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 KATHLEEN D. WALT, AND JENNIFER J. WALT	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 200

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 200 (Claimants: KATHLEEN D. WALT, AND JENNIFER J. WALT) and its associated contests (31, 3411, 3842, and 4184) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 133.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 200 on April 5, 2005. Exceptions were filed to the Proposed Order within the exception filing deadline by the United States of America.

3. The Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) for Claim 200 on May 15, 2007, to address enlargements of the original claim that were recommended in the April 5, 2005 Proposed Order. Except as modified, the Amended Proposed Order fully incorporated the 2005 Proposed Order.

4. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by (1) Kathleen D. Walt and Jennifer J. Walt, and (2) the United States of America.

5. The exceptions filed to the Proposed Order and the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 200 and are found to be unpersuasive.

6. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein with two exceptions: (1) a new section entitled "Amended Proposed Order Findings of Fact" is added to the Amended Proposed Order as set forth in Section A.7, below, and (2) the section titled "IV. Modifications to the 'Order' Section" is adopted with modifications, as set forth in Section A.8, below. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

7. **Findings of Fact.** A new section entitled "Amended Proposed Order Findings of Fact" is added to the Amended Proposed Order as follows:

Amended Proposed Order Findings of Fact

1. Because there is no evidence on the record to the contrary, the standard rate for irrigation is 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Amended Proposed Order Finding of Fact #1 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard rate for irrigation. The rate of 1/40 of one cubic foot per second per acre is consistent with OWRD's standard as set forth in Appendix A of the Preliminary Evaluation.

2. The Claimant claimed livestock watering for 88 head. (OWRD Ex. 1 at 19.) Livestock watering is limited to the 88 head, the number claimed.

Reason for Additional Amended Proposed Order Finding of Fact #1: To include a finding regarding a standard rate for irrigation based on the number of acres that should be irrigated with one cubic foot of water per second.

Reason for Additional Amended Proposed Order Finding of Fact #2: The facts in the ALJ's Proposed Order and failed to fully set forth the evidence on the record, and this omission was not addressed in the Amended Proposed Order.

8. **Order.**

a. Within the section of the Amended Proposed Order titled "IV. Modifications to the "Order" Section" the Purpose or Use is modified as follows (additions to the Amended Proposed Order are shown in underline):

PURPOSE or USE:

DOMESTIC INCLUDING IRRIGATION OF 0.5 ACRES (DOMESTIC EXPANDED); IRRIGATION OF 55.8 ACRES; AND LIVESTOCK WATERING OF 88 HEAD

b. Within the section of the Amended Proposed Order titled "IV. Modifications to the 'Order' Section" the standard rate for irrigation is expressed as follows (additions to the Amended Proposed Order are shown in underline):

> 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

Reason for Modifications: To provide consistency with the Amended Proposed Order's Findings of Facts 1 and 2.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein with two exceptions: (1) a new section entitled "Amended Proposed Order Findings of Fact" is added to the Amended Proposed Order as set forth in Section A.7, above, and (2) the section titled "IV. Modifications to the 'Order' Section" is adopted with modifications, as set forth in Section A.8, above. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 200 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 200

CLAIM MAP REFERENCE: CLAIM # 200, PAGE 0068

CLAIMANT: KATHLEEN D. WALT
JENNIFER J. WALT
650 CALIFORNIA ST., 20TH FLOOR
SAN FRANCISCO, CA 94108-2693

SOURCE OF WATER: KEENE CREEK, tributary to JENNY CREEK

PURPOSE or USE:

DOMESTIC INCLUDING IRRIGATION OF 0.5 ACRES (DOMESTIC EXPANDED);

IRRIGATION OF 55.8 ACRES; AND

LIVESTOCK WATERING OF 88 HEAD.

RATE OF USE:

1.30 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.28 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION;

0.01 CFS FOR DOMESTIC EXPANDED MEASURED AT THE POINT OF DIVERSION; AND

0.01 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF 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
Domestic Expanded	April 1 - October 31
Irrigation	April 1 - October 31
Livestock Watering	April 1 - October 31

DATE OF PRIORITY: DECEMBER 31, 1902

THE POINTS OF DIVERSIONS AND MAXIMUM RATES:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Authorized Use	Maximum Rate (cfs)
Northerly Pipeline	40 S	4 E	WM	17	NW NW	1640 FEET NORTH AND 4490 FEET WEST FROM E¼ CORNER, SECTION 17	Irrigation	0.81
							Domestic Expanded	0.01
							Livestock	0.008
Southerly Pipeline	40 S	4 E	WM	17	SE NW	445 FEET NORTH AND 2645 FEET WEST FROM E¼ CORNER, SECTION 17	Irrigation	0.34
							Livestock	0.002
Water Cannon	40 S	4 E	WM	17	SW NE	NONE GIVEN	Irrigation	0.13
Water Cannon	40 S	4 E	WM	17	SE NW	NONE GIVEN		

THE PLACE OF USE:

DOMESTIC EXPANDED						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**	**Authorized POD**
40 S	4 E	WM	17	SE NE	0.50	Northerly Pipeline

IRRIGATION						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**	**Authorized POD**
40 S	4 E	WM	17	SW NE	14.30	Northerly Pipeline
40 S	4 E	WM	17	SW NE	5.20	Southerly Pipeline
40 S	4 E	WM	17	SW NE	3.80	Water Cannon
40 S	4 E	WM	17	SE NE	10.00	Northerly Pipeline
40 S	4 E	WM	17	SE NE	9.70	Southerly Pipeline
40 S	4 E	WM	17	SE NW	10.80	Northerly Pipeline
40 S	4 E	WM	17	SE NW	2.00	Water Cannon

LIVESTOCK					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Authorized POD**
40 S	4 E	WM	17	SW NE	Northerly Pipeline and Southerly Pipeline
40 S	4 E	WM	17	SE NE	Northerly Pipeline and Southerly Pipeline
40 S	4 E	WM	17	NW NW	Northerly Pipeline

[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 W. BERG	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 201

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 201 (Claimant: RICHARD W. BERG) and its associated contests (36, 3187, 3412, 1843, and 4185) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 134.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER for Claim 201 on January 9, 2004. No exceptions were filed to the Proposed Order within the exceptions filing deadline.

3. On July 28, 2009, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to address 7.9 acres, a portion of the 30.9 acres approved in the January 9, 2004 Proposed Order. These 7.9 acres are subject to irrigation by the method of natural overflow rather than by irrigation from a point of diversion as recommended in the January 9, 2004 Proposed Order. The Amended Proposed Order replaces the 2004 Proposed Order in its entirety.

4. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the United States of America.

5. 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 201. Except for the items addressed in Sections A.7 and A.8, below, the exceptions filed to the Amended Proposed Order for Claim 201 are found to be unpersuasive.

6. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The introductory (first) paragraph of the Amended Proposed Order is adopted with modifications, as set forth in Section A.7, below.
   b. The "History of the Case" is adopted in its entirety.
   c. The "Procedural Matters" is adopted in its entirety.
   d. The "Evidentiary Rulings" is adopted in its entirety.
   e. The "Issues" is adopted in its entirety.
   f. The "Findings of Fact" is adopted in its entirety.
   g. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
   h. The "Opinion" is adopted with modifications, as set forth in Section A.9, below.
   i. The "Order" is adopted as in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. The outcome of the Order is without modification.

7. **Introductory Paragraph.** The first sentence within the first paragraph is modified as follows (deletions are shown in "~~strikethrough~~" text):

   After fully considering the entire record ~~and exceptions filed,~~ the Adjudicator issues this AMENDED PROPOSED ORDER pursuant to OAR 137-003-0655(3). This AMENDED PROPOSED ORDER modifies the PROPOSED ORDER issued on January 9, 2004, by Administrative Law Judge William D. Young, and is not a final order subject to judicial review pursuant to ORS 183.480 or ORS 539.130.

   Reason for Modifications: To make a correction raised in exceptions to the Amended Proposed Order; exceptions were not filed to the January 9, 2004 Proposed Order.

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

   (6) ~~An irrigation claim based on natural overflow is entitled as a matter of law to a Pre-1909 water right.~~ Beneficial use of water for irrigation by the method of natural overflow is a valid basis for a *Pre-1909* water right.

   Reason for Modifications: To correct and clarify the wording in Conclusions of Law #6, an issue raised in exceptions.

9. **Opinion.** The following paragraph (shown in "underline" text) is added at the end of the "Acreage entitled to the pre-1909 water right" subsection of the "Opinion" section:

   Lot 9 totals 34.18 acres (OWRD Ex. 1 at 44), of which 3 acres are not irrigable (OWRD Ex. 1, page 8, 10) and 23 acres are irrigated from a point of

diversion (OWRD Ex. 1, pages 51, 58). The remaining 7.92 acres within Lot 9 are irrigated by the method of natural overflow (TR. Pg 14-15, 30-33).

Reason for Modification: To add clarification using evidence on the record.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The introductory (first) paragraph of the Amended Proposed Order is adopted with modifications, as set forth in Section A.7, above.
   b. The "History of the Case" is adopted in its entirety.
   c. The "Procedural Matters" is adopted in its entirety.
   d. The "Evidentiary Rulings" is adopted in its entirety.
   e. The "Issues" is adopted in its entirety.
   f. The "Findings of Fact" is adopted in its entirety.
   g. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
   h. The "Opinion" is adopted with modifications, as set forth in Section A.9, above.
   i. The "Order" is adopted as in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. The outcome of the Order is without modification.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 201

CLAIM MAP REFERENCE: CLAIM # 201, PAGES 10 and 51

CLAIMANT: RICHARD W. BERG
PO BOX 54
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 23.00 ACRES FROM POD 1; AND IRRIGATION OF 7.92 ACRES BY NATURAL OVERFLOW; LIVESTOCK WATERING OF 12 HORSES INCIDENTAL TO IRRIGATION

RATE OF USE OF WATER APPLIED FROM POD 1:
0.64 CFS FROM POD 1 FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY OF WATER APPLIED FROM POD 1:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE OF WATER APPLIED FROM POD 1: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: MARCH 30, 1905

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	40 S	8 E	WM	6	NW SE	9	2510 FEET NORTH AND 1990 FEET EAST FROM SE CORNER, SECTION 6
Natural Overflow	40 S	8 E	WM				No specific point of diversion; Natural Overflow

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING FROM POD 1						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	8 E	WM	6	NE SW	9	2.00
40 S	8 E	WM	6	NW SE	9	21.00
40 S	8 E	WM	6	NW SE	9	7.92

IRRIGATION BY NATURAL OVERFLOW WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	8 E	WM	6	NW SE	9	7.92

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: 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. THE DUTY FOR IRRIGATION MAY NOT EXCEED 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

[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 BERNARD L. SIMONSEN; ROCKING AC RANCH	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 202

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 4, 1990, A.L. BRUNER timely submitted a Statement and Proof of Claim (Claim 202) 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 202 was submitted for "6 [inches] each 14 Days" of water for irrigation of 1,149.8 acres, and 0.03 cubic foot per second for livestock watering of 1500 head from the Klamath River, a tributary to the Pacific Ocean, with a season of use "March 1st – Jan 15th." The claimed priority date is prior to 1905.

3. The property appurtenant to Claim 202 was subsequently acquired by BERNARD L. SIMONSEN; ROCKING AC RANCH (Claimant) (9390 HWY 140E, KLAMATH FALLS, OR 97603) (Claim # 202, Pages 41 and 42).

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres than claimed.

5. On May 8, 2000, the United States of America timely filed Contest 3844 to the Claim and/or Preliminary Evaluation of Claim 202.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4186 to the Claim and/or Preliminary Evaluation of Claim 202.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3188 to the Claim and/or Preliminary Evaluation of Claim 202.

8. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2855 to the Claim and/or Preliminary Evaluation of Claim 202.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 135.

10. On February 21, 2003, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew from Contest 3188. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Feb. 21, 2003).

11. On March 2, 2004, the Claimant withdrew Claim 202 which thereby rendered all contests moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (Mar. 2, 2004).

12. On March 8, 2004, the Adjudicator withdrew Case 135 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 202 by the Claimant, IT IS ORDERED that Claim 202 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 BARNEY CALMES AND DAISY CALMES	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 203

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 203 (Claimants: BARNEY CALMES AND DAISY CALMES) and its associated contests (35, 3189, 3413, 3845, AND 4187) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 136.

2. Claim 203 was subsequently consolidated for hearing with Claims 206 and 207. Claim 203 is now unconsolidated for the purposes of issuing this Partial Order of Determination.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 203, 206, and 207 on August 30, 2005.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.

5. 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 203.

6. On April 4, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) (1) to modify the season of use for Claims 203, 206 and 207 because the seasons of use in the 2005 Proposed Order exceeded the claimed seasons of use, and (2) to correct and clarify the amounts of acreage irrigated by various sources of water and diversion points for Claims 203 and 207, (3) to modify the priority date of certain lands

in Claim 203, (4) to recognize abandonment of the right to irrigate on certain portions of Claim 207, (5) to modify the duty for Claims 203 and 207 because the duty in the 2005 Proposed Order exceeded the claimed duties, and (6) to limit Claims 203 and 207 to incidental livestock watering during the irrigation season. Except as modified, the Amended Proposed Order fully incorporated the 2005 Proposed Order.

7. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.

8. The exceptions filed to the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 203, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

9. The evidentiary record for Claims 203, 206, and 207 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 203.

10. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, except as modified to correct three scrivener's errors pertaining to Claim 203 as discussed below.

    a. *The modification made to the first paragraph of subsection D.2 contains an error in the 4th sentence (page 7 of the Amended Proposed Order). The modified sentence is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

    > With respect to the remaining ~~25.9~~ 25.2 acres from diversion point No. 1, and 72.5 acres from diversion point No. 2, the Preliminary Evaluation assigned a priority date of December 31, 1908.

    Reason for Modification: Claim 203 is approved for a total 101.9 acres, being 72.5 acres irrigated from POD 2 and 29.4 acres from POD 1. Of the 29.4 acres irrigated from POD 1, 4.2 acres have a priority date of October 28, 1897. Therefore the remaining acres from diversion point No. 1 should be 25.2.

    b. *The Claim Description for Claim 203 contains two scrivener's errors in the "PURPOSE or USE" description. The Claim Description is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

PURPOSE OR USE:

IRRIGATION OF 101.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 300 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

~~30.1~~ 29.4 ACRES FROM POD 1, AND

~~71.8~~ 72.5 ACRES FROM POD 2.

Reason for Modification: On page 5 of the Amended Proposed Order, in the additional Finding of Fact #9 it was found that 0.7 acres was irrigated from POD 2 rather than from POD 1. Although shown correctly in the Place of Use table, this adjustment failed to be made in the "Purpose or Use" within the Claim Description.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein except as modified to correct the three scrivener's errors discussed in Section A.10, above.

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

4. Based on the file and record herein, IT IS ORDERED that Claim 203 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 203

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 8 E

CLAIMANT: BARNEY CALMES
DAISLY CALMES
PO BOX 42
KENO OR 97627-0042

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:

IRRIGATION OF 101.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 300 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

29.4 ACRES FROM POD 1, AND

72.5 ACRES FROM POD 2.

RATE OF USE:

2.38 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.75 CFS FROM POD 1 AND 1.63 CFS FROM POD 2.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 1 - NOVEMBER 15

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	40 S	8 E	WM	16	SE NW	13	3760 FEET SOUTH AND 5830 FEET EAST FROM NW CORNER, SESW, SECTION 8
POD 2	40 S	8 E	WM	16	NE SW	14	NONE GIVEN

DATES OF PRIORITY AND THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING								
PRIORITY DATE	Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
October 28, 1897	40 S	8 E	WM	16	SW NW	12	1.7	POD 1
October 28, 1897	40 S	8 E	WM	17	NE NE	3	1.0	
December 31, 1908	40 S	8 E	WM	17	NE NE	1	1.9	
December 31, 1908	40 S	8 E	WM	17	NW NE		0.1	
December 31, 1908	40 S	8 E	WM	17	SW NE		0.8	
December 31, 1908	40 S	8 E	WM	17	SW NE		8.4	
December 31, 1908	40 S	8 E	WM	17	SE NE	2	10.8	
October 28, 1897	40 S	8 E	WM	17	SE NE	3	1.5	
December 31, 1908	40 S	8 E	WM	17	NE NW		2.2	
December 31, 1908	40 S	8 E	WM	17	SE NW		1.0	
December 31, 1908	40 S	8 E	WM	16	SW NW	1	11.2	POD 2
October 28, 1897	40 S	8 E	WM	16	SW NW	12	7.5	
October 28, 1897	40 S	8 E	WM	16	SE NW	13	3.6	
October 28, 1897	40 S	8 E	WM	16	NE SW	14	3.0	
December 31, 1908	40 S	8 E	WM	16	NE SW	2	14.9	
December 31, 1908	40 S	8 E	WM	16	NW SW		14.3	
December 31, 1908	40 S	8 E	WM	16	SW SW		3.2	
December 31, 1908	40 S	8 E	WM	16	SE SW	3	14.1	
December 31, 1908	40 S	8 E	WM	17	SE NE	2	0.7	

[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 JOHN AND BARBARA EVENSIZER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 204

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 April 24, 1990, JOHN AND BARBARA EVENSIZER (Claimants) timely submitted a Statement and Proof of Claim (Claim 204) 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 204 was submitted for a total 0.15 cubic feet per second (cfs) of water from the Klamath River, tributary to the Pacific Ocean, for irrigation of 3.6 acres with a season of use "May, June, July, Aug." The claimed priority date is 1901.

3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as "1901," and states the basis of the right as "irrigation started in 1901." (Claim # 204, Page 001).

4. BARBARA EVENSIZER signed the Statement and Proof of Claim for Claim 204 attesting that the information contained in the claim is true.

5. In 1980, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 204. The report also includes the statement, "He [Dave Jones, landowner at the time of the report] said that this property had been part of the Lowlands Farm in the past. He said that it was part of the original Kerns family land. Mr. Jones said that his wife, Sally and Edna Lilly had researched the water use and found that it had started in 1901." (Claim 204, WIP Page 00012).

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 than claimed and a longer season of use than claimed.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3190 to the Claim and/or Preliminary Evaluation of Claim 204.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 39.

9. On January 2, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3190. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 2, 2002).

10. On February 28, 2002, Contest 3190 was dismissed from the Office of Administrative Hearings. *See* FOURTH AMENDED ORDER DISMISSING CONTEST AND REFERRING TO ADJUDICATOR (Feb. 28, 2002).

11. Based on the sworn statements in Claim 204, along with the field inspection report, the following findings are made:

    a. The Claimants demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimants created a diversion, where necessary, to divert water from its natural source.

    c. The Claimants applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, 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 204 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 204

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 39 S, R 8 E, and T 40 S, R 8 E

CLAIMANT: JOHN AND BARBARA EVENSIZER
1877 MALLARD LANE
KLAMATH FALLS OR 97601

SOURCE OF WATER: KLAMATH RIVER, tributary to PACIFIC OCEAN

PURPOSE or USE: IRRIGATION OF 3.6 ACRES.

RATE OF USE:
0.09 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: MAY 1 - AUGUST 31

DATE OF PRIORITY: DECEMBER 31, 1901

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	8 E	WM	5	NE NW	8

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	8 E	WM	32	SW SW	11	0.2
40 S	8 E	WM	5	NE NW	8	1.7
40 S	8 E	WM	5	NW NW	9	1.7

[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 ROBERT FLOWERS; FLOWERS BROS. INC.; MARTIN SCULL; SANDRAL TUCKER; AND KAREN TUCKER	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 205

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 205 (Claimants: ROBERT FLOWERS, FLOWERS BROS. INC, MARTIN SCULL, SANDRAL TUCKER, AND KAREN TUCKER) and its associated contests (2856, 3191, 3864 and 4188) were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 137, and subsequently consolidated with Case 3. The consolidation with Case 3 was reversed by INTERIM ORDER (Jan 12, 2006) at 31.[1]

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 205 on April 13, 2007.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) claimants Robert Flowers, Martin Scull, Flowers Bros. Inc., Sandral Tucker and Karen Tucker, and (2) the United States of America.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 205. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.6, A.7 and A.8, below.

[1] This Interim Order was amended by an AMENDED INTERIM ORDER (May 24, 2006) issued *sua sponte* by the Administrative Law Judge to provide clarification of certain matters raised in correspondence and to correct typographical errors noted since the original order was issued.

5. The 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 Presented" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, below.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, below.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.8, below.
   g. The "Summary" is deleted in its entirety.
   h. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 205. Consistent with sections A.6, A.7., and A.8, below, the outcome of the order has been modified to recognize a right for irrigation on acreage reduced by 109.7 acres.

6. **Findings of Fact.**

   a. Within Proposed Order Finding of Fact #1, three place of use descriptions are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

      i. Lot 6, ~~SE¼ SE¼~~ SW¼ SE¼ Section 15 T40SR8E. W.M. 5.1 acres irrigation

Reason for Modification: To correct a scrivener's error; the 5.1 acres (1.7 + 3.4) within Lot 6 is within the SW¼ of the SE¼. (OWRD Ex. 1 at 100.)

      ii. ~~Lot 3, SE¼ NE¼ Section 22 T40SR8E. W.M. 0.1 acres irrigation~~

      iii. Lot 10, SE¼ NE¼ Section 22 T40SR8E. W.M. ~~15.1~~ 15.2 acres irrigation

Reason for Modification: To correct a scrivener's error in the lot number for the 0.1 acres within the SE¼ NE¼. This parcel is located above the meander line whereas Lot 3 is below the meander line; the 0.1 acres is within Lot 10. This 0.1 acre parcel shows on the OWRD Investigation Map as being separated from the 15.1 acres by an ownership boundary; the map shows 0.1 acres under the ownership of R.G. Flowers and 15.1 acres under J.A. Flowers. Thus the 0.1 acres has been combined with the 15.1 acres, all within Lot 10, for a total of 15.2 acres within the SE¼ NE¼, Section 22. (Compare C-14 @ 2 to OWRD Ex. 1 at 100: note the small arrow extending left from the '0 ^{1}' lettering on the OWRD Investigation Map – it points to the sliver within R.G. Flowers property boundary which is also within Lot 10.)

   b. The last Paragraph of Proposed Oregon Finding of Fact #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

An additional water right was claimed based upon application of water from the Ady District Improvement Co. and Warren Act contracts with the

United States for use of water from the Klamath Project, having a priority date of 1905. This portion of the claim was conditional on the United States failing to establish that it was the proper holder of the water right appropriated for the Klamath Project. The area in question in these additional properties was not defined with particularity in the original claim document. (OWRD Ex. 1 at 4.) ~~The holding in the Amended Interim Order in Klamath Adjudication Case 003 that the United States is the proper holder of the water right for the 1905 appropriation for the Klamath Project is the law of the case for this proceeding. Klamath Adjudication Case 003, May 23, 2006, at page 35.~~ This portion of the claim was properly consolidated with Case 003, since it concerns appropriations made for the Klamath Reclamation Project or appropriations that were incorporated into the Klamath Reclamation Project. The Partial Order of Determination pertaining to the Klamath Reclamation Project claims addresses this portion of the Claimants' claim.

c. Proposed Order Findings of Facts #8, #9 and #10 are renumbered as follows, and changes are made to the Finding of Fact renumbered as #11 (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

~~8)~~ 10) On October 30, 1889, the State of Oregon conveyed to W.L. Garretson a parcel of swamp land, including the following property subject to this claim: NW¼ NE¼ and Lots 5, 6 and 7, Section 22, T40S R8E.W.M. Consideration for this sale was one dollar per acre. (Ex. C-17.)

~~9)~~ 11) The evidence in the record establishes that most of the property subject to this claim (that portion within the meander line of the Klamath River) was under private ownership no later than the 1880s. ~~Natural grass was harvested from the land, either through grazing or as hay, from at least the time that it was in private hands.~~ (OWRD Ex. 1 at 16-29; Rebuttal Testimony of Robert Flowers at 2.)

~~10)~~ 12) Beginning in the early 1900s, various facilities were built on the Klamath River to control the flow of the river. Link River Dam controlled flooding, so that the upper areas previously subject to seasonal inundation

were no longer covered with water. From 1930 on, the California-Oregon Power Company raised the level of the river in the area subject to this claim, by building a dam downstream at Keno. This maintained the level of water in the river and Klamath Straits at a point where the land within the meander line of the river would be continually flooded without control structures. As dikes and levies were built along the Klamath River, and the Klamath Straits was blocked, Claimants built

head-gates through the structures to allow water to flood the subject property for irrigation. (OWRD Ex. 1 at 11, 12, 15.)

Reason for Modification: The record does not support, by a preponderance of the evidence, the finding that the entire claimed place of use within the meander line was either harvested or grazed by the time the land was taken into private ownership.

d. Proposed Order Findings of Fact #13 is added to the Proposed Order as follows (additions are shown in "underline" text):

13) An experimental farm began operation on a portion of the claimed place of use sometime in 1907, and operated through at least 1912. Pipe was installed to irrigate the farm. The farm was located south of Wildhorse Butte and west of the railroad. It included lands in Sections 22, 23 and 26. Based on a comparison of the written description of the location of the experimental farm with maps in the record, the experimental farm included the following claimed lands:

Lot 10	SE¼ NE¼	Section 22 T40S R8E W.M.	15.2 acres irrigation
Lot 10	NE¼ SE¼	Section 22 T40S R8E W.M.	12.7 acres irrigation
Lot 11	SE¼ SE¼	Section 22 T40S R8E W.M.	1.3 acres irrigation
	SE¼ SW¼	Section 23 T40S R8E W.M.	0.3 acres irrigation
Lot 4	NE¼ NW¼	Section 23 T40S R8E W.M.	15.2 acres irrigation
Lot 4	NW¼ NW¼	Section 23 T40S R8E W.M.	0.6 acres irrigation
Lot 5	SE¼ NW¼	Section 23 T40S R8E W.M.	11.1 acres irrigation
Lot 6	NE¼ SW¼	Section 23 T40S R8E W.M.	8.7 acres irrigation
Lot 7	NW¼ SW¼	Section 23 T40S R8E W.M.	38.0 acres irrigation

Lot 8 SW¼ NW¼ Section 23 T40S R8E W.M. 3.3 acres irrigation

Lot 9 SW¼ SW¼ Section 23 T40S R8E W.M. 33.5 acres irrigation

Lot 3 NW¼ NW¼ Section 26 T40S R8E W.M. 7.2 acres irrigation

Direct Testimony of Robert Flowers at 5, Attachment A; Ex. C5; OWRD Ex 1 at 11, 78.

Reason for Modification: To make an additional finding of fact supported by a preponderance of evidence in the record.

7. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #2 and #3 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   a. *Conclusion of Law #2 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

      2. There is sufficient information on the development of water on a portion of this place of use prior to February 24, 1909, to establish a vested pre-1909 water right. There is insufficient evidence to establish a vested pre-1909 water right on the remainder of the claimed place of use.

   b. *Conclusion of Law #3 is deleted as follows (deletions are shown in "~~strikethrough~~" text):*

      ~~3. The pre-1909 water right on the claimed place of use that is within the meander line of the Klamath River is prior to the claims of the United States for the Klamath Project. The United States is the proper holder of the water right for water obtained from the Klamath Project through contracts with the United States and the Ady District Improvement Company.~~

Reason for Modification: To make the Conclusions of Law consistent with the Findings of Fact and Opinion. In addition, the Partial Order of Determination concerning the Klamath Reclamation Project claims is the appropriate place to address claims for this place of use based on appropriations made for the Klamath Reclamation Project.

8. **Opinion.** Within the section titled "Opinion" of the Proposed Order, subsection #2 is modified as shown below in A.8.a., and A.8.b.

   a. Paragraph 7 of subsection #2 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

In this case, the United States objected to admission of hearsay. However, the findings of fact that are supported by hearsay in this case, contained in Findings of Fact Paragraphs 1, 2, 3 and 10[2], provide general information as to the seasonal overflow of the property, and the development of dams and control structures on the Klamath River. None of these facts is contradicted in the United States' presentation, or seriously open to question. In addition, the United States' evidence does not contradict the existence, dates of operation, or location of the experimental farm described in Finding of Fact #13.[3] Consequently, under *Cole,* the hearsay evidence used to support those findings of fact is substantial evidence.

b. The remainder of subsection #2 is deleted and replaced as follows (additions are shown in "underline" text):

Evidence of beneficial use prior to 1909 on a portion of the claimed lands comes from swamp land deeds and from evidence of an experimental farm on a portion of the claimed lands prior to 1909.

The Claimants have submitted swamp land deeds covering most of the claimed place of use. Swamp land deeds were issued in Oregon based on applications made under the terms of one of three successive Swamp Land Acts. The effect of a given swamp land deed as evidence of beneficial use of water depends both on the terms of the Swamp Land Act in effect at the time of the application, and on the effect of any subsequent Swamp Land Acts on the terms of the original application. Applications for deeds made under the authority of the initial Swamp Land Act of 1870 ("1870 Act") required subsequent proof of reclamation in order to obtain a swamp land deed. 1870 General Laws of Oregon §4, p. 56. The definition of "reclamation" provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. Specifically, the 1870 Act treated land as reclaimed which had been "successfully cultivated in

[2] Renumbered as Finding of Fact #12 in Section A.6.c of this Partial Order of Determination for Claim 205.
[3] Added in Section A.6.d of the Partial Order of Determination for Claim 205.

either grass, the cereals or vegetables for three years." *Id.* The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of $1 per acre. *Id.* at §3, p. 55.

The second Swamp Land Act of 1878 ("1878 Act") altered certain provisions of the 1870 Act. It provided applicants who initially applied under the 1870 Act a second path for obtaining a deed. An applicant under the 1870 Act could still submit proof of reclamation to obtain a deed. Or, an applicant under the 1870 Act could instead pay a higher price ($2.50 per acre) and obtain a deed without proof of reclamation. 1878 General Laws of Oregon, §10, p. 46. In addition, the 1878 Act provided that any applicant making a *new* application after the effective date of the 1878 Act could obtain a deed by payment of a minimum of $1 per acre without proof of reclamation. *Id.* at §4, p. 42). New applications made after the effective date of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 ("1887 Act") made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been "reclaimed or paid" by the effective date of the 1887 Act, with the exception that such applicants who were also "actual settlers on lands of 320 acres or less" and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. General Laws of 1887 §2, p. 10. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. *Id.* at §5, p. 9-10. Deeds issued under this provision were limited to 640 acres. *Id.* Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the 1878 Act (i.e., without requiring proof of reclamation). *Id.* The 1887 Act went into effect on February 16, 1887. *Id.*

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.[4]

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than $2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for $2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the swamp land deeds submitted in this case, these principles mean that the deed dated February 1, 1886, in the name of Quincy A. Brooks, is substantial evidence of beneficial use. Because the 1870 Act

[4] The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

required three years' cultivation before the state could issue a swamp land deed, the appropriate priority date for the claimed lands subject to this deed is February 1, 1883. The remaining swamp land deeds were all issued after February 16, 1887, and are not proof of beneficial use.

The following claimed lands are included in the deed dated February 1, 1886:

Lot 4	SW¼ SW¼	Section 15 T40S R8E.W.M.	14.2 acres irrigation
Lot 5	SE¼ SW¼	Section 15 T40S R8E.W.M.	4.4 acres irrigation
Lot 6	SW¼ SE¼	Section 15 T40S R8E.W.M.	5.1 acres irrigation
Lot 7	SE¼ SE¼	Section 15 T40S R8E.W.M.	1.0 acres irrigation
	NE¼ NE¼	Section 21 T40S R8E.W.M.	40.0 acres irrigation
Lot 3	SE¼ NE¼	Section 21 T40S R8E.W.M.	8.0 acres irrigation
Lot 4	NW¼ NE¼	Section 21 T40S R8E.W.M.	17.6 acres irrigation
	NE¼ NW¼	Section 22 T40S R8E.W.M.	38.5 acres irrigation
	NW¼ NW¼	Section 22 T40S R8E.W.M.	40.0 acres irrigation
	SE¼ NW¼	Section 22 T40S R8E.W.M.	40.0 acres irrigation
Lot 8	NE¼ SW¼	Section 22 T40S R8E.W.M.	12.5 acres irrigation
Lot 9	SW¼ NW¼	Section 22 T40S R8E.W.M.	30.0 acres irrigation

In addition to the swamp land deeds actually submitted in this case, a swamp land purchase covering the lands claimed in Section 16 of Township 40 South, Range 8 East, is referenced in *Corpe v. Brooks*, 8 Or 222 (1880).[5] In that case, the court found that Quincy Brooks purchased property under the 1870 Act, and that the land board approved the sale on April 4, 1872. The

[5] Additional support for beneficial use prior to 1909 on the claimed lands in Sections 15 and 16 comes from the Affidavit of J.W. and G.G. Kerns, in which they state that these lands were among lands that had "been used as naturally irrigated swamp land prior to 1905, and that after the flooding and receding of the water the land was used for hay and livestock pasture." OWRD Ex. 1 at 20.

following claimed lands are included in the deed referenced in *Corpe v. Brooks*:

	SW¼ SE¼	Section 16 T40S R8E.W.M.	2.5 acres irrigation
	SE¼ SE¼	Section 16 T40S R8E.W.M.	0.7 acres irrigation
Lot 5	SW¼ SE¼	Section 16 T40S R8E.W.M.	15.3 acres irrigation
Lot 6	SE¼ SE¼	Section 16 T40S R8E.W.M.	9.8 acres irrigation

Beneficial use prior to 1909 on the remainder of the claimed lands must be established by evidence other than swamp land deeds.

There is substantial evidence that a portion of the claimed lands was included within an "experimental farm" that operated between at least 1907 and 1912. The following lands are therefore entitled to a right with a priority date of December 31, 1907:

Lot 10	SE¼ NE¼	Section 22 T40S R8E W.M.	15.2 acres irrigation
Lot 10	NE¼ SE¼	Section 22 T40S R8E W.M.	12.7 acres irrigation
Lot 11	SE¼ SE¼	Section 22 T40S R8E W.M.	1.3 acres irrigation
	SE¼ SW¼	Section 23 T40S R8E W.M.	0.3 acres irrigation
Lot 4	NE¼ NW¼	Section 23 T40S R8E W.M.	15.2 acres irrigation
Lot 4	NW¼ NW¼	Section 23 T40S R8E W.M.	0.6 acres irrigation
Lot 5	SE¼ NW¼	Section 23 T40S R8E W.M.	11.1 acres irrigation
Lot 6	NE¼ SW¼	Section 23 T40S R8E W.M.	8.7 acres irrigation
Lot 7	NW¼ SW¼	Section 23 T40S R8E W.M.	38.0 acres irrigation
Lot 8	SW¼ NW¼	Section 23 T40S R8E W.M.	3.3 acres irrigation
Lot 9	SW¼ SW¼	Section 23 T40S R8E W.M.	33.5 acres irrigation
Lot 3	NW¼ NW¼	Section 26 T40S R8E W.M.	7.2 acres irrigation

There is insufficient evidence to establish pre-1909 beneficial use on the remainder of the claimed lands. The record contains a variety of

statements about pre-1909 use of land for cattle grazing in the general vicinity. There are two problems with this evidence. First, some of the evidence concerns use made before the claimed lands were in private ownership or under a claim of right to the land (such as a Homestead Act claim). Beneficial use could not form the basis for a water right until it coincided with evidence of a claim of right in the land. *Hough v. Porter* 51 Or 318, 421 (1909). Second, the evidence is not specific about the location of the beneficial use. While it is possible that area described includes the claimed lands, these generalized statements are insufficient on their own, to establish beneficial use by a preponderance of the evidence.

Finally, certain of the claimed lands lie outside the meander line of the Klamath River, and there is no evidence that beneficial use of water was made, by natural overflow or otherwise, prior to 1909.

For example, there is some evidence in the record that at least a portion of the claimed place of use was purchased in 1903 by Ottolini and Belloni, and that they leased this land for grazing after purchase. However, the location of the lands purportedly acquired is inadequately supported. In addition, there is evidence in the record that tends to contradict the evidence of the 1903 purchase. A deed shows that Belloni acquired roughly 700 acres of land in a sheriffs' sale, approximately 180 of which are included in the claimed place of use, but not until 1915.

Nonetheless, the Proposed Order infers that beneficial use of water was occurring on the entire claimed place of use by the time the various parcels comprising the claimed place of use passed into private ownership. While this is a possible inference, it is at least as likely, if not more so, that at least a portion of the place of use was not being hayed or grazed at the time that portion passed into private ownership, or indeed at any time prior to 1909. Because the Claimants have the burden of proving their claims, this inference and the evidence on which it relies is insufficient to establish the claim.

The modifications to the Proposed Order therefore rely on other evidence: the evidence of the swamp land deeds and the evidence of the "experimental farm." Both of these types of evidence are sufficiently related to specific lands within the claimed place of use, but they do not support the approval of all of the claimed lands.

Finally, this Partial Order of Determination recognizes the portion of the claim for 1.3 acres of irrigation for Lot 11 in Section 22. The Proposed Order denied this portion of the claim due to lack of title information. The evidence indicates that this acreage was part of the "experimental farm" that began operation in 1907. The evidence is sufficient to establish this portion of the claim with a December 31, 1907 priority date.

The Rate and Duty claimed (1/40th cfs per acre and 3 acre-feet per acre per year) are not challenged by the other parties, and therefore will be allowed. The claim asserts a year-round season of use, describing flood-irrigation of the fields three times per year, beginning during the winter. However, there is no evidence for this practice prior to 1909, and it was likely not possible until the dam was built at Keno to maintain a constant high level in the river. Prior to that point, the land was inundated during the spring floods, and the water gradually receded during the remainder of the spring and summer. Consequently, a Season of Use of April 1 through October 31 is appropriate.

Reasons for modifications: The Proposed Order relies on evidence in the record about pre-1909 use of land in the vicinity of the claimed place of use. However, this evidence is inadequately tied to specific lands within the claimed place of use. This Partial Order of Determination therefore relies on swamp land deeds and other evidence in the record pertaining to pre-1909 use.

c. Subsection #3 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

3. ~~None of the pre-1909 water right on the claimed place of use is included in the claims of the United States for the Klamath Project. The United States is the proper holder of the water right for water obtained~~

~~from the Klamath Project through contracts with the United States and the Ady District Improvement Company.~~ **The claimed appropriations described in subsection 2, above, are not included in the claims of the United States for the Klamath Project. The portion of the Claimants' claim that is based on Klamath Project appropriations is addressed in the Partial Order of Determination pertaining to the Klamath Project.**

In addition to the claim for irrigation within the meander line, the claim included the following:

> We wish to Reserve the Right to extend this claim the rest of this property described in att deeds if Bureau of Rec. fails to establish claim and Attach Rights on all Real Property for ADY Dist. Imp. Co. and Warren Act. Lands. [*sic*]

(OWRD Ex. 1 at 4.)

Robert Flowers, in his Direct Testimony, characterized this portion of the claim as 180 acres under the Warren Act contract and 435.1 acres under contract with the Ady District Improvement Company. Flowers also indicated that both the Warren Act contract and the Ady District Improvement Company contract are part of the Bureau of Reclamation's Klamath Project, with a priority date of 1905. As noted in the History of this case, above, this case was consolidated with Klamath Adjudication Case 003 for a determination of the ownership of the water right in the Klamath Project. ~~The decision in that case that the United States was the legal owner of that water right, is law of the case for this matter. Moreover, because the Bureau of Reclamation did *not* fail to establish its claim, the condition for application of this portion of the claim has not been met.~~ Because this portion of the Claimants' claim is based solely on Klamath Project appropriations, this portion of the claim is addressed in the Partial Order of Determination pertaining to the Klamath Project.

Reason for Modification: For clarity, all claims based on the Klamath Project appropriations are addressed in the Partial Order of Determination pertaining to the Klamath Project.

9. **Summary.** The "Summary" section of the Proposed Order is deleted in its entirety.

Reason for Modification: The "Summary" in the Proposed Order is inconsistent with the outcome of the Partial Order of Determination, and it is unnecessary to replace it.

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 Presented" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, above.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.8, above.
   g. The "Summary" is deleted in its entirety.
   h. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 205. Consistent with sections A.6, A.7., and A.8, above, the outcome of the order has been modified to recognize a right for irrigation on acreage reduced by 109.7 acres.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 205 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 205

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 40 S, R 8 E; CLAIM # 205, PAGE 88

CLAIMANT: ROBERT FLOWERS
FLOWERS BROS. INC.
MARTIN SCULL
18110 KENO-WARDEN RD.
KLAMATH FALLS, OR 97603

SANDRAL AND KAREN TUCKER
134 PFEIFFER RD
BULVERDE, TX 71863

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:
IRRIGATION OF 426.7 ACRES, BEING 399.8 ACRES FROM PODS 1, 2, 3, 4, AND 5, AND 26.9 ACRES FROM POD 6.

RATE OF USE:
10.67 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 10.00 CFS OF WATER COMBINED FROM PODS 1, 2, 3, 4, AND 5, AND 0.67 CFS FROM POD 6.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

THE POINTS OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	40 S	8 E	WM	15	SW SW	4	NONE GIVEN
POD 2	40 S	8 E	WM	16	SW SW		
POD 3	40 S	8 E	WM	16	SW SE		
POD 4	40 S	8 E	WM	16	SE SE		
POD 5	40 S	8 E	WM	22	NE NW		
POD 6	40 S	8 E	WM	23	NE NW	4	4805 FEET NORTH AND 1415 FEET EAST FROM SW CORNER, SECTION 23

DATES OF PRIORITY AND THE PLACES OF USE ARE LOCATED AS FOLLOWS:

IRRIGATION								
DATE OF PRIORITY	**Twp**	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**	**Authorized PODS**
April 4, 1872	40 S	8 E	WM	16	SW SE		2.5	PODS 1, 2, 3, 4, 5
	40 S	8 E	WM	16	SW SE	5	15.3	
	40 S	8 E	WM	16	SE SE		0.7	
	40 S	8 E	WM	16	SE SE	6	9.8	
February 1, 1883	40 S	8 E	WM	15	SW SW	4	14.2	PODS 1, 2, 3, 4, 5
	40 S	8 E	WM	15	SE SW	5	4.4	
	40 S	8 E	WM	15	SW SE	6	5.1	
	40 S	8 E	WM	15	SE SE	7	1.0	
	40 S	8 E	WM	21	NE NE		40.0	
	40 S	8 E	WM	21	NW NE	4	17.6	
	40 S	8 E	WM	21	SE NE	3	8.0	
	40 S	8 E	WM	22	NE NW		38.5	
	40 S	8 E	WM	22	NW NW		40.0	
	40 S	8 E	WM	22	SW NW	9	30.0	
	40 S	8 E	WM	22	SE NW		40.0	
	40 S	8 E	WM	22	NE SW	8	12.5	
December 31, 1907	40 S	8 E	WM	22	SE NE	10	15.2	PODS 1, 2, 3, 4, 5
	40 S	8 E	WM	22	NE SE	10	12.7	
	40 S	8 E	WM	22	SE SE	11	1.3	
	40 S	8 E	WM	23	SW NW	8	3.3	
	40 S	8 E	WM	23	NE SW	6	8.7	
	40 S	8 E	WM	23	NW SW	7	38.0	
	40 S	8 E	WM	23	SW SW	9	33.5	
	40 S	8 E	WM	23	SE SW		0.3	
	40 S	8 E	WM	26	NW NW	3	7.2	
December 31, 1907	40 S	8 E	WM	23	NE NW	4	15.2	POD 6
	40 S	8 E	WM	23	NW NW	4	0.6	
	40 S	8 E	WM	23	SE NW	5	11.1	

FURTHER LIMITATIONS:

USE OF WATER ON THE PLACE OF USE DESCRIBED IN THIS CLAIM, WHEN COMBINED WITH USE OF WATER UNDER ANY OTHER RIGHT ADJUDICATED IN THE KLAMATH BASIN ADJUDICATION FOR ANY PORTION OR ALL OF THE SAME PLACE OF USE, MAY NOT EXCEED THE RATE AND DUTY NECESSARY FOR BENEFICIAL USE AS DETERMINED IN THE KLAMATH BASIN ADJUDICATION.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of LARRY E. PEACORE AND CAROLYN F. PEACORE, TRUSTEES FOR THE PEACORE FAMILY TRUST	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 206

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 206 (Claimants: LARRY E. PEACORE AND CAROLYN F. PEACORE, TRUSTEES FOR THE PEACORE FAMILY TRUST) and its associated contests (3192, 3847, AND 4189) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 136.

2. Claim 206 was subsequently consolidated for hearing with Claims 203 and 207. Claim 206 is now unconsolidated for the purposes of issuing this Partial Order of Determination.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 203, 206, and 207 on August 30, 2005.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.

5. 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 206.

6. On April 4, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) (1) to modify the season of use for Claims 203, 206 and 207 because the seasons of use in the 2005 Proposed Order exceeded the claimed seasons of use, and (2) to correct and clarify the amounts of acreage irrigated by various sources of water and

diversion points for Claims 203 and 207, (3) to modify the priority date of certain lands in Claim 203, (4) to recognize the abandonment of the right to irrigate on certain portions of Claim 207, (5) to modify the duty for Claims 203 and 207 because the duty in the 2005 Proposed Order exceeded the claimed duties, and (6) to limit Claims 203 and 207 to incidental livestock watering during the irrigation season. Except as modified, the Amended Proposed Order fully incorporated the 2005 Proposed Order.

7. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.

8. The exceptions filed to the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 206, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

9. The evidentiary record for Claims 203, 206, and 207 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 206.

10. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, except as modified to correct three scrivener's errors pertaining to Claim 203 as discussed below.

    a. *The modification made to the first paragraph of subsection D.2 contains an error in the 4th sentence (page 7 of the Amended Proposed Order). The modified sentence is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

    > With respect to the remaining ~~25.9~~ 25.2 acres from diversion point No. 1, and 72.5 acres from diversion point No. 2, the Preliminary Evaluation assigned a priority date of December 31, 1908.

    Reason for Modification: Claim 203 is approved for a total 101.9 acres, being 72.5 acres irrigated from POD 2 and 29.4 acres from POD 1. Of the 29.4 acres irrigated from POD 1, 4.2 acres have a priority date of October 28, 1897. Therefore the remaining acres from diversion point No. 1 should be 25.2.

    b. *The Claim Description for Claim 203 contains two scrivener's errors in the "PURPOSE or USE" description. The Claim Description is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

PURPOSE OR USE:

IRRIGATION OF 101.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 300 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

~~30.1~~ 29.4 ACRES FROM POD 1, AND

~~71.8~~ 72.5 ACRES FROM POD 2.

Reason for Modification: On page 5 of the Amended Proposed Order, in the additional Finding of Fact #9 it was found that 0.7 acres was irrigated from POD 2 rather than from POD 1. Although shown correctly in the Place of Use table, this adjustment failed to be made in the "Purpose or Use" within the Claim Description.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein except as modified to correct the three scrivener's errors discussed in Section A.10, above.

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

4. Based on the file and record herein, IT IS ORDERED that Claim 206 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 206

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 40 S, R 8 E; and CLAIM # 206, PAGE 23

CLAIMANT: LARRY E. PEACORE AND CAROLYN F. PEACORE,
TRUSTEES FOR THE PEACORE FAMILY TRUST
PO BOX 1079
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:

IRRIGATION OF 154.0 ACRES AND LIVESTOCK WATERING OF 150 HEAD.

RATE OF USE:

3.8528 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0028 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1800 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: AUGUST 26, 1905

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
40 S	8 E	WM	8	NE NW	9	1770 FEET EAST FROM NW CORNER, SECTION 8

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	8 E	WM	5	SW SW		40.0
40 S	8 E	WM	5	SE SW	13	13.2
40 S	8 E	WM	7	SE NE	5	21.6
40 S	8 E	WM	8	NW NW		39.7
40 S	8 E	WM	8	SW NW		39.5

[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 KITE RANCHES, INC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 207

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 207 (Claimants: KITE RANCHES, INC.) and its associated contests (34, 2857, 3193, 3414, 3848, AND 4190) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 136.

2. Claim 207 was subsequently consolidated for hearing with Claims 203 and 206. Claim 207 is now unconsolidated for the purposes of issuing this Partial Order of Determination.

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 203, 206, and 207 on August 30, 2005.

4. Exceptions were filed to the Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.

5. 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 206.

6. On April 4, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) (1) to modify the season of use for Claims 203, 206 and 207 because the seasons of use in the 2005 Proposed Order exceeded the claimed seasons of use, and (2) to correct and clarify the amounts of acreage irrigated by various sources of water and diversion points for Claims 203 and 207, (3) to modify the priority date of certain lands

in Claim 203, (4) to recognize abandonment of the right to irrigate on certain portions of Claim 207, (5) to modify the duty for Claims 203 and 207 because the duty in the 2005 Proposed Order exceeded the claimed duties, and (6) to limit Claims 203 and 207 to incidental livestock watering during the irrigation season. Except as modified, the Amended Proposed Order fully incorporated the 2005 Proposed Order.

7. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimants and the United States. Responses to these exceptions were filed within the response deadline by the Claimants and the United States.

8. The exceptions filed to the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 207, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

9. The evidentiary record for Claims 203, 206, and 207 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 207.

10. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, except as modified to correct three scrivener's errors pertaining to Claim 203 as discussed below.

    a. *The modification made to the first paragraph of subsection D.2 contains an error in the 4th sentence (page 7 of the Amended Proposed Order). The modified sentence is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

    > With respect to the remaining ~~25.9~~ 25.2 acres from diversion point No. 1, and 72.5 acres from diversion point No. 2, the Preliminary Evaluation assigned a priority date of December 31, 1908.

    Reason for Modification: Claim 203 is approved for a total 101.9 acres, being 72.5 acres irrigated from POD 2 and 29.4 acres from POD 1. Of the 29.4 acres irrigated from POD 1, 4.2 acres have a priority date of October 28, 1897. Therefore the remaining acres from diversion point No. 1 should be 25.2.

    b. *The Claim Description for Claim 203 contains two scrivener's errors in the "PURPOSE or USE" description. The Claim Description is corrected as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):*

PURPOSE OR USE:

IRRIGATION OF 101.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 300 HEAD FOR ENTIRE CLAIM, AS FOLLOWS:

~~30.1~~ 29.4 ACRES FROM POD 1, AND

~~71.8~~ 72.5 ACRES FROM POD 2.

Reason for Modification: On page 5 of the Amended Proposed Order, in the additional Finding of Fact #9 it was found that 0.7 acres was irrigated from POD 2 rather than from POD 1. Although shown correctly in the Place of Use table, this adjustment failed to be made in the "Purpose or Use" within the Claim Description.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein except as modified to correct the three scrivener's errors discussed in Section A.10, above.

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

4. Based on the file and record herein, IT IS ORDERED that Claim 207 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 207

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAP – T 40 S, R 8 E; and CLAIM # 207, PAGE 23

CLAIMANT: KITE RANCHES INC.
PO BOX 175
KENO, OR 97627

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE:

IRRIGATION OF 648.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 600 PAIR FOR ENTIRE CLAIM, AS FOLLOWS:

206.8 ACRES FROM PODS 1, 2, AND 4, AND

441.2 ACRES FROM PODS 5, 6, AND 7.

RATE OF USE:

16.2 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 5.17 CFS OF WATER COMBINED FROM PODS 1, 2, AND 4, AND 11.03 CFS OF WATER COMBINED FROM PODS 5, 6, AND 7.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 15 - NOVEMBER 15

DATE OF PRIORITY: OCTOBER 28, 1897

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	40 S	8 E	WM	6	NE SE	10	2510 FEET NORTH AND 1280 FEET WEST FROM SW CORNER, SECTION 5
POD 2	40 S	8 E	WM	6	SE NE	11	2770 FEET NORTH AND 990 FEET WEST FROM SW CORNER, SECTION 5
POD 4	40 S	8 E	WM	5	NE SW	12	1320 FEET NORTH AND 2000 FEET EAST FROM SW CORNER, SECTION 5
POD 5	40 S	8 E	WM	8	SE NE	6	1580 FEET NORTH AND 3480 FEET EAST FROM NW CORNER, SESW, SECTION 8
POD 6	40 S	8 E	WM	9	SE SW	7	870 FEET SOUTH AND 5480 FEET EAST FROM NW CORNER, SESW, SECTION 8
POD 7	40 S	8 E	WM	16	SE NW	13	3760 FEET SOUTH AND 5830 FEET EAST FROM NW CORNER, SESW, SECTION 8

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized PODS
40 S	8 E	WM	5	SW NW	10	16.8	PODS 1, 2, 4
40 S	8 E	WM	5	NE SW	12	3.5	
40 S	8 E	WM	5	NW SW		31.9	
40 S	8 E	WM	6	SE NE	11	14.4	
40 S	8 E	WM	6	SE NE		3.1	
40 S	8 E	WM	6	NE SE	10	36.0	
40 S	8 E	WM	6	SW SE	8	16.3	
40 S	8 E	WM	6	SE SE		40.0	
40 S	8 E	WM	7	NE NE	6	33.8	
40 S	8 E	WM	7	NW NE	6	11.0	

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized PODS
40 S	8 E	WM	8	NE NE		1.3	
40 S	8 E	WM	8	NE NE	7	6.0	
40 S	8 E	WM	8	NW NE	8	18.0	
40 S	8 E	WM	8	NW NE		1.8	
40 S	8 E	WM	8	SW NE		40.0	
40 S	8 E	WM	8	SE NE	6	22.5	
40 S	8 E	WM	8	SE SW	11	14.5	
40 S	8 E	WM	8	SE SW	2	25.5	
40 S	8 E	WM	8	NE SE	5	39.0	
40 S	8 E	WM	8	NE SE		0.20	
40 S	8 E	WM	8	NW SE		39.4	
40 S	8 E	WM	8	SW SE	3	8.1	
40 S	8 E	WM	8	SW SE	12	31.9	
40 S	8 E	WM	8	SE SE	4	37.9	PODS 5, 6, 7
40 S	8 E	WM	9	NE SW	6	0.2	
40 S	8 E	WM	9	NW SW	6	19.5	
40 S	8 E	WM	9	NW SW		0.4	
40 S	8 E	WM	9	SW SW		32.3	
40 S	8 E	WM	9	SE SW	7	5.0	
40 S	8 E	WM	16	NW NW	11	20.8	
40 S	8 E	WM	16	SW NW	12	6.7	
40 S	8 E	WM	17	NE NE	3	24.6	
40 S	8 E	WM	17	NE NE	1	0.3	
40 S	8 E	WM	17	NW NE		20.1	
40 S	8 E	WM	17	SW NE		1.9	
40 S	8 E	WM	17	SE NE	2	1.5	
40 S	8 E	WM	17	SE NE	3	0.1	
40 S	8 E	WM	17	NE NW		21.7	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight Freneh, 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 D.E. MYERS 1999 TRUST; DIANE ELAINE STEVENSON, TRUSTEE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 208

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

A. FINDINGS OF FACT

1. On January 29, 1991, T. KEITH POCOCK timely submitted a Statement and Proof of Claim (Claim 208) 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 208 was submitted for an unspecified amount of water from the Klamath River, for irrigation of 149.4 acres with incidental livestock watering, and with a season of use "May to Sept." The claimed priority date is "prior to 1909."

3. T. KEITH POCOCK signed the Statement and Proof of Claim for Claim 208 attesting that the information contained in the claim is true.

4. In 1982, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 208 (Claim 208, WIP Page 00013).

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the rate of water claimed was not provided.

6. On August 23, 2001, the title to the property appurtenant to Claim 208 was transferred to DIANE ELAINE STEVENSON, TRUSTEE OF THE D.E. MYERS 1999 TRUST (Claimant) from T. KEITH POCOCK. *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M01, PAGE 43736.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3194 to the Claim and/or Preliminary Evaluation of Claim 208.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3415: 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.

9. On May 8, 2000, the United States of America timely filed Contest 3849 to the Claim and/or Preliminary Evaluation of Claim 208.

10. On May 8, 2000, the Klamath Tribes timely filed Contest 4191 to the Claim and/or Preliminary Evaluation of Claim 208.

11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 140.

12. On October 7, 2003, the Klamath Tribes voluntarily withdrew Contest 4191. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Oct. 7, 2003).

13. On December 18, 2003, the Horsefly Irrigation District and Langell Valley Irrigation District portions of Contest 3194 were dismissed. *See* STIPULATED AGREEMENT FOR DISMISSAL OF CONTEST NO. 3194 (Dec. 18, 2003).

14. On April 7, 2004, Klamath Project Water Users withdrew Contest 3415. *See* NOTICE OF WITHDRAWAL OF CONTEST 3415 (Apr. 7, 2004).

15. On August 9, 2004, the United States of America amended their Statement of Contest to the Claim and/or Preliminary Evaluation of Claim 208 (Contest 3849).

16. On August 30, 2004, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3194. *See* VOLUNTARY WITHDRAWAL OF CONTEST NO. 3194 BY MEDFORD IRRIGATION DISTRICT AND ROGUE RIVER VALLEY IRRIGATION DISTRICT (Aug. 30, 2004).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3415 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3415 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3415 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

17. On March 11, 2005, OWRD, the Claimant, and the United States of America executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving the remaining contest to Claim 208.

18. On March 16, 2005, the Adjudicator withdrew Case 140 from the Office of Administrative Hearings.

B. DETERMINATION

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

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 208 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 208

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 8 E

CLAIMANT: D.E. MYERS 1999 TRUST
DIANE ELAINE STEVENSON, TRUSTEE
3939 S SIXTH ST 174
KLAMATH FALLS, OR 97603

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE:
IRRIGATION of 143.0 ACRES

RATE OF USE:
3.58 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: MAY 1 - SEPTEMBER 30

DATE OF PRIORITY: DECEMBER 31, 1900

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	8 E	WM	8	NE NW	9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	8 E	WM	7	NE SE	4	1.4
40 S	8 E	WM	8	NE NW	9	29.7
40 S	8 E	WM	8	SE NW		38.6
40 S	8 E	WM	8	NW SW	10	34.3
40 S	8 E	WM	8	NE SW		38.5
40 S	8 E	WM	8	SW SW	10	0.5

[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 T. KEITH POCOCK	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 209

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

A. FINDINGS OF FACT

1. On January 29, 1991, T. KEITH POCOCK (Claimant) (14390 KENO-WORDEN RD, KLAMATH FALLS, OR 97601) timely submitted a Statement and Proof of Claim (Claim 209) 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 209 was submitted for an unspecified amount of water from the Klamath River, for irrigation of 4.6 acres and livestock watering with a season of use "May – September." The claimed priority date is prior to 1901.

3. The Claimant did not include payment of the fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.

4. T. KEITH POCOCK signed the Statement and Proof of Claim for Claim 209 attesting that the information contained in the claim is true.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the required pre-1909 elements were not established.

6. The Claimants did not file a contest to the Preliminary Evaluation of Claim 209.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3195 to the Claim and/or Preliminary Evaluation of Claim 209.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 40.

9. On February 8, 2002, Rogue River Valley Irrigation District and Medford Irrigation District voluntarily withdrew from Contest 3195. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Feb. 8, 2002).

10. On June 4, 2002, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew Contest 3195, the only contest to Claim 40. *See* CONDITIONAL VOLUNTARY WITHDRAWAL OF CONTEST BY HORSEFLY AND LANGELL VALLEY IRRIGATION DISTRICTS (June 4, 2002).

11. On March 11, 2002, the Adjudicator withdrew Case 40 from the Office of Administrative Hearings.

12. OWRD finds there was intent to apply water to beneficial use prior to February 4, 1909 (Claim # 209, Page 000, Item 4).

13. OWRD finds a diversion has been created to divert water from its natural source.

14. OWRD finds the record does not contain evidence of application of water to beneficial use within a reasonable time after showing intent to apply water.

B. DETERMINATION

1. The elements of a pre-1909 claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Based on the file and record herein, IT IS ORDERED that Claim 209 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 TULE SMOKE, INC.	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 210

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 210 (Claimant: TULE SMOKE, INC.) and its associated contests (41, 3196, 3416, 3850, and 4192) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 141.

2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER for Claim 210 on December 31, 2002. OWRD re-referred the case to the OAH on February 9, 2006. After further hearing, the Administrative Law Judge issued a second PROPOSED ORDER (Proposed Order) on February 12, 2009.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Tule Smoke, Inc., (2) the United States, and (3) the Klamath Project Water Users. Responses to exceptions were timely filed by Tule Smoke, Inc.

4. The exceptions filed to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 210, and are found to be persuasive in part; therefore, modifications are made to the Proposed Order as described in Sections A.6, A.7, and A.8, below.

5. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Sections A.6, below.

e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, below.
f. The "Opinion" is replaced in its entirety, as set forth in Section A.8, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. Consistent with Sections A.6, A.7 and A.8, below, modified to limit the right to the portion of the claimed lands covered by the Quincy Brooks Swamp Land Deed dated February 1, 1886, and to clarify that the duty is defined in acre-feet per acre, rather than elevation.

6. **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 each modified finding of fact are provided beneath the modified finding.

a. Modified Proposed Order Finding of Fact 22

(22) The Act of 1887 further provided that all sales or conveyances of lands "made under the provisions of this Act or which shall hereafter be made of swamp lands, an easement of thirty feet on each side of all section lines shall be reserved for a public highway." (*Id.* at §6.) ~~The Act of 1887 left unchanged the opportunity to reclaim and obtain a deed in accordance with the 1870 Act provisions. (Act of 1887.)~~

Reason for Modification: This "finding of fact" is an interpretation of law, and not a finding of fact. The deleted sentence contains an incorrect interpretation of law. These acts and their relationship to the evidence in this case are discussed in detail in the Opinion section, below.

b. Modified Proposed Order Finding of Fact 31

(31) On October 5, 1889, E. P. McCormack purchased the following relevant property in Township 40 South, Range 8 East, of the Willamette Meridian:

Section 14: S½, NW¼

Section 15: N½ SE¼, SE¼ NE¼, Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

(Ex. TS-10.) Mr. McCormack was a known rancher and cattleman.[1] (Ex. TS-63.)

[1] ~~More likely than not, Mr. McCormack grazed cattle and harvested hay on the claimed lands that he owned.~~

Reason for Modification: The text in the footnote is not supported by a preponderance of evidence in the record.

c. Modified Proposed Order Finding of Fact 32

(32) Sometime prior to June 1891, Mr. McCormack owned the claimed land in Section 1 of Township 40 South Range 8 East of the Willamette Meridian. (Ex. TS-11.) In June 1891, Mr. McCormack sold his properties to the Klamath Land Company.[2] (*Id.*)

Reason for Modification: The text in the footnote is not supported by a preponderance of evidence in the record.

d. Modified Proposed Order Finding of Fact 33

(33) On July 20, 1891, the Klamath Land Company purchased the following relevant property in Township 40 South, Range 8 East, of the Willamette Meridian:[3]

Section 2:	E½ E½, Lot 6
Section 11:	E½ E½, SW¼ NE ¼, Lot 2
Section 12:	W½, W½ NE¼, SE¼ NE¼
Section 14:	NE¼

(Ex. TS-22.)

Reason for Modification: It is unclear what the footnote refers to. The finding of fact is adequately cited in the body of the text.

e. Modified Proposed Order Finding of Fact 34

(34) ~~Before the turn of the century, the entire area was used for haying and grazing. As a practical matter, grazing anywhere in the area, meant grazing all over. (Ex. TS-81.)~~

Reason for Modification: The finding of fact is not supported by a preponderance of evidence in the record. The finding is based on a statement by a witness born in 1922, and there is insufficient basis for treating the witness's hearsay statements as reliable.

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[2] ~~Because the entire area was used for grazing and haying prior to the turn of the century, the reasonable inference is that the Klamath Land Company continued to make beneficial use of the claimed lands for grazing and haying purposes from 1891-1905.~~

[3] ~~*Id.*~~

f. Modified Proposed Order Finding of Fact 35

(35) The early settlers and ranchers grazed cattle and harvested hay on the claimed lands, including the property located in Sections 1, 2, 10, 11, 14, 15, 22 and 23 of Township 40 South, Range 8 East, Willamette Meridian. Wildlife was abundant in the area. (*Id.*; Exs. TS-10, ~~TS-60~~, TS-61, TS-63, ~~TS-66~~, TS-76, TS-80, TS-81.)

Reason for Modification: This finding of fact is not supported by certain of the cited documents, and, as to a portion of the claimed lands, the evidence supports use only during a period prior to 1909 when there is no evidence the land in question was privately owned. TS-60 likely refers to lands that are not a part of the claim. TS-61 does not provide substantial evidence of water use prior to 1909. TS-66 does not refer to the claimed lands. TS-63 and TS-76 refer to use at a time prior to evidence of private ownership of the claimed lands.

g. Modified Proposed Order Finding of Fact 38

(38) Sometime prior to December 4, 1905, the Klamath Land Company owned Lots 6 and 7 in Section 10 in Township 40 South, Range 8 East, of the Willamette Meridian.[4] (Ex. TS-12.)

Reason for Modification: It is unclear what the footnote refers to. The finding of fact is adequately cited in the body of the text.

h. Modified Proposed Order Finding of Fact 42

(42) On May 27, 1907, Mr. Ady negotiated with the Southern Pacific Railroad Company wherein Mr. Ady received a "hog-tight fence along the right of way" for the "purpose of livestock protection" in exchange for granting an easement to the Railroad along the eastern part of his property.[5] (Exs. TS 41, TS-74.)

Reason for Modification: The inference made in the footnote is not supported by a preponderance of evidence in the record.

i. Finding of Fact 65 is added as follows:

<u>(66) Claimant paid fees pursuant to ORS 539.081 of $200 for wildlife and recreation uses. Under ORS 539.081, this is enough to cover a claimed rate of</u>

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[4] ~~*Id.*~~

[5] ~~The reasonable inference is that Mr. Ady pastured livestock on the lands that he owned from 1905 - 1910.~~

diversion of 1 cubic foot per second (cfs). Claimant did not claim a rate of diversion, because the property is served by natural overflow.

Reason for Modification: Using evidence on the record, to make specific findings about the amount of fees paid by Claimant.

7. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions #1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 23, 24, and 26 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

(1) There is sufficient information on the development of water on the places of use prior to February 24, 1909, to establish a vested pre-1909 water right for irrigation purposes on a portion of the claimed place of use.

(3) The record demonstrates intent to divert water prior to February 24, 1909 on a portion of the claimed place of use. ~~It is irrelevant whether the intent was to use water to grow plants and grasses for cattle or to grow plants and grasses for wildlife.~~

(4) A duty of 3.0 acre-feet per acre is supported by the evidence in the record. ~~The claimed rate, duty and total quantity of water is not in excess of the standard rate and duty and is supported by evidence of use prior to February 24, 1909.~~

(5) There is evidence to support the following claimed priority dates: February 1, 1883~~; December 20, 1888; January 26, 1889; February 1, 1889; February 2, 1889; and March 11, 1889~~. There is insufficient evidence to support the claimed date of "time in memoriam."

(7) The evidence in the record establishes a pre-1909 water right on a portion of the claimed place of use. Construction of works is not required when the land is naturally irrigated.

(8) Construction of works is not required to establish a pre-1909 water right for irrigation use when the land is naturally irrigated.

(9) The record establishes intent to use natural overflow for irrigation on a portion of the claimed place of use before February 24, 1909.

(10) The quantity of water recognized herein ~~Claimant's use of~~ water is not wasteful for fish and wildlife habitat.

~~(11) The record supports the rate, duty, use, and 1,523.80 acres to be irrigated.~~

(13) The record establishes a season of use of April 1 through July ~~October~~ 31.

(14) Claimant has permissibly changed the purpose of use on the portion of the claimed place of use developed prior to 1909 from irrigation to wildlife use. The change of use from irrigation to recreation use is not permissible. ~~The use of natural overflow irrigation to grow plants and grasses on the claimed lands has not changed.~~

(15) The permissible change in use from irrigation to wildlife use, as conditioned, does not create injury to other water users. ~~Claimant's use and application of the water is not detrimental to contestants' priority water rights.~~

(17) "Over-appropriation" is not a relevant concept for determining the validity of claimed pre-1909 water rights. ~~The Klamath River and its tributaries were not over-appropriated at the time Claimant began its use of the claimed water.~~

(18) The priority date for the recognized portion of the claim is set based on the date of a Swamp Land Deed that established beneficial use of water on the recognized portion of the claimed place of use. ~~The current use was developed within a reasonable time after the claimed date of appropriation.~~

(19) It is irrelevant whether the purposes of the Klamath Reclamation Project may not be realized in the event that water used pursuant to the recognized portion of this claim interferes with the purpose of the Klamath Reclamation

Project. ~~, because this claim is senior to the priority of the Klamath Reclamation Project.~~

(23) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of regulation of water use by the OWRD Watermaster. ~~The claim is not barred to the extent it seeks water used by HID *et al.*~~

(24) It is both unnecessary and inappropriate in this proceeding to determine the sources of water that may be subject to a call based on the right recognized for this claim. This issue will be addressed, if the need should arise, in the context of regulation of water use by the OWRD Watermaster. ~~It is irrelevant whether the water described in the 1910 permits for Four Mile and Fish Lakes held by Rogue River Valley Irrigation District and Medford Irrigation District should be "water available" for appropriation in the adjudication, because this claim is senior to the priority of the 1910 permits.~~

(26) ~~Under Oregon law, beneficial use of natural overflow for the purpose of plant growth to support haying and grazing is not legally distinct as a purpose of use from beneficial use of natural overflow for the purpose of plant growth to support wildlife.~~ It is unnecessary to determine whether Oregon's modern definition of "irrigation" use is distinct from Oregon's modern definition of "wildlife" use. Claimant's claim is for "wildlife" and "recreation" uses, and must be determined solely on the validity of those claimed uses.

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 2009 Proposed Order.

8. **Opinion.** The Proposed Order's "Opinion" section Order has been replaced in its entirety with the following:

The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

1. History of Use

The Claimants have submitted Swamp Land Deeds covering most of the claimed place of use. The effect of these deeds depends on the circumstances in which they were issued. The Swamp Land Act of 1870 ("1870 Act") required proof of reclamation in order to obtain a deed. The definition of "reclamation" provided in the 1870 Act is consistent with the application of water to beneficial use for irrigation. The 1870 Act placed no restrictions on the number of acres for which an applicant could obtain a deed. The 1870 Act permitted the sale of swamp lands for a minimum of $1 per acre. The Swamp Land Act of 1878 ("1878 Act") altered some of the provisions of the 1870 Act. An applicant under the 1870 Act could, under the terms of the 1878 Act, obtain a deed without proof of reclamation by payment of $2.50 per acre. (Section 10, p46). Otherwise, an applicant under the 1870 Act would still need to submit proof of reclamation. An applicant making an application under the terms of the 1878 Act (i.e., making an initial application after the effective date of the 1878 Act) could obtain a deed by payment of a minimum of $1 per acre without proof of reclamation. (Section 4, 42). Applications under the terms of the 1878 Act were limited to 320 acres per applicant. *Id.*

The Swamp Land Act of 1887 ("1887 Act") made further changes affecting applicants under the 1870 and 1878 Acts. The 1887 Act voided any applications made under the 1870 Act that had not been "reclaimed or paid" by the effective date of the 1887 Act, with the exception that such applicants who were also "actual settlers on lands of 320 acres or less" and who had paid a 20 percent down payment prior to the effective date of the 1887 Act could obtain a deed without proof of reclamation. In addition, applicants under the 1870 Act who had paid their 20 percent down payment prior to January 17, 1879, could obtain a deed without proof of reclamation. Deeds issued under this provision were limited to 640 acres. Any additional sales of swamp lands after the effective date of the 1887 Act were to be made in the same manner as provided in the 1878 Act (i.e., without requiring proof of reclamation). The 1887 Act went into effect on February 16, 1887.

Although the history of the Swamp Land Acts is somewhat convoluted, their effects on Swamp Land Deeds as evidence of beneficial use of water is straightforward. Any deed issued before the effective date of the 1878 Act was issued based on proof of reclamation. While swamp act deeds and State Land Board minutes do not contain direct testimony concerning the application of water to beneficial use, the findings required of the State Land Board in order to complete the conveyance of the land to the applicants constitute substantial evidence of beneficial use of water.[6]

[6] The United States has submitted evidence suggesting that the process of conveyance of land under the Swamp Land Acts was subject to fraud. There is no evidence of fraud with respect to these particular lands, however, and OWRD does not conclude that the regular proceedings of a State entity are subject to a presumption of fraud.

Conversely, any deed issued after the effective date of the 1887 Act does *not* constitute proof of beneficial use for irrigation by a preponderance of the evidence. Applicants under the 1870 Act were thereafter excused from proof of reclamation, and applicants under the 1878 and 1887 Acts had never been required to provide such proof.

This leaves deeds issued between the effective dates of the 1878 and 1887 Acts. Their use as evidence of beneficial use for irrigation is dependent on the terms of the deed. Because applicants under the 1878 Act were restricted to 320 acres, any deed exceeding that amount is proof of beneficial use for irrigation by a preponderance of the evidence, *if* the price of the deed is less than $2.50 per acre. Conversely, a deed issued in this time period for up to 320 acres is insufficient proof of beneficial use for irrigation, *unless* there is some other evidence that the application was made under the 1870 Act, and not the 1878 Act (including a statement by the land board that proof of reclamation had been provided). Further, any deed issued in this time period for $2.50 per acre is insufficient proof of beneficial use for irrigation.

As applied to the Swamp Land Deeds in this case, the deed issued to Quincy Brooks on February 1, 1886, constitutes proof of beneficial use for irrigation, because the deed was issued for 1947.48 acres on payment of $1 per acre. (Ex. TS-1.) This indicates an application under the 1870 Act, when reclamation was still required. The claimed lands subject to this deed are entitled to a February 1, 1883 priority date.

The remaining Swamp Land Deeds at issue in this case do not constitute evidence of beneficial use for irrigation. Each of these deeds was issued after the effective date of the 1887 Act.

Although there is evidence supporting use on a portion of the claimed land as early as the 1860s, the evidence does not support application for transfer of these lands into private ownership during this period. While it is not always necessary for the owner of the land and the appropriator of the water to be the same in order to perfect a water right, there is no support for the position that private citizens could appropriate water for the benefit of swamp lands owned by the State before an application was filed for the lands under the Swamp Land Acts.

The evidence of beneficial use of water on the remainder of the claimed place of use after issuance of Swamp Land Deeds and prior to 1909 is insufficient to establish a water right. Generic statements about cattle grazing in the area of the claimed place of use prior to 1909 does not constitute a preponderance of evidence in support of the proposition that any part or all of the claimed place of use was beneficially used.

There is evidence that part of the claimed place of use was purchased by Ottolini and Belloni around 1900, with intent to build a dairy. The evidence indicates that the dairy was not built until 1917. (Ex. TS-59.) There is also a statement that Ottolini and Belloni leased this land to cattlemen until the dairy was constructed, but there is no indication as to when the leases began. (Ex. TS-80.)

There is evidence that the owner of the property at issue intended, as of 1907, to have a livestock fence built, but no evidence that this work was undertaken or completed, either prior to or after 1909. (Ex. TS-41.)

Finally, there is evidence that speaks to beneficial use on nearby properties, but not the property subject to this claim. The Kerns affidavit pertains to land west of Klamath River, and not the claimed place of use. (Ex. TS-60.) The Patterson affidavit pertains to the Furber property, not the claimed place of use. (Ex. TS-63.)

Because there is insufficient proof with respect to the remainder of the claimed place of use, the only portion of the claim that may be recognized is that portion covered by the Quincy Brooks Swamp Land Deed.

The United States contends that any water right that may have been established on the claimed place of use has been abandoned. The United States bears the burden of proving abandonment. There is insufficient evidence in the record to establish by a preponderance of the evidence that the recognized portion of the claim has been abandoned.

2. Purpose of Use

The claimed purposes of use of water are wildlife and recreation. As described above, a portion of the claimed place of use was beneficially used for irrigation prior to 1909. There is no evidence of pre-1909 wildlife or recreation uses. In order to recognize a right for wildlife or recreation uses, OWRD must find that the Claimant permissibly changed the purpose of use to wildlife or recreation uses at some point after 1909. The evidence shows that the purpose of use of the land changed after Claimant's acquisition of the claimed place of use in 1941. Some cattle grazing continued on the property during the 1940s. By the 1950s, the property was being exclusively used for wildlife and recreational uses.

At the time of the change in purpose of the use, a change of purpose of use of an unadjudicated right was permissible if the change did not create injury. *See In re North Powder River*, 75 Or 83, 90 (1914); *Whited v. Cavin*, 55 Or 98, 106 (1909).The changed use must not result in significantly increase the quantity or alter the timing of water use. Such changes would result in different quantities of water accessible to other users, a *de facto* injury. The change to wildlife use can be conditioned to avoid injury by imposing a similar season of use as would have been available for irrigation and by limiting the quantity of water to the amount reasonably necessary for growth of plants used for grazing.

The recreation use, however, cannot be so conditioned. Recreation implies a very different use pattern, with open water for boating, swimming, hunting, etc. *See* OAR 690-300-0010(43). The claimed recreation use is denied.

3. Place of Use

The place of use for the recognized portion of the claim is as follows:

Township 40 South, Range 8 East W.M.

Section 14	NE¼ NW ¼	40.0
	NW¼ NW¼	40.0
	SW¼ NW¼	40.0
	SE¼ NW¼	40.0
	NE¼ SW¼	40.0
	NW¼ SW¼	40.0
	SW¼ SW¼ (Lot 2)	31.2
	SE¼ SW¼	36.3
	NW¼ SE¼	8.5
	SW¼ SE¼	0.5
Section 15	NE¼ NE¼ (Lot 16)	37.7
	NW¼ NE¼ (Lot 16)	4.0
	SW¼ NE¼ (Lot 15)	39.6
	SE¼ NE¼	40.0
	NE¼ SE¼	40.0
	NW¼ SE¼	32.0
	SE¼ SE¼ (Lot 8)	11.7

4. Duty

The claimed duty is 3.0 acre-feet per acre or as much water as is necessary to maintain the elevation of the water on the land between 4,085.00 and 4,086.5 feet above sea level. A duty of water based on an elevation is inappropriate for a right initially developed as an irrigation right, because it is inconsistent with the principles of natural overflow-based rights expressed in *In re Water Rights in Silvies River*, 115 Or 27, 65-66 (1925) and *Warner Valley Stock Co. v. Lynch*, 215 Or 523, 534-40 (1959). The evidence in the record supports a duty of 3.0 acre-feet per acre.

5. Season of Use

Claimant contends that the period of use is year round. The evidence does not support a year-round season. Instead, the evidence establishes that prior to 1909, the claimed lands were flooded in early spring from natural overflow from the Klamath River. The evidence further establishes that beginning in June, the floodwater receded from parts of the land which produced an abundant crop of vegetation for grazing and haying in the summer and fall. (Ex. TS-82 at 5.) It was not until the construction of the Keno damn that the claimed lands were flooded year round. The appropriate season of use is April 1 through October 31.

Reasons for Modifications: To apply the correct legal standards with respect to the effect of Swamp Land Deeds; to determine the appropriate priority dates, diversion rates,

season of use, and purposes of use based on the evidence in the record; to make various clarifications with respect to the legal reasoning supporting the conclusions of law.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:

   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in it is entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.7, above.
   f. The "Opinion" is replaced in its entirety, as set forth in Section A.8, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 201. Consistent with Sections A.6, A.7 and A.8, above, the outcome of the Order has been modified to limit the right to the portion of the claimed lands covered by the Quincy Brooks Swamp Land Deed dated February 1, 1886, and to clarify that the duty is defined in acre-feet per acre, rather than elevation.

2. The elements of a pre-1909 claim are established in part. 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 210 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 210

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 40 S, R 8 E

CLAIMANT: TULE SMOKE, INC
PO BOX 1708
KLAMATH FALLS, OR 97601

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE OR USE: WILDLIFE

DATE OF PRIORITY: FEBRUARY 1, 1883

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

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WILDFLIFE					
Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	8 E	WM	14	NE NW	
40 S	8 E	WM	14	NW NW	
40 S	8 E	WM	14	SW NW	
40 S	8 E	WM	14	SE NW	
40 S	8 E	WM	14	NE SW	
40 S	8 E	WM	14	NW SW	
40 S	8 E	WM	14	SW SW	2
40 S	8 E	WM	14	SE SW	
40 S	8 E	WM	14	NW SE	
40 S	8 E	WM	14	SW SE	
40 S	8 E	WM	15	NE NE	16
40 S	8 E	WM	15	NW NE	16
40 S	8 E	WM	15	SW NE	15
40 S	8 E	WM	15	SE NE	
40 S	8 E	WM	15	NE SE	
40 S	8 E	WM	15	NW SE	
40 S	8 E	WM	15	SE SE	8

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 CONDITION 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.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

For Claim 211:

See the PARTIAL ORDER OF DETERMINATION FOR CASE 003

Claim 211 was consolidated with Case 003.

All Claims included in the PARTIAL ORDER OF DETERMINATION FOR CASE 003:

194, 211, 285, 289, 290, 291,292, 293, 294, 295, 296, 297, 298,299, 312, 317, 321, 322, 323, 324

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 BRAD BOUCHER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 212

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

A. FINDINGS OF FACT

1. On January 22, 1991, RICHARD AND ELIZABETH FUJAS timely submitted a Statement and Proof of Claim (Claim 212) 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 212 was submitted for a total 1.77 cubic feet per second (cfs) of water from Mill Creek, a tributary of the Klamath River, being 0.77 cfs for irrigation of 30.9 acres and 1.0 cfs for livestock watering of 80 head, with a "Feb. – Nov." season of use. The claimed priority date is 1853.

3. RICHARD FUJAS AND ELIZABETH FUJAS signed the Statement and Proof of Claim for Claim 212 attesting that the information contained in the claim is true.

4. In 1995, the original claimants, Elizabeth and Richard Fujas, partitioned their original Tax Lot 900 into 2 parcels. On May 1, 1996 they sold what is now Tax Lot 925 to Andrew Pratt and Cynthis Warzyn. On February 7, 1997, they sold the remaining parcel, currently Tax Lot 900, to BRAD BOUCHER (Claimant). [*See* WARRANTY DEED, (Feb. 7, 1997) (Claim # 212, Page 0029]. The parcel sold to Mr. Boucher contained the property for which Claim 212 has been filed. The parcel sold to Mr. Pratt and Ms. Warzyn contains the property for which Mr. and Mrs. Fujas did not file a claim. (*See* ORDER DENYING MOTION TO INTERVENE AND TO AMEND STATEMENT AND PROOF OF CLAIM, Findings of Fact, Item 5, Page 2 (Apr. 30, 2002).

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than was claimed for livestock watering, with a shorter season of use for irrigation than claimed, and with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, Andrew Pratt and Cynthia Warzyn filed Contest 3111 to the Claim and/or Preliminary Evaluation of Claim 212.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3200 to the Claim and/or Preliminary Evaluation of Claim 212.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3418: 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.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 16.

10. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3200. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).

11. On March 13, 2002, the OWRD, Claimant, and Klamath Project Water Users executed a CONSENT ORDER (Settlement Agreement) thereby resolving Contest 3418.

12. On April 30, 2002 the Administrative Law Judge issued on order denying the motion of Andrew Pratt and Cynthia Warzny to Intervene and to Amend Statement and Proof of Claim. *See* ORDER DENYING MOTION TO INTERVENE AND TO AMEND STATEMENT AND PROOF OF CLAIM (Apr. 30, 2002).

13. On January 14, 2004, the OWRD, the Claimant, and Andrew Pratt and Cynthia Warzyn executed a CONSENT ORDER (Jan. 14, 2004) thereby resolving the remaining contest (Contest 3111) to Claim 212.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3418 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[2] Berlva Pritchard voluntarily withdrew from Contest 3418 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3418 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

14. 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 "Feb. – Nov."

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with the exception of the claimed season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 14, above); the season of use for livestock watering recognized herein is consistent the Claimant's original claim.

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

4. The ORDER DENYING MOTION TO INTERVENE AND TO AMEND STATEMENT AND PROOF OF CLAIM (Apr. 30, 2002) is incorporated as if set forth fully herein.

5. The CONSENT ORDER (Jan. 14, 2004) referenced in Finding 13, above, is incorporated as if set forth fully herein.

6. 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.

7. 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.

8. Based on the file and record herein, IT IS ORDERED that Claim 212 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 212

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 41 S, R 1 E

CLAIMANT: BRAD BOUCHER
2300 COLESTIN RD
HORNBROOK, CA 96044

SOURCE OF WATER: MILL CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 30.9 ACRES AND LIVESTOCK WATERING OF 80 HEAD.

RATE OF USE:

0.771 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

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

0.001 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 960 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

3.5 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	February 1 – November 30

DATE OF PRIORITY: DECEMBER 31, 1853

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	1 E	WM	11	NE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	1 E	WM	12	NE SW	14.80
41 S	1 E	WM	12	NW SW	2.30
41 S	1 E	WM	12	SW SW	2.90
41 S	1 E	WM	12	SE SW	10.90

[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 HORST FORSTER, NANCY MARTIN, CYNTHIA NORTON, AND WESLEY NORTON	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 213

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 213 (Claimants: HORST FORSTER, NANCY MARTIN, CYNTHIA NORTON, AND WESLEY NORTON) and its associated contests (3201, 5656) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 17[1].

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 213 and 214 on October 16, 2002.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Claimants Wesley Norton, Cynthia Norton, Richard Martin[2], and Nancy Martin. These exceptions pertained solely to Claim 214.

4. On February 24, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) (1) to modify the season of use for Claims 213 and 214 because the seasons of use in the 2002 Proposed Order exceeded the claimed seasons of use, and (2) to address fee sufficiency issues in Claim 214. Except as modified, the Amended Proposed Order fully incorporated the 2002 Proposed Order.

5. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimants Wesley Norton, Cynthia Norton, and Nancy Martin. These exceptions pertained solely to Claim 214.

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[1] Claim 213 (Case 17) and Claim 214 (Case 18) were consolidated by Order and heard as Case 17 (*See* ORDER GRANTING MOTION TO CONSOLIDATE, January 17, 2002.)
[2] Nancy Martin succeeded to the interests of Richard Martin, now deceased.

6. The evidentiary record for Claims 213 and 214 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 213.

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 pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 213 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 213

CLAIM MAP REFERENCE: CLAIM # 213, PAGE 26

CLAIMANT: HORST FORSTER
2324 COLESTIN
HORNBROOK, CA 96044

WESLEY NORTON
CYNTHIA NORTON
PO BOX 417
ASHLAND, OR 97520

NANCY MARTIN
PO BOX 5396
SANTA ANA, CA 92704

SOURCES OF WATER:
WEST FORK COTTONWOOD CREEK, tributary to COTTONWOOD CREEK; and
MILL CREEK, tributary to COTTONWOOD CREEK

PURPOSE OR USE:
IRRIGATION OF 99.4 ACRES AND DAIRY LIVESTOCK WATERING UP TO 120 HEAD, AS FOLLOWS:

4.1 ACRES FROM WEST FORK COTTONWOOD CREEK (POD 4), AND

95.3 ACRES FROM MILL CREEK (POD 6)

RATE OF USE:

2.486 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

2.48 CFS FOR IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING 0.10 CFS OF WATER FROM WEST FORK COTTONWOOD CREEK (POD 4) AND 2.38 CFS OF WATER FROM MILL CREEK (POD 6)

0.006 CFS OF WATER FROM WEST FORK COTTONWOOD CREEK AND/OR MILL CREEK FOR DAIRY LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 4200 GALLONS PER DAY. DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: DECEMBER 31, 1854

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 4	West Fork Cottonwood Creek	41 S	1 E	WM	13	NW NW	570 FEET SOUTH AND 230 FEET EAST FROM NW CORNER, SECTION 13
POD 6	Mill Creek	41 S	1 E	WM	11	NE NW	1000 FEET SOUTH AND 3980 FEET WEST FROM NE CORNER, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION AND LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized PODS
41 S	1 E	WM	13	NE NW	2.7	POD 4
41 S	1 E	WM	13	NW NW	0.8	
41 S	1 E	WM	13	SE NW	0.6	

IRRIGATION AND LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized PODS
41 S	1 E	WM	11	SE SE	16.2	POD 6
41 S	1 E	WM	12	NW SW	1.5	
41 S	1 E	WM	12	SW SW	34.2	
41 S	1 E	WM	13	NE NW	17.8	
41 S	1 E	WM	13	NW NW	21.2	
41 S	1 E	WM	14	NE NE	4.4	

[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 NANCY MARTIN, CYNTHIA NORTON, AND WESLEY NORTON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 214

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 214 (Claimants: NANCY MARTIN, CYNTHIA NORTON, AND WESLEY NORTON) and its associated contests (3202, 3419) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 17[1].

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 213 and 214 on October 16, 2002.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Claimants Wesley Norton, Cynthia Norton, Richard Martin[2], and Nancy Martin. These exceptions pertained solely to Claim 214.

4. On February 24, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) (1) to modify the season of use for Claims 213 and 214 because the seasons of use in the 2002 Proposed Order exceeded the claimed seasons of use, and (2) to address fee sufficiency issues in Claim 214. Except as modified, the Amended Proposed Order fully incorporated the 2002 Proposed Order.

5. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by the Claimants Wesley Norton, Cynthia Norton, and Nancy Martin. These exceptions pertained solely to Claim 214.

---

[1] Claim 213 (Case 17) and Claim 214 (Case 18) were consolidated by Order and heard as Case 17 (*See* ORDER GRANTING MOTION TO CONSOLIDATE, January 17, 2002.)
[2] Nancy Martin succeeded to the interests of Richard Martin, now deceased.

6. The exceptions filed to the Amended Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 214, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.

7. The evidentiary record for Claims 213 and 214 is identical. For this reason, and because of the similar history of development for the lands underlying each of these claims, this Partial Order of Determination does not modify the Proposed Order for the sole purpose of separating out the portions of the Proposed Order that pertain only to Claim 214.

8. 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 pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

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

4. Based on the file and record herein, IT IS ORDERED that Claim 214 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 214

CLAIM MAP REFERENCE: CLAIM # 214, PAGE 14

CLAIMANT: WESLEY NORTON
CYNTHIA NORTON
PO BOX 417
ASHLAND, OR 97520

NANCY MARTIN
PO BOX 5396
SANTA ANA, CA 92704

SOURCES OF WATER:
WEST FORK COTTONWOOD CREEK, tributary to COTTONWOOD CREEK

PURPOSE OR USE:
IRRIGATION OF 37.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING UP TO 100 HEAD, BEING 5.7 ACRES FROM POD 4 AND 31.3 ACRES FROM POD 5

RATE OF USE:

NOT TO EXCEED 0.91 CFS FOR IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING UP TO 0.14 CFS OF WATER FROM POD 4 AND UP TO 0.78 CFS OF WATER FROM POD 5

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1854

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 4	West Fork Cottonwood Creek	41 S	1 E	WM	13	NW NW	570 FEET SOUTH AND 230 FEET EAST FROM NW CORNER, SECTION 13
POD 5	West Fork Cottonwood Creek	41 S	1 E	WM	11	SW SE	20 FEET NORTH AND 1700 FEET WEST FROM SE CORNER, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized PODS
41 S	1 E	WM	13	NW NE		0.1	POD 4
41 S	1 E	WM	13	SW NE	2	4.6	
41 S	1 E	WM	13	NE NW		1.0	
41 S	1 E	WM	13	NE NW		0.6	POD 5
41 S	1 E	WM	13	NW NW		10.8	
41 S	1 E	WM	13	SW NW	4	4.2	
41 S	1 E	WM	13	SE NW	3	6.9	
41 S	1 E	WM	14	NE NE		8.2	
41 S	1 E	WM	14	SE NE	1	0.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of JERRY BARRY	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 215

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, JERRY BARRY (Claimant) timely submitted a Statement and Proof of Claim (Claim 215) 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 215 was submitted for a total 1.18 cubic feet per second (cfs) of water from Sloan Springs, tributary to Sloan Creek, for irrigation of 78 acres and incidental livestock watering of 200 head, with a season of use "March 1 to Oct. 30." The claimed priority date is 1900.

3. JERRY BARRY signed the Statement and Proof of Claim for Claim 215 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 without any incidental livestock watering.

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3420: 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 3420 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

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 3852 to the Claim and/or Preliminary Evaluation of Claim 215.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4194 to the Claim and/or Preliminary Evaluation of Claim 215.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 142.

9. On April 7, 2004, the Klamath Project Water Users withdrew Contest 3420. *See* NOTICE OF WITHDRAWAL OF CONTEST 3420 (April 7, 2004).

10. On March 1, 2004, the Klamath Tribes voluntarily withdrew Contest 4194. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Mar. 1, 2004).

11. On May 13, 2005, OWRD, the Claimant, and the United States of America executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving the remaining contest (Contest 3852) to Claim 215.

12. On May 24, 2005, the Adjudicator withdrew Case 142 from the Office of Administrative Hearings.

B. DETERMINATION

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

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 215 is approved as set forth in the following Water Right Claim Description.

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[2] Berlva Pritchard voluntarily withdrew from Contest 3420 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3420 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

Beginning of Water Right Claim Description]

CLAIM NO. 215

CLAIM MAP REFERENCE: CLAIM # 215, PAGES 45 and 46

CLAIMANT: JERRY BARRY
8000 COPCO RD
ASHLAND OR 97520

SOURCE OF WATER: SLOAN SPRINGS, tributary to SLOAN CREEK

PURPOSE or USE: IRRIGATION OF 62.1 ACRES

RATE OF USE:

1.18 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:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 30

DATE OF PRIORITY: DECEMBER 31, 1900

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	4 E	WM	11	NE NW	980 FEET SOUTH AND 1020 FEET EAST FROM NW CORNER, NENW, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	4 E	WM	11	NE NW	13.2
41 S	4 E	WM	11	SE NW	31.1
41 S	4 E	WM	11	NE SW	17.8

[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 JERRY BARRY	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 216

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, JERRY BARRY (Claimant) timely submitted a Statement and Proof of Claim (Claim 216) 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 216 was submitted for an unspecified amount of water from Fall Creek and a spring, tributary to Fall Creek, for irrigation of 80 acres with a season of use "March 1 to Oct. 30." The claimed priority date is December 2, 1899.

3. JERRY BARRY signed the Statement and Proof of Claim for Claim 216 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the required pre-1909 elements were not established for the claim.

5. On May 1, 2000, the Claimant timely filed Contest 43 to the Claim and/or Preliminary Evaluation of Claim 216.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3421: 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.

7. On May 8, 2000, the United States of America timely filed Contest 3853 to the Claim and/or Preliminary Evaluation of Claim 216.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4195 to the Claim and/or Preliminary Evaluation of Claim 216.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 143.

10. On October 30, 2003, the Klamath Tribes voluntarily withdrew Contest 4195. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Oct. 30, 2003).

11. On April 7, 2004, the Klamath Project Water Users withdrew Contest 3421. *See* NOTICE OF WITHDRAWAL OF CONTEST 3421 (April 7, 2004).

12. On May 24, 2005, OWRD, the Claimant, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining two contests to Claim 216.

13. On May 31, 2005, the Adjudicator withdrew Case 143 from the Office of Administrative Hearings.

B. DETERMINATION

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

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3421 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3421 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3421 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

4. Based on the file and record herein, IT IS ORDERED that Claim 216 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 216

CLAIM MAP REFERENCE: CLAIM # 216 SETTLEMENT MAP (May 9, 2005)

CLAIMANT: JERRY BARRY
8000 COPCO RD
ASHLAND OR 97520

SOURCE OF WATER:
FALL CREEK and AN UNNAMED SPRING, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 54.3 ACRES.

RATE OF USE:
A MAXIMUM TOTAL OF 1.25 CUBIC FEET PER SECOND (CFS) FROM THREE POINTS OF DIVERSION, NOT TO EXCEED 0.97 CFS FROM POD 1, 0.96 CFS FROM POD 2, AND 0.28 CFS FROM POD 3; 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 30

DATE OF PRIORITY: DECEMBER 2, 1899

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Unnamed Spring	41 S	4 E	WM	2	NW SW	SOUTH 5 DEGREES EAST, 632 FEET FROM W1/4 CORNER, SECTION 2
POD 2	Fall Creek	41 S	4 E	WM	3	SE SE	NORTH 79 DEGREES WEST, 390 FEET FROM SE CORNER, SECTION 3
POD 3	Fall Creek	41 S	4 E	WM	10	NE NE	SOUTH 48 DEGREES 22 MINUTES 16 SECONDS WEST, 1147 FEET FROM NE CORNER, SECTION 10

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
41 S	4 E	WM	3	SW SE	4.8	POD 1 and POD 2
41 S	4 E	WM	10	NE NE	1.5	POD 1 and POD 2
41 S	4 E	WM	10	NE NE	1.7	POD 3
41 S	4 E	WM	10	NE NE	0.5	POD 1
41 S	4 E	WM	10	NW NE	2.4	POD 3
41 S	4 E	WM	10	NW NE	27.2	POD 1 and POD 2
41 S	4 E	WM	10	SW NE	2.6	POD 3
41 S	4 E	WM	10	SE NE	0.4	POD 3
41 S	4 E	WM	10	NE NW	0.3	POD 3
41 S	4 E	WM	10	NE NW	8.3	POD 1 and POD 2
41 S	4 E	WM	10	SE NW	4.6	POD 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 CHARLES E. TROUTMAN, MARILYN E. TROUTMAN, CHUCK TROUTMAN, AND VAL TROUTMAN	))))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 217

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, LARRY A. LEONARD timely submitted a Statement and Proof of Claim (Claim 217) 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 217 was submitted for a total 348 gallons per minute (gpm) water, being 20 gpm from 2 springs, tributary to Fall Creek, for domestic use for two households; and 328 gpm from a spring area and an unnamed stream, both tributary to Fall Creek, for irrigation of 29.5 acres and livestock watering for 60 head. The season of use claimed for domestic use and livestock watering is "year around," and the season of use claimed for irrigation is "May to the end of October." The claimed priority date is 1895.

3. LARRY A. LEONARD signed the Statement and Proof of Claim for Claim 217 attesting that the information contained in the claim is true.

4. On May 6, 1999, Claim 217 was transferred to CHARLES E. TROUTMAN, MARILYN E. TROUTMAN, CHUCK AND VAL TROUTMAN (Claimants); and WILLIAM E. AND KRISTY L. GOLDMAN.

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than claimed, and with longer season of use than claimed for irrigation.

6. On May 8, 2000, the United States of America timely filed Contest 3854 to the Claim and/or Preliminary Evaluation of Claim 217.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4196 to the Claim and/or Preliminary Evaluation of Claim 217.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 144.

9. On September 20, 2002, WILLIAM EARL GOLDMAN AND KRISTY LEE GOLDMAN transferred their interest in the property appurtenant to Claim 217 to CHUCK TROUTMAN AND VAL TROUTMAN *See* BARGAIN AND SALE DEED, COUNTY OF JACKSON RECORDS, (Recorded Jan. 17, 2003).

10. On December 5, 2003, the Klamath Tribes voluntarily withdrew Contest 4196. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Dec. 5, 2003).

11. On September 29, 2005, OWRD, the Claimants, and the United States of America, executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contest to Claim 217.

12. On October 5, 2005, the Adjudicator withdrew Case 144 from the Office of Administrative Hearings.

B. DETERMINATION

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

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.

4. 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 217 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 217

CLAIM MAP REFERENCE: CLAIM # 217 SETTLEMENT MAP (Aug. 15, 2005)

CLAIMANT: CHARLES E. TROUTMAN,
MARILYN E. TROUTMAN,
CHUCK TROUTMAN, AND
VAL TROUTMAN
9921 COPCO RD
ASHLAND OR 97520

SOURCE OF WATER: FOUR UNNAMED SPRINGS, tributary to FALL CREEK

PURPOSE or USE:

DOMESTIC FOR TWO HOUSEHOLDS FROM SPRING POD 1; AND

IRRIGATION OF 20.0 ACRES, AND LIVESTOCK WATERING OF 60 HEAD FROM SPRING POD 2, SPRING POD 3 AND SPRING POD 4.

RATE OF USE:

A MAXIMUM TOTAL OF 0.521 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.02 CFS, FOR DOMESTIC USE FROM SPRING POD 1, BEING 0.01 CFS PER HOUSEHOLD, MEASURED AT THE POINT OF DIVERSION;

0.5 CFS FOR IRRIGATION FROM SPRING POD 2, SPRING POD 3, AND SPRING POD 4, MEASURED AT THE POINTS OF DIVERSION; AND

0.001 CFS FOR LIVESTOCK WATERING FROM SPRING POD 2, SPRING POD 3, AND SPRING POD 4, MEASURED AT THE PLACE OF USE, NOT TO EXCEED 720 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: DECEMBER 31, 1895

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
Spring POD 1	41 S	4 E	WM	2	SW NE	NORTH 34 DEGREES 36 MINUTES 10 SECONDS WEST, 3514 FEET FROM SE CORNER, SECTION 2	Domestic Only
Spring POD 2	41 S	4 E	WM	2	SE NW	NORTH 38 DEGREES 9 MINUTES 40 SECONDS WEST, 4325 FEET FROM SE CORNER, SECTION 2	Irrigation and Livestock Watering Only
Spring POD 3	41 S	4 E	WM	2	SE NW	NORTH 40 DEGREES 53 MINUTES 24 SECONDS WEST, 4163 FEET FROM SE CORNER, SECTION 2	
Spring POD 4	41 S	4 E	WM	2	SE NW	NORTH 42 DEGREES 53 MINUTES 11 SECONDS WEST, 4060 FEET FROM SE CORNER, SECTION 2	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Twp	Authorized POD
41 S	4 E	WM	2	NE SW	41 S	Spring POD 1

IRRIGATION and LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	Twp	Acres	Authorized POD's
41 S	4 E	WM	2	SE NW	41 S	20.00	Spring POD 2, 3 and 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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 218

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 218 (Claimant: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.) and its associated contest (12) were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 19.

2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER for Claim 218 on December 31, 2002. Exceptions were filed to this Proposed Order within the exception filing deadline by Richard Taylor.

3. Pursuant to OAR 137-003-0655(2), OWRD referred Claim 218 back to the Office of Administrative Hearings for further proceedings in order to take evidence submitted with the Exception dated January 29, 2003 filed by Richard Taylor, and to consider this evidence to determine whether Pacificorp had historically diverted 16.5 cfs from Spring Creek as claimed, or if the Claimant was diverting and beneficially using a lesser amount. The Office of Administrative Hearings conducted further proceedings and ultimately issued an AMENDED PROPOSED ORDER (Amended Proposed Order) for Claim 218 on June 19, 2008.

4. Exceptions were filed to the Amended Proposed Order within the exception filing deadline by Richard Taylor.

5. The exceptions filed to the Amended Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for

Claim 218, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

6. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications as set forth in Section A.7, below, and 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 218. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

7. **Opinion.** The "Opinion" section of the Amended Proposed Order is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> This matter involves a contest of a claim filed in the Klamath Adjudication, a proceeding under ORS Chapter 539. There are three elements to such a claim: 1) Application of water of the Klamath River or its tributaries to beneficial use at a time prior to 1909 or a contemplated time in the future; (2) a diversion from the natural channel; and (3) application of the water within a reasonable time to some useful purpose. Where the claim is based on natural overflow, the appropriation may be established by evidence that the "proprietor of the land accepts the gift made by nature and garners the produce of the irrigation by harvesting or utilizing the crops grown on the land***." *In Re Rights of Deschutes River and Tributaries*, 134 Or 623 (1930); *In Re Water Rights in Silvies River*, 115 Or 27, 66 (1925). It is Claimant's burden to establish the elements of the claim. ORS 539.110. Claimant satisfied it burden of proof.
>
> The system of appropriation of water in effect prior to the Water Rights Act of 1909 was summarized by the Supreme Court in *Porter v. Pettengill* 57 Or 247 (1910) as follows:
>
>> A settler upon the public domain, by diverting water from a natural stream for domestic use, irrigation, or manufacturing purposes, may acquire a right to the use of the amount of water thus diverted to the extent that it is put to a beneficial use for actual needs. Where several rights are acquired from the same stream, they will have priority in the order of the time of their diversion. If more water is diverted by a settler than is needed for the purpose intended, or is actually used for such need, he acquires a right only to the amount so needed and used.

> [citations omitted] The water right is appurtenant to the land for which it is diverted. [cit. om.] And the quantity of water acquired by appropriation must be determined by the amount of land irrigated and the quantity of water needed therefor.

Porter v. Pettengill 57 Or at 249.

Thus, if there are other water rights in the same stream that may be earlier in time to the right that is the subject of this claim, those senior rights do not defeat the present right. Instead, if there is not enough water in the stream to satisfy both claims in any given year, the junior right must give way until the senior right is satisfied.

The remainder of this case turns on Contestant's position that Claimant has lost its right by nonuse.

~~There is some question whether this issue involves the law of abandonment or of forfeiture.[1] OWRD has noted that ORS 540.610(1) a statute providing for "forfeiture" of a water right that lies unused for five consecutive years does not apply to these proceedings because the water right in question is not based on a certificate or court decree, as provided under that statute.[2] OWRD also noted that its own regulation, OAR 690-028-0075(3), while using the term "forfeiture," was not referring to the "forfeiture" provided in ORS 540.610(1), but the "plain, ordinary and common meaning" provided in *Webster's Third New International Dictionary*: "divesting of ownership***on account of the breach of a legal duty." OWRD also cautions that this rule should not be treated as nullifying any exceptions or excuses recognized for non-use. Claimant questions OWRD's authority to provide for forfeiture by rule.~~

~~[1] "Abandonment "involves both nonuse and an intent to abandon. *In re Willow Creek* 74 Or 592 (1914). "Forfeiture" is the involuntary loss of the water right caused by nonuse for the statutory period. Forfeiture does not require intent. If both nonuse and intent to abandon are present, then abandonment may occur even before the expiration of the forfeiture statute. *Rencken v. Young,* 300 Or 352, 361 (1985).~~

~~[2] Contestant's Exception asserted that under ORS 539.010(1) two years nonuse is the applicable time to establish abandonment in this case. That statute relates to the circumstances in which a riparian proprietor may establish a vested right to water based on the proprietor's use, or its predecessor's use, of water before 1909. The statute does not apply here because Contestant has not argued that the original riparian proprietor's claim never vested because of two years' nonuse. Contestant has asserted that *Claimant* abandoned or forfeited its claim.~~

~~Whether a water right is subject to forfeiture or abandonment for nonuse is irrelevant, if nonuse, itself, is not found. Here, the evidence did not support Contestant's contention that Claimant did not use the water for 5 years, or for any substantial period, before 1988. As to Claimant's nonuse of water after 1994, this occurred after the claim was filed in this case, and, at all events, is not a proper ground for avoidance of the right, under the facts in this case.~~

It is a generally accepted principle of the doctrine of prior appropriation that water rights may be lost through nonuse. Most states that apply this doctrine determine nonuse based on the concepts of abandonment or forfeiture, or a combination of both. In order to find that a water right has been abandoned, "there must be a concurrence of the intention to abandon it and actual failure in its use."[3] *Hough v. Porter*, 51 Or 318, 434 (1909). The burden of establishing abandonment lies with the proponent of the abandonment (in this case, the contestant(s) to the claim). *Id.*

In contrast, forfeiture is based solely on the nonuse of water over a statutorily defined period of time, regardless of the intent of the water right holder. In Oregon, a rebuttable presumption of forfeiture is established "whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years." ORS 540.610. The burden of proving this rebuttable presumption lies with the proponent of the forfeiture. *Rencken v. Young*, 300 Or 352, 364 (1985).

Abandonment is the applicable standard in this case. In Oregon, forfeiture applies to "perfected and developed" water rights. A "developed" right is one that has been applied to the intended beneficial use. In *Green v.*

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[3] Contestant's Exception asserted that under ORS 539.010(1) two years nonuse is the applicable time to establish abandonment in this case. That statute relates to the circumstances in which a riparian proprietor may establish a vested right to water based on the proprietor's use, or its predecessor's use, of water before 1909. The statute does not apply here because Contestant has not argued that the original riparian proprietor's claim never vested because of two years' nonuse. Contestant has asserted that *Claimant* abandoned or forfeited its claim.

Wheeler, the court defined the term "perfected" as it is used in Oregon's Water Code. 254 Or 424 (1969) (*Green*). The court explained that *prior* to the enactment of the Water Code appropriation of water was sufficient to establish a "vested" interest in the use of water. *Id.* at. 430. In contrast, a water right acquired under the Water Code is not "vested" until the "appropriation has been perfected." *Id.* "Perfection," as defined by the court, requires appropriation of water, the fulfillment of conditions specified in or authorized by the Water Code, and *a determination by the Water Resources Department that the right has been perfected. Id.* at 430-31. (emphasis added). *See also, Hale v. Water Resources Department*, 184 Or App 36, 41 (2002) (citing to *Green*, and holding that "whether an appropriation has been 'perfected' within the meaning of ORS 537.250(1) is expressly left 'to the satisfaction of the department'"). *Green* cited to several instances in the Water Code of the term "perfected" in reaching this conclusion.

Perfection then, requires an administrative determination of the validity of the right. An unadjudicated right, which has not been subject to administrative determination, is not a perfected right for the purposes of ORS 540.610. Although the court in *Green* did not cite specifically to ORS 540.610, there are no textual or contextual bases for interpreting "perfected," as that term is used in ORS 540.610, differently than *Green* interpreted it.

When a water right has been perfected, ORS 540.610 applies and supersedes the common-law abandonment doctrine. *Rencken v. Young*, 300 Or at 361. However, where a common-law doctrine has not been superseded by statute, it remains applicable. *See, e.g., Olsen v. Deschutes County*, 204 Or App 7, 13-17 (2006). Because ORS 540.610 does not apply to unadjudicated rights initiated under state law, the abandonment doctrine does.

As described below, Contestant has not met the burden of proving abandonment of the claimed water right.

Nonuse before 1988:

At the outset it should be noted that those portions of Contestant's argument dealing with failure of Claimant to comply with various provisions of Oregon law are without merit for several reasons.

First, Contestant is limited to the terms of his contest. Nowhere in the contest document does Contestant refer to a failure by Claimant to comply with those laws as a basis for invalidating the claim. However, even if Contestant had raised that argument, the statutes he cites did not establish the exclusive process for appropriating water at the time. *State ex rel Van Winkle v. People's West Coast Hydroelectric Corp.* 129 Or 475 (1929). So long as the three standards stated in *In re Deschutes River*, *ibid.* are met, the appropriation is completed.

Claimant, as the proponent of the claim, bears the burden of showing that it diverted and put to beneficial use the claimed amount of water at least once during the applicable period. Claimant satisfied its burden. Contestant, as the party asserting ~~forfeiture or~~ abandonment, had the burden to prove by reliable, probative, and substantial evidence, ORS 183.450(5), that there was "a concurrence of the intention to abandon [the water right] and actual failure in its use." *Hough v. Porter*, 51 Or at 434. ~~Claimant failed to divert and use the claimed water right. *Rencken v. Young*, 300 Or 352, 364-65 (1985).~~ Contestant did not satisfy its burden of proof.

Contestant argued at great length concerning the amount of water that leaked from Claimant's works before the renovation in 1988, arguing that there was not 16.5 cfs left in the works for at least the 5 years before that renovation. The evidence did not support Contestant's position.

Most of Contestant's argument was based upon Contestant's opinion, from measurements that Contestant conducted along the ditch.

Contestant argued that those measurements demonstrate that the ditch, especially when leaking, was not capable of carrying 16.5 cfs. Contestant also argued from the measurement of water that was carried in the natural stream into Contestant's own works, that there was not sufficient water left to satisfy Claimant's claim.

The most telling evidence contradicting Contestant's position is the testimony of John Richards that the upper end of the 24-inch culvert was always under water. Exhibit 8009, an excerpt from the *Handbook of Steel Drainage & Highway Construction Products* (American Iron and Steel Institute, 3rd Ed. 1983) shows that the culvert would carry 17 or 18 cfs when a head of water above the upper end of the culvert is 12 inches. Richard Barney testified that when there was a head of water above the culvert, it would be carrying 16.5 cfs, and that he observed such a head of water himself.

Contestant argued that the culvert must have been obstructed to produce such a head of water. However, this is an inference based upon Contestant's opinion, and is not supported by any direct evidence of such an obstruction. To the contrary, John Richards testified that he never observed a large obstruction in the culvert. The record contains no evidence that any large obstruction was present in the culvert for more than a short time. Richard Barney testified that the slope of the culvert was such as to scour any sand or silt out of the culvert.

Contestant also argued that, given the amount of water he was removing from the ditch, there was not enough water left to allow 16.5 cfs to be diverted to the powerhouse. However, the evidence he presented did not go so far.

In the first place, Contestant assumed that the total amount of water coming from the springs was a constant 18 cfs, and, subtracting his withdrawal from that figure, derived a balance less that 16.5 cfs. However,

Richard Barney testified that Spring Creek was a spring-fed stream that did not have as much seasonal variation as a stream fed by snow-melt, but still varied "maybe as much as 10 cfs, plus or minus" from the general rate of 17 to 18 cfs. Thus, to show that it was impossible for Claimant to draw 16.5 cfs at any time during the period in question, which is essentially what Contestant argued, it would be necessary to subtract Contestant's use from 28 cfs, not 18.

In the second place, the evidence did not show that Contestant's withdrawal was constant. To the contrary, until 1987 Contestant was not diverting water from the ditch to supply his aquaculture facility. Even after the renovation, the evidence suggested Contestant would vary his withdrawal from the ditch to meet the requirements of his system.[4] It would thus be necessary to show that Contestant's use never dropped below 11.5 cfs during the entire period at issue. Contestant's evidence did not approach this showing.

Finally, Contestant argued that before the renovation Claimants diversion did not have a carrying capacity of 16.5 cfs. This is, however, not based on any measurements that withstand scrutiny.[5]

Exception Exhibits 1 and 2

Contestant also argued that Fall Creek's "normal" flow was about 31 cfs and that Spring Creek's and Fall Creek's combined flow averaged about 31 to 35 cfs. Contestant argued that Spring Creek contributed only 0 to 4 cfs to the total flow at Claimant's power station. (Exception at 69.)

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[4] The log entries placed in evidence as part of John Richards' direct testimony include several where Contestant or his mother changed the amount being diverted to the former channel. *See e.g.* entry for August 12, 1991, "Yesterday Mrs. Taylor requested that we turn out more water from the Spring Creek Canal into the old channel."

[5] For example, Contestant estimated the width of the canal as shown in one photograph by comparing it to the width of a nearby cattle trail. (Trans. 202.)

Contestant offered Exception Exhibits 1 and 2 in support of this argument. Exception Exhibit 1 is OWRD's discharge measurements taken at Fall Creek, near the California border, on one day in November 2002. According to Contestant, Exception Exhibit 1 "proves that Fall Creek historically was the major and sometimes only source available to [Claimant's] Fall Creek facility providing 31+ cfs of the 35 cfs [Claimant] has claimed to have diverted." (Exception at 70.) Contrary to Claimant's argument, one day's measurements taken at a point past the confluence of two creeks does not "prove" the "historical" flow of either of the creeks.

Contestant argued that Exception Exhibit 2—records of the water flow at Fall Creek at Copco, California, from 1928 to 1959—"only registered 31-35 cfs average summer levels for 29 years. *** This proves that the 16.5 cfs from 'Spring Creek' claimed to have been diverted and used by [Claimant] never made it to the Fall Creek basin. [Claimant] can't claim to use what isn't there." (Exception at 70.) According to Contestant, if Fall Creek's natural flow was 31+ cfs, then adding 16.5 cfs of water from Spring Creek would have resulted in total water flow of 47.5 cfs at the Fall Creek gage, which is "12.5 cfs to 16.5 cfs more than historically present within the Fall Creek basin ***." (Exception at 72 to 73.)

Exception Exhibit 2 did not support Contestant's argument. The exhibit showed that the flow at the Fall Creek power station varied widely during each year, often exceeding 200 cfs. Even the mean flow fluctuated between 30 cfs to 60 cfs during the years represented by the exhibit. Therefore, this exhibit did not establish that Spring Creek provided only 0 to 4 cfs to Claimant's power station. ~~Further, proof of nonuse during the period covered by Exception Exhibit 2 does not make a valid contest, because the records relate to a period more than 15 years before Contestant filed his contest. Under OAR 690-028-0075(3)(e), a valid contest ground is that the Claimant's claim had been "forfeited by five or more consecutive years of non-use *less than fifteen years previously.*" (Italics added.)~~

Starting with the 1950-1951 record, Exception Exhibit 2's records that "Power company diverts about 4 cfs to Fall Creek (above station from Spring Creek (tributary to Jenny Creek)." The remark is repeated verbatim in each record through 1958-1959. ~~Again, the remark relates to a period more than 15 years before Contestant's contest.~~ Claimant objected to the hearsay. The exhibit does not disclose the source of the information or the method or circumstances under which the information was obtained. In view of the evidence of wide variation in the creeks' flows, the repeated verbatim remark about a constant 4 cfs diversion from Spring Creek does not appear to be trustworthy and does not constitute substantial evidence for that proposition. *See Reguero v. Teacher Standards and Practices*, 312 Or 402, 418 (1991). Further, even if these remarks did not constitute substantial evidence of the amount of diversion during these years, the evidence is not sufficient to establish an intent to abandon a portion of the water right.

In administrative proceedings, each fact must be proved by a preponderance of the evidence. In other words, it must be shown that each fact is more likely than not to be true. *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 Industries*, 98 Or App 548 *rev den* 308 Or 660 (1989). Considering the evidence on that basis, Contestant has failed to prove abandonment of the claimed water right during the period up to 1994. ~~it is more likely than not that – at least up to the time of the renovation – no five year period elapsed during which 16.5 cfs of water never flowed from the Spring Creek diversion to Claimant's powerhouse.~~

Nonuse after 1994

The evidence after 1994 is much different. It is uncontested that Contestant diverted the entire stream to his own works starting in 1994. It is

also uncontested that Claimant acquiesced in this diversion. The question remaining is the legal significance of this state of affairs.

It should be noted that, although Claimant's personnel testified that they felt uneasy about Contestant's action of "self-help." There is no substantial evidence of an overt show or threat of force. It is apparent, however, that Claimant's acquiescence was not consensual. To the contrary, when Claimant protested Contestant's actions to the watermaster, and received no assistance, Claimant was left with no apparent recourse short of a breach of the peace.

On the other hand, Contestant entered on and tampered with Claimant's diversion works, under the apparent impression that, because the works had lain unrepaired for a considerable period before the renovation, Claimant's' claim to the water had been extinguished. As discussed above, this impression was mistaken, or, at least, not supported by the record in this case.

While a sufficiently lengthy period of non-use can give rise to an inference of abandonment, the facts in this case do not support such an inference that Claimant intended to abandon its diversion. *See, e.g., In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996). Rather, Claimant's nonuse has been imposed by Contestant. Although Claimant ultimately acquiesced to Contestant's potentially illegal actions,[6] there is no evidence that Claimant would not return to diverting water given an opportunity to do so.

~~As OWRD has noted in a different context, this proceeding is in the nature of an equitable proceeding. OWRD has also noted that the provisions of OAR 690-028-0075(3) relating to "forfeiture" are not intended~~

[6] ORS 540.610(7) provides, in pertinent part: "No person shall willfully open, close, change, or interfere with any lawfully established headgate or water box without authority****." It is not necessary for OWRD to make a definitive ruling as to the legality of Contestant's conduct in this proceeding. Given that the burden of proof of

~~to import the terms of ORS 540.610 into the adjudication process. Consequently, it is possible to recognize, in these proceedings, some equitable principles that might not otherwise apply. One of these principles is the requirement of "clean hands."~~

> ~~"Unclean hands" is an equitable doctrine under which the court, in order to protect its own integrity, will deny equitable relief to a party in a transaction if that party, relative to the same transaction, is "guilty of improper conduct no matter how improper the [other party's] behavior may have been." [Citation omitted.] Several limitations restrict application of the doctrine. First, "the misconduct must be serious enough to justify a court's denying relief on an otherwise valid claim. Even equity does not require saintliness." [Citation omitted.] Examples of serious misconduct include crimes, fraud, disloyalty to an employer, and bad faith. [Citation omitted.] Second, a court will not invoke the maxim if doing so will work an injustice. [Citation omitted.] Third, the party in favor of whom the maxim is invoked must prove that he or she has suffered actual injury due to the alleged misconduct. [Citation omitted.]~~

~~*Welsh v. Case*, 180 Or App 370, 385 (2002).~~

~~The circumstance presented here is precisely that for which application of the clean hands doctrine was intended. Contestant entered upon Claimant's property, and interfered with Claimant's headgate, to the point where Claimant was prevented from using its water for more than five years.~~

~~There is some question as to whether, even if he had a superior right to the water, Contestant could change Claimant's headgate without violating ORS 540.710.[7] Here, as has been discussed above, Contestant's belief that Claimant's water right had been extinguished by nonuse prior to the renovation was not correct. Thus, Contestant's actions constitute "improper conduct."~~

~~That improper conduct, being a violation of law, was sufficiently serious to justify denying relief. Moreover, denial of relief to Contestant in this case will not work an injustice on Contestant. To the contrary, allowing~~

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establishing abandonment lies with Contestant, it is sufficient to conclude that Contestant has not established his authority to undertake the actions that have prevented Claimant's diversion.

~~Contestant to extinguish Claimant's water right by expropriating Claimant's water for five years would clearly be unjust to Claimant.~~

~~Finally, if Contestant were permitted to prevail under these circumstances, Claimant would lose its water right on Spring Creek, as well as the benefit of the works constructed there. Claimant has clearly suffered an injury because of Contestant's conduct.~~

~~Contestant is barred by his unclean hands from asserting that Claimant's nonuse of water after 1994 extinguished Claimant's water right.~~

Summary: Claimant has established the required elements of a pre-1909 water right by a preponderance of the evidence. Although Claimant has not made use of the claimed right since 1994, Contestant has not proved that Claimant's nonuse constitutes an intent to abandon the right. ~~A preponderance of the evidence in this case establishes that Claimant used the water claimed without a break of five years, until 1994. Although Claimant has not used the water claimed since that time, this nonuse is excused Contestant's improper conduct. The claim is valid.~~

Reasons for Modifications: To clarify beneficial use of water by the method of natural overflow for a Pre-1909 water right; to clarify that abandonment is the applicable standard for determining loss of an unadjudicated water right; to apply the facts to the legal standard of abandonment; to remove discussion of equitable principle of "unclean hands" from the Opinion as unnecessary, since Contestant did not establish abandonment.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications as set forth in Section A.7, above, and 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 218. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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[7] 540.710 provides in pertinent part: "No person shall willfully open, close, change, or interfere with any lawfully established headgate or water box without authority****."

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 218 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 218

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 41 S, R 4 E, W.M. & T 48 N, R 4 W, M.D.M

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: SPRING CREEK, tributary to JENNY CREEK

PURPOSE OR USE: POWER DEVELOPMENT

RATE OF USE:
16.5 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION
PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 23, 1902

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	4 E	WM	3	NE NW	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

POWER DEVELOPMENT				
Twp	Rng	Mer	Sec	Q-Q
48 N	4 W	MDM	30	SW 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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 219

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, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 219) 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 219 was submitted for a total of 0.2 cubic feet per second (cfs) of water from an "unnamed stream (Tom Creek)," a tributary of the Klamath River, for irrigation of 8.0 acres, with a season of use "April 15 - October 31." The claimed priority date is 1906.

3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as "1906" for "appropriation, diversion and application to beneficial use" (Claim # 219, Page 002).

4. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 219 attesting that the information contained in the claim is true.

5. In 1979, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 223. The report also includes the statement, "He [Mr. Laubacher] had sold the ranch to Pacific Power and Light Co. in the past and is now leasing it back. Mr. Laubacher said that his place was actually made up of two old homesteads, these were the Hessig and Fay homesteads. Mr. Laubacher said that the water use began around 1874 on these two homesteads." (Claim # 219, WIP, Pages 00003 - 00004).

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 and concurrently for a smaller quantity of water than claimed, and with a longer season of use than claimed.

7. On May 5, 2000, the Claimant, timely filed Contest 2057 to the Preliminary Evaluation of Claim 219 contesting the Adjudicator's denial of the claim.

8. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3203 to the Claim and/or Preliminary Evaluation of Claim 219.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 20.

10. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3203. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).

11. On April 29, 2002, Contest 3203 was dismissed. *See* THIRD AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Apr. 29, 2002).

12. On June 5, 2002, the OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. executed a STIPULATION TO DISMISS CONTEST NO. 2057 (Settlement Agreement) thereby resolving the remaining contest to Claim 219.

13. On June 6, 2002, the Adjudicator withdrew Case 20 from the Office of Administrative Hearings.

14. 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 15 - October 31."

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. is adopted and incorporated as if set forth fully herein, with the exception of the irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 14, above); the irrigation season recognized herein is consistent the Claimant's original claim.

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

4. Because there is no evidence on the record to the contrary, the standard 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.

4. Based on the file and record herein, IT IS ORDERED that Claim 219 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 219

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 41 S, R 5 E

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: UNNAMED STREAM, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 6.2 ACRES.

RATE OF USE:
0.16 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: APRIL 15 - OCTOBER 31

DATE OF PRIORITY: DECEMBER 31, 1906

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	5 E	WM	12	SE SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	5 E	WM	12	SW SW	3.1
41 S	5 E	WM	12	SE SW	3.1

[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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 220

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, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 220) 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 220 was submitted for a total of 0.20 cubic feet per second (cfs) of water from Hayden Creek, a tributary of the Klamath River, for irrigation of 4.1 acres, with a season of use April 15 to October 31. The claimed priority date is September 4, 1906.

3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as "September 4, 1906" for "appropriation, diversion and application to beneficial use" (Claim # 220, Page 003).

4. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 220 attesting that the information contained in the claim is true.

5. In 1979, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 220. The report also includes the statement, "He [Mr. Laubacher] had sold the ranch to Pacific Power and Light Co. in the past and is now leasing it back. Mr. Laubacher said that his place was actually made up of two old homesteads, these were the Hessig and Fay homesteads. Mr. Laubacher said

that the water use began around 1874 on these two homesteads." (Claim # 220, WIP, Pages 00005 - 00006).

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 than claimed.

7. On May 5, 2000, the Claimant timely filed Contest 2058 to the Preliminary Evaluation of Claim 490 contesting the Adjudicator's reduction of the claimed 0.2 cfs for irrigation purposes to 0.1 cfs.

8. On October 31, 2001, the OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. executed a SETTLEMENT AGREEMENT (Settlement Agreement) stipulating to a rate of 0.1 cfs for irrigation purposes, thereby resolving Contest 2058.

9. Based on the sworn statements in Claim 138, along with the field inspection report, the following findings are made:

   a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

   b. The Claimant created a diversion, where necessary, to divert water from its natural source.

   c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. is adopted and incorporated as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard 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.

4. Based on the file and record herein, IT IS ORDERED that Claim 220 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 220

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 41 S, R 5 E

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: HAYDEN CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE: IRRIGATION OF 4.1 ACRES.

RATE OF USE:

0.10 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: APRIL 15 - OCTOBER 31

DATE OF PRIORITY: SEPTEMBER 4, 1906

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	5 E	WM	13	NW NW	4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	5 E	WM	13	NE NW	3	1.3
41 S	5 E	WM	13	NW NW	4	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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 221

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, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 221) 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 221 was submitted for a total of 12.5 cubic feet per second (cfs) of water from the Klamath River for irrigation of 31.0 acres, with a season of use April 15 to October 31. The claimed priority date is 1874.

3. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 221 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for fewer acres and a smaller quantity of water than claimed, and with a longer season of use than claimed.

5. On May 5, 2000, the Claimant timely filed Contest 2059 to the Preliminary Evaluation of Claim 221.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3204 to the Claim and/or Preliminary Evaluation of Claim 221.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3422: 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.

8. On May 8, 2000, the United States of America timely filed Contest 3855 to the Claim and/or Preliminary Evaluation of Claim 221.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4197 to the Claim and/or Preliminary Evaluation of Claim 221.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 145.

11. On December 19, 2003, the Klamath Tribes voluntarily withdrew Contest 4197. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Dec. 19, 2003).

12. On March 21, 2005, OWRD, the Claimants, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, Medford Irrigation District, Klamath Project Water Users, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS 2059, 3204, 3422, 3855, 2060, 3205, 3423, AND 3856 (Settlement Agreement) thereby resolving all remaining contests to Claim 221.

13. On March 23, 2005, the Adjudicator withdrew Case 145 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, Medford Irrigation District, Klamath Project Water Users, and the United States of America is adopted and incorporated as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3422 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3422 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3422 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Based on the file and record herein, IT IS ORDERED that Claim 221 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 221

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 41 S, R 5 E, W.M. & T 48 N, R 3 W, M.D.M

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND OR, 97232

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE: IRRIGATION OF 29.4 ACRES

RATE OF USE:
1.51 CUBIC FEET PER SECOND MEASURED AT THE POINT OF DIVERSION

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/20 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
3.25 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 15 - OCTOBER 31

DATE OF PRIORITY: APRIL 30, 1876

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	5 E	WM	12	SW SE	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
48 N	3 W	MDM	15	NE SE	6.7
48 N	3 W	MDM	15	SE SE	9.1
48 N	3 W	MDM	22	NE NE	4.3
48 N	3 W	MDM	22	SE NE	1.0
48 N	3 W	MDM	22	NE SE	3.7
48 N	3 W	MDM	23	NW SW	4.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 222

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, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 222) 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 222 was submitted for a total of 12.5 cubic feet per second (cfs) of water from the Klamath River for irrigation of 54.0 acres, with a season of use April 15 to October 31. The claimed priority date is 1874.

3. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 222 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for more acres and a smaller quantity of water than claimed, and with a longer season of use than claimed.

5. On May 5, 2000, the Claimant timely filed Contest 2060 to the Preliminary Evaluation of Claim 222.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3205 to the Claim and/or Preliminary Evaluation of Claim 222.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3423: 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.

8. On May 8, 2000, the United States of America timely filed Contest 3856 to the Claim and/or Preliminary Evaluation of Claim 222.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4198 to the Claim and/or Preliminary Evaluation of Claim 222.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 146.

11. On January 23, 2004, the Klamath Tribes voluntarily withdrew Contest 4198. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 23, 2004).

12. On March 21, 2005, OWRD, the Claimants, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, Medford Irrigation District, Klamath Project Water Users, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS 2059, 3204, 3422, 3855, 2060, 3205, 3423, AND 3856 (Settlement Agreement) thereby resolving all remaining contests to Claim 222.

13. On March 23, 2005, the Adjudicator withdrew Case 146 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3423 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3423 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3423 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimants, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, Medford Irrigation District, Klamath Project Water Users, and the United States of America is adopted and incorporated as if set forth fully herein.

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 222 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 222

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 41 S, R 5 E, W.M. & T 48 N, R 3 W, M.D.M

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: The KLAMATH RIVER, tributary to the PACIFIC OCEAN

PURPOSE or USE: IRRIGATION OF 54.0 ACRES

RATE OF USE:
1.82 CUBIC FEET PER SECOND MEASURED AT THE POINT OF DIVERSION

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/30 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:
3.25 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE: APRIL 15 - OCTOBER 31

DATE OF PRIORITY: APRIL 30, 1876

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	5 E	WM	13	NE NW	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
48 N	3 W	MDM	15	NE SE	1.4
48 N	3 W	MDM	15	SW SE	1.1
48 N	3 W	MDM	15	SE SE	10.2
48 N	3 W	MDM	22	NE NE	18.5
48 N	3 W	MDM	22	NW NE	2.0
48 N	3 W	MDM	22	SW NE	0.9
48 N	3 W	MDM	22	SE NE	18.1
48 N	3 W	MDM	22	NE SE	1.0
48 N	3 W	MDM	22	NW SE	0.8

[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 PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 223

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, PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. (Claimant) timely submitted a Statement and Proof of Claim (Claim 223) 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 223 was submitted for a total of 0.20 cubic feet per second (cfs) of water from an unnamed spring for domestic use, with a season of use January 1 to December 31. The claimed priority date is September 4, 1906.

3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as "September 4, 1906" for "appropriation, diversion and application to beneficial use" (Claim # 223, Page 002).

4. An authorized agent of PACIFICORP, DBA PACIFIC POWER AND LIGHT CO. signed the Statement and Proof of Claim for Claim 223 attesting that the information contained in the claim is true.

5. In 1979, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 223. The report also includes the statement, "He [Mr. Laubacher] had sold the ranch to Pacific Power and Light Co. in the past and is now leasing it back. Mr. Laubacher said that his place was actually made up

of two old homesteads, these were the Hessig and Fay homesteads. Mr. Laubacher said that the water use began around 1874 on these two homesteads." (Claim # 223, WIP, Pages 00008 - 00009).

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 than claimed.

7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3206 to the Claim and/or Preliminary Evaluation of Claim 204.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 22.

9. On December 20, 2001, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3206. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Dec. 20, 2001).

10. On February 13, 2002, Contest 3206 was dismissed from the Office of Administrative Hearings. *See* THIRD AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 13, 2002).

11. Based on the sworn statements in Claim 223, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

12. OWRD finds that the delivery system described in the 1979 field inspection report (Claim # 223, WIP Pages 00008 - 00009) has the capacity to deliver 0.01 cubic foot per second, and thus Claim 223 is limited to this amount.

13. Item 8 of the Statement and Proof of Claim (Claim # 223, Page 004) describes the point of diversion as being in the NWSW, Section 12, T 41 S, R 5 E, W.M. In Item 11 of the same Statement and Proof of Claim (Claim # 223, Page 005) the claimant indicates they accept the map prepared by OWRD and agree that it "show[s] correctly the location of

the diversion point." This OWRD investigation map (T 41 S, R 5 E) clearly shows a spring in the SESE, Section 11, T 41 S, R 5 E, W.M. delivering water to a house in the claimed place of use in the SWSW, Section 12, T 41 S, R 5 E, W.M. OWRD finds the point of diversion for Claim 223 to be in the SESE, Section 11, T 41 S, R 5 E, W.M.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, standard rate for domestic use, being 0.01 cfs per dwelling as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of domestic water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.

3. Based on the file and record herein, IT IS ORDERED that Claim 223 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 223

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 41 S, R 5 E

CLAIMANT: PACIFICORP, DBA PACIFIC POWER AND LIGHT CO.
825 NE MULTNOMAH, SUITE 1700
PORTLAND, OR 97232

SOURCE OF WATER: An UNNAMED SPRING, tributary to HAYDEN CREEK

PURPOSE or USE: DOMESTIC USE FOR ONE HOUSEHOLD.

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

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

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 4, 1906

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	5 E	WM	11	SE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
41 S	5 E	WM	12	SW SW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of WINSTON H. AND LOUISE PATTERSON JAMES C. AND MARILYN J. ROSS	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 224

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

A. FINDINGS OF FACT

1. On October 30, 1990, WINSTON H. AND LOUISE PATTERSON, and JAMES C. AND MARILYN J. ROSS (Claimants) timely submitted a Statement and Proof of Claim (Claim 224) 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 224 was submitted for a total 5.0 cubic feet per second (cfs) of water from Bear Creek, a tributary of the Klamath River, for irrigation of 232 acres with a season of use "late April thru August." The claimed priority date is May 13, 1899.

3. WINSTON H. PATTERSON, LOUISE PATTERSON, JAMES C. ROSS AND MARILYN J. ROSS signed the Statement and Proof of Claim for Claim 224 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 longer season of use than claimed.

5. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3198 to the Claim and/or Preliminary Evaluation of Claim 224.

6. On May 8, 2000, the United States of America timely filed Contest 3857 to the Claim and/or Preliminary Evaluation of Claim 224.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4199 to the Claim and/or Preliminary Evaluation of Claim 224.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 147.

9. On January 23, 2004, the Klamath Tribes voluntarily withdrew Contest 4199. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 23, 2004).

10. On March 2, 2004, Medford Irrigation District, and Rogue River Valley Irrigation District voluntarily withdrew from Contest 3198. *See* VOLUNTARY WITHDRAWAL OF CONTEST NO. 3198 BY MEDFORD IRRIGATION DISTRICT AND ROGUE RIVER VALLEY IRRIGATION DISTRICT (Mar. 2, 2004).

11. On March 15, 2004, Langell Valley Irrigation District and Horsefly Irrigation District voluntarily withdrew Contest 3198. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, AND HORSEFLY IRRIGATION DISTRICTS (Mar. 15, 2004).

12. On March 21, 2005, OWRD, the Claimants, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contest (Contest 3857) to Claim 224.

13. On March 23, 2005, the Adjudicator withdrew Case 147 from the Office of Administrative Hearings.

B. DETERMINATION

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

2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 224 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 224

CLAIM MAP REFERENCE: CLAIM # 224 SETTLEMENT MAP (Feb. 11, 2005)

CLAIMANT: WINSTON H. AND LOUISE PATTERSON
JAMES C. AND MARILYN J. ROSS
20792 KENO WORDEN RD
KLAMATH FALLS OR 97603

SOURCE OF WATER: BEAR CREEK, tributary to KLAMATH RIVER

PURPOSE or USE: SUPPLEMENTAL IRRIGATION OF 146.2 ACRES.

RATE OF USE:

2.9 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:

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

PERIOD OF ALLOWED USE: APRIL 15 - AUGUST 31

DATE OF PRIORITY: MAY 13, 1899

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	8 E	WM	4	NW NW	730.5 FEET EAST FROM NW CORNER, SECTION 4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	8 E	WM	4	SW NE		16.3
41 S	8 E	WM	4	NE NW		7.9
41 S	8 E	WM	4	NW NW		16.9
41 S	8 E	WM	4	SW NW		13.3
41 S	8 E	WM	4	SE NW		35.4
41 S	8 E	WM	4	NE SW	3	27.7
41 S	8 E	WM	4	NW SW	4	0.7
41 S	8 E	WM	4	NW SE	2	28.0

[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 COLESTIN ORGANIC FARM	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 225

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, SS BAR RANCH; FRED MARKEN timely submitted a Statement and Proof of Claim (Claim 225) 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 225 was submitted for a total 2.14 cubic feet per second (cfs) of water from East Fork Cottonwood Creek, a tributary of the Klamath River, being 1 cfs for livestock watering of 75 - 100 head, and 1.14 cfs for irrigation of 45.7 acres, with a season of use "March 1 to October 30." The claimed priority date is 1854.

3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit E," a copy of a newspaper article from THE MAIL TRIBUTE, EXTRA, SISKIYOU COUNTY, ISSUE NO. 498, DEC. 17-23, 1987, which states in pertinent part: "It was 100 years ago today, Dec 17, 1887, that the last stage coach pulled out of Cole's Station headed for Oregon. The large 6,000 acre ranch was started by Rufus Cole and his brother Byron in 1851 in a small valley just south of the Oregon border in Siskiyou County . . . Cole's Station, known in recent years as the SS Bar Ranch. . . ." (Claim # 225, Page 020).

4. FRED MARKEN signed the Statement and Proof of Claim for Claim 225 attesting that the information contained in the claim is true.

5. In 1980, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 225. The report also includes the statement, "They explained the ranch house was a historial [sic] site. There was a sign in front of it which said; 'Stage Coach Station COLE'S 1854-1887 Last south bound stage left on December 17, 1887.' . . . Their purpose was to indicate that there was use of the

meadows for pasture for the stock during the time of the stage lines." (Claim 225, Page 018 - 019).

6. On December 11, 1998, the Claimant supplemented information to Claim 225 and clarified that the livestock watering season of use is "Nov. thru March" (Claim # 225, Page 0028).

7. According to a letter received on April 29, 1999, from Ilona Toko, the name of SS BAR RANCH was subsequently changed to COLESTIN ORGANIC FARM (Claimant) (Claim # 225, Page 0033).

8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water for livestock watering than claimed and with a longer season of use than claimed.

9. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3207 to the Claim and/or Preliminary Evaluation of Claim 225.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 23.

11. On January 2, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3207. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 2, 2002).

12. On February 21, 2002, Contest 3207 was dismissed from the Office of Administrative Hearings. *See* SECOND AMENDED ORDER DISMISSING CONTEST AND REFERRAL TO ADJUDICATOR (Feb. 21, 2002).

13. Based on the sworn statements in Claim 225, along with the field inspection report, the following findings are made:

    a. The Claimant demonstrated intent to apply water to beneficial use prior to February 4, 1909.

    b. The Claimant created a diversion, where necessary, to divert water from its natural source.

    c. The Claimant applied water to beneficial use within a reasonable time.

B. DETERMINATION

1. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.

2. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.

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

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

[Beginning of Water Right Claim Description]

CLAIM NO. 225

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 41 S, R 1 E, W.M.; and
T 41 S, R 2 E, W.M. & T 48 N, R 7 W, M.D.M.

CLAIMANT: COLESTIN ORGANIC FARM
177 E 11TH ST
CHICO, OR 95928-5728

SOURCE OF WATER: EAST FORK COTTONWOOD CREEK, tributary to the KLAMATH RIVER

PURPOSE or USE:
IRRIGATION OF 45.7 ACRES AND LIVESTOCK WATERING OF 100 HEAD.

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

1.14 CFS FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION; AND

0.002 CFS FOR LIVESTOCK WATERING 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 AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 30
Livestock Watering	November 1 - March 31

DATE OF PRIORITY: DECEMBER 31, 1854

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	1 E	WM	13	SW NE	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
48 N	7 W	MDM	15	SE SW	3	5.20
48 N	7 W	MDM	15	SW SE	2	2.40
48 N	7 W	MDM	22	NW NE		17.80
48 N	7 W	MDM	22	SW NE		16.30
48 N	7 W	MDM	22	NE NW		2.70
48 N	7 W	MDM	22	NW SE		1.30

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of HERMAN AND DEBORAH ANDERSON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 226

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, HERMAN AND DEBORAH ANDERSON (Claimants) timely submitted a Statement and Proof of Claim (Claim 226) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 226 was submitted for a total of 875 acre-feet of water from the Sprague River, a tributary of the Williamson River, for irrigation of 95.1 acres, 150.2 practicably irrigable acres, and instream livestock watering of 100 head of cattle and 36 horses. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16 for irrigation and year-round for livestock watering. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 226 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim was approved for livestock watering and irrigation, but with a longer irrigation season than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimants timely filed Contest 1714 to the Claim and/or Preliminary Evaluation of Claim 226.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3517: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 43.

8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3517. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3517 (Apr. 7, 2005).

9. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1714 (Settlement Agreement) thereby resolving the remaining contest to Claim 226.

10. On July 8, 2005, the Adjudicator withdrew Case 43 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

---

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3517 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3517 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3517 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 226 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 226
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 226, PAGE 131

CLAIMANT: HERMAN AND DEBORAH ANDERSON
PO BOX 333
BEATTY OR 97621

VESTED (DEVELOPED) PORTION

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

PURPOSE or USE:
IRRIGATION OF 95.2 ACRES FROM POD 1; AND

INSTREAM LIVESTOCK WATERING FOR 100 HEAD OF CATTLE AND 36 HORSES.

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

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

0.002 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1560 GALLONS PER DAY.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	12 E	WM	13	NE NW	6	1122 FEET SOUTH AND 726 FEET WEST FROM N¼ CORNER, SECTION 13
Sprague River	36 S	12 E	WM	13	NE NW		No specific point of diversion, livestock drink directly from the Sprague River
	36 S	12 E	WM	13	NW NW		
	36 S	12 E	WM	13	SW NW		
	36 S	12 E	WM	13	SE NW		
	36 S	12 E	WM	14	NE NE		
	36 S	12 E	WM	14	NW NE		

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	13	NE NW	3	14.40	POD 1
36 S	12 E	WM	13	NE NW	6		
36 S	12 E	WM	13	NW NW	4	36.00	
36 S	12 E	WM	13	NW NW	5		
36 S	12 E	WM	13	SW NW	12	8.40	
36 S	12 E	WM	13	SE NW	11	1.70	
36 S	12 E	WM	14	NE NE	1	22.30	
36 S	12 E	WM	14	NE NE	8		
36 S	12 E	WM	14	NW NE	2	12.40	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
36 S	12 E	WM	13	NE NW
36 S	12 E	WM	13	NW NW
36 S	12 E	WM	13	SW NW
36 S	12 E	WM	13	SE NW
36 S	12 E	WM	14	NE NE
36 S	12 E	WM	14	NW NE

INCHOATE PORTION

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

PURPOSE or USE:

IRRIGATION OF 150.2 PRACTICABLY IRRIGABLE ACRES, BEING 18.2 ACRES FROM POD 1, 10.5 ACRES FROM POD A, 106.5 ACRES FROM POD B, AND 15.0 ACRES FROM POD C.

RATE OF USE:

2.79 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.33 CFS FROM POD 1, 0.19 CFS FROM POD A, 1.91 CFS FROM POD B, AND 0.36 CFS FROM POD C.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 1	36 S	12 E	WM	13	NE NW	6	1122 FEET SOUTH AND 726 FEET WEST FROM N¼ CORNER, SECTION 13
POD A	36 S	12 E	WM	13	NE SW	22	766 FEET SOUTH FROM C¼ CORNER, SECTION 13
POD B	36 S	12 E	WM	13	NE SW	19	246 FEET SOUTH AND 792 FEET WEST FROM C¼CORNER, SECTION 13
POD C	36 S	12 E	WM	14	SW NE	10	1188 FEET NORTH FROM C¼ CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	13	NE NW	3	18.2	POD 1
36 S	12 E	WM	13	NE NW	6		
36 S	12 E	WM	13	SE NW		0.8	POD A
36 S	12 E	WM	13	NE SW		9.7	
36 S	12 E	WM	13	NW NW	5	0.7	POD B
36 S	12 E	WM	13	SW NW	12	23.4	
36 S	12 E	WM	13	SW NW	13		
36 S	12 E	WM	13	SE NW		19.4	
36 S	12 E	WM	13	NE SW		3.6	
36 S	12 E	WM	13	NW SW	20	1.6	
36 S	12 E	WM	14	NE NE	8	13.0	
36 S	12 E	WM	14	NW NE		9.4	
36 S	12 E	WM	14	SW NE		8.8	
36 S	12 E	WM	14	SE NE	9	26.6	
36 S	12 E	WM	14	SE NE	16		
36 S	12 E	WM	14	NW NE		11.4	POD C
36 S	12 E	WM	14	SW NE		3.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of JOESPH H. LAFFARGUE, AND TINA MARIE LEAL	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 227

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 227 and its associated contests (3518, 3773, and 4200) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 239.

2. The property appurtenant to Claim 227 was transferred to JOESPH H. LAFFARGUE AND TINA MARIE LEAL (Claimants) (44700 HWY 140 E, BEATTY, OR 97621) from the original claimant, NORMAN MILLER ANDERSON (Claim # 227, Page 117).

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR LEGAL RULING AND FOR SUMMARY JUDGMENT, AND PROPOSED ORDER DENYING CLAIM on July 27, 2004 (Proposed Order).

4. No exceptions were filed to the Proposed Order.

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

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 227 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 OSKIE ANDERSON AND RICHARD DEAN YASANA	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 228

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, OSCAR (O. T.) ANDERSON timely submitted a Statement and Proof of Claim (Claim 228) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 228 was submitted for 72.7 acre-feet per year of water from the Sprague River, a tributary of the Williamson River, for irrigation of 23.5 practicably irrigable acres, with a season of use "March 1 through October 16." The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 228 attesting that the information contained in the claim is true.

4. The claim was transferred to the OSKIE ANDERSON AND RICHARD DEAN YASANA (Claimants).

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the elements for a practicably irrigable acreage right were not established.

6. On May 3, 2000, the Claimants timely filed Contest 1715 to the Preliminary Evaluation of Claim 228.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3519: 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.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 44.

9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3519. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3519 (Apr. 7, 2005).

10. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1715 (Settlement Agreement) thereby resolving the remaining contest to Claim 228.

11. On July 8, 2005, the Adjudicator withdrew Case 44 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, and the Claimants is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. 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 228 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 3519 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3519 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3519 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

[Beginning of Water Right Claim Description]

CLAIM NO. 228
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 228, PAGE 117

CLAIMANT: OSKIE ANDERSON
RICHARD DEAN YASANA
62185 CROWN POINT ROAD
COOS BAY, OR 97420

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

PURPOSE or USE: IRRIGATION OF 23.5 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.42 CUBIC FOOT PER SECOND FROM POD A, MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD A	36 S	12 E	WM	14	SE NW	14	990 FEET NORTH FROM C¼ CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	14	SE NW	11	23.5	POD A
36 S	12 E	WM	14	SE NW	14		

[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 OSKIE ANDERSON YASANA, AND RICHARD DEAN YASANA	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 229

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, RENA ANDERSON, (ON BEHALF OF HERSELF, OSKIE ANDERSON YASANA AND JODEAN ANDERSON BRYANT) timely submitted a Statement and Proof of Claim (Claim 229) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 229 was submitted for a total of 173.1 acre-feet of water from the Sprague River, a tributary of the Williamson River, being 123.8 acre-feet for irrigation of 28.8 acres (including domestic irrigation of 0.5 acres for lawn and garden), 49.0 acre-feet for irrigation of 15.8 practicably irrigable acres, and 0.3 acre-feet for instream livestock watering of 20 head. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 229 attesting that the information contained in the claim is true.

4. The claim was subsequently transferred to the OSKIE ANDERSON YASANA AND RICHARD DEAN YASANA (Claimants).

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 vested portion of the claim for instream livestock watering and irrigation was approved, but with a longer irrigation season than claimed; and the inchoate portion of

the claim was denied because the elements for a practicably irrigable acreage right were not established.

6. On May 3, 2000, the Claimants timely filed Contest 1716 to the Preliminary Evaluation of Claim 229.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3520: 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.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 45.

9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3520. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3520 (Apr. 7, 2005).

10. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1716 (Settlement Agreement) thereby resolving the remaining contest to Claim 229.

11. On July 8, 2005, the Adjudicator withdrew Case 45 from the Office of Administrative Hearings.

12. OWRD finds that livestock use for Claim 229 is for instream livestock watering only. This is consistent with the statement made in the claim, "[s]tock have access to the full length of the river throughout the property" [*See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 12, 1999 (Claim # 229, Page 65)].

13. OWRD finds that the use of livestock watering as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed instream livestock watering. The Claimants' map (Claim # 229, Page 69) shows the Sprague River only crosses Claimants' property appurtenant to Claim 229 within Government Lot 6 (NENW) and Government Lot 11 (SENW). Therefore, OWRD finds that the correct place of use for instream livestock watering is within Government

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3520 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3520 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3520 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

Lot 6, (NENW) and Government Lot 11 (SENW), Section 14, Township 36 South, Range 12 East, W.M; the place of use does not include Government Lot 5 (NWNW), or Government Lot 12 (SWNW), Section 14, Township 36 South, Range 12 East, W.M. as listed in the Settlement Agreement.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein, with the exception of use of livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 13, above); livestock watering is restricted to instream livestock watering and is only authorized within Government Lot 6, (NENW) and Government Lot 11 (SENW), Section 14, Township 36 South, Range 12 East, W.M.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

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

4. Because there is no evidence on the record to the contrary, the standard rate 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 229 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 229
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 229, PAGE 69

CLAIMANT: OSKIE ANDERSON YASANA
RICHARD DEAN YASANA
62185 CROWN POINT ROAD
COOS BAY, OR 97420

VESTED (DEVELOPED) PORTION

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

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

IRRIGATION OF 28.3 ACRES FROM POD 2; AND

INSTREAM LIVESTOCK WATERING OF 20 HEAD

RATE OF USE:

0.7204 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FROM POD 1 FOR DOMESTIC EXPANDED, MEASURED AT THE POINT OF DIVERSION,

0.71 CFS FROM POD 2 FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION, AND

0.0004 FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 240 GALLONS PER DAY.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
POD 1	36 S	12 E	WM	14	NE NW	6	Domestic Expanded Only
POD 2	36 S	12 E	WM	14	NE NW	6	Irrigation Only
Sprague River	36 S	12 E	WM	14	NE NW	6	Livestock Watering Only– No specific point of diversion for livestock watering, livestock drink directly from the Sprague River
	36 S	12 E	WM	14	SE NW	11	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	14	SE NW	11	0.5	POD 1

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	14	NE NW	6	4.7	POD 2
36 S	12 E	WM	14	NW NW	5	20.0	
36 S	12 E	WM	14	SW NW	12	3.4	
36 S	12 E	WM	14	SE NW	11	0.2	

INSTREAM LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	12 E	WM	14	NE NW	6
36 S	12 E	WM	14	SE NW	11

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 15.8 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.28 CFS FROM POD A, MEASURED AT THE POINT OF DIVERSION

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD A	36 S	12 E	WM	14	SE NW	11	1320 FEET NORTH & 1056 FEET WEST FROM C1/4 CORNER, SECTION 14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	12 E	WM	14	NE NW	6	13.6	POD A
36 S	12 E	WM	14	SE NW	11	2.2	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of JAMES M. SEVERIN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 230

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, GORDON BETTLES timely submitted a Statement and Proof of Claim (Claim 230) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 230 was submitted for a total of 4.53 acre-feet of water from Agency Lake, a tributary of Upper Klamath Lake, being 2.6 acre-feet for irrigation of 0.6 acres, 1.9 acre-feet for irrigation of 0.6 practicably irrigable acres (including domestic use for one household), and 0.03 acre-feet for direct livestock watering of 3 horses from Agency Lake. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 230 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim for irrigation and livestock watering was approved, but with a longer irrigation season than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimant timely filed Contest 1717 to the Preliminary Evaluation of Claim 230.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3521: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 46.

8. The claim was transferred to JAMES M. SEVERIN (Claimant) (*See* CHANGE OF OWNERSHIP FORM, Oct. 1, 2003), a non-Indian successor. 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.

9. On December 23, 2003, OWRD, the Claimant, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST NOS. 1717 AND 3521 (Settlement Agreement) thereby resolving the only two contests to Claim 230.

10. On December 29, 2003, the Adjudicator withdrew Case 46 from the Office of Administrative Hearings.

11. 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 March 1 through October 16.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with the exception of the irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 11, above); the irrigation season 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.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3521 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3521 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3521 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Because the Settlement Agreement does not provide a duty for irrigation, a duty of 4.3 acre-feet per acre, based on the evidence in the Statement and Proof of Claim, will apply. Because the Settlement Agreement does not provide a rate per acre for irrigation, and 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 230 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 230
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 230, PAGE 80

CLAIMANT: JAMES M. SEVERIN
36358 MODOC POINT ROAD
CHILOQUIN, OR 97624

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

PURPOSE OR USE:
IRRIGATION OF 0.6 ACRES FROM POD 1 AND DIRECT LIVESTOCK WATERING OF 3 HORSES FROM AGENCY LAKE.

RATE OF USE:
0.02005 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

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

0.00005 CFS FOR DIRECT LIVESTOCK WATERING FROM AGENCY LAKE MEASURED AT THE PLACE OF USE, NOT TO EXCEED 30 GALLONS PER DAY.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
POD 1	35 S	7 E	WM	7	SE NW	600 FEET NORTH AND 1254 FEET WEST FROM C¼ CORNER, SECTION 7	Irrigation Only
Agency Lake	35 S	7 E	WM	7	SE NW	No specific point of diversion – livestock drink directly from Agency Lake	Livestock Watering Only

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	7 E	WM	7	SE NW	0.6	POD 1

DIRECT LIVESTOCK WATERING FROM AGENCY LAKE				
Twp	Rng	Mer	Sec	Q-Q
35 S	7 E	WM	7	SE 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 WOKSAM VIEW LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 231

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, PRISCILLA BETTLES (ON BEHALF OF THE BETTLES FAMILY OF OREGON, LTD) timely submitted Statements and Proof of Claim for 2 properties to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. The claim for Property 1 was submitted for a total of 7.4 acre-feet for irrigation of 2.4 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864. According to the map submitted with the claim, Property 1 is located in Section 21, Township 35 South, Range 7 East, W.M. (Claim # 231, Page 020).

3. The claim for Property 2 was submitted for a total of 86.83 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 0.03 acre-feet for livestock watering of 3 horses directly from the lake, and 86.8 acre-feet for irrigation of 28.0 practicably irrigable acres. The claimed period of use is year-round for livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864. According to the map submitted with the claim, Property 2 is located in the Section 7, Township 35 South, Range 7 East, W.M. (Claim # 231, Page 042).

4. Counsel signed the Statements and Proofs of Claim attesting that the information contained in the claims is true.

5. OWRD assigned Property 1 to Claim 231 and Property 2 to Claim 680.

6. On February 17, 1999, OWRD combined Claim 231 and 680 into one claim, Claim 231(*see* Claim # 231, Page 0105).

7. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) for Claim 680 stating, "[t]his claim was combined with claim number 231."

8. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of Claim 231 for livestock watering from the lake was approved, and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

9. On October 12, 1999, Property 1 of Claim 231 was withdrawn by counsel for the claimant as noted in the following statement: "Please note that the same claim number, Claim No. 231, was assigned for two separate properties. We are withdrawing the claim for Property 1 only. The claim for Property 2 is still valid." (*See* Claim # 231, Page 121).

10. On May 3, 2000, the Property 2 Claimant, the BETTLES FAMILY CORPORATION, timely filed Contest 1718 to the Preliminary Evaluation of Claim 231 with respect to Property 2.

11. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3522: 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.

12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 47.

13. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3522. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3522 (Apr. 7, 2005).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3522 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3522 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3522 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

14. On July 12, 2005, OWRD and PRISCILLA BETTLES, BETTLES FAMILY OF OREGON, LTD (for Property 2) executed a STIPULATION TO RESOLVE CONTEST 1718 (contest to Property 2) (Settlement Agreement) thereby resolving the remaining contest to Claim 231.

15. On July 12, 2005, the Adjudicator withdrew Case 47 from the Office of Administrative Hearings.

16. The property appurtenant to Claim 231 (Property 2) was transferred to the BETTLES FAMILY CORPORATION (Claimant) from the BETTLES FAMILY OF OREGON, LTD. *See* STATUTORY BARGAIN AND SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M95, PAGE 28441 (Oct. 18, 1995) and CHANGE OF OWNERSHIP FORM (Jan. 26, 2009).

17. The property appurtenant to Claim 231 (Property 2) was transferred to the WOKSAM VIEW LLC (Claimant) from the BETTLES FAMILY CORPORATION. *See* BARGAIN AND SALE DEED – STATUTORY FORM, COUNTY OF KLAMATH RECORDS (March 19, 2010) and CHANGE OF OWNERSHIP FORM (March 21, 2011).

B. DETERMINATION

1. Based upon the file and record herein, including the October 12, 1999 letter withdrawing Property 1 from Claim 231(described in Finding 10, above), IT IS ORDERED that the portion of Claim 231 pertaining to Property 1 is denied and is of no force or effect.

2. The Settlement Agreement executed between OWRD and PRISCILLA BETTLES, BETTLES FAMILY OF OREGON, LTD (for Property 2) is adopted and incorporated as if set forth fully herein.

3. The elements of an Allottee claim are established for Property 2. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

4. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

5. Based on the file and record herein, IT IS ORDERED that the portion of Claim 231 pertaining to Property 2 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 231 (PROPERTY 2 ONLY)
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 231, PAGE 116

CLAIMANT: WOKSAM VIEW LLC
1972 11TH AVE
SAN FRANCISCO, CA 94116

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE: LIVESTOCK WATERING OF 3 HORSES

RATE OF USE:
0.00005 CUBIC FOOT PER SECOND MEASURED AT THE PLACE OF USE, NOT TO EXCEED 30 GALLONS PER DAY.

PERIOD OF ALLOWED USE:

Use	Period
Livestock Watering	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks
35 S	7 E	WM	7	SE NW	10	No specific point of diversion – livestock drink directly from Agency Lake

THE PLACE OF USE IS LOCATED AS FOLLOWS:

LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	7	SE NW	10

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 28.0 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.5 CUBIC FOOT PER SECOND FROM POD A, MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD A	35 S	7 E	WM	7	SE NW	10	132 FEET NORTH AND 1188 FEET WEST FROM C¼ CORNER, SECTION 7

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	7	SE NW	9	12.8	POD A
35 S	7 E	WM	7	SE NW	10		
35 S	7 E	WM	7	NE SW	15	15.2	
35 S	7 E	WM	7	NE SW	16		

[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 EDWARD LALO CASE; CASSIE LALO CASE; EDWARD L. CASE, IV; AND TORINA CASE	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 232

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, EDWARD LALO CASE AND CASSIE LALO CASE timely submitted a Statement and Proof of Claim (Claim 232) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 232 was submitted for a total of 242.9 acre-feet of water from the tributary springs and an unnamed creek, and the Sprague River, a tributary of the Williamson River, being 149.2 acre-feet for irrigation of 34.2 acres, 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 91.9 acre-feet for irrigation of 29.7 practicably irrigable acres, and 0.3 acre-feet for instream livestock watering of 20 head. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 232 attesting that the information contained in the claim is true.

4. A portion of the property appurtenant to Claim 232 was acquired by EDWARD L. CASE, IV, AND TORINA CASE. The Claimants in Claim 232 are EDWARD LALO CASE, CASSIE LALO CASE, EDWARD L. CASE, IV, AND TORINA CASE (Claimants). (*See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct 1, 1999 (Claim # 232, Page 142).

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 vested portion of the claim for instream livestock watering and irrigation was approved, but with a longer irrigation season than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

6. On May 3, 2000, the Claimants timely filed Contest 1719 to the Preliminary Evaluation of Claim 232.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3523: 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.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 48.

9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3523. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3523 (Apr. 7, 2005).

10. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1719 (Settlement Agreement) thereby resolving the remaining contest to Claim 232.

11. On July 8, 2005, the Adjudicator withdrew Case 48 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3523 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3523 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3523 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 232 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 232
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 232, PAGE 147

CLAIMANT: EDWARD LALO CASE
CASSIE LALO CASE
EDWARD L. CASE, IV
TORINA CASE
PO BOX 333
CHILOQUIN OR 97624

VESTED (DEVELOPED) PORTION

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

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

IRRIGATION OF 34.2 ACRES FROM POD 1; AND

INSTREAM LIVESTOCK WATERING OF 20 HEAD

RATE OF USE:
0.8704 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FROM POD 1 FOR DOMESTIC EXPANDED, MEASURED AT THE POINT OF DIVERSION,

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

0.0004 CFS FOR INSTREAM LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 240 GALLONS PER DAY.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Remarks
POD 1	34 S	8 E	WM	24	SE SE	Domestic Expanded and Irrigation Only
Sprague River	34 S	8 E	WM	24	SW SE	Livestock Watering Only– No specific point of diversion for livestock watering, livestock drink directly from the Sprague River
	34 S	8 E	WM	24	SE SE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	8 E	WM	24	SE SE	POD 1

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	24	SW SE	16.7	POD 1
34 S	8 E	WM	24	SE SE	17.5	

INSTREAM LIVESTOCK WATERING				
Twp	Rng	Mer	Sec	Q-Q
34 S	8 E	WM	24	SW SE
34 S	8 E	WM	24	SE SE

INCHOATE PORTION

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

PURPOSE or USE:

IRRIGATION OF 29.7 PRACTICABLY IRRIGABLE ACRES, BEING 7.6 ACRES FROM POD A, 4.0 ACRES FROM POD B, AND 18.1 ACRES FROM POD C.

RATE OF USE:

0.53 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.136 CFS FROM POD A, 0.071 CFS FROM POD B, AND 0.323 CFS FROM POD C.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	34 S	8 E	WM	24	SW SE	1320 FEET NORTH AND 660 FEET EAST FROM S1/4 CORNER, SECTION 24
POD B	34 S	8 E	WM	24	SE SE	1320 FEET NORTH AND 462 FEET WEST FROM SE1/4 CORNER, SECTION 24
POD C	34 S	8 E	WM	24	SE SE	528 FEET NORTH AND 528 FEET WEST FROM SE1/4 CORNER, SECTION 24

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	24	SW SE	7.6	POD A
34 S	8 E	WM	24	SE SE	4.0	POD B
34 S	8 E	WM	24	SE SE	4.5	POD C
34 S	8 E	WM	25	NE NE	1.8	
34 S	8 E	WM	25	NW NE	11.8	

[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 MELVA FYE LIFETIME TRUST; SOUTH VALLEY BANK AND TRUST, TRUSTEE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 233

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, DIBBON J. COOK timely submitted a Statement and Proof of Claim (Claim 233) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 233 was submitted for the construction of a 110 acre-feet storage reservoir to store water from an unnamed creek and tributary springs in Cook's Canyon, tributary to the Sprague River, and for the use of 708.0 acre-feet of water from the constructed reservoir, an unnamed creek and tributary springs in Cook's Canyon for irrigation of 228.4 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 233 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the original claimant timely filed Contest 1720 to the Preliminary Evaluation of Claim 233.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3524: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 49.

8. The claim was transferred to THE MELVA FYE LIFETIME TRUST, SOUTH VALLEY BANK AND TRUST AS TRUSTEE (Claimant). *See* CHANGE OF OWNERSHIP FORM, Sept. 22, 2003.

9. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3524. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3524 (Apr. 7, 2005).

10. On December 21, 2006, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1720 (Settlement Agreement)[4] thereby resolving the remaining contest to Claim 233.

11. On December 6, 2005, the Adjudicator withdrew Case 49 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3524 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3524 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3524 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

[4] This December 21, 2006 Settlement Agreement revoked and replaced a prior stipulation resolving contests entered into on December 1, 2005. The prior stipulation contained an error in the name of the Claimant.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 233
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 233, PAGE 65

CLAIMANT: MELVA FYE LIFETIME TRUST
SOUTH VALLEY BANK AND TRUST AS TRUSTEE
803 MAIN ST
KLAMATH FALLS, OR 97601

CONSTRUCTION OF A RESERVOIR AND STORAGE OF WATER

SOURCE OF WATER:
AN UNNAMED CREEK AND TRIBUTARY SPRINGS, tributary to The SPRAGUE RIVER

STORAGE FACILITY: AN UNNAMED RESERVOIR

MAXIMUM VOLUME: 110 ACRE-FEET PER YEAR

DATE OF PRIORITY: OCTOBER 14, 1864

PERIOD OF ALLOWED USE:

Use of Stored Water	Water May be Diverted for Storage During this Period
Irrigation of Practicably Irrigable Acres	October 17 - February 28

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	10 E	WM	12	NW SE	1222 FEET SOUTH FROM C¼ CORNER, SECTION 12
35 S	10 E	WM	12	NW SE	660 FEET SOUTH AND 264 FEET EAST FROM C¼ CORNER, SECTION 12

THE AREA TO BE SUBMERGED IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
35 S	10 E	WM	12	NE SW
35 S	10 E	WM	12	NW SE

IRRIGATION OF PRACTICABLY IRRIGABLE ACRES

SOURCE OF WATER:

AN UNNAMED RESERVOIR (DESCRIBED ABOVE), AND AN UNNAMED CREEK AND TRIBUTARY SPRINGS, tributary to The SPRAGUE RIVER

PURPOSE OR USE

IRRIGATION OF 228.4 PRACTICABLY IRRIGABLE ACRES, BEING 115.4 ACRES FROM POD A, 12.5 ACRES FROM POD B, AND 100.5 ACRES FROM POD C.

RATE OF USE

4.120 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 2.08 CFS FROM POD A, 0.23 CFS FROM POD B, AND 1.81 FROM POD C.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
POD A	35 S	10 E	WM	12	NW SE	1222 FEET SOUTH FROM C¼ CORNER, SECTION 12	Same location as POD C
POD B	35 S	10 E	WM	12	NW SE	660 FEET SOUTH AND 264 FEET EAST FROM C¼ CORNER, SECTION 12	
POD C	35 S	10 E	WM	12	NW SE	1222 FEET SOUTH FROM C¼ CORNER, SECTION 12	Same location as POD A

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	10 E	WM	11	NE SE	13.3	POD A
35 S	10 E	WM	11	SW SE	1.8	
35 S	10 E	WM	11	SE SE	31.0	
35 S	10 E	WM	12	NE SW	16.7	
35 S	10 E	WM	12	NW SW	20.6	
35 S	10 E	WM	12	SW SW	3.2	
35 S	10 E	WM	14	NE NE	15.9	
35 S	10 E	WM	14	NW NE	12.9	

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	10 E	WM	12	NE SW	3.3	POD B
35 S	10 E	WM	12	NW SE	9.2	
35 S	10 E	WM	12	SW SW	9.7	POD C
35 S	10 E	WM	12	SE SW	17.0	
35 S	10 E	WM	12	NW SE	13.7	
35 S	10 E	WM	13	NE NW	24.3	
35 S	10 E	WM	13	NW NW	35.8	

[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 ROBERT RATHBORNE	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 234

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, WILBUR CRIM timely submitted a Statement and Proof of Claim (Claim 230) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 230 was submitted for a total of 39.0 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 37.4 acre-feet for irrigation of 8.7 acres, and 0.1 acre-feet for direct livestock watering of 10 horses from the Williamson River. The duty claimed for current irrigation is 4.3 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 230 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 234 was transferred to non-Indian successors, T. C. AND SUE LITTLEJOHN, TRUSTEES OF THE LITTLEJOHN LIVING TRUST. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 5183 (Feb. 11, 1997) (Claim # 234, Pages 0069-0071). 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 vested portion of the claim for irrigation and livestock watering was approved, but with a longer irrigation season than claimed.

6. On May 8, 2000, the United States of America timely filed Contest 3736 to the Claim and Preliminary Evaluation of Claim 234.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4201 to the Claim and Preliminary Evaluation of Claim 234.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 240.

9. On March 1, 2004, the Klamath Tribes withdrew Contest 4201. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Mar.1, 2004).

10. The property appurtenant to Claim 234 was transferred to ROBERT RATHBORNE (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M03, PAGE 48473 (July 11, 2003) and CHANGE OF OWNERSHIP FORM (Aug. 19, 2004).

11. On October 12, 2004, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 234.

12. On October 18, 2004, the Adjudicator withdrew Case 240 from the Office of Administrative Hearings.

B. DETERMINATION

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

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

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 234 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 234
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 234, PAGE 019

CLAIMANT: ROBERT RATHBORNE
PO BOX 1
HALF MOON BAY, CA 94019

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

PURPOSE OR USE: IRRIGATION OF 8.7 ACRES.

RATE OF USE:
0.22 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 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	30	NE NE	2

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	30	NE NE	2	8.5
35 S	7 E	WM	30	NE NE	9	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 JOY EFFMAN AND DORIS EFFMAN, UNDER THE ESTATE OF GEORGE EFFMAN	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 235

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, JOY AND DORIS EFFMAN, UNDER THE ESTATE OF GEORGE EFFMAN (Claimants) timely submitted a Statement and Proof of Claim (Claim 235) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 235 was submitted for a total of 876.7 acre-feet of water from Fort Creek via the Fort Creek Canal, a tributary of the Wood River, being 813.6 acre-feet for irrigation of 189.2 acres, 61.3 acre-feet for irrigation of 19.8 practicably irrigable acres, and 1.8 acre-feet for livestock watering of 135 head. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 235 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the claimed source was previously adjudicated as a part of the Wood River.

5. On May 3, 2000, the Claimants timely filed Contest 1721 to the Preliminary Evaluation of Claim 235.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3525: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 50.

8. On May 6, 2003, Claim 235 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.

9. 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.

10. 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 9, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

11. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3525. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3525 (Apr. 7, 2005).

12. On July 7, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1721 (Settlement Agreement) thereby resolving the remaining contest to Claim 235.

13. On July 8, 2005, the Adjudicator withdrew Case 50 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3525 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3525 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3525 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.

4. 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 235 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 235
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 235, PAGE 84

CLAIMANT: JOY EFFMAN AND DORIS EFFMAN,
UNDER THE ESTATE OF GEORGE EFFMAN
2768 18TH ST
SACRAMENTO CA 95818

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 189.2 ACRES AND LIVESTOCK WATERING OF 135 HEAD.

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

4.67 CFS FOR IRRIGATION OF MEASURED AT THE POINT OF DIVERSION, AND
0.003 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 1620 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Remarks
Fort Creek	33 S	7.5 E	WM	26	NW NW	Point of Diversion into Canal
Fort Creek Canal Rediversion 1	34 S	7.5 E	WM	2	NE SE	Point of Rediversion

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	2	NE SW	40.0	Fort Creek Via Fort Creek Canal Rediversion 1
34 S	7.5 E	WM	2	SE SW	20.0	
34 S	7.5 E	WM	2	NE SE	15.9	
34 S	7.5 E	WM	2	NW SE	40.0	
34 S	7.5 E	WM	2	SW SE	40.0	
34 S	7.5 E	WM	2	SE SE	33.3	

INCHOATE PORTION

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE or USE:

IRRIGATION OF 19.8 PRACTICABLY IRRIGABLE ACRES FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION A.

RATE OF USE:

0.36 CFS FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION A, MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
Fort Creek	33 S	7.5 E	WM	26	NW NW	NONE GIVEN	Point of Diversion into Canal
Fort Creek Canal Rediversion A	34 S	7.5 E	WM	2	NE SE	200 FEET SOUTH AND 557 FEET WEST FROM E¼ CORNER, SECTION 2	Point of Rediversion from Canal

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	2	NE SE	13.4	Fort Creek Via Fort Creek Canal Rediversion A
34 S	7.5 E	WM	2	SE SE	6.4	

[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 MARK D. ANDERTON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 236

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, CLOVERINE EGGSMAN [ESTATE OF WALTER EGGSMAN] timely submitted a Statement and Proof of Claim (Claim 230) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 236 was submitted for a total of 354.1 acre-feet of water from the Sprague River, a tributary of the Williamson River, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, 245.5 acre-feet for irrigation of 57.1 acres, 107.0 acre-feet for irrigation of 35.1 practicably irrigable acres, and 0.1 acre-feet for livestock watering of 6 horses. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 236 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 236 was transferred to a non-Indian successor, MARK D. ANDERTON (Claimant). *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M96, PAGE 26703 (Aug. 28, 1996) (Claim # 236, Page 059), and CHANGE OF OWNERSHIP FORM (Jan. 28, 1997) (Claim # 236, Page 058). 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 vested portion of the claim for livestock watering and irrigation was approved, but with a shorter irrigation season than claimed. The inchoate portion of the claim was denied, but it was acknowledged that the claimant has the right to further develop the use of water with reasonable diligence.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3506: 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 3737 to the Claim and Preliminary Evaluation of Claim 236.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4202 to the Claim and Preliminary Evaluation of Claim 236.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 241.

10. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3506. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3506 (Apr. 8, 2004).

11. On July 26, 2004, the Klamath Tribes withdrew Contest 4202. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (July 26, 2004).

12. On May 12, 2005, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contest to Claim 236.

13. On May 17, 2005, the Adjudicator withdrew Case 241 from the Office of Administrative Hearings.

14. Beneficial use of water has been made on 35.1 practicably irrigable acres with reasonable diligence.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3506 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3506 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3506 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

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

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

3. 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 236 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 236
FOR A VESTED RIGHT

CLAIM MAP REFERENCE: CLAIM # 236 SETTLEMENT MAP (April 5, 2005)

CLAIMANT: MARK D. ANDERTON
PO BOX 380
CHILOQUIN OR 97624

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

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD; IRRIGATION OF 92.1 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 6 HEAD.

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

0.01 CFS FOR DOMESTIC USE, AND

2.30 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING.

NO MORE THAN TWO OF THE THREE POINTS OF DIVERSION, BEING PORTABLE PUMP POD 1, POD 2-A, AND POD 2-B, MAY BE USED TOGETHER AT ANY ONE GIVEN TIME FOR ANY COMBINATION OF USES

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Portable Pump POD 1	Sprague River	34 S	8 E	WM	23	NW SE	NONE GIVEN – PORTABLE PUMP
POD 2-A	A Slough on the Sprague River	34 S	8 E	WM	23	NW SE	616 FEET SOUTH AND 1262 FEET EAST FROM C1/4 CORNER, SECTION 23
POD 2-B		34 S	8 E	WM	23	NW SE	221 FEET SOUTH AND 516 FEET EAST FROM C1/4 CORNER, SECTION 23

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	8 E	WM	23	SW NE	PORTABLE PUMP POD 1, POD 2-A and/or POD 2-B No more than two PODs may be used together at any one time for any combination of uses.

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	8 E	WM	23	NW NE	24.4	PORTABLE PUMP POD 1, POD 2-A and/or POD 2-B No more than two PODs may be used together at any one time for any combination of uses.
34 S	8 E	WM	23	SW NE	13.6	
34 S	8 E	WM	23	NW SE	38.5	
34 S	8 E	WM	23	SW SE	15.6	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

BEFORE THE DIRECTOR
OF THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of JOSIE FOSTER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 237

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, Josie Foster (Claimant) (PO BOX 66, BEATTY, OR 97621) timely submitted a Statement and Proof of Claim (Claim 237) to Oregon Water Resources Department (OWRD) for a total of 4.52 cubic feet per second from the Sprague River, its tributaries, springs and subsurface flow, for irrigation of 360.0 acres. The claimed priority date is October 14, 1864.

2. Claimant withdrew Claim 237 by letter dated August 30, 1991. That letter states in pertinent part: "Owner No. 11. . . Eliminated – property sale" (referring to Claim Number 237). This withdrawal was further confirmed by a letter dated February 22, 2000.

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 237 or to the Preliminary Evaluation of Claim 237.

B. DETERMINATION

Based upon the file and record herein, including the October 30, 1992 letter withdrawing Claim 237, IT IS ORDERED that Claim 237 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 FRANCIS LOVING TRUST HILDA FRANCIS, TRUSTEE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 238

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, JESSE FRANCIS (ON BEHALF OF THE FRANCIS LOVING TRUST, HILDA FRANCIS, TRUSTEE) (Claimant) timely submitted a Statement and Proof of Claim (Claim 238) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 238 was submitted for a total of 130.5 acre-feet of water from the Williamson River, a tributary Upper Klamath Lake, for irrigation of 42.1 practicably irrigable acres with a season of use March 1 through October 16. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 238 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimant timely filed Contest 1722 to the Preliminary Evaluation of Claim 238.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3526: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 60.

8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3526. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3526 (Apr. 7, 2005).

9. On August 3, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1722 (Settlement Agreement) thereby resolving the remaining contest to Claim 238.

10. On August 4, 2005, the Adjudicator withdrew Case 60 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 238 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 238
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 238, PAGE 66

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3526 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3526 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3526 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

CLAIMANT: FRANCIS LOVING TRUST
HILDA FRANCIS, TRUSTEE
PO BOX 213
CHILOQUIN OR 97624

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

PURPOSE or USE:

IRRIGATION OF 42.1 PRACTICABLY IRRIGABLE ACRES, BEING 17.6 ACRES FROM POD A, AND 24.5 ACRES FROM POD B.

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

RATE OF USE:

0.76 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION, BEING 0.32 FROM POD A, AND 0.44 CFS FROM POD B.

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.

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	31 S	10 E	WM	24	SE NE	370 FEET NORTH AND 400 FEET WEST FROM E¼ CORNER, SECTION 24
POD B	31 S	10 E	WM	24	SE NE	726 FEET NORTH AND 792 FEET WEST FROM E¼ CORNER, SECTION 24

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
31 S	10 E	WM	24	NE NE	4.8	POD A
31 S	10 E	WM	24	SE NE	12.8	
31 S	10 E	WM	24	NE NE	13.6	POD B
31 S	10 E	WM	24	SE NE	10.9	

[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 FRANCIS	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 239

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, Richard Francis (Claimant) (11863 SW GREENBURG RD #20, TIGARD, OR 97223) timely submitted a Statement and Proof of Claim (Claim 239) to Oregon Water Resources Department (OWRD) for a total of 2.0 cubic feet per second from Sprague River, its tributaries, springs, and subsurface flow for irrigation of 160 acres. The claimed priority date is "October 14, 1864."

2. Claimants withdrew Claim 239 by letter dated October 30, 1992. That letter states in pertinent part: "[W]e have withdrawn claims for several allottee parcels" including "Owner No. 13, Property No. 01" (referring to Claim 239).

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 239 or to the Preliminary Evaluation of Claim 239.

B. DETERMINATION

Based upon the file and record herein, including the October 30, 1992 letter withdrawing Claim 239, IT IS ORDERED that Claim 239 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 ROBERTA FROST	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 240

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, ROBERTA FROST[1] (Claimant) timely submitted a Statement and Proof of Claim (Claim 240) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 240 was submitted for a total of 7.1 acre-feet of water from the Williamson River, a tributary of Upper Klamath Lake, being 1.5 acre-feet for domestic use for one household, including irrigation of 0.5 acre of lawn and garden; and 5.6 acre-feet for irrigation of 1.8 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 240 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 "no existing uses were claimed," and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimant timely filed Contest 1723 to the Preliminary Evaluation of Claim 240.

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[1] This claim was filed under the name of Roberta Garcia. Roberta Garcia changed her name to Roberta Frost. *See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct 6, 1999 (Claim # 240, Page 074).

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3527: 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. [2], Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard[3], Don Vincent[4], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 61.

8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3527. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3527 (Apr. 7, 2005).

9. On August 3, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1723 (Settlement Agreement) thereby resolving the remaining contest to Claim 240.

10. On August 4, 2005, the Adjudicator withdrew Case 61 from the Office of Administrative Hearings.

11. OWRD finds that the point of diversion listed in the Settlement Agreement, being GOVERNMENT LOT 11, SW¼SE¼, SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., is incorrectly described. The point of diversion listed in the claim (Claim # 240, Page 081) is the SE¼SE ¼, Section 27, Township 34 South, Range 7 East. Furthermore, this is consistent with the measured distances given for the point of diversion, being 1299 FEET NORTH AND 1238 FEET WEST OF SE ¼ CORNER, SECTION 27.

12. OWRD finds that the place of use listed in the Settlement Agreement, being GOVERNMENT LOT 11, SW¼SE¼, SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., is incorrectly described. The title report submitted on August 5, 1992 (Claim # 240, Page 026) describes the subject property as: "The South 215.9 feet of that tract of land described as the South 660 feet except the West 1100 feet of Government Lot 6, Section 27, Township 34 South, Range 7 East , Willamette Meridian, Klamath

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[2] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3527 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[3] Berlva Pritchard voluntarily withdrew from Contest 3527 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[4] Don Vincent voluntarily withdrew from Contest 3527 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

County, Oregon." Government Lot 6 is located within the NESE and NWSE quarter-quarters of Section 27. Furthermore, a map submitted with the title report (Claim # 240, Page 029) highlighted the subject property and shows the property is consistent with Klamath County Tax Lot 1200. Tax Lot 1200 lies in the SW¼ of the NE¼SE¼ and the SE¼ of the NW¼SE¼, all within Government Lot 6.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein, with two exceptions:

    a. the incorrect legal description of the point of diversion as described in Finding 11, above; the legal description of the point of diversion is corrected to SE¼SE¼ , SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M., and

    b. the incorrect legal description to the place of use as described in Finding 12, above; the legal description of the place of use is corrected to TAX LOT 1200 WITHIN GOVERNMENT LOT 6, (NE¼SE¼, AND NW¼SE¼), SECTION 27, TOWNSHIP 34 SOUTH, RANGE 7 EAST, W.M.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

4. Based on the file and record herein, IT IS ORDERED that Claim 240 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 240
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 240, PAGE 67

CLAIMANT: ROBERTA FROST
3820 GRANADA WAY
KLAMATH FALLS, OR 97601

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED)

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

PERIOD OF ALLOWED USE:

Use	Period
Domestic Expanded	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	7 E	WM	27	SE SE	1299 FEET NORTH AND 1238 FEET WEST FROM SE¼ CORNER, SECTION 27

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lot
34 S	7 E	WM	27	NE SE	6	1200
34 S	7 E	WM	27	NW SE		

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 1.3 PRACTICABLY IRRIGABLE ACRES.

RATE OF USE:

0.03 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	7 E	WM	27	SE SE	1299 FEET NORTH AND 1238 FEET WEST FROM SE¼ CORNER, SECTION 27

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lot	Acres
34 S	7 E	WM	27	NE SE	6	1200	1.3
34 S	7 E	WM	27	NW 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 CECIL GALLAGHER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 241

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, MARYETTA A. GENTRY timely submitted a Statement and Proof of Claim (Claim 241) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 241 was submitted for a total of 83.7 acre-feet of water from the Sprague River via Modoc Point Irrigation District canal system, a tributary of the Williamson River, being 1.5 acre-feet for domestic use, 81.7 acre-feet for irrigation of 19.0 acres (including domestic irrigation of 0.5 acres for lawn and garden), and 0.5 acre-feet for livestock watering of 35 head. The duty claimed for current irrigation is 4.3 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 241 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim for livestock watering and irrigation was approved, but with a shorter period of use for livestock watering and longer irrigation season than claimed.

5. On May 3, 2000, the Claimant timely filed Contest 1724 to the Preliminary Evaluation of Claim 241.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3528: 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[1], 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 62, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003).

8. On September 16, 2003, the Klamath Project Water Users withdrew Contest 3528. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3528 (Sept. 16, 2003).

9. On November 24, 2006, Claim 241 was transferred to CECIL GALLAGHER (Claimant). *See* CHANGE OF OWNERSHIP FORM (Nov. 24, 2006).

10. On December 1, 2006, the Claimant timely submitted an amendment to Claim 241 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).

11. No contests or claims of injury were filed to the Claimant's December 1, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

12. On November 9, 2007, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1724 (Settlement Agreement) thereby resolving the remaining contest to Claim 241.

13. On November 14, 2007, the Adjudicator withdrew Case 62 from the Office of Administrative Hearings.

14. OWRD finds that the place of use described in Claim 241 was successfully withdrawn from Modoc Point Irrigation District's Claim 84. The settlement condition precedent was met on November 9, 2007 with a settlement agreement between the Claimant of Claim

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[1] Berlva Pritchard voluntarily withdrew from Contest 3528 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[2] Don Vincent voluntarily withdrew from Contest 3528 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

241, OWRD and the Klamath Project Water Users. *See* STIPULATION TO RESOLVE CONTEST 1724 (Nov. 9, 2007). *See also* STIPULATION TO RESOLVE CONTESTS [Claim 84] (Nov. 21, 2007).

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. The Claimant's timely amendment made on December 1, 2006, pertaining to additional or relocated points of diversion meets the requirements of OAR 690-030-0085, and the amendment is incorporated into the Claimant's claim.

4. The relocated point of diversion on the Williamson River, within LOT 10, NENE, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21, is approved.

5. The diversion of water from the original point of diversion at the Chiloquin Dam on the Sprague River, located within the SESE, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 125 FEET EAST FROM NW CORNER, SESE, SECTION 3, is no longer authorized; removal of the Chiloquin Dam was completed on August 21, 2008.

6. The quantity of water diverted at the relocated point of diversion on the Williamson River must not exceed the quantity of water lawfully available at the original point of diversion at the Chiloquin Dam on the Sprague River.

7. 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.

8. 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.

9. Based on the file and record herein, IT IS ORDERED that Claim 241 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 241
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 241, PAGE 061 and CLAIM # 241, MYLAR MAP FILED DECEMBER 1, 2006

CLAIMANT: CECIL GALLAGHER
PO BOX 647
CHILOQUIN OR 97624

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

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (DOMESTIC EXPANDED);

IRRIGATION OF 18.5 ACRES; AND

LIVESTOCK WATERING OF 35 HEAD

RATE OF USE:
0.4906 CUBIC FOOT PER SECOND (CFS), IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, AS FOLLOWS:

0.01 CFS FOR DOMESTIC EXPANDED MEASURED AT THE POINT OF DIVERSION,

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

0.0006 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 420 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE:

Use	Period
Domestic Expanded	March 1 - October 16
Irrigation	March 1 - October 16
Livestock Watering	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
36 S	7 E	WM	4	NW SW	20	MODOC POINT IRRIGATION DISTRICT CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED					
Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	7 E	WM	4	NW SW	20

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	7 E	WM	4	NW SW	20	18.5

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

[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 J. MCAULIFFE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 242

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 242 (Claimants: AMBROSE W. MCAULIFFE AND SUSAN J. MCAULIFFE) and its associated contests (3281, 3507, 3811, and 4203) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 242.

2. On May 6, 2003, Claim 242 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 242 on April 5, 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" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.8, below.
   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 242. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **Evidentiary Rulings.** Within the section titled "Evidentiary Rulings" of the Proposed Order, the first paragraph is modified as follows:

> The STIPULATION BETWEEN AMBROSE MCAULIFFE, SUSAN MCAULIFFE, AND THE UNITED STATES AND WITHDRAWAL OF CONTEST BY THE UNITED STATES for Case 242, dated November 29, 2005, (Stipulation) is added to the list of items that were admitted into the record.

Reason for Modification: To correct an omission from the list of Evidentiary Rulings. Although the Stipulation was never explicitly admitted into the record, the Administrative Law Judge concluded that the claim should be allowed according to the terms of the Stipulation. (Proposed Order at 4 (Item 4), 10.) As a result, the adjudicator treats the failure to explicitly admit the stipulation into the record as an oversight and treats the Stipulation as if it had been admitted into the record at hearing.

9. **Findings of Fact.** The first sentence in Proposed Order Finding of Fact #5 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> (5) In their Response to Claimants' Closing Argument, KPWU do not dispute the *Walton* water rights outlined in the diversion for ~~93.9~~ 98.9 acres, but argue that in regards to the 43 acres from the other diversion, Claimants have not shown that they were the first non-Indian successors and therefore, they have not established *Walton* water rights for these acres.

Reason for Modification: OWRD has determined that the ALJ's finding regarding the number of acres not disputed in the Claimant's Closing Argument is not supported by a preponderance of evidence on the record. (*See* KLAMATH PROJECT WATER USERS' RESPONSE TO CLAIMANTS' CLOSING ARGUMENT at 3)

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 following paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> The only remaining contests are from KPWU and Claimants. KPWU do not dispute that Claimants have established *Walton* water rights to the ~~93.9~~ 98.9 acres from one diversion point, as outlined in the stipulation between Claimants and the United States. KPWU argue that Claimants' *Walton* water rights are limited to the amount in the stipulation, and Claimants agree, so there is no dispute regarding Claimants' *Walton* water rights on the ~~93.9~~ 98.9 acres.

Reason for Modifications: To provide consistency with Proposed Order Finding of Fact #5.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.8, above.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.9, 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 242. 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 242 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 242

CLAIM MAP REFERENCE:
CLAIM # 242, PAGE 28; OWRD INVESTIGATION MAP – T 33 S, R 7.5 E

CLAIMANT: AMBROSE W. MCAULIFFE
SUSAN J. MCAULIFFE
PO BOX 456
KLAMATH FALLS OR 97626

SOURCE OF WATER:
FORT CREEK, tributary to the WOOD RIVER, and
CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 141.9 ACRES, BEING 43.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM FORT CREEK POD AND 98.9 ACRES FROM CROOKED CREEK POD; LIVESTOCK WATERING FROM CROOKED CREEK.

ANY COMBINATION OF LIVESTOCK WATERING IS LIMITED TO A MAXIMUM OF 200 HEAD AT ANY ONE TIME.

RATE OF USE:
3.5737 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.1 CFS FROM FORT CREEK POD FOR IRRIGATION OF 43.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION;

2.47 CFS FROM CROOKED CREEK POD FOR IRRIGATION OF 98.9 ACRES, MEASURED AT THE POINT OF DIVERSION; AND

0.0037 CFS FROM CROOKED CREEK INCLUDING ITS DITCHES FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2400 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

FORT CREEK POD:

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

CROOKED CREEK POD:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 – October 16
Incidental Livestock Watering from Fort Creek	March 1 – October 16
Livestock Watering from Crooked Creek	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
Fort Creek POD	33 S	7.5 E	WM	26	SW NW
Crooked Creek POD	33 S	7.5 E	WM	26	SW NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING FROM FORT CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	26	SE NW	17.9
33 S	7.5 E	WM	26	NE SW	18.0
33 S	7.5 E	WM	26	SE SW	7.1

IRRIGATION and LIVESTOCK WATERING FROM CROOKED CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	26	SW NE	3.4
33 S	7.5 E	WM	26	SE NW	11.2
33 S	7.5 E	WM	26	NE SW	21.1
33 S	7.5 E	WM	26	SE SW	31.0
33 S	7.5 E	WM	26	NW SE	15.9
33 S	7.5 E	WM	26	SW SE	16.3

[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 PETER BOURDET	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 243

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, LLOYD LEE AND BONNIE KAY HALL timely submitted a Statement and Proof of Claim (Claim 243) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 243 was submitted for a total of 277.2 acre-feet of water from the Sprague River, a tributary of the Williamson River, being 230.1 acre-feet for irrigation of 53.5 acres and 45.6 acre-feet for irrigation of 14.7 practicably irrigable acres. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 243 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim for irrigation was approved, but with a longer irrigation season than claimed and a shorter season for livestock watering than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimant timely filed Contest 1725 to the Preliminary Evaluation of Claim 243.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3529: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 63, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003). Claim 243 was consolidated into Case 209 because lands appurtenant to this claim are partially or fully coextensive with the Modoc Point Irrigation District's claimed place of use in Claim 84, or may involve the delivery of water through District facilities serving lands appurtenant to the claims.

8. The claim was transferred to a non-Indian successor, PETER BOURDET (Claimant) (PO BOX 803, CHILOQUIN, OR 97624). *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M02, PAGE 5689 (Jan. 23, 2002), and CHANGE OF OWNERSHIP FORM (Feb. 26, 2007). 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.

9. Peter Bourdet elected to incorporate the acres claimed under Claim 243 into Modoc Point Irrigation District's (MPID) Claim 84. On November 9, 2007, Peter Bourdet, MPID, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS; CLAIM 84 (Settlement Agreement) in which PETER BOURDET agreed to withdraw Claim 243, and thereby resolved Contest 1725, and rendered the remaining Contest 3529 to Claim 243 moot. [*See* STIPULATION TO RESOLVE CONTESTS; CLAIM 84, Pages 4, 7, and 25, and Exhibit B (Nov. 9, 2007).]

10. On November 21, 2007, the Adjudicator withdrew Case 63 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3529 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3529 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3529 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between Peter Bourdet, MPID, OWRD, United States of America, 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 243 by the Claimant, IT IS ORDERED that Claim 243 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 MARILYN HALL	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 244

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, MARILYN HALL (Claimant) timely submitted a Statement and Proof of Claim (Claim 244) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as an Indian allottee on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 244 was submitted for a total of 8.6 acre-feet of water from the Williamson River, a tributary of the Upper Klamath Lake, being 1.5 acre-feet for domestic use including irrigation of 0.5 acres for lawn and garden, and 7.1 acre-feet for irrigation of 2.3 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 244 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim was denied because the elements of an Allottee claim were not established, and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimant timely filed Contest 1726 to the Preliminary Evaluation of Claim 244.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 41.
7. On July 2, 2003, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1726 (Settlement Agreement) thereby resolving the only contest to Claim 244.

8. On July 3, 2003, the Adjudicator withdrew Case 41 from the Office of Administrative Hearings.

9. Based on the water use stipulated in the Settlement Agreement (a maximum total of 7.1 acre-feet per year for irrigation of 2.3 practically irrigable acres), OWRD finds a duty of 3.1 acre-feet per acre.

10. OWRD finds that the irrigation season for practically irrigable acres, 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 March 1 through October 16.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant and OWRD is adopted and incorporated as if set forth fully herein, with the exception of the irrigation season for practically irrigable acres that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 10, above); the irrigation season recognized herein is consistent the Claimant's original claim.

2. The elements of an Allottee claim have been established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

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

4. Because there is no evidence on the record to the contrary, the domestic rate of water is the standard rate for domestic use (0.01 cfs per dwelling) as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION.

5. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

6. Based on the file and record herein, IT IS ORDERED that Claim 244 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 244
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 244, PAGE 067

CLAIMANT: MARILYN HALL
7118 RUTH'S COURT
KLAMATH FALLS, OR 97603

VESTED (DEVELOPED) PORTION

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

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

RATE OF USE:
0.01 CUBIC FOOT PER SECOND (CFS) FROM POD 1 MEASURED AT THE POINT OF DIVERSION; NOT TO EXCEED A TOTAL OF 1.5 ACRE-FEET PER YEAR

PERIOD OF ALLOWED USE:

Use	Period
Domestic Expanded	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	34 S	7 E	WM	27	SE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7 E	WM	27	SW SE	0.5	POD 1

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 2.3 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

0.04 CFS FROM POD A, MEASURED AT THE POINT OF DIVERSION; NOT TO EXCEED 7.1 ACRE-FEET PER YEAR.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	34 S	7 E	WM	27	SE SE	1073 FEET NORTH AND 1230 FEET WEST FROM SE CORNER, SECTION 27

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7 E	WM	27	SW SE	2.3	POD A

[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 SNAKE HARRINGTON	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 245

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, Snake Harrington (Claimant) (PO BOX 131, CHILOQUIN, OR 97324) timely submitted a Statement and Proof of Claim (Claim 245) to OWRD for a total of 1.0 cubic feet per second from Sprague River, its tributaries, springs, and subsurface flow for irrigation of 80.0 acres. The claimed priority date is October 14, 1864.

2. Claimant withdrew Claim 245 by letter dated August 5, 1991. That letter states in pertinent part: ". . . [W]e can not claim any water rights for the lands in the Klamath River Adjudication. We will therefore dismiss this claim from our filings."

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 245 or to the Preliminary Evaluation of Claim 245.

B. DETERMINATION

Based upon the file and record herein, including the August 5, 1991 letter withdrawing Claim 245, IT IS ORDERED that Claim 245 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 ERROL HATCHER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 246

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 246 (Claimant: ERROL HATCHER, PO BOX 564, CHILOQUIN, OR 97624) and its associated contests (1727 and 3530) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 64.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER BY DEFAULT (Proposed Order) on November 10, 2005, denying Claim 246.

3. No exceptions were filed to the Proposed Order.

4. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.5, below.

5. **Opinion.** The following text is added at the end of the Proposed Order's "Opinion" section:

> It is theoretically possible that the current owner could establish a *Walton* water right claim, even though the Indian Allottee claim must be denied. In this case, however, there is insufficient evidence to support a *Walton* claim.
>
> OWRD incorporates into this Opinion sections the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.
>
> The only evidence pertaining to ownership of the property underlying the claimed place of use is that the property was owned by a member of the Klamath Tribes as of January 31, 1991, that the property was sold at some point after that date, and that there is no evidence that the successor-in-interest is a member of the Klamath Tribes.

There is no evidence of diligent development of the use of water on the property following the change in ownership. As a result, the property may have been out of Indian ownership for more than fourteen years by the time the cross-examination hearing in this matter took place. Under the circumstances in this case, this does not constitute reasonably diligent development of the use of water, a required element for establishing a *Walton* right on practicably irrigable acreage.

Because the Claimant has failed to establish a water right under either an Indian Allottee or a *Walton* theory, Claim 246 is denied.

Reason for Modifications: To apply the facts in the case to the *Walton* elements

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.5, above.

2. The elements of an Allottee claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 246 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 KATHLEEN HATCHER-MITCHELL, STEPHEN D. HESS, AND MELISSA K. HESS	))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 247

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, KATHLEEN HATCHER[1], aka KATHLEEN HATCHER-MITCHELL, (ON BEHALF OF HERSELF, STEPHEN D. HESS AND MELISSA K. HESS) (Claimants) timely submitted a Statement and Proof of Claim (Claim 247) 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 an inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 247 was submitted for a total of 66.3 acre-feet of water from the Larkin Creek, a tributary of the Williamson River for irrigation of 21.7 practicably irrigable acres. The duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is March 1 through October 16. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 247 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the elements for a practicably irrigable acreage right were not established.

[1] The name on the original claim was incorrectly listed as Kathleen Hatchaway, and Stephen D. Hess and Melissa K. Hess were added as original claimants (*See* LETTER, Nov. 16, 1992, Claim # 247, Page 14).

5. On May 3, 2000, the Claimants timely filed Contest 1728 to the Preliminary Evaluation of Claim 247.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3531: 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. [2], Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard[3], Don Vincent[4], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 65.

8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3531. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3531 (Apr. 7, 2005).

9. On August 3, 2005, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1728 (Settlement Agreement) thereby resolving the remaining contest to Claim 247.

10. On August 4, 2005, the Adjudicator withdrew Case 65 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. 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.

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[2] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3531 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[3] Berlva Pritchard voluntarily withdrew from Contest 3531 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[4] Don Vincent voluntarily withdrew from Contest 3531 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

4. Based on the file and record herein, IT IS ORDERED that Claim 247 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 247
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 247, PAGE 88

CLAIMANT: KATHLEEN HATCHER-MITCHELL
PO BOX 1185
CHILOQUIN, OR 97624

STEPHEN D. HESS
MELISSA K. HESS
PO BOX 111
BEATTY, OR 97621

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

PURPOSE or USE:
IRRIGATION OF 21.6 PRACTICABLY IRRIGABLE ACRES, BEING 7.8 ACRES FROM POD A, AND 13.8 ACRES FROM POD B.

RATE OF USE:
0.39 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 0.14 CFS FROM POD A, AND 0.25 CFS FROM POD B.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD A	34 S	7 E	WM	11	NW NE	594 FEET SOUTH AND 330 FEET EAST FROM N¼ , SECTION 11
POD B	34 S	7 E	WM	11	NE NW	1320 FEET SOUTH AND 198 FEET WEST FROM N¼ CORNER, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**	**Authorized POD**
34 S	7 E	WM	11	NW NE	6.8	POD A
34 S	7 E	WM	11	NE NW	1.0	POD A
34 S	7 E	WM	11	NW NE	2.4	POD B
34 S	7 E	WM	11	NE NW	11.4	POD B

[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 STEPHEN HESS AND MELISSA HESS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 248

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, STEPHEN HESS AND MELISSA HESS (Claimants) timely submitted a Statement and Proof of Claim (Claim 248) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 248 was submitted for a total of 338.7 acre-feet of water from the Sprague River via Modoc Point Irrigation District canal system, a tributary of the Williamson River, being 325.5 acre-feet for irrigation of 75.7 acres, 12.7 acre-feet for irrigation of 4.1 practicably irrigable acres, and 0.5 acre-feet for livestock watering of 40 head. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 248 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim for livestock watering and irrigation was approved, but with a shorter period of use for livestock watering and longer irrigation season than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

5. On May 3, 2000, the Claimants timely filed Contest 1729 to the Preliminary Evaluation of Claim 248.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3532: 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.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 51, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003).

8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3532. *See* NOTICE OF WITHDRAWAL OF CONTEST NOS. 3532, 3547, 3550, AND 3569 (Apr. 7, 2005).

9. On December 1, 2006, the Claimants timely submitted an amendment to Claim 248 for additional or relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).

10. No contests or claims of injury were filed to the Claimant's December 1, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

11. On November 9, 2007, OWRD and the Claimants executed a STIPULATION TO RESOLVE CONTEST 1729 (Settlement Agreement) thereby resolving the remaining contest to Claim 248.

12. On November 14, 2007, the Adjudicator withdrew Case 51 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3532 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3532 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3532 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. OWRD finds that the place of use described in Claim 248 was successfully withdrawn from Modoc Point Irrigation District's Claim 84. The settlement condition precedent was met on November 9, 2007 with a settlement agreement between the Claimants of Claim 248, OWRD and the Klamath Project Water Users. *See* STIPULATION TO RESOLVE CONTEST 1729 (Nov. 9, 2007). *See also* STIPULATION TO RESOLVE CONTESTS [Claim 84] (Nov. 21, 2007).

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimants is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. The Claimants' timely amendment, made on December 1, 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 relocated point of diversion on the Williamson River, within LOT 10, NENE, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21, is approved.

5. The diversion of water from the original point of diversion at the Chiloquin Dam on the Sprague River, located within the SESE, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at 125 FEET EAST FROM NW CORNER, SESE, SECTION 3, is no longer authorized; removal of the Chiloquin Dam was completed on August 21, 2008.

6. The quantity of water diverted at the relocated point of diversion on the Williamson River must not exceed the quantity of water lawfully available at the original point of diversion at the Chiloquin Dam on the Sprague River.

7. 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.

8. 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.

9. Based on the file and record herein, IT IS ORDERED that Claim 248 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 248
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 248, PAGE 170 and CLAIM # 248, MYLAR MAP FILED DECEMBER 1, 2006

CLAIMANT: STEPHEN HESS AND MELISSA HESS
PO BOX 111
BEATTY, OR 97621

VESTED (DEVELOPED) PORTION

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

PURPOSE OR USE:
IRRIGATION OF 75.7 ACRES AND LIVESTOCK WATERING OF 40 HEAD.

RATE OF USE:
1.8707 CUBIC FEET PER SECOND (CFS), IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, AS FOLLOWS:

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

0.0007 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 480 GALLONS PER DAY.

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

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 16
Livestock Watering	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
35 S	7 E	WM	32	NE NE	1	MODOC POINT IRRIGATION DISTRICT CANAL

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**GLot**	**Acres**
35 S	7 E	WM	32	NE NE	1	15.7
35 S	7 E	WM	32	NE NE	8	20.0
35 S	7 E	WM	32	SE NE	9	20.0
35 S	7 E	WM	32	SE NE	16	20.0

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

INCHOATE PORTION

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

PURPOSE or USE: IRRIGATION OF 4.1 PRACTICABLY IRRIGABLE ACRES.

RATE OF USE:

0.07 CUBIC FOOT PER SECOND (CFS) TO BE MEASURED AT THE POINT OF DIVERSION, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM						
35 S	7 E	WM	3	SE SE		125 FEET EAST FROM NW CORNER, SESE, SECTION 3
RELOCATED POINT OF DIVERSION (AFTER REMOVAL OF CHILOQUIN DAM)						
35 S	7 E	WM	21	NE NE	10	180 FEET NORTH AND 180 FEET EAST FROM SW CORNER, NENE, SECTION 21
POINT OF RE-DIVERSION						
35 S	7 E	WM	32	NE NE	1	NONE GIVEN

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICABLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	32	NE NE	1	4.1

FURTHER LIMITATIONS

THE QUANTITY OF WATER DIVERTED AT THE RELOCATED POINT OF DIVERSION ON THE WILLIAMSON RIVER MUST NOT EXCEED THE QUANTITY OF WATER LAWFULLY AVAILABLE AT THE ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM ON THE SPRAGUE RIVER.

[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 HILDEGARD HICKS AND THE ESTATE OF JAMES HICKS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 249

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, HILDEGARD HICKS (Claimant) AND JAMES HICKS[1] timely submitted a Statement and Proof of Claim (Claim 249) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested and inchoate Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 249 was submitted for a total of 660.2 acre-feet of water from the Williamson River and unnamed tributaries, tributary to Upper Klamath Lake, being 38.7 acre-feet for irrigation of 9.0 acres, 621.4 acre-feet for irrigation of 200.5 practicably irrigable acres (including inchoate domestic irrigation of 0.5 acres for lawn and garden), and 0.1 acre-feet for livestock watering of 5 horses. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.

3. Counsel signed Claim 249 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the vested portion of the claim for livestock watering and irrigation was approved, but with a longer irrigation season than claimed, and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.

[1] Mr. James Hicks has since passed away. *See* RESERVED WATER RIGHTS CLAIM (REVISED REPORT), Oct. 6, 1999 (Claim # 249, Page 082).

5. On May 3, 2000, the Claimant timely filed Contest 1730 to the Preliminary Evaluation of Claim 249.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3533: 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. [2], Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard[3], Don Vincent[4], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 52.

8. On April 7, 2005, the Klamath Project Water Users withdrew Contest 3533. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3533 (Apr. 7, 2005).

9. On July 7, 2005, OWRD and the Claimant executed a STIPULATION TO RESOLVE CONTEST 1730 (Settlement Agreement) thereby resolving the remaining contest to Claim 249.

10. On July 8, 2005, the Adjudicator withdrew Case 52 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between OWRD and the Claimant is adopted and incorporated as if set forth fully herein.

2. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

3. Beneficial use of water by the method of natural overflow is established.

4. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF

[2] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3533 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[3] Berlva Pritchard voluntarily withdrew from Contest 3533 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[4] Don Vincent voluntarily withdrew from Contest 3533 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

FACT of the FINAL ORDER OF DETERMINATION will apply to the irrigation of practicably irrigable acreage from the point of diversion.

5. Based on the file and record herein, IT IS ORDERED that Claim 249 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 249
FOR A VESTED AND INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 249, PAGE 77

CLAIMANT: HILDEGARD HICKS
THE ESTATE OF JAMES HICKS
PO BOX 254
CHILOQUIN, OR 97624

VESTED (DEVELOPED) PORTION

SOURCE OF WATER: UNNAMED STREAMS, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 9.0 ACRES AND LIVESTOCK WATERING OF 5 HORSES BY NATURAL OVERFLOW

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 and LIVESTOCK WATERING BY NATURAL OVERFLOW						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	20	NE NE	1	0.1
35 S	7 E	WM	20	NE NE	8	3.5
35 S	7 E	WM	21	NW NW	6	5.4

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

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

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A

CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR. RATE FOR IRRIGATION MAY NOT EXCEED 0.22 CFS. RATE FOR LIVESTOCK WATERING MAY NOT EXCEED 50 GALLONS PER DAY. THE SEASON OF USE FOR IRRIGATION MAY NOT EXCEED MARCH 1 TO OCTOBER 16.

INCHOATE PORTION

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

PURPOSE or USE:

INCHOATE DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.5 ACRES OF LAWN AND GARDEN (INCHOATE DOMESTIC EXPANDED) FROM POD A; AND

IRRIGATION OF 200.0 PRACTICABLY IRRIGABLE ACRES FROM POD A.

RATE OF USE:

3.61 CUBIC FEET PER SECOND (CFS) FROM POD A, MEASURED AT THE POINT OF DIVERSION, AS FOLLOWS:

0.01 CFS FOR INCHOATE DOMESTIC EXPANDED; AND

3.60 CFS FOR IRRIGATION OF PRACTICABLY IRRIGABLE ACREAGE.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Inchoate Domestic Expanded	January 1 - December 31
Practicably Irrigable Acreage	March 1 - October 16

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD A	35 S	7 E	WM	20	SE NE	20	305 FEET NORTH OF E¼ CORNER, SECTION 20

THE PLACE OF USE IS LOCATED AS FOLLOWS:

INCHOATE DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	Authorized POD
35 S	7 E	WM	17	SE SE	32	POD A

PRACTICABLY IRRIGABLE ACREAGE							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	16	NW SW	25	38.0	POD A
35 S	7 E	WM	16	NW SW	26		
35 S	7 E	WM	16	SW SW	35	38.0	
35 S	7 E	WM	16	SW SW	36		
35 S	7 E	WM	17	NE SE	17	38.0	
35 S	7 E	WM	17	NE SE	24		
35 S	7 E	WM	17	SE SE	25	37.5	
35 S	7 E	WM	17	SE SE	32		
35 S	7 E	WM	20	NE NE	1	15.6	
35 S	7 E	WM	20	NE NE	8		
35 S	7 E	WM	21	NW NW	5	32.9	
35 S	7 E	WM	21	NW NW	6		

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication