Bellman, a non-Indian, on October 13, 1917. (Ex. 60020.) The property was subsequently conveyed to Charles Worden, also a non-Indian, on October 16, 1917. (Ex. 60021.) William Kittredge received title to the property in 1920. (Ex. 60028.)

The claim is for 24.2 acres, being 0.2 acres irrigated in the NW¼ ~~SW¼~~ SE¼ Section 18, T 30 S, R 10 E, W.M., and 24 acres irrigated in the SW¼ ~~SW¼~~ SE¼ Section 18, T 30 S, R 10 E, W.M. The claimed point of diversion is the POD south of Big Wire Dam located on the Williamson River within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (OWRD Ex. 1 at 10, 13, 25.)

¶ The claimed acres are part of the Little Wire field that was being cut for hay by 1921, and the Horse field. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) for 29 acres in SW¼ SE¼ Section 18, T 30 S, R 10 E, W.M. from ~~one~~ diversion points within the NW¼ NW¼, Section 16, and the SW¼ SE¼ Section 18, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60, 63.) A footnote on a map for Permit 9592 (later certificated as 11956)

indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 24.2 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 24.2 acres, or 0.30 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

Reasons for Modification: To correct a scrivener's error in the location of the claimed acreage; 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 additional citations to the record.

22) **Allotment 77 (65.6 acres claimed)**

The total allotment includes a number of different parcels, only 80 acres of which are subject to this claim. That portion, located in E½ SE¼ Section 18, T 30 S, R 10 E, W.M., was confirmed to Irene Skellock, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40015.) The property was conveyed to William Kittredge, a non-Indian, on April 20, 1921. (Ex. 60030.) The property was subsequently conveyed to Donovan Nicol, also a non-Indian, on September 2, 1955. (Ex. 60049.).

The claim is for 65.6 acres, being 62 acres irrigated from one diversion point on the Williamson River, located in NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (POD south of Big Wire Dam), and 3.6 acres irrigated from a second diversion point on the Williamson River also located in ~~SW¼ SE¼ Section 18~~, NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (POD north of Big Wire Dam). (OWRD Ex. 1 at 10, 11, 13, 25.)

¶ The claimed acres are part of the Little Wire and Timothy fields that were being cut for hay by 1921. (Corrections to Direct Testimony of Robert M. Cook, Ex. 1; Ex. 60138 at 4, 7.) William Kittredge obtained a Certificate of Water Right (#11956) for 71.3 acres in E½ SE¼ Section 18, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to

this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 65.6 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 65.6 acres, or 0.82 total cfs. The point of diversion for 3.6 acres within the NE¼ SE¼ is north of Big Wire Dam, and the point of diversion for the remaining 62.0 acres is south of Big Wire Dam, both diversions being located within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

Reasons for Modification: To correct and clarify the locations of the claimed points of diversion; 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 additional citations to the record.

23) **Allotment 75 (105.8 acres claimed)**

This allotment, composed of 160 acres located in NE¼ Section 19, T 30 S, R 10 E, W.M., was confirmed to Mamie Skellock, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40014.) The property was conveyed to William Kittredge, a non-Indian, on March 10, 1926. (Ex. 60034.) The property was subsequently conveyed to Donovan Nicol, also a non-Indian, on September 2, 1955. (Ex. 60049.).

The claim is for 105.8 acres irrigated from a single diversion point on the Williamson River located in NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (POD south of Big Wire Dam). (OWRD Ex. 1 at 10, 13, 25, 63.)

William Kittredge obtained a Certificate of Water Right (#11956) for 110.4 acres in NE¼ Section 19, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (*Id.* at 55, 57, 60.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* 25, 59, 63.) At hearing, the United States conceded that the Water Right Certificate established the elements of a *Walton* right for irrigation from the Williamson River. (Transcript at 39.)

Beneficial use of water from the Williamson River on 105.8 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 105.8 acres, or 1.32 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

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 additional citations to the record.

24) **Allotment 173 (97.0 acres claimed)**

This allotment, composed of 160 acres located in NE¼ Section 20, T 30 S, R 10 E, W.M., was confirmed to Emma Jackson, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40023.) A Fee Patent was issued to Emma Jackson December 28, 1918. (Ex. 60029.) The property was conveyed to Robert Wilson and Nora Bernice Wilson, non-Indians, by an unrecorded transfer. (Ex. 60066.) The property was subsequently conveyed to William Kittredge, also a non-Indian, on April 4, 1931. Ex. 60066.)

The claim is for 97 acres irrigated from a single diversion point on the Williamson River located in NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (POD south of Big Wire Dam). (OWRD Ex. 1 at 10, 13, 25, 63.)

¶ William Kittredge obtained a Certificate of Water Right (#11956) for ~~93.0~~ 98.0 acres in NE¼ Section 20, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60.) A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 97.0 acres within this allotment was made with reasonable diligence following the last known date the property was still under Indian ownership. The rate is 1/80 of one cfs per acre for 97.0 acres, or 1.21 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; 98.0 acres are shown on the 1930 water right certificate 11956 within the NE¼ Section 20; to add clarification using evidence on the record; to provide additional citations to the record.

25) **Allotment 21 (71.2 acres claimed)**

This allotment, composed of 160 acres located in NW¼ Section 21, T 30 S, R 10 E, W.M., was confirmed to Nannie Pompey, a Klamath Indian, by instrument dated March 3, 1910. (Ex. 40008.) In 1923, this property was described as mostly in timber, with about 40 acres of flat meadow ground. (*Id.* at 3.) The property was conveyed to William Kittredge, a non-Indian, on January 23, 1924. (Ex. 60065.) The property was subsequently conveyed to Donovan Nicol, also a non-Indian, on September 21, 1955. (Ex. 60049.)

The claim is for 71.2 acres irrigated from a single diversion point located in NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M. (POD south of Big Wire Dam). (OWRD Ex. 1 at 10, 13, 25.)

¶ William Kittredge obtained a Certificate of Water Right (#11956) for 66.5 acres in NW¼ Section 21, T 30 S, R 10 E, W.M. with a priority date of April 16, 1930. (OWRD Ex. 1 at 55, 57, 60.) The additional 4.7 acres not included on the certificate may have been developed subsequently. A footnote on a map for Permit 9592 (later certificated as 11956) indicates acreages [appurtenant to this allotment] noted on the map were under irrigation from the Kittredge Ditch system beginning in 1922. (*Id.* at 25, 59, 63.)

Beneficial use of water from the Williamson River on 66.5 acres within this allotment was made with reasonable diligence following transfer from Indian ownership. The rate is 1/80 of one cfs per acre for 66.5 acres, or 0.83 total cfs. The point of diversion is south of Big Wire Dam within the NW¼ NW¼ Section 16, T 30 S, R 10 E, W.M.

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 additional citations to the record.

8. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #3 and #6 are modified, and Conclusion #7 is added as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

a. Conclusion #3

There is sufficient information on the development or ~~continuous~~ continued use of water on this Place of Use to establish a *Walton* right for a portion of the property subject to this claim.

b. Conclusion #6

There is not sufficient information to support a period of use for irrigation outside of March 1 to October 31.

c. Conclusion #7

Beneficial use of water by the method of natural overflow is a valid basis for a *Walton* water right.

Reasons for Modifications: 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 2007 Proposed Order.

9. **Opinion.** The entire section titled "Opinion" of the Proposed Order is modified as described herein.

OWRD has removed the ALJ's discussions regarding the elements of a *Walton* claim, and natural overflow 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 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

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.

*****

Unlike many of the cases in the Adjudication, in this case we have the advantage of sworn statements made by a percipient witness to many of the events of significance, Oscar Kittredge. While Contestants have been able to raise questions as to the reliability of some of the other affidavits placed in this record, there is no clear evidence suggesting that Kittredge's affidavit marked as Ex. 60138 is not reliable.

To the contrary, ~~I consider~~ this affidavit is considered, with limited corroboration from another Kittredge affidavit dated in 1977 and attached to the Supplemental Direct Testimony of James P. Lynch, to be of particular value for several reasons:

Kittredge was born in 1900, and was 12 years old when he came to the Klamath Marsh area. He was an adult, or nearly so, when many of the events described in his affidavits occurred. He made his affidavits in 1978 and 1979, in the course of different litigation. The *Walton* cases were not published until the mid-1980s. Thus, particularly with regard to the "successor non-Indian" rule, and the artificial diversion rule, the principles stated in the *Walton* case could not have been in the contemplation of either Kittredge or his counsel when the affidavits were produced. No parties have suggested that Kittredge's affidavits are unreliable. To the contrary, all parties have relied upon different parts of his affidavits as support for their positions.

Although both affidavits are on the record, the shorter affidavit Kittredge signed in 1979 is primarily useful in clarifying statements contained in the longer

and more detailed affidavit he prepared in 1978[8]. For example, reading the two affidavits together, it is clear that the "diversion in the Big Wire Field" mentioned in the earlier affidavit is the "Big Wire Dam" that was in existence in the 1970s.

For these reasons ~~I have relied on~~ Kittredge's affidavits were relied on in much of the fact-finding in this case. While there is other evidence from which inferences could be made that contradict Kittredge's affidavits,[9] ~~I am not prepared to ignore~~ the otherwise apparently reliable statements by a percipient witness should not be ignored in favor of possible, but not necessary, contrary inferences that could be drawn.

As discussed below, the various allotments have different histories. Those different histories control the outcome as to each parcel. Several general statements can be made, however, that control the way the various portions of the claim are analyzed.

Long Prairie Creek and Jack Creek

Long Prairie Creek and Jack Creek are both subject to natural overflow, but mainly above the Mayfield Ditch. Where Jack Creek is claimed as the source of water, there is no evidence on the record to support beneficial use of water by natural overflow. Where Long Prairie Creek is claimed as the source of water such evidence on the record only exists for two allotments, 152 and 264.

The only eyewitness evidence as to the construction of any diversion of water to the non-contiguous Mayfield properties from the Williamson River was contained in the affidavit of Oscar Kittredge, who was present in 1924 when

[8] The Department has noted that there appear to have been some alterations in this exhibit after it was signed, and questions its reliability. (*cf.* Oregon Water Resources Department's Response to Robert Cook and TPC, LLC's Motion to admit Exhibit 160E00060129 through 160E00060138**** dated August 27, 2004) In view of the points the Department has made, ~~I have treated~~ this document has been treated with some care. However, the only portion for which it was considered is a list of dams contained on the same page as Kittredge's notarized signature, which seems sufficiently reliable to merit consideration.

[9] For example, the Big Wire Dam is located in a parcel that was owned by Logan Pompey in 1918, the year Kittredge says his father built the dam. It could be inferred from this that Kittredge was mistaken, and the dam was built after 1923, when William Kittredge bought the property. This is not a necessary inference, though, as there are other explanations possible. William Kittredge, after all, leased a number of Indian allotments in the area, and, as his son put it "the water development had been instigated on many of the allotments prior to the date of actual acquisition of title and while the same were under lease. " (Ex. 60138 at 6.)

Mayfield constructed a diversion from the Williamson River at Rocky Ford. However, that testimony does not establish that water from that diversion was ever applied or conveyed by the Mayfield Ditch on the property appurtenant to Claim 9 which Mayfield sold (in addition to other parcels) to Kittredge. Although David Shaw speculated that the diversions on Long Prairie Creek and Jack Creek would logically have been built before the 1924 diversion, the evidence is insufficient to prove this occurred. Shaw noted that "The Long Prairie and Jack Creek water supplies probably spread over much of the Mayfield place without construction of ditches and diversion facilities***." (Rebuttal Testimony of David B. Shaw at 4.) Shaw draws from this that it would be logical for diversions to be developed on these creeks before a diversion on the Williamson River, because of the comparative ease with which the creek diversions could be accomplished.

However, it is also possible that the early property owners would see no need to change the natural pattern of water dispersion if water was reaching the points at which it was needed with no additional effort by the owners. In any event, Oscar Kittredge stated in his affidavit in 1978 that at that time the former Mayfield properties were largely irrigated by overflow from Jackson Creek, a source that is not part of this claim. ~~I find it also telling that the Kittredges, who had acquired the Mayfield property by 1930, did not include that property in the application for a water right with a 1930 priority. One would suppose that if water was being applied by the Kittredge family through an artificial diversion by that time, the property would have been included in the certificate.~~ [10]

On this record it is not possible to determine when the diversions on Long Prairie and Jack Creek, or the Mayfield Ditch which is used to spread water out from these sources, were constructed. It is therefore not possible to determine whether those diversions were constructed with reasonable diligence after transfer from Indian to non-Indian ownership. ~~before the property transferred to the second non-Indian owner.~~ ~~Even if it were found that the diversions were~~

[10] The Kittredge's acquired the Mayfield properties in 1932, two years after the water right with a 1930 priority date was filed. (Shaw Direct Ex. 30004 at 16-17.) **Reason for addition of footnote:** To show the reason why OWRD has determined that the stricken statement is not supported by a preponderance of the evidence on the record.

~~developed before transfer to the second non-Indian owner, it would not be possible to quantify the various diversions, given that, as noted above, the property was largely watered by overflow from a source that is not subject to this claim, and the amount of water attributable to each stream has never been established. Consequently, I have concluded~~ In conclusion, except for the limited instances where the record supports beneficial use of water from Long Prairie Creek made by the method of natural overflow, ~~that~~ those parts of the claim where the point of diversion is on Jack Creek ~~and~~ or Long Prairie Creek cannot be allowed as a *Walton* right.

Combined Flows: Jack Creek, Long Prairie Creek, Return Flow

Part of the claim is based on a combination of water from Jack Creek, Long Prairie Creek, and return flow diverted from the Williamson River by an upstream user. This commingled water is treated as a single source; as claimed, it is not possible to quantify the rate of water from each supply source separately. ~~I am not convinced that~~ Although a claim based on return flow/tailwater is allowable as a privilege only[11] in this adjudication, in any event~~.~~, ~~Even if such a claim could be allowed, however,~~ the evidence in this case is not sufficient to establish ~~one~~ when beneficial use of the commingled water first began and thus reasonable diligence cannot be determined. ~~As discussed above, the claimed diversion from Jack Creek and Long Prairie Creek cannot be allowed. Claimants have not provided evidence from which it could be determined how much of the combined flow can be derived from each source. Without that information, the amount of return flow claimed cannot be quantified.~~ This part of the claim cannot be allowed.

Big Wire Dam and Reasonable Diligence

Contestants argue that, absent evidence of special circumstances, the correct measurement of due diligence would require irrigation to have been

[11] Use of tailwater cannot be insisted upon if the use or non-use of water by upstream users no longer results in waste water or overflow being available to a downstream user, and as such is a privilege-only use of water. Use of tailwater within irrigation districts or federal reclamation projects is addressed separately in the Findings of Fact and Order of Determination in the Klamath Basin Adjudication, and is not at issue in this particular claim.

developed within five years of the acquisition of the property by the first non-Indian owner. Contestants also argue that this five-year period should be found to end on the priority date of Kittredge's water right certificate, April 16, 1930. In this case, Contestants' position would require ~~me to~~ disallowing a *Walton* right as to all properties that Kittredge acquired before April 16, 1925, since Kittredge could not be found to have developed the irrigation with reasonable diligence as to those parcels.

While a five-year rule might be a useful rule of thumb, no rule or statute requires it. To the contrary, the only governing rule on the subject, OAR 690-028-0045(1) defines reasonable diligence as: "that which is usual and ordinary with persons performing similar projects." Such a determination must be made on a case-by-case basis. OAR 690-028-0045(2). Contestants' argument assumes that the "reasonable diligence" standard should be applied to each allotment separately without regard to its context. As each allotment was acquired, it became but part of a much larger property, for which an irrigation system was being constructed. Oscar Kittredge stated in his affidavit that William Kittredge built the Big Wire Dam in 1918, and began moving water into ditches behind the dam soon thereafter. Since the Big Wire Dam was one of the Points of Diversion noted in the 1930 Water Right Permit, it is apparent that Kittredge was developing his irrigation system well before 1930. Thus, 1930 is not the appropriate bench-mark from which to measure reasonable diligence in developing the irrigation system on these properties. To the contrary, 1930 would better be treated as the end-point,. ~~by which at least the basic outlines of the irrigation system had been completed.~~ Because it is noted on his map labeled "Kittredge Ditches," which is a part of his 1930 water right application, that water had been used beginning in 1922, eight years prior to when he applied for the water right, a preponderance of evidence on the record supports the conclusion that the irrigation system was completed or nearly completed before he applied for his water right. Considering the extensive system of ditches that was constructed between 1918 and 1930[12], it

[12] ~~I take~~ Judicial notice is taken that a section is composed of one square mile. (*Webster's Third New International Dictionary* (1986) at page 2052) The allotments are spread over several

is not surprising that it would take up to 12 years to complete. The gauge of reasonable diligence for a system as extensive as that involved here could logically be considerably longer than five years. In conclusion, when considering the property as a whole (excluding the Mayfield place which he acquired in 1932), ~~I conclude that~~ 12 years was a reasonable time in which to construct the irrigation system, and ~~that~~ William Kittredge exercised reasonable diligence in doing so.

The Mayfield Place and Reasonable Diligence

For the purposes of this discussion, the Mayfield place means the parcel appurtenant to Claim 9 which purchased by Kittredge from Mayfield in 1932 and described as the E½ and SW¼, Section 9; all Section 10; and the NW¼, Section 11; all within T 30 S, R 10 E. Beneficial use of water on the Mayfield place is from sources of water and on places of use not included in Kittredge's 1930 water right. Water is conveyed through the Mayfield Ditch, which is not shown on the map labeled "Kittredge Ditches." On this record it is not possible to determine when the Mayfield Ditch was first constructed. Thus is not possible to establish beneficial use of water with reasonable diligence on the Mayfield place except where beneficial use of water by the method of natural overflow can be established.

Individual Allotments

~~I turn now to the several allotments.~~

Allotment 54

This allotment first passed from Indian to non-Indian ownership in 1926. Of this portion of the claim, 28.8 acres are based on a diversion from Jack Creek. For the reasons discussed above, the evidence is insufficient to establish a *Walton* claim for water diverted from Jack Creek. However, the Contestants conceded that the portion of the claim (~~57.5~~ 58.8[13] acres) diverted from the Williamson River was allowable as a *Walton* claim, since William Kittredge, the first non-

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sections. Consequently, the ditches required to irrigate the several allotments would span several miles in length.

[13] *See* Fn 5

Indian owner, acquired the property less than five years before the approved priority date on a water permit Kittredge was later granted. Although Kittredge's permitted right was for 67.1 acres, only ~~57.5~~ 58.8 acres was claimed from the Williamson River in this proceeding, so only ~~57.5~~ 58.8 acres can be allowed.

Allotment 153

This portion of the claim is based on diversion of the combined flow of Jack Creek, Long Prairie Creek, and return flow from an upstream user. ~~As discussed above, a diversion from this combined source cannot be allowed as a *Walton* right. In any event,~~ There is no evidence of ~~a diversion~~ beneficial use of water prior to conveyance out of Indian ownership. ~~, and it is unlikely that a diversion was constructed in the seven months between~~ George Mayfield's acquisition of the property was in 1923 and his transfer to William Mayfield occurred 10 months later in April 1924. As discussed above, the evidence does not support a finding of development ~~before~~ after transfer from Indian ownership to the ~~second~~ non-Indian ~~user~~ successors. ~~,or continuous use of the water thereafter.~~ No *Walton* right exists respecting this allotment.

Allotment 158

This portion of the claim is based on use of water from Jack Creek. In 1920 this property was described as having no ditch. ~~It is unlikely that irrigation was developed in the three months between acquisition by J.W. McCoy, the first non-Indian owner, and transfer to George Mayfield, the second non-Indian owner. There is no evidence that J.W. McCoy constructed any diversions. Although Mayfield is recorded as having constructed diversions in this area, he was the second non-Indian owner, so any irrigation he developed would not qualify for treatment under a *Walton* claim.~~ As discussed above, the record does not support beneficial use of water made from Jack Creek with reasonable diligence after transfer from Indian to non-Indian successors. No *Walton* right can be found on this record.

Allotment 154

This portion of the claim is based on use of water from Jack Creek, and from commingled water from Jack Creek, Long Prairie Creek and return flow from an upstream user. ~~There is no clear evidence that Charles Pitcher constructed any diversion facilities in the area. The earliest record of a diversion by George Mayfield was in 1924, and this was from the Williamson River, not the source claimed here. In any event, Mayfield was the second non-Indian owner of the property.~~ As discussed above, the record does not support beneficial use of water made from these two sources with reasonable diligence after transfer from Indian to non-Indian successors. The record will not support a *Walton* right.

Allotment 264

This portion of the claim is based on use of water from Long Prairie Creek, and from commingled water from Jack Creek, Long Prairie Creek and return flow from an upstream user. ~~As in the case of Allotment 158, there is no evidence that the first non-Indian owner constructed any diversions on this property in the three months before George Mayfield, the second non-Indian owner, acquired it. Moreover, the claimed sources, Jack Creek, Long Prairie Creek, and combined water with return flow from an upstream user, cannot form the basis of a *Walton* right, as discussed above.~~ As discussed above, the record does not support beneficial use of water made from the commingled water source with reasonable diligence after transfer from Indian to non-Indian successors. No *Walton* right can be found for this portion of Allotment 264.

Because the portion of this allotment claimed from Long Prairie Creek is situated above the Mayfield Ditch, it would be subject to natural overflow. As supported by the Indian owner's Patent in Fee application, beneficial use of water from Long Prairie Creek was made on this allotment while still in his ownership. The record supports a *Walton* right for 78.0 acres based on use of water by the method of natural overflow for this portion of Allotment 264.

Allotment 156

The ~~circumstances~~ ownership history of this allotment ~~are~~ is similar to ~~those~~ that for Allotment 153. There is no evidence that the claimed sources of the

water from Long Prairie Creek, or from commingled water from Jack Creek, ~~and~~ Long Prairie Creek and return flow from an upstream user were developed ~~before the property was transferred to William Mayfield, the second non-Indian owner~~ with reasonable diligence following transfer from Indian ownership to non-Indian successors. No *Walton* right can be found.

Allotment 157

As in the case of Allotment 154, there is nothing on the record suggesting that ~~the first non-Indian owner, in this case A.C. Beal, ever constructed any diversion facilities. While George Mayfield is known to have done so, he was the second non-Indian owner, so any development he might have done would not qualify for a *Walton* right~~ beneficial use of water was made with reasonable diligence following transfer from Indian ownership to non-Indian successors. ~~Moreover,~~ The source~~s~~ of this water, the combined flow of Jack Creek, Long Prairie Creek, and return flow, will not support a *Walton* right.

Allotment 265

Again, the claimed source of water, Long Prairie Creek, ~~and~~ Jack Creek and return flow has not been shown to have been developed ~~before George Mayfield, the second non-Indian owner, acquired this property~~ with reasonable diligence following transfer from Indian ownership to non-Indian successors. No *Walton* right can be found.

Allotment 152

Like Allotment 153, George Mayfield acquired this property in April 1924, and transferred it to William Mayfield in November of the same year. ~~As the claimed source is Jack Creek, Long Prairie Creek, and return flow, and there is no evidence for development of these sources as early as 1924, no *Walton* right can be found. No *Walton* right can be found.~~ This allotment is situated above the Mayfield Ditch, and as such would be subject to natural overflow from the claimed source, Long Prairie Creek. This allotment was leased for grazing prior to transfer from Indian ownership, thus beneficial use of water was made while still

in Indian ownership. The record supports a *Walton* right for 79.5 acres based on use of water by the method of natural overflow.

Allotment 18

This allotment first passed from Indian to non-Indian ownership in 1923. Of this portion of the claim, 14 acres are based on a diversion from Jack Creek. However, the evidence is not sufficient to establish when water was diverted from Jack Creek, or whether that portion of the claim was developed with reasonable diligence.

As to the remainder of the claim, William Kittredge built the Big Wire Dam in 1918. That dam is currently located in this allotment. While Kittredge acquired the property seven years before he obtained a Water Right Certificate including it, he apparently began construction of the dam while the allotment was still in Indian ownership. ~~this does not establish that the irrigation system of which the Big Wire Dam was a part was not developed with reasonable diligence. It is likely that Kittredge would have applied water to the land closest to the dam as soon as he acquired title, if not before.~~ This allotment was encompassed within the irrigation system that William Kittredge constructed between 1918 and 1930, with beneficial use of water beginning in 1922. A *Walton* right in 101.2 acres irrigated from the Williamson River should be allowed. However, that portion of the claim from Jack Creek should not be allowed, as the evidence does not show when the diversion was constructed.

Allotment 20

This allotment first passed from Indian to non-Indian ownership in 1921. This allotment was encompassed within the irrigation system that William Kittredge constructed between 1918 and 1930~~.~~, with beneficial use of water beginning in 1922. ~~As discussed above, 12 years was a reasonable amount of time in which to have built such an extensive system.~~ A *Walton* right in 128.1 acres, the amount developed with reasonable diligence ~~by 1930,~~ should be allowed. The remaining 1.5 acres should not be allowed, as the evidence does not show that it was developed with reasonable diligence.

Allotment 52

This allotment first passed from Indian to non-Indian ownership in 1916. On this allotment, 3.6 acres are based on a diversion from Jack Creek. However, the evidence is not sufficient to establish when water was diverted from Jack Creek, or whether that portion of the claim was developed with reasonable diligence.

~~While~~ As to the remainder on this allotment, William Kittredge is known to have constructed a diversion on the Williamson River as early as 1918, and may have had some interest in this property in 1917 when he made a payment on behalf of Alex Davis, the first non-Indian owner~~;~~. Kittredge acquired title to this allotment in 1922. ~~the evidence does not show that water was applied to this property prior to Kittredge's obtaining title in 1922 as the second non-Indian owner. Unlike the case of Allotment 18, where it is known that Kittredge constructed works on the parcel before he acquired title to it, the record is silent as to the development of irrigation on this parcel while in another non-Indian's title. A *Walton* right should not be allowed.~~ This allotment was encompassed within the irrigation system that William Kittredge constructed between 1918 and 1930, with beneficial use of water beginning in 1922. A *Walton* right for 148.5 acres irrigated from the Williamson River should be allowed. However, that portion of the claim from Jack Creek should not be allowed, as the evidence does not show when the diversion was constructed.

Allotment 53

This allotment first passed from Indian to non-Indian ownership in 1920. Irrigation of this allotment was developed between 1918 and 1930 as part of the system William Kittredge constructed during that period. Beneficial use of water was made beginning in 1922. A *Walton* right should be allowed for ~~148.4~~ 154.4 acres, the amount claimed.

Allotment 78

~~William Kittredge was the second non-Indian owner of this parcel. There is no evidence that George Mayfield, the first non-Indian owner, developed irrigation to the property in the two months before he transferred it to Kittredge.~~

~~A *Walton* right should not be allowed.~~ This allotment first passed from Indian to non-Indian ownership in 1920. It was encompassed within the irrigation system that William Kittredge constructed between 1918 and 1930, with beneficial use of water beginning in 1922. A *Walton* right should be allowed for 150.2 acres, the amount claimed.

Allotment 174

The circumstances of this allotment are similar to those of Allotments18, 20 and 53. Likewise, a *Walton* right should be allowed for 159.8 acres, the amount claimed.

Allotment 24

The circumstances of this allotment are similar to those of Allotments 18, 20, 53 and 174. Likewise, a *Walton* right should be allowed for 52.7 acres, the amount allowed in Kittredge's 1930 water permit. The remainder should not be allowed, as it has not been shown to have been developed with reasonable diligence.

Allotment 25

This allotment first passed from Indian to non-Indian ownership in 1917. ~~There is no evidence that irrigation was developed on this property by its Indian owners. Nor is there evidence that A.A. Bellman, the first non-Indian owner, developed irrigation on this property in the three days before he transferred the property to Charles Worden. A *Walton* right should not be allowed.~~ This allotment was encompassed within the irrigation system that William Kittredge constructed between 1918 and 1930, with beneficial use of water beginning in 1922. A *Walton* right should be allowed for 24.2 acres, the amount claimed.

Allotment 77

Like Allotment 174, a *Walton* right should be allowed in 65.6 acres, the amount claimed.

Allotment 75

At hearing, Contestants conceded that a *Walton* right existed for water to this parcel from the Williamson River. A *Walton* right should be allowed in 105.8 acres, as claimed.

Allotment 173

This allotment was still under Indian ownership on December 28, 1918, being titled by fee patent to the same Indian owner confirmed as the allottee in 1910. Thus this allotment had not been transferred to non-Indian ownership prior to that date. ~~Because of a break in the chain of title, the identity of the first non-Indian owner cannot be determined. While it is possible that the Wilsons were the first non-Indian owners, there is no evidence that the Wilsons developed irrigation to the property before it was transferred to William Kittredge in 1931. A *Walton* right should not be allowed.~~ This allotment was encompassed within the irrigation system that William Kittredge constructed between 1918 and 1930, with beneficial use of water beginning in 1922. A *Walton* right should be allowed for 97.0 acres, the amount claimed.

Allotment 21

Like Allotment 24, a *Walton* right should be allowed in 66.5 acres, the amount allowed to William Kittredge in 1930. The remaining 4.5 acres should not be allowed, as not shown to have been diligently developed.

Livestock Watering

Neither party addressed the question of livestock watering. These allotments were used for grazing well before transfer out of Indian ownership, and have been either grazed or cut for hay ever since. There is ample support for the livestock watering portion of this claim for up to 2400 head of cattle, the number claimed.

Reasons for Modifications: To correct and clarify the elements of a *Walton* water right; to provide consistency with the above Modified Proposed Order Findings of Fact; to provide clarity of evidence on the record; to further substantiate approval of the claim; to apply the appropriate legal basis/bases to the proposed order's modified findings of fact.

10. **Order.**

a. Within the section titled "Order" of the Proposed Order, the season of use for livestock watering is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> Stock Water for 2400 head of cattle, between ~~March~~ February 1 and October 31.

Reason for Modification: To provide consistency with Conclusion of Law #1.

b. Within the section titled "Order" of the Proposed Order, a rate for livestock watering is added (shown in "underline" text) as follows:

> Rate for Livestock Watering: 28,800 gallons per day, or 0.45 cfs from the Williamson River (based on 12 gallons per head per day for 2400 head).

Reason for Modification: To allow a separate rate for livestock watering – issue raised in exceptions.

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.6, above.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   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 adopted with modifications, as set forth under 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 9. Consistent with Sections A.7, A.8, A.9, above, the outcome of the Order has been modified to recognize a right for irrigation on an additional 584.7 acres; the season of use for livestock watering is corrected in Findings of Fact A.10.a, and a rate is specified for livestock watering in Section A.10.b, 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. Beneficial use water by the method of natural overflow was established on Allotments 152 and 264 prior to the development of specific points of diversion.

4. Based on the file and record herein, IT IS ORDERED that Claim 9 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 9

CLAIM MAP REFERENCE:
CLAIM # 9, PAGE 25; OWRD INVESTIGATION MAP – T 30 S, R 10 E;

CLAIMANT: JERRY L. NEFF AND LINDA R. NEFF
4118 HARBOR WALK DRIVE
FORT COLLINS, CO 80525

ROBERT M. COOK - T P C, LLC, AN OREGON LIMITED LIABILITY CO
32041 CARTNEY DR.
HARRISBURG, OR 97446

SOURCE OF WATER:
LONG PRAIRIE CREEK, tributary to UPPER KLAMATH LAKE, and
The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
IRRIGATION OF 1470.3 ACRES AS FOLLOWS:

157.5 ACRES FROM LONG PRAIRIE CREEK POD, AND

1312.8 ACRES FROM THE WILLIAMSON RIVER, BEING 387.7 ACRES FROM BIG WIRE DAM POD NORTH, AND 925.1 ACRES FROM BIG WIRE DAM POD SOUTH;

LIVESTOCK WATERING FROM THE WILLIAMSON RIVER FOR 2400 HEAD

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

3.94 CFS FROM LONG PRAIRIE CREEK FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION,

16.41 CFS FROM THE WILLIAMSON RIVER FOR IRRIGATION, MEASURED AT THE POINTS OF DIVERSION, BEING 4.85 CFS FROM BIG WIRE DAM POD NORTH, AND 11.56 CFS FROM BIG WIRE DAM POD SOUTH, AND

0.045 CFS FOR LIVESTOCK WATERING FROM THE WILLIAMSON RIVER MEASURED AT THE PLACE OF USE, NOT TO EXCEED 28,800 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 FROM LONG PRAIRIE CREEK MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

THE RATE OF USE FOR IRRIGATION FROM THE WILLIAMSON RIVER MAY NOT EXCEED 1/80 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	March 1 - October 31
Livestock Watering from the Williamson River	February 1 - October 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Long Prairie Creek POD	Long Prairie Creek	30 S	10 E	WM	11	NW NW	330 FEET EAST FROM NW CORNER, SECTION 11
Big Wire Dam POD North	Williamson River	30 S	10 E	WM	16	NW NW	NONE GIVEN
Big Wire Dam POD South	Williamson River	30 S	10 E	WM	16	NW NW	NONE GIVEN

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM LONG PRAIRIE CREEK POD					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	10 E	WM	10	NE NE	17.2
30 S	10 E	WM	10	NW NE	17.6
30 S	10 E	WM	10	SW NE	11.2
30 S	10 E	WM	10	SE NE	32.0
30 S	10 E	WM	11	NW NW	10.4
30 S	10 E	WM	11	SW NW	35.1
30 S	10 E	WM	11	SE NW	34.0

IRRIGATION and LIVESTOCK WATERING FROM THE WILLIAMSON RIVER						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
30 S	10 E	WM	8	SW SW	20.8	BIG WIRE DAM POD NORTH
30 S	10 E	WM	8	SE SW	34.8	
30 S	10 E	WM	8	SE SE	3.2	
30 S	10 E	WM	16	NW NW	6.8	
30 S	10 E	WM	17	NE NE	34.4	
30 S	10 E	WM	17	NW NE	39.4	
30 S	10 E	WM	17	SW NE	28.0	
30 S	10 E	WM	17	SE NE	15.6	
30 S	10 E	WM	17	NE NW	40.0	
30 S	10 E	WM	17	NW NW	40.0	
30 S	10 E	WM	17	SW NW	35.6	
30 S	10 E	WM	17	SE NW	32.8	
30 S	10 E	WM	18	NE NE	31.9	
30 S	10 E	WM	18	SE NE	20.8	
30 S	10 E	WM	18	NE SE	3.6	

IRRIGATION and LIVESTOCK WATERING FROM THE WILLIAMSON RIVER						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
30 S	10 E	WM	16	NE NW	12.4	BIG WIRE DAM POD SOUTH
30 S	10 E	WM	16	NW NW	17.6	
30 S	10 E	WM	16	SW NW	40.0	
30 S	10 E	WM	16	SE NW	24.4	
30 S	10 E	WM	16	NE SW	25.7	
30 S	10 E	WM	16	NW SW	40.0	
30 S	10 E	WM	16	SW SW	40.0	
30 S	10 E	WM	16	SE SW	22.4	
30 S	10 E	WM	17	NE NE	0.3	
30 S	10 E	WM	17	SW NE	10.8	
30 S	10 E	WM	17	SE NE	20.0	
30 S	10 E	WM	17	SW NW	2.4	
30 S	10 E	WM	17	SE NW	3.6	
30 S	10 E	WM	17	NE SW	40.0	
30 S	10 E	WM	17	NW SW	38.6	
30 S	10 E	WM	17	SW SW	31.6	
30 S	10 E	WM	17	SE SW	40.0	
30 S	10 E	WM	17	NE SE	40.0	
30 S	10 E	WM	17	NW SE	39.8	
30 S	10 E	WM	17	SW SE	40.0	
30 S	10 E	WM	17	SE SE	40.0	
30 S	10 E	WM	18	NE SE	22.0	
30 S	10 E	WM	18	NW SE	0.2	
30 S	10 E	WM	18	SW SE	24.0	
30 S	10 E	WM	18	SE SE	40.0	
30 S	10 E	WM	19	NE NE	29.6	
30 S	10 E	WM	19	NW NE	40.0	
30 S	10 E	WM	19	SW NE	32.6	
30 S	10 E	WM	19	SE NE	3.6	
30 S	10 E	WM	20	NE NE	40.0	
30 S	10 E	WM	20	NW NE	28.0	
30 S	10 E	WM	20	SW NE	0.2	
30 S	10 E	WM	20	SE NE	28.8	
30 S	10 E	WM	21	NE NW	7.0	
30 S	10 E	WM	21	NW NW	39.5	
30 S	10 E	WM	21	SW NW	20.0	

[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 JERRY L. NEFF AND LINDA R. NEFF	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 10

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, JESS FRANCIS AND IDA GIVAN timely submitted a Statement and Proof of Claim (Claim 10) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 10 was submitted for a total of 22.24 cfs of water for primary irrigation of 889.4 acres including livestock watering of 600 pair, being 2.22 cfs from an unnamed stream, and 20.02 cfs from Jackson Creek, both tributaries of the Williamson River. Of the 22.24 cfs of water, 6.87 cfs of water is also claimed from the Williamson River, tributary to Upper Klamath Lake, for supplemental irrigation of 274.7 acres. The duty and rate claimed are 3.0 acre-feet per acre per year and 1/40 of one cubic foot per second per acre, respectively. The claimed period of use is year-round for livestock watering, and April 1 through November 30 for irrigation. The claimed priority date is October 14, 1864.

3. IDA LEA GIVAN signed Claim 10 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 10 was transferred to non-Indian successors, KENNETH HUFFORD AND LESLIE HUFFORD on December 30, 1997. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL. M98, PAGE 104 (Dec. 30, 1997) (Claim # 5, Pages 022 – 023). A non-Indian successor to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14 1864, 16 Stat. 707.

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 for livestock watering, irrigation, and supplemental irrigation was approved, but with a shorter season of use for livestock watering than claimed and with a larger duty for irrigation than claimed.

6. On May 8, 2000, KENNETH. HUFFORD AND LESLIE HUFFORD timely filed Contest 3263 to the Preliminary Evaluation of Claim 10.

7. On May 8, 2000, the United States of America timely filed Contest 3716 to the Claim and/or Preliminary Evaluation of Claim 10.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4072 to the Claim and/or Preliminary Evaluation of Claim 10.

9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2816 to the Claim and/or Preliminary Evaluation of Claim 10.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 161.

11. On February 20, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2816. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST NO. 2816 (Feb. 20, 2003).

12. On April 6, 2004, Kenneth J. Hufford and Leslie Hufford, OWRD, the United States of America, and the Klamath Tribes, executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving all remaining contests to Claim 10.

13. On April 8, 2004, the Adjudicator withdrew Case 161 from the Office of Administrative Hearings.

14. The claim was transferred to JERRY L. NEFF AND LINDA R. NEFF (Claimants) on November 4, 2004. [*See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL. M04, PAGE 76350 (Nov. 4, 2004) and CHANGE OF OWNERSHIP FORM (Feb. 11, 2005)].

15. OWRD finds a rate for irrigation of 1/40 of one cubic foot per second per acre and a duty of 3.0 acre-feet per acre per year, as claimed.

16. OWRD finds that the shift in the season of use for primary and supplemental irrigation from that which was originally claimed (April 1 through November 30), to March 1 through October 31, as stipulated in the Settlement Agreement is a permissible amendment because (1) it is not an enlargement to the length of the irrigation season, and (2) the Settlement Agreement relied on the same standard season of use as stated in the Preliminary Evaluation for Claim 10, whose publication preceded the October 1, 1999 deadline to timely amend a claim.

B. DETERMINATION

1. The Settlement Agreement executed between Kenneth J. Hufford and Leslie Hufford, OWRD, the United States of America, and the Klamath Tribes, is adopted and incorporated as if set forth fully herein.

2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

3. The shift in the season of use from irrigation from the season originally claimed (April 1 through November 30), to March 1 through October 31, constitutes a permissible amendment of the claim. The March 1 through October 31 season was first identified in the Preliminary Evaluation for Claim 10, which was issued prior to the beginning of open inspection in the Klamath Adjudication, and therefore complies with OAR 690-030-0085. In addition, the shifted season does not enlarge the overall length of the season of use, and therefore is not a "new" claim that would not be permitted pursuant to ORS 539.210.

4. 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. The duty for irrigation is 3.0 acre-feet per acre per year as claimed.

6. The rate for irrigation is 1/40 of one cubic foot per second per acre as claimed.

7. Based on the file and record herein, IT IS ORDERED that Claim 10 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 10
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 10, PAGE 19

CLAIMANT: JERRY L. NEFF AND LINDA R. NEFF
4118 HARBOR WALK DRIVE
FORT COLLINS, CO 80525

SOURCES OF WATER:
An UNNAMED STREAM, tributary to JACKSON CREEK;
JACKSON CREEK, tributary to WILLIAMSON RIVER; and
The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:

PRIMARY IRRIGATION OF 889.4 ACRES FROM POD 1, POD 2 AND POD 3;

SUPPLEMENTAL IRRIGATION OF 274.7 ACRES FROM POD 4; AND

LIVESTOCK WATERING OF 600 PAIR FROM POD 1, POD 2, POD 3, AND/OR POD 4.

RATE OF USE:

22.2548 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

UP TO 22.24 CFS FOR PRIMARY IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING A MAXIMUM OF 20.02 CFS FROM JACKSON CREEK (POD 1 AND POD 2), AND A MAXIMUM OF 2.22 CFS FROM AN UNNAMED STREAM (POD 3), AND

UP TO 6.87 CFS FOR SUPPLEMENTAL IRRIGATION FROM THE WILLIAMSON RIVER (POD 4) MEASURED AT THE POINT OF DIVERSION.

PRIMARY AND SUPPLEMENTAL IRRIGATION TOGETHER MUST NOT EXCEED 22.24 CUBIC FEET PER SECOND

0.0148 CFS FOR LIVESTOCK WATERING FROM AN UNNAMED STREAM INCLUDING ITS DITCHES, JACKSON CREEK INCLUDING ITS DITCHES, AND/OR THE WILLIAMSON RIVER INCLUDING ITS DITCHES, MEASURED AT THE PLACE OF USE, NOT TO EXCEED 9600 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 31
Supplemental Irrigation	March 1 - October 31
Livestock	November 1 – February 29

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Jackson Creek	30 S	11 E	WM	18	NE NW	5 FEET SOUTH AND 640 FEET WEST FROM N¼ CORNER, SECTION 18
POD 2	Jackson Creek	30 S	11 E	WM	18	NE NW	40 FEET SOUTH AND 320 FEET WEST FROM N¼ CORNER, SECTION 18
POD 3	Unnamed Stream	30 S	11 E	WM	18	NE NW	5 FEET SOUTH AND 110 FEET WEST FROM N¼ CORNER, SECTION 18
POD 4	Williamson River	30 S	10 E	WM	14	SE NW	2090 FEET SOUTH AND 3710 FEET WEST FROM NE CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRIMARY IRRIGATION FROM POD 1, POD 2 AND POD 3 and LIVESTOCK WATERING FROM POD 1, POD 2, POD 3 AND/OR POD 4						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	10 E	WM	11	NE SW		38.4
30 S	10 E	WM	11	NW SW		40.0
30 S	10 E	WM	11	SW SW		40.0
30 S	10 E	WM	11	SE SW		39.0
30 S	10 E	WM	11	NE SE		12.8
30 S	10 E	WM	11	NW SE		40.0
30 S	10 E	WM	11	SW SE		38.4
30 S	10 E	WM	11	SE SE		8.4
30 S	10 E	WM	13	NE NE		39.6
30 S	10 E	WM	13	NW NE		30.4
30 S	10 E	WM	13	SW NE		40.0
30 S	10 E	WM	13	SE NE		40.0
30 S	10 E	WM	13	NE NW		6.5
30 S	10 E	WM	13	NW NW		3.4
30 S	10 E	WM	13	SW NW		35.0
30 S	10 E	WM	13	SE NW		38.2
30 S	10 E	WM	14	NE NE		21.5
30 S	10 E	WM	14	NW NE		40.0
30 S	10 E	WM	14	SW NE		40.0
30 S	10 E	WM	14	SE NE		30.1
30 S	10 E	WM	14	NE NW		39.0
30 S	10 E	WM	14	NW NW		39.4
30 S	10 E	WM	14	SW NW		14.0
30 S	10 E	WM	14	SE NW		33.0
30 S	11 E	WM	18	NE NW		37.8
30 S	11 E	WM	18	NW NW	1	39.7
30 S	11 E	WM	18	SW NW	2	40.0
30 S	11 E	WM	18	SE NW		24.8

SUPPLEMENTAL IRRIGATION FROM THE WILLIAMSON RIVER (POD 4)					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	10 E	WM	11	NE SW	30.3
30 S	10 E	WM	11	NW SW	40.0
30 S	10 E	WM	11	SW SW	40.0
30 S	10 E	WM	11	SE SW	39.0
30 S	10 E	WM	14	NE NW	39.0
30 S	10 E	WM	14	NW NW	39.4
30 S	10 E	WM	14	SW NW	14.0
30 S	10 E	WM	14	SE NW	33.0

[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 THOMAS J. SHAW	)	PARTIAL ORDER OF DETERMINATION
	)	
	)	Water Right Claim 11

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 11 (Claimant: THOMAS SHAW) and its associated contests (2040, 3433, 3717 and 4073) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 162.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER ON STIPULATION BY PARTICIPANTS FOR RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S CLAIM (Proposed Order) for Claim 11 on April 15, 2005.

3. No exceptions were filed to the Proposed Order within the exceptions filing deadline.

4. On July 31, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) recognize a right based on beneficial use of water by the method of natural overflow. The Amended Proposed Order replaced the 2005 Proposed Order in its entirety.

5. Exceptions were jointly filed to the Amended Proposed Order within the exception filing deadline by the United States of America and the Klamath Tribes.

6. The exceptions filed to the Amended Proposed Order been reviewed and considered in conjunction with the entire record for Claim 11, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

7. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

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. Beneficial use of water by the method of natural overflow is shown to be established for a portion of this claim.

4. Based on the file and record herein, IT IS ORDERED that Claim 11 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 11
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 11 MAP (01-03-2012)

CLAIMANTS: THOMAS J. SHAW
PO BOX 257
KLAMATH FALLS, OR 97624

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

PURPOSE OR USE:
IRRIGATION OF 6.7 ACRES BY NATURAL OVERFLOW WITH INCIDENTAL LIVESTOCK WATERING OF 100 HEAD

DATE OF PRIORITY: OCTOBER 14, 1864

NO SPECIFIC POINT OF DIVERSION:
NATURAL OVERFLOW FROM THE WILLIAMSON RIVER

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION BY NATURAL OVERFLOW WITH INCIDENTAL LIVESTOCK WATERING					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
30 S	10 E	WM	14	NE SW	5.6
30 S	10 E	WM	14	SE SW	1.1

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

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 20.1 ACRE-FEET PER YEAR. THE SEASON OF USE MAY NOT EXCEED DECEMBER 1 TO JULY 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 G BAR W LAND AND CATTLE COMPANY	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 12

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 19, 1990, DIANE TAYLOR OF BEHALF OF DENNIS RANCH timely submitted a Statement and Proof of Claim (Claim 12) 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 12 was submitted for a total of 17.9 cfs of water for irrigation of 1035.2 acres and 0.01 cfs for livestock watering for a maximum of 400 head. The claimed sources are Irving Creek and Jackson Creek, both tributaries of the Williamson River, and the Williamson River, tributary to Upper Klamath Lake. The claimed period of use is "Apr. 1 – Nov. 1." The claimed priority date is October 14, 1864.

3. DIANE F. TAYLOR signed Claim 12 attesting that the information contained in the claim is true.

4. The claim was subsequently transferred to the G BAR W LAND AND CATTLE COMPANY (Claimant). *See* LETTER, May 24, 1993 (Claim # 12, Pages 040-041).

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 livestock watering and irrigation, but for fewer acres and a smaller quantity of water, and with longer seasons of use than claimed.

6. On December 18, 1998, the title to property appurtenant to Claim 12 within the NESW, NWSW, NESE, and NWSE of Section 13, and the NESE of Section 14, Township 30 South, Range 10 East, W.M. (partial listing) was transferred from G BAR W LAND AND CATTLE COMPANY to JEFF AND LYNDA HUNT, AND RICHARD AND JENNIFER

SANFORD. *See* COUNTY OF KLAMATH RECORDS, VOL. M98, PAGES 27738 - 27740 (May 11, 1998).

7. On May 4, 2000, the claimant, G BAR W LAND AND CATTLE COMPANY timely filed Contest 1789 to the Preliminary Evaluation of Claim 12.

8. On April 19, 2000, JEFF G. HUNT timely filed Contest 29 to the Preliminary Evaluation of Claim 12.

9. On May 4, 2000, Steven Lawrence, James B. Lawrence and John H. Lawrence timely filed Contest 1786 to the Claim and/or Preliminary Evaluation of Claim 12.

10. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3434: 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[2], Don Vincent[3], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

11. On May 8, 2000, the United States of America timely filed Contest 3718 to the Claim and/or Preliminary Evaluation of Claim 12.

12. On May 8, 2000, the Klamath Tribes timely filed Contest 4074 to the Claim and/or Preliminary Evaluation of Claim 12.

13. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2817 to the Claim and/or Preliminary Evaluation of Claim 12.

14. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 163.

15. On February 20, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2817. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST 2817 (Feb. 20, 2003).

16. On February 25, 2003, Steven Lawrence, James B. Lawrence, John H. Lawrence withdrew Contest 1786. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY STEVEN LAWRENCE, JAMES B. LAWRENCE, AND JOHN H. LAWRENCE (Feb. 25, 2003).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3434 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3434 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3434 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

17. On July 14, 2003, Claimant G Bar W Land and Cattle Company withdrew Contest 1789. *See* LETTER – RE: CASE NO. 163, CLAIM NO. 12 AND CONTEST OF PRELIMINARY EVALUATION (July 17, 2003).

18. On August 13, 2004, G Bar W Land and Cattle Company, Richard Sanford, Jennifer Sanford, Jeff Hunt, Lynda Hunt, OWRD, the Klamath Project Water Users, the United States of America, and the Klamath Tribes, executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all the remaining contests to Claim 12.

19. On August 18, 2004, the Adjudicator withdrew Case 163 from the Office of Administrative Hearings.

20. The terms of the Settlement Agreement specify the water right claim is to be adjudicated to two separate ownership groups, being (1) G BAR W LAND AND CATTLE CO, and (2) JEFF AND LYNDA HUNT, AND RICHARD AND JENNIFER SANFORD. Therefore, OWRD finds it practical to bifurcate Claim 12; OWRD has retained the designation of Claim 12 for the portion of the claim pertaining to G BAR W LAND AND CATTLE COMPANY, and has designated the portion of the claim pertaining to JEFF AND LYNDA HUNT, AND RICHARD AND JENNIFER SANFORD as Claim 731.

21. Based on the Claimant's map (Claim # 12, Page 63), OWRD's 1979 Field Inspection Report (Claim # 12, WIP, Page 0032), and Final Proof Survey Map prepared for OWRD Water Right Permit S-50262 which shows the Irving Creek Diversion on Claimant's property (Claim # 12, WIP, Page 0016), OWRD finds that the location of the point of diversion on Irving Creek listed in the in the Settlement Agreement within SESW, SECTION 24, TOWNSHIP 30 SOUTH, RANGE 11 EAST, W.M. is incorrect; the correct location of the point of diversion on Irving Creek is NWSW, SECTION 19, TOWNSHIP 30 SOUTH, RANGE 11 EAST, W.M.

22. 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 - Nov.1."

B. DETERMINATION

1. The Settlement Agreement executed between G Bar W Land and Cattle Company, Richard Sanford, Jennifer Sanford, Jeff Hunt, Lynda Hunt, OWRD, the Klamath Project Water Users, the United States of America, and the Klamath Tribes, is adopted and incorporated as if set forth fully herein, with two exceptions:

    a. the listed location of the point of diversion for Irving Creek; as described in Finding 21, above, the location of the point of diversion for Irving Creek is corrected to the NWSW, SECTION 19, TOWNSHIP 30 SOUTH, RANGE 11 EAST, W.M.; and

b. the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 22, above; the season of use for livestock watering recognized herein is consistent the Claimant's original claim.

2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

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.

4. 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.

5. Based on the file and record herein, IT IS ORDERED that Claim 12 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 12
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 30 S, R 10 E and T 30 S, R 11 E; CLAIM # 12, PAGE 63

CLAIMANT: G BAR W LAND AND CATTLE COMPANY
1059 CREWS RD
MEDFORD, OR 97501

SOURCE OF WATER:
IRVING CREEK and JACKSON CREEK, tributaries of the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 153.6 ACRES, BEING 144.2 ACRES FROM IRVING CREEK AND 9.4 ACRES FROM JACKSON CREEK; AND

LIVESTOCK WATERING OF 200 HEAD FROM IRVING CREEK AND/OR JACKSON CREEK.

RATE OF USE:
3.8237 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION AS FOLLOWS:

3.82 CFS FOR IRRIGATION, BEING 3.58 CFS FROM IRVING CREEK AND 0.24 CFS FROM JACKSON CREEK; AND

0.0037 CFS FOR LIVESTOCK WATERING NOT TO EXCEED 2400 GALLONS PER DAY FROM IRVING CREEK AND/OR JACKSON 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - October 31
Livestock	April 1 to November 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Irving Creek POD	30 S	11 E	WM	19	NW SW	10 FEET NORTH AND 60 FEET WEST, SE CORNER, NWSW, SECTION 19
Jackson Creek POD	30 S	11 E	WM	18	NE NW	20 FEET SOUTH AND 300 FEET WEST FROM N¼ CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized Source
30 S	10 E	WM	24	NE NE		8.0	Irving Creek POD
30 S	10 E	WM	24	NW NE		28.0	
30 S	10 E	WM	24	SW NE		40.0	
30 S	10 E	WM	24	SE NE		37.6	
30 S	10 E	WM	24	NE SW		20.0	
30 S	10 E	WM	24	NW SW		1.2	
30 S	10 E	WM	24	SE SW		0.6	
30 S	11 E	WM	19	SW NW	2	8.8	
30 S	10 E	WM	24	NW NE		9.4	Jackson Creek POD

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 STEVEN LAWRENCE AND JAMES LAWRENCE	)	PARTIAL ORDER OF DETERMINATIO
	)	Water Right Claim 13

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 LAWRENCE (ON BEHALF OF HIMSELF AND JAMES LAWRENCE) (Claimants) timely submitted a Statement and Proof of Claim (Claim 13) 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 13 was submitted for a total of 3.8 cfs of water from the Williamson River, a tributary of Upper Klamath Lake, for irrigation of 152.4 acres and for livestock watering of 300 head. The claimed period of use is "April through October." The claimed priority date is "1864."

3. STEVEN LAWRENCE signed Claim 13 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 livestock watering and irrigation, but with longer seasons of use than claimed, and for fewer acres than claimed.

5. On May 4, 2000, the Claimants timely filed Contest 1787 to the Preliminary Evaluation of Claim 13.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3435: 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[2], Don Vincent[3], 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 3719 to the Claim and/or Preliminary Evaluation of Claim 13.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4075 to the Claim and/or Preliminary Evaluation of Claim 13.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 164.

10. On April 1, 2004, the Klamath Project Water Users withdrew Contest 3435. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3435 (Apr. 1, 2004).

11. On January 18, 2005, 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 13.

12. On January 26, 2005, the Adjudicator withdrew Case 164 from the Office of Administrative Hearings.

13. OWRD finds that the location of the 112.8 acres described as the place of use listed in Paragraph B.1 of the Settlement Agreement is inconsistent with location of the 112.8 acres shown on the Settlement Map for Claim 13 (Dec. 21, 2004). OWRD finds that the Settlement Map is consistent with testimony from L. Ralph Saunders including Attachment 2, a depiction of the irrigated lands within Claim 13. Therefore, OWRD makes the following corrections to the place of use listing for irrigation and livestock watering:

    a. 13.4 acres within the NW¼ NE¼ , Section 1, Township 31 South, Range 10 East, W.M. is corrected to 5.6 acres,

    b. 0.06 acres within the NE¼ SW¼, Section 36, Township 30 South, Range 10 East, W.M. is deleted,

    c. 33.4 acres within the NW¼ SE¼, Section 36, Township 30 South, Range 10 East, W.M. is corrected to 34.0 acres, and

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3435 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3435 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3435 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

d. 26.4 acres within the SW¼ SE¼, Section 36, Township 30 South, Range 10 East, W.M. is corrected to 34.2 acres.

14. OWRD finds that the following locations referenced in the Settlement Agreement are within certain Government Lots as listed below:

a. SW¼ SE¼, Section 1, Township 31 South, Range 10 East, W.M. is within Government Lot 10,

b. SW¼ SE¼, Section 36, Township 30 South, Range 10 East, W.M. is within Government Lot 3,

c. SE¼ SE¼, Section 36, Township 30 South, Range 10 East, W.M. is within Government Lot 4,

d. NW¼ NE¼, Section 36, Township 30 South, Range 10 East, W.M. is within Government Lot 2,

e. SW¼ NE¼, Section 36, Township 30 South, Range 10 East, W.M. is within Government Lot 6, and

f. NW¼ SE¼, Section 36, Township 30 South, Range 10 East, W.M. is within Government Lot 9.

15. OWRD finds that the irrigation season, 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 an irrigation season "April through October."

16. The Claimants did not include payment of the fee required by ORS 539.081 for livestock use by the January 31, 1991 deadline for filing a Statement and Proof of Claim. Therefore, OWRD finds that the livestock watering use as stipulated in the Settlement Agreement is an impermissible amendment to the claim; livestock watering approved under Claim 13 must be limited to incidental livestock watering during the irrigation season.

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, with four exceptions:

a. The location and acreage of any place of use that does not agree with Settlement Map for Claim 13 (Dec. 21, 2004) as described in Finding 14, above; the place of use is corrected to reflect the Settlement Map for Claim 13 (Dec. 21, 2004);

b. Government Lots are assigned as described in Finding 14, above;

c. The irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 15, above; the irrigation season recognized herein is consistent the Claimant's original claim; and

d. The 8122 gallons per day for livestock watering that is an impermissible amendment as described in Finding 16, above; livestock watering is limited to incidental livestock watering during the irrigation season.

2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

3. The Claimants' claim for a separate right of use for livestock watering is denied because Claimants failed to timely file 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*...." ORS 539.210 (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. Livestock watering approved under Claim 13 must be limited to incidental livestock watering during the irrigation season.

4. The number of livestock allowed for incidental livestock watering is 300 head, the number of head claimed by the Claimant.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 13
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 13 SETTLEMENT MAP (Dec. 21, 2004)

CLAIMANT: STEVEN LAWRENCE
JAMES LAWRENCE
60 JENNIFER LANE
ALAMO, CA 94507

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

PURPOSE OR USE:

IRRIGATION OF 112.8 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 300 HEAD.

RATE OF USE:

2.82 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:

3.5 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:

Twp	Rng	Mer	Sec	Q-Q	GLot
31 S	10 E	WM	1	SW SE	10

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	10 E	WM	36	SW NE		7.9
30 S	10 E	WM	36	NE SE		4.5
30 S	10 E	WM	36	NW SE		34.0
30 S	10 E	WM	36	SW SE	3	34.2
30 S	10 E	WM	36	SE SE	4	2.6
31 S	10 E	WM	1	NW NE	2	5.6
31 S	10 E	WM	1	SW NE	6	13.6
31 S	10 E	WM	1	NW SE	9	10.4

[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 ROYSE LOVING TRUST	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 14

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 13, 1990, R. RAYMOND ROYSE AND JESSIE P. ROYSE (Claimants) submitted a Statement and Proof of Claim (Claim 14) to Oregon Water Resources Department (OWRD) for a total of 1.0 cubic feet per second from Irving Creek for irrigation of 34.4 acres. The claimed priority date is "Indian Treaty of 1864."

2. The claim was transferred to the ROYSE LOVING TRUST (539 GIRARD CIRCLE, MEDFORD, OR 97504) on March 3, 1994.

3. Claimants withdrew Claim 14 by letter dated October 30, 1993. That letter states in pertinent part: "This letter will serve as my request that my regular claim be withdrawn. . . ."

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 withdrawn and was of no force or effect.

5. No contests were filed to Claim 14 or to the Preliminary Evaluation of Claim 14.

B. DETERMINATION

Based upon the file and record herein, including the October 30, 1993 letter withdrawing Claim 14, IT IS ORDERED that Claim 14 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 ROYSE LOVING TRUST	))	PARTIAL ORDER OF DETERMINATION
	)	
	)	
_____	)	Water Right Claim 15

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 13, 1990, R. RAYMOND ROYSE AND JESSIE P. ROYSE (Claimants) timely submitted a Statement and Proof of Claim (Claim 15) to Oregon Water Resources Department (OWRD) for a total of 1.0 cubic feet per second from Irving Creek for irrigation of 45.3 acres. The claimed priority date is "1864."

2. The claim was transferred to the ROYSE LOVING TRUST (539 GIRARD CIRCLE, MEDFORD, OR 97504) on March 3, 1994.

3. Claimants withdrew Claim 15 by letter dated October 30, 1993. That letter states in pertinent part: "This letter will serve as my request that my regular claim be withdrawn. . . ."

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 withdrawn and was of no force or effect.

5. No contests were filed to Claim 15 or to the Preliminary Evaluation of Claim 15.

B. DETERMINATION

Based upon the file and record herein, including the October 30, 1993 letter withdrawing Claim 15, IT IS ORDERED that Claim 15 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 STEVEN D. ALLEN AND ARLENE D. ALLEN	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 16

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, CONNIE R. GOMEZ timely submitted a Statement and Proof of Claim (Claim 16) 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 an Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 16 was submitted for a total of 0.03 cubic feet per second (cfs) of water from Sand Creek, a tributary of the Williamson River, for irrigation of 1.3 acres with a season of use "March 1 to October 31." The claimed priority date is 1864.

3. CONNIE GOMEZ signed the Statement and Proof of Claim for Claim 16 attesting that the information contained in the claim is true.

4. According to Klamath County Assessor's records title to the property associated with Claim 16 was subsequently acquired by STEVEN D. ALLEN AND ARLENE D. ALLEN. *See* COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 9495.

5. In 1979, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 16 (Claim #16, WIP, Page 00016). The report also includes statements that the original owner of the property appurtenant to Claim 16 was a Klamath Indian allottee who had irrigated the land prior to selling it to a non-Indian.

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 was denied because the required Walton elements were not established for the

claim. However, this denial is not supported by the 1979 OWRD field inspection report referenced in Finding 5, above.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 16.

8. Based on the sworn statements in Claim 16, 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 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. 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 16 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 16

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 31 S, R 7 E

CLAIMANT: STEVEN ALLEN
ARLENE ALLEN
PO BOX 159
CHEMULT, OR 97731-0159

SOURCE OF WATER: SAND CREEK, tributary of the WILLIAMSON RIVER

PURPOSE or USE: IRRIGATION OF 1.3 ACRES.

RATE OF USE:
0.03 CUBIC FOOT PER SECOND 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: MARCH 1 – OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
31 S	7 E	WM	24	NE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
31 S	7 E	WM	24	NE NW	1.3

[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 SCOTT LEE RUNELS AND MARGIE B. RUNELS; AND JAMES R. LANCASTER AND JANICE M. LANCASTER	)	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 17

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 6, 1990, DONALD V. GREENE AND BERNIE L. GREENE timely submitted a Statement and Proof of Claim (Claim 17) 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 17 was submitted for livestock watering of 100 head for a total 0.5 cubic feet per second (cfs) of water from Sand Creek, tributary to the Upper Klamath Marsh, with a season of use May 1 to September 15. The claimed priority date is October 14, 1864.

3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit C," a statement signed by Bob L. Ferris and Ruth Farris (Shadley) which states in pertinent part, "This was originally owned property of the Shadley's. First work done on ditch was done by the Indian Service for Ruth Ferris (who was a Shadley). This water was used consistently every year until the summer of 1987 when the head gate was taken out by Mosby. Mrs. Shadly Ferris is an Indian Lady and was one of the original owners of the property. Ferris sold the property approximately in 73." (Claim # 17, Page 0006).

4. DONALD V. GREENE AND BERNIE L. GREENE signed the Statement and Proof of Claim for Claim 17 attesting that the information contained in the claim is true.

5. In 1987, an OWRD field inspection report was prepared describing the present use of water on the property in the S½, Section 19: "Mr. Green is unable to use surface water on any of his property at his time. He has said that he hasn't used surface water. He said that he was told surface water was used sometime in the past. There wasn't any livestock on his property." (Claim # 17, WIP, Pages 00019-00020).

6. In 1987, a separate OWRD field inspection report was prepared describing the present use of water on the property in the N½ N½, Section 21: "Mr. Green told me he purchased this property in 1987. . . . The neighbor said the ditch on this property has always been used for stockwater. . . . He told me that this summer he fenced a portion of his south line which apparently upset his neighbor, John Mosby, who then removed the headgate and plugged the ditch which was on his property. . . . Mr. Green did not have stock water from Sand Creek the remainder of the summer." (Claim # 17, WIP, Page 00018).

7. On March 17, 1998, the title to the property associated with Claim 17 in the S½ of Section 19, Township 31 South, Range 8 East, W.M. was subsequently acquired by SCOTT LEE RUNELS AND MARGIE B. RUNELS (Claimants). *See* COUNTY OF KLAMATH RECORDS VOL. M98, PAGE 8768.

8. On December 18, 1998, the title to the property associated with Claim 17 in the N½ N½ of Section 21, Township 31 South, Range 8 East, W.M. was transferred from SCOTT LEE RUNELS AND MARGIE B. RUNELS to JAMES R. LANCASTER AND JANICE M. LANCASTER (Claimants). *See* COUNTY OF KLAMATH RECORDS, VOL. M98, PAGE 46456.

9. 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, a longer season of use, and with a larger place of use than claimed.

10. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 17.

11. Based on the sworn statements in Claim 17, 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 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. 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.

3. The total rate of water for livestock use is based on 100 head, the number of head claimed by the Claimant.

4. Based on the file and record herein, IT IS ORDERED that Claim 17 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 17

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 31 S, R 8 E

CLAIMANTS: SCOTT LEE RUNELS AND MARGIE B. RUNELS
PO BOX 39
FORT ROCK, OR 97735

JAMES R. LANCASTER AND JANICE M. LANCASTER
94531 HWY 97N
CHEMULT, OR 97331

SOURCE OF WATER: SAND CREEK, tributary to the WILLIAMSON RIVER

PURPOSE or USE: LIVESTOCK WATERING FOR 100 HEAD

RATE OF USE:
0.0018 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1200 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: MAY 1 – SEPTEMBER 15

DATE OF PRIORITY: OCTOBER 14, 1864
THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
31 S	8 E	WM	18	SW SW	4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
31 S	8 E	WM	19	SE SE
31 S	8 E	WM	21	NW NE
31 S	8 E	WM	21	NE NW
31 S	8 E	WM	21	NW 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 JOHN M. MOSBY AND MARILYN MOSBY	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 18

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 18 (Claimants: JOHN M. MOSBY AND MARILYN MOSBY) and its associated contests (2818, 3099, 3436, 3720, and 4076) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 165.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an AMENDED PROPOSED ORDER (Proposed Order) for Claim 18 on June 2, 2006.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the United States of America and (2) John M. and Marilyn Mosby.

4. On May 8, 2012, the Adjudicator issued a SECOND AMENDED PROPOSED ORDER (Amended Proposed Order) to modify the season to April 1 through October 31 because the season of use in the June 2, 2006 Proposed Order exceeded the claimed season of use. No exceptions were filed to Amended Proposed Order.

5. The Amended Proposed Order issued on May 8, 2012, is adopted and incorporated in its entirety as if set forth fully herein.

6. The exceptions filed to the Proposed Order issued on June 2, 2006, along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 18. The exceptions are found to be persuasive in part, and therefore,

modifications are made to the Proposed Order as described in Sections A.8, A.9, A.10 and A.11, below.

7. 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.8, below.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   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 with modifications, as set forth in Section A.10, below.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.11, below.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 18. Consistent with Sections A.8, A.9, A.10 and A.11, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 787.2 acres, to approve livestock watering incidental to irrigation for 1356 head, to limit the season of use to April 1 to October 31 as claimed, and to describe the effects of naturally occurring subirrigation from the Williamson River on a portion of the claimed place of use.

8. **History of the Case.** The first paragraph is modified as follows: (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Claimants John M. and Marilyn Mosby filed their claim (claim 18) on December 7, 1990, making a claim for water as non-Indian successors to ~~a~~ Klamath Indian Allottees, and as non-Indian successors to unallotted Klamath Indian Reservation lands. This *Walton* claim[1] is for 77.73 cubic feet per second (cfs) of water, being 4.78 cfs from Scott Creek, 41.25 cfs from Sand Creek, and 26.7 cfs from the Williamson River for irrigation of approximately 5,376.7[2] acres of land; and 5 cfs (unspecified source) for livestock use.~~,~~ ~~with a~~ The claimed period of use ~~of~~ is April through October for irrigation, and year round for livestock. (Ex. 20002 at 1-10). On October 4, 1999, Richard D.

[1] Claims for water rights of non-Indian successors to Indian water rights are commonly referred to as "*Walton*" rights, a term derived from the *Colville Confederated Tribes v. Walton* line of cases. *Colville Confederated Tribes v. Walton*, 460 F Supp 1320 (ED Wash 1978) (*Walton I*); *Colville Confederated Tribes v. Walton*, 647 F2d 42 (9th Cir 1981), *cert den*, 454 US 1092 (1981) (*Walton II*); *Colville Confederated Tribes v. Walton*, 752 F2d 397 (9th Cir 1985), *cert den*, 475 US 1010 (1986) (*Walton III*).

[2] On the Statement and Proof of Claim, Item 7, the total acres are listed as 5376.7 acres. However, the sum of the acres listed by source and quarter-quarter is 5336.3. (Compare Ex. 20002 at 3 – 5 with Ex. 20002 at 8).

Bailey, the Adjudicator of the Klamath Basin Adjudication, issued a Preliminary Evaluation for this claim preliminarily denying the claim. Various contests were filed, including Contest 2818 filed by WaterWatch,[3] Contest 3099 filed by Claimants, Contest 3436 filed by Klamath Project Water Users (KPWU),[4] Contest 3720 filed by the United States, and Contest 4076 filed by the Klamath Tribes.[5]

Reason for Modifications: To make corrections raised in exceptions; using evidence on the record, to provide more specific information with reference to what was claimed; to provide an additional citation to the record; and to clarify the number of acres claimed in a footnote.

9. **Findings of Facts.** 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 the modified findings of fact are provided beneath certain sections of modified findings. A summary of the reasons for modification is provided here.

Summary of Reasons for Modification of Findings of Fact: The general reasons for modifications are as follows: (1) To correct scrivener's errors and provide clarity of evidence in the record. (2) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, and by the method of subirrigation, issues 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) 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.

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[3] Withdrawn on February 20, 2003.

[4] KPWU is a group of separate water users and districts within the Klamath Basin who have filed joint contests in Adjudication proceedings. The group is composed of the following parties: Klamath Irrigation District; Klamath Drainage District; Tulelake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Malin Irrigation District; Midland District Improvement Co.; 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; Randy Walthall; Inter-County Title Company; Winema Hunting Lodge, Inc.; Van Brimmer Ditch Company; Plevna District Improvement Company; Collins Products, LLC.

[5] Withdrawn on August 12, 2004.

Modified Proposed Order Findings of Fact

GENERAL DEVELOPMENT OF LANDS APPURTENANT TO THE CLAIM:

1. Claim 18 involves property that was originally part of the Klamath Indian Reservation, and has subsequently been transferred to non-Indian ownership. It was originally 43 parcels, all but three of which were originally allotted to Klamath Indians as part of the termination of the Reservation. The remaining three parcels were transferred by the United States to the Klamath Indian Tribes after the Reservation was terminated, and then transferred by the Tribes. The total claim is for 5,376.7 acres.[6] (Ex. 20002 at 8.)

2. The Allotments are located on both sides of the Williamson River, west of the Klamath Marsh. (Exs. 40008, 50172, ~~50183~~ 20002 at 154-155.) Prior to development, part of the land was subject to periodic flooding, while other portions were subject to subirrigation from the Williamson River or its tributaries. (Exs. 40061, 40065, 40067[7]; Affidavit of John Mosby at 2; 40001 at 65-134.) Early in the 1900s, several studies were conducted as to the feasibility of developing drainage ditches to drain portions of the reservation that were inundated much of the year. (Ex. 50105.) In addition, by 1920, several irrigation systems were under construction or completed on the reservation, including the Sand Creek Unit~~;~~.

¶ Construction of the irrigation system for the Sand Creek Unit began sometime after 1918 and was completed in 1920 (Exs. 50094 at 4-5; 50105 at 20; 50106 at 2-3; 20002 at 139) ~~which~~ The Unit was reported to irrigate 3,614 acres in the area. (Ex. 50105 at 10, 20; Ex. 20002 at 129, 143.) It was found, however, that the Sand Creek Unit was difficult and expensive to maintain, and the area irrigated from the Unit was reduced to 1,150 acres in 1939. (Exs. 20002 at 143; 50094 at 4-5; 50107 at 8.) Owners of the 1,150 acres land in the Sand Creek Unit were later assessed government charges under a Secretary of Interior Contract # 14-20-0500-2150 dated April 21, 1965. This contract specified which lands remained in the project as of 1965. (Ex. 20002 at 72-73, 143; Ex.

[6] As stated in the claim document. Claimant asserted in briefing that the actual irrigable acreage was 5,587. Since the claim controls, that will be the figure used in this case.

[7] The three exhibits listed are appraisals of the area shortly after 1900 that refer to the lands as "wet" or "marsh land." Since no irrigation works were in place at the time, ~~I~~ it is inferred from these descriptions that the property was receiving water by natural subirrigation.

40001 at 17.) The source of water for irrigation within the Sand Creek Unit is commingled water from Scott Creek and Sand Creek. (Ex. 20002 at 129-130, 143).

¶ A 1952 aerial photograph clearly shows a ditch passing through Allotments 84, 91, 92, and 94. (Ex. 40022.) The shape and location of this ditch is consistent with an "Old Ditch" marked on a 1962 Final Proof Survey map for Permit S-23046. (Ex. 20002 at 27.) ~~In approximately~~ By 1955, the Sand Creek Ditch was already developed by D.O. Williams as evidenced on a 1955 aerial photo. (Exs. 40001 at 36-37; 40023.) Laterals in Allotments 1347½ and 1387 were extended from the Sand Creek Ditch in 1969. (Ex. 40001 at 88-90, 96.)

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

ALLOTMENTS 133, 38, 39, 123, and 122:

3. These properties were part of the property served by the Sand Creek Unit, an irrigation system developed ~~prior to 1964~~ by 1920. (Exs. 50094 at 4-5; 50105 at 20; 50106 at 2-3; 20002 at 139.) Pursuant to the Act of August 20, 1964 (Public Law 88-456, 78 Stat 554) Allotments 133, 38, 39, 122, and 123 were identified in a 1965 contract between the United States and the property owners for assessments based upon the number of total acres under contract within each allotment.[8] ~~, 160 acres each. The contract does not refer to either acreage recited as "irrigable" or "under cultivation."~~ The acres under contract, by allotment, are as follows: Allot. 133 – 160 ac; Allot. 38 – 154 ac; Allot. 39 – 160 ac; Allot. 123 – 160 ac; Allot. 122 – 110 ac. (Exs. 50112; 20002 at 72-73.)

4. The claimed source of water for Allotments 133, 38, 39, 123, and 122 is commingled water from Scott and Sand Creeks. The claimed Scott Creek point of diversion is located within the NESE, Section 1, Township 31 S, Range 7 E, W.M. The claimed (upper) Sand Creek point of diversion is located within the NWNW, Section 28 Township 31 S, Range 7 E, W.M. (Ex. 20002 at 1-6, 34; Ex. 40008.)

[8] For example, in Allotment 122 only 110 acres of the 160 acre allotment were assessed. (Compare Ex. 20002 at 131 to Ex. 50129 at 1.)

4 5. The parties agree that Allotment 122, located in the NE¼ of Section 17, Township 31 S, Range 8 E, W.M. should be allowed as a *Walton* claim, with ~~at least~~ 110 acres irrigated. (Claimants' Reply Brief at 24; United States' Posthearing Brief at 42.) The ~~parties agree that at least~~ United States asserts that 134 acres have a developed water right for Allotment 39, located in the NE¼ of Section 7, Township 31 S, Range 8 E, W.M. and that at least 119 acres have a developed water right for Allotment 123, located in the NW¼ of Section 17, Township 31 S, Range 8 E, W.M.~~,~~. The claimants disagree with this evaluation of Allotments 39 and 123, asserting that additional acreage should be allowed. The United States' relied on interpretation of nine aerial photographs spanning the years 1952 to 2000 for measuring the maximum acres historically irrigated within these two allotments. The acreage for Allotment 39 is based on a 1961 aerial photograph and a 2000 aerial photograph for Allotment 123. ~~based upon the evidence of water actually beneficially applied to the allotments. The source for these properties is Sand Creek, a tributary of Williamson River. The diversion point is located in the NW 1/4 SE 1/4, section 16, Township 31 S, Range 7 E, W.M.~~ (Exs. ~~20002 at 45, 40008, 40010;~~ 40001 at 26-35; Claimants' Reply Brief at 25; United States' Posthearing Brief at ~~41~~ 42.)

Allotment 122

6. Allotment 122 was transferred from Indian ownership to a non-Indian successor as early as 1917. (Ex. 20002 @ 97-98; Ex 40010.) As evidenced by the 1920 completion date of the Sand Creek Unit and this allotment's inclusion in the Sand Creek Unit Irrigation Project 1965 contract, beneficial use of commingled water from Scott and Sand Creeks was made with reasonable diligence by non-Indian successors on the 110 acres assessed in the 1965 contract.

Irrigation from the claimed source has continued on this parcel as evidenced by the 1965 contract and water right Permit S-25987/Certificate 34993, priority date October 31, 1957. (Exs. 20072; 50134.)

The Claimants did not provide the location of these 110 acres by quarter-quarter. OWRD estimated the 110 acres by quarter-quarter using the 1923 map of the Sand Creek Unit (Ex. 20002 at 131) which illustrates the location of 110 acres within the NE¼ of Section 17, the OWRD Field Investigation Map for Township 31 S, Range 8 E, W.M.,

and a mapping tool as follows: 33.5 ac within the NENE ; 40.0 ac within the NWNE; 33.0 ac within the SWNE; and 3.5 ac within the SENE.

Allotment 39

7. Allotment 39 was transferred from Indian ownership to a non-Indian successor in 1917. (Ex. 20002 at 93; Ex 40010.) As evidenced by the 1920 completion date of the Sand Creek Unit and this allotment's inclusion in the Sand Creek Unit Irrigation Project 1965 contract, beneficial use of commingled water from Scott and Sand Creeks was made with reasonable diligence by non-Indian successors on the 156.0 acres claimed, being 40.0 acres within the NENE, 40.0 acres within the NWNE, 38.0 acres within the SWNE, and 38.0 acres within the SENE.

Irrigation from the claimed source has continued on this parcel as evidenced by the 1965 contract and water right Permit S-25987/Certificate 34993, priority date October 31, 1957. (Exs. 20072; 50134.)

Allotment 123

8. Allotment 123 was transferred from Indian ownership to a non-Indian successor as early as 1917. (Ex. 20002 @ 97-98; Ex 40010.) As evidenced by the 1920 completion date of the Sand Creek Unit and this allotment's inclusion in the Sand Creek Unit Irrigation Project 1965 contract, beneficial use of commingled water from Scott and Sand Creeks was made with reasonable diligence by non-Indian successors on the 160.0 acres claimed, being 40.0 acres within the NENW, 40.0 acres within the NWNW, 40.0 acres within the SWNW, and 40.0 acres within the SENW.

Irrigation from the claimed source has continued on this parcel as evidenced by the 1965 contract and water right Permit S-25987/Certificate 34993, priority date October 31, 1957. (Exs. 20072; 50134.)

Allotments 133 and 38

~~5~~ 9. In 1915, Grover Neil acquired title to both Allotments 133 and 38. He was the first non-Indian owner. (Ex. 50085.) In 1914, prior to his obtaining title to this property, Grover Neil apparently filed an application for a water right for irrigation of this land

with the State of Oregon. (Ex. 40054.) Neil transferred the property to another non-Indian owner on August 23, 1915. (Ex. 20002 at 83.) There is no evidence that water was diverted to the property before this second transfer. In 1914, the Superintendent of the Klamath Indian Reservation sent a letter concerning the water right application of Grover Neil in connection with these Allotments. (Ex. 40054.)

10. Allotment 133 is located in the SW¼ of Section 5, Township 31 S, Range 8 E, W.M. As evidenced by the 1920 completion date of the Sand Creek Unit and this allotment's inclusion in the Sand Creek Unit Irrigation Project 1965 contract, beneficial use of commingled water from Scott and Sand Creeks was made with reasonable diligence by non-Indian successors on the 160.0 acres claimed, being 40.0 acres within the NESW, 40.0 acres within the NWSW, 40.0 acres within the SWSW, and 40.0 acres within the SESW.

Irrigation from the claimed source has continued on this parcel as evidenced by the 1965 contract and water right Permit S-25987/Certificate 34993, priority date October 31, 1957. (Exs. 20072; 50134.)

11. Allotment 38 is located in the NW¼ of Section 7, Township 31 S, Range 8 E, W.M. As evidenced by the 1920 completion date of the Sand Creek Unit and this allotment's inclusion in the Sand Creek Unit Irrigation Project 1965 contract, beneficial use of commingled water from Scott and Sand Creeks was made with reasonable diligence by non-Indian successors on the 140.0 acres claimed, being 40.0 acres within the NENW, 31.6 acres within Lot 1 (NWNW), 30.4 acres within Lot 2 (SWNW), and 38.0 acres within the SENW.

Irrigation from the claimed source has continued on this parcel as evidenced by the 1965 contract and water right Permit S-25987/Certificate 34993, priority date October 31, 1957. (Exs. 20072; 50134.)

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to provide corrected and additional citations to the record; 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. In

Finding of Fact 6, OWRD addresses the location of 110 acres within the NE¼ of Section 17.

ALLOTMENTS 168, 91, 94, 184 and 84:

~~6~~ 12. In the letter discussed above in relation to Allotments 133 and 38, the Superintendent stated: "The Indians tell me that the waters of Sand Creek have been used by them for irrigation purposes and for livestock for more than 20 years." (Ex. 40054.) The distance between Allotments 133 and 38 and Allotments 84, 91, 94, 168, and 184 is more than one mile. (Ex. 40008.)

13. Testimony was given by the United States that water from Sand Creek, prior to the installation of the Sand Creek Ditch in 1955, under high flows would spread out to the east and work it way east to the Klamath Marsh which is located immediately to the east of Claim 18 lands. (Attachments 3 and 4 to Claimants' Reply Brief – Hearing Transcript at 40-41.) The United States also testified that natural overflow from Sand Creek spread over portions of Allotments 168 and 184. (Exs. 40001 at 45, 62; 40008.)

~~7~~ 14. In 1920, a farming and grazing lease entered into respecting Allotment 94 made provision for the lessee to clean out a ditch. The lease does not recite whether this ditch is for irrigation or drainage. (Ex. 40068.) ~~In 1951,~~ A 1962 Final Proof Survey map was filed for a state water right covering ~~a portion of~~ this entire block of allotments. This Survey map shows an "old ditch" passing continuously through Allotments 170, 92, 94, 91 and 84. ~~west of this block of allotments. It does not show any connection between that "old ditch" and Allotments 84, 91, 94, 168 and 184.~~ A ditch with the same contours is visible on a 1952 aerial photograph. (Compare Ex. 20002 at 27 to Ex. 40022 .) Furthermore, the United States testified that in 1952, a pre-existing ditch intercepted excess runoff from Sand Creek to the north prior to the construction of the Sand Creek Ditch spreading water onto Allotments 91, 94 and 84. (Ex. 40001 at 56, 58-60, 67.)

~~8~~ 15. Allotment 91 was transferred to B.S. Grigsby, a non-Indian, on April 20, 1921. (Ex. 50012.) Allotment 94 was transferred to B.S. Grigsby, a non-Indian, on June 29, 1927. (Ex. 50020.) Allotment 184 was transferred to Emma R. Grigsby, a non-Indian on

February 18, 1918. (Exs. 50010, 50011.) Allotment 84 was transferred to B.S. Grigsby, a non-Indian, on March 9, 1914. (Ex. 50002.) Allotment 168 was transferred to D.O. Williams, a non-Indian, on December 20, 1937. (Ex. 40016 at 2.)

Allotment 168

16. Allotment 168 is located in the NE¼ of Section 20, Township 31 S, Range 8 E, W.M. Two sources of water were claimed for this parcel. Commingled water from Scott and Sand Creeks were claimed on the northernmost 76.8 acres. Sand Creek from the "lower" point of diversion was claimed on the southernmost 71.8 acres. The claimed lower Sand Creek point of diversion is located within the NWNW, Section 20 Township 31 S, Range 8 E, W.M. (Ex. 20002 at 1-6, 27; Ex. 40008.) Department of Interior Grazing Lease # 115 was issued in 1925 on lands appurtenant to this parcel. (Ex. 50117.) Beneficial use of water from Sand Creek by the method of natural overflow on a portion of Allotment 168, being the 71.8 acres claimed from Sand Creek, was made prior to transfer from Indian ownership.

Irrigation from the claimed source has continued on this parcel as evidenced by water right Permit S-23046/Certificate 31364, priority date February 7, 1951. (Exs. 20002 at 27; 50133; 40101.)

Allotment 94

17. Allotment 94 is located in the NW¼ of Section 29, Township 31 S, Range 8 E, W.M. The claimed source of water for this parcel is Sand Creek with a claimed "lower" point of diversion located within the NWNW, Section 20 Township 31 S, Range 8 E, W.M. (Ex. 20002 at 1-6, 27; Ex. 40008.) A FARMING AND GRAZING LEASE dated 1920 was issued for this allotment wherein the lessee agreed to repair fences and clean out the ditch. (Ex. 40068.) In addition, DEPARTMENT OF INTERIOR GRAZING LEASE # 115 was issued in 1925 on lands appurtenant to this parcel. (Ex. 50117.) On a 1927 CERTIFICATE OF APPRAISEMENT, 160 acres were characterized as grazing land. Beneficial use of water was made on this parcel prior to transfer from Indian ownership on 156.9 acres claimed[9],

[9] The claimants recorded 39.3 acres within the NWNW of Section 29 (Ex. 20002 at 3), but to be consistent with the map was corrected by OWRD to 39.0 acres (Ex. 20002 at 149, 151.). Therefore there are 156.9 total acres claimed in Allotment 94.

being 39.3 acres within the NENW, 39.0 acres within the NWNW, 39.3 acres within the SWNW, and 39.3 acres within the SENW; Section 29, Township 31 S, Range 8 E, W.M.

Irrigation from the claimed source has continued on this parcel as evidenced by water right Permit S-23046/Certificate 31364, priority date February 7, 1951. (Exs. 20002 at 27; 50133; 40101; 40008).

Allotments 91, 184, 84

18. Although there was natural overflow and/or evidence of an early ditch on Allotments 91, 184 and 84, the first evidence of beneficial use of water from Sand Creek on these parcels is water right Permit S-23046/Certificate 31364 with a priority date of February 7, 1951. (Exs. 50133; 40008; 40101.) These allotments transferred out of Indian ownership between the years 1914 and 1921. Thus beneficial use of water was not demonstrated for thirty to thirty-five years following transfer from Indian ownership.

Beneficial use of water with reasonable diligence has not been demonstrated on these three allotments.

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to provide additional citations to the record; the ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to make findings of fact pertaining to natural overflow; to add clarification using evidence on the record.

ALLOTMENTS 170, 92, 93, 16, 80, 81, 83, 82, 95, 97, 100, 101, 103, 104, 266, 559, 591, 1311, 1374, 1493:

Allotment 170 – Claimed from Commingled Waters of Scott and Sand Creeks

19. The claimed source for Allotment 170 is commingled water from Scott and Sand Creeks. (Ex. 20002 at 1-6; Ex. 40008.) This allotment transferred out of Indian ownership in 1921. (Ex. 40010.) United States interpreted a 1952 aerial photograph as showing 96 acres of natural flooding on this allotment (Ex. 40001 at 42); however, there is no evidence on the record that beneficial use of this natural overflow was made with reasonable diligence. And although these lands are included in Certificate 31364 (1951 priority date) for irrigation from a point of diversion on Sand Creek (Ex. 50133), this

source of water is different from that which was claimed for this allotment. Even if it had been the same as the claimed source, beneficial use under this certificate would not have been made with reasonable diligence.

Beneficial use of water with reasonable diligence has not been demonstrated on Allotment 170.

Allotments 92, 93, 16, 80, 81, and Portions of 82, 83, 591, 1493 -- Claimed from Sand Creek.

20. The claimed source of water for these allotments is Sand Creek from the claimed lower point of diversion. (Ex. 20002 at 1-6, 27; Ex. 40008.)

21. Testimony was given by the United States that water from Sand Creek, prior to the installation of the Sand Creek Ditch, would under high flows spread out to the east toward the Klamath Marsh, which is located immediately to the east of Claim 18 lands. (Attachments 3 and 4 to Claimants' Reply Brief – Hearing Transcript at 40-41.) The United States' testimony also demonstrated that natural overflow spread over portions of Allotments 92, 93 and 16 (Ex. 40001 at 47, 50, 53; Ex. 40008.) However, there is no evidence on the record that beneficial use of water by the method of natural overflow was made within these allotments.

22. The first evidence of beneficial use of water on Allotments 92, 93, 16, 80, and 81, and on portions of Allotments 82, 83, 591, and 1493, is from the lower point of diversion on Sand Creek under the authority of water right Permit S-23046/Certificate 31364. This water right has a priority date of February 7, 1951. (Exs. 50133; 40008; 40101.) These allotments transferred out of Indian ownership between the years 1914 and 1927. (Ex. 40010.) Beneficial use of water was not demonstrated for twenty-four to thirty-seven years following transfer from Indian ownership.

Beneficial use of water with reasonable diligence from Sand Creek has not been demonstrated on these allotments or portions of allotments.

Allotments 95, 97, 100, 101, 103, 104, 266, 559, 1311, 1374, and Portions of 82, 83, 591, 1493 -- Claimed from the Williamson River.

23. The claimed source of water for these allotments is the Williamson River, with a claimed point of diversion located within the SENW, Section 33 Township 31 S, Range 8 E, W.M. (Ex. 20002 at 1-6, 31; Ex. 40008.)

24. The United States' testimony demonstrates that Allotments 95, 97, 100, 101, 103, 104, 266, 559, 1311, and 1374, which are located south and east of the Williamson River, appear to receive subirrigation from the river due to the proximity of the river and the low lying nature of the land. (Ex. 40001 at 98-99.) The United States' testimony also demonstrates that Allotments 1311, 82, 591, 1493, portions of Allotments 95, 97, and 103, the western portion of 266, and the eastern three-quarters of 83 are substantially influenced by subirrigation. (Attachments 9 to 11 to Claimants' Reply Brief – Hearing Transcript at 58-60.) An APPRAISAL REPORT for Allotment 95 states that "underground water" is at a sufficient height to provide adequate moisture to grow a good crop of grass. (Ex. 40098.) Soils maps and soils interpretations conducted by the U.S.D.A. Soil Conservation Service describe the majority of these lands as being within the Chincallo Series and subject to annual inundation (Ex. 500142 at 3), with only a small percentage of lands described as being subject to annual flooding (Exs. 500142 at 4; 40008) or frequent flooding except where diked (Ex. 500142 at 5).[10] (*See also* Exs. 500143-144; 40008; Claimants' Closing Argument at 24.)

25. The following allotments have grazing leases dated prior to the allotment transferring out of Indian ownership: Allotments 82, 83, 101, 104, 266, 591, and 1493 (Exs. 40010; 40076; 40078; 50116; 50117; 50118). Of these, Allotments 83, 101, 104 and 1493 also have a CERTIFICATE OF APPRAISEMENT issued under Indian ownership that characterizes all the acres within the allotment as "grazing." (Exs. 40077; 40080, 40087, 40090; 40093; 40094.) Allotments 100 and 103 have similar certificates. *Id.* Finally, a 1956 APPRAISAL REPORT characterized Allotment 95 as follows: " [t]he subject tract

[10] The Chincallo Series represents the overwhelming majority of the claimed lands, the Kirk Series is of limited presence being mostly in the far northwest and southeast corners of the farm, and the Skellock series occupy a very limited amount of land within Allotment 1347½ . This analysis is based on the soils maps in Ex. 50143.

consists of meadow land utilized at present for the grazing of cows . . . the tract is enclosed with a standard 4 barded wire fence." Allotment left Indian ownership in 1956. (Exs. 40010; 40098.)

Beneficial use of water from the Williamson River by the method of natural subirrigation[11] has been demonstrated on Allotments 95, 100, 101, 103, 104, and 266, and portions of Allotments 82, 83, 591 and 1493.

26. Aside from subirrigation, the first evidence of beneficial use of water on Allotments 95, 97, 100, 101, 103, 104, 266, 559, 1311, 1374, and portions of Allotments 82, 83, 591, and 1493 is from a diversion on the Williamson River as authorized under water right Permit S-25337/Certificate 33523. The water right has a priority date of February 10, 1958. (Exs. 40008; 40104.) With the exception of Allotments 95 and 1131, these allotments transferred out of Indian ownership between the years 1913 and 1927. (Ex. 40010.) Thus beneficial use of water from a diversion was not demonstrated on these twelve allotments for thirty-one to forty-five years following transfer from Indian ownership. Allotment 1131 transferred out of Indian ownership in 1950, eight years after beneficial use of water from a diversion began; beneficial use of water with reasonable diligence was not demonstrated on this allotment.

27. Allotment 95 transferred out of Indian ownership in 1956 (Exs. 50076; 40010). Thus, beneficial use of water from a diversion on the Williamson River was made with reasonable diligence by non-Indian successors on the 155.9 acres claimed, being 39.8 acres within the NENW, 39.8 acres within the NWNW, 39.8 acres within the SWNW, and 36.5 acres within the SENW; Section 8, Township 32 S, Range 8 E, W.M.

Irrigation from the claimed source has continued on this parcel as evidenced by water right Permit S-25337/Certificate 33523, priority date February 10, 1958. (Exs. 40008; 40104.)

[11] Natural subirrigation as used here refers to water use which results from a naturally occurring high water table condition.

Section Summary

~~9~~. 28. Except for 155.9 acres within Allotment 95, there is no evidence of beneficial use of water by the method of natural overflow or by an artificial diversion of water to the other nineteen allotments addressed in this section, prior to or within a reasonably diligent period after the transfer of the property to ~~the second~~ non-Indian ~~owner~~ successors.

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to provide additional citations to the record; the ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to make findings of fact pertaining to natural overflow and subirrigation; to add clarification using evidence on the record.

ALLOTMENT 532:

~~10~~ 29. The claimed source of water for Allotment 532 is commingled water from Scott and Sand Creeks. (Ex. 20002 at 1-6.) United States interpreted a 1952 aerial photograph as showing 96 acres of natural flooding on this allotment (Ex. 40001 at 39); however, there is no evidence on the record that beneficial use of natural overflow was made within this allotment. Ditches have been identified that could have supplied water to Allotment 532 in 1955, prior to its acquisition by Ernest Bubb, the first non-Indian owner, in 1957. However, there is no evidence that water was beneficially applied to this allotment at that time. (Ex. 40016 at 1; Ex. 40001 at 36-37, 96; Ex. 40023.) The United States determined, based on interpretation of aerial photographs, that the first evidence of application of water to Allotment 532 is in 1969. (Ex. 40001 at 96.) There is no evidence in the record of a state water right appurtenant to this allotment.

Beneficial use of water with reasonable diligence has not been demonstrated on this allotment.

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to provide additional citations to the record; the ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to make findings of fact pertaining to natural overflow; to add clarification using evidence on the record.

ALLOTMENTS 105 and 267:

~~11~~ 30. These allotments were acquired by the first non-Indian owner, McAuliffe, in 1926, and sold to D.O. Williams, also a non-Indian, in 1939. (Exs. 50035, 50041.) The claimed source of water for these two allotments is the Williamson River. (Ex. 20002 at 1-6, 31; Ex. 40008.)

¶ 31. In 1926 McAuliffe entered into an agreement, as part of the purchase of Allotment 267, to pay irrigation assessments for the portion of the property that is irrigated, and described the property as "irrigable lands now under ~~a~~ constructed ditch." (Ex. 40088.) At the same time, a Certificate of Appraisement was prepared, which shows that Allotment 267 was appraised as land for grazing, and did not show any part of the property under irrigation. (Ex. 40089.) ~~There is no evidence of irrigation of Allotments 105 or 267 prior to 1961. (Testimony of Clements.)~~

Allotment 267

32. The United States' testimony demonstrates that Allotment 267, which is located south and east of the Williamson River, receives subirrigation from the river due to the proximity of the river and the low lying nature of the land. (Ex. 40001 at 98-99; Attachments 9 to 11 to Claimants' Reply Brief – Hearing Transcript at 58-60.) A U.S.D.A. Soil Conservation Service map shows the majority of soils in this allotment are of the Chincallo Series (2H3ZV3, 4H3ZV3), which are subject to annual inundation. (Ex. 500142 a 3.) There is a narrow strip of Kirk Series soils (4M6ZA4) along the southern edge of the allotment parallel to an irrigation ditch. The Kirk Series soils are described as being subject to frequent flooding except where diked. (Ex. 500142 at 5). (*See also* Exs. 500143 at 3; 40008; Claimants' Closing Argument at 24.)

33. The Department of Interior issued grazing leases appurtenant to this allotment in 1925 and 1926. (Exs. 50116, 50118.) Beneficial use of water from the Williamson River by the method of natural subirrigation[12] has been demonstrated on this allotment.

[12] Natural subirrigation as used here refers to water use which results from a naturally occurring high water table condition.

34. The first evidence of a diversion from the Williamson River appears on a 1952 aerial photograph. (Ex. 50165.) The canal on this allotment is consistent with the canal associated with water right Permit S-25337/Certificate 33523, which has a priority date of February 10, 1958. (Exs. 20002 at 31; 40104.) Beneficial use of water from a diversion was not demonstrated on this allotment for at least twenty-six years following transfer from Indian ownership.

Allotment 105

35. The United States testified that Allotment 105, which is located south and east of the Williamson River, receives subirrigation from the river due to the proximity of the river and the low lying nature of the land. (Ex. 40001 at 98-99; Attachments 9 to 11 to Claimants' Reply Brief – Hearing Transcript at 58-60.) A U.S.D.A. Soil Conservation Service map all the soils in this allotment are of the Chincallo Series (2H3ZV3, 4H3ZV3), which are subject to annual inundation (Ex. 500142 a 3;). (*See also* Exs. 500143 at 3; 40008; Claimants' Closing Argument at 24.)

36. Department of Interior Grazing Lease # 128 was issued in 1926 on lands appurtenant to this allotment. (Ex. 50118.) Beneficial use of water from the Williamson River by the method of natural subirrigation[13] has been demonstrated this allotment.

37. Aside from subirrigation, the first evidence of beneficial use of water on this parcel was from a diversion on the Williamson River as authorized by water right Permit S-25337/Certificate 33523 with a priority date of February 10, 1958. Beneficial use of water from a diversion was not demonstrated on this allotment for thirty-two years following transfer from Indian ownership.

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to provide additional citations to the record; the ALJ's proposed findings of fact failed to fully set forth the evidence on

[13] Natural subirrigation as used here refers to water use which results from a naturally occurring high water table condition.

the record; to make findings of fact pertaining to subirrigation; to add clarification using evidence on the record.

ALLOTMENTS 86, 142, 143, 593, 1383, 1347½, and 1387:

38. The claimed source of water for Allotments 86, 142, 143, 593, 1383, 1347½ and 1387 is Sand Creek from the claimed lower point of diversion. (Ex. 20002 at 1-6, 27; Ex. 40008.)

39. The United States' testimony demonstrates that Allotments 86, 143, 142, 1383, and the eastern part of 593 are substantially influenced by subirrigation from the Williamson River, a source other than that which was claimed. (Attachments 9 to 11 to Claimants' Reply Brief – Hearing Transcript at 58-60.)

~~12~~ 40. Allotment 86 was transferred to H.R. Dunlap, a non-Indian on June 30, 1920. (Ex. ~~2~~50063.) This parcel was transferred to B.S. Grigsby, also a non-Indian, on July 3, 1920. (Ex. ~~2~~50064.)

~~13~~ 41. Allotment 142 was transferred to B.S. Grigsby, a non-Indian, on August 27, 1918. (Ex. 50018.) This parcel was transferred to W.B. Stevens, also a non-Indian, on July 25, 1921. (Ex. 50021.)

~~14~~ 42. Allotment 143 was transferred to B.S. Grigsby, a non-Indian, on March 24, 1927. (Ex. 50014.) This parcel was transferred to a second non-Indian ~~no later than 1948~~ on August 29, 1936. (Ex. ~~50043~~ 50023.)

~~15~~ 43. Allotment 593 was transferred to B.S. Grigsby, a non-Indian, on July 14, 1915. (Ex. 50010.) This parcel was transferred to a second non-Indian ~~no later than 1948~~ on August 29, 1936. (Ex. ~~50043~~ 50023.)

~~16~~ 44. ~~There is no~~ The first evidence ~~for irrigation~~ of beneficial use of water from Sand Creek on Allotments 86, 142, 143, or 593 ~~prior to 2000. (Ex. 40001 at 97.)~~ is water right

Permit S-23046/Certificate 31364, which has a priority date of February 7, 1951. (Exs. 50133; 40008; 40101.) The beneficial use of water was not demonstrated for twenty-four to thirty-six years following transfer from Indian ownership.

Beneficial use of water with reasonable diligence has not been demonstrated on these four allotments.

~~17~~ 45. Allotment 1383 was transferred to B.S. Grigsby, a non-Indian, on March 24, 1927. (Ex. 50016.) The first evidence of beneficial use of water from Sand Creek on this allotment is water right Permit S-23046/Certificate 31364 with a priority date of February 7, 1951. (Exs. 50133; 40008; 40101.) The beneficial use of water was not demonstrated for twenty-four years following transfer from Indian ownership.

Beneficial use of water with reasonable diligence has not been demonstrated on this allotment.

~~18~~ 46. Allotment 1347½ was transferred out of Indian ownership no later than 1962. (Ex. 40005 at 36.)

~~19~~ 47. Allotment 1387 was transferred out of Indian ownership in 1955. (Ex. 50031.) It was subsequently transferred to D.O. Williams, also a non-Indian, in 1957. (Ex. 50032.) Allotments 1347½ and 1387 were not irrigated until at least 1969, when the ditches were constructed connecting these parcels to the Sand Creek Ditch. (Ex. 40001 at 88-90, 96.) There is no evidence in the record of a state water right appurtenant to these two parcels.

Beneficial use of water with reasonable diligence has not been demonstrated on these two allotments.

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to correct and provide additional citations to the record; the ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to include a finding of fact pertaining to subirrigation; to add clarification using evidence on the record.

UNALLOTTED PARCELS A, B, C-1 and C-2:

~~20~~ 48. Parcels A, B, C-1 and C-2 were transferred directly by the Klamath Tribes to others pursuant to the Klamath Termination Act after the dissolution of the Klamath Indian Reservation.

49. The claimed source of water for these four parcels is the Williamson River, with a claimed point of diversion located within the SENW, Section 33 Township 31 S, Range 8 E, W.M. (Ex. 20002 at 1-6, 31; Ex. 40008.)

50. The United States' testimony demonstrates that Parcels B, C-1 and C-2 are substantially subirrigated from the Williamson River. (Ex. 40001 at 131, 133, 134.)

¶ 51. In 1959, Clarence and Beulah Clinton, members of the Klamath Tribe, acquired Parcel C-1, amounting to 39.6 acres, located in Lot 3 (NE¼ NW¼) of Section 5, and Parcel C-2, amounting to 55.5 acres, located in the E½ ~~NW¼~~ SE¼ of Section 6, all within Township 32 S, Range 8 E, W.M.. (Exs. 50140; 40008; 40010; 50081.) ~~It was subsequently acquired by D.O. Williams, a non-Indian, who included it within land planned to be under irrigation in a Final Proof Survey in 1964. (Ex. 20002 at 31.)~~ Parcels C-1 and C-2 were conveyed by Charles and Hazel A. Heaton, non-Indians, to Dayton O. Williams on May 16, 1960. (Ex. 50071.)

52. The first evidence of beneficial use of water on Parcels C-1 and C-2 is from a diversion on the Williamson River as authorized under water right Permit S-27254/Certificate 33422. The water right has a priority date of March 9, 1961. (Exs. 40008; 40105.)

Beneficial use of water from the Williamson River was made with reasonable diligence by non-Indian successors on the 92.4 acres claimed within these two parcels, being 39.6 acres within Lot 3 (NENW), Section 5; and 15.5 acres within the NESE, and 40.0 acres within the SESE, Section 6, all within Township 32 S, Range 8 E, W.M.

~~21~~ 53. The record does not establish when parcels A, and B ~~and C-1~~ were transferred by the Tribes pursuant to the Klamath Termination Act after the dissolution of the Klamath Indian Reservation. ~~, but by 1964, parcel C-1 was held by D.O. Williams and was part of the property planned for irrigation. (Ex. 20002 at 31.)~~ There is no evidence in the record of a state water right appurtenant to Parcels A and B.

Reasons for Modifications: Using evidence on the record, to correct and provide more specific information with reference to what was claimed; to provide additional citations to the record; the ALJ's proposed findings of fact failed to fully set forth the evidence on the record; to include a finding of fact pertaining to subirrigation; to add clarification using evidence on the record; to correct a scriveners error in the location description of Parcel C-1; to correct errors in the chain of title for Parcel C-1, issue raised in exceptions.

RATE AND DUTY:

~~22~~ 54. The Standard Rate for irrigation in the Klamath Basin is 1/40th cubic foot per second per irrigated acre. The Standard Duty in the Klamath Basin is 3.5 acre-feet for each acre irrigated. ~~The Standard Season in the Klamath Basin is March 1 through October 1.~~ (Ex. 20002 at 285.) None of the parties has contested these standards. The season of use is April 1 through October 31, as claimed.

Reasons for Modifications: The season of use was modified in the Amended Proposed Order issued by OWRD on May 8, 2012.

10. **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 land appurtenant to the claim was transferred from Klamath Indian ownership to non-Indian ownership.

2. ~~Water for part of the claimed use was developed and used by the last~~ On certain portions of the claimed place of use, beneficial use of water from each of the claimed sources was made by an Indian owner of the property prior to transfer to a non-Indian owner, and/or was diligently developed and beneficially used by the non-Indian ~~owners~~ successors of the property after transfer from the last Indian owner.

3. The *Walton* elements are satisfied for a portion of this claim, being 1110.6 acres of irrigation with incidental livestock watering as follows: 726.0 acres from the

commingled sources of Scott and Sand Creeks within Allotments 133, 38, 39, 123 and 122; 228.7 acres from Sand Creek within Allotments 94 and 168; and 155.9 acres from the Williamson River within Allotment 95, and Parcels C-1 and C-2.

4. The Klamath Tribes Termination Act is a valid basis for the portion of the claim covering unallotted, former Klamath Indian Reservation land. The elements for a Klamath Termination Act right are satisfied for irrigation with incidental livestock watering from the Williamson River on 95.1 acres within Parcels C-1 and C-2.

4 5. There is insufficient title information to establish a ~~*Walton*~~ Klamath Termination Act right for ~~a portion of~~ the place of use within Parcels A and B.

~~5~~ 6. There is sufficient information on the development or ~~continuous~~ continued use of water on part of this place of use, being 1205.7 acres within Allotments 133, 38, 39, 123, 122, 94, 168, 95, and Parcels C-1 and C-2, to establish a *Walton* right or Klamath Termination Act right.

7. Beneficial use of water by the method of natural overflow, as a matter of law, is a valid basis for a *Walton* water right. However, except for a portion of Allotment 168, the evidence on the record does not establish beneficial use of water from a claimed source by the method of natural overflow.

8. The Claimants have not provided sufficient evidence to demonstrate that beneficial use of commingled water from Scott and Sand Creeks was made with reasonable diligence on Allotments 168, 170, and 532.

9. The Claimants have not provided sufficient evidence to demonstrate that beneficial use of water from Sand Creek was made with reasonable diligence on Allotments 91, 184, 84, 92, 93, 16, 80, 81, 82, 83, 591, 1493, 86, 142, 143, 593, 1383, 1347½ and 1387.

10. The Claimants have not provided sufficient evidence to demonstrate that beneficial use of water from the Williamson River was made with reasonable diligence on Allotments 97, 100, 101, 103, 104, 266, 559, 1311, 1374, 82, 83, 591, 1493, 267 and 105.

11. The record supports an irrigation season of April 1 through October 31, a duty of 3.5 acre-feet per acre irrigated and a rate of 1/40 cubic foot per second per acre irrigated.

12. Livestock watering incidental to irrigation is limited to 1356 head for 1205.7 acres.

Reason for Modifications: 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.

11. **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. In addition, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

The remaining portions of the Opinion section of the ALJ's Proposed Order have been labeled "Application of Walton Elements or Klamath Termination Act 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 or Klamath Termination Act Elements (*Parcels A, B, C-1 and C-2 only*) 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 water rights sought by claimant will stand or fall based upon the ability of claimant to satisfy the elements of a *Walton* claim (or a Klamath Termination Act claim, depending on the history of the parcel). As discussed below, the various allotments have very different histories. Those different histories control the outcome as to each parcel.

ALLOTMENTS 133, 38, 39, 123, and 122:

Allotment 122

The parties agree that Allotment 122 should be allowed as a *Walton* claim, with 110 acres irrigated. Allotment 122 was conveyed from Indian ownership to non-Indian ownership in a number of Quitclaim Deeds from 1917 to 1922. (20002 at 98-103.) The United States' testimony demonstrates that Allotment 122 was irrigated by Indian predecessors or within a reasonable time after transfer to the first non-Indian owner based on construction of the Sand Creek Unit being completed in 1920, and by virtue of this allotment's inclusion in the Sand Creek Unit from 1920 through 1965, when the repayment contract (# 14-20-0500-2150) was entered into between the United States Department of Interior and prior landowner D.O. Williams. (40001 at 31-33.) Although 160 acres were claimed in Allotment 122, a *Walton* right must be limited to the 110 acres that were included in the Sand Creek Unit.

Allotments 39 and 123

The United States concedes that Allotments 39 and 123 are subject to a *Walton* right, but asserts that the water right should be limited to 134 and 119 acres respectively, based upon the ~~evidence of water actually beneficially applied to the allotments~~ analysis of aerial photographs. The United States' conclusion regarding the maximum number of acres they determined to have been continuously irrigated is based on the analysis of photographs from eleven days taken over a 48-year span (1952 – 2000). (Exs. 40019 – 40053.) The aerial photographs submitted by the United States are insufficient to establish abandonment of the developed *Walton* right. 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. Especially in light of water right Certificate 34993 which has authorized irrigation of these acres from the claimed source of water since 1957, the sporadic nature of this evidence is insufficient to establish abandonment of any portion of the developed rights. ~~Claimant asserts, to the contrary, that the water right should be for 160 acres in each case, because that was the amount identified in the Act of August 20, 1964 (P.L. 88-456, 78 Stat 554) as the acreage included within the Sand Creek Unit. Claimant argues that this identification constitutes a federal reservation of rights that overshadows any other law to the contrary. Claimant is mistaken. First, federal reservations of water right apply to property in control of the United States. No authority has been cited for the proposition that such rights appertain to property that was already in private hands when a federal law was enacted. Moreover, the contract asserted as an expression of intent to appropriate water for 160 acres is devoid of any such expression. While it measures the assessment of charges for construction and maintenance of the water system by a specified number of acres, it does not describe those acres as "irrigable" or "under cultivation." Without some such expression, the evidence for claimant's position does not reach a preponderance. Since it is claimant's burden to prove all the elements of a water right, and claimant has not done so as to 160 acres in each allotment, the water right should be limited to 134 acres for Allotment 39, and 119 acres for Allotment 123.~~

Allotment 39 was conveyed from Indian to non-Indian ownership in 1917. (20002 at 93.) Allotment 123 was conveyed from Indian ownership to non-Indian ownership in a number of Quitclaim Deeds from 1917 to 1922. (20002 at 98-103.) The United States' testimony demonstrates that Allotments 39 and 123 were irrigated within a reasonable time after transfer to the first non-Indian owner based on construction of the Sand Creek Unit being completed in 1920, and by virtue of these two allotment's inclusion in the Sand Creek Unit from 1920 through 1965, when the repayment contract (# 14-20-0500-2150) was entered into between the United States Department of Interior and prior landowner D.O. Williams. (40001 at 31-33.) A *Walton* right must be limited to the acres that were included in the Sand Creek Unit, but may not exceed the number of acres that were claimed.

Allotments 133 and 38

Claimant argues that Allotments 133 and 38 are the subject of federal reserved rights, because they were in Indian ownership until after the Sand Creek Unit was under study. However, claimant does not explain how the reservation of a federal water right for development of an irrigation project can be translated into an appropriation of water for application to a particular parcel of land. Claimant does not provide any authority for such a novel assertion. Claimant's water rights in Allotments 133 and 38 stand or fall based upon whether claimant has, as to them, satisfied the elements of a *Walton* right.

Claimant states that an application for a water right was filed in 1914 by Grover Neil, who acquired title to both Allotments 133 and 38 in 1915 and was the first non-Indian owner. Claimant argues that this shows that the elements of a *Walton* right were satisfied in 1914.[14] This is not correct. Unlike a pre-1909 water right, where intent is sufficient to commence the appropriation, so long as other factors are present, in a *Walton* right water must be actually applied. There is no evidence that water was actually applied to the property during Grover Neil's tenure of ownership. ~~This is especially so when the property was conveyed to a second non-Indian owner on August 23, 1915. Under the circumstances, the elements of a *Walton* right are not satisfied as to Allotments 133 or 38.~~ However, these two allotments were irrigated within a reasonable time by non-Indian successors based on construction of the Sand Creek Unit being completed in 1920, and by virtue of these two allotment's inclusion in the Sand Creek Unit from 1920 through 1965, when the repayment contract (# 14-20-0500-2150) was entered into between the United States Department of Interior and prior landowner D.O. Williams. (40001 at 31-33.) A *Walton* right must be limited to the acres that were included in the Sand Creek Unit, but may not exceed the number of acres that were claimed.

[14] Claimant (Claimant's Reply Brief, at 30) describes a letter from the Superintendent as expressing concerns as to whether Mr. Neil's filing for a water right would adversely affect the Indians' use of Sand Creek water, and contends that the United States may not argue that the water was not timely developed when the United States objected to the water right application. The letter is not an objection to the application, does not "express concerns" or even mention adverse effects of the application on the Indians. It merely reports the application, and that some Indians had reportedly used water from Sand Creek for 20 years. (Ex. 40054.)

Summary of Allotments 133, 38, 39, 123, and 122

The claimed lands within Allotments 133, 38, 39, 123, and 122 have been continuously authorized for irrigation from the commingled water of Scott and Sand Creeks under Permit S-25987 / Certificate 34993 since 1957 (Ex. 50134) and have continued to be irrigated as claimed.

Claimants have established *Walton* water rights for 110 acres within Allotment 122, 156 acres within Allotment 39, 160 acres within Allotment 123, 160 acres within Allotment 133, and 140 acres within Allotment 38.

Reasons for Modifications: 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, especially pertaining to beneficial use of water prior to transfer from Indian ownership, beneficial use of water being made with reasonable diligence after transfer to non-Indian successors, and continued use of a developed right; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

ALLOTMENTS 168, 91, 94, 184 and 84:

Claimant argues that Allotments 168, 91, 94, 184 and 84 were irrigated out of Sand Creek before the allotments passed out of Indian ownership. This argument is based on the conclusion that a ditch listed in a farming and grazing lease for Allotment 94 in 1920 is the same as an "old ditch" shown on a Final Proof Survey map in ~~1951~~ 1962. This ditch was established by the time a 1952 aerial photograph was taken, and a ditch visible on the photograph matches the contours of the "old ditch" labeled on the survey map. This ditch is continuous from north to south throughout Allotments 170, 92, 94 and 91, and extends into 84. The Claimant asserts that this ditch was used for irrigation for some time before 1920, as evidenced by the description of the Superintendent in the letter of 1914 about the water right application of Neil, discussed in connection with Allotments 133 and 38, above, in which the Superintendent notes, "The Indians tell me that the waters of Sand Creek have been used by them for irrigation purposes and for livestock for more than 20 years." Thus, Claimant asserts, the "old ditch" must have been used prior to 1900 by "the Indians" who discussed irrigation with the

Superintendent in 1914. This assertion is supported with respect to Allotment 94. However, with respect to Allotments 168, 91, 184 and 84 there is no evidence of beneficial use of water that may have occurred from use of this ditch.

Among this group of allotments, the "old ditch" would have conveyed water from Sand Creek to Allotments 84, 91 and 94. The proximity and direction of the ditch relative to Sand Creek in conjunction with the testimony given by the United States that prior to the installation of the Sand Creek Ditch by 1955, under high flows Sand Creek would spread out to the east, creates a plausible scenario for Sand Creek water (exclusive of any other source) being conveyed in this ditch.

The grazing lease on Allotment 94 demonstrates that water was put to beneficial use on this allotment prior to its transfer to non-Indian successors in 1927.

With respect to Allotments 84 and 91, however, Claimant has established only that they could have been irrigated by the "old ditch." Allotments 81 and 94 passed out of Indian ownership at the latest in 1927. The first evidence of beneficial use of water on these allotments is in 1951, the priority date of water right Certificate 31364.

~~So much cannot be drawn from the evidence, particularly when the allotments to which the Superintendent referred in his letter were more than a mile away from any of the allotments in this group. Moreover, there is no evidence that the ditch described in the farming and grazing lease is actually the ditch shown in the Final Proof Survey. It cannot be established when the "old ditch" in the Final Proof Survey was constructed, except to say it was constructed at some time prior to 1951. The evidence also does not show what land was irrigated out of this ditch. The most that Claimant can provide is the speculation that, given the slope and contours of the ground, water from that ditch could have irrigated the parcels in question. Since Allotments 91, 94, 184 and 84 passed out of Indian ownership at the latest in 1927, it has not been shown that the property was irrigated prior to transfer from Indian ownership. In addition, the only evidence in the record shows a ditch serving the property in 1951. The actual date of development of~~

~~that ditch is unknown. The most that can be said, then, is that the ditch was developed at some time within the 24 years after the property passed out of Indian ownership. This is not sufficient to establish diligent development by the first non-Indian owner.~~

¶ Allotment 168 was transferred to the first non-Indian owner in 1937, but the "old ditch" did not pass through Allotment 168. According to the Final Proof Survey map, it passed through Allotment 170, to the west. It is therefore~~, again,~~ speculative whether water from this ditch ever was applied to Allotment 168. However, this particular parcel was subject to natural overflow from Sand Creek. A 1925 grazing lease on lands that included Allotment 168 demonstrates that water was put to beneficial use prior to its transfer to non-Indian successors in 1937.

The claimed lands within Allotment 94 and 71.8 acres claimed within Allotment 168 have been continuously authorized for irrigation from Sand Creek under Permit S-23064 / Certificate 31364 since 1951, and have continued to be irrigated as claimed.

The "old ditch" did not pass through Allotment 184. This allotment was transferred to the first non-Indian owner in 1918. Although this parcel was subject to natural overflow from Sand Creek, the first evidence of beneficial use of water on this allotment is in 1951, the priority date of water right Certificate 31364.

In summary, claimants have established *Walton* water rights for 156.9 acres within Allotment 94, along with the portion of Allotment 168 that was claimed from Sand Creek, being 71.8 acres. Claimants have not established *Walton* water rights for Allotments 84, 91, and 184.

Reasons for Modifications: 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, especially pertaining to beneficial use of water prior to transfer from Indian ownership, natural overflow, and continued use of a developed right; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

ALLOTMENTS 170, 92, 93, 16, 80, 81, 83, 82, 95, 97, 100, 101, 103, 104, 266, 559, 591, 1311, 1374, 1493:

~~Claimant's entire argument for a water right as to these allotments depends on natural overflow as the basis for a *Walton* right. Since, as discussed above, a *Walton* right requires a diversion of water, and may not be based upon natural irrigation, a water right cannot be allowed for these allotments.~~ The claims on these 20 allotments depend in the first instance on assertions of beneficial use of natural overflow. However, the evidence supports only three (Allotments 16, 92 and 93) as being subject to natural overflow from any of the claimed sources. And while natural overflow from Sand Creek may have spread over portions of Allotments 92, 93 and 16, there is no evidence on the record that beneficial use of water was made by the method of natural overflow on these allotments.

State-issued water rights cover certain of these allotments, and serves as evidence of beneficial use of water as of the priority date of the rights. With the exception of Allotment 95, however, the priority dates are too far removed from the dates of transfer of the allotments to non-Indian successors to constitute application of water to beneficial use with reasonable diligence.

Allotment 95 left Indian ownership in 1956, and these lands were covered under a 1958 state based water right Certificate 33523 from the same water source as claimed (the Williamson River). These lands have continued to be irrigated as claimed. Claimants have established *Walton* water rights from the Williamson River for 155.9 acres within Allotment 95.

The claims for the remaining 19 allotments are denied.

Reasons for Modifications: 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, especially pertaining to beneficial use of water prior to transfer from Indian ownership, beneficial use of water being made with reasonable diligence after transfer to non-Indian successors, natural overflow, and continued use of a developed

right; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

ALLOTMENT 532:

This allotment is subject to natural overflow. Furthermore, the Claimant argues that the ditches providing water to Allotment 532 were in place in 1955, prior to its acquisition by the first non-Indian owner, Earnest Bubb, in 1957. However, the existence of natural overflow or artificial diversion works that could have served a parcel is not sufficient evidence that beneficial use of water had actually been made. ~~of application of water to the ground~~. In order to make out a *Walton* right, Claimant must ~~show not only~~ demonstrate that beneficial use of water was ~~applied to~~ made on the property before it transferred, or was made with reasonable diligence after the property transferred to non-Indian successors. ~~but how much water and to what portion of the property it was applied.~~ There are no grazing leases or other evidence on the record demonstrating beneficial use of water by the method of natural overflow. In addition, the Claimant does not controvert the evidence presented by Clements that "no irrigation is evident until 1969 – 12 years after acquisition by the first non-Indian owner." Because a *Walton* claimant must show beneficial use with reasonable diligence ~~diligent development of irrigation~~ by ~~the first~~ non-Indian successors ~~owner~~, and such a delay does not establish the necessary diligence, a *Walton* right cannot be allowed for this allotment.

Reasons for Modifications: 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, especially pertaining to beneficial use of water prior to transfer from Indian ownership, beneficial use of water being made with reasonable diligence after transfer to non-Indian successors, and natural overflow; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

ALLOTMENTS 105 AND 267:

These allotments were acquired by the first non-Indian owner, McAuliffe, in 1926, and sold to D.O. Williams in 1939. Claimant asserts that Clements testified that a

ditch was visible in aerial photos taken in 1952, that Clements testified that he could see irrigation water coming from this ditch, and that since there was a reference to ~~a~~ "irrigable lands now under constructed ditch" in ~~a Certificate of Appraisement~~ standardized language on a FORM OF AGREEMENT – CIRCULAR NO. 1677A[15] from 1926 for Allotment 267 (Ex. 40088), that Clements' testimony shows that Allotments 105 and 267 were being irrigated in 1926, soon after transfer to the first non-Indian owner. This mischaracterizes Clements' testimony. He testified at hearing that he could see a feature on several maps, including the map dated 1952, and that at the southern end of the feature, on a map from 1961 he could see signs of irrigation which, in his opinion, came from "the ditch at the South end of that parcel." He also, however, testified that he did not know if the feature noted "was a water structure or not." ~~Clearly, then, Clements was not referring to that feature when he mentioned a "ditch at the south end of the parcel." Indeed, although the printed language of the Certificate of Appraisement refers to property as being "now under constructed ditch," the actual space for acreage under irrigation was left blank, and the property appraised as grazing land.~~ Certificates of Appraisement for Allotment 267 (Exs. 40086, 40089), dated 1921 and 1926, characterized the allotment as "best adapted for grazing" and as grazing "all" acres. In 1926, the blanks for "Irrigated" or "Irrigable" acres were left empty. That the only reference to a ditch was stock language on a form in conjunction with the Certificates of Appraisement showing lack of irrigation strongly suggests that this allotment was not being irrigated by a diversion or natural overflow in 1926.[16]

~~Additionally, the reference from the Certificate of Appraisement to Allotment 267 as being "now under constructed ditch" clearly does not refer to the feature noted on the aerial photograph, since that feature does not cross Allotment 267 at any point. It would therefore be unlikely to be the "ditch" referred to in the Certificate of Appraisement. If~~

[15] The full title of this circular is as follows: THIS FORM OF AGREEMENT TO BE EXECUTED BY PURCHASE TO PAY THE CONSTRUCTION AND OPERATION AND MAINTENANCE CHARGES ASSESED ASSESSED AGAINST THE IRRIGABLE LANDS PURCHASED UNDER INDIAN IRRIGATION PROJECTS. This standardized form was an agreement that the purchaser, D.P. McAuliffe, "will pay on a per acres basis all irrigation charges assessed or to be assessed against this land. . ."

[16] As discussed in a section below, these two allotments were subject to natural subirrigation from the Williamson River, which would explain, without contradiction, the 1926 characterization of the property as "grazing" and the presence of a 1926 grazing lease on Allotments 105 and 267.

~~the feature discussed above is not the ditch, as is probably the case, there is no evidence showing where the ditch, if any, referred to in the Certificate of Appraisement was located. Thus, the evidence does not establish the existence of a ditch serving even 267. There is even less evidence for a ditch that could have served Allotment 105.~~

The earliest evidence of irrigation on these allotments by anything other than natural subirrigation is the "feature" on the 1952 aerial photograph. This "feature" is exactly consistent with the irrigation canal on a 1964 final proof survey map for Permit S-25337/Certificate 33523, which has a priority date of 1958. The canal extends from the Williamson River through the NE corner of Allotment 105, southeast through Allotment 267 until it reaches the southern edge of irrigated acreage. Assuming Claimant's predecessors began using this canal to irrigate these allotments in 1952, this represents a 26-year period after transfer of the allotments to non-Indian ownership in 1926. This is not sufficient to demonstrate beneficial use of water with reasonable diligence. The claims for Allotments 105 and 267 are denied. ~~The evidence is not sufficient to show artificial diversion of water in a specified amount to benefit specified property prior to the transfer of the property to the second non-Indian owner in 1939. Consequently, a *Walton* right has not been established.~~

Reason for Modifications: 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, 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; to apply the appropriate legal bases to the Proposed Order's modified findings of fact. Additionally, the ALJ confused the contents Exhibits 40088 and 40089 (the FORM OF AGREEMENT – CIRCULAR NO. 1677A and a CERTIFICATE OF APPRAISEMENT, both issued in 1926). The second paragraph was stricken because it is confusing and not needed. Exhibits 50164, 50166 and 50167 are aerial photographs noted in Ron Yockim's October 28, 2004 DOCUMENT LIST as "ditches drawn by Mr. Clements at hearing." None of these maps have any handwritten notations in the vicinity of the Williamson River. The handwritten labeled ditches are consistent with the "old ditch" in Allotments 170, 92, 94, 91 and 84, and with the Sand Creek Ditch. Because the weight of the evidence already shows that beneficial use of water was not likely in the year 1926, it is not necessary to rely on documents don't pertain to the area in question, and may have been referenced by mistake.

ALLOTMENTS 86, 142, 143, 593, 1347½, 1383, 1387:

Claimant's brief did not discuss these allotments. Allotments 1347½ and 1387 could not have been irrigated until 1969, when ditches were extended to these properties from the Sand Creek Ditch. Allotment 1387 was transferred out of Indian ownership in 1955, and transferred to D.O. Williams in 1957. The evidence does not show, therefore, that it was irrigated before the subsequent non-Indian owner. Although the evidence is unclear as to when Allotment 1347½ was first transferred, it transferred no later than 1962. Therefore, because it is claimant's burden to establish all the elements of a *Walton* right, this lack of evidence defeats the claim as to this parcel. The record does not establish that beneficial use of water was made with reasonable diligence. No *Walton* right can be found as to these two parcels.

There is no evidence showing that Allotments 86, 142, 143, 593, or 1383 were irrigated prior to ~~2000~~ 1951, the priority date of water right Certificate 31364 which authorizes irrigation from the Williamson River on these five parcels. All of these parcels had been transferred out of Indian ownership between 1915 and 1927, and to the second non-Indian owner by 1948. Beneficial use of water was made not made with reasonable diligence after transfer to non-Indian successors. No *Walton* right can be found as to these five parcels.

Reasons for Modifications: 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, 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; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

UNALLOTTED PARCELS, A, B, C-1 and C-2:

These properties were transferred directly by the Klamath Tribes pursuant to the Klamath Termination Act without a prior allotment. All parties agree that although, strictly speaking, they are not *Walton* claims as they did not come through the Allotment process, they are subject to a similar analysis. ~~Although~~ The United States asserted that

there was no evidence as to when ~~they~~ Parcels A and B had transferred from Indian ownership.~~,~~ Exhibit 50140 shows that a portion of the property, being Parcels C-1 and C-2, ~~was~~ were transferred to Clarence and Beulah Clinton, who were members of the Klamath Tribe, in 1959. The legal description ~~does not, however,~~ matches the description ~~for any of the parcels noted except~~ of Parcel C-1 (Lot 3 within Section 5) and Parcel C-2 (E½ SE¼ NW¼, Section 6). That property apparently transferred to D.O. Williams prior to 1964, since it was included in a Final Proof Survey map filed by Williams in that year. The actual date of transfer out of Indian ownership is unknown. However, there is no evidence of an intervening owner between the Clintons and Williams. The property was developed for irrigation by Williams, a non-Indian owner, so soon after it was originally sold by the Klamath Tribe, that it should be considered to have been diligently developed by either the Indian owners, or the first non-Indian owner. Consequently, the acreage in Parcels C-1 and C-2 was under irrigation shortly after it was transferred out of Tribal ownership, and should be allowed as a water right. Parcels C-1 and C-2 ~~was~~ were also included in that Final Proof Survey map.~~, but the description of the property transferred to the Clintons does not include that parcel, so it cannot be determined when it left Tribal ownership, or whether an intervening non-Indian owner may be in the chain of title.~~ Water use has continued as claimed under the authority of Certificate 33422.

¶ Parcels A and B were outside the Final Proof Survey map, so there is no evidence that they have been irrigated.

A Tribal Right, analogous to a *Walton* right, should be allowed as to 95.1 acres, being 39.6 acres in Parcel C-1 and 55.5 acres in Parcel C-2. A water right subject to this adjudication has not been shown as to Parcels A~~,~~ or B. ~~and C-1.~~

Reasons for Modifications: To correct and clarify the elements of a Klamath Termination Act right; to provide clarity of evidence on the record and provide further support for the conclusions reached herein, especially pertaining to beneficial use of water prior to transfer from Indian ownership, beneficial use of water being made with reasonable diligence after transfer to non-Indian successors, and continued use of a

developed right; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

NATURAL OVERFLOW FROM CLAIMED SOURCES OF WATER

John Mosby testified that "I have personally observed the claimed lands being hayed, grazed and irrigated from the 1930s. The overflow in the spring from the Williamson River as well as water entering the marsh from other sources, resulted in lands being covered with water and/or subirrigated." (Affidavit of John Mosby at 2, Item 3.) This statement alone is not sufficient to establish that natural overflow from the claimed sources of water actually correspond to claimed lands having those same claimed sources.

The only corroborating evidence which specified overflow from a named source matching the source of water claimed on specific allotments was presented in the United States' testimony. Based on interpretation of aerial photographs the United States testimony demonstrates that water from Sand Creek, prior to the installation of the Sand Creek Ditch, under high flows would spread out to the east toward Klamath Marsh. (Attachments 3 and 4 to Claimants' Reply Brief – Hearing Transcript at 40-41.) The United States further specified that natural overflow from Sand Creek would spread onto Allotments 168, 92, 93, 16 and 184. (Ex. 40001 at 45, 47, 50, 53 62.)

Those allotments or portions of allotments that are subject to natural overflow from Sand Creek, but for which the claimed source is commingled water from Scott and Sand Creeks or from the Williamson River, do not qualify for a *Walton* right with Sand Creek as a source.

Except for a portion of Allotment 168, there is no evidence in the record that demonstrates beneficial use water by the method of natural overflow. A *Walton* right was established for a portion of Allotment 168 on the basis of natural overflow (*see above*).

Reasons for Modifications: To provide clarity of evidence on the record and provide further support for the conclusions reached herein, especially pertaining to natural overflow; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

NATURAL SUBIRRIGATION FROM THE WILLIAMSON RIVER:

The United States' testimony establishes that Allotments 95, 97, 100, 101, 103, 104, 266, 559, 1311, 1374, 267, 105 and portions of Allotments 82, 83, 591, and 1493, all of which are located south and east of the Williamson River, receive subirrigation due to the proximity of the river and the low lying nature of the land. (Exs. 40001 at 98-99; Attachments 9 to 11 to Claimants' Reply Brief – Hearing Transcript at 58-60.)

The evidence establishes that these portions of the claimed place of use are subject to natural subirrigation from the Williamson River. Subirrigation does not form the basis for a Walton right or a Klamath Termination Act right. Natural subirrigation is a privilege only, as such it cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others. No priority date, season of use, rate or duty shall attach to such a 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 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.

No Double Allocation

Allotment 95 both receives subirrigation and qualifies for a Walton right from a point of diversion on the Williamson River. So that no double allocation will be awarded, the Walton right is limited by the principle of beneficial use when the authorized place of use on this allotment is subject to subirrigation from the same source.

Reasons for Modifications: To provide clarity of evidence on the record and provide further support for the conclusions reached herein, especially pertaining to subirrigation; 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 with modifications, as set forth in Section A.8, above.
   b. The "Evidentiary Rulings" is adopted in its entirety.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.9, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.10, above.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.11, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 18. Consistent with Sections A.6, 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 787.2 acres, to approve livestock watering incidental to irrigation for 1356 head, to limit the season of use to April 1 to October 31 as claimed, and to describe the effects of naturally occurring subirrigation from the Williamson River on a portion of the claimed place of use.

2. The Amended Proposed Order issued on May 8, 2012, is adopted and incorporated in its entirety as if set forth fully herein.

3. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

4. 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 this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.

5. Portions of the claimed place of use are subject to natural subirrigation from the Williamson 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 may not be transferred to any other property. This 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.

5. Based on the file and record herein, IT IS ORDERED that Claim 18 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 18

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 31 S, R 7 E; T 31 S, R 8 E; and T 32 S, R 8 E

CLAIMANTS: JOHN M. MOSBY AND MARILYN MOSBY
1133 NORTH 'H' ST, SUITE L
LOMPOC, CA 93436

SOURCES OF WATER:
SCOTT CREEK, tributary to SAND CREEK,
SAND CREEK, tributary to the WILLIAMSON RIVER, and
The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
IRRIGATION OF 1205.7 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 1356 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

726.0 ACRES FROM COMMINGLED WATER FROM SCOTT CREEK (POD 1) AND UPPER SAND CREEK (POD 2),

228.7 ACRES FROM LOWER SAND CREEK (POD 3), AND

251.0 ACRES FROM THE WILLIAMSON RIVER (POD 4)

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

18.15 CFS OF COMMINGLED WATER, BEING 4.78 CFS FROM SCOTT CREEK (POD 1) AND 13.37 CFS FROM UPPER SAND CREEK (POD 2), MEASURED AT THE POINTS OF DIVERSION,

5.72 CFS FROM LOWER SAND CREEK (POD 3) MEASURED AT THE POINT OF DIVERSION, AND

6.27 CFS FROM THE WILLIAMSON RIVER (POD 4) MEASURED AT THE POINT OF DIVERSON.

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 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Remarks
POD 1	Scott Creek	31 S	7 E	WM	1	NE SE	COMMINGLED WATER FROM UPPER SAND CREEK AND SCOTT CREEK
POD 2	Upper Sand Creek	31 S	7 E	WM	28	NW NW	
POD 3	Lower Sand Creek	31 S	8 E	WM	20	NW NW	
POD 4	Williamson River	31 S	8 E	WM	33	SE NW	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	8 E	WM	5	NE SW		40.0	POD 1 and POD 2
31 S	8 E	WM	5	NW SW		40.0	
31 S	8 E	WM	5	SW SW		40.0	
31 S	8 E	WM	5	SE SW		40.0	
31 S	8 E	WM	7	NE NE		40.0	
31 S	8 E	WM	7	NW NE		40.0	
31 S	8 E	WM	7	SW NE		38.0	
31 S	8 E	WM	7	SE NE		38.0	
31 S	8 E	WM	7	NE NW		40.0	
31 S	8 E	WM	7	NW NW	1	31.6	
31 S	8 E	WM	7	SW NW	2	30.4	
31 S	8 E	WM	7	SE NW		38.0	
31 S	8 E	WM	17	NE NE		33.5	
31 S	8 E	WM	17	NW NE		40.0	
31 S	8 E	WM	17	SW NE		33.0	
31 S	8 E	WM	17	SE NE		3.5	
31 S	8 E	WM	17	NE NW		40.0	
31 S	8 E	WM	17	NW NW		40.0	
31 S	8 E	WM	17	SW NW		40.0	
31 S	8 E	WM	17	SE NW		40.0	
31 S	8 E	WM	20	SW NE		35.5	POD 3
31 S	8 E	WM	20	SE NE		36.3	
31 S	8 E	WM	29	NE NW		39.3	
31 S	8 E	WM	29	NW NW		39.0	
31 S	8 E	WM	29	SW NW		39.3	
31 S	8 E	WM	29	SE NW		39.3	
32 S	8 E	WM	5	NE NW	3	39.6	POD 4
32 S	8 E	WM	6	NE SE		15.5	
32 S	8 E	WM	6	SE SE		40.0	
32 S	8 E	WM	8	NE NW		39.8	
32 S	8 E	WM	8	NW NW		39.8	
32 S	8 E	WM	8	SW NW		39.8	
32 S	8 E	WM	8	SE NW		36.5	

FURTHER LIMTATIONS:

THE RIGHT TO USE WATER IS LIMITED BY THE PRINCIPLE OF BENEFICIAL USE WHEN THE AUTHORIZED PLACE OF USE IS SUBJECT TO SUBIRRIGATON FROM THE SAME SOURCE.

[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
SCOTT AND MARGIE RUNELS	)	DETERMINATION
	)	
_____	)	Water Right Claim 19

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 19 (Claimants: SCOTT AND MARGIE RUNELS) and its associated contests (2787, 2819, 3437, and 4077) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 166.

2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER for Claim 19 on November 18, 2004. The record was reopened at the request of OWRD to identify the points of diversion and the number of irrigated acres by quarter-quarter. An AMENDED PROPOSED ORDER (First Amended Proposed Order) was issued on February 22, 2005. Claimant Margie Runels filed exceptions to both orders within the exception filing deadlines.

3. On June 20, 2007, OWRD filed a second request to reopen the record to allow further testimony and cross examination. A second AMENDED PROPOSED ORDER (Second Proposed Order) was issued on August 14, 2008. The First Amended Proposed Order was adopted and incorporated by reference into the Second Amended Proposed Order. (Second Amended Proposed Order at 4.) No exceptions were filed to the Second Proposed Order.

4. The exceptions filed have been reviewed and considered in conjunction with the entire record for Claim 19. The exceptions are found to be persuasive in part. In response to the persuasive exceptions, modifications to the First Amended Proposed Order are made as described in Section A.7., A.8, and A.9, below.

Note on Modifications

This Partial Order of Determination modifies certain parts of the Second Amended Proposed Order. This Partial Order of Determination also modifies certain parts of the First Amended Proposed Order. Modification of the First Amended Proposed Order is necessary because the Second Amended Proposed Order incorporates the First Amended Proposed Order by reference only. The Administrative Law Judge did not reprint the entirety of the First Amended Proposed Order in his Second Amended Proposed Order.

Modifications to the First Amended Proposed Order

5. The First Amended 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.
   d. The "Findings of Fact," is adopted with modifications, as set forth in Section A.7. below.
   e. The "Opinion" is adopted with modifications, as set forth in Section A.8, below.
   f. The section titled "Amended Proposed Order" is adopted with modifications, as set forth in Section A.9, below. Consistent with Sections A.7, A.8, and A.9, below, the outcome of the Order has been modified as to recognize a right for irrigation on an additional 177.8 acres.

6. **Evidentiary Rulings.** Within the section titled "Evidentiary Rulings" of the Proposed Order, the third to last sentence within the first Paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   The United States also moved to amend a reference in Exhibit 166 E 00040022 to read "R ~~9~~ 7 E," instead of "R ~~7~~ 9 E," to correct a typographical error.

   Reason for Modification: To correct a scrivener's error.

7. **Findings of Fact.**
   a. The Proposed Order's Finding of Facts #2, 3, 4, 5, and 6 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   (2) Allotment Nos. 11 and 13 were transferred to non-Indians in 1924 and 1920, respectively. (Clements Testimony at 52, ¶ 61.) ~~There was almost no irrigation of Allotments Nos. 11 or 13 prior to the mid-1970s. (*Id.*)~~ The first evidence of beneficial use of water on these two allotments is water right Permit S-37118 which was issued for irrigation from Sand Creek and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A photograph of Allotment 11 taken in 1976

shows approximately three acres of irrigation or spilling from the ditch along the western boundary of that allotment. (*Id.*) The first irrigation on Allotment 13 appears in photographs taken in 1974, 1976 and 1979, in which one to two acres received water. (*Id.*)

(3) Allotment No. 12 was transferred to the first non-Indian in 1918. There is no evidence of development of irrigation near the time of transfer, except a letter in which the owner requested water for use on a few acres of irrigable land in about 1919. (*Id.* at 53, ¶ 61) The issue in the letter is the landowner's improper maintenance of a flume. The flume was constructed to convey water to his land which crossed over onto his neighbors land. Leakage from the flume caused damage to his neighbor's crop. (Clements Direct Ex. 40032.) ~~There~~ Although this is ~~no~~ evidence that the requested water was delivered, the letter gives no indication as to the location of the land to which the flume was conveying water. ~~and no evidence of any irrigation of Allotment No. 12 from 1918 to 1952. (*Id.*)~~ The earliest evidence of irrigation on this allotment dates to sometime after 1930 when natural overflow from Sand Creek was spread across Sections 18 and 19 for irrigation using single plow furrow ditches, and continued into the 1940s and 1950s. (Runels Ex. S-3 [Affidavit of Lee Hunsaker].) Water right Permit S-37118 was issued for irrigation from Sand Creek covering lands within this allotment, and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A final proof survey map dated May 27, 1994, depicts the acreage under irrigation. (OWRD Ex. 1 at 85). Aerial photographs between 1952 and 1979 show different areas of between 8 and 23 acres receiving water. (~~*Id.*~~ Clements Testimony at 53, ¶ 61.) Photographs taken between 1987 and 1994 show no irrigation on Allotment No. 12. (*Id.*)

(4) Allotment Nos. 530 and 534 were transferred to non-Indian ownership in 1960-1961. (*Id.*) An aerial photograph from 1961 shows 14 acres and 41 acres being irrigated on Allotment Nos. 530 and 534, respectively. (*Id.*) Allotment No. 533 was transferred to the first non-Indian in 1921 and owned by that first non-Indian until 1928. There is no evidence of any irrigation of that allotment (533)

during that period of ownership. (*Id.*) ~~There is no evidence of any irrigation of Allotment No. 533 from 1928 to 1952. (*Id.*) Evidence shows a significant period of non-use of water on these three allotments, from 1976 to 1994 for Allotment No. 530, and at least 1979 to 1994 for Allotment Nos. 534 and 533. (*Id.* at 53-54, ¶ 61.)~~ The earliest evidence of irrigation on Allotment Nos. 530, 534 and 533 dates to sometime after 1930 when natural overflow from Sand Creek was spread across Sections 18 and 19 for irrigation using single plow furrow ditches, and continued into the 1940s and 1950s. (Runels Ex. S-3 [Affidavit of Lee Hunsaker].) Mr. Clements' testimony establishes that a 1952 aerial photograph indicates substantial portions of Allotment Nos. 530 and 534 were flooded that year, and that the channel of Sand Creek flows onto and through these allotments from which the high flows would spread over the lands adjacent to the stream channel. (Clements Testimony at 24, 25, 29) Water right Permit S-37118 was issued for irrigation from Sand Creek covering lands appurtenant to these three allotments, and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A final proof survey map dated May 27, 1994 shows irrigation on the lands claimed within these three allotments. (OWRD Ex. 1 at 85). Beneficial use of water did not occur for at least 9 years after transfer from Indian ownership on Allotment No. 533. Beneficial use of water from Sand Creek was made with reasonable diligence on 104.4 acres on Allotment No. 530 and 74.3 acres on Allotment No. 534.

(5) Allotment No. 1442 was transferred out of Indian ownership in 1918 and conveyed to the next owner in 1924. (*Id.* at 54, ¶ 61.) There is no evidence of water use on Allotment No. 1442 from 1918 to sometime after 1930. ~~1924, nor any evidence of irrigation on the parcel from 1924 to 1952. (*Id.*)~~ The earliest evidence of irrigation this allotment dates to sometime after 1930 when natural overflow from Sand Creek was spread across Sections 18 and 19 for irrigation using single plow furrow ditches, and continued into the 1940s and 1950s. (Runels Ex. S-3 [Affidavit of Lee Hunsaker].) Aerial photographs show no irrigation of the land from 1976 to 1987. (~~*Id.*~~ Clements Testimony at 54, ¶ 61.)

However, water right Permit S-37118 was issued for irrigation from Sand Creek covering lands appurtenant to this allotment, and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A final proof survey map dated May 27, 1994 shows irrigation on the lands claimed within this allotment. (OWRD Ex. 1 at 85). Beneficial use of water did not occur for at least twelve years after transfer from Indian ownership on Allotment No. 1442.

Reasons for Modifications: The Adjudicator has determined that certain of the ALJ's original findings were not supported by a preponderance of evidence in the record; 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; to provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership; to add clarification using evidence on the record.

(6) Allotment Nos. 120, 121, 208 and 1122 were transferred out of Indian ownership between 1920 and 1924. They were conveyed to the next owner between 1928 and 1936. (~~*Id.*~~ Clements Testimony at 54, ¶ 61.) All four allotments were within the boundaries of the Sand Creek Irrigation Project as it was initially completed in about 1920. (*Id.*) The lands within Allotment Nos. 120 and 121 were withdrawn from the project in 1939. (*Id.* at 54-55, ¶ 61.) Although the lands may have been irrigated under the project between 1920 and 1939, there is no evidence of ~~continuous~~ continued irrigation of the lands in Allotments 120 and 121 for a period of thirty-four years from 1939 to 1973, after they were withdrawn from the project in 1939. (*Id.* at 55, ¶ 61.) A letter dated 1955, from counsel of the current land owner (Dixon) protesting operation and maintenance assessments of irrigation of Sections 8, 18, 9 and 5, being the "old Woodruff property," states that "this property derives no beneficial use from the waters of the Sand Creek Project." (Clements Direct Ex. 40042.) Allotments 120 and 121 are located in Section 18. Aerial photographs of the allotments show that water uses since 1952 have consisted of minor ditch spillage, stock watering or sub-irrigation with long periods of non-use in between. (~~*Id.*~~ Clements Testimony at 55, ¶ 61.) Beneficial use of water resumed after 1973 as evidenced by water right

Permit S-37118 which was issued for irrigation from Sand Creek covering lands appurtenant to Allotment Nos. 120 and 121. (OWRD Ex. 1 at 80-84.)

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.

b. The last sentence in Finding of Fact # 7 is replaced as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

~~Claimants presented no evidence that the period of use should be outside of March 1 – October 31.~~ Although Claimants claimed a period of use March 15 through November 15 (OWRD Ex. 1 at 5), a season of use of March 1 through October 31 is a permissible amendment.

Reasons for Modification: The Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record; to add clarification using evidence on the record. In addition, OWRD finds that the shift in the season of use irrigation from that which was originally claimed (March 15 through November 15), to March 1 through October 31, as proposed by the ALJ in the First Amended Proposed Order is a permissible amendment because (1) it is not an enlargement to the length of the irrigation season, (2) the ALJ relied on the same standard season of use as stated in the Preliminary Evaluation for Claim 19, whose publication preceded the October 1, 1999 deadline to make amendments that do not enlarge the original claim, and (3) no exceptions were filed against the March 1 though October 31 season of use proposed in the First Amended Proposed Order.

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

OWRD removed the ALJ's discussions regarding the elements of a *Walton* Claim, including the first non-Indian purchaser rule 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 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

Claim 19 is a claim for water rights for lands purportedly within the boundaries of the former Klamath Indian Reservation. Claims for water rights of non-Indian successors to Indian water rights are commonly referred to as *"Walton"* water rights.[1]

*****

Claimants have the burden of proof to establish the claim by a preponderance of the evidence. ORS 539.110; ORS 183.450(2); *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 a 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 not true. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). Claimants have failed to meet their burden.[2]

Claimants' lands were within the boundaries of the former Klamath Indian Reservation. However, Claimants failed to prove the remaining elements for a *Walton* claim with respect to ~~each of the 11~~ Allotments 11, 12, 13, 533, 1442, 120 and 121. Claimants did not prove that irrigation was initiated by Indian predecessors or by ~~the first~~ non-Indian successors ~~owner of each allotment~~ with diligence within a reasonable period of time after transfer of the land ~~to the first non-Indian~~ from Indian ownership, ~~and~~ or that the land ~~has~~ had been continued to be irrigated without long periods (34 years) of non-use. ~~continuously.~~

[1] A *"Walton"* right refers to a term derived from the *Colville Confederated Tribes v. Walton* line of cases that address the issue of a claim for a water right of non-Indian successors to Indian allottees. *Colville Confederated Tribes v. Walton*, 460 F Supp 1320 (ED Wash 1978) (*Walton I*); *Colville Confederated Tribes v. Walton*, 647 F2d 42 (9th Cir 1981), *cert den* 454 US 1092 (1981) (*Walton II*); *Colville Confederated Tribes v. Walton*, 752 F2d 397 (9th Cir 1985), *cert den* 475 US 1010 (1986) (*Walton III*). An Indian "allotment" is a parcel of land on an Indian reservation awarded to an individual member of an Indian tribe, *i.e.*, an allotee, pursuant to the General Allotment Act of 1887, 24 Stat. 388. *See, e.g., Walton II*, 647 F2d at 45.

[2] With the exception of 138 acres of Allotment No. 208 and 160 acres of Allotment No. 1122, to which the United States has stipulated that Claimants have established a *Walton* water right.

There was no evidence of any irrigation of Allotments 11 and 13, which were transferred to non-Indians in the 1920s, before the 1970s. There was no evidence of any irrigation of Allotment 12, which was transferred to the first non-Indian in 1918, until sometime after 1930. ~~from 1918 to 1952.~~ Although aerial photographs taken between 1952 and 1979 show some areas in Allotment 12 receiving water, photographs from 1987 to 1994 show no irrigation. Claimants have failed to meet the requirements for a *Walton* water claim for Allotments 11, 12 and 13.

Allotment Nos. 530 and 534 were transferred to non-Indian ownership in 1960 or 1961. Allotment No. 533 was transferred to the first non-Indian in 1921. There is no evidence of any irrigation on Allotment No 533 until sometime after 1930, ~~from 1921 to 1928, the period~~ nine years after the allotment was first owned by ~~that~~ non-Indian successors. ~~, or from 1928 to 1952.~~ Beneficial use of water on Allotment No. 533 was not made by the Indian owner prior to transfer, nor made with reasonable diligence by non-Indian successors. Claimants failed to establish a *Walton* water right for Allotment No. 533.

¶ There is sufficient evidence to show that Allotments 530 and 534 were irrigated during the 1930s, 1940 and 1950s by natural overflow from Sand Creek. The water was spread over the land using single plow furrow ditches. This is further substantiated in the earliest available aerial photograph, taken in 1952. Beneficial use of water was made prior to the transfer from Indian ownership to non-Indian successors. ~~Although~~ A 1961 aerial photograph shows 14 acres and 41 acres being irrigated on Allotment Nos. 530 and 534, respectively, that year. ~~, there were long periods of non-use of water on Allotment Nos. 530, 533 and 534 between 1976 and 1994. Claimants failed to establish a Walton water right for Allotment Nos. 530, 533 and 534.~~ Irrigation has continued on these two allotments as claimed, as evidenced by water right Permit S-37118 which has a priority date of 1973, and a corresponding final Proof Survey map dated 1974. A *Walton* water right for irrigation from Sand Creek has been established on 104.4 acres within Allotment No. 530, and for 74.3 acres within Allotment No. 534. The claimed point of diversion is located in Lot 4, SW ¼ SW ¼ , Section 18, Township 31 South, Range 8 East, W.M.

Allotment No. ~~1142~~ 1442 was transferred to the first non-Indian in 1918, and transferred to the next owner in 1924. There is no evidence of irrigation on the land in this allotment until sometime after 1930, twelve years after transfer from Indian ownership. ~~from 1918 to 1924, from 1924 to 1952, or from 1976 to 1987.~~ Claimants failed to establish the elements of a *Walton* water right on Allotment No. 1442.

Allotment Nos. 120, 121, 208 and 1122 were transferred out of Indian ownership between 1920 and 1924, and conveyed to the next owner between 1928 and 1936. All four of these allotments were within the boundaries of the Sand Creek Irrigation Project, which was initially completed in about 1920. The lands within Allotment Nos. 120 and 121 were withdrawn from the project in 1939. While those lands may have been irrigated under the project between 1920 and 1939, there was no evidence of irrigation of these two allotments for a period of 34 years, being 1939 to 1973. ~~after 1939~~. ~~Claimants failed to prove the elements of a *Walton* water right for Allotment Nos. 120 and 121.~~ To the extent that a *Walton* water right may have been established on these allotments, they were abandoned due to a 34-year period of nonuse. "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. Intent to abandon may be inferred through a sufficiently long enough period of non-use. *See, e.g., In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996). Under the facts in this case, 34 years is a sufficiently long period of time for an intent to abandon the water right on these allotments to be inferred."

Based on the stipulation of the United States of irrigation of lands within Allotment Nos. 208 and 1122, Claimants have established the elements of a Walton water right for 138 acres for Allotment No. 208 and 160 acres for Allotment No. 1122, **the legal description for the irrigated acreage and points of diversion of which are specifically described in Finding of Fact No. 7, above.** The Preliminary Evaluation done by ~~ORWD~~ OWRD found an irrigation rate of 1/40th cfs/acre, a duty of 3.5 af/acre,

and a period of use of March 1 – October 31. ~~Claimants failed to establish a period of use outside of March 1 – October 31.~~

Claimants make a number of assertions in their written Closing Argument which warrant discussion.

Claimants contend that they have established a *Walton* water right for Claim 19 because of the determination made by the special water master in 1992, which was adopted by the Circuit Court. That determination established relative water rights between Claimants and Mosby, as a result of a civil lawsuit filed by Mosby against Claimants. However, the outcome of that lawsuit has no bearing on this proceeding. The determination states it is an interim resolution to the water use dispute only between Claimants and Mosby, pending final adjudication of the Klamath Basin. The purpose of this proceeding is to determine whether Claimants have presented evidence to establish a *Walton* water right. Moreover, the United States and the Klamath Tribes were not parties to the lawsuit filed in Circuit Court and are not bound by it. Claimants cannot establish a *Walton* water right in this proceeding based on the interim determination by the special water master.

Claimants also make assertions in their Closing Argument without any evidence in the record to support those assertions, or which while they may possible be true, do nothing to establish the elements of a *Walton* water right.

~~Claimants' reliance on language in the 1992 Interim Order, that files of the OWRD show continuous irrigation activity on Mosby's and their property from at least the mid-1970s to the present, does nothing to establish the initiation of irrigation by the first non-Indian owner on any of the allotments, nor does it establish continuous irrigation on the allotments.~~

Claimants' assertions that maps or other evidence in the record show irrigation from Sand Creek, show irrigation on some sections of land, or that OWRD issued water

permits out of Sand Creek during the 1950s, '60s and '70s, do not establish the elements of a *Walton* water right for Claimants on the allotments. As discussed earlier in this decision, on certain allotments Claimants failed to establish irrigation by Indian predecessors or by ~~the first~~ non-Indian successors ~~owner~~ within a reasonable period of time after transfer of the land to the first non-Indian owner. And the evidence establishes that rights on certain allotments have been abandoned due to an extended period of non-use. ~~, and that the land has been irrigated continuously.~~

Claimants charge in their Closing Argument that, "whenever someone tried to claim an Indian right * * * the neighbors would complain and the water master would try to shut them down." (Claimants' Closing at 1, ¶ 9.) There is no evidence in the record to support this assertion.[3]

Reasons for Modifications: To correct and clarify the elements of a *Walton* water right; to provide consistency with the above Modified Proposed Order Findings of Fact; to provide clarity of evidence on the record; to further substantiate approval of the claim; to apply the appropriate legal basis/bases to the proposed order's modified findings of fact; to correct scrivener's errors.

9. **Order.** Within the section titled "Amended Proposed Order," Section (1) is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 19. Section (2) is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> (2) Claimants failed to establish the elements of a *Walton* right for the remaining allotments of Claim 19 (*i.e.*, Allotment Nos. 11, 12, 13, 120, 121, ~~530,~~ 533, ~~534~~ and 1442). The claim for water rights on those allotments should be denied.

Reason for Modifications: To provide consistency with Findings of Facts A.8 and A.9.

[3] The February 3, 2004 Scheduling Order informed all participants of the requirement that they file in writing their witnesses' direct testimony no later than April 23, 2004. Claimants filed no written direct testimony.

Modifications to the Second Amended Proposed Order

10. The Second Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact and Conclusions of Law" is adopted in its entirety except as modified under Finding of Fact A.11, below, and (2) the section titled "Amended Proposed Order" is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 19.

11. **Findings of Fact and Conclusions of Law.**

a. Section 3 pertaining to Exhibit S3 is modified as shown below. Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

3. Exhibit S3, memoranda, pleadings, affidavits, and exhibits from Mosby v. Runels, 88-241CV, do not establish Walton rights on the claimed allotments.

Claimants submitted a significant number of documents filed in a civil court proceeding brought against them by a neighboring land owner. Many of these documents constitute argument rather than evidence. However, the Affidavit of Lee Hunsaker provides evidence to establish beneficial use of naturally overflowing water on certain allotments within a reasonable time period following transfer from Indian ownership. ~~Ignoring for a moment that many of these documents constitute argument rather than evidence, I find that, even considering them in a light most favorable to Claimants, the proffered documents do not provide any information to establish *Walton* rights on the claimed lands. These court documents, many of which were in evidence at the time ALJ Betterton issued his Amended Proposed Order, do not establish irrigation of the claimed allotments by the first non-Indian owner or continuous irrigation thereafter.~~

b. The last paragraph in Section 6 pertaining to Exhibit S6 is modified as shown below. Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

~~In conclusion, I find the newly submitted documents do not provide sufficient evidence to establish the claimed water rights on the claim 19 lands outside the stipulated acreage. Accordingly, I find no basis upon which to set aside or modify ALJ Betterton's Amended Proposed Order issued February 22, 2005.~~ In conclusion, the Affidavit of Lee Hunsaker (part of the newly submitted S-3) is sufficient, in combination with other evidence in the record,

to establish water rights on Allotments 530 and 534. The newly submitted evidence is insufficient to establish the claimed water rights on the other allotments outside the stipulated acreage.

Reason for Modifications: To make the findings of fact and conclusions of law in the Second Amended Proposed Order consistent with the Adjudicator's modifications to the First Amended Proposed Order.

B. DETERMINATION

1. The First Amended 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 "Opinion" is adopted with modifications, as set forth in Section A.8, above.
   f. The section titled "Amended Proposed Order" is adopted with modifications, as set forth in Section A.9, above. Consistent with Sections A.7, A.8, and A.9, above, the outcome of the Order has been modified as to recognize a right for irrigation on an additional 177.8 acres.

2. The Second Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact and Conclusions of Law" is adopted in its entirety except as modified under Finding of Fact A.11, above, and (2) the section titled "Amended Proposed Order" is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 19.

3. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

4. The shift in the season of use from irrigation from the season originally claimed (March 15 through November 15), to March 1 through October 31, constitutes a permissible amendment of the claim. The March 1 through October 31 season was first identified in the Preliminary Evaluation for Claim 19, which was issued prior to the beginning of open inspection in the Klamath Adjudication, and therefore complies with OAR 690-030-0085. In addition, the shifted season does not enlarge the overall length of the season of use, and therefore is not a "new" claim that would not be permitted pursuant to ORS 539.210.

5. Based on the file and record herein, IT IS ORDERED that Claim 19 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 19

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 31 S, R 7 E and T 31 S, R 8 E

CLAIMANT: SCOTT AND MARGIE RUNELS
PO BOX 39
FORT ROCK, OR 97735

SOURCES OF WATER:
SCOTT CREEK, tributary to SAND CREEK, and
SAND CREEK, tributary to the WILLIAMSON RIVER, and

PURPOSE OR USE:
IRRIGATION OF 476.7 ACRES AS FOLLOWS:

298.0 ACRES FROM COMMINGLED WATER FROM SCOTT CREEK (POD 1) AND UPPER SAND CREEK (POD 2), AND

178.7 ACRES FROM LOWER SAND CREEK (POD 3)

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

7.4 CFS OF COMMINGLED WATER FROM SCOTT CREEK (POD 1) AND UPPER SAND CREEK (POD 2), MEASURED AT THE POINTS OF DIVERSION, AND

4.5 CFS FROM LOWER SAND CREEK (POD 3) MEASURED AT THE POINT OF DIVERSION, AND

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 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks / Measured Distance
POD 1	Scott Creek	31 S	7 E	WM	16	NW SE		COMINGLED WATER FROM SAND CREEK AND SCOTT CREEK
POD 2	Upper Sand Creek	31 S	7 E	WM	28	NW NW		
POD 3	Lower Sand Creek	31 S	8 E	WM	18	SW SW	4	980 FEET NORTH & 360 FEET EAST FROM SW CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	8 E	WM	7	NE SW		40.0	POD 1 and POD 2
31 S	8 E	WM	7	NW SW	3	28.2	
31 S	8 E	WM	7	SW SW	4	29.8	
31 S	8 E	WM	7	SE SW		40.0	
31 S	8 E	WM	7	NE SE		40.0	
31 S	8 E	WM	7	NW SE		40.0	
31 S	8 E	WM	7	SW SE		40.0	
31 S	8 E	WM	7	SE SE		40.0	
31 S	8 E	WM	18	NE NW		34.3	POD 3
31 S	8 E	WM	18	SW SW	4	10.6	
31 S	8 E	WM	19	NE NE		37.0	
31 S	8 E	WM	19	NW NE		37.3	
31 S	8 E	WM	19	NE NW		40.0	
31 S	8 E	WM	19	NW NW	1	19.5	

[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 WILLIAM E. DOMES, PRESIDENT, SAVANAH LAND CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 20

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 18, 1991, WILLIAM E. DOMES, PRESIDENT, SAVANAH LAND CO. (Claimant) (7000 FARMER RD, RICKEALL, OR 97371) timely submitted a Statement and Proof of Claim (Claim 20) 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 20 was submitted for a total of 2 acre-feet of water from natural overflow and flooding from Big Springs Creek and the Williamson River, tributaries of the Klamath River, for wildlife use on 311 acres. The claimed period of use is year-round. The claimed priority date is "1864."

3. WILLIAM E. DOMES, PRESIDENT OF SAVANAH LAND CO., signed Claim 20 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 5, 2000, the Claimant timely filed Contest 2727 to the Preliminary Evaluation of Claim 20.

6. On May 8, 2000, the United States of America timely filed Contest 3722 to the Claim and/or Preliminary Evaluation of Claim 20.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4078 to the Claim and/or Preliminary Evaluation of Claim 20.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 167.

9. On June 28, 2004, the Claimant, OWRD, the United States of America, and the Klamath Tribes, executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all contests to Claim 20.

10. On June 30, 2004, the Adjudicator withdrew Case 167 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. As stipulated in the Settlement Agreement, the use of water is a privilege only, and is limited to the acceptance of natural overflow, sub-irrigation, and /or flooding for wildlife use on 311 acres.

3. The claimed place of use is subject to natural overflow, sub-irrigation, and /or flooding from Big Springs Creek and the Williamson 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 for this portion of Claim 20 subject to natural overflow, sub-irrigation, and /or flooding. 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, sub-irrigation, and /or flooding occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural overflow, sub-irrigation, and /or flooding. 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, sub-irrigation, and /or flooding is located as follows:

NATURAL OVERFLOW, SUB-IRRIGATION, AND/OR FLOODING FOR WILDLIFE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
31 S	8 E	WM	1	NE NE	10	36.8
31 S	8 E	WM	1	NW NE	11	17.2
31 S	8 E	WM	1	NW NE	1	19.3
31 S	8 E	WM	1	SW NE	4	30.3
31 S	8 E	WM	1	SW NE	9	9.6
31 S	8 E	WM	1	SE NE	9	40.0

NATURAL OVERFLOW, SUB-IRRIGATION, AND/OR FLOODING FOR WILDLIFE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
31 S	8 E	WM	1	NE SE	8	39.5
31 S	8 E	WM	1	NE SE	5	0.5
31 S	8 E	WM	1	NW SE	8	4.6
31 S	8 E	WM	1	NW SE	5	34.5
31 S	8 E	WM	1	SW SE	7	8.3
31 S	8 E	WM	1	SW SE	6	30.8
31 S	8 E	WM	1	SE SE	7	39.2
31 S	8 E	WM	1	SE SE	6	0.4

See OWRD INVESTIGATION MAP – T 31 S, R 8 E

4. Based on the file and record herein, IT IS ORDERED that Claim 20 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 EDWARD D. TOMPKINS AND MERRIE L. TOMPKINS, AS TRUSTEES OF THE DON AND MERRIE L. TOMPKINS FAMILY REVOCABLE TRUST DATED JULY 13, 1998; WILLIS STANLEY TOMPKINS	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 21

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 21 (Claimants: EDWARD D. TOMPKINS AND MERRIE L. TOMPKINS, AS TRUSTEES OF THE DON AND MERRIE L. TOMPKINS FAMILY REVOCABLE TRUST DATED JULY 13, 1998; WILLIS STANLEY TOMPKINS) and its associated contests (14, 15, 3723 and 4079) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 168.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 21 on February 23, 2006.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Claimants' Edward D. Tompkins and Merrie L. Tompkins, as trustees of the Don and Merrie L. Tompkins Family Revocable Trust, and Willis Stanley Tompkins. Responses to the Claimants' Exceptions were filed by the United States of America within the response filing deadline.

4. On January 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order. Except as modified, the Amended Proposed Order fully incorporated the 2006 Proposed Order.

5. Exceptions were jointly filed to the Amended Proposed Order within the exception filing deadline by the United States of America and the Klamath Tribes.

6. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 21, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

7. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

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. The place of use set forth in the following Claim Description is subject to natural overflow. Beneficial use of the natural overflow from November 16 through March 14 is a privilege only and no priority date, 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 irrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. The holder of this privilege cannot make a call on water appropriated under any other water rights. This privilege as described herein does not constitute a water right; as such, OWRD will not issue a water right certificate for natural overflow November 16 through March 14 as described in this paragraph.

4. Based on the file and record herein, IT IS ORDERED that Claim 21 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 21
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 30 S, R 8 E and T 31 S, R 8 E

CLAIMANTS:
EDWARD D. TOMPKINS AND MERRIE L. TOMPKINS,
AS TRUSTEES OF THE DON AND MERRIE L. TOMPKINS
FAMILY REVOCABLE TRUST DATED JULY 13, 1998
PO BOX 22
GUINDA, CA 95637

WILLIS STANLEY TOMPKINS
HC 63 BOX 328
CHILOQUIN, OR 97624

SOURCE OF WATER:

COW CREEK, tributary to BIG SPRINGS CREEK;
BIG SPRINGS CREEK, tributary to the WILLIAMSON RIVER; and
SIXTEEN UNNAMED SPRINGS, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

IRRIGATION OF 1964.6 ACRES FROM THE COMINGLED WATERS OF COW CREEK, BIG SPRINGS CREEK, AND SIXTEEN SPRINGS, ALL BY NATURAL OVERFLOW, WITH INCIDENTAL LIVESTOCK WATERING OF 750 HEAD

DATE OF PRIORITY: OCTOBER 14, 1864

THE SOURCES OF WATER ARE LOCATED AS FOLLOWS:

Source	Twp	Rng	Mer	Sec	Q-Q	Remarks
Cow Creek	30 S	8 E	WM			No specific point of diversion; Comingled water from all sources by natural overflow.
	31 S	8 E	WM			
Big Springs Creek	30 S	8 E	WM			
	31 S	8 E	WM			
Unnamed Spring	30 S	8 E	WM	27	SE SW	
Unnamed Spring	30 S	8 E	WM	28	SW NE	
Unnamed Spring	30 S	8 E	WM	29	NE NE	
Unnamed Spring	30 S	8 E	WM	29	NW NE	
Unnamed Spring	30 S	8 E	WM	32	SE SW	
Unnamed Spring	30 S	8 E	WM	32	NW SE	
Two Unnamed Springs	30 S	8 E	WM	33	SW NE	
Unnamed Spring	30 S	8 E	WM	34	SE NW	
Unnamed Spring	30 S	8 E	WM	34	NW SW	
Unnamed Spring	30 S	8 E	WM	34	SW SW	
Unnamed Spring	31 S	8 E	WM	4	SE NW	
Unnamed Spring	31 S	8 E	WM	4	SE SE	
Unnamed Spring	31 S	8 E	WM	5	NE NW	
Unnamed Spring	31 S	8 E	WM	5	NW SE	
Unnamed Spring	31 S	8 E	WM	8	NE NE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION BY NATURAL OVERFLOW WITH INCIDETNAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	8 E	WM	22	SW SW		1.8
30 S	8 E	WM	22	SE SW		38.4
30 S	8 E	WM	27	NE NW		40.0
30 S	8 E	WM	27	NW NW		33.6
30 S	8 E	WM	27	SW NW		40.0
30 S	8 E	WM	27	SE NW		40.0
30 S	8 E	WM	27	NE SW		40.0
30 S	8 E	WM	27	NW SW		40.0
30 S	8 E	WM	28	NE NE		8.8
30 S	8 E	WM	28	SW NE		18.4

IRRIGATION BY NATURAL OVERFLOW WITH INCIDETNAL LIVESTOCK WATERING						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**
30 S	8 E	WM	28	SE NE		36.8
30 S	8 E	WM	28	SE NW		7.2
30 S	8 E	WM	28	NE SW		36.0
30 S	8 E	WM	28	NW SW		10.4
30 S	8 E	WM	28	SW SW		0.7
30 S	8 E	WM	28	SW SW	2	14.4
30 S	8 E	WM	28	NE SE		40.0
30 S	8 E	WM	28	NW SE		40.0
30 S	8 E	WM	28	SW SE		36.8
30 S	8 E	WM	28	SE SE		40.0
30 S	8 E	WM	33	NE NE		40.0
30 S	8 E	WM	33	NW NE		40.0
30 S	8 E	WM	33	NE NW	3	36.0
30 S	8 E	WM	33	NW NW	2	21.4
30 S	8 E	WM	33	NE SW		40.0
30 S	8 E	WM	33	NW SW		40.0
30 S	8 E	WM	33	SW SW	4	39.8
30 S	8 E	WM	33	SE SW	5	39.9
30 S	8 E	WM	34	NE NW		40.0
30 S	8 E	WM	34	NW NW		40.0
30 S	8 E	WM	34	SW NW		40.0
30 S	8 E	WM	34	SE NW		40.0
30 S	8 E	WM	34	NE SW		40.0
30 S	8 E	WM	34	NW SW		40.0
30 S	8 E	WM	34	SW SW	1	39.9
30 S	8 E	WM	34	SE SW	2	39.7
31 S	8 E	WM	4	NE NE	1	36.3
31 S	8 E	WM	4	NW NE	2	36.2
31 S	8 E	WM	4	SW NE		40.0
31 S	8 E	WM	4	SE NE		40.0
31 S	8 E	WM	4	NE NW	3	36.1
31 S	8 E	WM	4	NW NW	4	36.0
31 S	8 E	WM	4	SW NW		40.0
31 S	8 E	WM	4	SE NW		40.0
31 S	8 E	WM	4	NE SW		40.0
31 S	8 E	WM	4	NW SW		40.0
31 S	8 E	WM	4	SW SW		40.0
31 S	8 E	WM	4	SE SW		40.0
31 S	8 E	WM	4	NE SE		40.0
31 S	8 E	WM	4	NW SE		40.0
31 S	8 E	WM	4	SW SE		40.0
31 S	8 E	WM	4	SE SE		40.0
31 S	8 E	WM	5	NE SE		40.0
31 S	8 E	WM	5	NW SE		40.0
31 S	8 E	WM	5	SW SE		40.0
31 S	8 E	WM	5	SE SE		40.0

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

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

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION. THE SEASON OF USE MAY NOT EXCEED MARCH 15 TO NOVEMBER 15.

[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 DONAL M. DEAN	)	PARTIAL ORDER OF DETERMINATION
	)	
	)	Water Right Claim 22

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, DONAL H. DEAN timely submitted a Statement and Proof of Claim (Claim 22) 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 22 was submitted for a total of 10.05 cfs of water, not to exceed 4.74 cfs from Aspen Creek, not to exceed 10.05 cfs from Deep Creek, and not to exceed 1.55 cfs from the Williamson River, all tributaries of the Klamath River, for irrigation of 408.6 acres. Seventy (70) gallons per minute were claimed for livestock watering of 400 head. The claimed period of use is year-round for livestock watering, and April 15 through October 1 for irrigation. The claimed priority date is "1864."

3. DONAL H. DEAN signed Claim 22 attesting that the information contained in the claim is true.

4. The claim was subsequently transferred to DONAL M. DEAN (Claimant). *See* MEMO dated Sept. 15, 1998, (Claim 22, Page 014).

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 for livestock watering and irrigation was approved, but with a smaller quantity of water for livestock watering and 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 3438: 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[2], Don Vincent[3], 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 3724 to the Claim and/or Preliminary Evaluation of Claim 22.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4080 to the Claim and/or Preliminary Evaluation of Claim 22.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 169.

10. On April 1, 2004, the Klamath Project Water Users withdrew Contest 3438. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3438 (Apr. 1, 2004).

11. On December 16, 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 22.

12. On December 27, 2004, the Adjudicator withdrew Case 169 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. 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 22 is approved as set forth in the following Water Right Claim Description.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3438 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3438 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3438 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

[Beginning of Water Right Claim Description]

CLAIM NO. 22
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 22 SETTLEMENT MAP (Dec. 20, 2004)

CLAIMANT: DONAL M. DEAN
PO DRAWER F
MERRILL OR 97633

SOURCE OF WATER:
DEEP CREEK and ASPEN CREEK, tributaries of the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 290.3 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 400 HEAD.

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

3.08 CFS FOR IRRIGATION OF 123.1 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM ASPEN CREEK POD #1, ASPEN CREEK POD #2, AND DEEP CREEK POD #3, NOT TO EXCEED 1.59 CFS FROM ASPEN CREEK POD #1,

2.81 CFS FOR IRRIGATION OF 112.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM DEEP CREEK POD #4; AND

1.37 CFS FOR IRRIGATION OF 54.8 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM DEEP CREEK 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:
2.4 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 15 - OCTOBER 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
Aspen Creek POD #1	Aspen Creek	31 S	11 E	WM	20	NE SE		NORTH 22 DEGREES 12 MINUTES WEST, 2707.8 FEET FROM SE CORNER, SECTION 20
Aspen Creek POD #2		31 S	11 E	WM	20	SE SW		NONE GIVEN

Pod Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Deep Creek POD #3	Deep Creek	31 S	11 E	WM	22	NW SW		SOUTH 58 DEGREES 48 MINUTES EAST, 379.4 FEET FROM W¼ CORNER, SECTION 22
Deep Creek POD #4		31 S	11 E	WM	28	SW NW		SOUTH 19 DEGREES 8 MINUTES 6 SECONDS EAST, 1370.73 FEET FROM NW CORNER, SECTION 28
Deep Creek POD #5		31 S	11 E	WM	31	NE NE	1	SOUTH 4 DEGREES 36 MINUTES 1 SECOND WEST, 5673.6 FEET FROM NE CORNER, SECTION 30

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	11 E	WM	29	NW SW		26.9	ASPEN CREEK POD #1, ASPEN CREEK POD #2, AND DEEP CREEK POD #3
31 S	11 E	WM	29	SE NW		0.8	
31 S	11 E	WM	29	SW SW		0.7	
31 S	11 E	WM	30	NE SW	3	1.1	
31 S	11 E	WM	30	SE SW	4	19.8	
31 S	11 E	WM	30	SW SE		8.3	
31 S	11 E	WM	31	NW NE		5.8	
31 S	11 E	WM	31	NE NW	1	0.1	
31 S	11 E	WM	20	SW SW		6.5	ASPEN CREEK POD #2, AND DEEP CREEK POD #3
31 S	11 E	WM	20	SE SW		14.6	
31 S	11 E	WM	29	NE NW		3.4	
31 S	11 E	WM	29	NW NW		11.2	
31 S	11 E	WM	29	SW NW		23.9	
31 S	11 E	WM	31	NE NE		20.4	DEEP CREEK POD #4
31 S	11 E	WM	31	NE SE		10.4	
31 S	11 E	WM	31	NW SE		28.0	
31 S	11 E	WM	32	NE NW		11.2	
31 S	11 E	WM	32	NW NW		20.8	
31 S	11 E	WM	32	SW NW		21.6	
31 S	11 E	WM	30	SE SW	4	8.6	DEEP CREEK POD #5
31 S	11 E	WM	31	NW NE		14.0	
31 S	11 E	WM	31	NE NW	1	32.2	

[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
THE NATURE CONSERVANCY	)	DETERMINATION
	)	
_____	)	Water Right Claim 23

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 28, 1990, BRATTAIN RANCH, INC. timely submitted a Statement and Proof of Claim (Claim 23) 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 23 was submitted for a total 77.47 cubic feet per second (cfs) of water, being 2.48 cfs from Pole Creek, 4.68 cfs from Coyote Creek, 4.09 cfs from Long Creek, and 66.22 cfs from the Sycan River, all tributaries of the Sprague River, for irrigation of 3098.2 acres, with a season of use "approx. March thru October." The claimed priority date is February 25, 1901.

3. On January 4, 1999, the title to the property associated with Claim 23 was transferred to THE NATURE CONSERVANCY (Claimant) (821 SE 14TH AVE, PORTLAND, OR 97214-2537). *See* COUNTY OF LAKE, GENERAL WARRANTY DEED, BOOK 242, PAGE 701.

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.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3383: 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,[2] Don Vincent,[3] 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.

6. On May 8, 2000, the United States of America timely filed Contest 3779 to the Claim and/or Preliminary Evaluation of Claim 23.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4081 to the Claim and/or Preliminary Evaluation of Claim 23.

8. On May 8, 2000, Thomas William Mallams filed Contest 4946 to the Claim and/or Preliminary Evaluation of Claim 23.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 104.

10. On March 22, 2002, the Claimant withdrew Claim 23 which thereby rendered all contests moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (Mar. 22, 2002).

11. On March 25, 2002, the Adjudicator withdrew Case 104 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 23 by the Claimant, IT IS ORDERED that Claim 23 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

[1] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3383 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.
[2] Berlva Pritchard voluntarily withdrew from Contest 3383 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.
[3] Don Vincent voluntarily withdrew from Contest 3383 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 PERNOLL RANCH, LLC	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 24

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, L. H. RANCH, INC. timely submitted a Statement and Proof of Claim (Claim 24) 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 24 was submitted for a total of 21.5 cfs of water, being 20.0 cfs from Long Creek, and 1.5 cfs from Coyote Creek, both tributaries of the Sycan River, for irrigation of 864.4 acres. The claimed period of use is April 1 through October 15 for irrigation. The claimed priority date is October 14, 1864.

3. GEORGE E. CARLON, DIRECTOR OF L.H. RANCH, INC. signed Claim 24 attesting that the information contained in the claim is true.

4. In 1978, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 24 (*See* Claim # 24, WIP, Pages 00024 through 00026).

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 with a longer season of use than claimed.

6. On May 8, 2000, WaterWatch of Oregon, Inc. timely filed Contest 2820 to the Claim and/or Preliminary Evaluation of the Klamath Tribes Claim 24.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 255.

8. The claim was transferred to PERNOLL RANCH, LLC (Claimant) from L. H. RANCH, INC. *See* WARRANTY DEED, COUNTY OF LAKE (Sept. 18, 2000), and CHANGE OF OWNERSHIP FORM (Feb. 14, 2003).

9. On April 3, 2003, WaterWatch was dismissed from Case 003, and under a January 17, 2003 Stipulation, that dismissal was also effective to dismiss WaterWatch from Case 255. *See* STIPULATION RE: STANDING OF WATERWATCH OF OREGON INC.'S CONTESTS (Jan. 17, 2003), *and* ORDER ON RENEWED MOTION TO STRIKE CONTESTS AND DISMISS WATERWATCH AS A PARTY AND MOTION TO RECONSIDER (April 3, 2003).

10. On May 5, 2003, the Adjudicator withdrew Case 255 from the Office of Administrative Hearings.

11. Based on the sworn statements in Claim 24, 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, 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.

3. Based on the file and record herein, IT IS ORDERED that Claim 24 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 24

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 31 S, R 13 E and T 32 S, R 13 E

CLAIMANT: PERNOLL RANCH, LLC
PO BOX 35
SUMMER LAKE, OR 97640

SOURCE OF WATER: LONG CREEK and COYOTE CREEK, tributaries of the SYCAN RIVER

PURPOSE or USE:
IRRIGATION OF 864.4 ACRES, BEING 806.1 ACRES FROM LONG CREEK AND 58.3 ACRES FROM COYOTE CREEK.

RATE OF USE:
21.46 CUBIC FEET PER SECOND (CFS), BEING 20.0 CFS FROM LONG CREEK AND 1.46 CFS FROM COYOTE 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:
3.5 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 POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
Long Creek	32 S	13 E	WM	4	SW NE
Coyote Creek	31 S	13 E	WM	27	NE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	13 E	WM	34	NE SW		25.1	Long Creek
31 S	13 E	WM	34	SW SW		2.7	
31 S	13 E	WM	34	SE SW		38.9	
31 S	13 E	WM	34	NE SE		40.0	
31 S	13 E	WM	34	NW SE		40.0	
31 S	13 E	WM	34	SW SE		40.0	
31 S	13 E	WM	34	SE SE		40.0	
31 S	13 E	WM	35	SW NW		21.7	
31 S	13 E	WM	35	NW SW		40.0	
31 S	13 E	WM	35	SW SW		40.0	
32 S	13 E	WM	1	NE NW	3	39.7	
32 S	13 E	WM	1	NW NW	4	39.6	

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
32 S	13 E	WM	1	SW NW		40.0	Long Creek
32 S	13 E	WM	1	SE NW		40.0	
32 S	13 E	WM	2	NE NE	1	39.6	
32 S	13 E	WM	2	NW NE	2	39.6	
32 S	13 E	WM	2	SW NE		40.0	
32 S	13 E	WM	2	SE NE		40.0	
32 S	13 E	WM	2	NE NW	3	39.6	
32 S	13 E	WM	2	NW NW	4	39.6	
32 S	13 E	WM	2	SW NW		40.0	
32 S	13 E	WM	2	SE NW		40.0	
31 S	13 E	WM	35	NW NW		40.0	Coyote Creek
31 S	13 E	WM	35	SW NW		18.3	

[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 MARTIN LESTER PERNOLL, MD	))	PARTIAL ORDER OF DETERMINATION
	)	
	)	Water Right Claim 25

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, MARTIN LESTER PERNOLL, M.D. (Claimant) timely submitted a Statement and Proof of Claim (Claim 25) 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 and inchoate Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 25 was submitted for a total of 23.31 cfs of water, being 22.3175 cfs from Long Creek, and 0.9925 cfs from Coyote Creek, both tributaries of the Sycan River, for irrigation of 932.4 acres with incidental livestock watering for 600 head. The claimed period of use is April 1 through October 1 for irrigation. The claimed priority date is "1864."

3. MARTIN LESTER PERNOLL, M.D. signed Claim 25 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 with a longer season of use than claimed.

5. On May 8, 2000, the United States of America timely filed Contest 3780 to the Claim and/or Preliminary Evaluation of Claim 25.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4082 to the Claim and/or Preliminary Evaluation of Claim 25.

7. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2821 to the Claim and/or Preliminary Evaluation of Claim 25.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case170.

9. On March 19, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2821. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST NO. 2821(Mar. 19, 2003).

10. On March 30, 2004, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS NOS. 3780 AND 4082 (Settlement Agreement) thereby resolving the remaining contests to Claim 25.

11. On April 8, 2004, the Adjudicator withdrew Case 170 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. 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 25 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 25
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 31 S, R 13 E and T 32 S, R 13 E;
CLAIM # 25 SETTLEMENT MAP (May 26, 2004)

CLAIMANT: MARTIN LESTER PERNOLL, M.D.
PO BOX 35
SUMMER LAKE OR 97640

SOURCE OF WATER: LONG CREEK and COYOTE CREEK, tributaries of the SYCAN RIVER

PURPOSE OR USE:

IRRIGATION OF 917.4 ACRES, BEING 892.7 ACRES FROM LONG CREEK AND 24.7 ACRES FROM COYOTE CREEK.

RATE OF USE:

22.94 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 22.32 CFS FROM LONG CREEK, AND 0.62 CFS FROM COYOTE 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:

2.625 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
Long Creek	32 S	13 E	WM	4	SW NE
Coyote Creek	31 S	13 E	WM	27	NE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	13 E	WM	35	NE NE		40.0	Long Creek
31 S	13 E	WM	35	NW NE		39.2	
31 S	13 E	WM	35	SW NE		40.0	
31 S	13 E	WM	35	SE NE		40.0	
31 S	13 E	WM	35	NE NW		4.6	
31 S	13 E	WM	35	SE NW		36.5	
31 S	13 E	WM	35	NE SW		40.0	
31 S	13 E	WM	35	SE SW		40.0	
31 S	13 E	WM	35	NE SE		40.0	
31 S	13 E	WM	35	NW SE		40.0	
31 S	13 E	WM	35	SW SE		40.0	
31 S	13 E	WM	35	SE SE		40.0	
32 S	13 E	WM	2	NE SW		40.0	
32 S	13 E	WM	2	NW SW		28.5	
32 S	13 E	WM	2	SW SW		2.0	
32 S	13 E	WM	2	SE SW		18.2	
32 S	13 E	WM	2	NE SE		40.0	
32 S	13 E	WM	2	NW SE		40.0	
32 S	13 E	WM	2	SW SE		40.0	
32 S	13 E	WM	2	SE SE		40.0	
32 S	13 E	WM	3	NE NE	1	27.7	
32 S	13 E	WM	3	NW NE	2	28.5	
32 S	13 E	WM	3	SW NE		15.3	
32 S	13 E	WM	3	SE NE		36.1	

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
32 S	13 E	WM	3	NE NW	3	34.0	Long Creek
32 S	13 E	WM	3	NW NW	4	20.7	
32 S	13 E	WM	3	SW NW		15.5	
32 S	13 E	WM	3	SE NW		25.9	
31 S	13 E	WM	35	NE NW		24.7	Coyote 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
CECIL SAXON	)	DETERMINATION
	)	
_____	)	Water Right Claim 26

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 26 (Claimant: CECIL SAXON) and its associated contests (3439, 3781, 4083, and 5655) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 171.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER ON STIPULATION (Proposed Order) for Claim 26 on August 30, 2005.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States of America.

4. The exceptions filed to the Proposed Order along with any responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 26. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Section A.6, below.

5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is replaced in its entirety as set forth in Section A.6, below, and (2) 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 26. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

6. **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 KLAMATH TERMINATION ACT CLAIMS.

In addition, OWRD incorporates into the Opinion section the following segment titled "Application of Klamath Termination Act Elements to the Modified Proposed Order Findings of Fact."

> **Application of Klamath Termination Act Elements to the Modified Proposed Order Findings of Fact**
>
> The property appurtenant to Claim 26 was formerly part of the Klamath Reservation, and was held in trust by the United States. While the property was still in trust, in 1953, irrigation works were developed on the land. It has continued to be irrigated since that time.
>
> Pursuant to the provisions of the Klamath Termination Act, these findings are sufficient to establish a vested federal reserved water right, and to conclude that the established right passed with the land when the land was conveyed out of trust.[1]

[1] Although this appears to be a question of first impression in Oregon, it is apparent that federal reserved water rights can be transferred pursuant to the Klamath Termination Act when the reserved lands pass into private ownership. Similar treatment occurred with the Ute termination process. *Hackwork v. Babbitt*, 14 F.3d 1457 (10th Cir. 1994) (express Congressional determination that the transfer of the former tribal lands included right to use water.)

Reason for Modification: To clarify the transfer of water rights pursuant to the Klamath Termination Act - issue raised in exceptions.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is replaced in its entirety as set forth in Section A.6, above, and (2) 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 26. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. 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 this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 26 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 26

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 31 S, R 13 E and T 32 S, R 13 E

CLAIMANT: CECIL SAXON
4740 MAIN ST SUITE A
SPRINGFIELD, OR 97477

SOURCE OF WATER: LONG CREEK, tributary to the SYCAN RIVER

PURPOSE OR USE:
IRRIGATION OF 57.2 ACRES

RATE OF USE:
1.43 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: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
32 S	13 E	WM	4	SW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
31 S	13 E	WM	36	NE SE	3	28.4
31 S	13 E	WM	36	SE SE	4	28.8

[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 ALVIN R. AND PEGGY A. MARENCO	))	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 27

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, ALVIN R. AND PEGGY A. MARENCO (Claimants) timely submitted a Statement and Proof of Claim (Claim 27) 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 27 was submitted for a total of 5.95 cfs of water from the Williamson River, tributary to Upper Klamath Lake, for irrigation of 238.2 acres. The claimed period of use is April 15 through October 31 for irrigation. The claimed priority date is October 14, 1864.

3. ALVIN R. MARENCO AND PEGGY A. MARENCO signed Claim 27 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 3264 to the Preliminary Evaluation of Claim 27.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3440: 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[2], Don Vincent[3], 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 3725 to the Claim and/or Preliminary Evaluation of Claim 27.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4084 to the Claim and/or Preliminary Evaluation of Claim 27.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 172.

10. On July 23, 2004, the Claimants, OWRD, the Klamath Project Water Users, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving all contests to Claim 27.

11. On July 27, 2004, the Adjudicator withdrew Case 172 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the Klamath Project Water Users, 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 27 is approved as set forth in the following Water Right Claim Description.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3440 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3440 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3440 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

[Beginning of Water Right Claim Description]

CLAIM NO. 27
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 32 S, R 7 E

CLAIMANT: ALVIN R. AND PEGGY A. MARENCO
8475 MARENCO RANCH DR
RED BLUFF, CA 96080

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

PURPOSE OR USE: IRRIGATION OF 238.2 ACRES.

RATE OF USE:
5.95 CUBIC FEET PER SECOND 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 15 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
32 S	7 E	WM	25	SW SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	7 E	WM	25	NE NE	32.3
32 S	7 E	WM	25	NW NE	38.3
32 S	7 E	WM	25	SW NE	30.3
32 S	7 E	WM	25	SE NE	37.8
32 S	7 E	WM	25	NE SE	37.8
32 S	7 E	WM	25	NW SE	22.2
32 S	7 E	WM	25	SW SE	22.4
32 S	7 E	WM	25	SE SE	17.1

[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 CLIFF L. AMBERS, AND JUDY E. AMBERS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 28

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 28 and its associated contests (32, 3441, 3726, and 4085) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 173.

2. CLIFF L. AMBERS conveyed an undivided one-half interest in the property appurtenant to Claim 28 to his wife, JUDY E. AMBERS (Claimants) (7120 WOCUS RD, KLAMATH FALLS, OR 97601). *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M98, PAGES 4387, Feb. 9, 1998 (Claim # 28, Page 016).

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on October 24, 2003, denying Claim 28.

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 the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.6, below.

6. **Opinion.**
   a. Within the section titled "Opinion" of the Proposed Order, 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 section titled "Opinion" of the Proposed Order, the two paragraphs immediately preceding the final paragraph in the "Opinion" are modified as follows (additions are shown in "underline" text, deletions are shown in "strikethrough" text):

> Even though the claim appears to be based upon natural irrigation or overflow, the requirement of demonstrating beneficial use of water is not eliminated. The greater weight of the evidence has to establish that natural irrigation or overflow was put to beneficial use by the Indian owner or if not, that beneficial use of water was made with reasonable diligence by ~~the first~~ non-Indian successors following transfer from Indian ownership. There is no evidence of when (or if) water by the method of natural overflow was put to beneficial use.
>
> Even though a Walton right may include water use based on the Indian allottee's undeveloped irrigable land to the extent that ~~the additional~~ water ~~use~~ is ~~developed~~ put to beneficial use with reasonable diligence ~~by the first purchaser~~ following transfer of the land from an Indian owner to non-Indian successors, there is ~~a~~ no evidence establishing that beneficial use of the waters claimed was occurring on the property at the time of transfer from Indian ownership, or that beneficial use of water ~~use~~ was ~~developed~~ made with reasonable diligence by the ~~first~~ non-Indian ~~owner~~ successors following transfer from Indian ownership. Mr. Ambers did not provide testimony or offer exhibits to support his claim and has not met his burden of proving that he has a valid Walton water right in Claim 28.

Reason for Modifications: To correct and clarify the elements of a *Walton* water right and to apply the appropriate legal bases to the Proposed Order's findings of fact.

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.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 28 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
JAMES L. CHAPMAN	)	DETERMINATION
	)	
_____	)	Water Right Claim 29

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 28, 1990, JAMES L. CHAPMAN (Claimant) timely submitted a Statement and Proof of Claim (Claim 29) 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 29 was submitted for instream livestock watering of 300 head for a total 4500 gallons per day of water from the Williamson River, a tributary of the Klamath River, with a season of use "April – December." The claimed priority date is 1864.

3. JAMES L. CHAPMAN signed the Statement and Proof of Claim for Claim 29 attesting that the information contained in the claim is true.

4. On April 23, 1999, the Claimant supplemented information to Claim 29 by providing a signed statement, stating in pertinent part: "My father, Jack R. Chapman purchased the property on the Upper Klamath Marsh, on 12 June 1957 from . . . Klamath Allottee N. 161 and . . . Klamath Allottee No. 162. . . . Members of the Klamath Tribe had used that area of the Klamath Marsh to raise cattle. . . . The only water available for cattle drinking water was the Williamson River. I purchased the property from my father on 11 Jan. 1971. We have run cattle on the property every year since we purchased it in 1957 and they have watered out the Williamson River." (Claim # 29, Page 009).

5. In 1981, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 29 (Claim # 29, WIP, Page 00014).

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 was approved, but for a smaller quantity of water and with a longer season of use than claimed.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 29.

8. Based on the sworn statements in Claim 29, 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 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. 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 300 head, the number of head claimed by the Claimant.

4. Based on the file and record herein, IT IS ORDERED that Claim 29 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 29

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 32 S, R 8 E

CLAIMANT: JAMES L CHAPMAN
18552 N POE VALLEY RD.
KLAMATH FALLS OR 97603

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

PURPOSE or USE: INSTREAM LIVESTOCK WATERING FOR 300 HEAD

RATE OF USE:
0.006 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 3600 GALLONS PER DAY.

PERIOD OF ALLOWED USE: APRIL 1 – DECEMBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Instream Livestock Watering
32 S	8 E	WM	7	NE SE	No specific point of diversion - livestock drink directly from the Williamson River

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
32 S	8 E	WM	7	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 ALVIN R. MARENCO, AND PEGGY A. MARENCO	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 30

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, ALVIN R. MARENCO AND PEGGY A. MARENCO (Claimants) (8475 MARENCO RANCH DR, RED BLUFF, CA 96080) timely submitted a Statement and Proof of Claim (Claim 30) 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 30 was submitted for a total 10.7 cubic feet per second (cfs) of water from the Williamson River, tributary to Upper Klamath Lake, for irrigation of 857.6 acres with a season of use "April 15 to October 31st." The claimed priority date is October 14, 1864.

3. ALVIN R. MARENCO and PEGGY A. MARENCO signed Claim 30 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 3265 to the Preliminary Evaluation of Claim 30.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3442: 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[2], Don Vincent[3], 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 3727 to the Claim and/or Preliminary Evaluation of Claim 30.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4086 to the Claim and/or Preliminary Evaluation of Claim 30.

9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2822 to the Claim and/or Preliminary Evaluation of Claim 30.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 174.

11. On March 19, 2003, WaterWatch of Oregon, Inc. voluntarily withdrew Contest 2822. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST (Mar. 19, 2003).

12. On July 23, 2004, the Claimants, OWRD, United States of America, Klamath Project Water Users, and the Klamath Tribes executed a STIPULATION TO VOLUNTARY WITHDRAWAL OF CLAIM 30 (Settlement Agreement) thereby resolving the remaining contests to Claim 30.

13. On July 27, 2004, the Adjudicator withdrew Case 174 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3442 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3442 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3442 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

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

2. Based upon the file and record herein, including the voluntary withdrawal of Claim 30 by the Claimants, IT IS ORDERED that Claim 30 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight Frenel, 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 J-SPEAR RANCH CO.	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 31

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 31 (Claimant: J-SPEAR RANCH CO., PO BOX 257, KLAMATH FALLS, OR 97601) and its associated contests (2038, 3443, 3728, and 4087) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 175.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER ON STIPULATION BY PARTICIPANTS FOR RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S CLAIM (Proposed Order) on April 15, 2005, denying Claim 31.

3. No exceptions were filed to the Proposed Order.

4. The STIPULATION OF FACTS for Claim 31 executed on February 21, 2005 is incorporated in its entirety as if set forth fully herein.

5. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Order" is adopted with modifications, as set forth in Section A.6, below. The outcome of the Order is without modification.

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

~~Based on the facts as set forth in the Stipulation of Facts in Exhibit A and the legal rulings in the Order in Exhibit B:~~

(1) ~~An irrigation claim based on natural overflow and sub-irrigation is not entitled as a matter of law to a Walton Right.~~ Based on the facts as set forth in the Stipulation of Facts in Exhibit A, which show an eight-year gap between transfer from Indian ownership and the beginning of a lease of the claimed lands for livestock pasture, beneficial use of water for the

claimed purposes of irrigation and livestock watering was not made with reasonable diligence following transfer from Indian ownership.

(2) Based on the facts as set forth in the Stipulation of Facts in Exhibit A and the legal rulings in the Order in Exhibit B, a claim for wildlife purpose of use is not entitled as a matter of law to a Walton right.

(3) Claimant's Claim No. 31 is dismissed.

Reasons for Modification:

(1) The PROPOSED ORDER ON THE UNITED STATES' MOTION FOR RECONSIDERATION AND RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S CLAIM issued in Case No. 175, December 10, 2004 (Exhibit B), does not provide the basis for the Adjudicator's denial of the portion of the claim for irrigation and livestock watering. Therefore, the Adjudicator modifies the Proposed Order by striking the reference to Exhibit B with respect to this portion of the claim.

(2) The basis on which Claim 31 should be dismissed needs to be corrected.

a. The stipulated facts show that there is an eight year gap between the time that the lands appurtenant to Claim 31 were first transferred to non-Indian ownership from Indian ownership (1957) and the initiation of a lease to the same lands for livestock pasture (1965).

b. The stipulated facts do not support beneficial use of water with reasonable diligence. Because the use of water on lands appurtenant to claim 31 relies upon natural overflow and natural subirrigation and there is no actual physical diversion of water from its natural source, eight years to apply water to beneficial use for irrigation or livestock watering is not considered reasonably diligent.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Order" is adopted with modifications, as set forth in Section A.6, above. The outcome of the Order is without modification.

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 31 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 THOMAS J. SHAW	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 32

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 32 (Claimant: THOMAS J. SHAW, PO BOX 257, KLAMATH FALLS, OR 97601) and its associated contests (2041, 3444, 3729, and 4088) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 176.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER ON STIPULATION BY PARTICIPANTS FOR RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S CLAIM (Proposed Order) on April 15, 2005, denying Claim 32.

3. No exceptions were filed to the Proposed Order.

4. The STIPULATION OF FACTS for Claim 32 executed on February 21, 2005 is incorporated in its entirety as if set forth fully herein.

5. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Order" is adopted with modifications, as set forth in Section A.6, below. The outcome of the Order is without modification.

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

> Based on the facts as set forth in the Stipulation of Facts in Exhibit A; ~~and the legal rulings in the Order in Exhibit B~~:
>
> (1) ~~An irrigation claim based on natural overflow and sub-irrigation is not entitled as a matter of law to a Walton Right.~~ Beneficial use of water for the claimed purposes of irrigation and livestock watering was not made with reasonable diligence following transfer from Indian ownership.

(2) A claim for wildlife purpose of use is not entitled as a matter of law to a Walton right.

(3) Claimant's Claim No. 32 is dismissed.

Reasons for Modifications:

(1) The PROPOSED ORDER ON THE UNITED STATES' MOTION FOR RECONSIDERATION AND RULING ON LEGAL ISSUES AND DISMISSAL OF CLAIMANT'S Claim issued in Case No. 176, December 10, 2004 (Exhibit B), does not provide the basis on which this claim is dismissed by the Adjudicator. Therefore, the Adjudicator modifies the Proposed Order by striking any reference to Exhibit B.

(2) The basis on which Claim 32 should be dismissed is corrected. The Adjudicator modifies the Proposed Order with the following facts and conclusions of law:

a. The stipulated facts show that there is an eight year gap between the time that the lands appurtenant to Claim 32 were first transferred to non-Indian ownership from Indian ownership (1957) and the initiation of a lease to the same lands for livestock pasture (1965).

b. The stipulated facts do not support beneficial use of water with reasonable diligence. Because the use of water on lands appurtenant to claim 32 relies upon natural overflow and natural subirrigation and there is no actual physical diversion of water from its natural source, eight years to apply water to beneficial use for irrigation or livestock watering is not considered reasonably diligent.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Order" is adopted with modifications, as set forth in Section A.6, above. The outcome of the Order is without modification.

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 32 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
DAYTON O. AND GERDA V. HYDE	)	DETERMINATION
	)	
_____	)	Water Right Claim 33

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 24, 1991, DAYTON O. AND GERDA V. HYDE (Claimants) timely submitted a Statement and Proof of Claim (Claim 33) 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 33 was submitted for a total of 24.03 cfs of water from the Williamson River, Haystack Draw, Bull Pasture Draw, and springs, all tributary to Upper Klamath Lake, for irrigation of 1402.7 acres. The claimed period of use is "[b]egin January 1 and end December 31 of each year." The claimed priority date is "1864."

3. DAYTON O. HYDE and GERDA V. HYDE signed Claim 33 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 with a shorter irrigation season than claimed.

5. On May 8, 2000, the United States of America timely filed Contest 3730 to the Claim and/or Preliminary Evaluation of Claim 33.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4089 to the Claim and/or Preliminary Evaluation of Claim 33.

7. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2823 to the Claim and/or Preliminary Evaluation of Claim 33.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 177.

9. On April 8, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2823. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST NO. 2823 (Apr. 8, 2003).

10. On February 15, 2005, Claimants, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all remaining contests to Claim 33.

11. On February 22, 2005, the Adjudicator withdrew Case 177 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 Tribes is adopted and incorporated as if set forth fully herein, with the exception of paragraphs B.1.(c), B.1.(d), B.1.(e), B.1.(f), and B.1.(g); these paragraphs are 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. 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 33 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 33
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 33 SETTLEMENT MAP (Feb. 2, 2005)

CLAIMANT: DAYTON O. AND GERDA V. HYDE
PO BOX 371
CHILOQUIN, OR 97624

SOURCE OF WATER:
An UNNAMED SPRING (HOUSE SPRING), tributary to the WILLIAMSON RIVER;
An UNNAMED STREAM, tributary to the WILLIAMSON RIVER; and
The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:

IRRIGATION OF 953.1 ACRES FROM HOUSE SPRING POD #5, UNNAMED STREAM POD #6, WILLIAMSON RIVER POD #7, AND/OR WILLIAMSON RIVER POD #8.

RATE OF USE:

NOT TO EXCEED 23.83 CUBIC FEET PER SECOND (CFS) FROM FOUR POINTS OF DIVERSION, BEING HOUSE SPRING POD #5, UNNAMED STREAM POD #6, WILLIAMSON RIVER POD #7, AND WILLIAMSON RIVER POD #8; TO BE 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:

3.1 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	Source	Twp	Rng	Mer	Sec	Q-Q	GLot
House Spring POD #5	Unnamed Spring	33 S	11 E	WM	9	SW NW	
Unnamed Stream POD #6	Unnamed Stream	33 S	11 E	WM	4	SW SW	
Williamson River POD #7	Williamson River	33 S	11 E	WM	5	NE NE	1
Williamson River POD #8		32 S	11 E	WM	29	NW SE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized PODs
32 S	11 E	WM	29	NW SE		14.6	House Spring POD #5, Unnamed Stream POD #6, Williamson River POD #7, and Williamson River POD #8
32 S	11 E	WM	29	SW SE		37.6	
32 S	11 E	WM	29	SE SE		6.4	
32 S	11 E	WM	32	NE NE		9.6	
32 S	11 E	WM	32	NW NE		40.0	
32 S	11 E	WM	32	SW NE		38.4	
32 S	11 E	WM	32	SE NE		4.0	
32 S	11 E	WM	32	NE NW		39.2	
32 S	11 E	WM	32	NW NW		8.8	
32 S	11 E	WM	32	SW NW		15.2	
32 S	11 E	WM	32	SE NW		40.0	
32 S	11 E	WM	32	NE SW		37.6	
32 S	11 E	WM	32	NW SW		0.8	
32 S	11 E	WM	32	SE SW		39.2	
32 S	11 E	WM	32	NW SE		31.2	
32 S	11 E	WM	32	SW SE		38.4	
32 S	11 E	WM	32	SE SE		0.8	
33 S	11 E	WM	4	NW SW		16.0	
33 S	11 E	WM	4	SW SW		29.6	
33 S	11 E	WM	5	NE NE	1	12.8	
33 S	11 E	WM	5	NW NE	2	39.7	

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized PODs
33 S	11 E	WM	5	SW NE		40.0	House Spring POD #5, Unnamed Stream POD #6, Williamson River POD #7, and Williamson River POD #8
33 S	11 E	WM	5	SE NE		23.2	
33 S	11 E	WM	5	NE NW	3	31.2	
33 S	11 E	WM	5	SE NW		33.6	
33 S	11 E	WM	5	NE SW		38.2	
33 S	11 E	WM	5	NW SW		7.2	
33 S	11 E	WM	5	SE SW		11.2	
33 S	11 E	WM	5	NE SE		40.0	
33 S	11 E	WM	5	NW SE		30.4	
33 S	11 E	WM	5	SW SE		12.6	
33 S	11 E	WM	5	SE SE		40.0	
33 S	11 E	WM	8	NE NE		40.0	
33 S	11 E	WM	8	NW NE		20.8	
33 S	11 E	WM	8	SW NE		20.0	
33 S	11 E	WM	8	SE NE		40.0	
33 S	11 E	WM	9	NW NW		14.4	
33 S	11 E	WM	9	SW NW		10.4	

FURTHER LIMITATIONS:

THE USE OF WATER AS DESCRIBED ABOVE IN THIS WATER RIGHT CLAIM DESCRIPTION IS SUBJECT TO MAINTAINING A FLOW OF AT LEAST ONE-HALF THE TOTAL FLOW IN THE WILLIAMSON RIVER UPSTREAM OF THE CURRENT NORTH BOUNDARY OF THE CLAIMANT'S PROPERTY, SUCH BOUNDARY BEING APPROXIMATELY THE NORTH EDGE OF THE S½ OF THE NW¼, SECTION 17, TOWNSHIP 32 SOUTH, RANGE 11 EAST, W.M.

[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 THE NATURE CONSERVANCY	))	PARTIAL ORDER OF DETERMINATION
	)	
	)	
_____	)	Water Right Claim 34

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, THE NATURE CONSERVANCY (Claimant) timely submitted a Statement and Proof of Claim (Claim 34) 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 34 was submitted for a total of 413.77 cfs from the Sycan River, a tributary of the Sprague River, and Long Creek, Coyote Creek, Dry Creek, and Pole Creek, all tributaries of the Sycan River; being 413.31 cfs of water for irrigation of 9790.3 acres, and 0.46 cfs for livestock watering of 4540 head. The claimed period of use is March 1 through October 31 for irrigation, and March 1 through November 30 for livestock watering. The claimed priority date is October 14, 1864.

3. CATHERINE MACDONALD, an agent making proof for THE NATURE CONSERVANCY, signed Claim 34 attesting that the information contained in the claim is true.

4. On January 20, 1999, Claim 34 was amended to (1) lengthen the claimed irrigation season from March 1 through October 31 to year around, (2) lengthen the season of use for incidental livestock watering from March 1 through November 30 to year around, (3) shorten the season of use for consumptive livestock watering from March 1 through November 30 to May 1 to November 15, (4) change the number of livestock to be watered from 4540 head to 4500 cow/calf pairs, (5) decrease the total cfs claimed for livestock watering from 0.46 cfs to 0.23 cfs (20 gallons per day per cow/calf pair for 4500 pair), (6) add 150 cfs of water conveyance losses to the livestock portion of the claim, (7) decrease the originally claimed acreage for irrigation from 9790.3 acres to 9711.2 acres, (8) change the amount of water claimed for irrigation from a total of 413.31

cfs to a total volume of 71,033.81 acre-feet, and (9) add sources of water to also include AL Creek, Chocktoot Creek, Shake Creek, Rock Creek, Knoll Creek, Divide Creek, ZX Creek and six unnamed streams.

5. On December 21, 1998, the title to the property appurtenant to Claim 23 was transferred to THE NATURE CONSERVANCY (Claimant) from David E. Brattain, Thomas A. Brattain, Mary Jane Brattain, Thomas M. Taylor, Susan J. Taylor, Trustee of the Susan J. Taylor Trust, Ruth L. Brattain, and Brattain Bros. Inc. *See* COUNTY OF LAKE RECORDS REEL 33, FILE 887, BOOK 242, Page 701. Claim 23 had been timely submitted for a total of 77.47 cfs, being 2.48 cfs from Pole Creek, 4.68 cfs from Coyote Creek, 4.09 cfs from Long Creek, all tributaries of the Sycan River, and 66.22 cfs from the Sycan River, a tributary of the Sprague River, for irrigation of 3098.2 acres, The claimed period of use is March 1 through October 31. The claimed priority date is February 25, 1901. Claim 23 was subsequently incorporated into THE NATURE CONSERVANCY'S Claims 34 and 36.

6. On July 16, 1999, Claim 34 was further amended to include acreage from Claim 23, described above, resulting in an increase of acreage for irrigation claimed by 225.1 acres [located in the E½, Section 25, Township 31 South, Range 13 East, W.M.], to a total of 9,936.3 acres, and an increase in the volume of water claimed by 12,071.44 acre-feet to a total of 83,105.25 acre-feet.

7. On September 29, 1999, Claim 34 was further amended to increase the volume of water claimed by 2026.11 acre-feet to a total of 85,131.36 acre-feet for the refilling of ground water storage after severe drought.

8. On October 26, 1999, Claim 34 was further amended to increase the claimed rate for watering livestock from 20 gallons per day per pair to 20 gallons per day per head, and to increase the quantity of water claimed for conveyance losses under the livestock watering portion of the claim

9. 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 for livestock watering was approved, but for a smaller quantity of water than claimed and a longer season of use than claimed. The portion of the claim for irrigation was denied because the required elements for a Walton right were not established.

10. On May 8, 2000, the Claimant timely filed Contest 2799 to the Preliminary Evaluation of Claim 34.

11. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3445: 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[2], Don Vincent[3], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

12. On May 8, 2000, the United States of America timely filed Contest 3782 to the Claim and/or Preliminary Evaluation of Claim 34.

13. On May 8, 2000, the Klamath Tribes timely filed Contest 4090 to the Claim and/or Preliminary Evaluation of Claim 34.

14. On May 8, 2000, Thomas William Mallams timely filed Contest 4947 to the Claim and/or Preliminary Evaluation of Claim 34.

15. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 178.

16. On May 1, 2006, Thomas William Mallams's Contest 4947 was dismissed. *See* ORDER GRANTING THE NATURE CONSERVANCY'S MOTION FOR SUMMARY DETERMINATION AND DISMISSING CONTEST NO. 4947 (May 1, 2006).

17. On November 30, 2006, The Nature Conservancy timely submitted an amendment to Claim 34 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Nov. 30, 2006).

18. On December 21, 2006, the Klamath Project Water Users withdrew Contest 3445 by stipulation. *See* STIPULATED WITHDRAWAL OF CONTEST NO. 3445 (Dec. 21, 2006).

19. On December 21, 2006, The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2799, 3782, AND 4090 (Settlement Agreement), thereby resolving all remaining contests to Claim 34.

20. On December 22, 2006, the Adjudicator withdrew Case 178 from the Office of Administrative Hearings.

21. No contests or claims of injury were filed to the Claimant's November 30, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3445 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3445 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3445 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

22. OWRD finds that the priority date, October 14, 1864, stipulated in the Settlement Agreement for the use of water on 8.1 acres located in the SE¼ Section 25, Township 31 South, Range 13 East, W.M., (4.8 acres in the NW¼SE ¼ and 3.3 acres in the SW¼SE¼), is an impermissible amendment because it is an enlargement of the original claim; the claimed priority date for use of water on these 8.1 acres which were incorporated into Claim 34 from Claim 23 as described in Findings 5 and 6 above, is February 25, 1901.

B. DETERMINATION

1. The Settlement Agreement executed between The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with two exceptions:

    a. The October 14, 1864 priority date stipulated to in the Settlement Agreement is an impermissible claim amendment as it applies to the use of water on 8.1 acres incorporated into Claim 34 from Claim 23; the priority date recognized herein for the use of water on these 8.1 acres, which are located in the SE¼ Section 25, Township 31 South, Range 13 East, W.M. (4.8 acres in the NW¼SE ¼ and 3.3 acres in the SW¼SE¼) is February 25, 1901, which is consistent with the original priority date claimed in Claim 23; and

    b. The following statement made in Paragraph B.1.c is applicable only to the portion of the place of use in the Settlement Agreement that is *not* based on a *Walton* claim (specifically, the 8.1 acres described in Paragraph B.1.a., above): "The Parties understand and agree that irrigation for the purposes hereof includes the artificial application of water to crops or plants to promote growth or nourish crops or plants, including marshlands or wetlands, with or without commercial harvest or grazing." The remainder of the place of use is subject to the definition of irrigation use applied by the Ninth Circuit to *Walton* claims: irrigation under a *Walton* right is that which is "essential to agricultural needs." *See United States v. Adair, 723 F.2d 1394, 1415* (9th Cir. 1983).

2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

3. The Claimant's timely amendment made on November 30, 2006, pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimants' claim.

4. The following three relocated points of diversion are approved:

    a. POD 'H-1' SOUTH FORK STEP POOL 1, located within the NENW, SECTION 11, TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M., at 430 FEET SOUTH AND 2620 FEET EAST FROM NW CORNER, SECTION 11.

b. POD 'H-2' SOUTH FORK STEP POOL 2, located within the NWSE, SECTION 11, TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M., at 2100 FEET NORTH AND 1570 FEET WEST FROM SE CORNER, SECTION 11.

c. POD 'H-3' SECTION LINE DITCH, located within the SWSE, SECTION 11, TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M. at 1610 FEET WEST FROM SE CORNER, SECTION 11.

5. The diversion of water from the original point of diversion (POD 'H'), located within the SWNE, SECTION 4, TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M., at 1950 FEET SOUTH AND 1770 FEET WEST FROM NE CORNER, SECTION 4, is not authorized.

6. The combined quantity of water diverted at each of the three relocated points of diversion (POD 'H-1' SOUTH FORK STEP POOL 1, 'H-2' SOUTH FORK STEP POOL 2, and POD 'H-3' SECTION LINE DITCH) must not exceed the quantity of water lawfully available at the original point of diversion (POD 'H').

7. Based on the file and record herein, IT IS ORDERED that Claim 34 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 34
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
SYCAN MARSH PRESERVE MAPS (Dec.13, 2006) – T 31 S, R 13 E; T 32 S, R 13 E; T 32 S, R 14 E; and T 33 S, R 13 E

SYCAN MARSH PRESERVE MAP FOR ADDITIONAL POINTS OF DIVERSION, EXHIBIT A (Dec. 4, 2006) – T 32 S, R 13 E

CLAIMANT: THE NATURE CONSERVANCY
821 SE 14TH AVE
PORTLAND OR 97214-2537

SOURCES OF WATER:

The SYCAN RIVER, tributary to the SPRAGUE RIVER

LONG CREEK, tributary to the SYCAN RIVER,

DRY CREEK, tributary to the SYCAN RIVER,

COYOTE CREEK, tributary to the SYCAN RIVER, and

An UNNAMED STREAM (POLE CREEK), tributary to the SYCAN RIVER

PURPOSE OR USE:
IRRIGATION OF 8985.2 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 4540 COW/CALF PAIRS

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)	32 S	14 E	WM	21	SW NE	1810 FEET SOUTH AND 2040 FEET WEST FROM NE CORNER, SECTION 21
POD 'D' SYCAN RIVER WEIR 3	32 S	14 E	WM	20	NW NE	380 FEET SOUTH AND 2360 FEET WEST FROM NE CORNER, SECTION 20
POD 'E' SYCAN RIVER WEIR 6	33 S	13 E	WM	3	SE NE	2550 FEET SOUTH AND 850 FEET WEST FROM NE CORNER, SECTION 3
POD 'F' LONG CREEK WEIR 7	33 S	13 E	WM	3	NW NW	920 FEET SOUTH AND 1220 FEET EAST FROM NW CORNER, SECTION 3
POD 'G' DRY CREEK WEIR	32 S	13 E	WM	15	SE SW	1310 FEET NORTH AND 1850 FEET EAST FROM SW CORNER, SECTION 15
[a]POD 'H-1' SOUTH FORK STEP POOL 1	32 S	13 E	WM	11	NE NW	430 FEET SOUTH AND 2620 FEET EAST FROM NW CORNER, SECTION 11
[a]POD 'H-2' SOUTH FORK STEP POOL 2	32 S	13 E	WM	11	NW SE	2100 FEET NORTH AND 1570 FEET WEST FROM SE CORNER, SECTION 11
[a]POD 'H-3' SECTION LINE DITCH	32 S	13 E	WM	11	SW SE	1610 FEET WEST FROM SE CORNER, SECTION 11
POD 'H-4' SMALLS DITCH	32 S	13 E	WM	4	SW NE	1800 FEET SOUTH AND 1550 FEET WEST FROM NE CORNER, SECTION 4
POD 'H-5' NORTH FORK MAIN WEIR	32 S	13 E	WM	4	SW NE	1760 FEET SOUTH AND 1620 FEET WEST FROM NE CORNER, SECTION 4
POD 'I-1' COYOTE CREEK SOUTH DITCH	31 S	13 E	WM	27	NE SE	2100 FEET NORTH AND 1200 FEET WEST FROM SE CORNER, SECTION 27
POD 'I-2' COYOTE CREEK MAIN WEIR	31 S	13 E	WM	27	NE SE	2020 FEET NORTH AND 1300 FEET WEST FROM SE CORNER, SECTION 27
POD 'J' POLE CREEK SPREADER WEIR	31 S	13 E	WM	23	NE SE	1460 FEET NORTH AND 640 FEET WEST FROM SE CORNER, SECTION 23

[a] Relocated points of diversion; the original point of diversion is located within the SWNE, SECTION 4, TOWNSHIP 32 SOUTH, RANGE 13 EAST, W.M., at 1950 FEET SOUTH AND 1770 FEET WEST FROM NE CORNER, SECTION 4.

RATES OF USE [CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR (CFS/Acre) AND TOTAL CFS] MEASURED AT THE POINTS OF DIVERSION, OR MAXIMUM ACRE-FEET PER YEAR ALLOWED (AF/Year) ARE AS FOLLOWS:

POD Name	Source	Quantity of Water			Authorized Number of Acres
		CFS/Acre	Total CFS	AF/Year	
POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)	Sycan River	1/61	2.8		170.6
POD 'D' SYCAN RIVER WEIR 3	Sycan River	1/70	8.9		624.3
POD 'E' SYCAN RIVER WEIR 6	Sycan River			4946.0	1446.2
POD 'F' LONG CREEK WEIR 7	Long Creek			2787.0	814.8
POD 'G' DRY CREEK WEIR	Dry Creek	1/40	13.4		537.9
POD 'H-1' SOUTH FORK STEP POOL 1	Long Creek	1/42	29.0		1223.0
POD 'H-2' SOUTH FORK STEP POOL 2	Long Creek	1/42	10.8		455.5
POD 'H-3' SECTION LINE DITCH	Long Creek	1/42	40.0		1687.0
POD 'H-4' SMALLS DITCH	Long Creek	1/38	13.4		504.7
POD 'H-5' NORTH FORK	Long Creek	1/83	6.9		573.7

POD Name	Source	Quantity of Water			Authorized Number of Acres
		CFS/Acre	Total CFS	AF/Year	
MAIN WEIR					
POD 'I-1' COYOTE CREEK SOUTH DITCH	Coyote Creek	1/36	5.4		196.1
POD 'I-2' COYOTE CREEK MAIN WEIR	Coyote Creek	1/41	16.2		665.1
POD 'J' POLE CREEK SPREADER WEIR	Unnamed Stream (Pole Creek)	1/86	1.0		86.3
TOTALS for WATER RIGHT			**147.8 CFS**	**7733.0 AC/Year**	**8985.2 Acres**

ALTERNATE POINTS OF DIVERSION ARE AUTHORIZED AS FOLLOWS:

Primary POD Name	Maximum Quantity of Water from an Alternate POD[a]		Authorized Alternate POD(s)	Authorized Number of Acres from Alternate POD(s)
	CFS/Acre	Total CFS		
POD 'D' SYCAN RIVER WEIR 3	1/104	6.0	POD 'H-5' NORTH FORK MAIN WEIR[b]	624.3
POD 'F' LONG CREEK WEIR 7	1/60	13.58	POD 'H-1' SOUTH FORK STEP POOL 1[c]	814.8
			POD 'H-2' SOUTH FORK STEP POOL 2[d]	
			POD 'H-3' SECTION LINE DITCH[e]	
POD 'G' DRY CREEK WEIR	1/60	8.96	POD 'H-1' SOUTH FORK STEP POOL 1[f]	537.8
			POD 'H-2' SOUTH FORK STEP POOL 2[g]	
			POD 'H-3' SECTION LINE DITCH[h]	

[a] ALTERNATE PODS MAY BE USED WHEN WATER IS NOT UTILIZED FROM THE PRIMARY POD

[b] USE OF WATER FROM POD 'H-5' NORTH FORK MAIN WEIR AS AN AUTHORIZED ALTERNATE POD TOGETHER WITH ANY OTHER USE OF WATER FROM THIS SAME POD MAY NOT EXCEED 6.9 CFS

[c] [f] USE OF WATER FROM POD 'H-1' SOUTH FORK STEP POOL 1 AS AN AUTHORIZED ALTERNATE POD TOGETHER WITH ANY OTHER USE OF WATER FROM THIS SAME POD MAY NOT EXCEED 29.0 CFS

[d] [g] USE OF WATER FROM POD 'H-2' SOUTH FORK STEP POOL 2 AS AN AUTHORIZED ALTERNATE POD TOGETHER WITH ANY OTHER USE OF WATER FROM THIS SAME POD MAY NOT EXCEED 10.8 CFS

[e] [h] USE OF WATER FROM POD 'H-3' SECTION LINE DITCH AS AN AUTHORIZED ALTERNATE POD TOGETHER WITH ANY OTHER USE OF WATER FROM THIS SAME POD MAY NOT EXCEED 40.0 CFS

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	March 1 - October 31

DATES OF PRIORITY:

OCTOBER 14, 1864 – EXCLUDING USE OF WATER WITHIN THE SE¼ SECTION 25, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

FEBRUARY 25, 1901 – FOR USE OF WATER WITHIN THE SE¼ SECTION 25, TOWNSHIP 31 SOUTH, RANGE 13 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
31 S	13 E	WM	23	NE SE		2.8	POD 'J' POLE CREEK SPREADER WEIR
31 S	13 E	WM	23	SE SE		24.2	POD 'J' POLE CREEK SPREADER WEIR
31 S	13 E	WM	24	NE SW		2.4	POD 'J' POLE CREEK SPREADER WEIR
31 S	13 E	WM	24	NW SW		12.1	POD 'J' POLE CREEK SPREADER WEIR
31 S	13 E	WM	24	SW SW		35.4	POD 'J' POLE CREEK SPREADER WEIR
31 S	13 E	WM	24	SW SW		4.6	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	24	SE SW		25.8	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	24	SE SW		9.4	POD 'J' POLE CREEK SPREADER WEIR
31 S	13 E	WM	24	SW SE		31.2	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	24	SE SE	4	28.5	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	NE NW		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	NW NW		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	SW NW		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	SE NW		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	NE SW		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	NW SW		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	SW SW		37.1	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	25	SE SW		36.7	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	13 E	WM	25	NW SE		4.8	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	13 E	WM	25	SW SE		3.3	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	NE SW		6.9	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	NW SW		0.7	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	SW SW		12.6	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	SW SW		22.4	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	26	SE SW		20.4	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	26	SE SW		19.6	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	NE SE		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	NW SE		32.3	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	SW SE		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	26	SE SE		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	27	NE SE		6.4	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	27	NE SE		3.0	POD 'I-1' COYOTE CREEK SOUTH DITCH

[a] The use of water on these place of use locations is subject to a February 25, 1901 priority date.

Irrigation with Incidental Livestock Watering							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	13 E	WM	27	NW SE		2.0	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	27	SW SE		3.0	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	27	SE SE		36.5	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	27	SE SE		2.6	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	34	NE NE		39.6	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	34	NW NE		5.4	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	34	SW NE		23.8	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	34	SE NE		40.0	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	13 E	WM	36	NE NE	1	22.6	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	36	NW NE		3.0	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	36	NW NE		24.7	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SW NE		38.3	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SE NE		3.0	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SE NE	2	26.4	POD 'I-2' COYOTE CREEK MAIN WEIR
31 S	13 E	WM	36	NE NW		37.1	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	NW NW		37.1	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SW NW		40.0	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SE NW		40.0	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	NE SW		34.2	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	NW SW		39.4	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SW SW		40.0	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SE SW		31.8	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	NW SE		33.3	POD 'H-4' SMALLS DITCH
31 S	13 E	WM	36	SW SE		37.7	POD 'H-4' SMALLS DITCH
32 S	13 E	WM	1	NE NE	1	32.2	POD 'H-4' SMALLS DITCH
32 S	13 E	WM	1	NW NE	2	35.9	POD 'H-4' SMALLS DITCH
32 S	13 E	WM	1	SW NE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	SE NE	5	32.3	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	NE SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	NW SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	SW SW		38.9	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	SE SW		38.7	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	NE SE	6	30.5	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	NW SE		39.5	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	SW SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	1	SE SE	7	32.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	3	NW SE		13.5	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	10	NE SE		9.2	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	10	NW SE		18.1	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	10	SW SE		39.7	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	10	SE SE		40.0	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	NE NE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	NW NE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	SW NE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	SE NE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	NE NW		2.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	SE NW		20.5	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	NE SW		10.5	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	NW SW		1.2	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	SW SW		35.5	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	SE SW		12.7	POD 'H-2' SOUTH FORK STEP POOL 2

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	13 E	WM	11	SE SW		5.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	SE SW		0.6	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	11	NE SE		36.4	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	NE SE		3.3	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	NW SE		13.9	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	NW SE		15.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	SW SE		3.2	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	11	SW SE		32.6	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	SW SE		4.2	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	11	SE SE		2.9	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	11	SE SE		25.7	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	11	SE SE		11.4	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NE NE	1	32.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NW NE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SW NE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SE NE	2	32.1	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NE NW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NW NW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SW NW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SE NW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NE SW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NW SW		33.4	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SW SW		34.4	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SW SW		0.9	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	12	SW SW		0.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	12	SE SW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NE SE	3	31.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	NW SE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SW SE		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	12	SE SE	4	31.7	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	NE NE	1	15.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	NE NE	1	15.6	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	NW NE		36.5	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	NW NE		3.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	SW NE		27.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	SW NE		12.9	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	SE NE	2	31.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	NE NW		8.8	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	NE NW		31.2	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	NW NW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	SW NW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	SE NW		33.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	SE NW		6.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	NE SW		0.4	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	NE SW		12.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	NE SW		26.8	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	NW SW		40.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	SW SW		33.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	SW SW		7.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	13	SE SW		30.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)

Irrigation with Incidental Livestock Watering							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
32 S	13 E	WM	13	SE SW		3.0	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	13	SE SW		7.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	NE SE	3	32.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	NE SE	3	0.1	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	13	NW SE		2.2	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	13	NW SE		37.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	NW SE		0.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	13	SW SE		0.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	13	SW SE		39.9	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	13	SE SE	4	29.2	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	13	SE SE	4	3.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	13 E	WM	14	NE NE		26.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NE NE		13.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	14	NW NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SW NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SE NE		17.7	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SE NE		22.3	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	14	NE NW		25.3	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NE NW		14.7	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	14	NW NW		40.0	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	14	SW NW		12.7	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SW NW		27.3	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	14	SE NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NE SW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NW SW		32.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NW SW		7.9	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	14	SW SW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SE SW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NE SE		15.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	NE SE		22.9	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	14	NW SE		39.2	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SW SE		34.6	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	14	SE SE		19.6	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	14	SE SE		14.4	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	15	NE NE		39.7	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	NW NE		14.3	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	SW NE		11.3	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	SE NE		36.0	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	NE NW		0.9	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	NE SW		13.1	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	15	SE SW		16.4	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	15	NE SE		13.6	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	15	NE SE		26.4	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	NW SE		35.3	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
							STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	15	NW SE		4.2	POD 'H-2' SOUTH FORK STEP POOL 2
32 S	13 E	WM	15	SW SE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	15	SE SE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	NE NE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	NW NE		37.8	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	SW NE		38.7	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	SE NE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	NE NW		0.6	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	SE NW		1.1	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	NE SE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	NW SE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	SW SE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	22	SE SE		40.0	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	23	NE NE		16.7	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	23	NE NE		22.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	NW NE		33.3	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SW NE		32.2	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SE NE		36.9	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SE NE		0.6	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	23	SE NE		2.5	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	23	NE NW		27.2	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	NW NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SW NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SE NW		14.2	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	NE SW		19.7	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	NE SW		1.2	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	23	NW SW		28.5	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	23	NW SW		11.4	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SW SW		2.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SW SW		31.5	POD 'G' DRY CREEK WEIR (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)

Irrigation with Incidental Livestock Watering							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
32 S	13 E	WM	23	SE SW		0.1	POD 'G' DRY CREEK WEIR
32 S	13 E	WM	23	SE SW		32.7	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	NE SE		23.9	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	NE SE		16.1	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	23	NW SE		38.9	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SW SE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SE SE		33.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	23	SE SE		7.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NE NE	1	33.5	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NW NE		40.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SW NE		40.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SE NE	2	34.5	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NE NW		40.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NW NW		25.6	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NW NW		14.4	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	24	SW NW		2.5	POD 'H-1' SOUTH FORK STEP POOL 1
32 S	13 E	WM	24	SW NW		36.2	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SW NW		1.3	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	24	SE NW		40.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NE SW		40.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NW SW		40.0	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SW SW		36.4	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SW SW		3.6	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	24	SE SW		37.6	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SE SW		2.4	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	24	NE SE	3	28.9	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	24	NE SE	3	6.6	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NW SE		32.5	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	NW SE		7.5	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	24	SW SE		32.6	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	24	SW SE		7.4	POD 'D' SYCAN RIVER WEIR 3 (AUTHORIZED ALTERNATE POD: POD 'H-5' NORTH FORK MAIN WEIR)
32 S	13 E	WM	24	SE SE	4	36.4	POD 'H-5' NORTH FORK MAIN WEIR
32 S	13 E	WM	25	NE NE	1	37.3	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NW NE		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	SW NE		39.6	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	SE NE	2	34.7	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NE NW		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NW NW		23.9	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NW NW		16.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	25	SW NW		40.0	POD 'E' SYCAN RIVER WEIR 6

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	13 E	WM	25	SE NW		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NE SW		39.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NW SW		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	SW SW		39.2	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	SE SW		28.5	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NE SE	3	27.9	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	NW SE		30.4	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	SW SE		0.8	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	25	SE SE	4	1.6	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	NE NE		0.2	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	NE NE		39.8	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	NW NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SW NE		35.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SW NE		4.9	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	SE NE		29.8	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	SE NE		10.2	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	NE NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	NW NW		35.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SW NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SE NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	NE SW		35.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	NE SW		4.9	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	NW SW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SW SW		3.5	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SW SW		32.2	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	26	SW SW		4.3	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	SE SW		34.5	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	SE SW		0.4	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	26	SE SW		5.1	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	NE SE		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	NW SE		35.2	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	NW SE		4.8	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	26	SW SE		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	26	SE SE		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	27	NE NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	NW NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	SW NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	SE NE		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	NE NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	NW NW		37.8	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	SW NW		15.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	SE NW		40.0	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	NE SW		15.9	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	SE SW		0.6	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	27	NE SE		7.5	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	27	NE SE		32.5	POD 'H-3' SECTION LINE DITCH

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	13 E	WM	27	NW SE		38.7	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	27	NW SE		1.3	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	27	SW SE		35.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	27	SE SE		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	28	NE NE		4.8	POD 'H-3' SECTION LINE DITCH
32 S	13 E	WM	33	NE NE		36.1	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	33	SE NE		16.9	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	33	SE SE		1.9	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NE NE		24.8	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NE NE		15.2	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	34	NW NE		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SW NE		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SE NE		15.9	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	34	SE NE		20.6	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NE NW		38.1	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NW NW		38.4	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SW NW		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SE NW		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NE SW		34.9	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NW SW		39.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SW SW		39.8	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SE SW		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NE SE		4.4	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	34	NE SE		33.8	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	NW SE		40.0	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2'

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
							SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SW SE		37.7	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	34	SW SE		2.3	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	34	SE SE		31.6	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	34	SE SE		8.4	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	35	NE NE		37.1	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NW NE		39.1	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	SW NE		37.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	SE NE		19.7	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NE NW		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NW NW		39.6	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NW NW		0.4	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	35	SW NW		40.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	SE NW		35.4	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NE SW		30.2	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NW SW		39.1	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	NW SW		0.9	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
32 S	13 E	WM	35	SW SW		39.1	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	35	SE SW		12.1	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	36	NE NW		4.0	POD 'E' SYCAN RIVER WEIR 6
32 S	13 E	WM	36	NW NW		30.5	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	2	NE NW	3	2.1	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	2	NW NW	4	28.7	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	2	SW NW		11.3	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	NE NE	1	36.7	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	NW NE	2	36.7	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	NW NE	2	5.2	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
33 S	13 E	WM	3	SW NE		37.6	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	SE NE		35.3	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	NE NW	3	4.7	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	NE NW	3	32.1	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
33 S	13 E	WM	3	NW NW	4	32.7	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
33 S	13 E	WM	3	SW NW		1.8	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)
33 S	13 E	WM	3	SE NW		4.1	POD 'E' SYCAN RIVER WEIR 6
33 S	13 E	WM	3	SE NW		14.3	POD 'F' LONG CREEK WEIR 7 (AUTHORIZED ALTERNATE PODS: POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND/OR POD 'H-3' SECTION LINE DITCH)

FURTHER LIMITATIONS

THE COMBINED QUANTITY OF WATER DIVERTED AT EACH OF THE THREE RELOCATED POINTS OF DIVERSION, BEING POD 'H-1' SOUTH FORK STEP POOL 1, POD 'H-2' SOUTH FORK STEP POOL 2, AND POD 'H-3' SECTION LINE DITCH, MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION.

[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 J. R. SIMPLOT, TRUSTEE FOR J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 35

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, METROPOLITAN LIFE INSURANCE COMPANY, DBA ZX LAND AND CATTLE CO., timely submitted a Statement and Proof of Claim (Claim 35) 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 35 was submitted for a total 8.402 cubic feet per second (cfs) of water from the Sycan River, a tributary of the Sprague River, being 0.002 cfs for domestic use, 8.2 for irrigation of 187.3 acres, and 0.2 cfs for livestock watering of 6500 head of cattle and 100 horses. The claimed period of use is March 1 to October 31 for irrigation and March 1 to November 30 for livestock watering. The claimed priority date is October 8, 1879.

3. ROBERT M. MORRIS on behalf of METROPOLITAN LIFE INSURANCE COMPANY, DBA ZX LAND AND CATTLE CO. signed the Statement and Proof of Claim for Claim 35 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 35 was transferred to J. R. SIMPLOT, TRUSTEE FOR J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST (Claimant) from METROPOLITAN LIFE INSURANCE COMPANY, DBA ZX LAND AND CATTLE CO. *See* SPECIAL STATUTORY WARRANTY DEED, COUNTY OF LAKE RECORDS, RECORD OF DEEDS BOOK 224, PAGE 592 (Dec. 30, 1993) and LETTER requesting an ownership change (Sept. 3, 1996).

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 irrigation and livestock watering, but for a smaller quantity of water than claimed, and with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, the Claimant timely filed Contest 2765 to the Preliminary Evaluation of Claim 35.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3384: 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., 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, the United States of America timely filed Contest 3783 to the Claim and Preliminary Evaluation of Claim 35.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4091 to the Claim and Preliminary Evaluation of Claim 35.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 105.

11. On May 1, 2003 the Klamath Tribes filed an amendment to Contest 4091. *See* AMENDED STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (May 1, 2003).

12. On May 5, 2003 the United States of America filed an amendment to Contest 3783. *See* AMENDED STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (May 5, 2003).

13. On August 29, 2003, the Claimant and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 2765 AND 3384, AND ORDER THEREON thereby resolving these two contests to Claim 35.

14. On March 29, 2004, the Claimant, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091, AND ORDER THEREON (Settlement Agreement) thereby resolving all remaining contests to Claim 35.

15. On May 10, 2004, Administrative Law Judge Maurice L. Russell executed the order on the Settlement Agreement effectively vacating the contested case hearing. *See*

STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091, AND ORDER THEREON (May 10, 2004).

16. Based on the Claimant's map, OWRD finds the place of use is located within Section 21, Township 32 South, Range 14 East, W.M.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, 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, with the following clarification: the place of use is located within Section 21, Township 32 South, Range 14 East, W.M.

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. The livestock watering which is incidental to irrigation is limited to a maximum of 6,500 head of cattle and 100 horses, the number of head claimed by the Claimant.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 35

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 32 S, R 14 E

CLAIMANT: J. R. SIMPLOT, TRUSTEE FOR J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
PO BOX 27
BOISE, ID 83707

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

PURPOSE or USE:
IRRIGATION OF 170.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 6,500 HEAD OF CATTLE AND 100 HORSES.

RATE OF USE:
4.25 CUBIC FEET PER SECOND 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 – October 31
Incidental Livestock Watering	April 1 - October 31

DATE OF PRIORITY: OCTOBER 8, 1879

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	32 S	14 E	WM	21	SW NE
POD 2 (DECOSTA DITCH)	32 S	14 E	WM	21	SW SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING FROM POD 1 AND POD 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	14 E	WM	21	NW NE	32.0
32 S	14 E	WM	21	SW NE	7.0
32 S	14 E	WM	21	NE NW	32.5
32 S	14 E	WM	21	NW NW	31.0
32 S	14 E	WM	21	SW NW	36.5
32 S	14 E	WM	21	SE NW	18.0
32 S	14 E	WM	21	NW SW	12.0
32 S	14 E	WM	21	SW SW	3.0

[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 NATURE CONSERVANCY	)	DETERMINATION
	)	
_____	)	Water Right Claim 36

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 3, 1991, THE NATURE CONSERVANCY (Claimant) timely submitted a Statement and Proof of Claim (Claim 36) 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 36 was submitted for a total of 592.44 cfs from the Sycan River, a tributary of the Sprague River, and Long Creek, Chocktoot Creek, and Coyote Creek, all tributaries of the Sycan River; being 592.03 cfs of water for irrigation of 8517.5 acres, and 0.41 cfs for livestock watering of 6830 head. The claimed period of use is March 1 through October 31 for irrigation, and March 1 through November 30 for livestock watering. The claimed priority date is October 8, 1879.

3. CATHERINE MACDONALD, an agent making proof for THE NATURE CONSERVANCY, signed Claim 36 attesting that the information contained in the claim is true.

4. On January 20, 1999, Claim 36 was amended to (1) lengthen the claimed irrigation season from March 1 through October 31 to year around, (2) lengthen the season of use for incidental livestock watering from March 1 through November 30 to year around, (3) shorten the season of use for consumptive livestock watering from March 1 through November 30 to May 1 through November 15, (4) change the number of livestock to be watered from 6830 head to 3000 cow/calf pairs, (5) decrease the total cfs claimed for livestock watering from 0.41 cfs to 0.10 cfs (20 gallons per day cow/calf pair for 3000 pair), (6) add 150 cfs for conveyance losses to the livestock portion of the claim, (7) increase the originally claimed acreage for irrigation from 8517.5 acres to 8520.0 acres, (8) change the amount of water claimed for irrigation from a total of 592.44 cfs to a total volume of 72,817.52 acre-feet, and (9) add sources of water to also include AL Creek,

Shake Creek, ZX Creek, Rock Creek, Knoll Creek, Dry Creek, and Pole Creek, Divide Creek, and six unnamed streams.

5. On December 21, 1998, the title to the property appurtenant to Claim 23 was transferred to THE NATURE CONSERVANCY (Claimants) from David E. Brattain, Thomas A. Brattain, Mary Jane Brattain, Thomas M. Taylor, Susan J. Taylor, Trustee of the Susan J. Taylor Trust, Ruth L. Brattain, and Brattain Bros. Inc. *See* COUNTY OF LAKE RECORDS REEL 33, FILE 887, BOOK 242, Page 701. Claim 23 had been timely submitted for a total of 77.47 cfs, being 2.48 cfs from Pole Creek, 4.68 cfs from Coyote Creek, 4.09 cfs from Long Creek, all tributaries of the Sycan River, and 66.22 cfs from the Sycan River, a tributary of the Sprague River, for irrigation of 3098.2 acres, The claimed period of use is March 1 through October 31. The claimed priority date is February 25, 1901. Claim 23 was subsequently incorporated into THE NATURE CONSERVANCY'S Claims 34 and 36.

6. On July 16, 1999, Claim 36 was further amended to include acreage from Claim 23, described above, resulting in an increase of the acreage for irrigation claimed by 2873.1 acres to a total of 11,931 acres, and an increase in the volume of water claimed by 12,374.57 acre-feet to a total of 85,192.09 acre-feet.

7. On September 29, 1999, Claim 36 was further amended to increase the volume of water claimed by 2026.11 acre-feet to a total of 87,218.2 acre-feet. The increase in rate is for the refilling of ground water storage after severe drought.

8. On October 26, 1999, Claim 36 was further amended to increase the claimed rate for watering livestock from 20 gallons per day per pair to 20 gallons per day per head, and to increase the quantity of water claimed for conveyance losses under the livestock watering portion of the claim.

9. 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.

10. On May 8, 2000, the Claimant timely filed Contest 2798 to the Preliminary Evaluation of Claim 36.

11. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3385: 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

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3385 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

Johnston & Son, Bradley S. Luscombe, Berlva Pritchard, Don Vincent[2], 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.

12. On May 8, 2000, the United States of America timely filed Contest 3784 to the Claim and/or Preliminary Evaluation of Claim 36.

13. On May 8, 2000, the Klamath Tribes timely filed Contest 4092 to the Claim and/or Preliminary Evaluation of Claim 36.

14. On May 8, 2000, Thomas William Mallams timely filed Contest 4948 to the Claim and/or Preliminary Evaluation of Claim 36.

15. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 106.

16. On May 1, 2006, Thomas William Mallams's Contest 4948 was dismissed. *See* ORDER GRANTING THE NATURE CONSERVANCY'S MOTION FOR SUMMARY DETERMINATION AND DISMISSING CONTEST NO. 4948 (May 1, 2006).

17. On December 21, 2006, the Klamath Project Water Users withdrew Contest 3385 by stipulation. *See* STIPULATED WITHDRAWAL OF CONTEST NO. 3385 (Dec. 21, 2006).

18. On December 21, 2006, The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2798, 3784, AND 4902 [sic] (Settlement Agreement), thereby resolving all remaining contests to Claim 36.

19. On December 22, 2006, the Adjudicator withdrew Case 106 from the Office of Administrative Hearings.

20. OWRD finds that the priority date, October 8, 1879, stipulated in the Settlement Agreement for the use of water on 668.7 acres located within SECTION 30, and the NE¼ & W½, SECTION 31; TOWNSHIP 31 SOUTH, RANGE 14 EAST, W.M. is an impermissible amendment because it is an enlargement of the original claim; the claimed priority date for use of water on the 668.7 acres which were incorporated into Claim 36 from Claim 23, as described in Findings 5 and 6 above, is February 25, 1901.

21. OWRD finds that the 36.5 acres listed in the Settlement Agreement within the NW¼ SE¼, SECTION 17, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M is incorrect; the correct location is within the NE¼ NW¼.

22. OWRD finds that the measured distances for POD 'I-2' COYOTE CREEK MAIN WEIR listed in the Settlement Agreement as 202 FEET NORTH AND 1300 FEET WEST OF THE

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[2] Don Vincent voluntarily withdrew from Contest 3385 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

SE CORNER, SECTION 27, TOWNSHIP 31S, RANGE 13E, W.M. are incorrect; the correct measured distances are 2020 FEET NORTH AND 1300 FEET WEST OF THE SE CORNER.

B. DETERMINATION

1. The Settlement Agreement executed between The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with three exceptions:

    a. The October 8, 1879 priority date in the Settlement Agreement is an impermissible claim amendment as it applies to the use of water on the 668.7 acres incorporated into Claim 36 from Claim 23; the priority date recognized herein for the 668.7 acres located within SECTION 30, and the NE¼ & W½, SECTION 31; TOWNSHIP 31 SOUTH, RANGE 14 EAST, W.M. is consistent with the original priority date (February 25, 1901) claimed in Claim 23; and

    b. A scrivener's error in the location of the 36.5 acres as described in Finding 21, above; the location of the 36.5 acres is corrected to the NE¼ NW¼, SECTION 17, TOWNSHIP 32 SOUTH, RANGE 14 EAST, W.M.; and

    c. A scrivener's error in the measured distances for POD 'I-2' COYOTE CREEK MAIN WEIR as described in Finding 22, above; the measured distances are corrected to 2020 FEET NORTH AND 1300 FEET WEST OF THE SE CORNER, SECTION 27, TOWNSHIP 31S, RANGE 13E, W.M.

    The definition of irrigation specified in the Settlement Agreement, "irrigation for the purposes hereof includes the artificial application of water to crops or plants to promote growth or nourish crops or plants, including marshlands or wetlands, with or without commercial harvest or grazing," is specific to Claim 36.

2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 36 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 36
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
SYCAN MARSH PRESERVE MAPS (Dec.13, 2006) – T 31 S, R 14 E and T 32 S, R 14 E;

CLAIMANT: THE NATURE CONSERVANCY
821 SE 14TH ST
PORTLAND OR 97204

SOURCES OF WATER:
CHOCKTOOT CREEK, tributary to the SYCAN RIVER,
The SYCAN RIVER, tributary to the SPRAGUE RIVER
LONG CREEK, tributary to the SYCAN RIVER, and
COYOTE CREEK, tributary to the SYCAN RIVER

PURPOSE OR USE:
IRRIGATION OF 9009.8 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 3000 COW/CALF PAIRS

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 'A' CHOCKTOOT CREEK DITCH	32 S	14 E	WM	9	SE SE	900 FEET NORTH AND 1040 FEET WEST FROM SE CORNER, SECTION 9
POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)	32 S	14 E	WM	21	SW NE	1790 FEET SOUTH AND 2000 FEET WEST FROM NE CORNER, SECTION 21
POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)	32 S	14 E	WM	21	SW NE	1810 FEET SOUTH AND 2040 FEET WEST FROM NE CORNER, SECTION 21
POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)	32 S	14 E	WM	21	SW NE	1810 FEET SOUTH AND 2120 FEET WEST FROM NE CORNER, SECTION 21
POD 'D' SYCAN RIVER WEIR 3	32 S	14 E	WM	20	NW NE	380 FEET SOUTH AND 2360 FEET WEST FROM NE CORNER, SECTION 20
POD 'H-4' SMALLS DITCH	32 S	13 E	WM	4	SW NE	1800 FEET SOUTH AND 1550 FEET WEST FROM NE CORNER, SECTION 4
POD 'H-5' NORTH FORK MAIN WEIR	32 S	13 E	WM	4	SW NE	1760 FEET SOUTH AND 1620 FEET WEST FROM NE CORNER, SECTION 4
POD 'I-1' COYOTE CREEK SOUTH DITCH	31 S	13 E	WM	27	NE SE	2100 FEET NORTH AND 1200 FEET WEST FROM SE CORNER, SECTION 27
POD 'I-2' COYOTE CREEK MAIN WEIR	31 S	13 E	WM	27	NE SE	2020 FEET NORTH AND 1300 FEET WEST FROM SE CORNER, SECTION 27

RATES OF USE [CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR (CFS/Acre) AND TOTAL CFS] MEASURED AT THE POINTS OF DIVERSION ARE AS FOLLOWS:

POD Name	Source	Quantity of Water		Authorized Number of Acres
		CFS/Acre	Total CFS	
POD 'A' CHOCKTOOT CREEK DITCH	Chocktoot Creek	1/38	28.9	1086.1
POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)	Sycan River	1/52	15.8	814.4
POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)	Sycan River	1/58	52.7	3135.1
POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)	Sycan River	1/44	7.5	327.2
POD 'D' SYCAN RIVER WEIR 3	Sycan River	1/70	18.4	1289.9
POD 'H-4' SMALLS DITCH	Long Creek	1/38	2.3	88.1
POD 'H-5' NORTH FORK MAIN WEIR	Long Creek	1/83	23.3	1926.4
POD 'I-1' COYOTE CREEK SOUTH DITCH	Coyote Creek	1/36	2.8	99.7
POD 'I-2' COYOTE CREEK MAIN WEIR	Coyote Creek	1/41	5.9	242.9
TOTALS for WATER RIGHT			**157.6 CFS**	**9009.8 Acres**

ALTERNATE POINTS OF DIVERSION ARE AUTHORIZED AS FOLLOWS:

Primary POD Name	Maximum Quantity of Water from an Alternate POD[a]		Authorized Alternate POD(s)	Authorized Number of Acres from Alternate POD(s)
	CFS/Acre	Total CFS		
POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)	1/75	8.61	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)[b]	662.1

[a] ALTERNATE PODS MAY BE USED WHEN WATER IS NOT UTILIZED FROM THE PRIMARY POD

[b] USE OF WATER FROM POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH) AS AN AUTHORIZED ALTERNATE POD TOGETHER WITH ANY OTHER USE OF WATER FROM THIS SAME POD MAY NOT EXCEED 52.7 CFS

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	March 1 - October 31

DATE OF PRIORITY:

OCTOBER 14, 1864 – EXCLUDING USE OF WATER WITHIN SECTION 30, AND THE NE¼ & W½, SECTION 31; TOWNSHIP 31 SOUTH, RANGE 14 EAST, W.M.

FEBRUARY 25, 1901 – FOR USE OF WATER WITHIN SECTION 30, AND THE NE¼ & W½, SECTION 31; TOWNSHIP 31 SOUTH, RANGE 14 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
31 S	14 E	WM	29	NE SW		39.2	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	14 E	WM	29	NW SW		40.0	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	14 E	WM	29	SW SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	29	SE SW		29.6	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	29	SE SW		8.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	29	NE SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	29	NW SE		16.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	29	NW SE		20.5	POD 'I-1' COYOTE CREEK SOUTH DITCH
31 S	14 E	WM	29	SW SE		39.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	29	SE SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
[a]31 S	14 E	WM	30	SE NE		3.9	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	NE SW		0.9	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	SW SW	4	26.1	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	SE SW		34.6	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	NE SE		36.6	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	NW SE		16.5	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	SW SE		39.3	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	30	SE SE		40.0	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	31	NE NE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	NW NE		39.7	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	SW NE		39.8	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	SE NE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	NE NW		6.2	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	31	NE NW		33.8	POD 'H-4' SMALLS DITCH
[a]31 S	14 E	WM	31	NW NW		5.9	POD 'H-4' SMALLS DITCH
[a]31 S	14 E	WM	31	NW NW	1	37.4	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	31	SW NW	2	0.3	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	SW NW	2	1.4	POD 'I-2' COYOTE CREEK MAIN WEIR
[a]31 S	14 E	WM	31	SW NW	2	34.2	POD 'H-4' SMALLS DITCH
[a]31 S	14 E	WM	31	SE NW		14.2	POD 'H-4' SMALLS DITCH
[a]31 S	14 E	WM	31	SE NW		24.3	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	NE SW		37.7	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	NW SW	3	38.8	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	SW SW	4	39.3	POD 'H-5' NORTH FORK MAIN WEIR
[a]31 S	14 E	WM	31	SE SW		37.8	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	31	NE SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR

[a] The use of water on these place of use locations (totaling 668.7 acres) is subject to a February 25, 1901 priority date.

Irrigation with Incidental Livestock Watering							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	14 E	WM	31	NW SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	31	SW SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	31	SE SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NE NE		38.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	NW NE		4.7	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NW NE		33.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	SW NE		36.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	SW NE		3.6	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	SE NE		37.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	NE NW		36.3	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NE NW		2.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	NW NW		39.4	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	SW NW		39.8	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	SE NW		39.3	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NE SW		39.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NW SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	SW SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	SE SW		38.3	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NE SE		3.1	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	32	NE SE		32.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	NW SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	SW SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	SE SE		24.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
31 S	14 E	WM	32	SE SE		11.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	33	NE SW		24.3	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	33	NW SW		26.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	33	SW SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	33	SE SW		40.0	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	33	NW SE		18.4	POD 'H-5' NORTH FORK MAIN WEIR
31 S	14 E	WM	33	SW SE		33.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	3	NW NE	2	4.2	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	SW NE		1.1	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	NE NW	3	30.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	NE NW	3	6.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	3	NW NW	4	37.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	3	SW NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	3	SE NW		4.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	3	SE NW		23.2	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	NE SW		22.3	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	NE SW		2.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	3	NW SW		18.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	3	NW SW		19.6	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	SW SW		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	3	SE SW		22.1	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	4	NE NE	1	37.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	NW NE	2	29.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	NW NE	2	9.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	4	SW NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SE NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	NE NW	3	3.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	NE NW	3	35.2	POD 'H-5' NORTH FORK MAIN WEIR

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	4	NW NW	4	38.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	4	SW NW		25.8	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	4	SW NW		14.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SE NW		35.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SE NW		4.7	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	4	NE SW		37.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	NW SW		37.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SW SW		30.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	4	SW SW		1.9	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	4	SW SW		8.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SE SW		4.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SE SW		2.2	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	4	SE SW		33.7	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	4	NE SE		11.2	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	4	NE SE		25.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	NW SE		3.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	4	NW SE		34.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SW SE		39.9	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	4	SW SE		0.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	4	SE SE		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	5	NE NE	1	10.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NE NE	1	24.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	5	NW NE	2	0.2	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	5	NW NE	2	37.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SW NE		34.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	5	SW NE		0.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SE NE		2.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SE NE		37.8	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	5	NE NW	3	23.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NE NW	3	14.3	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	5	NW NW	4	33.6	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	5	NW NW	4	4.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SW NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SE NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NE SW		4.7	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	5	NE SW		32.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NW SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SW SW		35.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SW SW		2.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	5	SE SW		34.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	5	SE SW		3.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NE SE		37.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NW SE		30.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	NW SE		5.5	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	5	SW SE		38.5	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	5	SW SE		1.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SE SE		11.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	5	SE SE		28.2	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	6	NE NE	1	38.4	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NW NE	2	38.8	POD 'H-5' NORTH FORK MAIN WEIR

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	6	SW NE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SE NE		39.6	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NE NW	3	39.3	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NW NW	4	18.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SW NW	5	39.1	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SE NW		37.8	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NE SW		31.3	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NW SW	6	33.6	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SW SW	7	36.5	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SE SW		38.8	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NE SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	NW SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SW SE		40.0	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SE SE		34.7	POD 'H-5' NORTH FORK MAIN WEIR
32 S	14 E	WM	6	SE SE		5.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	NE NE		0.3	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	NE NE		38.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	NW NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SW NE		39.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SE NE		14.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SE NE		20.6	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	NE NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	NW NW	1	38.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SW NW	2	38.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SE NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	NE SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	NW SW	3	37.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SW SW	4	37.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SE SW		29.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SE SW		6.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	NE SE		39.8	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	NW SE		13.1	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	NW SE		21.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SW SE		0.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	7	SW SE		36.8	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	SE SE		38.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	7	SE SE		0.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	8	NE NE		18.1	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	NE NE		21.9	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	8	NW NE		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SW NE		17.6	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	8	SW NE		22.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SE NE		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	8	NE NW		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	NW NW		8.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	8	NW NW		27.9	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SW NW		40.0	POD 'A' CHOCKTOOT CREEK DITCH

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	8	SE NW		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	NE SW		32.3	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	NE SW		4.8	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	8	NE SW		2.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	8	NW SW		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SW SW		15.1	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SW SW		23.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	8	SE SW		0.6	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SE SW		20.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	8	SE SW		18.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	8	NE SE		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	8	NW SE		38.9	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	8	NW SE		1.1	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	8	SW SE		38.8	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	8	SE SE		38.8	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	NE NE		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	NW NE		23.7	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	NW NE		16.3	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	SW NE		36.6	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	9	SW NE		3.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	SE NE		40.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	NE NW		0.7	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	NE NW		39.3	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	NW NW		39.2	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	NW NW		0.8	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	SW NW		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	SE NW		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	NE SW		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	NW SW		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	9	SW SW		38.8	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	SE SW		38.8	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	9	NE SE		28.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	9	NW SE		40.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	9	SW SE		37.9	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	9	SE SE		2.4	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	9	SE SE		4.9	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	10	NE NW		0.7	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	10	NW NW		27.8	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	10	SW NW		4.2	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	16	NE NE		0.5	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	16	NW NE		26.4	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	16	NW NE		9.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	SW NE		33.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	SW NE		6.6	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	16	SE NE		8.4	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH)
32 S	14 E	WM	16	NE NW		20.6	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	16	NE NW		18.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	NW NW		22.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	NW NW		16.0	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	16	SW NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	SE NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	NE SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	NW SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	SW SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	SE SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	NE SE		3.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	NE SE		1.1	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	16	NW SE		38.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	16	SW SE		33.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NE NE		27.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NE NE		11.4	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	17	NW NE		31.9	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	17	NW NE		6.9	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	17	SW NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	SE NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NE NW		36.5	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NE NW		2.3	POD 'C-1' SYCAN RIVER WEIR 2 (CHOCKTOOT DITCH) (AUTHORIZED ALTERNATE POD: POD 'C-2' SYCAN RIVER WEIR 2 - REEN DITCH)
32 S	14 E	WM	17	NW NW		38.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	SW NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	SE NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NE SW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NW SW		37.6	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NW SW		2.4	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	17	SW SW		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	17	SE SW		38.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	17	SE SW		1.7	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NE SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	NW SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	SW SE		38.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	17	SW SE		1.9	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	17	SE SE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NE NE		37.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NE NE		1.4	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	18	NW NE		2.0	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	18	NW NE		36.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	SW NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	SE NE		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NE NW		36.2	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NE NW		1.2	POD 'A' CHOCKTOOT CREEK DITCH
32 S	14 E	WM	18	NW NW	1	34.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	SW NW	2	34.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	SE NW		40.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NE SW		26.3	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NE SW		13.7	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	NW SW	3	15.9	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	NW SW	3	21.0	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	SW SW	4	36.6	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	SE SW		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	NE SE		6.2	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	NE SE		33.8	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	NW SE		9.9	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	NW SE		30.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	18	SW SE		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	18	SE SE		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NE NE		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NW NE		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SW NE		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SE NE		39.9	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NE NW		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NW NW	1	37.1	POD 'D' SYCAN RIVER WEIR 3

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	19	SW NW	2	36.9	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SE NW		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NE SW		40.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NW SW	3	36.8	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SW SW	4	36.6	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SE SW		39.4	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NE SE		38.2	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	NW SE		39.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SW SE		38.2	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SE SE		36.8	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	19	SE SE		1.8	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	NE NE		12.4	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	NE NE		25.1	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	20	NW NE		17.4	POD 'C-2' SYCAN RIVER WEIR 2 (REEN DITCH)
32 S	14 E	WM	20	NW NE		20.8	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SW NE		8.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SW NE		31.7	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	SE NE		11.2	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SE NE		28.8	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	NE NW		37.6	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	NW NW		39.5	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SW NW		26.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SW NW		12.1	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	SE NW		32.7	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	SE NW		7.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	NE SW		40.0	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	NW SW		37.0	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	NW SW		3.0	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SW SW		0.1	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	20	SW SW		12.9	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	SE SW		9.6	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	NE SE		40.0	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	NW SE		40.0	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	SW SE		23.8	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	20	SE SE		16.8	POD 'C-3' SYCAN RIVER WEIR 2 (DECOSTA DITCH)
32 S	14 E	WM	30	NE NE		24.1	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	NW NE		38.4	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	SW NE		0.8	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	NE NW		38.1	POD 'D' SYCAN RIVER WEIR 3

Irrigation with Incidental Livestock Watering							
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized POD**
32 S	14 E	WM	30	NW NW	1	34.6	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	SW NW	2	37.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	SE NW		19.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	NW SW	3	25.3	POD 'D' SYCAN RIVER WEIR 3
32 S	14 E	WM	30	SW SW	4	1.7	POD 'D' SYCAN RIVER WEIR 3

[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 GARY L. GRIMES, KAREN BREITHAUPT, AND EILEEN L. GRIMES	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 37

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 37 and its associated contests (2750, 3100, 3446, and 4093) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 256.

2. The property appurtenant to Claim 37 was ultimately transferred to GARY L. GRIMES (11990 HWY 140 E, KLAMATH FALLS, OR 97603), KAREN BREITHAUPT (3839 YALE WAY, LIVERMORE, CA 64550) AND EILEEN GRIMES (11990 HWY 140 E, KLAMATH FALLS, OR 97603) (Claimants) from the original claimant, JAMES G. GRIMES. (*See* OWRD Ex. 1 at 1, 9, 15, 16, 18, 19, 93–96).

3. On May 6, 2003, Claim 37 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 4, 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 MOTION FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM on July 5, 2005 (Proposed Order).

7. Exceptions were filed to the Proposed Order within the exception filing deadline by claimants/contestants' Gary Grimes, Karen Breithaupt and Eileen Grimes.

8. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 37, 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, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.10, below.

10. **Opinion.** The section titled "Opinion" of the Proposed Order is modified by adding the following footnote to the end of Paragraph 3 of Page 6 of the Proposed Order (the second-to-last paragraph of the "Opinion"):

    The United States Supreme Court has held that publication notice is sufficient where a person's interest *or whereabouts* cannot reasonably be ascertained. *Mullane v. Central Hanover Bank Trust Co.*, 339 US 306, 316, 70 S Ct 652 (1950). As a matter of logic, a similar interpretation must be given to the "reasonably be ascertained" requirement in Section 13 of the 1909 Water Code. The existence of the fee patent to Henry Grimes does not establish that Henry Grimes' whereabouts were reasonably ascertainable. Absent additional evidence concerning Henry Grimes' whereabouts, the State Engineer's findings demonstrate that Mr. Grimes' whereabouts could not reasonably be determined at the time the notice was sent, and that he therefore was not due registered mail notice under Section 13 of the 1909 Water Code.

    Reasons for modification: To provide additional detail concerning the statutory and constitutional notice requirements applicable to the Wood River Adjudication.

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.10, above.

2. The lands described in Claim 37 were lawfully embraced in the previous Wood River Adjudication, and are therefore precluded from being claimed in the Klamath Basin General Stream Adjudication.

3. Based on the file and record herein, IT IS ORDERED that Claim 37 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 LAWRENCE AND ANN HALL	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 38

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, LAWRENCE AND ANN HALL (Claimants) (PO BOX 552, FORT KLAMATH, OR 97626) timely submitted a Statement and Proof of Claim (Claim 38) to Oregon Water Resources Department (OWRD) for a total of 2.5 cubic feet per second from Crooked Creek, tributary to Wood River, for irrigation of 99.3 acres. The claimed priority date is October 14, 1864.

2. Claimants withdrew Claim 38 by letter dated October 30, 1993. That letter states in pertinent part: "This letter will serve as my request that my regular claim be withdrawn. . . ."

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 withdrawn and was of no force or effect.

4. No contests were filed to Claim 38 or to the Preliminary Evaluation of Claim 38.

B. DETERMINATION

Based upon the file and record herein, including the October 30, 1993 letter withdrawing Claim 38, IT IS ORDERED that Claim 38 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 PATRICK J. KENNEALLY, PAULINE MARY KENNEALLY, AND CHRISTINE MARGARET KENNEALLY	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 39

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 39 (Claimants: PATRICK J. KENNEALLY, PAULINE MARY KENNEALLY, AND CHRISTINE MARGARET KENNEALLY) and its associated contests (3447 and 4094) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 257.

2. On May 6, 2003, Claim 39 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.

3. 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.

4. 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).

5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 39 on August 31, 2005.

6. No exceptions were filed to the Proposed Order.

7. 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 in its entirety.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety. In addition, Findings of Fact #14 and #15 are added as set forth in Section A.8, below.
   e. The "Opinion" is adopted with modifications, as set forth in Section A.9, below.
   f. The section titled "Proposed 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 39. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **Findings of Fact.** Proposed Order Findings of Fact #14, and #15 are added as follows (additions are shown in "underline" text):

   14. The natural spring claimed as a source of water in Claim 39 is labeled on the OWRD Investigation Map as "Crooked Creek Spring Area" at the location of point of diversion within the NW¼ NE¼ , Section 26, T33S, R7.5E, W.M. Crooked Creek Ditch begins at an 80-foot long earth dam near the Crooked Creek Springs area, and the dam diverts the total flow of the spring stream into the ditch. (OWRD Ex. A1 at 1, 26, 27, 28, 29.)

   15. Because there is no evidence on the record to the contrary, the standard duty is 3.5 acre-feet per acre and the standard rate for irrigation is 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Finding of Fact #15 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard duty and rate for irrigation. A duty of 3.5 acre-feet per acre, and a rate of 1/40 of one cubic foot per second per acre are consistent with OWRD's standards as set forth in Appendix A of the Preliminary Evaluation.

Reason for Addition of Proposed Order Finding of Fact #14: Using evidence on the record, to further clarify the source of claimed water and the point of diversion; the facts in the ALJ's Proposed Order failed to fully set forth the evidence on the record.

Reason for Addition of Proposed Order Finding of Fact #15: To include a finding regarding the standard duty, and the standard rate for irrigation based on the number of acres that should be irrigated with one cubic foot of water per second.

9. **Opinion.** Within the section titled "Opinion" of the Proposed Order, 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. 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 in its entirety.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety. In addition, Findings of Fact #14 and #15 are added as set forth in Section A.8, above.
   e. The "Opinion" is adopted with modifications, as set forth in A.9, above.
   f. The section titled "Proposed 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 39. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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.

4. Based on the file and record herein, IT IS ORDERED that Claim 39 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 39

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 33 S, R 7.5 E

CLAIMANT: PATRICK J. KENNEALLY
PAULINE MARY KENNEALLY
CHRISTINE MARGARET KENNEALLY
PO BOX 525
FORT KLAMATH, OR 97626

SOURCE OF WATER: CROOKED CREEK SPRING AREA, tributary to CROOKED CREEK

PURPOSE OR USE:

IRRIGATION OF 26.4 ACRES AND LIVESTOCK WATERING OF 80 HEAD

RATE OF USE:

0.73 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.03 CFS FOR LIVESTOCK MEASURED AT THE POINT OF DIVERSION

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE

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	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
33 S	7.5 E	WM	26	NW NE

HE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
33 S	7.5 E	WM	35	NW NE	0.8
33 S	7.5 E	WM	35	SW NE	9.7
33 S	7.5 E	WM	35	NE NW	2.2
33 S	7.5 E	WM	35	SE NW	13.7

[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 AMBROSE W. MCAULIFFE, AND SUSAN MCAULIFFE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 40

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, AMBROSE W. MCAULIFFE AND SUSAN MCAULIFFE (Claimants) (PO BOX 456, FORT KLAMATH, OR 97626) timely submitted a Statement and Proof of Claim (Claim 40) 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 40 was submitted for a total 20.0 cubic feet per second (cfs) of water from Anna Creek, a tributary of the Wood River, for "Fish and Wildlife" with a "year around" season of use. The claimed priority date is April 1891.

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.

4. On May 8, 2000, the Claimants timely filed Contest 3266 to the Claim and/or Preliminary Evaluation of Claim 40.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3386: 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., 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.

6. On May 8, 2000, the United States of America timely filed Contest 3785 to the Claim and/or Preliminary Evaluation of Claim 40.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4095 to the Claim and/or Preliminary Evaluation of Claim 40.

8. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2824 to the Claim and/or Preliminary Evaluation of Claim 40.

9. On May 8, 2000, LMJ Cattle Company and Lauren Peter Owens filed Contest 2790 to the Claim and/or Preliminary Evaluation of Claim 40.

10. On May 8, 2000, Clark W. Roeder filed Contest 2794 to the Claim and/or Preliminary Evaluation of Claim 40.

11. These matters were referred to the Office of Administrative Hearings for a contested case hearing.

12. On February 27, 2003, the Claimants withdrew Claim 40 which thereby rendered all contests moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (Feb. 27, 2003).

13. On March 3, 2003, the Adjudicator withdrew Claim 40 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 40 by the Claimant, IT IS ORDERED that Claim 40 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 NBCC, LLC	)	PARTIAL ORDER OF DETERMINATION
	)	
	)	Water Right Claim 41

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 41 (Claimant: NBCC, LLC) and its associated contests (2825, 3267, 3448, 3786, and 4096) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 180.

2. On May 6, 2003, Claim 41 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.

3. 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.

4. 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).

5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 41 on February 28, 2007.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by NBCC, LLC.

7. 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 41. Except for the items addressed in Sections A.9, A.10.b and A.11, below, the exceptions filed to the Proposed Order for Claim 41 are found to be unpersuasive.

8. 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 in its entirety.
   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 41, which also incorporates any modifications made in Section A.11, below. Consistent with Sections A.9, A.10.b, and A.11, below, the outcome of the Order has been modified as to a standard rate for irrigation and season of use.

9. **Findings of Fact.**
   a. Proposed Order Finding of Fact #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

      1. This claim was originally for a total of 7.75 cubic feet per second (cfs) of water, being 5.75 cfs for ~~approximately~~ 114.8 acres of land for irrigation at a rate of 1/20 of one cfs per acre, 1.0 cfs for stock and 1.0 cfs for fish and wildlife. The claimed duty is 5.0 acre-feet/irrigated acre. The claimed period of use is April 1 through November 1 for irrigation. (OWRD Ex. 1 at 1, 4.) Of the original claim, 112 acres located in the SE ¼ Section 35, T33S R7½E.W.M. were the subject of a previous adjudication of the Wood River, and are therefore precluded from inclusion within this adjudication. (Order on Motions for Ruling on Legal Issues, Dec. 9, 2005.) The remaining 2.8 acres was held in trust by the United States at the time of the Wood River Adjudication, and was therefore not a part of that adjudication. (*Id.*)

   Reason 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 provide additional citations to the record.

b. Proposed Order Finding of Fact #5 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> 5. The description of the works in the Field Inspection Report establishes that the works are adequate to deliver the rate and duty of water ~~noted~~ as agreed upon in the Stipulation between the Claimant and the United States. (OWRD Ex. 1 at 106, 115, 116.) The adjoining property in common ownership that was subject to the Wood River Adjudication has an allowed season of use pursuant to the Decree in that adjudication of April 1 to October 1, an allowed rate of 1/50th cfs per acre from April 1 through July 20, and 1/80th cfs per acre from July 20 through October 1, and a duty of 5 acre-feet of water per acre during the entire season of use. (*Id.* at 111.) ~~No evidence has been presented for a different rate, duty and season of use, except as limited by the Stipulation.~~ However, the Claimant attested to the ability to beneficially use the claimed quantities of water. The Stipulation between the Claimant and the United States limits the rate and duty to 1/40 cfs per acre, and 4.3 acre-feet per acre, with a season of use of April 1 through November 1. The evidence supports the rate, duty, and season of use as agreed upon in the Stipulation. [STIPULATION BETWEEN CLAIMANT AND THE UNITED STATES TO RESOLVE THE UNITED STATES' CONTEST 3786, July 3, 2006 (Stipulation).]

Reason for Modification: To base the standard rate, duty and season of use on the stipulation between the Claimant and United States, an issue raised in exceptions; to provide an additional citation to the record. The ALJ's finding with respect to the appropriate rate, duty and season of use is not supported by a preponderance of evidence in the record.

10. **Opinion.**

a. Within the section titled "Opinion" of the Proposed Order, 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 Modifications: To correct and clarify the elements of a Walton water right.

b. Within the section titled "Opinion" of the Proposed Order, the last paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> ~~This parcel adjoined, and was in common ownership from 1960 on with a parcel that was subject to the Wood River Adjudication. There is no evidentiary basis for allowing a different rate, duty and season of use for this property, than for the adjoining parcel, although the claim was for a longer season of use and a higher rate than was allowed in the prior adjudication. At the same time, the allowed duty in the Wood River Adjudication was 5 acre-feet of water per acre, whereas the Stipulation limited the duty to 4.3 acre-feet of water per acre. Except as limited by stipulation, I conclude that~~ The rate~~,~~ and duty ~~and season of use~~ for this parcel should be ~~the same as for the connected property that was previously adjudicated~~ reduced from that which was originally claimed to that which was agreed upon in the Stipulation between the United States and the Claimant. The season of use should be April 1 through November 1 as claimed and agreed upon in the Stipulation.

Reasons for Modifications: To base the standard rate, duty and season of use on the stipulation between the Claimant and United States, an issue raised in exceptions.

11. **Order.** Within the section titled "Order" of the Proposed Order, the following modifications are made (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> Diversion Rate: ~~0.056 cfs (1/50= 0.02; 2.8 X 0.02= 0.056) from April 1 through July 20, 0.035 cfs (1/80 = 0.0125; 0.0125 X 2.8 = 0.035) for the remainder of the season of use~~ 0.07 cfs (1/40 = 0.025; 2.8 X 0.025 = 0.07), measured at the point of diversion.
>
> Period of Use: April 1 to ~~October~~ November 1

Reasons for Modifications: To provide consistency with Sections A.9 and A.10.b.

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 in its entirety.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.9, above.
   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 41, which also incorporates any modifications made in Section A.11, above. Consistent with Sections A.9, A.10.b, and A.11, above, the outcome of the Order has been modified as to a standard rate for irrigation and season of use.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 41

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 35 S, R 7.5 E

CLAIMANT: NBCC, LLC
PO BOX 458
FORT KLAMATH, OR 97626

SOURCE OF WATER: CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE: IRRIGATION OF 2.8 ACRES

RATE OF USE:
0.07 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:
4.3 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
33 S	7.5 E	WM	26	NW NE	1200 FEET SOUTH AND 270 FEET EAST FROM N¼ CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	35	NE SW	2.8

[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 RICHARD NICHOLSON, AND ROGER NICHOLSON	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 42

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, RICHARD NICHOLSON AND ROGER NICHOLSON (Claimants) (PO BOX 458, FORT KLAMATH, OR 97626) timely submitted a Statement and Proof of Claim (Claim 42) 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 42 was submitted for a total 2.0 cubic feet per second (cfs) of water from Seven Mile Creek, tributary to Agency Lake, for "Fish and Wildlife" with a "year round" season of use. The claimed priority date is 1891.

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.

4. On May 8, 2000, the Claimants timely filed Contest 3268 to the Claim and/or Preliminary Evaluation of Claim 42.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3387: 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

[1] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3387 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

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.

6. On May 8, 2000, the United States of America timely filed Contest 3787 to the Claim and/or Preliminary Evaluation of Claim 42.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4097 to the Claim and/or Preliminary Evaluation of Claim 42.

8. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2826 to the Claim and/or Preliminary Evaluation of Claim 42.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 107.

10. On April 2, 2002, the Claimants withdrew Claim 42 and their Contest 3268 which thereby rendered all contests moot. *See* CLAIMANT'S WITHDRAWAL OF CLAIM AND CONTEST (Apr. 2, 2002).

11. On April 8, 2002, the Adjudicator withdrew Case 107 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 42 by the Claimants, IT IS ORDERED that Claim 42 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
ROGER NICHOLSON	)	DETERMINATION
	)	
_____	)	Water Right Claim 43

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, ROGER NICHOLSON (Claimant) (PO BOX 458, FORT KLAMATH, OR 97626) timely submitted a Statement and Proof of Claim (Claim 43) 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 43 was submitted for a total 2.0 cubic feet per second (cfs) of water from Annie Creek, a tributary of Wood River, for "Fish and wildlife" with a "year round" season of use. The claimed priority date is 1891.

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.

4. On May 8, 2000, the Claimant timely filed Contest 3269 to the Claim and/or Preliminary Evaluation of Claim 43.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3388: 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 Co. voluntarily withdrew from Contest 3388 on January 20, 2004. *See* NOTICE OF 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. On May 8, 2000, the United States of America timely filed Contest 3788 to the Claim and/or Preliminary Evaluation of Claim 43.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4098 to the Claim and/or Preliminary Evaluation of Claim 43.

8. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2827 to the Claim and/or Preliminary Evaluation of Claim 43.

9. On May 8, 2000, LMJ Cattle Company and Lauren Peter Owens filed Contest 2791 to the Claim and/or Preliminary Evaluation of Claim 43.

10. On May 8, 2000, Clark W. Roeder filed Contest 2795 to the Claim and/or Preliminary Evaluation of Claim 43.

11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 108.

12. On April 2, 2002, the Claimant withdrew Claim 43 and the Contest 3269 which thereby rendered all contests moot. *See* CLAIMANT'S WITHDRAWAL OF CLAIM AND CONTEST (Apr. 2, 2002).

13. On April 8, 2002, the Adjudicator withdrew Case 108 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 43 by the Claimant, IT IS ORDERED that Claim 43 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
ROGER NICHOLSON	)	DETERMINATION
	)	
_____	)	Water Right Claim 44

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, ROGER NICHOLSON (Claimant) (PO BOX 458, FORT KLAMATH, OR 97626) timely submitted a Statement and Proof of Claim (Claim 44) 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 44 was submitted for a total 3.0 cubic feet per second (cfs) of water from Seven Mile Creek, tributary to Agency Lake, for "Fish and Wildlife" with a "year round" season of use. The claimed priority date is 1891.

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.

4. On May 8, 2000, the Claimant timely filed Contest 3270 to the Claim and/or Preliminary Evaluation of Claim 44.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3389: 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 Co. voluntarily withdrew from Contest 3389 on January 20, 2004. *See* NOTICE OF 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. On May 8, 2000, the United States of America timely filed Contest 3789 to the Claim and/or Preliminary Evaluation of Claim 44.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4099 to the Claim and/or Preliminary Evaluation of Claim 44.

8. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2828 to the Claim and/or Preliminary Evaluation of Claim 44.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 109.

10. On April 2, 2002, the Claimant withdrew Claim 44 and the Contest 3270 which thereby rendered all contests moot. *See* CLAIMANT'S WITHDRAWAL OF CLAIM AND CONTEST (Apr. 2, 2002).

11. On April 8, 2002, the Adjudicator withdrew Case 109 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 44 by the Claimant, IT IS ORDERED that Claim 44 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
NBCC, LLC	)	DETERMINATION
	)	
_____	)	Water Right Claim 45

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 45 and its associated contests (2829, 3271, 3449, 3790, and 4100) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 181.

2. On May 6, 2003, Claim 45 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.

3. 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.

4. 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).

5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER ON MOTIONS FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM (Proposed Order) on November 25, 2005, denying Claim 45.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by claimants Roger Nicholson, Richard Nicholson, and the Dorothy Nicholson Trust.

7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 45, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

8. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

9. The property appurtenant to Claim 46 was ultimately transferred to NBCC, LLC (PO BOX 458, FORT KLAMATH, OR 97626) (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M04, PAGE 26211 (April 30, 2004) and CHANGE OF OWNERSHIP FORM (April 7, 2006).

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, IT IS ORDERED that Claim 45 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
NBCC, LLC	)	DETERMINATION
	)	
_____	)	Water Right Claim 46

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, RICHARD NICHOLSON, ROGER NICHOLSON and the DOROTHY NICHOLSON TRUST timely submitted a Statement and Proof of Claim (Claim 46) 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 46 was submitted for a total of 3 cfs of water from Fort Creek, a tributary of the Wood Creek [sic], being 1 cfs for fish and wildlife, 1 cfs for livestock watering of 10 head, and 1.0 cfs for irrigation of 1.0 acre with a duty of 5.0 acre-feet per acre. The claimed period of use is "year round" for fish and wildlife and livestock watering, and April 1 to November 1 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel, DAVID C. MOON, signed Claim 46 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 claim is for a source which has been previously adjudicated."

5. On May 8, 2000, the Claimant timely filed Contest 3272 to the Preliminary Evaluation of Claim 46.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3450: 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[2], Don Vincent[3], 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 3791 to the Claim and/or Preliminary Evaluation of Claim 46.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4101 to the Claim and/or Preliminary Evaluation of Claim 46.

9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2830 to the Claim and/or Preliminary Evaluation of Claim 46.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 182.

11. On May 20, 2003, WaterWatch's Contest 2830 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).

12. On May 6, 2003, Claim 46 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.

13. 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.

14. 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 13, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3450 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3450 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3450 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On January 19, 2005, the Klamath Tribes withdrew Contest 4101. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 19, 2005).

16. On March 18, 2005, Richard Nicholson, Roger Nicholson and the Dorothy Nicholson Trust, 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 46.

17. On March 23, 2005, the Adjudicator withdrew Case 182 from the Office of Administrative Hearings.

18. The property appurtenant to Claim 46 was ultimately transferred to NBCC, LLC (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M04, PAGE 26211 (April 30, 2004) and CHANGE OF OWNERSHIP FORM (April 7, 2006).

B. DETERMINATION

1. The Settlement Agreement executed between the Richard Nicholson, Roger Nicholson and the Dorothy Nicholson Trust, 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 46 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 46
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 46, PAGE 88

CLAIMANT: NBCC, LLC
PO BOX 458
FORT KLAMATH, OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 0.2 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 10 HEAD.

RATE OF USE:

0.005 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 - NOVEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
33 S	7.5 E	WM	35	SE SW	0.2

[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 ROGER NICHOLSON CATTLE CO.	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 47

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, ROGER NICHOLSON CATTLE CO. (Claimant) (PO BOX 458, FORT KLAMATH, OR 97626) timely submitted a Statement and Proof of Claim (Claim 47) 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 47 was submitted for a total 2.0 cubic feet per second (cfs) of water from Annie Creek, a tributary of the Wood River, for "Fish and wildlife" with a "year round" season of use. The claimed priority date is 1891.

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.

4. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3390: 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.

[1] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3390 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

5. On May 8, 2000, the United States of America timely filed Contest 3792 to the Claim and/or Preliminary Evaluation of Claim 47.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4102 to the Claim and/or Preliminary Evaluation of Claim 47.

7. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2831 to the Claim and/or Preliminary Evaluation of Claim 47.

8. On May 8, 2000, LMJ Cattle Company and Lauren Peter Owens filed Contest 2792 to the Claim and/or Preliminary Evaluation of Claim 47.

9. On May 8, 2000, Clark W. Roeder filed Contest 2796 to the Claim and/or Preliminary Evaluation of Claim 47.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 110.

11. On April 2, 2002, the Claimant withdrew Claim 47 which thereby rendered all contests moot. *See* CLAIMANT'S WITHDRAWAL OF CLAIM AND CONTEST (Apr. 2, 2002).

12. On April 8, 2002, the Adjudicator withdrew Case 110 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 47 by the Claimant, IT IS ORDERED that Claim 47 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 DARYL KOLLMAN	)))	PARTIAL ORDER OF DETERMINATION
_____	)	Water Right Claim 48

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 48 and its associated contests (2737, 2751, 2782, 3451, 3793, and 4103) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 183.

2. The property appurtenant to Claim 48 was ultimately transferred to DARYL KOLLMAN (Claimant) (5534 SOUTH SIXTH ST 225, KLAMATH FALLS, OR 97601) from original claimants RANDY S. SPARACINO, CYNTHIA L. SPARACINO, BRADFORD J. ASPELL, DELLA-ROSE ASPELL, RICHARD ASPELL, AND ANADROMOUS, INC.

3. On May 6, 2003, Claim 48 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 4, 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 MOTION FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM on September 7, 2005 (Proposed Order).

7. No exceptions were filed to the Proposed Order.

8. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.9, below.

9. **Order.** Within the section titled "Opinion" of the Proposed Order, 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. DETERMINATION

1. The Proposed Order is adopted and incorporated as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.9, 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 48 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 KENNETH L. TUTTLE, AND KAREN TUTTLE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 49

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 49 (Claimants: KENNETH L. TUTTLE AND KAREN TUTTLE) and its associated contests (2758, 2797, 3452, 3794, and 4104) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 184.

2. On May 6, 2003, Claim 49 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.

3. 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.

4. 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).

5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 49 on May 8, 2007.

6. No exceptions were filed to the Proposed Order.

7. 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 in its entirety.
   c. The "Issue" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, below.
   e. The "Conclusion of Law" is adopted in its entirety.
   f. The "Opinion" is adopted with modifications, 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 49. Except as identified in Section A.10, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **Findings of Fact.**
   a. The first sentence in Proposed Order Finding of Fact #4 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

      4. The property in question is within the former Klamath ~~Adjudication~~ Reservation. (OWRD Ex. 1 at 199.)

      Reason for Modification: To correct a scrivener's error.

   b. The Proposed Order Finding of Fact #6 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

      6. There is no evidence in the record of any forfeiture proceedings for non-use of the water subject to the water right Certificate 2807 that was issued in 1920. Certain lands encompassed under Claim 49, being those located within the NE¼ SE¼, Section 22, NW¼ SW¼ and SW¼ SW¼, Section 23, T 33 S, R 7.5 E, W.M., have been continuously authorized for irrigation from Fort Creek under Permit S-4158 / Certificate 2807 since 1919 (OWRD Ex. 1 at 4, 161, 162), and have continued to be irrigated as claimed. ~~The property in question has been irrigated continuously since at least 1957.~~ (Direct Testimony of Ambrose McAuliffe at 2.)

   Reason for Modifications: 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 ALJ's statement that the property in question has been irrigated continuously since at least 1957 was stricken because it is not supported by a preponderance of the evidence on the record. The record instead demonstrates that irrigation had continued since 1919.

9. **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. 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 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

The burden of proof to establish a claim is on the Claimants. 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 property in question was part of the Klamath Indian Reservation and allotted to an Indian, Francis Kirk, before 1917. By 1920, the property, though still allotted to Francis Kirk, was the subject of ~~a~~ Water Right Certificate 2807 in the name of Walter Dixon, based upon completion of the irrigation ditches that are still shown on the map of the property. This certificate included a description of the property remaining in this claim as part of the place of use. After Francis Kirk received his patent to the property, in 1929, he transferred it to the Mallories in 1930, who were non-Indians. ~~Although there is no direct evidence that the property was continuously irrigated from 1930 and 1957,~~ These lands have been continuously authorized for irrigation from Fort Creek under Certificate 2807 since 1920. Furthermore, no forfeiture proceedings were brought against the certificated water right during this period, suggesting that water was put to beneficial use. ~~From 1957 to the present,~~ The percipient testimony of witnesses in these proceedings and evidence on the record supports the conclusion that the property has ~~been continuously~~ continued to be irrigated, and is irrigated at the

present day. The elements necessary for a *Walton* claim for the 30.8 acres have been established.

Based on the evidence presented, ~~I~~ it is recommended that the Adjudicator allow the claim on the terms specified in the stipulation between Claimant and the United States.

Reasons for Modifications: To provide consistency with the above Modified Proposed Order Finding of Fact; to provide clarity of evidence on the record; to further substantiate approval of the claim; to apply the appropriate legal basis/bases to the proposed order's modified findings of fact.

10. **Order.** Within the section titled "Order" of the Proposed Order, the following items are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

a. Point of Diversion: NE¼ SW¼ Section ~~26~~ 23, Township 33 South, Range 7.5 East, W.M.

Reason for Modification: To correct a scrivener's error. The point of diversion was incorrectly listed in the Proposed Order as being within Section 26; the point of diversion is located within Section 23. (OWRD Ex. 1 at 96, 125, 126; Kenneth Tuttle Direct, Ex. B.)

b. Period of Use: April 1 to October 1 (irrigation with incidental livestock watering~~); year-round~~

Reason for Modification: To provide consistency with the season of use specified in the STIPULATION BETWEEN THE CLAIMANTS AND UNITED STATES TO RESOLVE UNITED STATES' CONTEST 3794 (June 21, 2006). In addition, livestock watering is incidental to irrigation, and as such the season of use is coincidental to the irrigation season.

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 in its entirety.
   c. The "Issue" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, above.
   e. The "Conclusion of Law" is adopted in its entirety.
   f. The "Opinion" is adopted with modifications, 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 49. Except as

identified in Section A.10, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 49

CLAIM MAP REFERENCE:
MAP FROM KENNETH L. TUTTLE DIRECT TESTIMONY, EX. B. PAGE 1

CLAIMANT: KENNETH L. TUTTLE
KAREN TUTTLE
1696 COVE POINT RD
KLAMATH FALLS, OR 97601

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 30.8 ACRES INCLUDING INCIDENTAL LIVESTOCK WATERING OF UP TO 759 HEAD

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

DUTY:
4.0 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 POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7 E	WM	23	NE SW	672 FEET SOUTH AND 509 FEET WEST FROM C¼ CORNER, SECTION 23

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	22	NE SE	10.0
33 S	7.5 E	WM	23	NW SW	12.5
33 S	7.5 E	WM	23	SW SW[1]	8.3

[1] The authorized place of use within the SW¼ SW¼ lies entirely to the west of Highway 62

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication