

**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
DONAL M. DEAN)	DETERMINATION
)	
_____)	Water Right Claim 22

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 November 30, 1990, DONAL H. DEAN timely submitted a Statement and Proof of Claim (Claim 22) 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 22 was submitted for a total of 10.05 cfs of water, not to exceed 4.74 cfs from Aspen Creek, not to exceed 10.05 cfs from Deep Creek, and not to exceed 1.55 cfs from the Williamson River, all tributaries of the Klamath River, for irrigation of 408.6 acres. Seventy (70) gallons per minute were claimed for livestock watering of 400 head. The claimed period of use is year-round for livestock watering, and April 15 through October 1 for irrigation. The claimed priority date is "1864."
3. DONAL H. DEAN signed Claim 22 attesting that the information contained in the claim is true.
4. The claim was subsequently transferred to DONAL M. DEAN (Claimant). See MEMO dated Sept. 15, 1998, (Claim 22, Page 014).
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 for livestock watering and irrigation was approved, but with a smaller quantity of water for livestock watering and a longer irrigation season than claimed.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3438: 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 3724 to the Claim and/or Preliminary Evaluation of Claim 22.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4080 to the Claim and/or Preliminary Evaluation of Claim 22.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 169.
10. On April 1, 2004, the Klamath Project Water Users withdrew Contest 3438. *See* NOTICE OF WITHDRAWAL OF CONTEST NO. 3438 (Apr. 1, 2004).
11. On December 16, 2004, the Claimant, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 22.
12. On December 27, 2004, the Adjudicator withdrew Case 169 from the Office of Administrative Hearings.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein.
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. 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 22 is approved as set forth in the following Water Right Claim Description.

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3438 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3438 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3438 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

CLAIM NO. 22
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 22 SETTLEMENT MAP (Dec. 20, 2004)

CLAIMANT: DONAL M. DEAN
PO DRAWER F
MERRILL OR 97633

SOURCE OF WATER:
DEEP CREEK and ASPEN CREEK, tributaries of the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 290.3 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 400 HEAD.

RATE OF USE:
7.26 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION AS FOLLOWS:

3.08 CFS FOR IRRIGATION OF 123.1 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM ASPEN CREEK POD #1, ASPEN CREEK POD #2, AND DEEP CREEK POD #3, NOT TO EXCEED 1.59 CFS FROM ASPEN CREEK POD #1,

2.81 CFS FOR IRRIGATION OF 112.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM DEEP CREEK POD #4; AND

1.37 CFS FOR IRRIGATION OF 54.8 ACRES WITH INCIDENTAL LIVESTOCK WATERING FROM DEEP CREEK POD #5.

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

PERIOD OF ALLOWED USE: APRIL 15 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

Pod Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Aspen Creek POD #1	Aspen Creek	31 S	11 E	WM	20	NE SE		NORTH 22 DEGREES 12 MINUTES WEST, 2707.8 FEET FROM SE CORNER, SECTION 20
Aspen Creek POD #2		31 S	11 E	WM	20	SE SW		NONE GIVEN


Pod Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
Deep Creek POD #3	Deep Creek	31 S	11 E	WM	22	NW SW		SOUTH 58 DEGREES 48 MINUTES EAST, 379.4 FEET FROM W¼ CORNER, SECTION 22
Deep Creek POD #4		31 S	11 E	WM	28	SW NW		SOUTH 19 DEGREES 8 MINUTES 6 SECONDS EAST, 1370.73 FEET FROM NW CORNER, SECTION 28
Deep Creek POD #5		31 S	11 E	WM	31	NE NE	1	SOUTH 4 DEGREES 36 MINUTES 1 SECOND WEST, 5673.6 FEET FROM NE CORNER, SECTION 30

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	11 E	WM	29	NW SW		26.9	ASPEN CREEK POD #1, ASPEN CREEK POD #2, AND DEEP CREEK POD #3
31 S	11 E	WM	29	SE NW		0.8	
31 S	11 E	WM	29	SW SW		0.7	
31 S	11 E	WM	30	NE SW	3	1.1	
31 S	11 E	WM	30	SE SW	4	19.8	
31 S	11 E	WM	30	SW SE		8.3	
31 S	11 E	WM	31	NW NE		5.8	
31 S	11 E	WM	31	NE NW	1	0.1	
31 S	11 E	WM	20	SW SW		6.5	ASPEN CREEK POD #2, AND DEEP CREEK POD #3
31 S	11 E	WM	20	SE SW		14.6	
31 S	11 E	WM	29	NE NW		3.4	
31 S	11 E	WM	29	NW NW		11.2	
31 S	11 E	WM	29	SW NW		23.9	
31 S	11 E	WM	31	NE NE		20.4	DEEP CREEK POD #4
31 S	11 E	WM	31	NE SE		10.4	
31 S	11 E	WM	31	NW SE		28.0	
31 S	11 E	WM	32	NE NW		11.2	
31 S	11 E	WM	32	NW NW		20.8	
31 S	11 E	WM	32	SW NW		21.6	
31 S	11 E	WM	30	SE SW	4	8.6	DEEP CREEK POD #5
31 S	11 E	WM	31	NW NE		14.0	
31 S	11 E	WM	31	NE NW	1	32.2	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication