

**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
L.A. AND PAULINE GIENGER, DBA	)	DETERMINATION
GIENGER INVESTMENTS	)	
_____	)	
	)	Water Right Claim 682

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 30, 1991, AARON SMITH FOR THE ESTATE OF LAVINA LALO SMITH timely submitted a Statement and Proof of Claim (Claim 682) 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 (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 682 was submitted for a total of 117.8 acre-feet of water from the Sprague River, a tributary of the Williamson River, for irrigation of 38.0 practicably irrigable acres. The claimed period of use is March 1 through October 16. The claimed priority date is October 14, 1864.
3. Counsel signed Claim 682 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 682 was transferred to non-Indian successors, L.A. AND PAULINE GIENGER, DBA GIENGER INVESTMENTS (Claimants) (25050 MODOC POINT ROAD, CHILOQUIN, OR 97624) (Claim 682, Page 50). *See also* BARGAIN AND SALE DEEDS, COUNTY OF KLAMATH, VOL. M88, PAGE 14387 (Aug. 31, 1988), VOL. M95, PAGE 20461 (July 21, 1995), and CHANGE OF OWNERSHIP FORM (Feb. 26, 2007).
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 denied because the elements for a practicably irrigable acreage right were not established.

6. The Claimants did not file a contest to the Preliminary Evaluation of Claim 682.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3565: 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.<sup>1</sup>, 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<sup>2</sup>, Don Vincent<sup>3</sup>, 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. On May 8, 2000, the United States of America timely filed Contest 3777 to the Claim and/or Preliminary Evaluation of Claim 682.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4239 to the Claim and/or Preliminary Evaluation of Claim 682.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing. The Office of Administrative Hearings designated these matters as Case 250, which was subsequently consolidated into Case 209. *See* ORDER GRANTING MOTION TO CONSOLIDATE (Oct. 15, 2003). Claim 682 was consolidated into Case 209 because lands appurtenant to this claim are partially or fully coextensive with the Modoc Point Irrigation District’s claimed place of use in Claim 84, or may involve the delivery of water through District facilities serving lands appurtenant to the claims.
11. L.A. AND PAULINE GIENGER, ON BEHALF OF GIENGER INVESTMENTS elected to incorporate the acres claimed under Claim 682 into Modoc Point Irrigation District’s (MPID) Claim 84. On November 9, 2007, L.A. and Pauline Gienger, dba Gienger Investments, MPID, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS; CLAIM 84 (Settlement Agreement) in which L.A. AND PAULINE GIENGER, DBA GIENGER INVESTMENTS agreed to withdraw Claim 682 and thereby resolved Contests 3777 and 4239, and rendered the remaining Contest 3565 to Claim 682 moot. [*See* STIPULATION TO RESOLVE CONTESTS; CLAIM 84, Pages 5, 7, and 28, and Exhibit E (Nov. 9, 2007).]

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3565 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3565 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3565 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

12. On November 21, 2007, the Adjudicator withdrew Case 250 from the Office of Administrative Hearings.

### **B. DETERMINATION**

1. The Settlement Agreement executed between L.A. and Pauline Gienger, dba Gienger Investments, MPID, OWRD, United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.
2. Based upon the file and record herein, including the voluntary withdrawal of Claim 682 by the Claimant, IT IS ORDERED that Claim 682 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013



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Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication