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 KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)	PARTIAL ORDER OF DETERMINATION
	)	Water Right Claim 729

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, LITITIA KIRK, timely submitted a Statement and Proof of Claim (Claim 83) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication as an Indian allottee on the former Klamath Reservation, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On October 1, 1999, the UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA) timely amended the portion of Claim 83 appurtenant to lands acquired by the Klamath Tribes on September 5, 1995.

3. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 83 was denied.

4. On May 8, 2000, the Klamath Tribes timely filed Contest 4001 to the Claim and/or Preliminary Evaluation of Claim 83.

5. On May 8, 2000, the BIA timely filed Contest 3877 to the Claim and/or Preliminary Evaluation of Claim 83.

6. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District timely filed Contest 3128 to the Claim and/or Preliminary Evaluation of Claim 83.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson et al.," filed Contest 3277 to the Claim and/or Preliminary Evaluation of Claim 83: Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet;

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[1] Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

[2] Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

[3] Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

[4] Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Jim McAuliffe and McAuliffe Ranches

[5] Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC ; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Joe McAuliffe Company

[6] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3277. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interest to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

8. On May 19, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3514 to the Claim and/or Preliminary Evaluation of Claim 83: 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.[20], 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[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

9. These matters were referred to the Office of Administrative Hearings for a contested case hearing, and were designated as Case 208.

10. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3514, as to the Klamath Tribes and BIA portion of Claim 83. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002). The Klamath Project Water Users withdrew "only insofar as claim no. 83 pertains to BIA and tribal claims. Such contest, as it pertains to BIA and tribal claims, shall be dismissed with prejudice, and KPWU shall not hereafter be a participant in the adjudication of the BIA and Tribal portion of the claim." *Id.* This withdrawal is effective with respect to Claims 729 and 730, both of which were bifurcated from Claim 83, as described below, because Claims 729 and 730 were filed by the BIA

11. On June 30, 2003, Medford Irrigation District voluntarily withdrew from Contest 3128. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD IRRIGATION DISTRICTS (June 30, 2003).

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[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3514 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3514 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3514 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

12. On June 30, 2003, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contest 3128. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY HORSEFLY AND LANGELL VALLEY IRRIGATION DISTRICTS (June 30, 2003).

13. On July 31, 2003, Rogue River Valley Irrigation District voluntarily withdrew from Contest 3128. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY ROGUE RIVER VALLEY IRRIGATION District (July 31, 2003).

14. On October 10, 2003, Claim 83 was bifurcated, and Claim 729 was assigned to the portion of Claim 83 appurtenant to lands acquired by the Klamath Tribes on September 5, 1995. *See* STIPULATION TO BIFURCATE CLAIM 83, ASSIGN CLAIM 729 TO ONE PORTION OF BIFURCATED CLAIM 83 (Oct. 10, 2003).

15. On October 16, 2003, Claim 729 was consolidated into Case 283 into which other like claims of the Klamath Tribes and the BIA had already been consolidated. *See* ORDER ON MOTION TO CONSOLIDATE (Oct. 16, 2003).

16. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants (Nicholson et al.) executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (portion of the Contest 3277 appurtenant to Claim 729, and Contests 3877 and 4001).

17. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

18. The land underlying Claim 729 is within the boundaries of the former Klamath Indian Reservation.

19. The primary purpose of the Tribes' reacquisition of the land underlying Claim 729 is for irrigation. *See* DECLARATION OF ALLEN T. FOREMAN (REVISED EXHIBIT C2) (Nov.13, 2006), admitted into the record November 21, 2006.

B. DETERMINATION

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

2. The Klamath Indian Tribe Restoration Act of August 27, 1986, 25 USC § 566, when combined with the Tribes' reacquisition of the parcel underlying this claim for the primary purpose of irrigation, is a valid basis for this claim. The Klamath Indian Tribe Restoration Act provides, among other things, that federal recognition of the Tribes is restored and that "[a]ll rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority...are restored...." 25 USC § 566(b). The Ninth Circuit has held that where a federally recognized Indian tribe reacquires land that was formerly a part of its

reservation, the land is treated "in a manner analogous to that of a newly created federal reservation...." *United States v. Anderson*, 736 F2d 1358, 1363 (1984). Water rights for such land are implied to the extent necessary to "fulfill the very purposes for which [the] reservation was created." *Id.* The priority date of any such rights is the date of reacquisition by the Tribes.[23] *Id.* The land underlying Claim 729 is within the boundaries of the former Klamath Indian Reservation, and was acquired for the primary purpose of irrigation. A water right with the priority date of the reacquisition of the land by the Klamath Tribes is recognized for this primary purpose.

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

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[23] The determination of this claim need not and does not address the issue of implied water rights for land acquired by a federally recognized Indian tribe that lies outside the boundaries of its reservation. Nor does the determination of this claim address the issue of implied water rights for privately held land subsequently acquired by the federal government outside the context of a federally recognized Indian tribe's reacquisition of land within the boundaries of its former reservation.

[Beginning of Water Right Claim Description]

CLAIM NO. 729
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 729, MYLAR MAP FILED APRIL 21, 2006

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

PARCEL: KIRK ACQUISITION I

SOURCE OF WATER: WILLIAMSON RIVER, tributary to KLAMATH RIVER

PURPOSE or USE:
IRRIGATION OF 16.9 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE.

RATE OF USE:

0.20 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:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: SEPTEMBER 8, 1995

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	16	NE NE	9	660 FEET SOUTH AND 1214 FEET WEST FROM NE 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	NW NE	8	6.3
35 S	7 E	WM	16	SW NE	13	5.6
35 S	7 E	WM	16	SW NE	18	5.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of THE KLAMATH TRIBES AND THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES	)))))))	PARTIAL ORDER OF DETERMINATION Water Right Claim 730

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, LITITIA KIRK, timely submitted a Statement and Proof of Claim (Claim 83) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication as an Indian allottee on the former Klamath Reservation, claiming an inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.

2. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating Claim 83 was denied.

3. On May 8, 2000, the Klamath Tribes timely filed Contest 4001 to the Claim and/or Preliminary Evaluation of Claim 83.

4. On May 8, 2000, the BIA timely filed Contest 3877 to the Claim and/or Preliminary Evaluation of Claim 83.

5. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District timely filed Contest 3128 to the Claim and/or Preliminary Evaluation of Claim 83.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as "Nicholson et al.," filed Contest 3277 to the Claim and/or Preliminary Evaluation of Claim 83:

Roger Nicholson; Roger Nicholson Cattle Co.[1]; Lloyd Nicholson Trust[2]; Dorothy Nicholson Trust[3]; Richard Nicholson; Jim McAuliffe and McAuliffe Ranches[4]; Maxine Kizer; Ambrose McAuliffe; Susan McAuliffe; Joe McAuliffe Company[5]; Kenneth L. Tuttle and Karen L. Tuttle dba Double K Ranch; Dave Wood[6]; Kenneth Zamzow[7]; Anita Nicholson[8]; Wm. S. Nicholson; John B. Owens; Kenneth Owens; Wm L. Brewer; Mary Jane Danforth; Jane M. Barnes; Franklin Lockwood Barnes, Jr.; Jacob D. Wood[9]; Elmore E. Nicholson; Mary Ann Nicholson; Gerald H. Hawkins, Hawkins Cattle Co.; Owens & Hawkins; Harlowe Ranch; Terry M. Bengard; Tom Bengard; Dwight T. Mebane and Helen Mebane[10]; Walter Seput[11]; Clifford Rabe; Tom Griffith; William Gallagher; Thomas William Mallams; River Springs Ranch; Pierre A. Kern Trust; William V. Hill[12]; Lillian M. Hill; Carolyn Obenchain; Lon Brooks Newman Enterprise; William C. Knudtsen[13]; Wayne Jacobs; Margaret Jacobs; Robert Bartell[14]; Rodney Z. James; Hilda Francis for Francis Loving Trust; William J. Rust and Ethel J. Rust[15]; James R. Goold for Tillie Goold Trust; Duane F. Martin; Modoc Point Irrigation District[16]; Peter M. Bourdet; Vincent Briggs; J.T. Ranch Co.; Tom Bentley; Thomas Stephens; John Briggs; Wm

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[1] Agri Water, LLC, successor in interest to Roger Nicholson Cattle Co.

[2] Roger Nicholson and Richard Nicholson, successors in interest to Lloyd Nicholson Trust

[3] Roger Nicholson and Richard Nicholson, successors in interest to Dorothy Nicholson Trust

[4] Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Jim McAuliffe and McAuliffe Ranches

[5] Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC ; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Dwight T. Mebane and Helen Mebane, successors in interest to Joe McAuliffe Company

[6] On October 26, 2004, Dave Wood voluntarily withdrew from Contest 3277. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY DAVID WOOD (Oct. 26, 2004).

[7] On July 8, 2005, Kenneth Zamzow voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (July 8, 2005).

[8] Nicholson Investments, LLC, successor in interest to Anita Nicholson

[9] On January 15, 2010, Jacob D. Wood voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (Jan. 15, 2010).

[10] Robinson Best, LLC, successors in interest to PCA Acquired Properties, LLC; PCA Acquired Properties, LLC, successors in interest to Farm Credit West, PCA; Farm Credit West, PCA, successors in interest to Dwight T. Mebane and Helen Mebane; Sevenmile Creek Ranch, successor in partial interest to Dwight T. Mebane and Helen Mebane; On February 13, 2007, Sevenmile Creek Ranch voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Feb. 13, 2007).

[11] James G. Wayne, Jr., successor in interest to Walter Seput.

[12] Lillian Hill, successor in interest to William V. Hill

[13] On September 13, 2005, William C. Knudtsen voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTESTS (Sept. 13, 2005).

[14] Michael LaGrande, successor in interst to Robert Bartell

[15] Dave Cowan, successor in interest to William J. Rust and Ethel J. Rust

[16] On October 15, 2008, Modoc Point Irrigation District voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 15, 2008).

Bryant[17]; Peggy Marenco; Kenneth J. Hufford and Leslie Hufford[18]; and Hart Estate Investment Company[19].

7. On May 19, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3514 to the Claim and/or Preliminary Evaluation of Claim 83: 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.[20], 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[21], Don Vincent[22], Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

8. These matters were referred to the Office of Administrative Hearings for a contested case hearing, and were designated as Case 208.

9. On November 26, 2002, Klamath Project Water Users withdrew/dismissed with prejudice Contest 3514, as to the Klamath Tribes and BIA consumptive use claim portions of Claim 83. *See* CONTEST DISMISSAL AGREEMENT AND STIPULATION BETWEEN KLAMATH PROJECT WATER USERS, THE KLAMATH TRIBES, AND THE UNITED STATES; [PROPOSED] ORDER OF THE HEARING OFFICER IN CASE 003 (Nov. 26, 2002) and APPROVAL AND ORDER OF HEARING OFFICER (Dec. 6, 2002). The Klamath Project Water Users withdrew "only insofar as claim no. 83 pertains to BIA and tribal claims. Such contest, as it pertains to BIA and tribal claims, shall be dismissed with prejudice, and KPWU shall not hereafter be a participant in the adjudication of the BIA and Tribal portion of the claim." *Id.* This withdrawal is effective with respect to Claims 729 and 730, both of which were bifurcated from Claim 83, as described below, because Claims 729 and 730 were filed by the BIA.

10. On June 30, 2003, Medford Irrigation District voluntarily withdrew from Contest 3128. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY MEDFORD IRRIGATION DISTRICTS (June 30, 2003).

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[17] On October 31, 2003, William Bryant voluntarily withdrew from Contest 3277. *See* NOTICE OF WITHDRAWAL OF CONTEST (Oct. 31, 2003).

[18] Jerry L. Neff and Linda R. Neff, successors in interest to Kenneth J. Hufford and Leslie Hufford

[19] Jerry L. Neff and Linda R. Neff, successors in interest to Hart Estate Investment Company

[20] Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3514 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

[21] Berlva Pritchard voluntarily withdrew from Contest 3514 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

[22] Don Vincent voluntarily withdrew from Contest 3514 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

11. On June 30, 2003, Horsefly Irrigation District and Langell Valley Irrigation District voluntarily withdrew from Contest 3128. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY HORSEFLY AND LANGELL VALLEY IRRIGATION DISTRICTS (June 30, 2003).

12. On July 31, 2003, Rogue River Valley Irrigation District voluntarily withdrew from Contest 3128. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY ROGUE RIVER VALLEY IRRIGATION DISTRICT (July 31, 2003).

13. On October 10, 2003, Claim 83 was bifurcated, and Claim 729 was assigned to the portion of Claim 83 appurtenant to lands acquired by the Klamath Tribes on September 5, 1995. *See* STIPULATION TO BIFURCATE CLAIM 83, ASSIGN CLAIM 729 TO ONE PORTION OF BIFURCATED CLAIM 83 (Oct. 10, 2003).

14. On December 5, 2003, Nicholson *et al.* voluntarily withdrew from Contest 3277. *See* VOLUNTARY WITHDRAWAL OF CONTEST AGAINST LITITIA KIRK AND WILLIAM RAY BY NICHOLSON *ET AL.* (DEC. 5, 2003).

15. On February 24, 2005, the portion of Claim 83 remaining after the first bifurcation on October 10, 2003, was again bifurcated, and Claim 730 was assigned to appurtenant to lands acquired by the Klamath Tribes on September 8, 2004. *See* STIPULATION TO BIFURCATE CLAIM 83, AND ASSIGN CLAIM 730 TO A PORTION OF BIFURCATED CLAIM 83, AND TO CONSOLIDATE CLAIM NO. 730 INTO CASE 283. (Feb. 24, 2005).

16. On February 24, 2005, Claim 730 was consolidated into Case 283 into which other like claims of the Klamath Tribes and the BIA had already been consolidated. *See* STIPULATION TO BIFURCATE CLAIM 83, AND ASSIGN CLAIM 730 TO A PORTION OF BIFURCATED CLAIM 83, AND TO CONSOLIDATE CLAIM NO. 730 INTO CASE 283. (Feb. 24, 2005).

17. On December 14, 2006, OWRD and the Claimants (the Klamath Tribes and BIA) and the Contestants executed STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) which resolved the remaining contests (3877 and 4001).

18. On December 15, 2006, the Adjudicator withdrew Case 283 from the Office of Administrative Hearings.

19. The land underlying Claim 730 is within the boundaries of the former Klamath Indian Reservation.

20. The primary purpose of the Tribes' reacquisition of the land underlying Claim 730 is for irrigation. *See* DECLARATION OF ALLEN T. FOREMAN (REVISED EXHIBIT C2) (Nov.13, 2006), admitted into the record November 21, 2006.

B. DETERMINATION

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

2. The Klamath Indian Tribe Restoration Act of August 27, 1986, 25 USC § 566, when combined with the Tribes' reacquisition of the parcel underlying this claim for the primary purpose of irrigation, is a valid basis for this claim. The Klamath Indian Tribe Restoration Act provides, among other things, that federal recognition of the Tribes is restored and that "[a]ll rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or any other Federal authority...are restored...." 25 USC § 566(b). The Ninth Circuit has held that where a federally recognized Indian tribe reacquires land that was formerly a part of its reservation, the land is treated "in a manner analogous to that of a newly created federal reservation...." *United States v. Anderson*, 736 F2d 1358, 1363 (1984). Water rights for such land are implied to the extent necessary to "fulfill the very purposes for which [the] reservation was created." *Id.* The priority date of any such rights is the date of reacquisition by the Tribes.[23] *Id.* The land underlying Claim 730 is within the boundaries of the former Klamath Indian Reservation, and was acquired for the primary purpose of irrigation. A water right with the priority date of the reacquisition of the land by the Klamath Tribes is recognized for this primary purpose.

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

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[23] The determination of this claim need not and does not address the issue of implied water rights for land acquired by a federally recognized Indian tribe that lies outside the boundaries of its reservation. Nor does the determination of this claim address the issue of implied water rights for privately held land subsequently acquired by the federal government outside the context of a federally recognized Indian tribe's reacquisition of land within the boundaries of its former reservation.

[Beginning of Water Right Claim Description]

CLAIM NO. 730
FOR AN INCHOATE WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 730, MYLAR MAP FILED APRIL 21, 2006

CLAIMANTS: THE KLAMATH TRIBES
PO BOX 436
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON
BEHALF OF THE KLAMATH TRIBES
911 NE 11TH AVE
PORTLAND, OR 97232

PARCEL: KIRK ACQUISITION II

SOURCE OF WATER: WILLIAMSON RIVER, tributary to KLAMATH RIVER

PURPOSE or USE:

IRRIGATION OF 6.94 PRACTICABLY IRRIGABLE ACRES; USES WILL NOT AND CANNOT BE CHANGED TO INSTREAM USE.

RATE OF USE:

0.08 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:

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

PERIOD OF ALLOWED USE: APRIL 1 - OCTOBER 31

DATE OF PRIORITY: SEPTEMBER 8, 2004

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	7 E	WM	16	NE NE	9	660 FEET SOUTH AND 1214 FEET WEST FROM NE 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	NW NE	3	6.94

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

Dwight French, Adjudicator
Klamath Basin General Stream Adjudication