

**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
JAMES M. SEVERIN)	DETERMINATION
)	
_____)	Water Right Claim 230

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, GORDON BETTLES timely submitted a Statement and Proof of Claim (Claim 230) 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 a vested and inchoate Indian reserved water right under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 230 was submitted for a total of 4.53 acre-feet of water from Agency Lake, a tributary of Upper Klamath Lake, being 2.6 acre-feet for irrigation of 0.6 acres, 1.9 acre-feet for irrigation of 0.6 practicably irrigable acres (including domestic use for one household), and 0.03 acre-feet for direct livestock watering of 3 horses from Agency Lake. The duty claimed for current irrigation is 4.3 acre-feet per acre, and the duty claimed for practicably irrigable acres is 3.1 acre-feet per acre. The claimed period of use is year-round for domestic use and livestock watering, and March 1 through October 16 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 230 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 vested portion of the claim for irrigation and livestock watering was approved, but with a longer irrigation season than claimed; and the inchoate portion of the claim was denied because the elements for a practicably irrigable acreage right were not established.
5. On May 3, 2000, the Claimant timely filed Contest 1717 to the Preliminary Evaluation of Claim 230.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3521: 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.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 46.
8. The claim was transferred to JAMES M. SEVERIN (Claimant) (*See* CHANGE OF OWNERSHIP FORM, Oct. 1, 2003), a non-Indian successor. A non-Indian successor to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14 1864, 16 Stat. 707.
9. On December 23, 2003, OWRD, the Claimant, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST NOS. 1717 AND 3521 (Settlement Agreement) thereby resolving the only two contests to Claim 230.
10. On December 29, 2003, the Adjudicator withdrew Case 46 from the Office of Administrative Hearings.
11. 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 March 1 through October 16.

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 irrigation season that was enlarged by the Settlement Agreement and constitutes an impermissible amendment (described in Finding 11, above); the irrigation season recognized herein is consistent the Claimant’s original claim.
2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3521 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3521 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3521 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

3. Because the Settlement Agreement does not provide a duty for irrigation, a duty of 4.3 acre-feet per acre, based on the evidence in the Statement and Proof of Claim, will apply. Because the Settlement Agreement does not provide a rate per acre for irrigation, and 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 230 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 230
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 230, PAGE 80

CLAIMANT: JAMES M. SEVERIN
36358 MODOC POINT ROAD
CHILOQUIN, OR 97624

SOURCE OF WATER: AGENCY LAKE, tributary to UPPER KLAMATH LAKE

PURPOSE OR USE:
IRRIGATION OF 0.6 ACRES FROM POD 1 AND DIRECT LIVESTOCK WATERING OF 3 HORSES FROM AGENCY LAKE.

RATE OF USE:
0.02005 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.02 CFS FROM POD 1 FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION,
AND

0.00005 CFS FOR DIRECT LIVESTOCK WATERING FROM AGENCY LAKE MEASURED
AT THE PLACE OF USE, NOT TO EXCEED 30 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:
4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH
YEAR.

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	March 1 - October 16
Livestock Watering	January 1 - December 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	Remarks
POD 1	35 S	7 E	WM	7	SE NW	600 FEET NORTH AND 1254 FEET WEST FROM C ¹ / ₄ CORNER, SECTION 7	Irrigation Only
Agency Lake	35 S	7 E	WM	7	SE NW	No specific point of diversion – livestock drink directly from Agency Lake	Livestock Watering Only

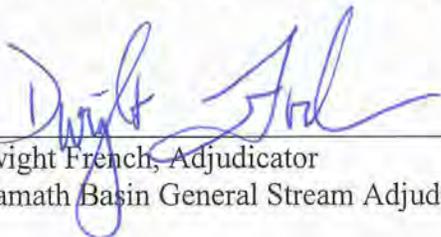
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
35 S	7 E	WM	7	SE NW	0.6	POD 1

DIRECT LIVESTOCK WATERING FROM AGENCY LAKE				
Twp	Rng	Mer	Sec	Q-Q
35 S	7 E	WM	7	SE NW

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication