

**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
ANDY R. DOMENIGONI AND)	DETERMINATION
CINDY G. DOMENIGONI)	
_____)	Water Right Claim 119
)	

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 19, 1990, F. M. S. SHORTHORN RANCH timely submitted a Statement and Proof of Claim (Claim 119) 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 119 was submitted for 5.0 cfs of water from a spring, tributary to the Sprague River, for irrigation of 96.5 acres. Additionally, 5 gallons per minute is claimed for domestic use, and 3000 gallons per day is claimed for livestock watering. The claimed period of use is April 1 to September 15. The claimed priority date is "1864."
3. HOWARD THOMPSON, as partner and owner of F. M. S. SHORTHORN RANCH, signed Claim 119 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, F. M. S. SHORTHORN RANCH / RIMFIRE5, INC. timely filed Contest 3107 to the Preliminary Evaluation of Claim 119.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3495: 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.

7. On May 8, 2000, the United States of America timely filed Contest 3762 to the Claim and Preliminary Evaluation of Claim 119.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4149 to the Claim and Preliminary Evaluation of Claim 119.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 229.
10. On April 8, 2004, the Klamath Project Water Users withdrew Contest 3495. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3495 (Apr. 8, 2004).
11. On January 26, 2005, the Klamath Tribes withdrew Contest 4149. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 26, 2005).
12. The property appurtenant to Claim 119 was ultimately transferred to ANDY R. DOMENIGONI AND CINDY G. DOMENIGONI (Claimants). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M04, PAGE 87207 (Dec. 17, 2004) and CHANGE OF OWNERSHIP FORM (April 26, 2005).
13. On April 14, 2005, the Claimants, OWRD, and the United States of America executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 119.
14. On April 18, 2005, the Adjudicator withdrew Case 229 from the Office of Administrative Hearings.
15. OWRD finds that the season of use for livestock watering, January 1 to December 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed a season of use April 1 to September 15.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3495 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3495 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3495 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

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, with the exception of the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 15, above); the season of use for livestock watering 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 rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
5. Because there is no evidence on the record to the contrary, the standard rate for irrigation, being 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
6. Based on the file and record herein, IT IS ORDERED that Claim 119 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 119
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 36 S, R 12 E

CLAIMANT: ANDY R. DOMENIGONI
CINDY G. DOMENIGONI
31851 WINCHESTER RD
WINCHESTER CA 91596

SOURCE OF WATER: A SPRING, tributary to SPRING CREEK

PURPOSE OR USE:
IRRIGATION OF 96.5 ACRES AND LIVESTOCK WATERING OF 200 HEAD.

RATE OF USE:

2.4137 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0037 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2400 GALLONS PER DAY.

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

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

DUTY:

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

PERIOD OF ALLOWED USE: APRIL 1 - SEPTEMBER 15

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	GLot
36 S	12 E	WM	23	SE NE	9

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	12 E	WM	23	NE NE	1	17.9
36 S	12 E	WM	23	NE NE	8	19.0
36 S	12 E	WM	23	NW NE	2	4.4
36 S	12 E	WM	23	NW NE	7	5.3
36 S	12 E	WM	23	SW NE	10	11.5
36 S	12 E	WM	23	SW NE	15	5.1
36 S	12 E	WM	23	SE NE	9	17.5
36 S	12 E	WM	23	SE NE	16	2.7
36 S	12 E	WM	24	NW NW		11.5
36 S	12 E	WM	24	SW NW		1.6

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication