

**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)	CORRECTED PARTIAL ORDER OF
BRAD BOUCHER)	DETERMINATION
)	
_____)	Water Right Claim 212

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

A. FINDINGS OF FACT

1. On January 22, 1991, RICHARD AND ELIZABETH FUJAS timely submitted a Statement and Proof of Claim (Claim 212) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 212 was submitted for a total 1.77 cubic feet per second (cfs) of water from Mill Creek, a tributary of the Klamath River, being 0.77 cfs for irrigation of 30.9 acres and 1.0 cfs for livestock watering of 80 head, with a "Feb. – Nov." season of use. The claimed priority date is 1853.
3. RICHARD FUJAS AND ELIZABETH FUJAS signed the Statement and Proof of Claim for Claim 212 attesting that the information contained in the claim is true.
4. In 1995, the original claimants, Elizabeth and Richard Fujas, partitioned their original Tax Lot 900 into 2 parcels. On May 1, 1996 they sold what is now Tax Lot 925 to Andrew Pratt and Cynthia Warzyn. On February 7, 1997, they sold the remaining parcel, currently Tax Lot 900, to BRAD BOUCHER (Claimant). [See WARRANTY DEED, (Feb. 7, 1997) (Claim # 212, Page 0029)]. The parcel sold to Mr. Boucher contained the property for which Claim 212 has been filed. The parcel sold to Mr. Pratt and Ms. Warzyn contains the property for which Mr. and Mrs. Fujas did not file a claim. (See ORDER DENYING MOTION TO INTERVENE AND TO AMEND STATEMENT AND PROOF OF CLAIM, Findings of Fact, Item 5, Page 2 (Apr. 30, 2002).
5. On October 4, 1999, following investigation of the evidence submitted, the Adjudicator issued a Summary and Preliminary Evaluation of Claims (Preliminary Evaluation) stating the claim was approved, but for a smaller quantity of water than was claimed for livestock watering, with a shorter season of use for irrigation than claimed, and with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, Andrew Pratt and Cynthia Warzyn filed Contest 3111 to the Claim and/or Preliminary Evaluation of Claim 212.
7. On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District filed Contest 3200 to the Claim and/or Preliminary Evaluation of Claim 212.
8. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3418: Klamath Irrigation District, Klamath Drainage District, Tulelake Irrigation District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Klamath Hills District Improvement Co.¹, Malin Irrigation District, Midland District Improvement Company, Pine Grove Irrigation District, Pioneer District Improvement Company, Poe Valley Improvement District, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Berlva Pritchard², Don Vincent³, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 16.
10. On January 8, 2002, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District, and Medford Irrigation District voluntarily withdrew Contest 3200. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY LANGELL VALLEY, HORSEFLY, MEDFORD AND ROGUE RIVER VALLEY IRRIGATION DISTRICTS (Jan. 8, 2002).
11. On March 13, 2002, the OWRD, Claimant, and Klamath Project Water Users executed a CONSENT ORDER (Settlement Agreement) thereby resolving Contest 3418.
12. On April 30, 2002 the Administrative Law Judge issued an order denying the motion of Andrew Pratt and Cynthia Warzyn to Intervene and to Amend Statement and Proof of Claim. *See* ORDER DENYING MOTION TO INTERVENE AND TO AMEND STATEMENT AND PROOF OF CLAIM (Apr. 30, 2002).
13. On January 14, 2004, the OWRD, the Claimant, and Andrew Pratt and Cynthia Warzyn executed a CONSENT ORDER (Jan. 14, 2004) thereby resolving the remaining contest (Contest 3111) to Claim 212.

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

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

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

14. OWRD finds that the season of use for livestock watering, January 1 to December 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed a season of use "Feb. – Nov."

B. DETERMINATION

1. The Settlement Agreement executed between OWRD, the Claimant, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with the exception of the claimed season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 14, above); the season of use for livestock watering recognized herein is consistent the Claimant's original claim.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
4. The ORDER DENYING MOTION TO INTERVENE AND TO AMEND STATEMENT AND PROOF OF CLAIM (Apr. 30, 2002) is incorporated as if set forth fully herein.
5. The CONSENT ORDER (Jan. 14, 2004) referenced in Finding 13, above, is incorporated as if set forth fully herein.
6. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water.
7. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and the standard rate for irrigation, being 1/40 of one cubic foot per second per acre, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
8. Based on the file and record herein, IT IS ORDERED that Claim 212 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 212

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

CLAIMANT: BRAD BOUCHER
2300 COLESTIN RD
HORN BROOK, CA 96044

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

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

RATE OF USE:

0.771 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

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

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

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

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

DUTY:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 31
Livestock Watering	February 1 – November 30

DATE OF PRIORITY: DECEMBER 31, 1854

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

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

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication