

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

KLAMATH BASIN GENERAL STREAM ADJUDICATION

In the Matter of the Claim of)	PARTIAL ORDER OF
LETA MAE JOHNSON)	DETERMINATION
)	
_____)	Water Right Claim 100

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

A. FINDINGS OF FACT

1. On December 7, 1990, LETA MAE JOHNSON (Claimant) (10440 HILL ROAD, KLAMATH FALLS, OR 97603) timely submitted a Statement and Proof of Claim (Claim 100) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 100 was submitted for a total of 8.5 cfs of water from the an unnamed stream, a tributary of the Sprague River, for flood irrigation of 340.0 acres with a rate of 1/40 of one cubic foot per second per acre. The claimed period of use is March 1 to July 31. The claimed priority date is October 14, 1864.
3. LETA MAE JOHNSON signed Claim 100 attesting that the information contained in the claim is true.
4. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was denied because the required elements for a Walton right were not established.
5. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3481: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District

Improvement Co.¹, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard², Don Vincent³, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.

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

B. DETERMINATION

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

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

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

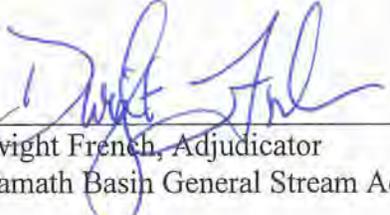
³ Don Vincent voluntarily withdrew from Contest 3481 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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

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

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

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication