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 RAYMOND J. DRISCOLL, AND BARBARA A. DRISCOLL	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 50

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 50 (Claimants: RAYMOND J. DRISCOLL AND BARBARA A. DISCROLL, 43411 HWY 62, CHILOQUIN, OR 97624) and its associated contests (1713, 3738, and 4105) were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 185.

2. On May 6, 2003, Claim 50 was consolidated with Case 900 "for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication." *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.

3. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.

4. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 3, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR LEGAL RULING AND FOR SUMMARY JUDGMENT, AND PROPOSED ORDER DENYING CLAIM on January 31, 2005 (Proposed Order).

6. No exceptions were filed to the Proposed Order.

7. On August 11, 2011, OWRD referred Claim 50 back to the Office of Administrative Hearings for further proceedings in order to take further evidence in support of or opposition to the Claimants' claim to a Klamath Termination Act right based on beneficial use of water for domestic use. The Deemed Admissions in the Proposed Order insufficiently addressed the domestic use portion of the claim.

8. On September 20, 2011, James Root and Valerie Root partially withdrew Contest 1713 to the extent that the contest relates to the Claimants' claim to 5 gallons per minute for domestic use. *See* CONTESTANTS' NOTICE OF PARTIAL WITHDRAWAL OF CONTEST 1713 (September 20, 2011).

9. On September 22, 2011, the United States partially withdrew Contest 3738 to the extent that the contest relates to the Claimants' claim to 5 gallons per minute for domestic use. *See* NOTICE OF PARTIAL WITHDRAWAL OF CONTEST (September 22, 2011).

10. Because all contests pertaining to the domestic use portion of Claim 50 have been withdrawn, the Adjudicator withdrew the Case 185 from the Office of Administrative Hearings on June September 23, 2011.

11. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
    a. The "Findings of Fact" is adopted with modifications, as set forth in Section A.12, below.
    b. The "Conclusions of Law" is adopted is adopted with modifications, as set forth in Sections A.13, below.
    c. The "Opinion" is adopted with modifications, as set forth in Section A.14, below.
    d. 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 50, which also incorporates any modifications made in Section A.15, below. Consistent with Sections A.12, A.13, and A.14, below, the outcome of the Order has been modified to approve a right for domestic use for one household including non-commercial irrigation of 0.32 acre of lawn and garden.

12. **Findings of Fact.**

    a. The second sentence in the Proposed Order Finding of Fact #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

        Claimants made a Klamath Termination Act claim for water as a non-Indian successors to ~~a Klamath Indian Allottee~~ unallotted Klamath Indian Reservation lands, claiming an amount of water sufficient to irrigate the allotment's share of the Tribe's "practically irrigable acreage" (PIA).

    Reason for Modification: To correct the basis of the claim.

b. Footnote #4 of Proposed Order Finding of Fact #2 is deleted in its entirety. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

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

c. The Proposed Order Finding of Fact #8 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> (8) Through Claimants' deemed admissions, Claimants have admitted, among other things, that: (1) They have not provided sufficient title information regarding Indian Allottee ownership of the claimed place of use and/or transfer of the property to the second non-Indian owner~~ship~~ for Claim No. 50 (*Id.*, Ex. A at pp. 5-6, Request for Admission ("RFA") Nos. 1, 2 and 7); (2) The place of use was not used for bottling water by the last Indian owner (*Id.*, Ex. A, at pp. 5-6, RFA Nos. 3, 5 and 8); (3) The claimed place of use was not developed for bottling water by the first non-Indian within a reasonable period of time (*Id.*, Ex. A, pp. 5-7, RFA Nos. 3-6, 9, 11); and (4) The claimed place of use of bottling water has not been continually ~~irrigated~~ used for the bottling water since it was first owned by a non-Indian. (*Id.*, Ex. A, p. 7, RFA No. 10.)

Reason for Modification: ALJ's original finding is not supported by a preponderance of evidence in the record, it failed to fully set forth the evidence on the record.

d. The Proposed Order Finding of Fact #9 is added as follows:

> (9) The property appurtenant to Claim 50 was formerly part of the Klamath Reservation, and was held in trust by the United States. The property was purchased in 1960 by a group of withdrawing Indian Tribal members (*See* DEED OF TRIBAL PROPERTY, 55979, Vol. 325, page 507 – OWRD Ex. 1 at 47-50). Use of water from Agency Spring was developed for domestic use while the property was part of the Klamath Reservation, and has continued to be used for domestic purposes for one household since that time. (OWRD Ex. 1 at 7, 29-32.)

Reason for Modification: The ALJ's failed to fully set forth the evidence on the record. The claimed lands were unallotted and transferred from the Klamath Tribes to a non-Indian purchaser pursuant to the express language of the Klamath Termination Act.

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

> The United States' Motion for Ruling on Legal Issues should be granted in ~~its entirety~~ in part.
>
> (1) Pursuant to OAR 137-003-0570(12), the requests for admissions served by the United States upon Claimants, and not responded to by them, are deemed admitted; and
>
> (2) Claimants' deemed admissions establish that there is no factual basis for the bottled water portion of Claim No. 50.
>
> (3) The Klamath Tribes Termination Act is a valid basis for this claim. The elements for a Klamath Termination Act right are satisfied for domestic use for one household with irrigation of non-commercial lawn garden on 0.32 acres.

Reason for Modifications: The evidence on the record, as described in the modified findings of fact, and the application of the appropriate legal bases to the evidence on the record, as described in the modified opinion section, below, supports certain conclusions other than those in the 2005 Proposed Order.

14. **Opinion.**

a. Within the section titled "Opinion" of the Proposed Order, the final paragraph is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> Claimants are deemed to have admitted, among other things, ~~that because they cannot establish the elements of an Allottee right,~~ that they cannot establish the elements of a *Walton* water right,[1] and that there was "no

factual basis to support a water right for the claimed place of use for bottled water portion of ~~in~~ Claim No. 50. The United States, which seeks summary judgment and denial of the portion of the Claimants' claim pertaining to the bottling of water ~~in its entirety~~ on the basis that they have admitted that they cannot establish the elements of the claimed water right for the use of bottled water, and that there is no factual support for the bottling of water portion of the claim, is entitled to the ruling it seeks. The deemed admissions are not sufficient to deny the domestic use portion of the claim. In addition, all contests pertaining to the domestic use portion of the claim have been withdrawn.

b. OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

c. OWRD incorporates into the Opinion section the following segment titled "Application of Klamath Termination Act Elements to the Modified Proposed Order Findings of Fact."

Application of Klamath Termination Act Elements to the Modified Proposed Order Findings of Fact

The record establishes that the property appurtenant to Claim 50 was formerly part of the Klamath Reservation, and was held in trust by the United States. The property was purchased in 1960 by a group of withdrawing Indian Tribal members. Prior to transfer out of Indian ownership, use of water from Agency Spring was developed for domestic use and has continued to be used for domestic purposes since that time.

Pursuant to the provisions of the Klamath Termination Act, these findings are sufficient to establish a vested federal reserved water right, and to conclude that

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[1] ~~The claim was initially filed as an Allottee claim. If the land transferred into non-Indian ownership, the claim would be for a water right as a non-Indian successor to an Allottee (*i.e.*, a *Walton* claim.) Because Claimants cannot establish the elements of a valid Allottee claim, no right would exist to succeed to as a *Walton* claim.~~ **Reason for striking the footnote:** This footnote is incorrect; the claim was initially filed as a non-Indian successor to unallotted Klamath Indian Reservation lands under the Klamath Termination Act.

the established right passed with the land when the land was conveyed out of trust.[2]

[2] Although this appears to be a question of first impression in Oregon, it is apparent that federal reserved water rights can be transferred pursuant to the Klamath Termination Act when the reserved lands pass into private ownership. Similar treatment occurred with the Ute termination process. *Hackwork v. Babbitt*, 14 F.3d 1457 (10th Cir. 1994) (express Congressional determination that the transfer of the former tribal lands included right to use water.)

Reasons for Modification: To correct and clarify the elements of a Klamath Termination Act right; to provide clarity of evidence on the record and provide further support for the conclusions reached herein, especially pertaining to beneficial use of water for domestic use prior to transfer from Indian ownership; to apply the appropriate legal bases to the Proposed Order's modified findings of fact.

15. **Order.** The section titled "Order" is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Based on the foregoing, a recommendation is made to the Adjudicator for the Klamath Basin General Stream Adjudication to enter a Final Order consistent with the Findings of Fact and Conclusions of Law stated herein, and as specifically set out below:

The elements of a water right cognizable under ORS chapter 539 are not established for the bottling of water portion of Claim No. 50. ~~and~~ This portion of the claim is denied.

The record establishes the elements of a Klamath Termination Act right for the domestic use portion of Claim 50. This portion of the claim is approved.

Reason for Modifications: To provide consistency with Sections A.12, A.13, and A.14.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated with modifications, into this Partial Order of Determination as follows:
   a. The "Findings of Fact" is adopted with modifications, as set forth in Sections A.12, above.
   b. The "Conclusions of Law" is adopted is adopted with modifications, as set forth in Sections A.13, above.
   c. The "Opinion" is adopted with modifications, as set forth in Section A.14, above.

d. 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 50, which also incorporates any modifications made in Section A.15, above. Consistent with Sections A.12, A.13, and A.14, above, the outcome of the Order has been modified to approve a right for domestic use for one household including non-commercial irrigation of 0.32 acre of lawn and garden.

2. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.

3. All contests pertaining to the domestic use portion Claim 50 have been withdrawn.

4. Based on the file and record herein, IT IS ORDERED that a portion of Claim 50 is denied for the bottling water use and is of no force or effect.

5. Based on the file and record herein, IT IS ORDERED that a portion of Claim 50 is approved for domestic use including irrigation of non-commercial lawn and garden as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 50

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 34 S, R 7 E, and CLAIM # 50 MYLAR MAP (NOV.17, 1998)

CLAIMANT: RAYMOND J. DRISCOLL
BARBARA A. DRISCOLL
43411 HWY 62
CHILOQUIN OR 97624

SOURCE OF WATER: AGENCY SPRING, tributary to AGENCY CREEK

PURPOSE or USE:
DOMESTIC FOR ONE HOUSEHOLD INCLUDING IRRIGATION OF 0.32 ACRES OF NON-COMMERCIAL LAWN AND GARDEN

RATE OF USE: 0.01 CFS MEASURED AT THE POINT OF DIVERSION,

PERIOD OF ALLOWED USE: JANUARY 1 - DECEMBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
34 S	7 E	WM	18	SW SW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC INCLUDING LAWN AND GARDEN					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7 E	WM	18	SW SW	0.32

[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. AND VALERIE M. ROOT	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 51

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, KURT GRUEN timely submitted a Statement and Proof of Claim (Claim 51) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 51 was submitted for a total of 1.0 cfs of water from Agency Spring and Agency Creek, tributaries to Agency Lake, for irrigation of 38.9 acres and for livestock watering of 10-20 head. The claimed period of use is "April thru October." The claimed priority date is October 14, 1864.

3. KURT GRUEN signed Claim 51 attesting that the information contained in the claim is true.

4. On May 27, 1998, Claim 51 was amended adding claimed uses of grounds maintenance, livestock watering, commercial recreational purposes, and fish, and adding Agency Creek Canal as a source of claimed water.

5. On October 12, 1998, Claim 51 was amended increasing the irrigated acreage claimed from 38.9 acres to 75.8 acres,

6. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating

the claim was denied because "the claim is for a source which has been previously adjudicated."

7. The property appurtenant to Claim 51 was transferred to FORT KLAMATH PROPERTIES LLC from KURT GRUEN / COLOMBO LAND AND FARM INC. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M00, PAGE 28196 (Aug. 1, 2000).

8. On May 3, 2000, Kurt Gruen, original claimant, timely filed Contest 1712 to the Preliminary Evaluation of Claim 51.

9. On May 5, 2000, James and Valerie Root timely filed Contest 2069 to the Preliminary Evaluation of Claim 51.

10. On May 8, 2000, the United States of America timely filed Contest 3795 to the Claim and/or Preliminary Evaluation of Claim 51.

11. On May 8, 2000, the Klamath Tribes timely filed Contest 4106 to the Claim and/or Preliminary Evaluation of Claim 51.

12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 186.

13. On May 6, 2003, Claim 51 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.

14. 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.

15. 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 14, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

16. On July 16, 2004, the Klamath Tribes withdrew Contest 4106. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Sept.14, 2004).

17. On September 14, 2004, James and Valerie Root withdrew Contest 2069. *See* JAMES AND VALERIE ROOT'S VOLUNTARY WITHDRAWAL OF CONTEST (Sept.14, 2004).

18. On October 14, 2004, the United States of America timely filed an amendment and supplement to their Contest 3795 to the Claim and/or Preliminary Evaluation of

Claim 51. *See* UNITED STATES' AMENDMENT AND SUPPLEMENT TO STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (Oct. 14, 2004).

19. On September 13, 2005 the claimants withdrew the fish and wildlife amended portion of Claim 51. *See* CLAIMANTS' NOTICE OF WITHDRAWAL OF FISH AND WILDLIFE CLAIMS.

20. On January 18, 2006, the United States of America timely filed a second amendment to their Contest 3795 to the Claim and/or Preliminary Evaluation of Claim 51. *See* AMENDMENT TO UNITED STATES' STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (Jan. 18, 2006).

21. On April 17, 2006, Claim 51 was assigned to JAMES AND VALERIE ROOT (Claimants). *See* CHANGE OF OWNERSHIP FORM (April 17, 2006). In addition, the Claimants filed a motion to include on the record documentation of the transfer the property associated with Case 186, Claim 51 from the former claimant and contestant Kurt Gruen to Fort Klamath Properties, LLC, owned by James and Valerie Root. *See* CLAIMANTS' MOTION TO SUPPLEMENT RECORD (July 3, 2006). The motion was granted. *See* ORDER ON CLAIMANTS' MOTION TO SUPPLEMENT THE Record (July 5, 2006). The Claimants succeeded Kurt Gruen as the current contestants in Contest 1712.

22. On April 12, 2006, the Claimants and the United States of America executed a STIPULATION BETWEEN CLAIMANTS AND UNITED STATES TO RESOLVE UNITED STATES' CONTEST 3795 (Settlement Agreement 'A').

23. On July 21, 2006, the Claimants and OWRD executed a STIPULATION TO RESOLVE CLAIMANTS' CONTEST 1712 (Settlement Agreement 'B') thereby resolving the remaining contest to Claim 51.

24. On July 24, 2006, the Adjudicator withdrew Case 186 from the Office of Administrative Hearings.

B. DETERMINATION

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

2. The Settlement Agreement 'B' executed between the Claimants and OWRD is adopted and incorporated as if set forth fully herein.

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

4. Based on the file and record herein, IT IS ORDERED that Claim 51 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 51
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 51 SETTLEMENT MAP (June 30, 2006)

CLAIMANT: JAMES M. AND VALERIE M. ROOT
216 MARIPOSA TERRACE
MEDFORD, OR 97504-9326

SOURCE OF WATER: AGENCY SPRING, tributary to AGENCY CREEK

PURPOSE OR USE:
IRRIGATION OF 15.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 20 HEAD.

RATE OF USE:
0.375 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

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

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	18	SW SW	4	815 FEET EAST AND 1100 FEET NORTH FROM SW CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	13	SE SE	15.0

[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 SPRINGCREEK PROPERTIES, INC.	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 52

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 52 and its associated contests (3391 and 4107) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 111.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on April 25, 2003, denying Claim 52.

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

4. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the portion of the "Opinion" is adopted with modifications, as set forth in Section A.5, below.

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

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

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

6. The property appurtenant to Claim 52 was transferred to SPRINGCREEK PROPERTIES, INC. (Claimant) (39641 S CHILOQUIN RD, CHILOQUIN, OR 97624) from the original claimants, DONALD R. AND PATRICIA A. HOLM. (WARRANTY DEED, COUNTY OF KLAMATH, VOL. M99, PAGES 48244 AND 48245). *See* Tr., Vol. I, p. 22, Ll. 1 - 3.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the portion of the "Opinion" is adopted with modifications, as set forth in Section A.5, above.

2. Based on the file and record herein, IT IS ORDERED that Claim 52 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 JAMES M. ROOT, AND VALERIE ROOT	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 53

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 53 (Claimants: JAMES M. ROOT AND VALERIE ROOT) and its associated contests (2067, 2752, 2793, 3453, 3796, and 4180) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 187.

2. On May 6, 2003, Claim 53 was consolidated with Case 900 "for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication." *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.

3. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.

4. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 3, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an AMENDED PROPOSED ORDER[1] (Amended Proposed Order) for Claim 53 on November 3, 2006.

[1] A Proposed Order was issued on October 18, 2006. On October 20, 2006, Claimants requested amendment of the Proposed Order to correct description basis of the water rights. On November 1, 2006, OWRD

6. No exceptions were filed to the Amended Proposed Order.

7. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8. below.
   e. The "Conclusions of Law" is adopted in its entirety.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.9, below.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 53. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **Findings of Fact.**
   a. The Amended Proposed Order Finding of Facts #1 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

> (1) On January 28, 1991, Ambrose and Susan McAuliffe filed a Statement and Proof of Claim (Claim 53) as non-Indian successors to unallotted Klamath Indian Reservation lands for their property that was irrigated from Agency Creek, which is part of the Klamath Basin. (Ex. C2-B.) The claimed priority date is October 14, 1864 (the date the Klamath Indian reservation was established). In 1995, James and Valerie Root (Claimants) purchased the property. The original claim was for 45.0 cubic feet per second (cfs) of water diverted from Agency Creek for the following uses: 20 cfs for irrigation of ~~340.0~~ 339.2 acres (Ex. C2 at 2), 5 cfs for livestock, and 20 cfs for fish and wildlife purposes. (OWRD Ex. 1 at 3, 6). On July 8, 2005, Claimants withdrew their fish and wildlife claim. ~~The claimed priority date is October 14, 1864 (the date the Klamath Indian reservation was established), as a non-Indian successor to a Klamath Indian Allottee.~~ The claimed period of use was April 1 through November ~~30~~ 1 for irrigation, and year-round for livestock (OWRD Ex. 1 at 4). Subsequently, on June 18,

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re-referred this case to amend the Proposed Order. The Proposed Order was withdrawn and this Amended Order issued.

1998, the claim was amended to claim irrigation of ~~396.4~~ 335.5 acres (OWRD Ex. 1 at 146-147).

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record. In addition, the ALJ's finding with respect to the number of acres claimed, the number of acres the claim was amended to, and the claimed period of use are not supported by a preponderance of evidence on the record.

b. The Amended Proposed Order Finding of Facts #4 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

(4) All the land included in this claim ~~is~~ was unallotted within the former boundaries of the Klamath Indian Reservation. (Ex. C3 at 3; Ex.C3-C) ~~All the land included in Claim 53 was allotted by the United States to members of the Klamath Tribes.~~ The irrigation system on the property was built during Indian ownership. (Ex. C2 at 2.) The location of the claim is detailed in Ex. C2-A. Ambrose and Susan McAuliffe were the first non-Indian purchasers of the property. (Ex. C2.) They have continued the irrigation system that operated during Indian ownership. (*Id.*)

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record. In addition, the statement that all the land included in Claim 53 was allotted by the United States to members of the Klamath Tribes was stricken because it is not supported by a preponderance of the evidence on the record; these lands were unallotted and transferred from the Klamath Tribes to a non-Indian purchaser pursuant to the express language of the Klamath Termination Act. (*See* Ex. C3-C).

c. Proposed Order Finding of Fact #5 is added to the Amended Proposed Order as follows (additions are shown in "underline" text):

(5) As stipulated between the claimant, the United States of America, and Klamath Project Water Users, the incidental livestock watering between April 1 and October 15 is limited to a maximum of 400 head, and livestock watering between October 16 and March 31 is limited to a maximum of 200 head. (Ex. C1 at 7, STIPULATION TO RESOLVE CONTESTS 3453 AND 3796, (Feb. 21, 2006).)

Reason for Additional Finding of Fact: The ALJ's proposed findings of fact failed to fully set forth the evidence on the record.

9. **Opinion.** Within the section titled "Opinion" of the Amended Proposed Order, OWRD removed the ALJ's discussion regarding the elements of a Klamath Termination Act claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

Reason for Modifications: To correct and clarify the elements of a Klamath Termination Act water right.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Issues" is adopted in its entirety.
   c. The "Evidentiary Rulings" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, above.
   e. The "Conclusions of Law" is adopted in its entirety.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.9, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 53. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.

3. 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, up to a maximum of 3.0 cfs measured at the point of diversion; further limited to a maximum of 2400 gallons per day, measured at the point of diversion, when flows into Agency Creek from Agency Spring are less than 11.0 cfs after diversion for livestock watering.

4. Based on the file and record herein, IT IS ORDERED that Claim 53 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 53

CLAIM MAP REFERENCE: CLAIM # 53 SETTLEMENT MAP (March 6, 2006)

CLAIMANT: JAMES M. ROOT
VALERIE ROOT
216 MARIPOSA TERRACE
MEDFORD, OR 97504

SOURCE OF WATER: AGENCY SPRING, tributary to AGENCY CREEK

PURPOSE OR USE:

IRRIGATION OF 335.5 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 400 HEAD; AND LIVESTOCK WATERING OF 200 HEAD OCTOBER 16 THROUGH MARCH 31

RATE OF USE DURING THE IRRIGATION SEASON:

FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING AS FOLLOWS:

APRIL 1 THROUGH AUGUST 31:

4.194 CFS MEASURED AT THE POINT OF DIVERSION, BEING 3.275 CFS FOR 262.0 ACRES AND 0.919 CFS FOR 73.5 ACRES.

SEPTEMBER 1 THROUGH OCTOBER 15:

6.71 CFS MEASURED AT THE POINT OF DIVERSION, BEING 5.24 CFS FOR 262.0 ACRES AND 1.47 CFS FOR 73.5 ACRES.

USE OF WATER FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING IS FUTHER LIMITED AS FOLLOWS:

APRIL 1 THROUGH AUGUST 31:

1/80 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

SEPTEMBER 1 THROUGH OCTOBER 15:

1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

4.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR FOR 262.0 ACRES

2.15 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR FOR 73.5 ACRES

VOLUME OF USE OUTSIDE OF THE IRRIGATION SEASON:

FOR LIVESTOCK WATERING AS FOLLOWS:

UP TO 1.24 ACRE-FEET (325,850 GALLONS TOTAL) OF WATER OCTOBER 16 THROUGH MARCH 31, MEASURED AT THE PLACE OF USE.

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

NECESSARY TO TRANSPORT THE WATER AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON, UP TO A MAXIMUM OF 3.0 CFS MEASURED AT THE POINT OF DIVERSION; FURTHER LIMITED TO A MAXIMUM OF 2400 GALLONS PER DAY, MEASURED AT THE POINT OF DIVERSION, WHEN FLOWS INTO AGENCY CREEK FROM AGENCY SPRING ARE LESS THAN 11 CFS AFTER DIVERSION FOR LIVESTOCK WATERING.

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 – October 15
Livestock Watering	October 16 – March 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	18	SW SW	4	1100 FEET NORTH AND 815 FEET EAST FROM SW CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING WITH A DUTY OF 4.0 ACRE-FEET PER ACRE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7 E	WM	19	SW SW	4	9.3
34 S	7 E	WM	30	NE NW	5	3.0
34 S	7 E	WM	30	NW NW	1	36.2
34 S	7 E	WM	30	SW NW	2	39.4
34 S	7 E	WM	30	SE NW		13.0
34 S	7 E	WM	30	NW SW	3	32.2
34 S	7 E	WM	30	SW SW	4	37.0
34 S	7.5 E	WM	25	NE NE	12	20.7
34 S	7.5 E	WM	25	NE NE	13	11.5
34 S	7.5 E	WM	25	NW NE		3.4
34 S	7.5 E	WM	25	SE NE	15	18.7
34 S	7.5 E	WM	25	SE NE	14	13.5
34 S	7.5 E	WM	25	NE SE	16	4.0
34 S	7.5 E	WM	25	NE SE	17	16.0
34 S	7.5 E	WM	25	SE SE		4.1

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING WITH A DUTY OF 2.15 ACRE-FEET PER ACRE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	25	NE NE	13	1.1
34 S	7.5 E	WM	25	NW NE		26.6
34 S	7.5 E	WM	25	SW NE	9	22.0
34 S	7.5 E	WM	25	SE NE	14	7.8
34 S	7.5 E	WM	25	NE SE	17	16.0

LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	GLot
34 S	7 E	WM	30	NW SW	3
34 S	7 E	WM	30	SW SW	4
34 S	7.5 E	WM	25	NE SE	17
34 S	7.5 E	WM	25	SE SE	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of YEUGENY KAPLUN; LUBA KAPLUN; WILLIAM G. SHAFFER; MARUEEN SHAFFER; DENNIS E. ODELL; PHYLLIS C. ODELL; HARRY E. FUQUA II; THOMAS E. MCKELVEY; SALLY MCKELVEY; MCMANUS FAMILY TRUST; DANIEL WARREN; MARY LEZOTTE; GEORGE R. PEDRANTI, JR; SHARON PEDRANTI; YOSHITAKA K. TANIGUCHI; KEIKO TANIGUCHI; JAMES E. ELLIS; KAREN L. ELLIS; ELLIS FAMILY TRUST; GILBERT L. THOMPSON; JEAN THOMPSON; H. DEBORAH MORUSS; DAVID BARTA, LYDIA BARTA; DAVID T. GARRETT; ANN M. GARRETT; THOMAS A. HENDERSON; YVONNE HENDERSON; SCHERL FAMILY TRUST; RICHARD J. SWIATKOWSKI; JOAN SWIATKOWSKI; DAVID J. SCHRODI; JOAN B. SCHRODI, CHARLES E. COKER; AND BONGERZ FAMILY TRUST	)	PARTIAL ORDER OF DETERMINATION Water Right Claim 54

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 54 and its associated contests (3797 and 4109) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 188.

2. The property appurtenant to Claim 54 was ultimately transferred to YEUGENY KAPLUN AND LUBA KAPLUN (2040 W MIDDLEFIELD RD 16, MOUNTAIN VIEW, CA 94030); WILLIAM G. SHAFFER AND MAUREEN SHAFFER (4505 COSTA DE ORO, OXNARD, CA 93035); DENNIS E. ODELL AND PHYLLIS C. ODELL (1837 TIOGA WAY, SAN JOSE, CA 95124); HARRY E. FUQUA II (24629 STONEGATE DR, WEST HILLS, CA 91304); THOMAS E. MCKELVEY AND SALLY MCKELVEY (341 SARATOGA GLEN, ESCONDIDO, CA 92025); MCMANUS FAMILY TRUST (23561 E COYOTE SPRINGS DR,

DIAMOND BAR, CA 91765); DANIEL WARREN AND MARY LEZOTTE (1519 COWPER COURT, SAN JOSE, CA 95120); GEORGE R. PEDRANTI, JR AND SHARON PEDRANTI (4111 WAKFIELD LOOP, FREMONT, CA 94535); YOSHITAKA K. TANIGUCHI AND KEIKO TANIGUCHI (3109 PEPITA CT, SAN JOSE, CA 95132); JAMES E. ELLIS, KAREN L. ELLIS AND ELLIS FAMILY TRUST (25662 BRADFORD LANE, LAGUNA HILLS, CA 92653); GILBERT L. THOMPSON AND JEAN THOMPSON (5762 MIDDLECOFF DR, HUNTINGTON BEACH, CA 92647); H. DEBORAH MORUSS (6141 CHOCTAW DR, WESTMINSTER, CA 92683); DAVID BARTA AND LYDIA BARTA (2376 WALDEN SQUARE, SAN JOSE, CA 95124); DAVID T. GARRETT AND ANN M. GARRETT (12801 DESERT SKY AVE NE, ALBUQUERQUE, NM, 87111); THOMAS A. HENDERSON AND YVONNE HENDERSON (1575 GAZLEY, MYRTLE CREEK, OR 97457); SCHERL FAMILY TRUST (11215 POCHE PT, SAN DIEGO, CA 92131); RICHARD J. SWIATKOWSKI AND JOAN SWIATKOWSKI (14038 ARBOLITOS DR, POWAY, CA 92064); DAVID J. SCHRODI AND JOAN B. SCHRODI (847 NISQUALLY DR, SUNNYVALE, CA 94087); CHARLES E. COKER (24334 DALE DR, LAGUNA HILLS, CA 92653); AND BONGERZ FAMILY TRUST (2544 BUENA FLORES, FALLBROOK, CA 92028)(Claimants) from ELI PROPERTY COMPANY, which acquired the property from the original claimants, RICHARD E. SIEMENS AND THEODORE E. SIEMENS, DBA SIEMENS FARMS).

3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR LEGAL RULING; PROPOSED ORDER DENYING CLAIM on March 11, 2005 (Proposed Order).

4. No exceptions were filed to the Proposed Order.

5. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.6, below, and (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, below.

6. **Findings of Fact.** The third sentence in the first paragraph of Proposed Order Finding of Fact #2 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

   "An agent for the developer, ~~Cory Engel~~ Carry Penn, stated that the agricultural land has been taken out of use and developed into residential property."

   Reason for Modification: This statement was made by Carry Penn of Eli Property Company; Cory Engel was an employee of OWRD. (OWRD Ex. 1 at 81.)

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

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

   Claimants are deemed to have admitted, among other things, that they cannot establish the elements of a *Walton* right. Further, Claimants have admitted that

they cannot establish the extent of irrigation, if any under Indian ownership, or the date of transfer from Indian ownership. Finally, the Claimants are deemed to have admitted that they have no intent to prosecute the water right claim, and thereby have effectively withdrawn the claim from further consideration. Therefore, Claimants in Claim 54 have failed to prove the basic elements of a *Walton* water right and, consequently, Claim 54 should be denied.

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions (1) the "Findings of Fact" is adopted with modifications, as set forth in Section A.6, above, and (2) the section titled "Opinion" is adopted with modifications, as set forth in Section A.7, above.

2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 54 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of KENNETH L. AND KAREN L. TUTTLE, DBA DOUBLE K RANCH	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 55

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, KENNETH L. AND KAREN L. TUTTLE, DBA DOUBLE K RANCH (Claimants) timely submitted a Statement and Proof of Claim (Claim 55) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 55 was submitted for a total of 7.91 cfs of water, being 3.55 cfs from Spring Creek, 2.87 from Spring 1, and 1.49 from Spring 2, all tributaries of the Williamson River, for irrigation of 316.4 acres. The claimed period of use is January 1 through December 31. The claimed priority date is "1864."

3. KENNETH L. AND KAREN L. TUTTLE signed Claim 55 attesting that the information contained in the claim is true.

4. On July 29, 1997, Claim 55 was amended to (1) increase the originally claimed acreage for irrigation from 316.4 acres to 378 acres, (2) increase the amount of water claimed for irrigation from 7.91 cfs to 9.46 cfs, (3) add a use of incidental livestock watering, and (4) clarify the claimed priority date to October 14, 1864.

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

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3454: 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. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 258.

8. On May 5, 2003, Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST 3454 (Settlement Agreement) thereby resolving the only contest to Claim 55.

9. On May 12, 2003, the Adjudicator withdrew Case 258 from the Office of Administrative Hearings.

10. OWRD finds that the total place of use stipulated in the settlement agreement, 318.9 acres, is an impermissible amendment because it is an enlargement of the original claim; the Claimant originally claimed 316.4 acres. The 59.1 acres stipulated in the Settlement Agreement (Paragraph B.1.c) are reduced to 56.6 acres; specifically, the 5.8 acres located within the NE ¼ NE ¼, Section 22, Township 34 South, Range 7 East W.M. are reduced to 3.3 acres, which equals the 2.5 acres difference between the number of acres originally claimed and the enlargement in the stipulation.

11. OWRD finds that the rate of water use stipulated in the settlement agreement, 7.98 cfs, is an impermissible amendment because it is an enlargement of the original claim; the Claimants originally claimed 7.91 cfs. The 1.48 cfs from the commingled waters of Spring 1 and Spring 2 (POD 3) stipulated in the Settlement Agreement (Paragraph B.1.c) is reduced to 1.41 cfs, which equals the 0.07 cfs difference between the rate originally claimed and the enlargement in the stipulation.

12. OWRD finds that Spring Creek was claimed as a source of water for irrigation of 95.5 acres of identical lands under Claim 252 (Claimant: Leroy Jackson, Sr.) in the Klamath Basin Adjudication within Township 34 South, Range 7 East, W.M., being 0.7 acres in the NE¼ SW¼, 36.6 acres in the NW¼ SW¼, 20.4 acres in the SW¼ SW¼, 8.7 acres in the SE¼ SW¼, all in Section 15; 0.4 acres in the NE¼ SE¼, Section 16; and 14.4 acres in the NE¼ NW¼, 13.1 acres in the NW¼ NW¼, 0.1 acres in the SW¼ NW¼, 1.1 acres in the

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[1] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3454 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[2] Berlva Pritchard voluntarily withdrew from Contest 3454 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3454 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

SE¼ NW¼, all in Section 22. Spring Creek (POD 1) is the stipulated source of water for irrigation of these acres at a rate equivalent to 1/40 of one cubic foot per second per acre.

a. On November 16, 2011, OWRD sent identical letters to both sets of claimants at their most current addresses of record, outlining the conflict between the two claims. In the letter, OWRD requested that documentation showing proof of ownership for the lands in question be submitted to OWRD.

b. OWRD did not receive returned mail or responses from either of the claimants for Claim 55 or Claim 252.

c. On April 27, 2012, OWRD sent a second letter by Certified Mail, again to both sets of claimants at their most current addresses of record. In this letter, OWRD proposed to assign 66.4 acres within Tax Lot 1000 (within Section 15) and 0.4 acres within Tax Lot 500 (within Section 16) to Claim 55, thereby reducing Claim 252 by the same 66.8 acres; and to assign 28.7 acres within Tax Lot 200 (within Section 22) to Claim 252, thereby reducing Claim 55 by the same 28.7 acres. The proposed assignments were made by comparing claim maps to tax lot data using THE OREGON MAP at http://www.ormap.net/, and tax lot information from data made available from the Klamath County Assessor. The Department requested a response within 30 days of receipt of the letter, and stated that in the event that a timely response is not received that the overlapping acreage issue would be resolved as proposed in the letter.

d. The 'Return Receipt' signed by Claimant Jackson was received by OWRD. The 'Return Receipt' for Claimants, Kenneth and Karen Tuttle, dba Double K Ranch was returned to OWRD from the postal service as "Unclaimed." OWRD did not receive responses from either of the claimants for Claim 55 or Claim 252, thus the overlapping acreage issue will be resolved as described in Finding 12.c, above.

13. Based on OWRD's Investigation Map (T 34 S, R 7 E, W.M.), OWRD finds that the following place of use locations referenced in the Settlement Agreement are within certain Government Lots as listed below:

    a. 1.0 acres within the SE¼ SW¼, Section 15 is within Government Lot 9, and

    b. 14.4 acres within the NE¼ NW¼, Section 22 is within Government Lot 2.

14. OWRD finds that the 15.6 acres listed within the NE¼ NW¼, Section 22, Township 34 South, Range 7 East, W.M. are located within Government Lot 1; these acres were incorrectly identified as being within Government Lot 2.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with five exceptions:

a. The place of use that was enlarged by the Settlement Agreement; the total acreage recognized herein is consistent the Claimant's original claim - only 3.3 acres are approved within the NE ¼ NE ¼, Section 22, Township 34 South, Range 7 East W.M. as described in Finding 10, above.

b. The rate of water use that was enlarged by the Settlement Agreement; the rate of water use recognized herein is consistent the Claimant's original claim - only 1.41 cfs is approved from POD 3, as described in Finding 11, above.

c. As described in Finding 12, above, the following acreages are assigned to Claim 252 thereby reducing Claim 55 by 28.7 acres: 14.4 acres in the NE¼ NW¼, 13.1 acres in the NW¼ NW¼, 0.1 acres in the SW¼ NW¼, and 1.1 acres in the SE¼ NW¼, Section 22.

d. Consistent with Finding 12, above, based on 28.7 acres being assigned to Claim 252, the rate of water from POD 1 is reduced by 0.72 cfs.

e. Government Lots are assigned or corrected as described in Findings 13 and 14, above.

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

3. 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 will apply, 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.

5. Based on the file and record herein, IT IS ORDERED that Claim 55 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 55
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 34 S, R 7 E; and
CLAIM # 55 MYLAR MAP (Nov.16, 1998)

CLAIMANT: KENNETH L. AND KAREN L. TUTTLE,
DBA DOUBLE K RANCH
1696 COVE POINT RD
KLAMATH FALLS OR 97601

SOURCES OF WATER:

SPRING CREEK, SPRING 1, and SPRING 2, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

IRRIGATION OF 287.7 ACRES, BEING 113.6 ACRES FROM POD 1, 117.5 ACRES FROM POD 2, AND 56.6 ACRES FROM POD 3.

RATE OF USE:

7.19 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 2.84 CFS FROM POD 1, 2.94 CFS FROM POD 2, AND 1.41 FROM POD 3.

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

DUTY:

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

PERIOD OF ALLOWED USE: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Spring Creek	34 S	7 E	WM	9	NW NE	130 FEET SOUTH AND 160 FEET WEST FROM NE CORNER, NWNE, SECTION 9
POD 2	Spring 2	34 S	7 E	WM	11	SW SW	460 FEET NORTH AND 1260 FEET EAST FROM SW CORNER, SECTION 11
POD 3	Commingled Waters of Spring 1 and Spring 2	34 S	7 E	WM	14, 11	SW SW, SW SW	SPRING 1: 800 FEET NORTH AND 250 FEET EAST FROM SW CORNER, SECTION 14 SPRING 2: 460 FEET NORTH AND 1260 FEET EAST FROM SW CORNER, SECTION 11

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7 E	WM	15	NW NW	3	5.7	POD 1
34 S	7 E	WM	15	SW NW	4	17.8	
34 S	7 E	WM	15	NE SW	7	0.7	
34 S	7 E	WM	15	NW SW		36.6	
34 S	7 E	WM	15	SW SW		20.4	
34 S	7 E	WM	15	SE SW	8	10.3	
34 S	7 E	WM	16	NE NE		11.5	
34 S	7 E	WM	16	SE NE		10.2	
34 S	7 E	WM	16	NE SE		0.4	
34 S	7 E	WM	14	NW SW		17.7	POD 2
34 S	7 E	WM	14	SW SW		1.0	
34 S	7 E	WM	15	NE SW		1.9	
34 S	7 E	WM	15	SE SW		8.0	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7 E	WM	15	NE SE		19.8	POD 2
34 S	7 E	WM	15	NW SE		19.4	
34 S	7 E	WM	15	SW SE		27.0	
34 S	7 E	WM	15	SE SE		19.0	
34 S	7 E	WM	22	NW NE		0.7	
34 S	7 E	WM	22	NE NW		3.0	
34 S	7 E	WM	15	SE SW	9	1.0	POD 3
34 S	7 E	WM	15	SW SE		0.8	
34 S	7 E	WM	15	SE SE		4.9	
34 S	7 E	WM	22	NE NE		3.3	
34 S	7 E	WM	22	NW NE		31.0	
34 S	7 E	WM	22	NE NW	1	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 ROBERT M. WAMPLER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 56

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 27, 1990, ROBERT M. WAMPLER (Claimant) timely submitted a Statement and Proof of Claim (Claim 56) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 56 was submitted for a total of 0.63 cfs of water from the Williamson River, tributary to Upper Klamath Lake for irrigation of 25.3 acres. The claimed period of use is May 1 to September 15. The claimed priority date is October 14, 1864.

3. ROBERT M. WAMPLER signed Claim 56 attesting that the information contained in the claim is true.

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

5. On May 8, 2000, the United States of America timely filed Contest 3732 to the Claim and/or Preliminary Evaluation of Claim 56.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4110 to the Claim and/or Preliminary Evaluation of Claim 56.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 189.
8. On June 8, 2004, the Klamath Tribes voluntarily withdrew Contest 4110. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (June 8, 2004).

9. On October 25, 2004, Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contest to Claim 56.

10. On October 28, 2004, the Adjudicator withdrew Case 189 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 56 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 56
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 56 SETTLEMENT MAP (Oct. 25, 2004)

CLAIMANT: ROBERT M. WAMPLER
PO BOX 285
CHILOQUIN OR 97624

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

PURPOSE OR USE: IRRIGATION OF 23.3 ACRES.

RATE OF USE:
0.58 CUBIC FOOT PER SECOND (CFS).

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:

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

PERIOD OF ALLOWED USE: MAY 1 - SEPTEMBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	34	SE NE	17	NORTH 52 DEGREES 56 MINUTES 26 SECONDS WEST, 1479 FEET FROM SE CORNER, SECTION 34

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7 E	WM	34	SW NE	19	11.2
34 S	7 E	WM	34	SW NE	17	10.1
34 S	7 E	WM	34	SE NE	17	2.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of NBCC, LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 57

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 57 (Claimant: NBCC, LLC) and its associated contests (2832, 3273, 3455, 3798, and 4111) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 190.

2. On May 6, 2003, Claim 57 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 57 on May 9, 2007.

6. No exceptions were filed to the Proposed Order.

7. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.8, below, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of

Determination for Claim 57. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.8, above, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 57. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

3. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.

4. Based on the file and record herein, IT IS ORDERED that Claim 57 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 57

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 33 S, R 7.5 E and T 34 S, R 7.5 E

CLAIMANT: NBCC, LLC
PO BOX 458
FORT KLAMATH, OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 41.2 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 82 HEAD; AND LIVESTOCK WATERING OF 82 HEAD OUTSIDE OF THE IRRIGATION SEASON.

RATE OF USE:

1.0315 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.03 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, AND

0.0015 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 984 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 - November 1
Livestock Watering	November 2 - March 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
33 S	7.5 E	WM	26	NW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	3	NE NE	13.5
34 S	7.5 E	WM	3	SE NE	27.7

[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 LAWRENCE HALL, AND ANN HALL	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 58

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 58 and its associated contest (3456) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 259.

2. The property appurtenant to Claim 58 was transferred to LAWRENCE HALL AND ANN HALL (Claimants) (PO BOX 552, FORT KLAMATH, OR 97626) from the original claimants, HARRY O. AND ALMA M. ELLIOTT. *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M92, PAGE 25670 (Sept. 4, 1997), (Claim # 59, Page 39).

3. On May 6, 2003, Claim 58 was consolidated with Case 900 "for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication." *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.

4. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.

5. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 4, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

6. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM (Proposed Order) on March 29, 2005.

7. No exceptions were filed to the Proposed Order.

8. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exceptions that the sections titled "Conclusions of Law" and "Opinion" are adopted with modifications, as set forth in Sections A.9, and A.10, below.

9. **Conclusions of Law.** OWRD has modified Conclusion of Law #2 as follows (additions are shown in underlined text):

> (2) Claimants' deemed admissions establish that Claim 58 fails to meet the basic elements of a *Walton* claim and, therefore, should be denied. In addition, Claimants' deemed admissions establish that the place of use claimed in Claim 58 was lawfully embraced in the Wood River Adjudication, and the place of use claimed in Claim 58 is therefore precluded from being claimed in the Klamath Basin General Stream Adjudication as a matter of law.

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

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

> Claimants are deemed to have admitted, among other things, that they cannot establish the elements of a *Walton* right. Therefore, Claimants in Claim 58 have failed to prove the basic elements of a *Walton* water right and, consequently, Claim 58 should be denied. In addition, Claimants' deemed admissions establish that the place of use claimed in Claim 58 was lawfully embraced in the Wood River Adjudication, and the place of use claimed in Claim 58 is therefore precluded from being claimed in the Klamath Basin General Stream Adjudication as a matter of law.

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exceptions that the sections titled "Conclusions of Law" and "Opinion" are adopted with modifications, as set forth in Sections A.9, and A.10, above.

2. The elements of a Walton claim are not established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 58 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 JACK OWENS RANCH	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 59

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 59 (Claimant: JACK OWENS RANCH) and its associated contests (2753, 3101, 3457, 3799, and 4112) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 191.

2. On May 6, 2003, Claim 59 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 59 on April 13, 2007.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Jack Owens Ranch and (2) the United States of America.

7. 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 59. Except for the items addressed in Sections A.9, A.10, and A.12, below, the exceptions filed to the Proposed Order for Claim 59 are found to be unpersuasive.

8. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted with modifications, as set forth in Section A.9, below.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.10, below.
   c. The "Issue" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   e. The "Conclusions of Law" is adopted in its entirety.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.11, below.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 59. Except as identified in Section A.12, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

   As modified by stipulation, this Walton claim is for 1/50 cubic foot per second (cfs) of water per acre and ~~five~~ four acre-feet of water per acre for irrigation of approximately 77.5 acres of land."

   Reason for Modification: To correct a scrivener's error, an issue raised in exceptions.

10. **Evidentiary Rulings.** Within the section titled "Evidentiary Rulings" of the Proposed Order, the first paragraph is modified as follows:

    The STIPULATION TO RESOLVE CONTESTS dated January 31, 2006, is added to the list of "exhibits, written testimony and affidavits [that] were admitted into the record."

    Reason for Modification: To correct an omission from the list of Evidentiary Rulings, an issue raised in exceptions.

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

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

12. **Order.** Within the section titled "Order" of the Proposed Order, the points of diversion are more fully described as follows:

   a. The Crooked Creek point of diversion is located South 10 Degrees 45 Minutes 20 Seconds East, 1274.4 Feet from the N¼ Corner of Section 26. (OWRD Ex.1 at 6.)

   b. The Fort Creek point of diversion is located 960 Feet South and 1050 Feet East from the NW¼ Corner of Section 26. (OWRD Ex.1 at 6.)

Reason for Modifications: To clarify the location of the points of diversion, an issue raised in exceptions.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted with modifications, as set forth in Section A.9, above.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.10, above.
   c. The "Issue" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   e. The "Conclusions of Law" is adopted in its entirety.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.11, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 59. Except as identified in Section A.12, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

3. Based on the file and record herein, IT IS ORDERED that Claim 59 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 59

CLAIM MAP REFERENCE: CLAIM # 59, PAGE 60

CLAIMANT: JACK OWENS RANCH
2200 LOS VIBORAS RD
HOLLISTER, CA 95023

SOURCE OF WATER:

CROOKED CREEK, tributary to the WOOD RIVER, and
FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:

IRRIGATION OF 77.5 ACRES, BEING 46.5 ACRES FROM CROOKED CREEK POD, AND 31.0 ACRES FROM FORT CREEK POD.

RATE OF USE:

1.55 CUBIC FEET PER SECOND (CFS) FOR IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING 0.93 CFS FROM CROOKED CREEK POD, AND 0.62 CFS FROM FORT CREEK POD.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Crooked Creek POD	33 S	7.5 E	WM	26	NW NE	SOUTH 10 DEGREES 45 MINUTES 20 SECONDS EAST, 1274.4 FEET FROM N¼ CORNER, SECTION 26
Fort Creek POD	33 S	7.5 E	WM	26	NW NW	960 FEET SOUTH AND 1050 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	2	NE NE	39.8	Crooked Creek POD
34 S	7.5 E	WM	2	NW NE	6.7	
34 S	7.5 E	WM	2	NW NE	31.0	Fort Creek POD

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of JELD-WEN, INC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 60

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

A. FINDINGS OF FACT

1. On February 1, 1991, JELD-WEN, INC (Claimant) timely submitted a Statement and Proof of Claim (Claim 60) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 60 was submitted for a total of 2.6 cfs of water from Crooked Creek and the Fort Creek Canal, tributaries of the Wood River, being 1.6 cfs for irrigation of 80 acres and 1.0 cfs for livestock watering of 60 head. The claimed period of use is year-round for livestock watering, and May 1 through October 1 for irrigation. The claimed priority date is October 14, 1864.

3. MATTHEW W. BEDDOE, corporate counsel for JELD-WEN, INC., signed Claim 60 attesting that the information contained in the claim is true.

4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because "the claim is for a source which has been previously adjudicated."

5. On May 5, 2000, the Claimant timely filed Contest 2042 to the Preliminary Evaluation of Claim 60.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3458: 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 3800 to the Claim and/or Preliminary Evaluation of Claim 60.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4113 to the Claim and/or Preliminary Evaluation of Claim 60.

9. On May 8, 2000, Ambrose W. McAuliffe, Dwight Mebane, Elmore Nicholson, Richard Nicholson, and William Nicholson timely filed Contest 2754 to the Claim and/or Preliminary Evaluation of Claim 60.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 192.

11. On May 6, 2003, Claim 60 was consolidated with Case 900 "for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . , which have been previously adjudicated, bar the Claimants from participation in this adjudication." *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.

12. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.

13. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 12, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

14. On June 25, 2004, Dwight Mebane voluntarily withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DWIGHT MEBANE (June 25, 2004).

15. On July 16, 2004, the Klamath Tribes withdrew from Contest 4113. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (July 16, 2004).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3458 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3458 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3458 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

16. On November 3, 2004, Ambrose McAuliffe withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY AMBROSE MCAULIFFE (Nov. 1, 2004).

17. On November 3, 2004, Elmore Nicholson withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY ELMORE NICHOLSON (Nov. 3, 2004).

18. On November 3, 2004, William Nicholson withdrew from Contest 2754. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY WILLIAM NICHOLSON (Nov. 3, 2004).

19. On June 9, 2005, the Klamath Project Water Users withdrew Contest 3458. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3457 [sic] (June. 9, 2005) and CORRECTED NOTICE OF WITHDRAWAL OF CONTEST NO. 3458 (June 14, 2005).

20. On March 15, 2006, Roger Nicholson[4] voluntarily withdrew from Contest 2754. *See* WITHDRAWAL OF CONTEST OF CONTEST 2458 (Nov. 3, 2004).

21. On March 28, 2006, Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 60.

22. On March 29, 2006, the Adjudicator withdrew Case 192 from the Office of Administrative Hearings.

23. OWRD finds that livestock watering is limited to 60 head as originally claimed.

B. DETERMINATION

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

2. Livestock watering is limited to 60 head as described in Finding 23, above.

3. A portion of the claimed place of use is subject to natural subirrigation and/or natural overflow from Crooked Creek. The Settlement Agreement states that the privilege to use water as described herein does not constitute a water right. OWRD will not issue a certificate for this portion of Claim 60 subject to natural subirrigation and/or natural overflow. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property, and may not be altered by the use of any physical means to modify the manner in which natural subirrigation and/or natural overflow occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural

[4] Roger Nicholson was substituted for Richard Nicholson in Contest 2754. *See* CHANGE OF OWNERSHIP FORM (Nov. 3, 2004) and STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL M04, PAGE 26209.

subirrigation and/or natural overflow. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS.537.150. This privilege will not modify any rights that the Claimant may have to allow livestock watering pursuant to ORS 537.141(2). The stipulated place of use for acceptance of natural subirrigation and/or natural overflow is located as follows:

IRRIGATION AND LIVESTOCK WATERING BY NATURAL SUBIRRIGATION AND/OR NATURAL OVERFLOW					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
34 S	7.5 E	WM	12	NW SE	7.8
34 S	7.5 E	WM	12	SW SE	17.5
34 S	7.5 E	WM	13	NE NE	3.9
34 S	7.5 E	WM	13	NW NE	0.3
34 S	7.5 E	WM	13	NW NE	0.8
34 S	7.5 E	WM	13	SE NE	0.5

See Map at CLAIM # 60, PAGE 63

4. Diversion of stock water to the place of use for the portion of Claim 60 as specified in the Water Right Claim Description, below, is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.

5. Based on the file and record herein, IT IS ORDERED that a portion of Claim 60 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 60
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 34 S, R 7.5 E; CLAIM # 60, PAGE 63

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

SOURCE OF WATER: CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 14.8 ACRES, AND LIVESTOCK WATERING UP TO 60 HEAD

RATE OF USE:
0.3711 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0011 CFS FOR LIVESTOCK WATERING 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:

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

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Crooked Creek	34 S	7.5 E	WM	13	NW SE	1420 FEET NORTH AND 2210 FEET WEST FROM SE CORNER, SECTION 13

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM POD 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	12	SW SE	0.2
34 S	7.5 E	WM	13	NE NE	2.6
34 S	7.5 E	WM	13	NW NE	7.5
34 S	7.5 E	WM	13	SW NE	1.5
34 S	7.5 E	WM	13	SE NE	3.0

LIVESTOCK WATERING FROM POD 1				
Twp	Rng	Mer	Sec	Q-Q
34 S	7.5 E	WM	12	SW SE
34 S	7.5 E	WM	13	NE NE
34 S	7.5 E	WM	13	NW NE
34 S	7.5 E	WM	13	SW NE
34 S	7.5 E	WM	13	SE NE
34 S	7.5 E	WM	13	NE SE
34 S	7.5 E	WM	13	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 NBCC, LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 61

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 61 (Claimant: NBCC, LLC) and its associated contests (2833, 3274, 3459, 3801, and 4114) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 193.

2. On May 6, 2003, Claim 61 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 61 on May 9, 2007.

6. No exceptions were filed to the Proposed Order.

7. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.8, below, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 61. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.8, above, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 61. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

3. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.

4. Based on the file and record herein, IT IS ORDERED that Claim 61 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 61

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 33 S, R 7.5 E and T 34 S, R 7.5 E

CLAIMANT: NBCC, LLC
PO BOX 458
FORT KLAMATH, OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 86.6 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 185 HEAD; AND LIVESTOCK WATERING OF 185 HEAD OUTSIDE OF THE IRRIGATION SEASON.

RATE OF USE:
2.1034 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

2.1 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, AND

0.0034 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2220 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:
4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 - November 1
Livestock Watering	November 2 - March 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
33 S	7.5 E	WM	26	NW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	3	NE SW	11	28.1
34 S	7.5 E	WM	3	SW SW	13	19.8
34 S	7.5 E	WM	3	SE SW	12	38.7

[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 NBCC, LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 62

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 62 (Claimant: NBCC, LLC) and its associated contests (2834, 3275, 3460, 3802, and 4115) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 194.

2. On May 6, 2003, Claim 62 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 62 on April 17, 2007.

6. No exceptions were filed to the Proposed Order.

7. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set

forth in Section A.8, below, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 62. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.8, above, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 62. 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 62 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 62

CLAIM MAP REFERENCE:
CLAIM # 62, PAGE 8; OWRD INVESTIGATION MAP –T 34 S, R 7.5 E

CLAIMANT: NBCC, LLC
PO BOX 458
FORT KLAMATH, OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 160.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 320 HEAD; AND LIVESTOCK WATERING OF 320 HEAD OUTSIDE OF THE IRRIGATION SEASON

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

4.000 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, AND

0.006 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 3840 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 - November 1
Livestock Watering	November 2 - March 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	2	NE NW	40.0
34 S	7.5 E	WM	2	NW NW	40.0
34 S	7.5 E	WM	2	SW NW	40.0
34 S	7.5 E	WM	2	SE NW	40.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of ROGER NICHOLSON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 63

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 63 (Claimant: ROGER NICHOLSON) and its associated contests (2835, 3276, 3461, 3803, and 4116) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 195.

2. On May 6, 2003, Claim 63 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 63 on April 17, 2007.

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

7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 63. The exceptions are found to be persuasive, and therefore, modifications are made to the Proposed Order as described in Section A.9, below.

8. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, below
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   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 63. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

9. **Evidentiary Rulings.** Within the section titled "Evidentiary Rulings" of the Proposed Order, the first paragraph is modified as follows:

   The STIPULATION BETWEEN CLAIMANT AND THE UNITED STATES TO RESOLVE THE UNITED STATES' CONTEST 3803 dated June 30, 2006, 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, an issue raised in exceptions.

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

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

B. DETERMINATION

The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
a. The "History of the Case" is adopted in its entirety.
b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, above.
c. The "Issues" is adopted in its entirety.
d. The "Findings of Fact" is adopted in its entirety.

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 63. 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 63 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 63

CLAIM MAP REFERENCE:
CLAIM # 63, PAGE 82; OWRD INVESTIGATION MAPS – T 33 S, R 7.5 E and T 34 S, R 7.5 E

CLAIMANT: ROGER NICHOLSON
PO BOX 458
FORT KLAMATH OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 273.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 470 HEAD; AND LIVESTOCK WATERING OF 470 HEAD OUTSIDE OF THE IRRIGATION SEASON.

RATE OF USE:
5.9337 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

5.925 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, AND

0.0087 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 5640 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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 - November 1
Livestock Watering	November 2 - March 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	2	NW SW	40.0
34 S	7.5 E	WM	2	SW SW	19.7
34 S	7.5 E	WM	2	SE SW	21.5
34 S	7.5 E	WM	3	NE SE	39.8
34 S	7.5 E	WM	3	NW SE	40.0
34 S	7.5 E	WM	3	SW SE	36.0
34 S	7.5 E	WM	3	SE SE	40.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of OWENS AND HAWKINS, C/O JERRY HAWKINS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 64

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 64 (Claimant: OWENS AND HAWKINS, C/O JERRY HAWKINS) and its associated contests (2755, 2836, 3102, 3462, 3804, AND 4117) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 196.

2. On May 6, 2003, Claim 64 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 64 on February 1, 2007.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by Owens and Hawkins.

7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 64, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.

8. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.9, below, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 64. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

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

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled "Opinion" is adopted with modifications, as set forth in Section A.9, above, and (2) the section titled "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 64. 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 64 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 64

CLAIM MAP REFERENCE: CLAIM # 64 MAP (Nov. 18, 1998)

CLAIMANT: OWENS AND HAWKINS
C/O JERRY HAWKINS
2200 LOS VIBORAS RD
HOLLISTER, CA 95023

SOURCE OF WATER:
The WOOD RIVER, tributary to UPPER KLAMATH LAKE, and
FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 259 ACRES, BEING 133.8 ACRES FROM WOOD RIVER POD, AND 125.2 ACRES FROM THE FORT CREEK POD.

RATE OF USE:
5.18 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 2.68 CFS FROM THE WOOD RIVER POD AND 2.50 CFS FROM THE FORT CREEK POD.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Wood River POD	34 S	7.5 E	WM	3	SE NW	10	3090 FEET NORTH AND 8760 FEET WEST FROM SE CORNER, SECTION 2
Fort Creek POD	33 S	7.5 E	WM	26	NW NW		940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7.5 E	WM	10	SW NE		39.00	Wood River POD
34 S	7.5 E	WM	10	SE NE		38.80	
34 S	7.5 E	WM	10	NE SW	6	2.60	
34 S	7.5 E	WM	10	NE SE	7	34.40	
34 S	7.5 E	WM	10	NW SE	6	16.40	
34 S	7.5 E	WM	10	SE SE	7	2.60	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7.5 E	WM	11	NE NE		39.60	Fort Creek POD
34 S	7.5 E	WM	11	NW NE		8.00	
34 S	7.5 E	WM	11	SW NE		6.70	
34 S	7.5 E	WM	11	SE NE		40.40	
34 S	7.5 E	WM	12	NW NW [a]		20.35	
34 S	7.5 E	WM	12	SW NW [b]		10.15	

[a] S½ NW¼ NW¼
[b] N½ N½ SW¼ NW¼

[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 GERALD A. AND LOUISE L. PAGE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 65

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

A. FINDINGS OF FACT

1. On January 16, 1991, GERALD A. AND LOUISE L. PAGE (Claimants) (PO BOX 429, KLAMATH FALLS, OR 97626) timely submitted a Statement and Proof of Claim (Claim 65) to Oregon Water Resources Department (OWRD) for a total of 5.0 cubic feet per second, for irrigation of 142.2 acres and 1.0 cubic feet per second, for irrigation of 11.4 of Practically Irrigable Acres from Agency Springs Reservoir and Cooked Creek, tributary to Wood River. The claimed priority date is October 14, 1864.

2. Claimants withdrew Claim 65 by letter dated March 14, 1994. That letter states in pertinent part: "This letter will serve as our request that our regular claim be withdrawn. . . ."

3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation), stating the claim was withdrawn and was of no force or effect.

4. No contests were filed to Claim 65 or to the Preliminary Evaluation of Claim 65.

B. DETERMINATION

Based upon the file and record herein, including the March 14, 1994 letter withdrawing Claim 65, IT IS ORDERED that Claim 65 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 STEPHEN S. AND MARY ANNA NAPIER	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 66

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, JACK F. SIMINGTON timely submitted a Statement and Proof of Claim (Claim 66) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 66 was submitted for a total of 0.225 cfs of water, being .025 cfs from Tecumsah Spring, tributary to Agency Lake, for domestic use for 2 houses and 2 shops, including irrigation of lawn and garden; and 0.2 cfs from Crooked Creek and Fort Creek, tributaries of Agency Lake, for irrigation of 15 acres and incidental livestock watering of 22 head. The claimed period of use is "year around" for domestic use, and "April/Nov." for irrigation and livestock watering. The claimed priority date is "1864."

3. JACK F. SIMINGTON signed Claim 66 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 66 was transferred to STEPHEN S. NAPIER AND MARY ANNA NAPIER (Claimants) from JACK F. SIMINGTON AND ERLENE G. SIMINGTON. *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M93, PAGE 17439 (July 15, 1993) (Claim # 66, Page 0132).

5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because "the claim is for a source which has been previously adjudicated."
6. On May 8, 2000, the Claimants timely filed Contest 3103 to the Preliminary Evaluation of Claim 66.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3463: 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.

8. On May 8, 2000, the United States of America timely filed Contest 3805 to the Claim and/or Preliminary Evaluation of Claim 66.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4118 to the Claim and/or Preliminary Evaluation of Claim 66.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 197.

11. On May 6, 2003, Claim 66 was consolidated with Case 900 "for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication." *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.

12. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.

13. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 12, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

14. On July 28, 2004, the Klamath Tribes voluntarily withdrew Contest 4118. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (July 28, 2004).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3463 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3463 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3463 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On August 2, 2005, the United States of America voluntarily withdrew Contest 3805. *See* STIPULATION BETWEEN STEPHEN S. NAPIER, MARY ANNA NAPIER, AND THE UNITED STATES AND WITHDRAWL [sic] OF CONTEST BY THE UNITED STATES (Aug. 2, 2005).

16. On May 2, 2006, the Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 66.

17. On May 2, 2006, the Adjudicator withdrew Case 197 from the Office of Administrative Hearings.

B. DETERMINATION

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

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

[Beginning of Water Right Claim Description]

CLAIM NO. 66
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 66, PAGE 25

CLAIMANT: STEVEN S. AND MARY ANNA NAPIER
6415 CORSINI PLACE
RANCHO PALOS VERDES, CA 90274

SOURCE OF WATER:
TECUMSEH SPRING, tributary to CROOKED CREEK; CROOKED CREEK and FORT CREEK, tributary of the WOOD RIVER

PURPOSE OR USE:
DOMESTIC FOR TWO HOUSEHOLDS AND TWO ANCILLARY SHOP BUILDINGS; IRRIGATION OF 4.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 22 HEAD, BEING 0.5 ACRES FROM CROOKED CREEK AND 4.4 ACRES FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION.

RATE OF USE:

0.1425 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.02 CFS FROM TECUMSEH SPRING FOR DOMESTIC USE, MEASURED AT THE POINT OF DIVERSION;

UP TO 0.0125 CFS FROM CROOKED CREEK FOR IRRIGATION OF 0.5 ACRES WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION, LIMITED TO 0.006 CFS JULY 1 TO AUGUST 31; AND

UP TO 0.11 CFS FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION FOR IRRIGATION OF 4.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION, LIMITED TO 0.055 CFS JULY 1 TO AUGUST 31.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Domestic	January 1 - December 31
Irrigation with Incidental Livestock Watering	April 1 - October 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
Tecumseh Spring	34 S	7.5 E	WM	12	SW NE	460 FEET SOUTH AND 515 FEET WEST FROM NE CORNER, SWNE, SECTION 12	For Domestic Only
Crooked Creek	34 S	7.5 E	WM	12	SW NE	775 FEET SOUTH AND 750 FEET WEST FROM NE CORNER, SWNE, SECTION 12	
Fort Creek	33 S	7.5 E	WM	26	NW NW	950 FEET SOUTH AND 1100 FEET EAST FROM NW CORNER, SECTION 26	Point of Diversion into Canal
Fort Creek Canal Rediversion	34 S	7.5 E	WM	2	NE SW	NONE GIVEN	Point of Rediversion from Canal

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	7.5 E	WM	12	SW NE	Tecumseh Spring

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**	**Authorized POD**
34 S	7.5 E	WM	12	SW NE	0.5	Crooked Creek
34 S	7.5 E	WM	12	SW NE	4.4	Fort Creek Via Fort Creek Canal Rediversion

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of THOMAS FAMILY LIMITED PARTNERSHIP	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 67

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 67 (Claimant: THOMAS FAMILY LIMITED PARTNERSHIP) and its associated contests (2756, 2837, 3104, 3464, 3806, and 4119) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 198.

2. On May 6, 2003, Claim 67 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 67 on March 14, 2007.

6. Exceptions were filed to the Proposed Order within the exception filing deadline by the Thomas Family Limited Partnership.

7. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 67. The exceptions are found to be persuasive, and therefore, modifications are made to the Proposed Order as described in Section A.11.a, below.

8. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, below.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   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 67. Except as identified in Section A.11, below, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

9. **Evidentiary Rulings.** Within the section titled "Evidentiary Rulings" of the Proposed Order, the first paragraph is modified as follows:

   > The STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 dated January 26, 2006, is added to the list of items that were admitted into the record.

   Reason for Modification: A STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 was executed on January 26, 2006 between the Claimant, the United States, and the "Klamath Project Water Users." Although a CLAIMANT'S UNOPPOSED MOTION TO ADMIT THE STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 INTO THE RECORD (February 14, 2006) was filed, and the motion recited that the other participants did not oppose the motion, the motion was not formally granted by an order. However, the Administrative Law Judge based his Proposed Order on the terms specified in the stipulation. As a result, the Adjudicator treats the failure to explicitly admit the stipulation into the record as an oversight and treats the motion as if it had been explicitly granted. The STIPULATION TO RESOLVE CONTESTS 3464 AND 3806 was also omitted from the Section titled "Evidentiary Rulings." Therefore, the adjudicator modifies the Proposed Order to correct this omission.

10. **Opinion.** OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

    Reason for Modification: To clarify the elements of a Klamath Termination Act water right.

11. **Order.**

a. Within the section titled "Order" of the Proposed Order, the duty for Diversion Point #3 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

Duty: ~~2324~~ 2325 acre-feet

Reason for Modification: To correct a scrivener's error; the calculation for the duty is based on 3.0 acre-feet per acre per year for 775.0 acres, an issue raised in exceptions.

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

Stock Water for 3,400 head of cattle, between ~~March~~ April 1 and October 31

Reason for Modification: To correct a scrivener's error. As per the Stipulation, livestock use is incidental to irrigation, and as such the season of use is coincidental to the irrigation season.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.9, above.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted in its entirety.
   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 67. Except as identified in Section A.11, above, the outcome of the Order is without modification; it is presented in a format standardized by OWRD.

2. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS is incorporated as if set forth fully herein.

3. Based on the file and record herein, IT IS ORDERED that Claim 67 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 67

CLAIM MAP REFERENCE: CLAIM # 67 SETTLEMENT MAP (Feb. 23, 2006)

CLAIMANT: THOMAS FAMILY LIMITED PARTNERSHIP
5800 GEORGIA DR
BAKERSFIELD, CA 93308

SOURCE OF WATER:
The WOOD RIVER, tributary to UPPER KLAMATH LAKE, and
CROOKED CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 1500.5 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 3400 HEAD, BEING 725.5 ACRES FROM WOOD RIVER PODS 1 AND 2, AND 775.0 ACRES FROM CROOKED CREEK POD.

RATE OF USE:
30.01 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 14.51 CFS FROM WOOD RIVER PODS 1 AND 2, AND 15.5 CFS FROM CROOKED CREEK POD.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Wood River POD 1 (Headgate)	34 S	7.5 E	WM	14	NW NW	5	30 FEET SOUTH AND 2450 FEET WEST FROM N¼ CORNER, SECTION 14
Wood River POD 2 (Pump)	34 S	7.5 E	WM	14	NW NW	5	45 FEET SOUTH AND 2450 FEET WEST FROM N¼ CORNER, SECTION 14
Crooked Creek POD	34 S	7.5 E	WM	13	NW SE		1510 FEET NORTH AND 2210 FEET WEST FROM SE CORNER, SECTION 13

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7.5 E	WM	11	SE SW		22.5	Wood River POD 1 (Headgate) and/or Wood River POD 2 (Pump)
34 S	7.5 E	WM	11	SW SE		27.1	
34 S	7.5 E	WM	13	SW SW		10.3	
34 S	7.5 E	WM	14	NE NE		1.6	
34 S	7.5 E	WM	14	NW NE		37.6	
34 S	7.5 E	WM	14	SW NE		37.6	
34 S	7.5 E	WM	14	SE NE		16.5	
34 S	7.5 E	WM	14	NE NW		40.0	
34 S	7.5 E	WM	14	NW NW	5	22.9	
34 S	7.5 E	WM	14	SW NW	6	16.6	
34 S	7.5 E	WM	14	SE NW		40.0	
34 S	7.5 E	WM	14	NE SW	7	43.1	
34 S	7.5 E	WM	14	SE SW	8	10.9	
34 S	7.5 E	WM	14	NE SE		33.4	
34 S	7.5 E	WM	14	NW SE		40.0	
34 S	7.5 E	WM	14	SW SE	9	33.9	
34 S	7.5 E	WM	14	SE SE		40.0	
34 S	7.5 E	WM	23	NE NE		40.0	
34 S	7.5 E	WM	23	SE NE	2	28.5	
34 S	7.5 E	WM	23	NW NE	1	9.8	
34 S	7.5 E	WM	23	NE SE	3	5.7	
34 S	7.5 E	WM	24	NW NW		30.0	
34 S	7.5 E	WM	24	SW NW		41.0	
34 S	7.5 E	WM	24	SE NW		13.3	
34 S	7.5 E	WM	24	NE SW		33.0	
34 S	7.5 E	WM	24	NW SW	6	37.7	
34 S	7.5 E	WM	24	SE SW	7	12.5	
34 S	7.5 E	WM	11	SW SE		12.9	Crooked Creek POD
34 S	7.5 E	WM	11	SE SE		39.6	
34 S	7.5 E	WM	12	SW SW		39.2	
34 S	7.5 E	WM	12	SE SW		30.4	
34 S	7.5 E	WM	13	NW NE	4	2.2	
34 S	7.5 E	WM	13	SW NE	6	12.3	
34 S	7.5 E	WM	13	SE NE	7	6.2	
34 S	7.5 E	WM	13	NE NW		35.6	
34 S	7.5 E	WM	13	NW NW		40.0	
34 S	7.5 E	WM	13	SW NW		40.0	
34 S	7.5 E	WM	13	SE NW		40.0	
34 S	7.5 E	WM	13	NE SW		35.1	
34 S	7.5 E	WM	13	NW SW		40.0	
34 S	7.5 E	WM	13	SW SW		29.7	
34 S	7.5 E	WM	13	SE SW		39.8	
34 S	7.5 E	WM	13	NE SE	9	0.5	
34 S	7.5 E	WM	13	NW SE	12	3.7	
34 S	7.5 E	WM	13	NW SE	11	14.0	
34 S	7.5 E	WM	13	NW SE	10	9.6	
34 S	7.5 E	WM	14	NE NE		38.4	
34 S	7.5 E	WM	14	NW NE		2.4	

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7.5 E	WM	14	SE NE		24.5	Crooked Creek POD
34 S	7.5 E	WM	14	NE SE		6.6	
34 S	7.5 W	WM	13	SW SE	14	7.9	
34 S	7.5 W	WM	13	SW SE	13	3.9	
34 S	7.5 W	WM	24	NE NE		4.8	
34 S	7.5 W	WM	24	NW NE		37.4	
34 S	7.5 W	WM	24	SW NE		37.5	
34 S	7.5 W	WM	24	SE NE		0.9	
34 S	7.5 W	WM	24	NE NW		41.9	
34 S	7.5 W	WM	24	NW NW		10.5	
34 S	7.5 W	WM	24	SE NW		25.9	
34 S	7.5 W	WM	24	NE SW		6.0	
34 S	7.5 W	WM	24	NE SE		0.3	
34 S	7.5 W	WM	24	NW SE		22.1	
34 S	7.5 W	WM	24	SW SE		29.1	
34 S	7.5 W	WM	24	SE SE		1.9	
34 S	7.5 W	WM	25	NE NW		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 DOROTHY BUCHANAN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 68

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

A. FINDINGS OF FACT

1. On November 8, 1990, DOROTHY BUCHANAN (Claimant) timely submitted a Statement and Proof of Claim (Claim 68) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 68 was submitted for a total of 7.39 cfs of water from Whitehorse Spring, tributary to the Sprague River, being 0.01 cfs for domestic, 7.36 cfs for irrigation of 294.5 acres, and 0.02 cfs for livestock watering of 600 head. The claimed period of use for irrigation is April 1 to December 1. The claimed priority date is October 14, 1864.

3. DOROTHY BUCHANAN signed Claim 68 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 domestic use, livestock watering, and irrigation was approved but with a shorter irrigation season than claimed and with a smaller quantity of water for livestock watering than claimed.

5. On May 8, 2000, the United States of America timely filed Contest 3739 to the Claim and/or Preliminary Evaluation of Claim 68.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4120 to the Claim and/or Preliminary Evaluation of Claim 68.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 199.

8. On January 15, 2004, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 68.

9. On January 16, 2004, the Adjudicator withdrew Case 199 from the Office of Administrative Hearings.

B. DETERMINATION

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

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 rate of water per head is the standard rate for livestock use (12 gallons per head per day measured at the place of use) as outlined in the GENERAL FINDINGS OF FACT OF THE FINAL ORDER OF DETERMINATION. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.

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

5. Based on the file and record herein, IT IS ORDERED that Claim 68 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 68
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 68 SETTLEMENT MAP (Jan. 20, 2004)

CLAIMANT: DOROTHY BUCHANAN
13851 ALGOMA RD
KLAMATH FALLS, OR 97601

SOURCE OF WATER: WHITEHORSE SPRING, tributary to WHITEHORSE SPRING CREEK

PURPOSE OR USE:

DOMESTIC FOR ONE HOUSEHOLD;

IRRIGATION OF 242.22 ACRES; AND

LIVESTOCK WATERING OF 600 HEAD

RATE OF USE:

6.08 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.01 CFS FOR DOMESTIC USE MEASURED AT THE POINT OF DIVERSION;

6.06 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION; AND

0.01 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 7200 GALLONS PER DAY.

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

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

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
34 S	8 E	WM	22	NE NE	3 Portable Pumps

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
34 S	8 E	WM	22	NE NE

IRRIGATION and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	22	NW NE	22.42
34 S	8 E	WM	22	SW NE	29.82
34 S	8 E	WM	22	SE NE	11.53
34 S	8 E	WM	22	NE NW	19.35
34 S	8 E	WM	22	NW NW	29.86
34 S	8 E	WM	22	SW NW	1.54
34 S	8 E	WM	22	SE NW	15.34
34 S	8 E	WM	22	NE SE	35.93
34 S	8 E	WM	22	NW SE	3.84
34 S	8 E	WM	22	SW SE	5.59
34 S	8 E	WM	22	SE SE	34.29
34 S	8 E	WM	27	NE NE	26.73
34 S	8 E	WM	27	NW NE	5.98

[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 DOROTHY BUCHANAN; GLENDA BUCHANAN; ROBERT BUCHANAN; AND RUTH HAGELSTEIN	))))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 69

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

A. FINDINGS OF FACT

1. On November 13, 1990, DOROTHY BUCHANAN, GLENDA BUCHANAN, ROBERT BUCHANAN, AND RUTH HAGELSTEIN (Claimants) (13851 ALGOMA ROAD, KLAMATH FALLS, OR 97601) timely submitted a Statement and Proof of Claim (Claim 69) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 69 was submitted for a total 1.61 cubic feet per second (cfs) of water from unnamed springs, tributary to the Sprague River, being 1.6 cfs for irrigation of 61.5 acres, and .01 cfs for livestock watering of 100 head. The claimed season of use is "April 1 to Nov. 1." The claimed priority date is October 14, 1864.

3. DOROTHY BUCHANAN as an authorized agent for herself, GLENDA BUCHANAN, ROBERT BUCHANAN, and RUTH HAGELSTEIN, signed Claim 69 attesting that the information contained in the claim is true.

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

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3465: 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.

6. On May 8, 2000, the United States of America timely filed Contest 3740 to the Claim and/or Preliminary Evaluation of Claim 69.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4121 to the Claim and/or Preliminary Evaluation of Claim 69.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 200.

9. On November 3, 2003, the Claimants withdrew Claim 69 which thereby rendered all contests to Claim 69 moot. *See* NOTICE OF WITHDRAWAL OF CLAIM (Nov. 3, 2003).

10. On November 10, 2003, the Adjudicator withdrew Case 200 from the Office of Administrative Hearings.

B. DETERMINATION

Based upon the file and record herein, including the withdrawal of Claim 69 by the Claimants, IT IS ORDERED that Claim 69 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

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3465 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3465 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3465 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of FRANCIS LOVING TRUST; HILDA FRANCIS, TRUSTEE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 70

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

A. FINDINGS OF FACT

1. On December 5, 1990, JESS AND HILDA FRANCIS, (original claimants) timely submitted a Statement and Proof of Claim (Claim 70) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. The specifics of Oregon Water Right Certificate 42747 (Certificate 42747) were incorporated into Claim 70 by references made in the Statement and Proof of Claim.

3. Claim 70 was submitted for year around livestock watering of 100 pair, and for irrigation of 216 acres with a season of use April 1 to November 30. The claimed quantity of water was listed "as set forth in the attached certificates [42747]." Certificate 42747 lists the total quantity of water as 5.26 cubic feet per second (cfs) from the Sprague River, a tributary of the Williamson River. The duty listed on Certificate 42747 is 3.0 acre-feet per acre per year with a rate of 1/40 of one cubic foot per second per acre. The claimed priority date is 1864.

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

5. JESS FRANCIS signed the Statement and Proof of Claim for Claim 70 attesting that the information contained in the claim is true.

6. In 1986, an OWRD field inspection report was prepared describing the points of diversion substantially as stated in Claim 70 including its reference to Certificate 42747, and describing the use of water for irrigation (Claim # 70, WIP, Pages 00016 - 00017).

7. On May 17, 1990, the title to the property associated with Claim 70 was transferred from JESS AND HILDA FRANCIS to the FRANCIS LOVING TRUST, JESSE F. FRANCIS AND HILDA E. FRANCIS, TRUSTEES (Claimant). *See* COUNTY OF KLAMATH RECORDS, VOL. M90, PAGE 10029.

8. On October 5, 1998 OWRD sent a letter to Claimant, Hilda Francis, to request clarification of lands irrigated by specific points of diversion (POD) claimed in Claim 70, and for clarification as to whether or not the Claimant agreed with an enclosed copy of an OWRD Investigation Map. OWRD's letter included instructions to the Claimant to submit a map prepared by a Certified Water Right Examiner (CWRE) in the event they did not agree with OWRD's Investigation Map (Claim # 70, Pages 20 - 23).

9. In response to OWRD's October 5, 1998 letter, OWRD received letter on November 12, 1998, from a representative (Richard Francis) of the Claimant stating "[w]e do not totally agree with it [the map]. We agree that the acres shown in sections 23 & 26 are correct, but the map does not show the 2.4 acres in the NE4-SE4-S27, T34S, R 8 E, W.M. which is on the origional[sic] watter[sic] certificate #4247 [sic]." The November 12, 1998 letter also included a tally of 210.4 irrigated acres listed by quarter-quarter assigned to a particular POD, being Pump #1, Pump #2 or Portable Pump #3 (Claim # 70, Pages 36-37). The tally of 210.4 acres is fewer than the 216 acres stated on the Statement and Proof of Claim, but consistent with Certificate 42747 which was incorporated by reference in the Claimant Statement and Proof of Claim for Claim 70.

10. The 2.4 acres identified in the Claimant's November 12, 1998 letter (located in the NESE, Section 27) were included in the Claimant's original claim by the Claimant's reference to Certificate 42747. The 2.4 acres are clearly shown on the Final Proof Survey Map that accompanies Certificate 42747. The OWRD Investigation Map does not show 2.4 acres in the NESE, Section 27, but OWRD assigns the Final Proof Survey map greater weight. The 2.4 acres irrigated from Pump #2 are approved in Claim 70.

11. The following findings are made pertaining to the location of 2.4 acres in various quarter-quarters irrigated by Portable Pump #3. These findings are based on the Claimant's Statement and Proof of Claim for Claim 70 including its reference to Certificate 42747, the Final Proof Survey Map Under Permit No. 32272 (Certificate 42747), OWRD's Investigation Map appurtenant to Claim 70 (Claim # 70, Page 12), and the Claimant's written response on November 12, 1998 that lists lands irrigated by specific points of diversion.

a. Both Certificate 42747 and the OWRD Investigation Map show a total of 27.6 irrigated acres in the SWNW, Section 26. In the November 12, 1998 letter, the Claimant listed a total of 27.7 acres irrigated in the SWNW, Section 26, being 13.5 acres irrigated from Pump #2, and 14.2 acres irrigated from Portable Pump #3. This is an overage of 0.1 acre compared to Certificate 42747 and the OWRD Investigation Map. OWRD subtracts this 0.1 acre overage from acres irrigated by the Portable pump #3. Therefore, the 27.6 acres of irrigation are approved in the SWNW, Section 26, being 13.5 acres irrigated from Pump #2, but only 14.1 acres irrigated from Pump #3.

b. Both Certificate 42747 and the OWRD Investigation Map show a total of 31.6 irrigated acres in the SENW, Section 26. In the November 12, 1998 letter, the Claimant listed a total of 33.5 acres irrigated in the SENW, Section 26, being 2.0 acres irrigated from Pump #1, 13.7 acres irrigated from Pump #2, and 17.8 acres irrigated from Portable Pump #3. This is an overage of 1.9 acres compared to Certificate 42747 and the OWRD Investigation Map. OWRD subtracts this 1.9 acre overage from acres irrigated by Portable Pump #3. Therefore, the 31.6 acres of irrigation are approved in the SENW, Section 26, being 2.0 acres irrigated from Pump #1, 13.7 acres irrigated from Pump #2, but only 15.9 acres irrigated from Portable Pump #3.

c. Both Certificate 42747 and the OWRD Investigation Map show a total of 28.0 irrigated acres in the NENW, Section 26. In the November 12, 1998 letter, the Claimant listed a total of 28.4 acres irrigated in the NENW, Section 26, being 28.0 acres irrigated from Pump #1, and 0.4 acres irrigated from Portable Pump #3. This is an overage of 0.4 acre compared to Certificate 42747 and the OWRD Investigation Map. OWRD subtracts this 0.4 acre overage from acres irrigated by Portable Pump #3. Therefore, the 28.0 acres of irrigation are approved in the NENW, Section 26, being 28.0 acres irrigated from Pump #1, but no acres irrigated from Portable Pump #3.

d. As outlined in Findings 11.a, 11.b, and 11.c, above, a total of 2.4 acres were subtracted from the total acreage irrigated by Portable Pump #3.

e. Both Certificate 42747 and the OWRD Investigation Map show a total of 18.0 irrigated acres in the NWNW, Section 26. In the November 12, 1998 letter, the Claimant listed only a total of 15.6 acres irrigated in the NWNW, Section 26, being 12.0 acres irrigated from Pump #1, and 3.6 acres irrigated from Portable Pump #3. This is an underage of 2.4 acres compared to Certificate 42747 and the OWRD Investigation Map. OWRD adds this 2.4 acre overage to acres irrigated by Portable Pump #3.Therefore, 18.0 acres of irrigation are approved in the NWNW, Section 26, being 12.0 acres irrigated from Pump #1 and 6.0 acres irrigated from Pump #3.

f. The adjustment to the location of 2.4 acres pumped by Portable Pump #3 does not alter the claimed total number of acres irrigated by the three different pumps; the acreages irrigated by the three different pumps remains consistent with Claimant's written response on November 12, 1998 that lists 66.8 acres irrigated from Pump #1, 107.6 acres irrigated from Pump #2, and 36.0 acres irrigate by Portable Pump #3.

12. 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, being an approval of a total 208 acres.

13. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 70.

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

15. Based on the sworn statements in Claim 70, along with the field inspection report, the following findings are made:

    a. The land appurtenant to Claim 70 is part of the former Klamath Indian Reservation.

    b. The Claimants are Klamath Indians.

    c. The Claimants have applied water to beneficial use.

    d. The land is arable.

    e. The land appurtenant to Claim 70 has not had more than five successive years of non-Indian ownership.

B. DETERMINATION

1. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.

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

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

4. Claimant's claim for a separate right of use for livestock watering is denied, because the Claimant failed to timely submit fees for livestock use. ORS 539.210 provides that "it shall be the duty of all claimants . . . to appear and submit proof of their respective claims, *at the time and in the manner required by law.*" (Emphasis added) Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings."

ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For Claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. Because OWRD did not receive payment for a separate right of use for livestock watering by the deadline, this portion of Claimant's claim must be denied. Livestock watering approved under Claim 70 must be limited to incidental livestock watering during the irrigation season.

5. Based on the file and record herein, IT IS ORDERED that Claim 70 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 70

CLAIM MAP REFERENCE:
FINAL PROOF SURVEY MAP UNDER OWRD PERMIT NO. 32272 (CERTIFICATE 42747)

CLAIMANT: FRANCIS LOVING TRUST
HILDA FRANCIS, TRUSTEE
PO BOX 213
CHILOQUIN OR 97624

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

PURPOSE or USE:
IRRIGATION OF 210.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 200 HEAD.

RATE OF USE:
5.26 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 1.67 CFS FROM PUMP #1, 2.69 CFS FROM PUMP #2, AND 0.90 CFS FROM PORTABLE PUMP #3.

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 30

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Pump 1	34 S	8 E	WM	23	SE SW	NORTH 85 DEGREES 22 MINUTES EAST, 2292 FEET FROM NW CORNER, SECTION 26
Pump 2	34 S	8 E	WM	26	SW SW	SOUTH 17 DEGREES 33 MINUTES EAST, 2187 FEET FROM NW CORNER, SECTION 26
Portable Pump 3	34 S	8 E	WM	26	SW NW	BETWEEN SOUTH 8 DEGREES 25 MINUTES EAST 2052 FEET FROM NW CORNER, SECTION 26 AND SOUTH 49 DEGREES 16 MINUTES EAST, 3233 FEET FROM NW CORNER, SECTION 26; ALSO SENW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation with Incidental Livestock Watering						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized Diversion
34 S	8 E	WM	23	NE SW	2.0	Pump 1
34 S	8 E	WM	23	SW SW	2.8	
34 S	8 E	WM	23	SE SW	20.0	
34 S	8 E	WM	26	NE NW	28.0	
34 S	8 E	WM	26	NW NW	12.0	
34 S	8 E	WM	26	SE NW	2.0	
34 S	8 E	WM	26	SW NW	13.5	Pump 2
34 S	8 E	WM	26	SE NW	13.7	
34 S	8 E	WM	26	NE SW	21.8	
34 S	8 E	WM	26	NW SW	36.0	
34 S	8 E	WM	26	SE SW	20.2	
34 S	8 E	WM	27	NE SE	2.4	
34 S	8 E	WM	26	NW NW	6.0	Portable Pump 3
34 S	8 E	WM	26	SW NW	14.1	
34 S	8 E	WM	26	SE NW	15.9	

[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 CARY AND MARLYS HAVIRD	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 71

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, CARY AND MARLYS HAVIRD (Claimant) timely submitted a Statement and Proof of Claim (Claim 71) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 71 was submitted for a total of 1.1 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 46.0 acres. The claimed period of use is July 1 to October 1. The claimed priority date is "1864."

3. CARY AND MARLYS HAVIRD signed Claim 71 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 irrigation was approved, but with a longer irrigation season than claimed and fewer acres than claimed.

5. On May 8, 2000, the United States of America timely filed Contest 3741 to the Claim and/or Preliminary Evaluation of Claim 71.

6. On May 8, 2000, the Klamath Tribes timely filed Contest 4122 to the Claim and/or Preliminary Evaluation of Claim 71.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 201.

8. On December 19, 2003, the Claimants, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 71.

9. On December 9, 2003, the Adjudicator withdrew Case 201 from the Office of Administrative Hearings.

10. OWRD finds that the location of the points of diversion for the portable pump as listed in the Settlement Agreement, being within the E½ NE¼, Section 23, Township 34 South, Range 8 East, W.M., is not sufficiently defined because the Sprague River is not coincidental with the NE¼ NE¼. OWRD finds the points of diversion are located only within the SE¼ NE¼, Section 23, Township 34 South, Range 8 East, W.M.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception that the points of diversion for the portable pump are authorized only within the SE¼ NE¼, Section 23, Township 34 South, Range 8 East, W.M.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 71
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 71 SETTLEMENT MAP (Dec. 24, 2003)

CLAIMANT: CARY AND MARLYS HAVIRD
PO BOX 498
CHILOQUIN, OR 97624

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

PURPOSE OR USE: IRRIGATION OF 30.0 ACRES.

RATE OF USE:

0.75 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:

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

PERIOD OF ALLOWED USE: JULY 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Remarks
34 S	8 E	WM	23	SE NE	Portable Pump

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	23	NE NE	7.85
34 S	8 E	WM	23	SE NE	20.03
34 S	8 E	WM	23	SE SE	2.12

[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 SHIRLEY M. NIGH	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 72

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 May 20, 1977, Walter J. Eggsman, filed a NOTICE OF INTENTION TO FILE A CLAIM (NOI 100) with OWRD for lands in the E ½ E ½, Section 21, Township 34 south, Range 8 West, W.M. Walter J. Eggsman is listed on the NOVEMBER 21, 1957 FEDERAL REGISTER FOR MEMBERS OF KLAMATH TRIBE INDIANS, Page 9309.

2. On November 29, 1990, SHIRLEY M. NIGH (Claimant) (PO BOX 682, CHILOQUIN, OR 97624) timely submitted a Statement and Proof of Claim (Claim 72) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

3. Claim 72 was submitted for irrigation of 7.5 acres by the method of natural overflow and flooding from the Sprague River, a tributary of the Williamson River, with a duty of 2.0 acre-feet per acre and a season of use "November – March". The claimed priority date is October 14, 1864. The evidence in the record supports the claimed duty and season of use.

4. SHIRLEY M. NIGH signed the Statement and Proof of Claim for Claim 72 attesting that the information contained in the claim is true.

5. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 72 (Claim # 72, WIP, Page 00011). The report also includes the statement, "[s]he [Mrs. Cloverine Eggsman] said that

overflow was the only mean of irrigation on any of the Eggsman Lands, including Parcel A [E ½ E ½, Section 21, Township 34 south, Range 8 West, W.M.]."

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 different season of use than claimed.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 72.

8. Based on the sworn statements in Claim 72, along with the field inspection report, the following findings are made:

   a. The claimed water use is on former Klamath Indian Reservation Land.

   b. The claimed water use is on land that was transferred from Indian ownership.

   c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

   d. Beneficial use of water by the method of natural overflow from the Sprague River for the claimed purpose on lands appurtenant to Claim 72 has been demonstrated.

B. DETERMINATION

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

2. Beneficial use water by the method of natural overflow is established.

3. Based on the file and record herein, IT IS ORDERED that Claim 72 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 72

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 34 S, R 8 E

CLAIMANT: SHIRLEY M. NIGH
PO BOX 682
CHILOQUIN OR 97624

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

PURPOSE or USE: IRRIGATION OF 7.5 ACRES BY NATURAL OVERFLOW

DATE OF PRIORITY: OCTOBER 14, 1864

NO SPECIFIC POINT OF DIVERSION:

NATURAL OVERFLOW FROM THE SPRAGUE RIVER

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION BY NATURAL OVERFLOW					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	21	SE NE	6.40
34 S	8 E	WM	21	NE SE	1.10

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 15.0 ACRE-FEET PER YEAR. THE SEASON OF USE MAY NOT EXCEED NOVEMBER 1 TO MARCH 1.

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 S. E. COLLINS, RONALD COLLINS, AND TEZEA COLLINS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 73

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 25, 1991, RICHARD H. AND LOIS M. OUTCALT timely submitted a Statement and Proof of Claim (Claim 73) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 73 was submitted for livestock watering of 25 head, and a total of 0.33 cubic feet per second (cfs) of water from the Sprague River, a tributary of the Williamson River, for irrigation of 13.2 acres with a "June – October" season of use, at a rate of 1/40 of one cubic foot per second per acre, and a duty of 3.0 acre-feet per acre. The claimed priority date is 1864.

3. An attachment to the Statement and Proof of Claim states in pertinent part, "[t]his land was owned by the Eggsman family who are Indians. Neva and Wilber Eggsman sold it to Walter Eggsman 16 December 1953, who sold it to Gerald and Diane Basset, who were not Indian, on 19 October 1976. We [Outcalts] bought the land from them on 5 June 1978. . . . The following summer, August 11, 1979, we turned on the pump and started watering this land from the Sprague River, and have been irrigating every season since." (Claim # 73, Page 23).

4. RICHARD H. OUTCALT signed the Statement and Proof of Claim for Claim 73 attesting that the information contained in the claim is true.

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

6. The property appurtenant to Claim 73 was subsequently acquired by S. E. COLLINS, RONALD COLLINS, AND TEZEA COLLINS (Claimants).

7. In 1991, a field inspection report was prepared by a private engineer or surveyor, describing in writing the present use of water on the property as stated in the Claim 73 (Claim # 73, Page 30). However, the map included with the report, "Adjudication Claims Map" (Claim # 73, Page 31), clearly shows on an outage of 0.3 acres for buildings, and shows a total of 12.9 irrigated acres; the map does not show 13.2 acres as described in writing in the report and as claimed in the Statement and Proof of Claim.

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 fewer acres and with a longer period of use than claimed.

9. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 73.

10. Based on the "Adjudication Claims Map" referred to in Finding 7, above, OWRD finds irrigation of 7.5 acres in the NENE, Section 21, and not 7.8 acres as claimed; the map clearly shows on an outage of 0.3 acres for buildings and irrigation of 7.5 acres. Thus, for Claim 73 OWRD finds a total of 12.9 irrigated acres rather than 13.2 acres as claimed in the Statement and Proof of Claim (Claim 73).

11. Based on sworn statements made in the Statement and Proof of Claim, OWRD finds a rate for irrigation of 1/40 of one cubic foot per second per acre, a duty of 3.0 acre-feet per acre per year, and a season of use of June 1st through October 31st, as claimed.

12. Based on the sworn statements in Claim 73, along with the field inspection report, the following findings are made:

    a. The claimed water use is on former Klamath Indian Reservation Land.

    b. The claimed water use is on land that was transferred from Indian ownership.

    c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

B. DETERMINATION

1. The elements of a Walton claim are established with respect to the portion of the claim for irrigation. Water was beneficially used for irrigation of 12.9 acres within three years of transfer from Indian ownership. This constitutes reasonable diligence given the facts pertaining to the claim. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.

2. The season of use for irrigation is June 1st through October 31st, as claimed. .

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

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

5. Claimants' claim for a separate right of use for livestock watering is denied, because Claimants failed to timely submit fees for livestock use. ORS 539.210 provides that "it shall be the duty of all claimants . . . to appear and submit proof of their respective claims, *at the time and in the manner required by law.*" (Emphasis added) Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings." ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For Claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. Because OWRD did not receive payment for a separate right of use for livestock watering by the deadline, this portion of Claimants' claim must be denied. Livestock watering approved under Claim 73 must be limited to incidental livestock watering during the irrigation season.

6. Based on the file and record herein, IT IS ORDERED that Claim 73 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 73

CLAIM MAP REFERENCE: CLAIM # 73, PAGE 31

CLAIMANTS: S. E. COLLINS; RONALD COLLINS; TEZEA COLLINS
PO BOX 669
CHILOQUIN OR 97624

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

PURPOSE or USE:
IRRIGATION OF 12.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 25 HEAD.

RATE OF USE:
0.322 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:
3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: JUNE 1 – OCTOBER 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	8 E	WM	21	SE NE	1890 FEET SOUTH & 960 FEET WEST FROM NE CORNER, SECTION 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	21	NE NE	7.50
34 S	8 E	WM	21	SE NE	5.40

[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 WAYNE RANCH, LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 74

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 CORRECTED PROPOSED ORDER

1. Claim 74 (Claimant: WAYNE RANCH, LLC) and its associated contests (2838, 3466, 3742, and 4123) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 202.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a CORRECTED PROPOSED ORDER ORDER[1] (Corrected Proposed Order) for Claim 74 on December 8, 2006.

3. Exceptions were filed to the Corrected Proposed Order within the exception filing deadline by (1) Wayne Ranch, LLC, and (2) the United States of America.

4. The exceptions filed to the Corrected Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 74. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Corrected Proposed Order as described in Sections A.6, A.7, A.8 and A.9, below.

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

[1] The CORRECTED PROPOSED ORDER replaced a PROPOSED ORDER issued on December 5, 2006. The CORRECTED PROPOSED ORDER corrected an error in the Priorty date as stated in Paragraphs 3 througth 6 of the Findings of Fact. No other changes were made.

d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, below.
e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
f. The "Opinion" is replaced in its entirety as set forth in Section A.9, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B in this Partial Order of Determination for Claim 74. Consistent with Sections A.7, A.8, and A.9, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 371.4 acres, and to approve livestock watering incidental to irrigation.

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

> The evidentiary record closed on November 21, 2004. On December 14, 2004, a Scheduling Order was issued, providing due-dates for submission of written argument. On ~~February 11~~ June 23, 2005, Claimant filed its Closing Argument. ~~On March 30, 2005, the United States filed a motion seeking an extension of time to file its brief in response. This motion was denied, but, upon renewal of the motion, a short extension, until April 6, 2005, was allowed.~~ On ~~April 6~~ September 2, 2005, the United States filed its ~~Posthearing Brief~~ Closing Argument. Also on ~~April 6~~ September 2, 2005, KPWU filed its ~~Response~~ Opposition to Claimant's Closing ~~brief~~ Argument. ~~On April 29, 2005, OWRD filed its Reply Brief. Also on April 29, 2005~~, On October 20, 2005, Claimant filed its Reply Brief. ~~The record closed on April 29, 2005.~~

Reason for Modification: To make corrections raised in exceptions and to correct scrivener's errors.

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

Summary of Reasons for Modification of Findings of Fact: The general reasons for modifications are as follows: (1) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, an issue raised in exceptions. (2) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership, an issue raised in exceptions. (3) To provide evidence from the record to substantiate beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership, an issue raised

in exceptions. (4) To provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions. (5) To provide evidence from the record to substantiate incidental livestock watering after transfer from Indian ownership, an issue raised in exceptions. (6) In each instance where this Partial Order of Determination modifies historical findings of fact made by the ALJ, the Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record.

Modified Corrected Proposed Order Findings of Fact

1. Claim 74 involves property that was originally part of the Klamath Indian Reservation, and has subsequently been transferred to non-Indian ownership. It was originally 13 parcels, all of which were allotted to Klamath Indians after 1910. ~~as part of the termination of the Reservation.~~ (OWRD Ex. 1 at 37 - 129.) The total claim is for irrigation of 710.3 acres from the Sprague River with a season of use April through October. (*Id.* at 5 ~~7~~ -9.) Abstracts of Permits 21150, 24816, and 32240 covering portions of the claimed lands (submitted as a part of the Claimant's signed Statement and Proof of Claim), provide the only evidence of the claimed rate and duty of water. All three abstracts show water use at a rate of 1/40 of one cfs per acre and a duty of 3.0 acre-feet per acre during the irrigation season of each year. (OWRD Ex. 1 at 17, 19, 21.)

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

2. The allotments are located on or near the Sprague River. (*Id.* at 27, 147.) ~~Prior to development, most of the land was subject to periodic flooding, while other portions were subject to subirrigation from the Sprague River or its tributaries. (Direct Test of Walter Seput , at 2.)~~ Except for 13.4 acres located in the south half of Section 31 (within the north half of Allotment 1154), all of the claimed lands lie within the floodplain of the Sprague River and are naturally flood irrigated. While most of the claimed lands are in a depression, the lowest part of the claimed lands lies just north of the Sprague River Highway [southern border of most of the claimed lands]. The land closest to the river is higher than the land immediately to the south and west. When it naturally floods, the water all flows down slope to the south and away from the river. The land just north of

the Sprague River Highway is the last to dry out in the spring after flooding. (Seput Direct, at 2, 3, Ex. A-1, A-2.) Lands appurtenant to the claim within Allotments 713, 714, 127, 205, 206, and 1156 (north) receive natural overflow annually, while lands within Allotments 126, 547, 207, 548, 989, 1156 (south), and 1284, only receive natural overflow during periods of major floods. (*Id.* at 3, 4, Ex. A-3.) Ditches are utilized to even out the natural overflow and to facilitate draining of the land if the overflow lingers too long in the spring. (*Id.* at 5, 6, 7, Ex. A-4, E-1, E-2, F-1, F-2, H-1, H-2; Yockim Affidavit (Nov. 1, 2004), Ex. RS-6 at 2, 11.) Levees have been built by the government, landowners, or lessees to help control the natural overflow, but are only partially effective. (Seput Direct at 4, 5; Yockim Affidavit (Nov. 1, 2004), Ex. RS-6 at 6, 11, RS-9 at 2.) Once the lands have dried out in the spring and the season progresses, such use provides even further benefits. (Gurney Direct, Ex. 6 at 11-14; Seput Rebuttal at 2.)

Reason for Modification: To provide an additional citation to the record; to add clarification using evidence on the record, the ALJ's proposed finding of fact failed to fully set forth the evidence on the record. The ALJ's statement regarding periodic flooding and subirrigation is stricken because it is has been replaced with a more detailed description of the natural flooding; furthermore, there is no mention of subirrigation in the Direct Testimony of Walter Seput at 2, and the finding related to subirrigation is not supported by a preponderance of evidence in the record.

Allotments 713 and 714 (198.8 acres claimed)

3. Klamath Indian Allotments 713 (131.9 acres) and 714 (66.9 acres), totaling 198.8 acres ~~at~~ within the SE¼ of Section 36, Township 34 S, Range 8 E, W.M. and NE¼ of Section 1, Township 35 S, Range 8 E, W.M., respectively, were allotted to Clarence Cowen and Ransom Cowen, both members of the Klamath Tribe. (Gurney Direct, Ex. 3 at 2; OWRD Ex. 1 at 14, ~~18~~, 101, 149-151.) ~~The property~~ Allotment 713 was sold to Henry G. Wolff, a non-Indian, in 1955. ~~(Allotment 713) and 1957 (Allotment 714).~~ (*Id.* at ~~78,~~ 104.) Allotment 714 was ultimately sold to Henry G. Wolff, a non-Indian, in 1957. (*Id.* at 77 - 78.) Lands within these two allotments receive natural overflow from the Sprague River. (Seput Direct at 3, 4; Ex. A-3.) As evidenced by multiple grazing permits, beneficial use of water was established under Indian ownership of the land.

(Yockim Affidavit (Nov. 1, 2004), Ex. RS-5 - RS-9; Linn Rebuttal, Ex. ML-2, ML-6.) Wolff filed for a water right permit (S-24816) to develop irrigation on this property on April 9, 1957. (OWRD Ex. 1 at 19, 20, 187.) Development was complete by ~~January 24~~ March 23, 1962, when Certificate 29626 was issued. (*Id.* at 187.) Two points of diversion have been developed to irrigate separate portions of these lands. Pump 3 is located in the NE¼ SE¼, Section 36, Township 34 S, Range 8 E, W.M., and a second point of diversion, Pump 2, is located in the NW¼ SE¼, Section 31, Township 34 S, Range 9 E, W.M. (*Id.* at 146 - 151.) Proved application of water on this property, based on the rate and duty established in Certificate 29626, is 1/40 cfs per acre, three acre-feet per acre, from April 1 through October 31, with a priority date October 14, 1864. ~~The Diversion Point is located in the NE ¼ SE ¼ Section 36, Township 34 S, Range 8 E.W.M. (*ID.* at 18, 19.).~~

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. The date on which Certificate 29626 was issued was corrected to March 23, 1962, the date clearly shown in the evidence cited for this fact (OWRD Ex. 1 at 187). OWRD has determined that the ALJ's finding that these lands are irrigated from a single point of diversion is not supported by a preponderance of evidence on the record.

Allotments 127, 548 and 989 (5.1 acres claimed)

4. Klamath Indian Allotments 127 (0.9 acres), 548 (0.6 acres) and 989 (~~8.6~~ approximately 3.6 acres), totaling ~~10.1~~ 5.1 acres located within the NW¼ NW¼ of Section 31, Township 34 S, Range 9 E, W.M. (127), the ~~NW¼~~ N½ SW¼ NW¼ of Section 32, Township 34 S, Range 9 E, W.M. (548), and the N½ NW¼ SW¼ of Section 32, Township 34 S, Range 9 E, W.M. (989)[2] (Gurney Direct Ex. 3 at 2; OWRD Ex. 1 at 14, ~~18~~, 149-151), were first purchased by non-Indians Earl Harris, F.F. McCready and Nellie McCready in the 1950s. (Gurney Direct Ex. 5 at 1~~, 8~~; OWRD Ex. 1 at 125 - 129; Yockim Affidavit (Mar. 29, 2004), Ex. AB-3.) Allotment 548 was leased for grazing while in Indian ownership. (Linn Rebuttal,

[2] Allotment 989 is within the S½ SW¼ NW¼ and N½ NW¼ SW¼, Section 32, however, the claimed acreage is only within the N½ NW¼ SW¼. **Reason for addition of footnote:** to show location of the claimed acreage relative to the entire allotment.

Ex. ML-1 at 12.) The properties were already under an application for a water right permit (Application No. 26915 / Permit S-21150) on March 3, 1952, when the property passed out of Indian ownership. (OWRD Ex. 1 at 17.) A Final Proof Survey shows the system was completed in 1958, for which Certificate 24655 was issued. (*Id.* at 17, 18, 191.) A diversion point, Pump 2, located in the NW¼ SE¼, Section 31 Township 34 S, Range 9 E, W.M. has been developed to irrigate these lands. (*Id.* at 146 - 151.) Proved application of water on this property, based on the rate and duty established in Certificate 24655, is 1/40 cfs per acre, three acre-feet per acre, from April 1 through October 31, with a priority date October 14, 1864. ~~The Diversion Point was located in the NW¼ SE¼, Section 31 Township 34 S, Range 9 E, W.M. (127); SW ¼ SW ¼ Section 32, Township 34 S Range 9 E.W.M. (548, 989) (*Id.* at 17, 18).~~

Reasons for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In addition, OWRD has determined that the ALJ's findings that the claimed acreage in Allotment 989 is 8.6 acres, and that the sum of the claimed acres in these three allotment totals 10.1 acres are not supported by a preponderance of evidence on the record. The maps referenced in the above citations show that the 8.6 acres are split between Allotments 989 and 1156 (south). In the Corrected Proposed Order's Finding of Fact #7 the ALJ found that Allotment 1156 (south) is approximately 5 acres, which would leave a balance of approximately 3.6 acres claimed in Allotment 989. OWRD has determined that the ALJ's finding that these lands are also irrigated from a point of diversion within the SW¼ SW¼ Section 32 is not supported by a preponderance of evidence on the record.

Allotment 1284 (9.8 acres claimed)

5. Klamath Indian Allotment 1284 (~~9.4~~ 9.8 acres), located within the SW¼, SW¼ of Section 32, Township 34 S, Range 9 E, W.M., (Gurney Direct, Ex. 3 at 2; OWRD Ex. 1 at 14, ~~18~~ 149-151) was first sold to non-Indians J.W. Wolff, Gerald C. Wolff, and Henry C. Wolff on May 11, 1948. (Gurney Direct, Ex. 5 at 3 ¶m; OWRD Ex. 1 at 119.) The Wolff family filed for a water right permit (S-21150) to develop irrigation on this property on March 3, 1952. (*Id.* at 17, 18.) Development was complete by 1958 as evidenced by the Final Proof Map for Certificate 24655. (*Id.* at 17, 18, 191.) Pump 1, located in the SW¼ SW¼, Section 32, Township 34 S, Range 9 E, W.M., has been developed to irrigate a portion of

the claimed 9.8 acres (Allotment 1284), and a second point of diversion, Pump 2, located in the NW¼ SE¼, Section 31, Township 34 S, Range 9 E, W.M., has been developed to irrigate the remaining portion. (*Id.* at 146 -151.) Proved application of water on this property, based on the rate and duty established in Certificate 24655, is 1/40 cfs per acre, three acre-feet per acre, from April 1 through October 31 with a priority date October 14, 1864. ~~The Diversion Point: SW ¼ SW ¼ Section 32, Township 34 S Range 9 E.W.M. (*Id.* at 17, 18.).~~

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In addition, OWRD has determined that the ALJ's finding that the claimed acreage in Allotment 1284 is 9.4 acres is not supported by a preponderance of evidence on the record. The OWRD investigation map (OWRD Ex. 1 at 14, 149) and the claimant's place of use listing (OWRD Ex. 1 at 150) both clearly show 9.8 acres were claimed within the SW¼, SW¼ of Section 32.

Allotments 205, 206, and 1156 (north) (322.2 acres claimed)

6. Klamath Indian Allotment~~s~~ 205 (154.3 acres) located within the SW¼, Section 31, Township 34 S, Range 9 E, W.M., Allotment 206 (116 acres) located within the NW¼, Section 6, Township 35 S, Range 9 E, W.M., and a portion of Allotment 1156 (Allotment 1156 (north) (51.9 acres) located within the NW¼, Section 31, Township 34 S Range 9 E, W.M., ~~was~~ were first sold to non-Indian Marvin Williams, Sr. in 1920. ~~It was~~ These allotments were transferred to Klamath Indian Marvin Williams, Jr. in 1923, from Marvin Williams, Jr. to C.R. Bowman, a non-Indian, and from C.R. Bowman to L.V. Corbell later the same year. (OWRD Ex. 1 at 49; Gurney Direct at 3.) Although Corbell applied for a water right permit in 1924, that permit (Permit S-6300) for lands appurtenant to Allotments 205, 206 and 1156 (north) was subsequently cancelled for ~~lack of diligent development~~ failure to submit proof (lack of proper showing) of construction and beneficial use of an irrigation system. ~~Water was not applied to this property prior to the transfer of the property by C.R. Bowman to L.V. Corbell.~~ (*Id.*, ~~at 3, 4,~~ Ex. 7.) Because the lands within these three allotments receive natural overflow from the Sprague River (Seput Direct at 3, 4, Ex. A-3), and Corbell is documented as having cattle in 1922 (150 head owned by Lee

Corbell) and 1935 (184 head owned by L.V. Corbell) (Seput Direct, Ex. M), it is more likely than not that he was grazing cattle on these lands. Beneficial use of water was made by the method of the natural overflow of water from the Sprague River; therefore, water use was made with reasonable diligence following transfer from Indian ownership. A point of diversion, Pump 2, located in the NW¼ SE¼, Section 31, Township 34 S, Range 9 E, W.M., has been developed to irrigate the largest portion of these lands within Allotments 205, 206, 1156 (north), and a second point of diversion, Pump 1, located in the located in the SW¼ SW¼. Section 32, Township 34 S, Range 9 E, W.M., has been developed to irrigate the remaining portion within Allotments 205 and 206. (OWRD Ex. 1 at 146 -151.) The claimed water use on this property is at a rate of 1/40 of one cfs per acre, with a duty of three acre-feet per acre, from April 1 through October 31, with a priority date October 14, 1864.

Reason for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In addition, the ALJ's statement that the permit was cancelled for lack of diligent development is not supported by a preponderance of the evidence on the record. The OWRD order cancelling the permit (Gurney Direct, Ex. 7 at 6) did not make any determination about diligent development or lack thereof, but cancelled the permit for failure to submit proof. The ALJ's statement that water was not applied to beneficial use on this property prior to the transfer of the property by C.R. Bowman to L.V. Corbell was stricken because it is not supported by a preponderance of the evidence on the record.

Allotment 1156 (south) (approximately 5 acres claimed)

7. In 1926, a fee patent for the remaining portion of Allotment 1156 (south)[3] (approximately 5 acres) located within the S½ NW¼ SW¼, Section 32, Township 34 S, Range 9 E, W.M. was issued to Valentine Lee Corbell (Yockim Affidavit (Mar. 29, 2009), Ex. AB-5), a Klamath Indian, (*Id.* Ex. AC-1, AD-2 at 3, AD-3 at 3), before it was first sold to D.E. Colwell and R.D. Colwell, the first non-Indian~~s~~ owners, in 1943. (OWRD Ex. 1 at 52.) Water was ~~not applied to~~ beneficially used on this property ~~prior to~~ after the transfer of the property by the Colwells to the Wolff family in 1945, as evidenced by water right Certificate 24655 which

[3] Allotment 1156 was divided into two separate, non-contiguous parcels in different Sections.

includes lands in Allotment 1156 (south) and has a priority date of March 3, 1952. (OWRD Ex. 1 at 17, 18, 54.) This is 9 years following transfer from Indian ownership which does not demonstrate use of water made with reasonable diligence.

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

Allotment 207 (92.6 acres claimed)

8. Klamath Indian Allotment 207 (92.6 acres) located within the S½ NE¼ and N½ SE¼, Section 31, Township 34 S, Range 9 E, W.M. was first sold to non-Indian owners A.C. and Dora Gienger in 1918. (OWRD Ex. 1 at 45.) The property was then sold to L.H. and Daisy Lauritsen on May 17, 1920. (*Id.* at 46.) Water was not applied to this property prior to the transfer to the Lauritsens. (Ex. 9, 10, 11, 12; Gurney Direct at 7.) The property eventually passed to Henry G. and Josephine M. Wolff, also non-Indians. (*Id.* at 113.) The record shows that water was applied to this property (Allotment 207) after the transfer to the Wolffs in 1952, 34 years following transfer from Indian ownership. This does not demonstrate use of water made with reasonable diligence.

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

Allotment 547 (53.8 acres claimed)

9. Klamath Indian Allotment 547 (53.8 acres) located within the N½ NE¼, Section~~s~~ 31 and N½ NW¼, Section 32, Township 34 S, Range 9 E, W.M. was first transferred to non-Indian F. F. McCready in 1948 or 1949.[4] Prior to McCready's ownership, Allotment 547 was leased from 1930 through 1949 from Indian Allottee Fanny Alta Captain (Jackson) for farming and grazing. (Linn Rebuttal,

[4] The property was owned by Klamath Indian Fanny Alta Jackson in 1948. (~~Ex. J.~~ Gurney Direct, Ex. 13; Yockim Affidavit (Mar. 29, 204), Ex. AB-6) It was transferred by F.F. McCready to his wife in 1949. (OWRD Ex.1 at 107.) The record does not contain a transfer from Fanny Alta Jackson. She probably conveyed to F.F. McCready, but the record is silent. **Reason for modification of footnote:** To correct and provide additional citations to the record.

Ex. ML-1, ML-4 - ML-6.) The property then passed to Henry G. and Josephine M. Wolff, also non-Indians, in 1952. (OWRD Ex. 1 at 113.) Beneficial use of water ~~was not applied to~~ on this property ~~prior to~~ was made after the transfer to the Wolffs as evidenced by water right Certificate 24655 which includes lands in Allotment 547 and has a priority date of March 3, 1952.[5] A point of diversion, Pump 2, located in the NW¼ SE¼, Section 31, Township 34 S, Range 9 E, W.M., has been developed to irrigate these lands. (*Id.* at 146 -151.) The claimed water use on this property is at a rate of 1/40 of one cfs per acre, with a duty of three acre-feet per acre, from April 1 through October 31, with a priority date October 14, 1864.

Reason for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed. In addition, the ALJ's statement that water was not applied to the property prior to the transfer of the property to the Wolff family is not supported by a preponderance of the evidence on the record.

Allotment 1154 (23.4 acres claimed)

10. Klamath Indian Allotment 1154 (23.4 acres) located within the S½ SE¼ Section 31, Township 34 S, Range 9 E, W.M., and the N½ NE¼, Section 6, Township 35 S, Range 9 E, W.M. was first transferred to Della Barber, on July 2, 1947. (OWRD Ex. 1 at 62, 63.) ~~While~~ Although an Indian, Barber was not a member of the Klamath Tribe. (Gurney Direct, Ex. 14 at 4, 7.) Barber sold the property to the Wolff family on August 12, 1947. (OWRD Ex. 1 at 64.) Barber did not apply water to the property prior to her sale to the Wolffs. (*Id.* at 17-18, 191.) Although the Wolffs filed for a water right in 1952 which included 1.6 acres within the SW¼ SE¼ , Section 31, Township 35 S, Range 9 E, W.M., a comparison of the final proof map for this water right (Permit S-21150 / Certificate 42655) with the claim map shows that these 1.6 acres are not co-extensive with the claimed 9.8 acres within this same quarter-quarter. (*Id.* at 16, 17, 18.) The Wolff's filed for a water right in 1966 (Permit S-32240), which included the 23.4 acres claimed within these allotments. (*Id.* at 21, 23.) This use

[5] As Claimant notes, a water right application was filed while the McCreadys were still in title. (OWRD Ex. 1 at 17.) This application, however, was filed by the Wolffs. It is not likely that

of water, 19 years following transfer from Indian ownership, does not demonstrate use of water with reasonable diligence.

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

Allotment 126 (0.7 acres claimed)

11. Klamath Indian Allotment 126 (0.7 acres) located within the SW¼ SW¼, Section 30 Township 34 S, Range 9 E, W.M. was first transferred to non-Indian F.F. McCready in 1915. (Gurney Direct, Ex. 5 at 1; Yockim Affidavit (Mar. 29, 2004), Ex. AB-1.) There is no evidence that this property was irrigated.

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

Artificial Irrigation in 1918

12. Although the Claimant asserted that historical accounts showed that in 1918, A.C. Gienger was irrigating property appurtenant to a portion of the claimed lands, this assertion is not supported by a preponderance of the evidence on the record. Similarly, there is insufficient evidence on the record to support the existence of the Lewis Dam in 1918. A 1925 Report on the Application for a Patent in Fee and a 1925 Certificate of Appraisement for the allotment on which the dam was built do not identity irrigation works pertaining to the construction of a dam or ditch system on this allotment. (Gurney Direct at 3 ¶10).

Reason for Additional Finding of Fact: Reorganization of a finding found in the opinion section of the ALJ's Corrected Proposed Order; this finding has been moved from the opinion section and reworded.

Livestock Use

13. Historical grazing has been documented on Allotments 713, 714, 127, 1156 (north and south), 205, 206, 547, 548, and 989. (Linn Rebuttal, Ex. ML-1, ML-2, ML-4, ML-5, ML-6; Yockim Affidavit (Nov. 1, 2004), Ex. RS-5, RS-6,

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water was diverted to the property by the Wolffs in the 24 days before their deed, as second non-Indian owner, was recorded.

RS-7, RS-8, RS-9, RS-10.) Livestock watering which is incidental to irrigation should be approved on these lands for the number of livestock claimed (250 pair).

Reason for Additional Finding of Fact: With regards to livestock watering, the ALJ's failed to fully set forth the evidence on the record.

8. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Corrected Proposed Order, Conclusions #10 and #11 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

a. Conclusion 10:

Beneficial use of water for irrigation with incidental livestock watering of 250 pair of cattle ~~of part~~ on a portion of the claimed place of use was ~~developed~~ made with reasonable diligence ~~by the first non-Indian purchaser from an Indian owner~~ following transfer from Indian ownership.

b. Conclusion 11:

Water provided to Allotments 127, 1156 (north), 205, 206, 713, and 714 within the claimed place of use by the method of natural overflow, ~~means (flooding in the spring or through subirrigation) and~~ although not through a diversion system created by humans, ~~cannot be the~~ is a valid basis for a Walton right. ~~or constitute irrigation under a *Walton* right.~~

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

9. **Opinion.** The section titled "Opinion" of the Corrected Proposed Order is replaced in its entirety as follows:

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

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

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

The burden of proof to establish a claim is on the claimant. ORS 539.110; OAR 690-028-0040. All facts must be shown to be true by a preponderance of the evidence. *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999); *Cook v. Employment Division,* 47 Or App 437 (1980); *Metcalf*

v. AFSD, 65 Or App 761, (1983), *rev den* 296 Or 411 (1984); *OSCI v. Bureau of Labor and Industries*, 98 Or App 548 *rev den* 308 Or 660 (1989). Thus, if, considering all the evidence, it is more likely than not that the facts necessary to establish the claim are true, the claim must be allowed.

As discussed below, the various allotments have very different histories. Those different histories control the outcome as to each parcel.

Allotments 713, 714, 127, 547, 548, 989, 1284

Beneficial use of water by the method of natural overflow was made on Allotments 713, 714, and 548 while still under Indian ownership as evidenced by grazing leases. On Allotments 127, 547, 989, and 1248 beneficial use of water was made with reasonable diligence following transfer from Indian to non-Indian ownership.

The United States concedes that Claimant has met its burden as to Allotments 713, 714, 127, 548, 989 and 1284. The United States argues that the rate and duty as allowed in the Preliminary Evaluation exceed the amount claimed. This is correct. Claimant enclosed with his claim water right permits previously issued as evidence of use of water. Those permits expressly limited the rate and duty to 1/40 of one cfs per acre and 3 acre-feet per acre. The permits provide the best evidence in the record of the appropriate rate and duty to apply to the portion of the claim that qualifies for a *Walton* right. The qualifying acres are therefore limited to a rate of 1/40th cfs per acre and a duty of 3 acre-feet per acre.

Allotments 1156 (north), 205, 206

The existence of natural overflow on these allotments, combined with grazing records, show that Corbell made beneficial use of water within two years after the land was transferred out of Williams' Indian ownership. Beneficial use was made with reasonable diligence on the claimed portions of these allotments following transfer from Indian ownership.

The Claimants also asserted that water had been artificially applied to a beneficial use with reasonable diligence following transfer from Indian ownership. The evidence does not support this contention.[6] Since the evidence

[6] Claimant asserted that the "historical accounts" showed that in 1918, A.C. Gienger was irrigating the property that he owned for two years. That "historical account" is actually the hearsay recital of Leroy Gienger as to what he had been told at third-hand about the activities of his grandfather. While recourse to such evidence has sometimes been necessary in the Klamath Adjudication, it must be viewed with some caution. In this case, there were maps and reports prepared contemporaneously with the Giengers' occupation of Allotment 207 which purported to record the property that was irrigated within the Klamath Reservation, including private developments. Those maps and reports make no mention of irrigation works developed in the area included within Gienger's property.

In *Cole v. DMV,* 336 Or 565 (2004) the Supreme Court discussed the factors to be considered in deciding whether hearsay may be treated as substantial evidence in any particular case. There, the Supreme Court concluded that where hearsay evidence is based upon multiple hearsay, and is contradicted by evidence presented by the opposing party, it is not sufficiently reliable to allow it to be treated as substantial evidence in an administrative case. Here, that is the case. The testimony of Leroy Gienger is multiple hearsay, and is contradicted by contemporaneously prepared documents in the record. It is not, therefore, sufficiently reliable to allow it to be treated as substantial evidence to support a finding of fact in this case.

establishes beneficial use of natural overflow with reasonable diligence following transfer from Indian ownership, proof of artificial irrigation is unnecessary with respect to the claimed lands in these allotments.

Allotments 126, 207, and 1154, 1156 (south)

Claimants have not proved that water was applied to a beneficial use on these Allotments with reasonable diligence. There is no evidence that water was ever applied to a beneficial use on Allotment 126. Water was not applied to a beneficial use on Allotment 1154 for 19 years following transfer from Indian ownership. Water was not applied to beneficial use on Allotment 1156 (south) for 9 years following transfer from Indian ownership[7]. Water was not applied to a beneficial use on Allotment 207 for 34 years following transfer from Indian ownership. These time periods do not demonstrate reasonable diligence based on the facts in this case.

Summary

In view of the foregoing, the portion of Claim 74 related to Allotments 713, 714, 127, 205, 206, 1156 (north), 547, 548, 989 and 1284 should be allowed for irrigation with incidental livestock watering. The remainder of the claim (Allotments 126, 207, 1154 and 1156 (south) should be denied.

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

B. DETERMINATION

1. The Corrected Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
    h. The "History of the Case" "History of the Case" is adopted with modifications, as set forth in Section A.6, above.
    a. The "Evidentiary Rulings" is adopted in its entirety.
    b. The "Issues" is adopted in its entirety.
    c. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
    d. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
    e. The "Opinion" is replaced in its entirety as set forth in Section A.9, above.
    f. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B in this Partial Order of Determination for Claim 74. Consistent with Sections A.7, A.8, and A.9, above, the outcome of the Order has been modified

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Likewise, Claimant's argument for the existence of the Lewis Dam in 1918 is based entirely on inference unsupported by evidence sufficient to allow the inference to be made.

[7] The only evidence of beneficial use prior to transfer from Indian ownership is the fact that Corbell owned cattle in 1922 and 1935, and that Allotment 1156 (south) receives natural overflow during "major" floods. These facts are insufficient to establish a *Walton* right on this allotment.

to recognize a right for irrigation on an additional 371.4 acres, and to approve livestock watering incidental to irrigation.

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

3. Beneficial use of water by the method of natural overflow was established on portions of the claim prior to the development of specific points of diversion.

4. Based on the file and record herein, IT IS ORDERED that Claim 74 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 74

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 34 S, R 8 E; T 34 S, R 9 E; T 35 S, R 8 E; and T 35 S, R 9 E.

CLAIMANT: WAYNE RANCH, LLC
6205 CRESCENT DR
ENIDA, MN 55436

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

PURPOSE OR USE:
IRRIGATION OF 589.7 ACRES FROM PUMP 1, PUMP 2, AND PUMP 3, WITH INCIDENTAL LIVESTOCK WATERING OF 250 PAIR; NOT TO EXCEED IRRIGATION OF 135.2 ACRES FROM PUMP 1 AND 74.7 ACRES FROM PUMP 3.

RATE OF USE:
14.74 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION (PUMP 1, PUMP 2 AND PUMP 3), NOT TO EXCEED 3.38 CFS FROM PUMP 1 AND 1.86 CFS FROM PUMP 2.

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

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Pump 1	34 S	9 E	WM	32	SW SW	150 FEET NORTH AND 420 FEET EAST FROM SW CORNER, SECTION 32
Pump 2	34 S	9 E	WM	31	NW SE	
Pump 3	34 S	8 E	WM	36	NE SE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	9 E	WM	31	NE SW		36.9	Pumps 1 and 2
34 S	9 E	WM	31	SE SW		38.2	
34 S	9 E	WM	32	SW SW		9.8	
35 S	9 E	WM	6	NE NW	3	31.8	
35 S	9 E	WM	6	SE NW		18.5	
34 S	8 E	WM	36	NE SE		37.2	Pump 2
34 S	8 E	WM	36	SE SE		40.0	
34 S	9 E	WM	31	NE NE		29.2	
34 S	9 E	WM	31	NW NE		15.9	
34 S	9 E	WM	31	NW NW	1	0.9	
34 S	9 E	WM	31	SW NW	2	29.7	
34 S	9 E	WM	31	SE NW		22.2	
34 S	9 E	WM	31	NW SW	3	39.6	
34 S	9 E	WM	31	SW SW	4	39.6	
34 S	9 E	WM	32	NW NW		8.7	
34 S	9 E	WM	32	SW NW		0.6	
34 S	9 E	WM	32	NW SW		3.6	
35 S	8 E	WM	1	NE NE	1	39.8	
35 S	8 E	WM	1	SE NE		7.1	
35 S	9 E	WM	6	NW NW	4	39.6	
35 S	9 E	WM	6	SW NW	5	26.1	
34 S	8 E	WM	36	NW SE		16.6	Pumps 2 and 3
34 S	8 E	WM	36	SW SE		38.1	
35 S	8 E	WM	1	NW NE	2	20.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of RON COLE AND LISA COLE	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 75

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, GORDON A. AND KAREN R. WEBB timely submitted a Statement and Proof of Claim (Claim 75) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 75 was submitted for a total of 7.42 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 296.6 acres with incidental livestock watering of 250 head. The claimed period of use is April 1 through October 31. The claimed priority date is "1864."

3. KAREN WEBB AND GORDON WEBB signed Claim 75 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 75 was ultimately transferred to RON COLE AND LISA COLE (Claimants) from GORDON WEBB. *See* WARRANTY DEED – STATUTORY FORM, COUNTY OF KLAMATH RECORDS, VOL. M04, PAGE 76381 (Nov. 3, 2004) and CHANGE OF OWNERSHIP FORM (Feb. 14, 2005).

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.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3467: 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 3743 to the Claim and/or Preliminary Evaluation of Claim 75.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4124 to the Claim and/or Preliminary Evaluation of Claim 75.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 203.

10. On April 7, 2004, the Klamath Project Water Users withdrew Contest 3467. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3467 (Apr. 7, 2004).

11. On April 1, 2005, the Claimants, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 3743 AND 4124 (Settlement Agreement) thereby resolving the remaining contests to Claim 75.

12. On April 5, 2005, the Adjudicator withdrew Case 203 from the Office of Administrative Hearings.

13. The Settlement Agreement contains two sets of terms of the agreement, being one set of terms in Paragraph B.1., and a second set of terms in Paragraph B.2. The terms in Paragraph B.2. are effective only in the event that the Claimants, the United States of America, and/or the Klamath Tribes submit to OWRD document(s) as set forth in Paragraph B.2.b. OWRD finds the terms of the water right derived for Claim 75 must be consistent with the terms set forth in Paragraph B.1. because that events set forth in Paragraph B.2.b. have not occurred.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3467 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3467 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3467 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception of paragraph B.3.; this paragraph is not pertinent to the determination of a water right claim.

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

3. 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 75 is approved according to terms set forth in Paragraph B.1. of the Settlement Agreement, as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 75
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAPS – T 34 S, R 8 E and T 34 S R 9 E

CLAIMANT: RON COLE
LISA COLE
61682 BROKEN TOP DR
BEND OR 97702

SOURCE OF WATER: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 262.2 ACRES, BEING 61.6 ACRES FROM POD 1, 40.0 ACRES FROM POD 2, AND 160.6 ACRES FROM POD 3.

RATE OF USE:
6.56 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 1.54 CFS FROM POD 1, 1.0 CFS FROM POD 2, AND 4.02 FROM POD 3.

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

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	34 S	9 E	WM	19	NE SW
POD 2	34 S	8 E	WM	24	NE SE
POD 3	34 S	8 E	WM	24	NE SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	9 E	WM	19	NE NE		18.0	POD 1
34 S	9 E	WM	19	NW NW	1	8.0	
34 S	9 E	WM	19	SW NW	2	9.0	
34 S	9 E	WM	19	SE NW		7.6	
34 S	9 E	WM	19	NE SW		10.2	
34 S	9 E	WM	19	NW SW	3	8.8	
34 S	9 E	WM	19	NW SW	3	4.8	POD 2
34 S	9 E	WM	24	SE NE		9.2	
34 S	9 E	WM	24	NE SE		26.0	
34 S	9 E	WM	24	SW NE		27.6	POD 3
34 S	9 E	WM	24	SW NW		20.8	
34 S	9 E	WM	24	SE NW		33.8	
34 S	9 E	WM	24	NE SW		36.5	
34 S	9 E	WM	24	NW SW		9.4	
34 S	9 E	WM	24	SE SW		0.3	
34 S	9 E	WM	24	NW SE		32.2	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of EARL M. HARRIS	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 76

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

A. FINDINGS OF FACT

1. On December 6, 1990, EARL M. HARRIS (Claimant) timely submitted a Statement and Proof of Claim (Claim 76) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 76 was submitted for a total of 4.015 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 139.2 acres. The claimed period of use is April 1 to October 1 for irrigation. The claimed priority date is "1864."

3. EARL M. HARRIS signed Claim 76 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 a portion of the claim was approved, but for fewer acres and a smaller quantity of water than claimed, and with a longer irrigation season than claimed.

5. On April 19, 2000, the Claimant timely filed Contest 0017 to the Preliminary Evaluation of Claim 76.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3468: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District

7. 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.

8. On May 8, 2000, the United States of America timely filed Contest 3744 to the Claim and/or Preliminary Evaluation of Claim 76.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4125 to the Claim and/or Preliminary Evaluation of Claim 76.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 204.

11. On January 21, 2004, the Klamath Tribes withdrew Contest 4125. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 21, 2004).

12. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3468. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3468 (Apr. 8, 2004).

13. On January 26, 2006, the Claimant, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 76.

14. On February 1, 2006, the Adjudicator withdrew Case 204 from the Office of Administrative Hearings.

B. DETERMINATION

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

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.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3468 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3468 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3468 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

4. Based on the file and record herein, IT IS ORDERED that Claim 76 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 76
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 76 MYLAR SETTLEMENT MAP

CLAIMANT: EARL M. HARRIS
BOX 467
CHILOQUIN, OR 97624

SOURCE OF WATER: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 131.0 ACRES, BEING 68.2 ACRES FROM POD 1 AND 62.8 ACRES FROM POD 2.

RATE OF USE:
3.14 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 1.57 FROM POD 1, AND 1.57 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:
2.9 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	GLot
POD 1	34 S	9 E	WM	30	SE SW	
POD 2	34 S	9 E	WM	30	NW SW	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	9 E	WM	30	SE SW		9.0	POD 1
34 S	9 E	WM	30	SE SE		9.4	
34 S	9 E	WM	31	NE NW		33.6	
34 S	9 E	WM	31	NW NW	1	16.2	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	9 E	WM	30	SE NE		7.0	POD 2
34 S	9 E	WM	30	NE SW		25.5	
34 S	9 E	WM	30	NW SW	3	4.2	
34 S	9 E	WM	30	NE SE		14.3	
34 S	9 E	WM	30	NW SE		5.8	
34 S	9 E	WM	30	SW SE		6.0	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of DAVID P. FAIRCLO, AND JELD-WEN, INC.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 77

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 17, 1991, RICHARD FAIRCLO timely submitted a Statement and Proof of Claim (Claim 77) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 77 was submitted for a total of 2.9 acre-feet per year of water from unnamed draws, all tributary to the Sycan River, stored in six stock watering ponds for livestock watering of 200 to 800 head with a "year round" season of use. The claimed priority date is 1864.

3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit C," an Affidavit that states in pertinent part: "All the lands described in Exhibit "A" [lands appurtenant to Claim 77] are within the former Klamath Indian Reservation and our predecessors in interest of the land described were members of the Klamath Tribe as allottees or were the Klamath Tribe since the Treaty of 1864, and all diversions and improvements of the use of the water were made within a reasonable time after acquisition of the lands from the members of the Tribe for those diversions and improvements that were not already in place by such Indians. All owners have claimed and continue to claim a treaty date priority for the water applied on the described lands." (Claim # 77, Page 08).

4. RICHARD FAIRCLO signed the Statement and Proof of Claim for Claim 77 attesting that the information contained in the claim is true.

5. On January 9, 1997, RICHARD FAIRCLO assigned one-half interest in the title to the property associated with Claim 77 to DAVID P. FAIRCLO and the other one-half interest to JELD-WEN, INC. *See* ASSIGNMENT OF WATER RIGHTS (CLAIM # 77, PAGE 017). *See also* COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 762. Claimants in Claim 77 are DAVID P. FAIRCLO AND JELD-WEN, INC (Claimants).

6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 77 (Claim # 77, WIP, Page 00001).

7. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved.

8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 77.

9. Based on the sworn statements in Claim 77, along with the field inspection report, the following findings are made:

   a. The claimed water use is on former Klamath Indian Reservation Land.

   b. The claimed water use is on land that was transferred from Indian ownership.

   c. Beneficial use of water for the claimed purpose was not made prior to transfer from Indian ownership.

   d. Beneficial use of water for the claimed purpose has been made with reasonable diligence following the transfer from Indian ownership.

B. DETERMINATION

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

2. Based on the file and record herein, IT IS ORDERED that Claim 77 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 77

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 35 S, R 12 E

CLAIMANTS: DAVID FAIRCLO
20751 AMBER WAY
BEND, OR 97701

JELD-WEN, INC.
401 HARBOR ISLES BVLD.
KLAMATH FALLS, OR 97601

SOURCES OF WATER: UNNAMED DRAWS, all tributary to the SYCAN RIVER

PURPOSE or USE:
LIVESTOCK WATERING OF UP TO 800 HEAD FROM SIX STOCK WATERING PONDS

PERIOD OF ALLOWED USE: JANUARY 1 – DECEMBER 31

RATE OF USE:
2.9 ACRE-FEET PER YEAR (AF) MEASURED AT THE PLACE OF USE, BEING 0.2 AF EACH IN CHECK DAM # 1 AND # 5, 0.1 AF EACH IN CHECK DAM # 2 AND # 3, 1.3 AF IN CHECK DAM # 4, AND 1.0 AF IN CHECK DAM # 6

DATE OF PRIORITY: OCTOBER 14, 1864

POINTS OF DIVERSION LOCATIONS ARE AS FOLLOWS:

All Tributary to the Sycan River		Point of Diversion Location				
Source	Stock Pond Name	Twp	Rng	Mer	Sec	Q-Q
Unnamed Draw	Check Dam # 1	35 S	12 E	WM	10	NW NW
Unnamed Draw	Check Dam # 2	35 S	12 E	WM	10	SW NW
Unnamed Draw	Check Dam # 3	35 S	12 E	WM	10	SE SE
Unnamed Draw	Check Dam # 4	35 S	12 E	WM	10	NW SE
Unnamed Draw	Check Dam # 5	35 S	12 E	WM	9	NWNE
Unnamed Draw	Check Dam # 6	35 S	12 E	WM	9	SW NW and SE NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
35 S	12 E	WM	9	NW NE
35 S	12 E	WM	9	SW NW
35 S	12 E	WM	9	SE NW
35 S	12 E	WM	10	NW NW
35 S	12 E	WM	10	SW NW
35 S	12 E	WM	10	NW SE
35 S	12 E	WM	10	SE SE

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of DAVID P. FAIRCLO, AND JELD-WEN, INC.	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 78

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 17, 1991, RICHARD FAIRCLO timely submitted a Statement and Proof of Claim (Claim 78), for both private and public lands, to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication as follows:

   a. as a non-Indian successor to allotted Klamath Reservation lands claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707, for private lands; and

   b. as a non-Indian successor to unallotted Klamath Indian Reservation lands claiming a vested Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707, pursuant to the Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. (Klamath Termination Act claim), for public lands.

2. Claim 78 was submitted for a total of 4.81 cfs of water, being 3.63 cfs from Blue Creek, a tributary of the Sycan River, and 1.18 cfs from Corner Creek (natural overflow), a tributary of the Blue Creek, for irrigation of 183.9 acres and livestock watering of 200 - 800 head. The claimed period of use is March 15 to December 1. The claimed priority date is "1864."

3. RICHARD FAIRCLO signed Claim 78 attesting that the information contained in the claim is true.

4. On January 9, 1997, RICHARD FAIRCLO assigned one-half interest in the title to the property associated with Claim 78 to DAVID P. FAIRCLO and the other one-half interest to JELD-WEN, INC. *See* ASSIGNMENT OF WATER RIGHTS (CLAIM # 78, PAGE 013). *See*

also COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 762. Claimants in Claim 78 are DAVID P. FAIRCLO AND JELD-WEN, INC (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 approved for irrigation and livestock watering, but for a smaller quantity of water than claimed, and with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3469: 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 3807 to the Claim and/or Preliminary Evaluation of Claim 78.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4126 to the Claim and/or Preliminary Evaluation of Claim 78.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 205.

10. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3469. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3469 (Apr. 8, 2004).

11. On April 7, 2005, the Klamath Tribes withdrew Contest 4126. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (April 7, 2005).

12. On February 2, 2006, Claimants, DAVID P. FAIRCLO AND JELD-WEN, INC., conditionally assigned the portion of Claim 78 appurtenant to the Fremont National Forest, located within the NW¼SW¼ and SW¼SW¼ of Section 33, Township 34 South, Range 12 East, W.M., to the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS). *See* PARTIAL ASSIGNMENT OF CLAIM; KLAMATH BASIN ADJUDICATION CLAIM 78 (Feb. 2, 2006).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3469 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3469 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3469 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

13. On February 28, 2006, the Claimants, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTEST 1714 (Settlement Agreement) thereby resolving the remaining contest to Claim 78.

14. On March 1, 2006, the Adjudicator withdrew Case 205 from the Office of Administrative Hearings.

15. The terms of the Settlement Agreement specify the water right claim is to be adjudicated to two separate ownership groups, being (1) DAVID P. FAIRCLO AND JELD-WEN, INC., and (2) the USFS. Therefore, OWRD finds it practical to bifurcate Claim 78; OWRD has retained the designation of Claim 78 for the portion of the claim pertaining to DAVID P. FAIRCLO AND JELD-WEN, INC., and has designated the portion of the claim pertaining to the USFS as Claim 732.

16. OWRD prorated the 800 head as originally claimed in Claim 78 for incidental livestock watering, based on grazing acres available within the two bifurcated portions[4]. OWRD finds the number of head for incidental livestock watering is limited to 720 head for Claim 78, and 80 head for Claim 732.

B. DETERMINATION

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

2. Incidental livestock watering is limited to 720 head as described in Finding 16, above.

3. A portion of the claimed place of use is subject to natural irrigation from Corner Creek, tributary to the Blue Creek. The Settlement Agreement states that the privilege to use water as described herein does not constitute a water right. OWRD will not issue a certificate for this portion of Claim 78 subject to natural overflow. This privilege cannot be insisted upon if it interferes with the appropriation of the waters for beneficial use by others, and no priority date, season of use, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property, and may not be altered by the use of any physical means to modify the manner in which natural irrigation occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural irrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. This privilege will not modify any rights that the Claimant may have to allow livestock watering pursuant to ORS 537.141(2). In addition, the stipulation states that this privilege allows for managing the flow of naturally occurring overflow in a manner consistent with their historic control of the overflow, so long as such management does not include the use of head gates, dams or other structures for the appropriation of water from the source. Such management activities may include, but are not limited to, the maintenance of canals or

[4] 17.2 acres / 179.5 acres = 10% for Claim 732; and 162.3 acres / 179.5 acres = 90% for Claim 78

channels to help spread the overflow water across the stipulated place of use. The stipulated place of use for acceptance of natural irrigation is located as follows:

IRRIGATION BY NATURAL OVERFLOW WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	12 E	WM	4	NW NE	2	9.8
35 S	12 E	WM	4	SW NE		18.5
35 S	12 E	WM	4	SE NE		8.4
35 S	12 E	WM	4	NE NW	3	2.0
35 S	12 E	WM	4	SE NW		6.8

See CLAIM # 78 SETTLEMENT MAP (Feb. 22, 2006)

4. Based on the file and record herein, IT IS ORDERED that a portion of Claim 78 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 78
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 78 SETTLEMENT MAP (Feb. 22, 2006)

CLAIMANT: DAVID FAIRCLO
20751 AMBER WAY
BEND, OR 97701

JELD-WEN, INC.
401 HARBOR ISLES BVLD.
KLAMATH FALLS, OR 97601

SOURCE OF WATER: BLUE CREEK, tributary to the SYCAN RIVER

PURPOSE OR USE:
IRRIGATION OF 116.8 ACRES, AND

INCIDENTAL LIVESTOCK WATERING UP TO 720 HEAD, FOR THE PORTION OF THE CLAIM THAT IS ACKNOWLEDGED AS A PRIVILEGE ONLY COMBINED WITH THE PORTION THAT IS A VESTED WATER RIGHT

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

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

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

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 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	12 E	WM	32	NE SE	2100 FEET NORTH AND 400 FEET WEST FROM SE CORNER, SECTION 32

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	12 E	WM	4	NE NW	3	20.4
35 S	12 E	WM	4	NW NW	4	37.2
35 S	12 E	WM	4	SW NW		25.2
35 S	12 E	WM	4	SE NW		3.6
35 S	12 E	WM	5	NE NE		1.6
35 S	12 E	WM	5	SW NE		1.2
35 S	12 E	WM	5	SE NE		27.6

[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 RODNEY N. MURRAY	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 79

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 79 (Claimant: RODNEY N. MURRAY, 1945 PAINTER ST, KLAMATH FALLS, OR 97601) and its associated contests (4 and 3470) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 260.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) on August 22, 2003, denying Claim 79. No exceptions were filed to the Proposed Order.

3. On July 21, 2011, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify the outcome of the original Proposed Order to recognize a right for domestic use for one household and irrigation on 1 acre. Except as modified, the Amended Proposed Order fully incorporated the 2003 Proposed Order.

4. No exceptions were filed to Amended Proposed Order.

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

B. DETERMINATION

1. The Amended Proposed Order issued on July 21, 2011, is adopted and incorporated in its entirety as if set forth fully herein.

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

1. Based on the file and record herein, IT IS ORDERED that Claim 79 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 79
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 34 S, R13 E THRU T 36 S, R 16 E (DETAIL SHEET #5)

CLAIMANT: RODNEY N. MURRAY
1945 PAINTER ST
KLAMATH FALLS, OR 97601

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

PURPOSE OR USE:
DOMESTIC FOR ONE HOUSEHOLD AND IRRIGATION OF 1.0 ACRES

RATE OF USE:
UP TO 20 GALLONS PER MINUTE (GPM) MEASURED AT THE POINT OF DIVERSION AS FOLLOWS:
NOT TO EXCEED 10 GPM FOR DOMESTIC, AND
NOT TO EXCEED 10 GPM FOR IRRIGATION

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

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

PERIOD OF ALLOWED USE:

Use	Period
Domestic	February 1 - November 30
Irrigation	May 1 - October 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
34 S	13 E	WM	36	SE NE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
34 S	13 E	WM	36	SE NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	13 E	WM	36	SE NE	1.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of JAMES M. SEVERIN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 80

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, MARY E. FIKE timely submitted a Statement and Proof of Claim (Claim 80) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 80 was submitted for a total of 0.01 cfs of water from the Agency Lake, a tributary of the Klamath River for irrigation of 3.4 acres. The claimed period of use is "April thru October." The claimed priority date is "1864."

3. MARY E. FIKE signed Claim 80 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 80 was ultimately transferred to JAMES M. SEVERIN (Claimant). *See* MEMORANDUM OF LAND SALE CONTRACT, COUNTY OF KLAMATH RECORDS, VOL. M95, PAGE 26454 (Sept. 27, 1995).

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

6. On May 8, 2000, the Claimant timely filed Contest 2783 to the Preliminary Evaluation of Claim 80.

7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 261.

8. On February 6, 2003, the Claimant and OWRD executed a STIPULATION TO RESOLVE CONTEST 2783 (Settlement Agreement) thereby resolving the remaining contest to Claim 80.

9. On February 10, 2003, the Adjudicator withdrew Case 261 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants and OWRD 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 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 80 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 80
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 80, PAGE 57

CLAIMANT: JAMES M. SEVERIN
36358 MODOC POINT RD
CHILOQUIN OR 97624

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

PURPOSE OR USE: IRRIGATION OF 3.4 ACRES.

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

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

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	7	SE NW	9	480 FEET SOUTH AND 1220 WEST FROM THE NE CORNER, GOVERNMENT LOT 9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	7	SE NW	9	3.4

[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 THE NATURE CONSERVANCY	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 81

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

A. FINDINGS OF FACT

1. On February 1, 1991, GOOSE BAY FARMS timely submitted a Statement and Proof of Claim (Claim 81) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 81 was submitted for a total of 51.4 cfs from the Williamson River, a tributary of the Upper Klamath Lake, being 31.4 cfs of water for irrigation of 2,187 acres, 5.0 cfs for livestock watering of 400 head, and 15.0 cfs for wildlife. The claimed period of use is "year round" for irrigation, livestock watering, and wildlife. The claimed priority date is October 14, 1864.

3. CATHERYN MORSE as an agent of GOOSE BAY FARMS signed the Statement and Proof of Claim for Claim 81 attesting that the information contained in the claim is true.

4. On August 31, 1998, Claim 81 was amended to (1) increase the rate for irrigation claimed from 31.4 cfs to 54.85 cfs, and (2) increase the originally claimed acreage for irrigation from 2187 acres to 2193.8 acres.

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

6. On November 23, 1999, Claim 81 was subsequently transferred to THE NATURE CONSERVANCY (Claimant). *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH, VOL. M99, PAGE 46418 (Nov 23, 1999).

7. On May 8, 2000, the Claimant timely filed Contest 2800 to the Preliminary Evaluation of Claim 81.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3471: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.[1], Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard[2], Don Vincent[3], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. On May 8, 2000, the United States of America timely filed Contest 3733 to the Claim and/or Preliminary Evaluation of Claim 81.

10. On May 8, 2000, the Klamath Tribes timely filed Contest 4127 to the Claim and/or Preliminary Evaluation of Claim 81.

11. On May 8, 2000, Thomas William Mallams timely filed Contest 4949 to the Claim and/or Preliminary Evaluation of Claim 81.

12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 206.

13. On April 28, 2006, Thomas William Mallams's Contest 4949 was dismissed. *See* ORDER GRANTING THE NATURE CONSERVANCY'S MOTION FOR SUMMARY DETERMINATION AND DISMISSING CONTEST NO. 4949 (April 28, 2006).

14. On September 26, 2006, the Klamath Project Water Users withdrew Contest 3471 by stipulation. *See* STIPULATED WITHDRAWAL OF CONTEST NO. 3471 (Sept. 26, 2006).

15. On September 26, 2006, The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2800, 3733, AND 4127 (Settlement Agreement), thereby resolving all remaining contests to Claim 81.

16. On September 27, 2006, the Adjudicator withdrew Case 206 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3471 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3471 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3471 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

1. The Settlement Agreement executed between The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception of the following statement made in Paragraph B.1.c: "The Parties and OWRD understand and agree that irrigation for the purposes hereof includes the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants, including the application of water to crops or plants growing or to be grown in marshlands or wetlands, with or without any commercial harvest or grazing of such crops or plants." Irrigation authorized under this claim is subject to the definition of irrigation use applied by the Ninth Circuit to *Walton* claims: irrigation under a *Walton* right is that which is "essential to agricultural needs." *See United States v. Adair, 723 F.2d 1394, 1415* (9th Cir. 1983).

2. Based on the file and record herein, IT IS ORDERED that Claim 81 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 81
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
WILLIAMSON RIVER DELTA PRESERVE MAP – CLAIM 81 (Oct. 2, 2006)

CLAIMANT: THE NATURE CONSERVANCY
821 SE 14TH ST
PORTLAND OR 97214-2537

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

PURPOSE OR USE:
IRRIGATION OF 308.6 ACRES, BEING 56.1 ACRES FROM POD B AND 252.2 ACRES FROM POD D.

RATE OF USE:
7.71 CUBIC FEET PER SECOND (CFS) FOR IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING 1.4 CFS FROM 'POD B' AND 6.31 CFS FROM POD D.

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

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTSOF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD B	36 S	7.5 E	WM	1	SW NW	1460 FEET SOUTH AND 10,000 FEET WEST FROM SE CORNER, SECTION 31, T 35 S, R 7.0 E, W.M.
POD D	35 S	7.0 E	WM	31	SE NW	2760 FEET NORTH AND 3970 FEET WEST FROM SE CORNER, SECTION 31, T 35 S, R 7.0 E, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	7 E	WM	5	SW NW	12	5.5	POD B
36 S	7 E	WM	5	SW NW	13	3.5	
36 S	7 E	WM	5	NW SW	20	0.1	
36 S	7 E	WM	6	SW NE		11.5	
36 S	7 E	WM	6	SE NE		35.4	
36 S	7 E	WM	6	NE SE		0.1	
35 S	7 E	WM	31	SW NE	12	7.0	POD D
35 S	7 E	WM	31	SW NE	19	16.0	
35 S	7 E	WM	31	SE NE	20	0.8	
35 S	7 E	WM	31	SW NW	16	0.2	
35 S	7 E	WM	31	SE NW	18	1.2	
35 S	7 E	WM	31	NE SW	23	18.2	
35 S	7 E	WM	31	NE SW	26	14.4	
35 S	7 E	WM	31	NW SW	24	0.8	
35 S	7 E	WM	31	SE SW	31	10.2	
35 S	7 E	WM	31	SE SW	36	6.2	
35 S	7 E	WM	31	NE SE	28	5.1	
35 S	7 E	WM	31	NE SE	21	2.9	
35 S	7 E	WM	31	NW SE	22	20.0	
35 S	7 E	WM	31	NW SE	27	20.0	
35 S	7 E	WM	31	SW SE	37	19.3	
35 S	7 E	WM	31	SW SE	30	20.1	
35 S	7 E	WM	31	SE SE	29	7.4	
35 S	7 E	WM	31	SE SE	38	9.3	
36 S	7 E	WM	5	NW NW	5	0.8	
36 S	7 E	WM	6	NE NE		32.1	
36 S	7 E	WM	6	NW NE		37.0	
36 S	7 E	WM	6	NE NW		3.5	

[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 PETER BOURDET	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 82

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

A. FINDINGS OF FACT

1. On December 7, 1990, LLOYD LEE AND BONNIE KAY HALL timely submitted a Statement and Proof of Claim (Claim 82) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 82 was submitted for a total of 1.67 cubic feet per second (cfs) of water from the Sprague River, a tributary of the Williamson River, for irrigation of 53.5 acres with a season of use "Mar. 1 thru Nov. 1." The claimed priority date is October 14, 1864.

3. LLOYD LEE HALL and BONNIE KAY HALL signed Claim 82 attesting that the information contained in the claim is true.

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

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3472: 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

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3472 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

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.

6. On May 8, 2000, the United States of America timely filed Contest 3734 to the Claim and/or Preliminary Evaluation of Claim 82.

7. On May 8, 2000, the Klamath Tribes timely filed Contest 4128 to the Claim and/or Preliminary Evaluation of Claim 82.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 207.

9. The claim was transferred to the 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 (Oct. 21, 2004).

10. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3472. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3472 (April 8, 2004).

11. On June 8, 2004, the Klamath Tribes withdrew without prejudice Contest 4128. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3472 (June 8, 2004).

12. On October 28, 2004, the Claimant, OWRD, United States of America, Klamath Project Water Users, and the Klamath Tribes executed a STIPULATION TO VOLUNTARILY WITHDRAWAL CLAIM 82 (Settlement Agreement) thereby resolving the remaining contest (Contest 3472) to Claim 82.

13. On November 2, 2004, the Adjudicator withdrew Case 207 from the Office of Administrative Hearings.

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[2] Berlva Pritchard voluntarily withdrew from Contest 3472 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3472 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

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

2. Based upon the file and record herein, including the voluntary withdrawal of Claim 82 by the Claimants, IT IS ORDERED that Claim 82 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 LITITIA KIRK	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 83

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 83 (Claimant: LITITIA KIRK) and its associated contests (3218, 3277, 3514, 3877, and 4001) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 208.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 83 on February 20, 2007. No exceptions were filed to the Proposed Order within the exceptions filing deadline.

3. The Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) for Claim 83 on July 1, 2009, to address a 2.23 acre computation error in the total number of acres to be considered under Claim 83. The Amended Proposed Order replaces the 2007 Proposed Order in its entirety.

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

5. 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 an Allottee claim are 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 83 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 83
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 83, NCRE REPORT MAP (May 5, 2004)

CLAIMANT: LITITIA KIRK
PO BOX 69622
PORTLAND, OR 97201

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

PURPOSE OR USE: IRRIGATION OF 56.39 PRACTICABLY IRRIGABLE ACRES

RATE OF USE:
1.12 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

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

PERIOD OF ALLOWED USE: MARCH 15 – OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	7 E	WM	16	NE NE	312 FEET EAST AND 25 FEET SOUTH FROM N¼ CORNER, SECTION 16

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PRACTICALLY IRRIGABLE ACREAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	16	NE NE	2	2.23
35 S	7 E	WM	16	NE NE	9	1.55
35 S	7 E	WM	16	NW NE	3	9.89
35 S	7 E	WM	16	NW NE	8	10.48
35 S	7 E	WM	16	SW NE	13	11.06
35 S	7 E	WM	16	SW NE	18	11.16
35 S	7 E	WM	16	SE NE	19	6.06
35 S	7 E	WM	16	SE NE	12	3.96

[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 MODOC POINT IRRIGATION DISTRICT	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 84

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, MODOC POINT IRRIGATION DISTRICT (Claimant) timely submitted a Statement and Proof of Claim (Claim 84) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 84 was submitted for a total of 130.5 cfs of water from the Sprague River, a tributary of the Williamson River, being 129.5 cfs for irrigation of 5431.4 acres and 1.0 cfs for livestock watering. The claimed period of use is year-round for livestock watering, and April 15 through November 1 for irrigation. The claimed priority date is October 14, 1864.

3. NEAL G. BUCHANAN on behalf of MODOC POINT IRRIGATION DISTRICT signed Claim 84 attesting that the information contained in the claim is true.

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

5. On May 8, 2000, the Claimant timely filed Contest 3278 to the Preliminary Evaluation of Claim 84.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3473: 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 3745 to the Claim and/or Preliminary Evaluation of Claim 84.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4129 to the Claim and/or Preliminary Evaluation of Claim 84.

9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2839 to the Claim and/or Preliminary Evaluation of Claim 84.

10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 209.

11. On October 15, 2003, Claim 84 was consolidated with Claims 241, 243, 248, 250, 253, 260, 266, 269, 682, 688, 700, 702, 705 and 706 into Case 209. These 14 claims 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. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003).

12. On May 20, 2003, WaterWatch's Contest 2839 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).

13. On December 1, 2006, the Claimant timely submitted an amendment to Claim 84 for additional and relocated points of diversion. *See* AFFIDAVIT AND REQUEST FOR ADDITIONAL OR RELOCATED POINTS(S) OF DIVERSION (Dec. 1, 2006).

14. No contests or claims of injury were filed to the Claimant's December 4, 2006 request for additional or relocated points of diversion on or prior to the filing deadline of February 21, 2007.

15. On November 19, 2007, the Klamath Project Water Users withdrew Contest 3473. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3473 (Nov. 19, 2007).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3473 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3473 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3473 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

16. On November 21, 2007, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 84.

17. On November 21, 2007, the Adjudicator withdrew Case 209 from the Office of Administrative Hearings.

18. On May 20, 2008, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed an addendum to the Settlement Agreement for the sole purpose of the inclusion of an additional 28.8 acres to the total allocation allowed for irrigation. *See* ADDENDUM TO STIPULATION TO RESOLVE CONTESTS (Settlement Agreement Addendum).

19. The Claimant submitted to OWRD documents necessary to fulfill requirements in the Settlement Agreement (Paragraph B.1.a.i), being a final settlement map and place of use listing, which were added to the record on November 26, 2008.

B. DETERMINATION

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

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

3. The Claimant's timely amendment, made on December 4, 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 following seven additional points of diversion are approved:

    a. POD 2, located within LOT 20, SENW, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 28 DEGREES 27 MINUTES 11 SECONDS WEST, 8663.7 FEET FROM NE CORNER, SECTION 16.

    b. POD 3, located within LOT 16, SWNW, SECTION 20, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 52 DEGREES 36 MINUTES 46 SECONDS WEST, 12140.3 FEET FROM NE CORNER, SECTION 16.

    c. POD 4, located within LOT 21, NESE, SECTION 19, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 51 DEGREES 44 MINUTES 29 SECONDS WEST, 14001.4 FEET FROM NE CORNER, SECTION 16.

    d. POD 5, located within LOT 24, SESE, SECTION 19, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 49 DEGREES 13 MINUTES 16 DEGREES WEST, 14397.4 FEET FROM NE CORNER, SECTION 16.

e. POD 6, located within LOT 34, SWSW, SECTION 20, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 48 DEGREES 48 MINUTES 4 SECONDS WEST, 14449.4 FEET FROM NE CORNER, SECTION 16.

f. POD 7, located within LOT 34, SWSW, SECTION 20, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 48 DEGREES 24 MINUTES 13 SECONDS WEST, 14504.4 FEET FROM NE CORNER, SECTION 16.

g. POD 8, located within LOT 9, NWNE, SECTION 31, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 37 DEGREES 52 MINUTES 36 SECONDS WEST, 21595.0 FEET FROM NE CORNER, SECTION 16.

5. The following four relocated points of diversion are approved:

a. POD 9, located within LOT 14, SENW, SECTION 3, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at NORTH 14 DEGREES 8 MINUTES 10 SECONDS EAST, 9134.2 FEET FROM SW CORNER, SECTION 10.

b. POD 10, located within LOT 15, SWSW, SECTION 10, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at NORTH 13 DEGREES 36 MINUTES 21 SECONDS EAST, 1285.3 FEET FROM SW CORNER, SECTION 10.

c. POD 11, located within LOT 20, SENE, SECTION 16, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 22 DEGREES 6 MINUTES 1 SECOND WEST, 2183.2 FEET FROM NE CORNER, SECTION 16.

d. POD 12, located within LOT 10, NENE, SECTION 21, TOWNSHIP 35 SOUTH, RANGE 7 EAST, W.M., at SOUTH 12 DEGREES 17 MINUTES 15 SECONDS WEST, 6386.2 FEET FROM NE CORNER, SECTION 16.

6. The diversion of water from the original point of diversion at the Chiloquin Dam (CHILOQUIN DAM POD) 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.

7. The combined quantity of water diverted at each of the seven additional and four relocated points of diversion (PODS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12) must not exceed the quantity of water lawfully available at the original point of diversion at the Chiloquin Dam on the Sprague River.

8. 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; the livestock watering is limited to a combined total of 53,860 head. 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 November 1 through April 14.

9. 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.

10. Based on the file and record herein, IT IS ORDERED that Claim 84 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 84
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
CLAIM # 84 SETTLEMENT MAPS (Nov. 20, 2008) – T 35 S, R 7 E and T 36 S, R 7 E

CLAIMANT: MODOC POINT IRRIGATION DISTRICT
24444 MODOC POINT RD
CHILOQUIN OR 97624

SOURCES OF WATER:
The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER, and
The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
IRRIGATION OF 4,272.68 ACRES WITH INCIDENTAL LIVESTOCK WATERING UP TO 53,860 HEAD DURING THE IRRIGATION SEASON; AND

LIVESTOCK WATERING OF UP TO 53,860 HEAD NOVEMBER 1 THROUGH APRIL 15.

RATE OF USE:
68.12 CUBIC FEET PER SECOND (CFS) , IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM, FROM ELEVEN POINTS OF DIVERSION, BEING 68.12 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING AND 1.0 CFS FOR LIVESTOCK WATERING AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING – 68.12 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 0.42 CFS FROM THE SPRAGUE RIVER FROM POD 9, AND 67.70 CFS FROM THE WILLIAMSON RIVER FROM PODS 2, 3, 4, 5, 6, 7, 8, 10, 11, AND 12 AS FOLLOWS:

2.69 CFS FROM POD 2 FOR IRRIGATION OF 102.6 ACRES
0.02 CFS FROM POD 3 FOR IRRIGATION OF 0.8 ACRES
0.99 CFS FROM POD 4 FOR IRRIGATION OF 39.7 ACRES
0.01 CFS FROM POD 5 FOR IRRIGATION OF 0.2 ACRES
0.01 CFS FROM POD 6 FOR IRRIGATION OF 0.4 ACRES
0.01 CFS FROM POD 7 FOR IRRIGATION OF 0.4 ACRES
1.22 CFS FROM POD 8 FOR IRRIGATION OF 48.66 ACRES
0.42 CFS FROM POD 9 FOR IRRIGATION OF 16.6 ACRES
0.60 CFS FROM POD 10 FOR IRRIGATION OF 21.8 ACRES
0.29 CFS FROM POD 11 FOR IRRIGATION OF 11.7 ACRES
61.86 CFS FROM POD 12 FOR IRRIGATION OF 4029.82 ACRES

LIVESTOCK WATERING NOVEMBER 1 THROUGH APRIL 15 – 1.0 CFS MEASURED AT THE PLACE OF USE, FROM ANY ONE OR ANY COMBINATION OF PODS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND/OR 12.

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 NOVEMBER 1 THROUGH APRIL 15.

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:

NOT TO EXCEED 10,478 ACRE-FEET DURING THE IRRIGATION SEASON OF EACH YEAR.

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 15 - November 1
Livestock Watering	November 1 - April 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

ORIGINAL POINT OF DIVERSION AT THE CHILOQUIN DAM

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
CHILOQUIN DAM POD	Sprague River	35 S	7 E	WM	3	SE SE	21	125 FEET EAST FROM NW CORNER, SESE, SECTION 3

ADDITIONAL AND RELOCATED POINTS OF DIVERSION

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 2	Williamson River	35 S	7 E	WM	21	SE NW	20	SOUTH 28 DEGREES 27 MINUTES 11 SECONDS WEST, 8663.7 FEET FROM NE CORNER, SECTION 16
POD 3	Williamson River	35 S	7 E	WM	20	SW NW	16	SOUTH 52 DEGREES 36 MINUTES 46 SECONDS WEST, 12140.3 FEET FROM NE CORNER, SECTION 16
POD 4	Williamson River	35 S	7 E	WM	19	NE SE	21	SOUTH 51 DEGREES 44 MINUTES 29 SECONDS WEST, 14001.4 FEET FROM NE CORNER, SECTION 16
POD 5	Williamson River	35 S	7 E	WM	19	SE SE	24	SOUTH 49 DEGREES 13 MINUTES 16 DEGREES WEST, 14397.4 FEET FROM NE CORNER, SECTION 16

ADDITIONAL AND RELOCATED POINTS OF DIVERSION								
POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
POD 6	Williamson River	35 S	7 E	WM	20	SW SW	34	SOUTH 48 DEGREES 48 MINUTES 4 SECONDS WEST, 14449.4 FEET FROM NE CORNER, SECTION 16
POD 7	Williamson River	35 S	7 E	WM	20	SW SW	34	SOUTH 48 DEGREES 24 MINUTES 13 SECONDS WEST, 14504.4 FEET FROM NE CORNER, SECTION 16
POD 8	Williamson River	35 S	7 E	WM	31	NW NE	9	SOUTH 37 DEGREES 52 MINUTES 36 SECONDS WEST, 21595.0 FEET FROM NE CORNER, SECTION 16
POD 9	Sprague River	35 S	7 E	WM	3	SE NW	14	NORTH 14 DEGREES 8 MINUTES 10 SECONDS EAST, 9134.2 FEET FROM SW CORNER, SECTION 10
POD 10	Williamson River	35 S	7 E	WM	10	SW SW	15	NORTH 13 DEGREES 36 MINUTES 21 SECONDS EAST, 1285.3 FEET FROM SW CORNER, SECTION 10
POD 11	Williamson River	35 S	7 E	WM	16	SE NE	20	SOUTH 22 DEGREES 6 MINUTES 1 SECOND WEST, 2183.2 FEET FROM NE CORNER, SECTION 16
POD 12	Williamson River	35 S	7 E	WM	21	NE NE	10	SOUTH 12 DEGREES 17 MINUTES 15 SECONDS WEST, 6386.2 FEET FROM NE CORNER, SECTION 16

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	21	SW NW	18	3.6	POD 2
35 S	7 E	WM	21	SE NW	20	8.4	
35 S	7 E	WM	21	NE SW	26	15.0	
35 S	7 E	WM	21	NE SW	29	19.0	
35 S	7 E	WM	21	NW SW	27	8.3	
35 S	7 E	WM	21	NW SW	28	8.3	
35 S	7 E	WM	21	SE SW	34	20.0	
35 S	7 E	WM	21	SE SW	37	20.0	
35 S	7 E	WM	20	SW NW	16	0.8	POD 3
35 S	7 E	WM	20	SW NW	16	4.0	POD 4
35 S	7 E	WM	20	NW SW	27	12.4	
35 S	7 E	WM	20	NW SW	25	12.4	
35 S	7 E	WM	20	SW SW	34	10.9	
35 S	7 E	WM	20	SW SW	34	0.2	POD 5
35 S	7 E	WM	20	SW SW	34	0.4	POD 6
35 S	7 E	WM	20	SW SW	34	0.4	POD 7

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	31	NW NE	9	13.46	POD 8
35 S	7 E	WM	31	SE NE	11	19.7	
35 S	7 E	WM	31	SE NE	20	15.5	
35 S	7 E	WM	3	SW NE	15	4.5	POD 9
35 S	7 E	WM	3	NW NW	13	2.2	
35 S	7 E	WM	3	SE NW	14	3.3	
35 S	7 E	WM	3	NW SE	20	4.6	
35 S	7 E	WM	4	NE NE	9	2.0	
35 S	7 E	WM	9	SE SE	33	2.5	POD 10
35 S	7 E	WM	10	SW SW	15	9.7	
35 S	7 E	WM	15	NW NW	12	2.7	
35 S	7 E	WM	16	NE NE	1	4.9	
35 S	7 E	WM	16	NE NE	10	2.0	
35 S	7 E	WM	16	SE NE	20	6.3	POD 11
35 S	7 E	WM	16	NE SE	21	5.4	
35 S	7 E	WM	20	SE SW	33	6.6	POD 12
35 S	7 E	WM	20	SE SW	36	7.9	
35 S	7 E	WM	20	NE SE	30	19.1	
35 S	7 E	WM	20	NE SE	22	13.3	
35 S	7 E	WM	20	SW SE	32	20.0	
35 S	7 E	WM	20	SW SE	37	19.0	
35 S	7 E	WM	20	SE SE	31	19.5	
35 S	7 E	WM	20	SE SE	38	18.0	
35 S	7 E	WM	21	NE NE	10	5.7	
35 S	7 E	WM	21	NW NE	11	0.4	
35 S	7 E	WM	21	SW NE	13	5.5	
35 S	7 E	WM	21	SW NE	22	6.0	
35 S	7 E	WM	21	SE NE	12	3.9	
35 S	7 E	WM	21	SE NE	23	0.4	
35 S	7 E	WM	21	NW SW	27	7.0	
35 S	7 E	WM	21	NW SW	28	10.0	
35 S	7 E	WM	21	SW SW	35	14.4	
35 S	7 E	WM	21	SW SW	36	18.5	
35 S	7 E	WM	28	NE NW	3	10.0	
35 S	7 E	WM	28	NW NW	4	12.9	
35 S	7 E	WM	28	NW NW	5	19.8	
35 S	7 E	WM	28	SW NW	6	20.0	
35 S	7 E	WM	28	SW NW	12	20.0	
35 S	7 E	WM	28	SW NW	13	20.0	
35 S	7 E	WM	28	SE NW	11	20.0	
35 S	7 E	WM	28	SE NW	14	20.0	
35 S	7 E	WM	28	NE SW	19	19.2	
35 S	7 E	WM	28	NE SW	22	19.3	
35 S	7 E	WM	28	NW SW	20	19.5	
35 S	7 E	WM	28	NW SW	21	19.5	
35 S	7 E	WM	28	SW SW	29	18.8	
35 S	7 E	WM	28	SW SW	28	12.6	

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	28	SE SW	30	20.0	
35 S	7 E	WM	28	SE SW	27	18.0	
35 S	7 E	WM	28	NW SE	23	19.3	
35 S	7 E	WM	28	NW SE	18	17.0	
35 S	7 E	WM	28	SW SE	26	17.9	
35 S	7 E	WM	28	SW SE	31	20.0	
35 S	7 E	WM	29	NE NE	8	17.2	
35 S	7 E	WM	29	NE NE	1	19.0	
35 S	7 E	WM	29	SW NE	10	20.0	
35 S	7 E	WM	29	SW NE	15	18.5	
35 S	7 E	WM	29	SE NE	9	19.2	
35 S	7 E	WM	29	SE NE	16	20.0	
35 S	7 E	WM	29	NE NW	3	20.0	
35 S	7 E	WM	29	NW NW	5	4.9	
35 S	7 E	WM	29	NW NW	4	15.0	
35 S	7 E	WM	29	SW NW	13	19.0	
35 S	7 E	WM	29	SW NW	12	16.3	
35 S	7 E	WM	29	SE NW	11	20.0	
35 S	7 E	WM	29	SE NW	14	17.3	
35 S	7 E	WM	29	NE SW	22	18.1	
35 S	7 E	WM	29	NE SW	19	20.0	
35 S	7 E	WM	29	NW SW	20	16.1	
35 S	7 E	WM	29	NW SW	21	13.3	
35 S	7 E	WM	29	SW SW	29	20.0	
35 S	7 E	WM	29	SW SW	28	16.4	
35 S	7 E	WM	29	SE SW	30	15.7	POD 12
35 S	7 E	WM	29	SE SW	27	17.7	
35 S	7 E	WM	29	NE SE	17	19.5	
35 S	7 E	WM	29	NE SE	24	19.1	
35 S	7 E	WM	29	NW SE	23	11.0	
35 S	7 E	WM	29	NW SE	18	20.0	
35 S	7 E	WM	29	SW SE	31	12.5	
35 S	7 E	WM	29	SW SE	26	12.5	
35 S	7 E	WM	29	SE SE	25	17.1	
35 S	7 E	WM	29	SE SE	32	12.8	
35 S	7 E	WM	30	NE NE	10	8.8	
35 S	7 E	WM	30	SW NE	19	0.6	
35 S	7 E	WM	30	SE NE	20	20.0	
35 S	7 E	WM	30	SE NE	11	17.2	
35 S	7 E	WM	30	SE SW	38	0.2	
35 S	7 E	WM	30	SW SE	39	18.4	
35 S	7 E	WM	30	SE SE	40	18.5	
35 S	7 E	WM	31	NE NE	1	14.2	
35 S	7 E	WM	31	NE NE	10	20.0	
35 S	7 E	WM	31	NW NE	2	20.0	
35 S	7 E	WM	31	NE NW	3	2.7	
35 S	7 E	WM	32	NW NE	2	17.5	
35 S	7 E	WM	32	NW NE	7	20.0	
35 S	7 E	WM	32	NE NW	6	14.5	
35 S	7 E	WM	32	NE NW	3	14.2	
35 S	7 E	WM	32	NW NW	4	19.4	

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	7 E	WM	32	NW NW	5	19.4	
35 S	7 E	WM	32	SE NW	14	17.8	
35 S	7 E	WM	32	SE NW	11	17.2	
35 S	7 E	WM	32	NW SW	21	20.0	
35 S	7 E	WM	32	NW SW	20	20.0	
35 S	7 E	WM	32	SW SW	29	20.0	
35 S	7 E	WM	32	SW SW	28	10.0	
35 S	7 E	WM	32	NE SE	17	20.0	
35 S	7 E	WM	32	NE SE	24	20.0	
35 S	7 E	WM	32	NW SE	23	19.0	
35 S	7 E	WM	32	NW SE	18	15.65	
35 S	7 E	WM	32	SW SE	31	20.0	
35 S	7 E	WM	32	SW SE	26	19.0	
35 S	7 E	WM	32	SE SE	32	19.0	
35 S	7 E	WM	32	SE SE	25	17.0	
35 S	7 E	WM	33	NE NE	8	5.3	
35 S	7 E	WM	33	NE NE	1	4.5	
35 S	7 E	WM	33	NW NE	2	11.2	
35 S	7 E	WM	33	NW NE	7	20.0	
35 S	7 E	WM	33	SW NE	10	20.0	
35 S	7 E	WM	33	SE NE	9	4.2	
35 S	7 E	WM	33	NE NW	3	18.8	
35 S	7 E	WM	33	NE NW	6	20.0	
35 S	7 E	WM	33	NW NW	5	17.6	
35 S	7 E	WM	33	NW NW	4	17.9	
35 S	7 E	WM	33	SW NW	13	18.4	POD 12
35 S	7 E	WM	33	SW NW	12	20.0	
35 S	7 E	WM	33	SE NW	11	20.0	
35 S	7 E	WM	33	SE NW	14	20.0	
35 S	7 E	WM	33	NE SW	19	19.0	
35 S	7 E	WM	33	NW SW	21	20.0	
35 S	7 E	WM	33	NW SW	20	18.9	
35 S	7 E	WM	33	SW SW	29	9.0	
35 S	7 E	WM	33	SW SW	28	10.0	
35 S	7 E	WM	33	SE SW	30	20.0	
35 S	7 E	WM	33	SE SW	27	20.0	
35 S	7 E	WM	33	NE SE	17	8.3	
35 S	7 E	WM	33	NE SE	24	8.0	
35 S	7 E	WM	33	NE SE	22	19.0	
35 S	7 E	WM	33	NW SE	23	19.5	
35 S	7 E	WM	33	NW SE	18	19.5	
35 S	7 E	WM	33	SW SE	31	20.0	
35 S	7 E	WM	33	SW SE	15	20.0	
35 S	7 E	WM	33	SW SE	26	20.0	
35 S	7 E	WM	33	SE SE	16	5.2	
36 S	7 E	WM	3	SW NW	12	3.6	
36 S	7 E	WM	3	SW NW	13	5.6	
36 S	7 E	WM	3	NW SW	21	10.5	
36 S	7 E	WM	3	NW SW	20	9.0	
36 S	7 E	WM	3	SW SW	28	12.5	
36 S	7 E	WM	3	SW SW	29	14.5	

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	7 E	WM	4	NE NE	8	20.0	
36 S	7 E	WM	4	NE NE	1	15.9	
36 S	7 E	WM	4	NW NE	7	20.0	
36 S	7 E	WM	4	NW NE	2	15.0	
36 S	7 E	WM	4	SW NE	10	17.2	
36 S	7 E	WM	4	SW NE	15	16.9	
36 S	7 E	WM	4	SE NE	9	20.0	
36 S	7 E	WM	4	SE NE	16	17.0	
36 S	7 E	WM	4	NE NW	6	20.0	
36 S	7 E	WM	4	NE NW	3	20.0	
36 S	7 E	WM	4	NW NW	4	20.0	
36 S	7 E	WM	4	NW NW	5	20.0	
36 S	7 E	WM	4	SW NW	12	20.0	
36 S	7 E	WM	4	SW NW	13	16.2	
36 S	7 E	WM	4	SE NW	11	20.0	
36 S	7 E	WM	4	SE NW	14	17.1	
36 S	7 E	WM	4	NE SW	19	20.0	
36 S	7 E	WM	4	NE SW	22	16.1	
36 S	7 E	WM	4	NW SW	21	12.3	
36 S	7 E	WM	4	SW SW	29	10.9	
36 S	7 E	WM	4	SW SW	28	11.3	
36 S	7 E	WM	4	SE SW	27	17.3	
36 S	7 E	WM	4	SE SW	30	18.2	
36 S	7 E	WM	4	NW SE	18	20.0	
36 S	7 E	WM	4	NW SE	23	20.0	
36 S	7 E	WM	4	SW SE	31	18.0	POD 12
36 S	7 E	WM	4	SW SE	26	20.0	
36 S	7 E	WM	4	SE SE	25	20.0	
36 S	7 E	WM	4	SE SE	32	19.7	
36 S	7 E	WM	5	NE NE	1	17.5	
36 S	7 E	WM	5	NE NE	8	18.8	
36 S	7 E	WM	5	NW NE	2	19.5	
36 S	7 E	WM	5	NW NE	7	20.0	
36 S	7 E	WM	5	SW NE	10	18.0	
36 S	7 E	WM	5	SW NE	15	17.0	
36 S	7 E	WM	5	SE NE	9	17.0	
36 S	7 E	WM	5	SE NE	16	17.0	
36 S	7 E	WM	5	NE NW	6	19.7	
36 S	7 E	WM	5	NE NW	3	17.9	
36 S	7 E	WM	5	NW NW	4	19.2	
36 S	7 E	WM	5	NW NW	5	15.6	
36 S	7 E	WM	5	SW NW	13	2.7	
36 S	7 E	WM	5	SW NW	12	9.0	
36 S	7 E	WM	5	SE NW	11	20.0	
36 S	7 E	WM	5	SE NW	14	19.9	
36 S	7 E	WM	5	NE SW	22	7.4	
36 S	7 E	WM	5	NE SW	19	16.0	
36 S	7 E	WM	5	SW SE	31	19.7	
36 S	7 E	WM	5	SW SE	26	19.7	
36 S	7 E	WM	5	SE SE	32	19.0	
36 S	7 E	WM	5	SE SE	25	19.0	

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	7 E	WM	8	NE NE		40.0	
36 S	7 E	WM	8	NW NE		35.9	
36 S	7 E	WM	9	NE NE	8	13.0	
36 S	7 E	WM	9	NE NE	1	17.2	
36 S	7 E	WM	9	NW NE	7	20.0	
36 S	7 E	WM	9	NW NE	2	20.0	
36 S	7 E	WM	9	SW NE	15	20.0	
36 S	7 E	WM	9	SW NE	10	10.0	
36 S	7 E	WM	9	SE NE	16	20.0	
36 S	7 E	WM	9	SE NE	9	20.0	
36 S	7 E	WM	9	NE NW	3	18.8	
36 S	7 E	WM	9	NE NW	6	19.0	
36 S	7 E	WM	9	NW NW	4	14.5	
36 S	7 E	WM	9	NW NW	5	18.5	
36 S	7 E	WM	9	SW NW	12	20.0	
36 S	7 E	WM	9	SW NW	13	20.0	
36 S	7 E	WM	9	SE NW	14	19.5	
36 S	7 E	WM	9	SE NW	11	13.5	
36 S	7 E	WM	9	NE SW	19	20.0	
36 S	7 E	WM	9	NE SW	22	20.0	
36 S	7 E	WM	9	SE SW	30	10.37	
36 S	7 E	WM	9	SE SW	27	8.6	
36 S	7 E	WM	9	NE SE	17	20.0	
36 S	7 E	WM	9	NE SE	24	20.0	
36 S	7 E	WM	9	NW SE	23	13.2	
36 S	7 E	WM	9	NW SE	18	19.4	POD 12
36 S	7 E	WM	9	SW SE	31	16.4	
36 S	7 E	WM	9	SW SE	26	5.0	
36 S	7 E	WM	9	SE SE	32	20.0	
36 S	7 E	WM	9	SE SE	25	20.0	
36 S	7 E	WM	10	NW NW	5	13.5	
36 S	7 E	WM	10	NW NW	4	16.5	
36 S	7 E	WM	10	SW NW	13	17.6	
36 S	7 E	WM	10	SW NW	12	19.0	
36 S	7 E	WM	10	SE NW	14	2.7	
36 S	7 E	WM	10	NE SW	19	4.2	
36 S	7 E	WM	10	NE SW	22	6.2	
36 S	7 E	WM	10	NW SW	21	19.4	
36 S	7 E	WM	10	NW SW	20	19.4	
36 S	7 E	WM	10	SW SW	28	19.5	
36 S	7 E	WM	10	SW SW	29	19.4	
36 S	7 E	WM	10	SE SW	27	7.3	
36 S	7 E	WM	10	SE SW	30	9.3	
36 S	7 E	WM	15	NE NW	6	12.1	
36 S	7 E	WM	15	NE NW	3	10.4	
36 S	7 E	WM	15	NW NW	5	20.0	
36 S	7 E	WM	15	NW NW	4	20.0	
36 S	7 E	WM	15	SW NW	12	14.0	
36 S	7 E	WM	15	SW NW	13	16.9	
36 S	7 E	WM	15	SE NW	11	13.7	
36 S	7 E	WM	15	SE NW	14	10.8	

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
36 S	7 E	WM	16	NE NE	1	19.5	POD 12
36 S	7 E	WM	16	NE NE	8	8.0	
36 S	7 E	WM	16	SW NE	15	15.0	
36 S	7 E	WM	16	SW NE	10	15.3	
36 S	7 E	WM	16	SE NE	9	7.0	
36 S	7 E	WM	16	SE NE	16	15.0	
36 S	7 E	WM	16	NE NW	6	8.0	
36 S	7 E	WM	16	NE NW	3	10.0	
36 S	7 E	WM	16	SE NW	14	15.5	
36 S	7 E	WM	16	SE NW	11	10.0	
36 S	7 E	WM	16	NE SW	22	11.6	
36 S	7 E	WM	16	NE SW	19	18.0	
36 S	7 E	WM	16	NW SW	20	5.0	
36 S	7 E	WM	16	NW SW	21	5.0	
36 S	7 E	WM	16	SE SW	27	2.0	
36 S	7 E	WM	16	NE SE	24	5.0	
36 S	7 E	WM	16	NE SE	17	20.0	
36 S	7 E	WM	16	NW SE	18	19.0	
36 S	7 E	WM	16	NW SE	23	10.0	

FURTHER LIMITATIONS:

THE COMBINED QUANTITY OF WATER DIVERTED AT EACH OF THE ELEVEN RELOCATED AND ADDITIONAL POINTS OF DIVERSION, BEING PODS 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, AND 12, 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 RAYMOND K. POTEET	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 85

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, RAYMOND K. POTEET (Claimant) timely submitted a Statement and Proof of Claim (Claim 85) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 85 was submitted for a total of 0.20 cubic feet per second (cfs) of water from the Williamson River, tributary to Upper Klamath Lake, for irrigation of 7.5 acres with an season of use "April 1 to November 1." The claimed priority date is October 14, 1864. The evidence in the record supports the season of use claimed.

3. Item 13 of the Statement and Proof of Claim incorporates a "Claim of Title" attachment which includes a signed statement, stating in pertinent part, "All our property was patented to Harry Wilson, a member of the Klamath Tribe. This is evident in the document dated March 3, 1948. . . . The land was originally used for farming. They irrigated the land out of the river." (Claim # 85, Page 15).

4. RAYMOND POTEET signed the Statement and Proof of Claim for Claim 85 attesting that the information contained in the claim is true.

5. In 1991, a field inspection report was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 85, with the exception that the map shows only 4.7 acres of irrigation (Claim # 85, Page 46).

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 with a longer season of use than claimed.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 85.

8. Based on the Claimant's map submitted on January 19,1999 (Claim # 85, Page 65), ORWD finds a total of 4.7 irrigated acres rather than the 7.5 acres stated in the Statement and Proof of Claim (Claim 85).

9. Based on the sworn statements in Claim 85, along with the field inspection report, the following findings are made:

   a. The claimed water use is on former Klamath Indian Reservation Land.

   b. The claimed water use is on land that was transferred from Indian ownership.

   c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

B. DETERMINATION

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

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 85 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 85

CLAIM MAP REFERENCE: CLAIM # 85, PAGE 65

CLAIMANT: RAYMOND K POTEET
200 WILLIAMSON RIVER DR
CHILOQUIN OR 97624

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

PURPOSE or USE: IRRIGATION OF 4.7 ACRES

RATE OF USE:

0.12 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 1 - NOVEMBER 1

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	21	SW NE	21	Portable Pumps
35 S	7 E	WM	21	SE NW	19	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	21	SW NE	21	0.50
35 S	7 E	WM	21	SW NE	14	1.20
35 S	7 E	WM	21	SE NW	19	1.10
35 S	7 E	WM	21	SE NW	15	1.90

[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 JAMES P. AND BERYL REIS	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 86

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 29, 1990, JAMES P. AND BERYL REIS (Claimants) timely submitted a Statement and Proof of Claim (Claim 86) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 86 was submitted for a total 20 gallons per minute of water from the Williamson River, a tributary of Klamath Lake, for irrigation of 0.3 acres with a season of use "May – October." The claimed priority date is 1864.

3. Item 13 of the Statement and Proof of Claim incorporates "Attachment B" which is a deed showing transfer of ownership from Wade Crawford and Ida M. Crawford to James P. Reis and Beryl Ries on July 20, 1966 (*See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M-70, PAGE 5441 in Claim # 86, Page 07). Wade Crawford and Ida Crawford (Miller) are both listed on the NOVEMBER 21, 1957 FEDERAL REGISTER FOR MEMBERS OF KLAMATH TRIBE OF INDIANS, Page 9307.

4. JAMES P. AND BERYL REIS signed the Statement and Proof of Claim for Claim 86 attesting that the information contained in the claim is true.

5. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 86 (Claim # 86, WIP, Page 00010).

6. On June 1, 1999, the Claimant supplemented information to Claim 86 by providing a statement signed by Coralie Crawford Nelson, daughter of Wade and Ida M. Crawford,

stating in pertinent part: "Henry Wilson was the original allottee. The land was purchased by Wade Crawford about 1946. Wilson irrigated with gasoline pumps. Wade Crawford irrigated with gasoline pumps until he put in the waterwheel. The waterwheel irrigated 650 gallons per minute." (Claim # 86, Page 42).

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

8. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 86.

9. Based on the sworn statements in Claim 86, along with the field inspection report, the following findings are made:

   a. The claimed water use is on former Klamath Indian Reservation Land.

   b. The claimed water use is on land that was transferred from Indian ownership.

   c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

B. DETERMINATION

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

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 86 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 86

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 35 S, R 7 E

CLAIMANTS: JAMES P. AND BERYL REIS
5500 MILLER AVE.
KLAMATH FALLS OR 97603

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

PURPOSE or USE: IRRIGATION OF 0.3 ACRES.

RATE OF USE:

.01 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 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	21	SE NW	19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	21	SE NW	15	0.30
35 S	7 E	WM	21	SE NW	19	

[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 DEAN AND GERALDINE SCHNECK	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 87

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, ROBERT H. AND ANGELIQUE G. SHACKELFORD (Claimant) timely submitted a Statement and Proof of Claim (Claim 87) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 87 was submitted for a total of 0.5 cfs of water from Agency Lake, tributary to Upper Klamath Lake, for irrigation of 1.0 acre. The claimed period of use is "start in May – end in Oct." The claimed priority date is "1864."

3. ROBERT H. SHACKELFORD AND ANGELIQUE G. SHACKELFORD signed Claim 87 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 87 was ultimately transferred to DEAN R. SCHNECK AND GERALDINE D. SCHNECK (Claimants) (36588 MODOC POINT ROAD, CHILOQUIN, OR 97624) on March 24, 1999. *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M99, PAGES 11034, Mar. 24, 1999 (Claim # 87, Page 43).

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

6. On May 9, 2000, the Claimants untimely filed Contest 5654 to the Preliminary Evaluation of Claim 87; it was filed one day past the May 8, 2000 deadline.

7. On June 19, 2000, the Claimants untimely submitted additional information to support Claim 87 (Claim # 87, Pages 31 through 37); it was received after the period of Open Inspection (from Oct. 4, 1999 to March 31, 2000).

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 262.

9. On January 6, 2003, the Adjudicator withdrew Case 262 from the Office of Administrative Hearings because without a timely contest, there was no valid request for a hearing.

B. DETERMINATION

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

2. The June 19, 2000 additional information referenced in Finding 7, above, is not considered in this determination.

3. Based on the file and record herein, IT IS ORDERED that Claim 87 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 DAVID H. PETERSEN AND TERESA A. RENNICK	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 88

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 27, 1990, THEODORE E. SIEMENS timely submitted a Statement and Proof of Claim (Claim 88) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 88 was submitted for a total 35 gallons per minute of water from the Agency Lake, tributary to Upper Klamath Lake, for irrigation 0.4 acres with a season of use "April through October. The claimed priority date is October 14, 1864.

3. Item 4 of the Statement and Proof of Claim states the date of initiation of the water right as "October 14, 1867" with the basis of the right being "John C. Siemens (Father, deceased) Tribal Member No 1795." Claim # 88, Page 01).

4. Item 12 of the Statement and Proof of Claim incorporates a deed showing transfer of ownership from John C. Siemens to Theodore E. Siemens and Geraldine A. Siemens on August 26, 1976. *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M 89, PAGE 13990, (Claim # 88, Page 08).

5. THEODORE E. SIEMENS signed the Statement and Proof of Claim for Claim 88 attesting that the information contained in the claim is true.

6. The property appurtenant to Claim 88 was subsequently acquired by DAVID H. PETERSEN AND TERESA A. RENNICK (Claimants) (*See* DEED OF TRUST (Mar. 14, 1996), Claim # 88, Page 019).

7. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 88 (Claim # 88, WIP, Page 00010).

8. The 1986 OWRD field inspection report includes the following statement based on a March 13, 1986 letter from Theodore E. Siemens: ". . . this property was acquired and water use commenced between April 1940 and June 1951." (Claim # 88, WIP, Page 00010; *see* Claim # 88, WIP, Page 00012).

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

10. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 88.

11. Based on the sworn statements in Claim 88, along with the field inspection report, the following findings are made:

    a. The claimed water use is on former Klamath Indian Reservation Land.

    b. The claimed water use is on land that was transferred from Indian ownership.

    c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

B. DETERMINATION

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

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 88 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 88

CLAIM MAP REFERENCE: CLAIM # 88, PAGE 07

CLAIMANT: DAVID H. PETERSEN
TERESA A. RENNICK
36670 MODOC POINT RD
CHILOQUIN OR 97624

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

PURPOSE or USE: IRRIGATION OF 0.4 ACRES.

RATE OF USE:

0.01 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 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	7	NE NW	3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	7	NE NW	3	0.4

[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 ANNA MAE SISSON	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 89

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 26, 1990, ANNA MAE SISSON (Claimant) timely submitted a Statement and Proof of Claim (Claim 89) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 89 was submitted for a total 3 gallons per minute of water from an Unnamed Spring, tributary to Agency Lake, for irrigation of "less than an acre" with a season of use "April through October." The claimed priority date is 1864.

3. ANNA MAE SISSON signed the Statement and Proof of Claim for Claim 89 attesting that the information contained in the claim is true.

4. In 1991, a field inspection report was prepared by a private engineer or surveyor, describing the present use of water on the property substantially as stated in the Claim 89, but for irrigation of 0.54 acres (Claim # 89, Page 07).

5. On May 5, 1999, the Claimant supplemented information to Claim 89 by providing a signed statement, stating in pertinent part: "Enclosed is a copy of the deed to my property [recorded June 25, 1973, COUNTY OF KLAMATH, VOL. M73 OF DEEDS ON PAGE 7996]. . . . This land was purchased from the Robert Summers istate[sic]. Robert Summers . . . was a Klamath tribal member. . . . There is a small spring on the property that I am applying for the water rights on. We purchased this place in 1973 and in 1975 we had it boxed in for yard and garden use. Robert Summers had never developed the spring."
(Claim # 89, Page 024).

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 for irrigation of 0.54 acres and with a longer season of use than claimed.

7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 89.

8. Based on the Claimant's map submitted on June 13, 1991, OWRD finds a total of 0.54 irrigated acres for Claim 89 (Claim # 89, Page 07).

9. Based on the sworn statements in Claim 89, along with the field inspection report, the following findings are made:

   a. The claimed water use is on former Klamath Indian Reservation Land.

   b. The claimed water use is on land that was transferred from Indian ownership.

   c. Beneficial use of water for the claimed purpose was not made prior to transfer from Indian ownership.

   d. Beneficial use of water for the claimed purpose has been made with reasonable diligence following the transfer from Indian ownership.

B. DETERMINATION

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

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 89 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 89

CLAIM MAP REFERENCE: CLAIM # 89, PAGE 33

CLAIMANT: ANNA MAE SISSON
34343 MODOC POINT ROAD
CHILOQUIN OR 97624

SOURCE OF WATER: UNNAMED SPRING, tributary to AGENCY LAKE

PURPOSE or USE: IRRIGATION OF 0.54 ACRES.

RATE OF USE:

0.007 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 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	18	NE SW	19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	18	NE SW	19	0.54

[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 SILVERBOW RANCH, LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 90

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

A. FINDINGS OF FACT

1. On January 3, 1991, KENDALL A. TAIT timely submitted a Statement and Proof of Claim (Claim 90) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 90 was submitted for a total of 600 gallons per day (1.33 cfs) of water from the Williamson River, a tributary of Upper Klamath Lake for irrigation of 15.4 acres. The claimed period of use is April 1 to November 1. The claimed priority date is "1864."

3. KENDALL A. TAIT signed Claim 90 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 90 was ultimately transferred to SILVERBOW RANCH, LLC (Claimant). *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 9537 (April 1, 1997).

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3474: 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

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3474 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

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.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 263.

7. On February 13, 2003, the Claimant, OWRD, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 3474 AND 3476 (Settlement Agreement) thereby resolving the only contest to Claim 90.

8. On February 21, 2003, the Adjudicator withdrew Case 263 from the Office of Administrative Hearings.

9. 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 1 to November 1.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, and 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 9, above); the irrigation season recognized herein is consistent the Claimant's original claim.

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

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

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

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[2] Berlva Pritchard voluntarily withdrew from Contest 3474 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3474 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

5. Based on the file and record herein, IT IS ORDERED that Claim 90 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 90
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 35 S, R 7 E (Page 12, WIP File)

CLAIMANT: SILVERBOW RANCH, LLC
250 NW FRANKLIN AVE SUITE 204
BEND, OR 97701

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

PURPOSE OR USE: IRRIGATION OF 15.4 ACRES.

RATE OF USE:
0.39 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

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

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

PERIOD OF ALLOWED USE: APRIL 1 – NOVEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
35 S	7 E	WM	21	SW NE	14

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	21	NW NE	41	0.5
35 S	7 E	WM	21	SW NE	14	0.5
35 S	7 E	WM	21	NE NW	4	4.5
35 S	7 E	WM	21	NE NW	7	5.8
35 S	7 E	WM	21	SE NW	15	4.1

[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 THE NATURE CONSERVANCY	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 91

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

A. FINDINGS OF FACT

1. On February 1, 1991, TULANA FARMS timely submitted a Statement and Proof of Claim (Claim 91) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 91 was submitted for a total of 100.47 cfs from the Williamson River, a tributary of the Upper Klamath Lake, being 62.47 cfs of water for irrigation of 4351.6 acres, 8.0 cfs for livestock watering of 1500 head, and 30.0 cfs for wildlife. The claimed period of use is "March 15 to November 1" for irrigation, and "year round" for livestock watering and wildlife. The claimed priority date is October 14, 1864.

3. R. L. GARRISON, OWNER OF TULANA FARMS, signed the Statement and Proof of Claim for Claim 91 attesting that the information contained in the claim is true.

4. On July 19, 1996, Claim 91 was subsequently transferred to THE NATURE CONSERVANCY (Claimant) from R. LEONARD AND LINDA B GARRISON. *See* SPECIAL WARRANTY DEED, COUNTY OF KLAMATH, VOL. M96, PAGE 21767 (July 19, 1996).

5. On August 21, 1998, Claim 91 was amended to (1) lengthen the claimed irrigation season from March 15 - November 1 to March 1 through December 31, (2) increase the total cfs claimed from 100.47 cfs to 108.36 cfs, (3) add wetlands as a use for water being claimed, and (4) decrease the originally claimed acreage for irrigation from 4351.6 acres to 4334.3 acres.

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 portion of the claim for irrigation was approved, but for a smaller quantity of water than claimed and a shorter season of use than claimed. Livestock watering was limited to incidental livestock watering only.

7. On May 8, 2000, the Claimant timely filed Contest 2801 to the Preliminary Evaluation of Claim 91.

8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3475: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.[1], Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard[2], Don Vincent[3], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. On May 8, 2000, the United States of America timely filed Contest 3735 to the Claim and/or Preliminary Evaluation of Claim 91.

10. On May 8, 2000, the Klamath Tribes timely filed Contest 4130 to the Claim and/or Preliminary Evaluation of Claim 91.

11. On May 8, 2000, Thomas William Mallams timely filed Contest 4950 to the Claim and/or Preliminary Evaluation of Claim 91.

12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 210.

13. On April 28, 2006, Thomas William Mallams's Contest 4950 was dismissed. *See* ORDER GRANTING THE NATURE CONSERVANCY'S MOTION FOR SUMMARY DETERMINATION AND DISMISSING CONTEST NO. 4950 (April 28, 2006).

14. On September 26, 2006, the Klamath Project Water Users withdrew Contest 3475 by stipulation. *See* STIPULATED WITHDRAWAL OF CONTEST NO. 3475 (Sept. 26, 2006).

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3475 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3475 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3475 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On September 26, 2006, The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS 2801, 3735, AND 4130 (Settlement Agreement), thereby resolving all remaining contests to Claim 91.

16. On September 27, 2006, the Adjudicator withdrew Case 210 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between The Nature Conservancy, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception of the following statement made in Paragraph B.1.c: "The Parties and OWRD understand and agree that irrigation for the purposes hereof includes the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants, including the application of water to crops or plants growing or to be grown in marshlands or wetlands, with or without any commercial harvest or grazing of such crops or plants." Irrigation authorized under this claim is subject to the definition of irrigation use applied by the Ninth Circuit to *Walton* claims: irrigation under a *Walton* right is that which is "essential to agricultural needs." *See United States v. Adair, 723 F.2d 1394, 1415* (9th Cir. 1983).

2. Based on the file and record herein, IT IS ORDERED that Claim 91 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 91
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
WILLIAMSON RIVER DELTA PRESERVE MAP – CLAIM 91 (Oct. 2, 2006)

CLAIMANT: THE NATURE CONSERVANCY
821 SE 14TH ST
PORTLAND OR 97214-2537

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

PURPOSE OR USE: IRRIGATION OF 630.7 ACRES.

RATE OF USE:
15.77 CUBIC FEET PER SECOND (CFS) FROM 'POD C' FOR IRRIGATION, MEASURED AT THE POINT OF DIVERSION.
THE RATE OF USE FOR IRRIGATION MAY NOT EXCEED 1/40 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 15 - October 31

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 C	35 S	7.5 E	WM	36	SE NE	2820 FEET NORTH AND 5340 FEET WEST FROM SE CORNER, SECTION 31, T 35 S, R 7.0 E, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION FROM 'POD C'						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	19	SW SW	28	16.5
35 S	7 E	WM	19	SE SW	29	16.8
35 S	7 E	WM	19	SW SE	30	3.5
35 S	7 E	WM	30	NW NE	3	3.9
35 S	7 E	WM	30	NW NE	8	3.9
35 S	7 E	WM	30	SW NE	13	0.5
35 S	7 E	WM	30	SW NE	18	0.4
35 S	7 E	WM	30	NE NW	7	19.3
35 S	7 E	WM	30	NE NW	4	18.3
35 S	7 E	WM	30	NW NW	6	17.8
35 S	7 E	WM	30	NW NW	5	17.6
35 S	7 E	WM	30	SW NW	16	17.9
35 S	7 E	WM	30	SW NW	15	17.9
35 S	7 E	WM	30	SE NW	17	19.1
35 S	7 E	WM	30	SE NW	14	19.1
35 S	7 E	WM	30	NE SW	27	19.7
35 S	7 E	WM	30	NE SW	24	19.7
35 S	7 E	WM	30	NW SW	26	19.3
35 S	7 E	WM	30	NW SW	25	19.2
35 S	7 E	WM	30	SW SW	36	19.3
35 S	7 E	WM	30	SW SW	35	19.4
35 S	7 E	WM	30	SE SW	37	12.0
35 S	7 E	WM	30	SE SW	34	17.6
35 S	7 E	WM	31	NE NW	4	0.1
35 S	7 E	WM	31	NW NW	5	17.1
35 S	7.5 E	WM	24	SW SE	2	3.8
35 S	7.5 E	WM	24	SE SE	1	12.7
35 S	7.5 E	WM	25	NE NE		36.7
35 S	7.5 E	WM	25	NW NE	10	4.2
35 S	7.5 E	WM	25	NW NE	1	8.5
35 S	7.5 E	WM	25	SW NE		21.6
35 S	7.5 E	WM	25	SE NE		38.0

IRRIGATION FROM 'POD C'						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7.5 E	WM	25	NE SE		39.4
35 S	7.5 E	WM	25	NW SE		23.9
35 S	7.5 E	WM	25	SW SE		24.3
35 S	7.5 E	WM	25	SE SE		38.9
35 S	7.5 E	WM	36	NE NE		15.1
35 S	7.5 E	WM	36	NW NE	8	0.1
35 S	7.5 E	WM	36	NW NE	3	7.6

[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 DALE IVAN WALKER	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 92

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 25, 1990, Dale Ivan Walker (Claimant) (PO BOX 247, CHILOQUIN, OR 97624) timely submitted a Statement and Proof of Claim (Claim 92) to Oregon Water Resources Department (OWRD) for a total of 1.65 cubic feet per second from an unnamed stream, the Williamson River, or a spring for irrigation of 70.5 acres, and 0.334 cubic feet per second from an unnamed stream or the Williamson River for 30 head of livestock watering. The claimed priority date is October 14, 1864.

2. Claimant withdrew Claim 92 by letter dated October 30, 1993. That letter states in pertinent part: "This letter will serve as my request that my regular claim be withdrawn. . . ."

3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation), stating the claim was withdrawn and was of no force or effect.

4. No contests were filed to Claim 92 or to the Preliminary Evaluation of Claim 92.

B. DETERMINATION

Based upon the file and record herein, including the October 30, 1993 letter withdrawing Claim 92, IT IS ORDERED that Claim 92 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 SILVERBOW RANCH, LLC	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 93

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

A. FINDINGS OF FACT

1. On January 3, 1991, RALEIGH AND DIANE L. WIRTH, TRUSTEES OF THE WIRTH FAMILY TRUST timely submitted a Statement and Proof of Claim (Claim 93) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 93 was submitted for a total of 0.892 cfs of water from the Williamson River, a tributary of Upper Klamath Lake for irrigation of 13.6 acres. The claimed period of use is April 15 to October 15. The claimed priority date is "1864."

3. RALEIGH WIRTH and DIANE L. WIRTH signed Claim 93 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 93 was ultimately transferred to SILVERBOW RANCH, LLC (Claimant). *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M97, PAGE 9537 (April 1, 1997) (Claim # 93, Page 30).

5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3476: 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

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3476 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

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.

6. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 263.

7. On February 13, 2003, the Claimant, OWRD, and Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 3474 AND 3476 (Settlement Agreement) thereby resolving the only contest to Claim 93.

8. On February 21, 2003, the Adjudicator withdrew Case 263 from the Office of Administrative Hearings.

9. 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 to October 15.

10. OWRD finds that the place of use locations referenced in the Settlement Agreement are within certain Government Lots as listed below:

    a. 4.0 acres within the NE¼ NW¼ is within Government Lot 7

    b. 9.6 acres within the SE¼ NW¼ is within Government Lot 15

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, and Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with two exceptions:

    a. The irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 9, above; the irrigation season recognized herein is consistent the Claimant's original claim.

    b. Government Lots are assigned as described in Finding 10, above.

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

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

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[2] Berlva Pritchard voluntarily withdrew from Contest 3476 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3476 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 93
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 35 S, R 7 E (CLAIM # 93, PAGE 28);
CLAIM # 93 PAGE 67

CLAIMANT: SILVERBOW RANCH, LLC
250 NW FRANKLIN AVE SUITE 204
BEND, OR 97701

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

PURPOSE OR USE: IRRIGATION OF 13.6 ACRES.

RATE OF USE:
0.34 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

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

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

PERIOD OF ALLOWED USE: APRIL 15 TO OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	21	SE NW	19	916 FEET SOUTH AND 12 FEET EAST FROM NW CORNER, SENW, SECTION 21

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	21	NE NW	7	4.0
35 S	7 E	WM	21	SE NW	15	9.6

[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 DALE MATHER AND SUZI MATHER	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 94

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

A. FINDINGS OF FACT

1. On February 1, 1991, BRUCE AND PATRICIA BOYD timely submitted a Statement and Proof of Claim (Claim 94) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 94 was submitted for a total of 0.2 cubic feet per second (cfs) of water from the Sprague River, a tributary of the Williamson River, for livestock watering of 10 head and for irrigation of 14.0 acres with a season of use "April 1st to September 30." The claim listed the date of initiation of the water right as "November 17, 1938" with a basis of the right as "Federal Reservation."

3. Item 13 of the Statement and Proof of Claim incorporates "Exhibit B," which contains, among other documents, a copy of a patent issued by the Bureau of Indian Affairs to Evaline Cheraldo for Allotment 1547 which is located in the S ½ NW ¼, Section 11, Township 35 South, Range 9 East, W.M. (Claim # 94, Page 008).

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

5. PATRICIA A. BOYD signed the Statement and Proof of Claim for Claim 94 attesting that the information contained in the claim is true.

6. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 94 (Claim # 94, WIP, Page 00013).

The report also includes the statement, "She [Sandy Jackson, conservator for the heirs of the estate of Evaline Lang and Rudolf Cheraldo] said both Cheraldos were Klamath Tribal members and had lived on the property since it was allotted to them in the 1930's. . . . She [also] said Rudolf Cheraldo irrigated and farmed the land, including growing oats, since the 1930's."

7. A November 3, 1998 letter, signed by the original claimant Patricia Boyd, verified the claimed use of water is (only) for incidental livestock use by stating: "Irrigation was primary, no diversion to livestock occurred, they only grazed the land after harvest . . ." (Claim # 94, Page 00029).

8. The property appurtenant to Claim 94 was subsequently acquired by DALE AND SUZI MATHER (Claimants) (Claim # 94, Page 00029).

9. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved with a priority date of October 14, 1864, and with a longer season of use than claimed.

10. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 94.

11. Based on the totality of the information submitted with the Statement and Proof of Claim (Claim 94), OWRD finds the intent of the original applicant was to have requested a priority date of October 14, 1864. This is confirmed in a November 3, 1998 letter to OWRD from the original claimant wherein the statement was made that "the basis of the claim is the Reservation and treaty date, so 10-14-1864 would be correct." (Claim # 94, Page 00029).

12. Based on the sworn statements in Claim 94, along with the field inspection report, the following findings are made:

    a. The claimed water use is on former Klamath Indian Reservation Land.

    b. The claimed water use is on land that was transferred from Indian ownership.

    c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.

B. DETERMINATION

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

2. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.

3. Based on the file and record herein, IT IS ORDERED that Claim 94 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 94

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 35 S, R 9 E

CLAIMANT: DALE MATHER AND SUZI MATHER
13974 SPRAGUE RIVER RD
CHILOQUIN OR 97624

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

PURPOSE or USE:
IRRIGATION OF 14.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 10 HEAD.

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

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

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

PERIOD OF ALLOWED USE: APRIL 1 - SEPTEMBER 30

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
35 S	9 E	WM	11	SW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Irrigation with Incidental Livestock Watering					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	9 E	WM	11	SW NW	14.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of CLIFFORD C. RABE AND MARY A. RABE	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 95

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 95 (Claimants: CLIFFORD C. RABE AND MARY A. RABE) and its associated contests (2764, 3477, 3746, and 4131) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 211.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 95 on February 1, 2007.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by Clifford C. Rabe and Mary A. Rabe.

4. The exceptions to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 95. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8, and A.9, below.

5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as described below:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.6, below.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, below.

e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
f. The "Opinion" is adopted with modifications, as set forth in Section A.9, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 95. Consistent with Sections A.7, A.8, and A.9, below, the outcome of the Order has been modified to recognize a right for irrigation on 220.3 acres and livestock watering.

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

> The AFFIDAVIT OF VINCE BODNER, JR. dated April 9, 2004, is added to the list of items that were admitted into the record.

Reason for Modification: To correct an omission from the list of Evidentiary Rulings.

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

Summary of Reasons for Modification of Findings of Fact: (1) To correct scrivener's errors and provide clarity of evidence in the record. (2) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, an issue raised in exceptions by the Claimants. (3) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership, an issue raised in exceptions by the Claimants (4) To provide evidence from the record to substantiate beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (5) To provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (6) To provide evidence from the record to substantiate livestock watering after transfer from Indian ownership, an issue raised in exceptions by the Claimants. (7) In each instance where this Partial Order of Determination modifies historical findings of fact made by the ALJ, the Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record.

Modified Proposed Order Findings of Fact

1. Claim 95 involves property that was originally part of the Klamath Indian Reservation, and has subsequently been transferred to non-Indian ownership. The claim is comprised of six allotments in the Klamath Reservation (Allotment numbers 400, 409, 637, 638, 1091, and 1252), that have been consolidated into the ownership of Clifford

and Mary Rabe (Claimants). The total acreage is 353.6 acres.[1] Claimants acquired the property in 1976. (Rabe Direct at 2.) The claim is for 7.0 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation and livestock watering of 225 head of cattle. The claimed season of use is April 15 to October 15 for irrigation, and year around for livestock watering. The claimed priority date is October 14, 1864. (OWRD Ex. 1 at 1-5.) The claimant submitted a 1995 pump test demonstrating the pumping capacity of his system to be 2613.0 gallons per minute, or 5.82 cfs. (Claimant's Ex. 55.)

Reason for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed.

2. The claimed acreage for Claim 95 extends into each of the six allotments. The Sprague River flows through the property and the acreage in the claim is located on the west and south sides of the Sprague River. Near the property, Trout Creek joins the Sprague River, approximately one-half mile west of the property, and downstream from the claimed point of diversion on the Sprague River. (Book Affidavit (Direct) at 13, Ex. 3.) Claimants ~~identified~~ claimed ~~two~~ a single point of diversion~~s~~ on ~~serving the property from Trout Creek and~~ the Sprague River, located within the NW¼ NE¼, Section 36, Township 35 South, Range 9 East, W.M. (OWRD Ex. 1 at ~~13~~ 3, 68.) The claimed lands are within the flood plain of the Sprague River, are relatively flat, and therefore flood readily making them subject to natural overflow in the spring. This natural overflow has provided water for wild and cultivated grasses which have been utilized for hay and pasture (grazing). (Rabe Direct at 2, 3, Ex. C-1; Book Direct, Ex. 13; Rabe Rebuttal at 2, 3, Ex. H-1, H-2; Bodner Affidavit at 2, 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.)

Reasons for Modification: The ALJ's finding with respect to the number of points of diversion is not supported by a preponderance of evidence on the record; the Sprague River is the only source of water that was claimed in Claim 95. In addition, the ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

[1] Claimants claimed the total acreage was 374.8 acres, but OWRD determined the correct acreage was 353.6 acres. (OWRD Ex. 1 at 24, 29, 113, 118, 69.) There is no evidence to dispute OWRD's determination.

3. Vincent Bodner, Jr.,[2] a Klamath Indian, acquired allotment 637 in the late 1940s. He acquired allotments 638 and 1091 in the mid 1950s. He inherited allotments 400, 409, and 1252 in 1962. (Bodner Affidavit at 2-4.) Mr. Bodner did not use an irrigation system to artificially irrigate any of the allotments. (*Id.* at 5, 6.) However, he did make beneficial use of water by the method of natural overflow from the Sprague River on five of the six allotments (all except 1091) to grow and harvest hay crops, and/or by utilizing pasture for grazing cattle. (*Id.* at 2, 5, 6.) Although Mr. Bodner did not continue the artificial irrigation of the grass, as done by the prior landowner land on allotment 638, he continued to pasture and hay the grass that grew after the spring floods. He planted allotments 1252, 409, and 637 into rye grass which were "flooded by the [Sprague] River in the spring and the flood provided water for the hay and pasture. We hayed it and let the cows in onto the stubble in the fall." With regards to allotment 400 Bodner stated that "we hayed and grazed [the wild hay] along the river while my family and I owned these lands." (*Id.* at 2, 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.)

Reason for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

4. In 1967, the California Land Co. acquired all of the allotments from Vincent Bodner, Jr., Shirley Bodner, Alfareta Skeen Bodner, and Vincent Bodner, Sr., all Klamath Indians. The California Land Co. was a group of non-Indians. (OWRD Ex. 1 at 11; Bodner Affidavit at 4.) The property was then conveyed to David Griffith in 1967 and subsequently acquired by a partnership in 1971 that included Cecil Elliott. The land was conveyed from Elliott to the Claimants in 1976. (OWRD Ex. 1 at 11.) There is no evidence that any of the persons in the chain of title after the California Land Co. are Klamath Indians. (Book Affidavit (Direct) at 12.)

[2] The Affidavit filed in this case shows the name spelled Bodnar. However, most of the other documents in the record spell the name Bodner. ~~I have adopted~~ The spelling used by the majority of documents, Bodner, is adopted. ~~I note that~~ There is no contention that the two spellings refer to two different people.

5. ~~There is no evidence~~ It is more likely than not that water was ~~diverted~~ beneficially used for livestock use because allotments 400, 1252, 409, 637, and 638 were grazed under the ownership of Vincent Bodner, Jr. (Bodner Affidavit at 2, 5, 6.)

Reason for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

Allotment 400 (13.6 acres claimed)

6. This property is located in the N½ NE¼, Section 36, Township 35 S, Range 9 E, W.M. The property was allotted to Rosa Dick, a Klamath Indian, by trust patent in 1900. (Book Direct, Ex. 14 at 4.) In 1918, the allotment was conveyed to John A. Smith, as heir to Rosa Dick, by fee patent from the United States. (Claimants' Ex. 25.) John Smith was not a member of the Klamath Tribe or any other tribe.[3] (Book Direct, Ex. 14 at 2.) John Smith was the first non-Indian owner of Allotment 400. The property was conveyed to Nettie Smith, a Klamath Indian, in 1924. (Claimants' Ex. 33.) The property remained in Indian ownership until sold by Alfareta and Vincent Bodner to the California Land Co. in 1967. (*Id.*, Ex. 50.)

7. Part of Allotment 400 was irrigated from a diversion on Trout Creek prior to 1923. (Book Direct, Ex. 10 at 27.) This irrigation was discontinued by at least the 1930's and was not resumed through 1967. (Bodner Affidavit at 3-4.) The Claimants did not claim Trout Creek as a source of water for Allotment 400. Trout Creek is a tributary of the Sprague River, but Trout Creek enters the Sprague River downstream from the point of diversion on the Sprague River claimed for Allotment 400. Although there was no state water right for Allotment 400 prior to 1976 (Book Affidavit (Direct) at 16), beneficial use of water from the Sprague River by the method of natural overflow began by 1962. (Bodner Affidavit at 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.) ~~There was no irrigation on the property from 1967 to 1976 when Claimants purchased the property. (Bodner Affidavit at 3.)~~ Claimants started to build the current artificial irrigation system on Allotment 400 in 1976. (Rabe Direct at 2.)

[3] John Smith self-reported to being one quarter Pitt River Indian and three quarters white. He was not enrolled in any Indian Tribe. He was the widow of Rosa Dick and inherited the property from her on her death. ~~I am not persuaded by~~ Claimants' argument that Smith should be treated as an Indian for *Walton* right purposes because he married a Klamath Tribal member is not persuasive. *See* Claimants' Closing Argument at 9-10.

Reason for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

Allotment 1252 (69.4 acres claimed)

8. This property is located in the S½ NE¼, Section 36, Township 35 S, Range 9 East, W.M. The allotment was confirmed to David Skeen, a Klamath Indian, by trust patent granted in 1915 (Claimants' Ex. 24), and by fee patent in March 1918. (*Id.*, Ex. 26.) The property was conveyed from David Skeen to B. S. Grigsby and then back to David Skeen in 1918.[4] (*Id.*, Ex. 27.) B. S. Grigsby was a non-Indian ~~white man~~. (Stipulation.) The property was conveyed by Sheriff's deed to Klamath County in 1930, (*Id.*, Ex. 37 at 5), and then back to David Skeen in 1933. (*Id.*, Ex. 38.) The property was subsequently conveyed to the United States in trust for David Skeen in 1950 and conveyed to David Skeen again in 1959. (OWRD Ex. 1 at 8, 9.) The property was inherited by Vincent Bodner Jr. and Alfareta Skeen Bodner in 1962. (Bodner Affidavit at 3.) The property was subsequently conveyed to the California Land Co. in 1967. (Claimants' Ex. 50.)

Reason for Modification: For consistency of terminology; to clarify a citation.

9. A portion of Allotment 1252 was irrigated by a ditch from Trout Creek prior to 1923. (Bodner Affidavit at 3 and Book Direct, Ex. 10.) However, irrigation was discontinued some time prior to 1950. (Bodner Affidavit at 3.) The ditch from Trout Creek was not used from at least 1950 through 1976. (*Id.* and Book Affidavit (Direct) at 18.) Mr. Bodner did not recall Trout Creek Ditch ever being used to irrigate Allotment 1252. (*Id.*) Beneficial use of water from the Sprague River on Allotment 1252 by the method of natural overflow began by 1962. (Bodner Affidavit at 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.) ~~There was no irrigation of the property from 1967 until Claimants purchased the property in 1976. (Bodner Affidavit at 2-4.)~~ Claimants started to build the current artificial irrigation system on Allotment 1252 in 1976. (Rabe Direct at 8, 9.) The point of diversion for this parcel is located in the NW¼ NE¼ Section 36, Township 35 S, R 9 E, W.M. (OWRD Ex. 1 at 68.) Rate is 1.74

[4] Documentation for the conveyance from David Skeen to B.S. Grigsby, or some other sequence of ownership in 1918, has not been provided. (Book Affidavit at 8.)

cfs[5]. Duty is 208.2 acre-feet per year. The period of use for irrigation is April 15 through October 15, and year-round for livestock watering. The priority date is October 14, 1864.

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record.; to add clarification using evidence on the record; the statement that there was no irrigation on the on the property from 1967 to 1976 was stricken because it is not supported by a preponderance of the evidence on the record.

Allotment 409 (115.0 acres claimed)

10. The property is located in the SE¼, Section 36, Township 35 S, Range 9 E, W.M. The allotment to Bessie Faithful, a Klamath Indian, was confirmed by trust patent dated 1910. (Ex. 23.) David Skeen received a fee patent as heir to Bessie Faithful in 1919. (Ex. 28.) The property was conveyed by Sheriff's deed to Klamath County in 1930, (Ex. 37 at 5), and back to David Skeen by deed in 1933. (Ex. 38.) The property was conveyed from David Skeen to Hans Anderson in January 1945. (Ex. 43.) Hans Anderson was not an Indian. (Book Direct, Ex. 15 at 2.) The property was conveyed to David Skeen again in July 1945. The property was subsequently conveyed to the United States in trust for David Skeen in 1950. (OWRD Ex. 1 at 8.) The property was inherited by Vincent Bodner, Jr. and Alfareta Skeen Bodner in the early 1960s. (Bodner Affidavit at 3.)

11. An early Bureau of Indian Affairs (BIA) report for Allotment 409 did not show the Trout Creek Ditch irrigating this allotment, although the Trout Creek Ditch appears to extend a short distance onto this allotment. (Book Affidavit (Direct) at 13-14.) Mr. Bodnnar knew of a ditch from Trout Creek on the edge of this allotment, but he did not recall it ever being used to irrigate land in Allotment 409. (Bodner Affidavit at 3.) The Claimants did not claim Trout Creek as a source of water for Allotment 409. In the 1930s, David Skeen built a small dam on the Sprague River to obtain water for a ditch that ran onto allotment 409. (Bodner Affidavit at 3, 4.) The dam lasted two years and was not used again after that time. (*Id.* at 4.) A pump installed in the Sprague River in Allotment 638 provided water to Allotment 409 and 1252 but was used for only one year.

[5] All rates and duties allowed are calculated at 1/40th cfs per acre and 3 acre-feet per acre, based on the amount approved in the water use permits issued on these properties. (OWRD Ex. 1 at 17, 24, 93.) Priority date for all allowed rights is October 14, 1864, the date of the treaty creating the Klamath Indian Reservation.

(*Id.* at 3.) The pump and ditch were not used after that. (*Id.*) Although a 1957 appraisal by the General Services Administration noted that there was no developed source of water to the allotment, it was stated that of the 160 acres of this property, sixty eight acres were under cultivation, and thirty five acres were in pasture at that time. (Book Direct, Ex. 20 at 3.) ~~Any development of irrigation of Allotment 409 was temporary and sporadic. (Book Affidavit at 21.)~~ Vincent Bodner did not artificially irrigate Allotment 409 during his period of ownership from the early 1960s to 1967~~.~~ (Bodner Affidavit at 2-4); however, he did make beneficial use of water from the Sprague River by the method of natural overflow. (*Id.* at 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.) ~~There was no irrigation on the property from 1967 to 1976 when Claimants purchased the property. (Bodner Affidavit at 2-4.)~~ Claimants started to build the current irrigation system on this allotment in 1976. (Rabe Direct at 8, 9.) The point of diversion for this parcel is located in the NW¼ NE¼ Section 36, Township 35 S, R 9 E, W.M. (OWRD Ex. 1 at 68.) The rate is 2.87 cfs. The duty is 345.0 acre-feet per year. The period of use for irrigation is April 15 through October 15, and year-round for livestock watering. The priority date is October 14, 1864.

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record; the statement that there was no irrigation on the on the property from 1967 to 1976 was stricken because it is not supported by a preponderance of the evidence on the record.

Allotment 637 (35.9 acres claimed)

12. The property is located in the NW¼, Section 31, Township 35 S, Range 10 E, W.M. The allotment was confirmed to Neffie Weeks, a Klamath Indian, by trust patent dated 1910. (Claimants' Ex. 17.) The property was passed to the heirs of Weeks, Caroline Cowen and Cinda Checaskane, Klamath Indians. (*Id.*, Ex. 18, 19.) The property was conveyed to Vincent Bodner Jr. in 1942. (*Id.*, Ex. 21.) The property was conveyed to California Land Co. in 1967. (*Id.*, Ex. 50.)

Reason for Modification: To provide additional citations to the record.

13. ~~Allotment 637 was not irrigated until the Claimants acquired it and started their development in 1976. (Rabe Direct Testimony at 8-9.)~~ Beginning in the 1940s, Mr.

Bodner made beneficial use of water by the method of natural overflow from the Sprague River. Allotment 637 was planted into rye grass which was "flooded by the [Sprague] River in the spring and the flood provided water for the hay and pasture. We hayed it and let the cows in onto the stubble in the fall." (Bodner Affidavit at 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.) Claimants started to build the current irrigation system on allotment 637 in 1976. (Rabe Direct at 8, 9.) The point of diversion for this parcel is located in the NW¼ NE¼ Section 36, Township 35 S, R 9 E, W.M. (OWRD Ex. 1 at 68.) Rate is 0.90 cfs. Duty is 107.7 acre-feet per year. Period of use for irrigation is April 15 through October 15, and year-round for livestock watering. Priority date is October 14, 1864.

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

Allotment 638 (67.2 acres claimed)

14. The property is located in the SW¼, Section 31, Township 35 S, Range 10 E, W.M. The allotment was allotted to Ella Cowen, a Klamath Indian~~, was confirmed by the allotment ledgers and township allotment maps~~. ~~(OWRD Ex. 1 at 9.)~~ (Rabe Direct at 2; Claimants' Ex. 15.) David Skeen received a fee patent in 1923 from Ella Cowen. (*Id.*) The property was conveyed to Albert Thalhofer in 1927. (*Id.*, Ex. 16.) Mr. Thalhofer was non-Indian ~~white~~. (Stipulation.) The property was subsequently conveyed to Klamath County by Sheriff's deed in 1941. (*Id.*, Ex. 40.) The property was then conveyed to Leroy Gienger in 1942. (*Id.*, Ex. 20.) Mr. Gienger was not an Indian. (Bodner Affidavit at 2.) Mr. Gienger conveyed the property to Vincent Bodner Jr. in 1964. (OWRD Ex. 1 at 9; Claimants' Ex. 2.) The property was conveyed to the California Land Co. in 1967. (*Id.*, Ex. 50.)

Reasons for Modification: To provide corrected and additional citations to the record; to add clarification using evidence on the record; for consistency of terminology.

15. There was no artificial irrigation on the land prior to 1950, when Leroy Gienger started development of irrigation. An application for a water right was filed in 1950 to irrigate lands on both sides of the Sprague River within Allotment 638. Permit 20509 was ~~granted~~ issued in 1952 to Mr. Gienger. (OWRD Ex. 1 at 94.) ~~A water right~~

~~was granted to Mr. Gienger for lands in Allotment 638. (*Id.*) A permit application was filed in 1950 to irrigate lands on both sides of the Sprague River.~~ Mr. Gienger submitted proof of appropriation in 1958 for irrigation of 286.5 acres and was granted a certificate in 1959, of which 126.5 acres were located in Allotment 638. (*Id.* at 93, 97.) ~~Only 67.2 acres were located on Allotment 638. (Book Affidavit at 16.)~~ Mr. Gienger's irrigation development started 23 years after the conveyance to Mr. Thalhofer, the first non-Indian owner. ~~Irrigation was discontinued on this allotment~~ From the time that Mr. Bodner acquired ~~it~~ this allotment in 1964 until ~~the Claimants acquired the property in 1976 (Bodner Affidavit 3.)~~ he sold it in 1967, he continued to pasture and hay the grass that grew after the spring floods, thus making beneficial use of water from the Sprague River by the method of natural overflow. (Bodner Affidavit at 2, 5, 6, Ex. U.S.G.S. Quadrangle Map - Sprague River West.) Claimants started to build ~~on~~ the current irrigation system on this allotment in 1976. (Rabe Direct at 8, 9.)

Reasons for Modification: Changes were made to the description of Permit 20509 for added clarity. In addition, the ALJ's findings that only 67.2 acres of the area covered by the certificate resulting from Permit 20509, and that irrigation was discontinued on this allotment from the time Mr. Bodner acquired it, are not supported by a preponderance of evidence on the record. The ALJ's proposed finding of fact failed to fully set forth the evidence on the record.

Allotment 1091 (52.5 acres claimed)

16. This property is located in the E½, NE¼, Section 1, Township ~~35~~ 36 S, Range 9 E, W.M. The allotment to Julia Hart, a Klamath Indian, was confirmed by a 1913 trust patent. (Claimants' Ex. 1, 5.) Julia Hart died in 1911. The ownership by heirs was described in the 1958 Land Status Report issued for allotment 1091. (*Id.* at 5) The heirs conveyed the property to the Bly Lumber Co. in 1959. (*Id.* at 6 - 9.) Bly Lumber Co. was the first non-Indian owner. (Book Direct, Ex. 12 at 2, ¶5.d.) The property was subsequently conveyed to Leroy Gienger in 1959. (Claimants' Ex. 11.) Vincent Bodner Jr. acquired the property in 1964 and conveyed it to the California Land Co. in 1967. (*Id.* at 50.)

17. Allotment 1091 was not irrigated (either artificially or naturally) from 1940 - 1979. (Book Affidavit (Direct) at 22, and Book Direct, Ex. 6, 1968 photograph.) There

was no way to serve this land historically from ~~Trout Creek or~~ the Sprague River pump. (*Id.* at 22.) There is no evidence in the record confirming any beneficial use of water made, either by the method of natural overflow or by use of an irrigation system on the property until after the Claimants purchased the property in 1976. Claimants developed the ditch serving this allotment several years after they acquired the property in 1976. (OWRD Ex. 1 at 99 - 100.)

Reasons for Modification: To correct a scrivener's error in the township; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

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

1. The period of use ~~is not relevant because a *Walton* right has not been established on any allotment~~ should be April 15 through October 15 for irrigation and year-round for livestock watering, as claimed.

2. The record ~~does not~~ supports the claimed rate, duty, actual uses, the points of diversion, ~~and re-diversion, place of use,~~ seasons of use and~~/or~~ acreage claimed ~~because~~ on allotments where a *Walton* right has ~~not~~ been established. ~~on any allotment.~~

3. Title information ~~does not~~ establishes a *Walton* right on ~~any~~ portions of the claimed places of use.

4. ~~There is insufficient continuous use of water on the Place of Use to establish a *Walton* right for any allotment.~~ On allotments where the Claimants have otherwise established the elements of a *Walton* right, the Contestants have failed to prove lack of continued use of the developed rights.

5. The diversion rate for the place of use ~~is not relevant because a~~ where a *Walton* right has ~~not~~ been established ~~for any allotment~~ should be 1/40 cfs per acre.

6. The diversion rate for livestock watering ~~is not relevant because a~~ where a *Walton* right has ~~not~~ been established ~~for any allotment~~ should be 12 gallons per day per

head for the number of cattle claimed (225 cattle). The season of use for livestock watering should be January 1 through December 31 as claimed.

7. The period of use for irrigation in the preliminary evaluation ~~is not relevant because a *Walton* right has not been established for any allotment~~ exceeded the period of use claimed.

8. Beneficial use of water for irrigation was made on 35.9 acres of allotment 637 by Indian owners prior to transfer out of Indian ownership. Allotments 409 and 1252 went through periods of non-Indian ownership before Klamath Indian owners made beneficial use of water for irrigation on 184.4 acres within these two allotments. These periods of non-Indian ownership were not long enough for the inchoate *Walton* rights to expire for lack of diligent development. ~~The claimed place of use was not under irrigation by the Indian owner before the land was transferred to the first non-Indian owner.~~

9. Beneficial use of water for irrigation on 133.3 acres within allotments 400, 638 and 1091 ~~of the claimed place of use~~ was not ~~developed~~ made with reasonable diligence ~~by the first non-Indian purchaser from an Indian owner~~ following transfer from Indian ownership.

10. Beneficial use of water for livestock watering was made on 35.9 acres of allotment 637 by Indian owners prior to transfer out of Indian ownership. Allotments 409, and 1252 went through periods of non-Indian ownership before Klamath Indian owners made beneficial use of water for livestock watering on 184.4 acres of these allotments. These periods of non-Indian ownership were not long enough for the inchoate *Walton* rights to expire for lack of diligent development. ~~Irrigation of the claimed place of use was not developed with reasonable diligence by the non-Indian owner(s) after the first non-Indian purchaser from an Indian owner.~~

11. Water provided to the claimed place of use by the method of natural overflow ~~means (flooding in the Spring or through sub-irrigation)~~ -- although not through a diversion system created by humans-- ~~does not constitute irrigation under~~ is a valid basis for a *Walton* right.

12. Where the Claimants have otherwise established the elements of a Walton right, the Contestants have failed to demonstrate that the developed *Walton* rights have been abandoned as a result of non-use. ~~If any part of the claimed place of use was ever irrigated by the Indian owner before the land was transferred to the first non-Indian owner or developed with reasonable diligence by the first non-Indian purchaser from an Indian owner, the water claimed for that part of the claimed place of use has not been continuously used by the first non_Indian successor and by all subsequent successors.~~

13. The irrigation season of use ~~is not relevant because a *Walton* right has not been established for any allotment~~ is limited to April 15 through October 15, the season of use claimed.

14. ~~Because none of the claimed place of use is awarded a water right, the water duty for that part of the claimed place is not relevant.~~ The water duty for that part of the claimed place of use that is approved should be 3.0 acre-feet per acre.

~~15. Because none of the claimed place of use is awarded a water right, the diversion rate for that part of the claimed place of use is not relevant.~~

~~16.~~ 15. The Preliminary Evaluation for Claim No. 95 (including Appendix A to the Preliminary Evaluation entitled "Standards for Rates, Duties, and Seasons of Use Within Previously Adjudicated Areas of the Klamath Basin") should not be accorded any weight in this contested case.

Reason for Modifications: The evidence in the record and the application of the appropriate legal bases to the evidence in the record supports conclusions other than those in the Proposed Order.

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

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

The remaining portions of the Opinion section of the ALJ's Proposed Order have been labeled "Application of Walton Elements to the Modified Proposed Order Findings of

Fact." Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

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

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

*****

The record shows that all of the allotments at issue in this case were of the Klamath Indian Reservation and the land was allotted to a member of the Klamath tribe. Each of the allotments was transferred from the original allottee or a direct Indian successor to the original allottee, to a non-Indian successor. Therefore, the first two elements of a *Walton* right, as articulated by Judge Young, have been satisfied by each allotment.

Claimants must also establish that the ~~claimed irrigation was developed~~ beneficial use of water from the Sprague River was made by their Indian predecessors or by ~~the first~~ non-Indian ~~purchaser~~ successors of each allotment with reasonable diligence. ~~prior to the conveyance of the allotment to the next owner~~. ~~To satisfy *Walton* elements, claimants must also show that each allotment was continuously irrigated after the initial development~~. Following case precedent[6] and ~~Oregon statutes~~ Oregon Administrative Rule 690-028-0045,[7] ~~I adopt a five year rule of thumb as~~ the reasonable time period to

[6] *See, Seaward v. Pacific Livestock Co.,* 49 Or 157 (1907) (when several appropriators quit expanding their irrigation in 1899 and did nothing for five years, the Oregon Supreme Court limited their claim to the acreage fed by a diversion that they each had developed by 1899).

[7] ~~ORS 537.230(1) provides for five years for the completion of the works necessary to put water to beneficial use, unless good cause to enlarge the period can be shown. *See* ORS 539.010(5). ORS 540.610(1) creates a rebuttable presumption of forfeiture after five years of non-use of irrigation.~~ OAR 690-028-0045 provides that reasonable diligence in the construction of the system of works necessary to fully accomplish appropriation of the water does

make beneficial use of water ~~for diligent development of the irrigation system and to determine the "continuous use" of the irrigation established by the last Indian owner or by the first~~ by subsequent non-Indian owners is that which does not require unusual or extraordinary effort, absent extraordinary circumstances. ~~In this case, even if a five year standard did not apply, the extended periods of non-use far exceed any amount of time justified on this record. Below, I apply these~~ The four elements of a *Walton* right are applied to the facts of each allotment at issue in this claim. [8]

Allotment 400

The first non-Klamath Indian purchaser of this allotment was John Smith in 1918. The record shows irrigation of the claimed portion of Allotment 400 from Trout Creek occurred prior to 1923. ~~but was discontinued by at least 1940 and not resumed until 1976, when the first state water right was granted. Because the water was not continuously used after development by the first non-Indian successor and by all subsequent successors, this allotment fails to meet standards that establish a *Walton* right.~~ The allotment returned to Indian ownership in 1924.

Irrigation from Trout Creek was discontinued no later than the 1930s. The irrigation from Trout Creek would have been sufficient to have established a *Walton* right for diversion from Trout Creek on the claimed portion of Allotment 400. Beneficial use was made within five years of transfer from Indian ownership. Under the facts in this case, that constitutes reasonably diligent development. However, the Claimants did not claim Trout Creek as a source of water for Allotment 400, instead claiming a point of diversion on the Sprague River. Trout Creek enters the Sprague River downstream from the current point of diversion on the Sprague River. The change from Trout Creek to

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not require unusual or extraordinary effort. Reasonable diligence is that which is usual and ordinary with persons performing similar projects. The water user must demonstrate a genuine intent to complete the appropriation in a timely manner. The question is one of fact, to be determined from the circumstances on case-by-case basis.

[8] ~~Claimants also argued that the standards should be different for allotments that leave Indian ownership and then at some point return to Indian ownership for a period of time before again returning to non-Indian ownership. Claimants argued lands that return to Indian ownership should provide a new chance for that Indian or his grantee to put in an irrigation system and receive a *Walton* right. (Claimants' Closing Argument at 8-9) (Vince Bodner's reacquisition of the property after a seller defaulted allegedly reinstated the reserved water right). This argument is not supported by case law. The *Walton III* court explained that the right flows from the allottee to the first grantee. (752 F2d at 402) ("the immediate grantee of the original allottee must exercise due diligence"). It is the reasonable diligence of the first non-Indian that is at issue to establish a *Walton* right.~~

Sprague River therefore constitutes a change in source, which is not permissible.[9] The failure to claim the Trout Creek as a source of water for Allotment 400 by the January 31, 1991, claim filing deadline means that Claimants are now estopped from doing so. ORS 539.210. Finally, even if the Claimants had properly claimed Trout Creek as a source, any right to divert water from Trout Creek has been abandoned. There is no evidence of use of water from Trout Creek on this allotment after the 1930s. While the right to use of water from Trout Creek could not have been abandoned during the 1930-1967 period of Indian ownership, it was subject to abandonment beginning with the 1967 purchase by the California Land Co. Abandonment may be inferred from non-use if the period of non-use is sufficiently long. A forty-plus year period of nonuse is sufficient to infer abandonment.

With respect to the claim for use from the Sprague River, Allotment 400 was out of Indian ownership between 1918 and 1924, a period of six years. This is long enough, under the facts in this case, for the right to have expired if not diligently developed. When the property was re-conveyed to a Klamath Indian (Nettie Smith) in 1924, she could only have acquired those rights that had not been lost. There is no evidence that beneficial use of water from the Sprague River was made on Allotment 400 by the time Nettie Smith purchased it. The first evidence of use from the Sprague is not until 1962. The Claimants have not established a *Walton* right on the claimed lands in Allotment 400.

Allotment 1252

~~The first non-Indian purchaser of this allotment was B.S. Grigsby, who owned the property for a short time in 1918. David Skeen reacquired it and kept it until 1930 when it was conveyed to Klamath County. There is no evidence Mr. Grigsby developed irrigation. However, the record shows a portion of the allotment was irrigated by a ditch from Trout Creek prior to 1923. Even if Mr. Grigsby developed the irrigation described in 1923, use was discontinued some time prior to 1950. The ditch was not used from 1950 to 1976. This allotment fails to establish a *Walton* right because either there is no evidence that the first non-Indian owner developed irrigation or because the irrigation that was developed was not used continuously~~.

Allotment 1252 went through two periods of non-Indian ownership prior to the beginning of beneficial use of water: a period during 1918 (B.S. Grigsby) and 1930 –

[9] Note that, per OAR 690-030-0085(2)(f), in the context of requesting a change of a claimed point of diversion for an adjudication claim, moving a point of diversion from an *upstream* tributary is not considered an impermissible change of source.

1933 (Klamath County). In *United States v. Anderson*, the Ninth Circuit addressed the effect on *Walton* rights of reacquisition by an Indian tribe after a period of non-Indian ownership. The court held that:

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

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

The first period of non-Indian ownership for this allotment lasted less than a year. The second lasted less than four years. The period for reasonably diligent development of a water right is dependent on a number of circumstances, and may vary in length. Generally, though, within a five year period an inchoate right will not be considered to have expired for failure to diligently develop. The five-year period is the default period for diligent development under Oregon's Water Rights Act. ORS 537.230(1). Given this general rule, and the absence of evidence that a period of non-Indian ownership less than five years in length would have been an unreasonably long period for development, we

conclude that the inchoate *Walton* right had not expired by the time it re-entered Indian ownership in 1933, and therefore remained eligible for development.[10]

Beneficial use of water by the method of natural overflow was subsequently established under Indian ownership, at least by 1962. The water has continued to be put to beneficial use by non-Indian successors. This allotment meets all the standards that establish a *Walton* right.

Allotment 409

~~The first non-Indian purchaser of this allotment was Klamath County in 1930. The County did not develop irrigation on the land. The land was conveyed to David Skeen in 1933 and to Hans Anderson in 1945. The Trout Creek ditch extended onto this allotment, but was not used to irrigate the allotment. In the 1930s, David Skeen built a small dam on the Sprague River to obtain water for a ditch that ran into allotment 409. The ditch was used for two years and was not used after that time. There was no irrigation from the 1950s through 1976. Because the first non-Indian owner did not develop irrigation and because water was not used continuously after Mr. Skeen's development, this allotment fails to meet standards that establish a *Walton* right.~~

Allotment 409 also went through two periods of non-Indian ownership prior to the beginning of beneficial use of water: from 1930-1933 (Klamath County), and for a period during 1945 (Hans Anderson). As with Allotment 1252, neither period was long enough for the *Walton* right to expire for failure to diligently develop the claimed lands. Beneficial use of the majority of the claimed lands was occurring by 1957, under Klamath Indian ownership. Beneficial use of all of the claimed lands, resulting from natural overflow of the Sprague River, began by 1960, also under Klamath Indian ownership.[11] Beneficial use has continued, from an artificial irrigation system, under the ownership of the non-Indian successors. The claimed lands in this allotment meet the standards that establish a *Walton* right.

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

[11] Because beneficial use was made under Indian ownership no later than 1960, and has continued under the non-Indian successors, it is not necessary to consider whether the initial efforts at development made in the 1930s by Mr. Skeen were sufficient to establish a right.

Allotment 637

Beneficial use of water by the method of natural overflow was established under Indian ownership prior to the non-Indian purchase of the allotment. The first non-Indian purchaser of this allotment was the California Land Company in 1967. ~~There was no irrigation on this allotment until the Claimants acquired it and started their development in 1976. Because there was no development of irrigation by the first non-Indian purchaser for nine years~~, The record shows that water has continued to be put to beneficial use by non-Indian successors. Therefore, this allotment ~~fails~~ meets all the standards that ~~to~~ establish a *Walton* right.

Allotment 638

The first non-Indian purchaser of this allotment was Albert Thalhofer in 1927, who owned the land for 14 years. There is no evidence that Mr. Thalhofer either artificially irrigated the land or made beneficial use of natural overflow. The record shows that the first development of irrigation occurred in 1952 when a water permit was ~~granted~~ issued to Leroy Gienger, who acquired the land in 1942. Mr. Gienger's irrigation development started 23 years after transfer from Indian ownership, well outside a reasonable period for development of beneficial use given the facts in the record. ~~Because Mr. Thalhofer was the first non-Indian purchaser and did not irrigate the land, the irrigation that was begun by Mr. Gienger in 1952 is of no moment. Furthermore, after Mr. Geinger irrigated the land in the 1950s, the land was not irrigated for approximately 20 years until Claimants started development of a system in 1976~~. The standards of a *Walton* right are not established for this allotment because beneficial use of water was not made with reasonable diligence following transfer from Indian ownership. ~~there has not been diligent development or continuous use.~~

Allotment 1091

There is no evidence that the Indian owners irrigated this parcel—either artificially or by natural overflow. The first non-Indian purchaser was Bly Lumber Company in 1959. ~~There is no evidence that any irrigation occurred from 1940 to 1979.~~ The first evidence of beneficial use of water was in 1976. Thus, there is no evidence that ~~the first~~ non-Indian ~~owner~~ successors ~~developed~~ made beneficial use of water for

irrigation with reasonable diligence. ~~and there is no evidence of continuous use.~~ Therefore, the standards of a *Walton* right are not established for this allotment.

Reasons for Modifications: (1) To correct and clarify the elements of a *Walton* right. (2) To provide clarity of evidence in the record and further substantiate approval of the claim. (3) To correct the legal basis for determining reasonable diligence in an adjudication of pre-1909 water rights. (4) To apply the appropriate legal bases to the Proposed Order's modified findings of fact.

Summary

For the reasons stated above, ~~none of the allotments at issue in this case establish~~ a *Walton* right is established for irrigation and livestock watering on 220.3 acres within allotments 1252, 409, and 637. The elements of a *Walton* right are not established for 133.3 acres within allotments 400, 638 and 1091.

Reason for Modifications: To provide consistency with Sections A.7, A.8 and A.9.

B. DETERMINATION

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

   a. The "History of the Case" adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.6, above.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
   f. The "Opinion" adopted with modifications, as set forth in Section A.9, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 95. Consistent with Sections A.7, A.8, and A.9, above, the outcome of the Order has been modified to recognize a right for irrigation on 220.3 acres and livestock watering.

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

[Beginning of Water Right Claim Description]

CLAIM NO. 95

CLAIMANT: CLIFFORD C. RABE
MARY A. RABE
22539 HWY 140 E
DAIRY, OR 97625

CLAIM MAP REFERENCE: CLAIM # 95, PAGE 74

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

PURPOSE OR USE:

IRRIGATION OF 220.3 ACRES; AND LIVESTOCK WATERING OF 225 HEAD.

RATE OF USE:

5.5142 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0042 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2700 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	April 15 - October 15
Livestock	January 1 - December 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	9 E	WM	36	NW NE	1830 FEET NORTH AND 140 FEET EAST FROM C¼ CORNER, SECTION 36

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	9 E	WM	36	SW NE		35.4
35 S	9 E	WM	36	SE NE		34.0
35 S	9 E	WM	36	NE SE		40.0
35 S	9 E	WM	36	NW SE		28.8
35 S	9 E	WM	36	SW SE		6.2
35 S	9 E	WM	36	SE SE		40.0
35 S	10 E	WM	36	NW NW	2	1.3
35 S	10 E	WM	36	SW NW	2	33.8
35 S	10 E	WM	36	SE NW	2	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 STERN SKEEN AND BETTY SKEEN	))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 96

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 96 (Claimants: STERN SKEEN AND BETTY SKEEN, 2420 LINDLEY WAY, KLAMATH FALLS, OR 97601) and its associated timely filed contest (3515) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 265.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a CORRECTED PROPOSED ORDER[1] on August 31, 2004 (Proposed Order) denying Claim 96.

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.

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 96 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

[1] The CORRECTED PROPOSED ORDER replaced a PROPOSED ORDER issued on August 29, 2005. The PROPOSED ORDER was withdrawn for correction, to delete references to *Walton* water rights because this claim is for an Allottee water right.

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 DONALD LAWLESS, MARLENE LAWLESS, AND LEWIS LAWLESS	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 97

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 97 (Claimants: DONALD LAWLESS, MARLENE LAWLESS, AND LEWIS LAWLESS) and its associated contests (38, 2840, 3478, 3747, 4132) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 212.

2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 97 on December 13, 2006.

3. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) Donald Lawless, Marlene Lawless and Lewis Lawless, and (2) the United States of America.

4. The exceptions to the Proposed Order along with responses to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 97. The exceptions are found to be persuasive, in part and therefore, modifications are made to the Proposed Order as described in Sections A.7, A.8 and A.9, below.

5. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.6, below.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, below.

e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, below.
f. The "Opinion" is adopted with modifications, as set forth in Section A.9, below.
g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 97. Consistent with Sections A.7, A.8, and A.9, below, the outcome of the Order has been modified to recognize a right for irrigation on an additional 7.3 acres

6. **Evidentiary Rulings.**

a. Within the section titled "Evidentiary Rulings" of the Proposed Order, the first paragraph is modified as follows:

> The AFFIDAVIT OF RICK N. BARNES dated July 16, 2004, and the REBUTTAL AFFIDAVIT OF RONALD S. YOCKIM dated July 16, 2004, are added to the list of items that were admitted into the record.

Reason for Modification: To correct omissions from the list of Evidentiary Rulings.

b. Within the section titled "Evidentiary Rulings" of the Proposed Order, the second sentence within the last paragraph is corrected as follows (the correction is shown in "underline" text):

> This motion was granted by order dated August 18, 2005.

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

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

Summary of Reasons for Modification of Findings of Fact: The general reasons for modifications are as follows: (1) To provide evidence from the record to substantiate beneficial use of water by the method of natural overflow, an issue raised in exceptions. (2) To provide evidence from the record to substantiate beneficial use of water prior to transfer from Indian ownership, an issue raised in exceptions. (3) To provide evidence from the record to substantiate of beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership, an issue raised in exceptions. (4) In each instance where this Partial Order of Determination modifies historical findings of fact made by the ALJ, the Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record.

Modified Proposed Order Findings of Fact

1) Claim 97 seeks a water right for lands owned by non-Indian successors to Indian allottees on the Klamath Indian Reservation. The claim is for a diversion rate of

14 cubic feet per second (cfs) from the Sprague River to irrigate 675.1 acres[1] and instream stockwater for 150 head of cattle. The claimed priority date is October 14, 1864. The claimed season of use for irrigation is May 1 through October 1, and year-round for instream livestock watering. (OWRD Ex. 1 at 1-8, 140, 143.) The claim is comprised of eight allotments in the Klamath Indian Reservation (Book Direct, Ex. 2-3.), which have been consolidated into the ownership of Donald, Marlene and Lewis Lawless (Claimants). The Claimants acquired the property in 1993 from Jeffrey and Tami Carter who filed this claim on behalf of Carter Air Balance, Inc. in 1991. (OWRD Ex. 1. at 1-104, 141-142.)

The claim for watering of livestock was not addressed in any contest other than claimants'. Livestock has been grazed on the property since before its conveyance out of Indian ownership. (Yockim Rebuttal Affidavit at 2, Ex. RS-29; OWRD Ex. 1 at 81.) The claim as a whole is based on the assertion that beneficial use of water for irrigation was ~~developed~~ made by the Indian owners, or made with reasonable diligence by first non-Indian owners, and has been continuous since that time. (OWRD Ex. 1 at 1-8, 15-17, 228-232.)

¶ The lands within Allotments 637, 638, a small portion of 634, 135, and most of 832 and 566 are subject to natural overflow in the spring from the Sprague River. (L. Lawless Rebuttal at 2, Ex. 3; D. Lawless Rebuttal at 2, Ex 7; Ex. RS-26 at 51-56, 75-86, 101, 106 - 107.)

Reasons for Modification: Using evidence on the record, to provide more specific information with reference to what was claimed; to correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to use consistent terminology regarding beneficial use of water; to add clarification using evidence on the record.

2) **Allotment 135 (39.6 acres claimed)**

This property located in the NW¼, Section 6, Township 36 S, Range 10 E, W.M. was allotted to Millie George, a Klamath Indian, by trust patent dated 1910. (OWRD Ex. 1 at 202.) The property was split into two tracts under the ownership of the heirs of Millie George. The allotment includes land on both sides of the Sprague River. (*Id.* at 77; Book Direct, Ex. 3.) Only land on the east side is included in Claim 97. (OWRD Ex.

[1] The original claim was for 720 acres in 1991. (OWRD Ex. 1 at 3). The claim was revised by survey submitted January 18, 1999. (OWRD Ex. 1 at 140 – 143.)

1 at ~~102~~ 143.) Tract A includes the south part of allotment 135 within the claim (SE¼ NW¼) and Tract B includes the north part of allotment 135 within the claim (NE¼ NW¼). (Book Direct at 10.)

Tract A (6.2 acres) was conveyed from Norma Weeks Jackson, a Klamath Indian, to Gienger Enterprises, a non-Indian business, on March 7, 1968. (OWRD Ex.1 at 89.) On September ~~25~~ 27, 1968, Gienger Enterprises conveyed the SE¼ NW¼ in Section 6, Township 36 S, Range 10 E, W.M., among other parcels, to Charles Dixon, a non-Indian. (*Id.* at 90.) On June 24, 1969, Charles Dixon conveyed SE¼ NW¼ East of the Sprague River, Section 6, Township 36 S, Range 10 E, W.M. among other parcels to Dale and Madeline Newman. (*Id.* at 91.)

Although, prior to transfer out of Indian ownership, a small part of this property was sometimes flooded by a temporary dam across the Sprague River, this practice was discontinued at some time prior to conveyance out of Indian ownership in 1968, and the extent of this irrigation is unknown.[2] (Ex. RS-26 at 83.) Tract A is subject to natural overflow from the Sprague River. (Ex. RS-26 at 51-56, 106.) After conveyance out of Indian ownership, irrigation of Tract A was not initiated prior to conveyance to Dixon, the second non-Indian owner. However, a subsequent owner, Richard Perry, applied for an Oregon water right (Permit S-37151) for lands appurtenant to Allotment 135 in 1973. (OWRD Ex. 1 at 12-13; Book Direct, Ex. 11 at 12-14.) Notice of Complete Application of Water to a Beneficial Use ("Form C") was filed by the permit holder for Permit S-37151 on December 2, 1977. (Book Direct, Ex. 11 at 15.) Although Tract A was not included in the original 1973 application and its map for this water right, a 1994 final proof survey for this permit included 7.4 acres within Tract A (SE¼ NW¼, Section 6). (Book Direct, Ex. 11 at 12-17; OWRD Ex. 1 at 12-13.)

¶ The point of diversion for this parcel, Pump 1, is located within the SE¼ SW¼, Section 32, Township 35 S, Range 10 E, W.M. (OWRD Ex. 1 at 143.) The rate is 0.16 cfs. The duty is 18.6 acre-feet per year. The period of use is May 1 through October 1. The priority date is October 14, 1864.

[2] Given the direction of the current in the Sprague river, (as shown by OWRD Ex. 1 at 13) a dam located at the Southern end of Tract A, (as described by James Goold in Ex. RS-26 at 83) would have flooded only a very small portion of this tract, or of any land subject to this claim.

Tract B (33.4 acres) was under the ownership of David Skeen, a Klamath Indian, in 1948. (OWRD Ex 1 at 75-76.) In ~~1960~~ 1969, the tract was conveyed by Charles Dixon, a non-Indian to Dale Newman, also a non-Indian. The chain of title between Skeen and Dixon is unknown. (Book Direct at 10.) Tract B is subject to natural overflow from the Sprague River (Ex. RS-26 at 51-56, 106); however, there is no evidence on the record confirming any beneficial use of water for irrigation made on this allotment prior to the 1973. Irrigation of Tract B was initiated under Oregon water permit number S-37151 in 1973 (Book Direct at 13-14; OWRD Ex. 1 at 12-14.)

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

3) **Allotment 566 (104.0 acres claimed)**

This allotment, composed of 104 acres located in NW¼, Section 5, Township 36 S, Range 10 E, W.M., was confirmed to Mildred Miller by instrument dated March 7, 1910. (OWRD Ex. 1 at 194-195.) The property was conveyed by the heirs of Mildred Miller to Leroy Gienger, a non-Indian, on September 8, 1958. (*Id.* at 73 -74.) The property was subsequently conveyed to Albeit Lang in 1965 (*Id.* at 30-31).

Portions of Allotment 566 are subject to natural overflow from the Sprague River. (Ex. RS-26 at 51-56, 106.) As evidenced on an 1958 Indian Land Status report, Allotment 566 was leased for farming and grazing beginning in 1954, which was prior to the initial transfer from Indian ownership. (OWRD Ex. 1 at 171-172.) Gienger, the first non-Indian owner, developed or continued to develop an artificial irrigation system on the property by 1960. Allotment 566 has continuously been irrigated since that time. (Book Direct at ~~17~~-18.)

The point of diversion for this parcel, Pump 3, is located within the NW¼ NW¼, Section 5, Township 36 S, Range 10 E, W.M. (OWRD Ex. 1 at 143.) The rate is 2.6 cfs.[3] The duty is 312 acre-feet per year. The period of use is May 1 through October 1. The priority date is October 14, 1864.

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

[3] All rates and duties allowed are calculated at 1/40th cfs per acre ~~(2)~~ and 3 acre-feet per acre, based on the amount approved in the water use permits issued on these properties. (OWRD Ex. 1 at 10-13.) Priority date for all allowed rights is October 14, 1864, the date of the treaty creating the Klamath Indian Reservation.

4) **Allotment 634 (160.0 acres claimed)**

This allotment, composed of 160 acres located in the SE¼, Section 31, Township 35 S, Range 10 E, W.M., was confirmed to Charley~~s~~ Cowan, a Klamath Indian by ~~trust~~ fee simple patent dated February 7, 1920. (OWRD Ex. 1 at 183.) The property remained in Klamath Indian ownership until May 10, 1923, when it was conveyed by David Skeen, a Klamath Indian, to B.E. Wolford and Dan Wann, both non-Indians. (*Id.* at 63; Book Direct, Ex. 8 at 5.) B. E. Wolford acquired the Wann interest in 1929. (OWRD Ex. 1 at 68-69, 178.) The property was then conveyed by the Wolford heirs to Leroy Gienger in 1944. (~~*Id.*~~ Book Direct, Ex. 3b.)

¶ A small portion of Allotment 634 is subject to natural overflow from the Sprague River (Ex. RS-26 at 51-56, 106), however the record contains no evidence of beneficial use of water for irrigation made prior to 1950. Irrigation on Allotment 634 was first initiated by Leroy Gienger, a subsequent non-Indian owner, in 1950, 27 years after transfer from Indian ownership. (Book Direct at 13.) Gienger applied for Oregon water right Permit S-20509 on lands appurtenant to this allotment in 1950. (OWRD Ex. 1 at 10-11.) This does not demonstrate beneficial use water for irrigation made with reasonable diligence.

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

5) **Allotment 636 (100.1 acres claimed)**

This allotment, composed of 100.1 acres located in the NE¼, Section 31, Township 35 S, Range 10 E, W.M., was confirmed to Ward Weeks, a Klamath Indian, by trust patent dated March 7, 1910. (OWRD Ex. 1 at 186-187.) The heirs of Ward Weeks conveyed the property to Vincent Bodner, Jr., a Klamath Indian, on September 3, 1947. (*Id.* at 85, 188-189).

The property was conveyed by Vince Bodner, Jr. to Gienger Enterprises, a non-Indian business, in April 1964. (*Id.* at 87.) The property was subsequently conveyed to James Templeton on May 20, 1965 (*Id.* at 93), and then to Albeit Lang on May 4, 1966. (*Id.* at 95.)

Beneficial use of water for irrigation was ~~developed~~ made on the property while under the ownership of Gienger Enterprises, in 1964, prior to the transfer of the property to James Templeton. (Bodner, Jr. Affidavit at 1.)

The points of diversion for this parcel, Pump 1 and Pump 2, ~~is~~ are located in the SE¼ SW¼, Section 32, Township 35 S, Range 10 E, W.M. (OWRD Ex. 1 at 143.) The rate is 2.50 cfs, being 0.59 cfs from Pump 1 for 23.7 acres, and 1.91 cfs from Pump 2 for 76.4 acres. The duty is 300 acre-feet per year. The period of use is May 1 through October 1. The priority date is October 14, 1864.

Reasons for Modification: To correct and provide additional citations to the record; to use consistent terminology regarding beneficial use of water; to add clarification using evidence on the record. In addition the ALJ's finding with respect to the number of acres claimed within the NE¼, Section 31 (Allotment 636) is not supported by a preponderance of evidence on the record. In a footnote to the Proposed Order's Finding of Fact #1, the ALJ noted that "the claim was revised by survey submitted January 18, 1999. (OWRD Ex. 1 at 140 – 143.)." The map at OWRD Ex. 1 at 143 clearly shows 100.1 acres within this allotment. Since this map is intended to provide definitive information about the place of use, OWRD views this change as the correction of a clerical error.

6) **Allotment 637 (24.4 acres claimed)**

This allotment, composed of 24.4 acres located in the NW¼, Section 31, Township 35 S, Range 10 E, W.M., was confirmed to Neffie Weeks, a Klamath Indian, by trust patent dated March 7, 1910 (*Id.* at 184, 185). The property was passed to the Indian heirs of Neffie Weeks, Caroline Cowen and Cinda Checaskane, on November 1, 1920. (*Id.* at 83-84.) The property was subsequently conveyed to Vince Bodner, Jr., a Klamath Indian, on December 21, 1942. (*Id.*) The property was conveyed from Vince Bodner, Jr. to Gienger Enterprises, a non-Indian business, in 1964. (*Id.* at 87; Book Direct at 7.)

Allotment 637 is subject to natural overflow from the Sprague River. (Ex. RS-26 at 51-56, 106.) Like Allotment 636, this property was first irrigated by Gienger Enterprises, the first non-Indian owner, in 1964. (Bodner, Jr. Affidavit at 1) The points of diversion for this parcel, Pump 1 and Pump 2, ~~is~~ are located in the SE¼ SW¼, Section 32, Township 35 S, Range 10 E, W.M. (OWRD Ex. 1 at 143.) The rate is 0.61 cfs, being 0.15 cfs from Pump 1 for 6.0 acres, and 0.46 cfs from Pump 2 for 18.4 acres. The duty is 73.2 acre-feet per year. The period of use is May 1 through October 1. The priority date is October 14, 1864.

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

7) **Allotment 638 (52.0 acres claimed)**

This allotment, composed of ~~65.8~~ 52.0 acres located in the SW¼, Section 31, Township 35 S, Range 10 E, W.M., was confirmed to Ella Cowen, a Klamath Indian, prior to 1923. (OWRD Ex. 1 at 64-65; 204-205.) David Skeen, ~~an~~ Klamath Indian, received the patent ~~in~~ on June 30, 1923. (*Id.*; Ex. RS -14) The property was conveyed from David Skeen to Albeit Thalhofer, a non-Indian, on February 5, 1927. (*Id.* at 66-67.) The property was subsequently conveyed from Mr. Thalhofer to Klamath County by Sheriff's deed in 1941 and to Leroy Gienger in 1942. (*Id.* at 179.)

¶ Allotment 638 is subject to natural overflow from the Sprague River (Ex. RS-26 at 51-56, 106); however, the record contains no evidence of beneficial use of water for irrigation prior to 1950. Irrigation on Allotment 638 was first initiated by Leroy Gienger, a subsequent non-Indian owner, in 1950, 23 years after transfer from Indian ownership. (Book Direct at 16.) Gienger applied for Oregon water right Permit S-20509 on lands appurtenant to this allotment in 1950. (OWRD Ex. 1 at 10-11.) This does not demonstrate beneficial use of water for irrigation made with reasonable diligence.

Reasons for Modification: To correct and provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In addition the ALJ's finding with respect to the number of acres claimed within the SW¼, Section 31 (Allotment 638) is not supported by a preponderance of evidence on the record. In a footnote to the Proposed Order's Finding of Fact #1, the ALJ noted that "the claim was revised by survey submitted January 18, 1999. (OWRD Ex. 1 at 140 – 143.)." The map at OWRD Ex. 1 at 143 clearly shows 52.0 acres within this allotment. Since this map is intended to provide definitive information about the place of use, OWRD views this change as the correction of a clerical error.

8) **Allotment 832 (160.0 acres claimed)**

This allotment composed of ~~158.34~~ 160.0 acres located in the NE¼, Section 6, Township 36 S, Range 10 E, W.M., was confirmed to Robinson (aka Psissum - Ky - wath) prior to 1921. (OWRD Ex. 1 at 198.) The property was conveyed to Anna Willis, a Klamath Indian, on April 30, 1921. (*Id.*) The property was conveyed from Anna Willis to David Skeen, a Klamath Indian, in 1921. (*Id.* at 179.) The property was conveyed

from David Skeen to Albeit Thalhofer, a non-Indian, on February 5, 1927. (*Id.* at 66-67.) Klamath County subsequently obtained the property. (*Id.* at 179.) The property was conveyed from Klamath County to ~~Gienger Enterprises~~ Leroy Gienger April 15, 1941. (*Id.* at 70).

Although it is possible that some part of this property was sometimes flooded by a temporary dam across the river, the inception date of this practice and the extent of the irrigation thereby accomplished is unknown. (Ex. RS-26 at 83.) Most of Allotment 832 is subject to natural overflow from the Sprague River (Ex. RS-26 at 51-56, 106). The record contains no evidence of beneficial use of water for irrigation prior to 1940. Beneficial use of water from the Sprague River by the method of natural overflow may have been made on a portion of this allotment in the 1940s, 13 years after transfer to non-Indian successors. (Book Rebuttal at 2.) A subsequent owner, Richard Perry, applied for an Oregon water permit number S-37151 for lands appurtenant to Allotment 832 in 1973. (OWRD Ex. 1 at 12-13; Book Direct, Ex. 11 at 12-14). ~~The first clear record of irrigation on Allotment 832 was in 1974, by James Goold. (Test of Book.)~~ This does not demonstrate beneficial use of water for irrigation made with reasonable diligence.

Reasons for Modification: The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record. In addition the ALJ's finding with respect to the number of acres claimed within the NE¼, Section 6, (Allotment 832) is not supported by a preponderance of evidence on the record. In a footnote to the Proposed Order's Finding of Fact #1, the ALJ noted that "the claim was revised by survey submitted January 18, 1999. (OWRD Ex. 1 at 140 – 143.)." The map at OWRD Ex. 1 at 143 clearly shows 160.0 acres within this allotment. Since this map is intended to provide definitive information about the place of use, OWRD views this change as the correction of a clerical error. The statement that the first clear record on irrigation on this allotment was in 1974 by Goold was stricken because it is not supported by a preponderance of the evidence on the record.

9) **Allotment 1264/1542 (35.0 acres claimed)**

This allotment, composed of ~~34~~ 35 acres located in the S½ SW¼, Section 32, Township 35 S, Range 10 E, W.M., was confirmed to Sylvester Smith ~~prior to 1956~~ on October 25, 1950. ~~(Ex. 9.)~~ (OWRD Ex. 1 at 168.) The property was then conveyed to Theodore Crume, a Klamath Indian, in 1956. (~~*Id.*~~ Book Direct, Ex. 9 at 4.) The property was conveyed from Theodore Crume to Leroy Gienger, a non-Indian, in 1957 (Book Direct, Ex. 10 at 9), and from Leroy Gienger to Albeit Lang ~~in~~ on August 12, 1965. (OWRD Ex. 1 at 30-31~~; Ex. 10~~.)

Irrigation of the property was initiated by Theodore Crume, the last Indian owner, and was continued by Mr. Gienger, and has been maintained through the present. (Book Direct at 17-18; Gienger Direct at 2.) Two points of diversion serve this parcel. One point, Pump 3, is located in the NW¼, NW¼ Section 5, Township 36 S, Range 10 E, W.M. The other point, Pump 1, is located in the SE¼ SW¼, Section 32, Township 35 S, Range 10 E, W.M. (OWRD Ex. 1 at 143.) The rate is ~~0.85~~ 0.88 cfs, being 0.42 cfs from Pump 1 for 16.7 acres, and 0.46 cfs from Pump 3 for 18.3 acres. The duty is ~~102~~ 105 acre-feet per year. The period of use is May 1 through October 1. The priority date is October 14, 1864.

Reasons for Modification: To correct and provide additional citations to the record; to add clarification using evidence on the record. In addition the ALJ's finding with respect to the number of acres claimed within the S½ SW¼, Section 32 (Allotment 1264/1542) is not supported by a preponderance of evidence on the record. In a footnote to the Proposed Order's Finding of Fact #1, the ALJ noted that "the claim was revised by survey submitted January 18, 1999. (OWRD Ex. 1 at 140 – 143.)." The map at OWRD Ex. 1 at 143 clearly shows 100.1 acres within this allotment. Since this map is intended to provide definitive information about the place of use, OWRD views this change as the correction of a clerical error.

10) Instream Livestock Watering:

The property within all claimed allotments was used for the grazing of livestock since before its conveyance out of Indian owership. (Yockim Rebuttal Affidavit at 2, Ex. RS-29; OWRD Ex. 1 at 81.) The stock water claim for instream livestock watering of 150 head of cattle should be allowed where the Sprague River is coextensive with these allotments, being within Allotments 135 (Tracts A and B), 566, 637, 638, and 1264/1542. Because there is no evidence on the record to the contrary, the standard rate for livestock watering is 12 gallons of water per head of livestock per day as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Finding of Fact #10 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard rate for livestock watering. The rate of 12 gallons of water per head of livestock per day is consistent with OWRD's standard as set forth in Appendix A of the Preliminary Evaluation.

Reason for Additional Finding of Fact #10: The facts in the ALJ's Proposed Order failed to fully set forth the evidence on the record. To include a finding regarding a rate for livestock grazing.

8. **Conclusions of Law.** Within the section titled "Conclusions of Law" of the Proposed Order, Conclusions 1, 3-6, 9-11, and 16-19 are adopted without modification. Conclusions 2, 7, 8, 12, 13, 14 and 15 are modified, and Conclusions 20, and 21 are added as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

a. Conclusion 2:

For the part of the claimed place of use that is approved, the period of use for irrigation should be May 1 through October 1 of each year, as claimed.

b. Conclusion 7:

There is sufficient information on the ~~development~~ beneficial use of water for irrigation having been made with reasonable diligence or ~~continuous~~ continued use of water on a portion of this place of use to establish a *Walton* right.

c. Conclusion 8:

Part of the claimed place of use has ~~been continuously~~ continued to be irrigated.

d. Conclusion 12:

Beneficial use of water on a portion of the claimed place of use was not ~~developed~~ made with reasonable diligence ~~by the first non-Indian purchaser from an Indian owner~~ following transfer from Indian ownership.

e. Conclusion 13

Beneficial use of water for irrigation ~~of~~ on a portion of the claimed place of use for was not ~~developed~~ made with reasonable diligence by ~~the first~~ non-Indian ~~owners~~ successors.

f. Conclusion 14:

Water provided to the claimed place of use by the method of natural overflow ~~means (flooding in the spring or through sub-irrigation)~~ -- although not through a diversion system created by humans-- ~~does not constitute irrigation under~~ is a valid basis for a *Walton* right.

g. Conclusion 15:

Water claimed for a portion of the claimed place of use has ~~been continuously~~ continued to be used by the first non-Indian successor and by all subsequent successors.

h. Conclusion 20:

Beneficial use of water by the method of natural overflow was made on Allotment 566 prior to the initial transfer from Indian ownership.

i. Conclusion 21:

Property within all the claimed allotments was used for the grazing of livestock since before its conveyance of Indian ownership. Therefore, the stock water claim for instream livestock watering of 150 head of cattle is allowed where the Sprague River is coextensive with these allotments, being within Allotments 135 (Tracts A, and B), 566, 637, 638 and 1264/1542. The period of use for instream livestock watering is year-round. The rate is 12 gallons of water per head of livestock per day.

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

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

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

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

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

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

*****

As discussed below, the various allotments have very different histories. Those different histories control the outcome as to each parcel.

Allotment 135

A small portion of this property, which was divided into two parcels while still in Indian ownership, may have been irrigated by the Indian owners through flooding as a result of temporary dams across the Sprague River, but the amount of this irrigation, and its date, are unknown. It would have been very little, however, as most of the property in question is downstream from the dam. The first substantial evidence of irrigation of Tract A, the small southernmost of the tracts, is the 1977 Notice of Complete Application of Water to a Beneficial Use ("Form C") for which a water right application was filed in 1973, and its 1994 final proof map. a~~ppears after the property had been conveyed to Charles Dixon, the second non-Indian owner.~~ Beneficial use of water for irrigation on Tract A was made with reasonable diligence. Tract A, therefore, does ~~not~~ qualify for a *Walton* right.

Tract B~~, likewise,~~ was not subject to irrigation until 1973, when Richard Perry applied for a water right permit. The property was first conveyed out of Indian ownership before 1960, and in 1960 was transferred to the second non-Indian owner, Dale Newman. Because the chain of title is incomplete it is not possible to determine when the land was transferred out of Indian ownership. Reasonable diligence cannot be determined. Tract B~~, also,~~ does not qualify for a *Walton* right.

Allotment 566

Beneficial use of water was established prior to the initial transfer from Indian ownership, and evidenced by reference to a 5 year grazing and farming lease on an Indian Land Status report. Irrigation on this allotment ~~was~~ continued to be developed by Leroy Gienger, the first non-Indian owner, by 1960. These 104 acres, therefore, qualify for a *Walton* right.

Allotment 634

Beneficial use of water for irrigation was ~~developed~~ made on this allotment by Leroy Gienger, who acquired the property from the Wolford family in 1944, 21 years after transfer from Indian ownership. The earliest evidence of beneficial use of water for irrigation is in 1950, 27 years after transfer from Indian ownership. Since the Wolfords

were not Indians, Gienger was at least the second non-Indian owner. Beneficial use of water was not made with reasonable diligence. The allotment does not, therefore, qualify for a *Walton* right.

Allotment 636

The 100.1 acres of this allotment were first irrigated by Gienger Enterprises, the first non-Indian owner, in 1964, shortly after the land was transferred from Indian ownership. Beneficial use of water was made with reasonable diligence. This allotment qualifies for a *Walton* right.

Allotment 637

Like Allotment 636, beneficial use of water for irrigation was ~~developed~~ made on this parcel, at the latest, by Gienger Enterprises the first non-Indian owner. This occurred in 1964, shortly after the land was transferred from Indian ownership. Beneficial use of water was made with reasonable diligence. The 24.4 acres of this parcel, therefore, qualify for a *Walton* right.

Allotments 638 and 832

Beneficial use of water for irrigation of these allotments was not initiated prior to at a sheriff's sale, to Klamath County, the second non-Indian owner. Beneficial use of water occurred 23 years (Allotment 638) and 47 years (Allotment 832) after their initial transfer from Indian ownership.[4] Beneficial use of water was not made with reasonable diligence. These allotments do not qualify for a *Walton* right.

Allotment 1264/1542

Irrigation of this property was initiated by Theodore Crume, the last Indian owner, and has continued to the present. The 34 acres in this property qualify for a *Walton* right.

[4] As noted in the findings of fact, there is some evidence that irrigation may have occurred within 13 years of transfer from Indian ownership. Because a 13-year period is insufficient to establish reasonable diligence, it is not necessary to determine whether the evidence of irrigation after 13 years is substantial enough to support a *Walton* right.

Instream Livestock Watering

As noted, no party other than Claimants addresses stock water in their contest. The evidence establishes that the property claimed ~~in question~~ was used for the grazing of livestock since before conveyance out of Indian ownership. Consequently, the stock water claim for instream livestock watering of 150 head of cattle should be allowed where the Sprague River is coextensive with these allotments, being within Allotments 135 (Tracts A and B), 566, 637, 638, , and 1264/1542.

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

B. DETERMINATION

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
   a. The "History of the Case" is adopted in its entirety.
   b. The "Evidentiary Rulings" is adopted with modifications, as set forth in Section A.6, above.
   c. The "Issues" is adopted in its entirety.
   d. The "Findings of Fact" is adopted with modifications, as set forth in Section A.7, above.
   e. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.8, above.
   f. The "Opinion" is adopted with modifications, as set forth in Section A.9, above.
   g. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 97. Consistent with Sections A.7, A.8, and A.9, above, the outcome of the Order has been modified to recognize a right for irrigation on an additional 7.3 acres.

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

3. Based on the file and record herein, IT IS ORDERED that Claim 97 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 97

CLAIM MAP REFERENCE: CLAIM # 97 MYLAR MAP (Jan. 20, 1999)

CLAIMANT: DONALD T. LAWLESS
MARLENE LAWLESS
LEWIS LAWLESS
PO BOX 1778
GRANTS PASS OR 97528

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

PURPOSE OR USE:

IRRIGATION OF 269.7 ACRES, BEING 52.6 ACRES FROM PUMP 1, 94.8 ACRES FROM PUMP 2, AND 122.3 ACRES FROM PUMP 3; AND INSTREAM LIVESTOCK WATERING OF 150 HEAD.

RATE OF USE:

6.7428 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

6.74 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, BEING 1.31 CFS FROM PUMP 1, 2.37 CFS FROM PUMP 2, AND 3.06 CFS FROM PUMP 3; AND

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

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

DUTY:

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

PERIOD OF ALLOWED USE:

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

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Pod Name	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Pumps 1 & 2	35 S	10 E	WM	32	SE SW		4034 FEET SOUTH AND 1491 FEET EAST FROM NW CORNER, SECTION 32, T 35 S, R 10 E
Pump 3	36 S	10 E	WM	5	NW NW	4	5437 FEET SOUTH AND 1121 FEET EAST FROM NW CORNER, SECTION 32, T 35 S, R 10 E
Sprague River	35 S	10 E	WM	31	SE NW		No specific point of diversion - livestock drink directly from the Sprague River
	35 S	10 E	WM	32	SW SW		
	36 S	10 E	WM	5	NE NW	3	
	36 S	10 E	WM	5	NW NW	4	
	36 S	10 E	WM	5	SE NW		
	36 S	10 E	WM	6	SE NW		

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
35 S	10 E	WM	31	NE NE		8.9	Pump 1
35 S	10 E	WM	31	NW NE		0.5	
35 S	10 E	WM	31	SE NE		14.3	
35 S	10 E	WM	31	SE NW		6.0	
35 S	10 E	WM	32	SW SW		15.7	
35 S	10 E	WM	32	SE SW		1.0	
36 S	10 E	WM	6	SE NW		6.2	
35 S	10 E	WM	31	NE NE		1.1	Pump 2
35 S	10 E	WM	31	NW NE		9.6	
35 S	10 E	WM	31	SW NE		40.0	
35 S	10 E	WM	31	SE NE		25.7	
35 S	10 E	WM	31	SE NW		18.4	
35 S	10 E	WM	32	SW SW		18.3	Pump 3
36 S	10 E	WM	5	NE NW	3	5.0	
36 S	10 E	WM	5	NW NW	4	39.0	
36 S	10 E	WM	5	SW NW		40.0	
36 S	10 E	WM	5	SE NW		20.0	

INSTREAM LIVESTOCK WATERING FROM THE SPRAGUE RIVER				
Twp	Rng	Mer	Sec	Q-Q
35 S	10 E	WM	31	SE NW
35 S	10 E	WM	31	NE SW
35 S	10 E	WM	31	SE SW
35 S	10 E	WM	32	SW SW
35 S	10 E	WM	32	SE SW
36 S	10 E	WM	5	NE NW
36 S	10 E	WM	5	NW NW
36 S	10 E	WM	5	SE NW
36 S	10 E	WM	6	NE NW
36 S	10 E	WM	6	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 TILLIE L. GOOLD TRUST; JAMES R. GOOLD, TRUSTEE	)))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 98

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

A. FINDINGS OF FACT

1. On December 7, 1990, DELL PARKS AS TRUSTEE for the TILLIE L. GOOLD TRUST (Claimant) timely submitted a Statement and Proof of Claim (Claim 98) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 98 was submitted for a total of 6.44 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 617.39 acres and livestock watering of 300 head. The claimed period of use is May 1 through October 15 for irrigation and livestock watering. The claimed priority date is "1864."

3. DELL PARKS signed Claim 98 attesting that the information contained in the claim is true.

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

5. JAMES GOOLD AS TRUSTEE ultimately succeeded DEL PARKS AS TRUSTEE for the TILLIE L. GOOLD TRUST. See LETTER (May 10, 2000) (Claim# 98, Page 154).

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3479: 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 3748 to the Claim and/or Preliminary Evaluation of Claim 98.

8. On May 8, 2000, the Klamath Tribes timely filed Contest 4133 to the Claim and/or Preliminary Evaluation of Claim 98.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 213.

10. On January 28, 2005, the Klamath Tribes withdrew Contest 4133. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 28, 2005).

11. On September 29, 2005, the Claimant, OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 98.

12. On October 10, 2005, the Adjudicator withdrew Case 213 from the Office of Administrative Hearings.

B. DETERMINATION

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

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

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

4. Based on the file and record herein, IT IS ORDERED that Claim 98 is approved as set forth in the following Water Right Claim Description.

---

[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3479 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3479 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3479 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

[Beginning of Water Right Claim Description]

CLAIM NO. 98
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 98 SETTLEMENT MAP (Sept. 28, 2005)

CLAIMANT: TILLIE L. GOOLD TRUST
JAMES R. GOOLD, TRUSTEE
PO BOX 89
SPRAGUE RIVER, OR 97639

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

PURPOSE OR USE: IRRIGATION OF 165.0 ACRES.

RATE OF USE:
4.13 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

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

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

PERIOD OF ALLOWED USE: MAY 1 - OCTOBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	9 E	WM	36	NW NE	702 FEET SOUTH AND 2475 FEET WEST FROM NE CORNER, SECTION 36

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	9 E	WM	25	SE SE		18.9
35 S	10 E	WM	30	SW SW	4	37.7
35 S	10 E	WM	30	SE SW		40.0
35 S	10 E	WM	30	SW SE		40.0
35 S	10 E	WM	30	SE SE		28.4

[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 HENRY J. CALDWELL, JR. AND DEBORAH L. CALDWELL, TRUSTEES OF THE CALDWELL FAMILY TRUST uda JANUARY 5, 1996; AND GLEN R. CROUCH AND SHARLINE J. CROUCH	)	PARTIAL ORDER OF DETERMINATION Water Right Claim 99

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 17, 1991, D. G. RICHARDSON timely submitted a Statement and Proof of Claim (Claim 99) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.

2. Claim 99 was submitted for a total of 11.1 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 600 acres. The claimed period of use is "April – October." The claimed priority date is "1864."

3. JEAN H. RICHARDSON AND DUDLEY G. RICHARDSON signed Claim 99 attesting that the information contained in the claim is true.

4. The property appurtenant to Claim 99 was transferred to CRAIG AND DEBRA CAHOON. *See* BARGAIN AND SALE DEED, COUNTY OF KLAMATH RECORDS, VOL. M94, PAGE 34923 (Oct. 28, 1994).

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

6. On April 6, 2000, the CRAIG AND DEBRA CAHOON timely filed Contest 0003 to the Preliminary Evaluation of Claim 99.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3480: 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.

8. On May 8, 2000, the United States of America timely filed Contest 3749 to the Claim and Preliminary Evaluation of Claim 99.

9. On May 8, 2000, the Klamath Tribes timely filed Contest 4134 to the Claim and Preliminary Evaluation of Claim 99.

10. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2841 to the Claim and/or Preliminary Evaluation of Claim 99.

11. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 214.

12. The property appurtenant to Claim 99 was transferred to HENRY J. CALDWELL, JR., AND DEBORAH L. CALDWELL, TRUSTEES OF THE CALDWELL FAMILY TRUST uda JANUARY 5, 1996 (one-half interest) and GLEN R. CROUCH, AND SHARLINE J. CROUCH (one-half interest) (Claimants) from CRAIG AND DEBRA CAHOON. *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS VOL. M02, PAGE 33949 (Oct. 528, 1994) and CHANGE OF OWNERSHIP FORM (June 20, 2002).

13. On May 20, 2003, WaterWatch's Contest 2841 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.'S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).

14. On December 3, 2004, the Claimants, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 99.

15. On December 6, 2004, the Adjudicator withdrew Case 214 from the Office of Administrative Hearings.

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[1] Klamath Hills District Improvement Company voluntarily withdrew from Contest 3480 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

[2] Berlva Pritchard voluntarily withdrew from Contest 3480 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[3] Don Vincent voluntarily withdrew from Contest 3480 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

B. DETERMINATION

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

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

3. 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 99 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 99
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 99 SETTLEMENT MAP (Dec. 6, 2004)

CLAIMANT: HENRY J. CALDWELL, JR., AND DEBORAH L. CALDWELL,
TRUSTEES OF THE CALDWELL FAMILY TRUST uda JANUARY 5, 1996
19683 WEBBER RD
KLAMATH FALLS, OR 97603

GLEN R. CROUCH
SHARLINE J. CROUCH
180 COMMERCIAL ST NE #9
SALEM, OR 97301

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

PURPOSE OR USE: IRRIGATION OF 470.0 ACRES.

RATE OF USE:
11.1 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION.

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

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	10 E	WM	4	SW NW	1826 FEET SOUTH AND 593 FEET EAST FROM NW CORNER, SECTION 4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	10 W	WM	32	SE SW		33.4
35 S	10 W	WM	32	SW SE		20.0
35 S	10 W	WM	32	SE SE		40.0
35 S	10 W	WM	33	SW SW		40.0
35 S	10 W	WM	33	SE SW		30.0
36 S	10 W	WM	4	NE NW	3	38.0
36 S	10 W	WM	4	NW NW	4	40.0
36 S	10 W	WM	4	SW NW		24.6
36 S	10 W	WM	5	NE NE	1	40.0
36 S	10 W	WM	5	NW NE	2	40.0
36 S	10 W	WM	5	SW NE		40.0
36 S	10 W	WM	5	SE NE		40.0
36 S	10 W	WM	5	NE NW	3	30.0
36 S	10 W	WM	5	SE NW		14.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication