

017/018F00001005
BEFORE THE HEARING OFFICER PANEL
FOR THE STATE OF OREGON
FOR THE
WATER RESOURCES DEPARTMENT

In the Matter of the Determination of the Relative rights of the Waters of the Klamath River
a Tributary of the Pacific Ocean

Horsefly Irrigation District; Langell Valley
Irrigation District; Medford Irrigation District;
Rogue River Irrigation District; 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.; 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 Prichard; Don
Vincent; Randy Walthall; Inter-County Title Co.;
Winema Hunting Lodge, Inc.; Reames Golf and
Country Club; Van Brimmer Ditch Co.; Plevna
District Improvement Company; Collins Products,
LLC,
Contestants

PROPOSED ORDER

Case No. 017/018

Claim No. 213, 214

Contest Nos. 3201, 3202, 3419, 5656

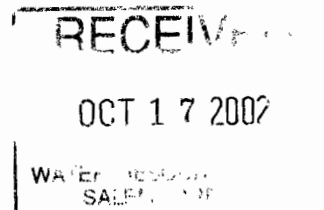
v.

Horst Forster, Wesley and Cynthia Norton;
Richard and Nancy Martin;
Claimants

HISTORY OF THE CASE

This consolidated proceeding in the Klamath Basin Water Adjudication was commenced by claims filed on January 28, 1981 by Major General Hal W. Vincent (Claim 213) and June L. Young (Claim 214) based upon use of water beginning prior to February 24, 1909.

On October 4, 1999, OWRD issued its Preliminary Evaluation concluding that the elements of a pre-1909 claim had been established, and preliminarily approving both claims, with the following changes:



With respect to claim 213, reducing the amount of irrigated acreage subject to the claimed right, reducing the amount of water allowed, and allowing diversion from one, instead of the claimed two, points of diversion on Mill Creek and Cottonwood Creek.

With respect to claim 214, reducing the amount of water allowed, and allowing diversion from one, instead of the claimed two, points of diversion.

On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District and Medford Irrigation District, filed Contest Number 03201, asserting an interest in water potentially subject to claim 213 and seeking to bar the claim to the extent it would effect the water rights of these contestants. This Contest was subsequently withdrawn on January 8, 2002.

On May 8, 2000, Horsefly Irrigation District, Langell Valley Irrigation District, Rogue River Valley Irrigation District and Medford Irrigation District, filed Contest Number 03202, asserting an interest in water potentially subject to claim 214 and seeking to bar the claim to the extent it would effect the water rights of these contestants. This contest was subsequently withdrawn on January 8, 2002.

On May 8, 2000, Klamath Irrigation District; Klamath Drainage District; Tulalake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; 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 Prichard; Don Vincent; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; Collins Products, LLC; (Klamath Project Water Users) filed Contest No. 05656, asserting that the Claimant in Claim 213 did not prove the necessary elements of the claim.

On May 8, 2000, Klamath Irrigation District; Klamath Drainage District; Tulalake Irrigation District; Klamath Basin Improvement District; Ady District Improvement Company; Enterprise Irrigation District; Klamath Hills District Improvement Co.; 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 Prichard; Don Vincent; Randy Walthall; Inter-County Title Co.; Winema Hunting Lodge, Inc.; Reames Golf and Country Club; Van Brimmer Ditch Co.; Plevna District Improvement Company; Collins Products, LLC; (Klamath Project Water Users or "KPWU") filed Contest No. 03419, asserting that the Claimant in Claim 214 did not prove the necessary elements of the claim.

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Both matters were then referred to the Hearing Officer Panel for a contested case hearing. Prehearing conferences were conducted by Maurice L. Russell, II, Administrative Law Judge of the Hearing Officer Panel, on December 14, 2001, with respect to Claim 213, and February 12, 2002, respecting both claims, which had been consolidated pursuant to motion of the claimants by order on January 17, 2002. A Pre-Hearing Order was issued, March 6, 2002, finding the issues presented in this case to be primarily factual, and setting a schedule for proceedings. Pursuant to the order of March 6, 2002, a Notice of Hearing was duly served on all participants on May 22, 2002, for a hearing commencing June 17, 2002. This notice was subsequently amended with the consent of the participants by notice on June 13, 2002, moving the time for commencement of the hearing from 9:00 a.m. on June 17, 2002, to 1:00 p.m. on June 17, 2002. OWRD, claimants, and KPWU timely submitted written testimony and exhibits.

The hearing for cross-examination of witnesses was convened on June 17, 2002, at 1:00 p.m. in the Conference Room at the offices of the Hearing Officer Panel at 3420 Cherry Ave. NE, Suite 140, Salem, Oregon.

Kimberly Grigsby appeared as Agency Representative for Oregon Water Resources Department (OWRD), together with Justin Wirth, Assistant Attorney General. David B. Paradis appeared for Claimants. Andrew M. Hitchings and Daniel Kelly appeared for Contestant, KPWU. The following witnesses testified:

Edward Lawrence Lemos
Italo Marin
Debbie Minder
Wesley Reed Norton
Cynthia Marie Norton
Major General Hal Vincent
Gerald Edward Clark

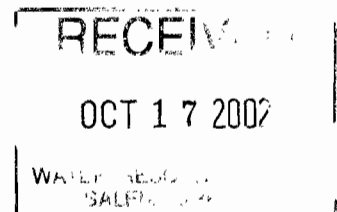
Maurice L. Russell, II, Administrative Law Judge for the Hearing Officer Panel, presided.

ISSUES

1. Whether there is sufficient evidence in the record to support the claim.
2. Whether the required elements of a pre-1909 claim have been established.
3. Whether the record supports the rate, duty, use, point of diversion, season and acreage claimed.

EVIDENTIARY RULINGS

OWRD Exhibit 1 was offered and admitted into the record, with the addition of Page 200a, at the agreement of the participants.



OWRD Exhibits 2 through 4 were offered and admitted into the record. Claimants offered Exhibit 101, which was received without objection.

In the course of the hearing, Claimants objected to questioning by the Agency Representative of OWRD that appeared to be an effort to elicit testimony for impeachment purposes, arguing that OWRD, as a neutral participant in the proceedings, was exceeding the scope of its authority by asking questions that appeared to favor one participant over another. This objection was taken under advisement, pending discussion in closing argument. Argument having been received on the subject, the objection is overruled.

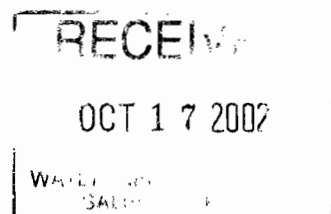
OWRD has the authority to question witnesses. (OAR 137-003-0600(50)). The agency representative has the statutory authority to "examine and cross-examine witnesses. ORS 183.452(4). The authority to "cross-examine" implies the authority to test the veracity of the direct testimony of the witness examined. The administrative rules applicable to Contested Case Proceedings, and the Administrative Procedures Act, itself, do not contain any express limitations on the scope of questioning by an agency representative, other than those limitations on evidence generally applicable, namely, that the evidence must be relevant and material. I therefore conclude that the agency representative, in the course of cross-examination, is authorized to ask any question that will elicit evidence material and relevant to issues presented for disposition in the case, including those intended to test the veracity of testimony previous given by the witness.

The record was held open until September 13, 2002, for submission of additional materials. The participants submitted further briefing, as well as a photocopy of Exhibit 1 page 200a, which was marked and included in the record. The record closed on September 13, 2002.

FINDINGS OF FACT

In 1854, Rufus and Byron Cole began the development of a cattle ranch in the area included within the two claims subject to this proceeding. (Ex. 1 at 33.) This ranch became known as the SS Bar or Coles Station Ranch, which, at one point, included 3,200 acres. (Ex. 1 at 33, 40.) At approximately the same time, the Cole Brothers built a stagehouse and Inn, which operated until 1887, when a railroad was completed through the Siskiyou Mountains. (Ex. 1 at 33.) In 1891, a large Hay-barn was constructed on the ranch. (Ex. 1 at 32, tr. 64.) Virtually from the beginning, the Ranch properties included substantial irrigated land, with developed irrigation ditches, from both Mill Creek and the West Fork, Cottonwood Creek. (Tr. 44, 45.) Irrigation is necessary to cultivate hay in the area. (Tr. 44.)

In 1914, the ranch was sold to Bill Bray. (Ex. 1 at 40.) Bray operated the ranch for three years, then sold it to Reginal Parsons. Bray reacquired the ranch in 1927, and operated it until 1940, when it was sold to S.S. Smith. (Ex. 1 at 40.) Thereafter, the ranch property passed through several owners before being divided, and the separate units conveyed. (Ex. 1 at 51.) The portion of the ranch that is the subject of these claims was acquired by L.B. Properties in 1981. (Ex. 1 at 51.) Thereafter, it was divided



between Young, Vincent, and Fugas. Vincent, the original claimant under claim 213, obtained 117 acres in 1984. (Ex. 1 at 20.) Vincent conveyed three acres of his parcel to Minder. The current claimants under claim 213; Wesley and Cynthia Norton and Richard and Nancy Martin acquired the property in 1993. (Tr. 78.) Vincent filed claim no. 213 in 1991, claiming water to irrigate 99.5 acres from two diversion points.

The Young's acquired 100 acres, of which 77 acres was originally irrigated. (Ex. 1 at 212.) Ms. Young filed claim no. 214 in 1991. Young stated in her Statement of Claim that the water distribution system had been originally constructed to irrigate 77 acres, but the claim itself only claimed water to irrigate 41.6 acres from two diversion points. (Ex. 1 at 212.) In her claim, however Young objected to the use of the map prepared by OWRD for the adjudication of her claim (Ex. 1 at 215.) arguing that a Final Proof Survey prepared in connection with application 58955 for Permit No. 44755 in 1985 by B.S. James was more accurate. (Ex. 1 at 218.)

On November 16, 1998, OWRD sent a letter to June Young requesting additional information and clarification regarding her claim, including information concerning Ms. Young's challenge to the use of the maps prepared by the Department for the adjudication of her claim. The letter requested the additional information within 30 days, with a new map showing the scope of the property, which Ms. Young considered subject to the claim to be submitted within 60 days. (Ex. 1 at 239-240.) The record does not contain any response from Ms. Young to this letter. Thereafter, the Open Inspection Period closed.

In 1999, June Young communicated to OWRD that the Nortons and Martins had acquired the property that is subject to claim 214. (Ex. 1 at 248.)

There are three established diversion points in use for irrigation of the two properties at issue. These are Diversion Point 4, from the West Fork, Cottonwood Creek, located in the NW 1/4, NW 1/4, Section 13, T. 41S, R. 1E, W.M.; Diversion Point 5, also from the West Fork, Cottonwood Creek, presently located on or near the boundary between the SW 1/4, SE 1/4, Section 11, and the NW 1/4, NE 1/4, Section 14 T. 41S, R. 1E, W.M; and Diversion Point 6, from Mill Creek, located in the NE 1/4, NW 1/4, Section 11, T. 41S, R. 1E, W.M.. (Ex. 1 at 47.) All of these diversion points have been in continuous use since the irrigation system was first developed in 1854. (Tr. 22, 39, 45, 232.) The water from these diversion points has been applied to the following properties since the construction of the system: (Ex.1 at 6, 47, 210.)

Claim 213: Claimed-99.4 acres irrigated.

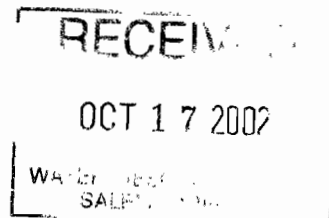
Diversion Point 4-4.1 acres

2.7 acres, NE 1/4 NW 1/4

0.8 acres, NW 1/4 NW 1/4

0.6 acres SE 1/4 NW 1/4 Section 13, T 41 S, R 1 E. W.M.

Diversion Point 6-95.3 acres



16.2 acres SE 1/4 SE 1/4 Section 11 T 41 S, R 1 E.W. M.

1.5 acres NW 1/4 SW 1/4

34.2 acres SW 1/4 SW 1/4 Section 12 T 41 S, R 1 E.W. M.

17.8 acres NE 1/4 NW 1/4

21.2 acres NW 1/4 NW 1/4 Section 13 T 41 S, R 1 E.W. M.

4.4 acres NE 1/4 NE 1/4 Section 14 T 41 S, R 1 E.W. M.

Claim 214: Claimed 41.6 acres Irrigated

Diversion Point 4-5.7 acres

0.1 acres NW 1/4 NE 1/4

4.6 acres Lot 2 (SW 1/4 NE 1/4)

1.0 acres NE 1/4 NW 1/4 Section 13 T 41 S, R 1 E.W. M.

Diversion Point 5-35.9 acres

1.6 acres NE 1/4 NW 1/4

10.8 acres NW 1/4 NW 1/4

4.2 acres SW 1/4 NW 1/4

10.5 acres SE 1/4 NW 1/4 Section 13 T 41 S, R 1 E.W. M.

8.2 acres NE 1/4 NE 1/4

0.6 acres SE 1/4 NE 1/4 Section 14 T 41 S, R 1 E.W. M.

(Ex. 1 at 175, 210.)

CONCLUSIONS OF LAW

1. There is sufficient evidence in the record to support the claim.
2. The required elements of a pre-1909 claim have been established.
3. The record supports the rate, duty, use, point of diversion, season and acreage claimed.

OPINION

This matter is before me as a contest of a claim filed in the Klamath Adjudication, a proceeding under ORS Chapter 539. There are three elements to such a claim: 1) Application of water of the Klamath River or its tributaries to beneficial use at a time prior to 1909 or a contemplated time in the future; (2) a diversion from the natural channel; and (3) application of the water within a reasonable time to some useful purpose. *In Re Rights of Deschutes River and Tributaries*, 134 Or 623 (1930); *In Re*

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Water Rights in Silvies River, 115 Or 27 (1925). It is the burden of Claimants to establish the elements of the claim. ORS 539.110.

In this case, the issues identified by the parties in their contests and subsequent proceedings are primarily questions of fact.

There are three factual issues that dispose of this case. First, how many acres did Ms. Young claim? Second, has Diversion Point 4 been in continuous use since its development? Third, what priority date has been established in the file?

As to the first question, there is an ambiguity in Statement of Claim for claim 214. Under item 7 of the Statement of Claim, Ms. Young listed a number of parcels under the "area irrigated" totaling 41.6 acres. (Ex. 1 at 212.) Under item 6, however, she stated that the distribution system, as originally constructed, was intended to irrigate 77 acres. (Ex. 1 at 212.)

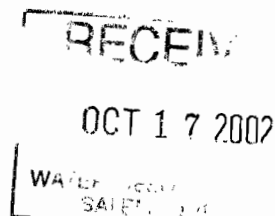
In an attached sheet referring to "#7", Ms. Young listed the parcels and acreage again, also totaling 41.6 acres. (Ex. 1 at 210.) However, in another note also submitted with the Statement of Claim, Ms. Young stated that when she and her late husband acquired the ranch, they were irrigating 77 acres, but "then it started to drop." She then asked, "Why is this happening?" (Ex. 1 at 211.)

Ms. Young also stated, in answer to question 10 of the Statement of Claim, that she did not "accept the maps which were prepared by the Water Resources Department as they relate to your claim." (Ex. 1 at 215.) Ms. Young also included a Final Proof Survey prepared for Application 58955, and additional documents complaining about how OWRD was "taking water away from me." (Ex. 1 at 217, 218.) There is sufficient uncertainty raised in these documents as to what was the intended claim to provide a colorable assertion.

OWRD points out, however, that once the Open Inspection Period was completed, claimants were prohibited from amending their claims, based upon reliance by potential contestants on the amount of acreage stated up to that point.

In reviewing the file, it was noted that prior to the close of Open Inspection OWRD sent a letter to Ms. Young asking for clarification of her claim. (Ex. 1 at 239, 240.) Ms. Young did not respond to that request, so far as the record discloses. Since Ms. Young was given an opportunity to provide additional material that would have fleshed out her claim, and disclosed whether she was claiming 41.6 acres irrigated ground or some other figure, and Ms. Young did not provide that additional material, the claim must stand at 41.6 acres, as found in the Findings of Fact.

Regarding the second question, which relates to both Case 213 and 214, OWRD stated in its both of Preliminary Evaluation of Claims that "Point of Diversion #6 [sic] did not yet exist at the time of the field inspection." (Ex. 1 at 203, 315.) Although the evaluations refer to Diversion #6, there is not the slightest evidence that Diversion #6 as referred to in all the documents was created at any other time than the initial development



of the delivery system. All the testimony and documentation in the file, apart from the preliminary evaluations themselves, referred to Diversion Point #4 as being subject to question. I therefore will only consider the evidence respecting the existence, creation, or nonuse of Diversion Point #4.

There are two items of evidence in the OWRD file regarding Diversion Point #4, that form the basis for the conclusion reached in the Preliminary Evaluation. First, in a note dated 7/11/86, Tom Shook related a telephone conversation with Debbie Minder. That note states:

She told me Div 4, which is all north of W.F.C.C. and on Young's property, was reconditioned in 1981. She believes water was diverted from W.F.C.C. through Div. 4 on lands north of W.F. (about 10 acres) since 1989 until floods in late 60s or early 70's washed out diversion works. The area in question was then irrigated from Mill Creek (Div. 6) until they refurbished No. 4 in 1981. As a result, she thinks Willey misunderstood the irrigation project and incorrectly described source for the 10 acres on application 58955. If true, the land probably will not be allowed when final determination of adjudication is made known because of nonuse of water from W.F.

(Ex. 1 at 113.)

The record shows that on 9/22/1999 Cory Engel relied upon this not in instructing that Point of Diversion 4 not be allowed. (Ex. 1 at 312.)

The other item is a memorandum from Don Knauer, who performed a field inspection, and marked a map for the adjudication which does not show Diversion point 4. This memorandum states that Mr. Knauer spoke with "Mrs. Fugas" who said:

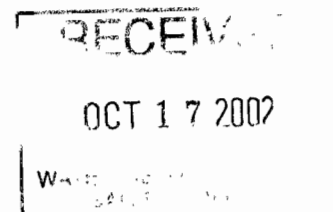
[S]he talked to their hired man about the diversion point and water use in question. She told me that Frank Rumsey told her that the diversion point in the NW NW section 13 T41S R1E was constructed at Cottonwood Creek in 1981 by Gail Willey, the owner of SS Bar Ranch at that time, and himself.

(Ex. 1 at 292.)

This statement by Rumsey is also reported by Ms. Fugas, herself. (Ex 1 at 52.)

The record shows that on 11/16/98 Lisa Juul referred to this memo in recommending that Point of Diversion #4 not be allowed. (Ex. 1 at 294.)

The record is replete with evidence contradicting these items, however.



Debbie Minder testified that she remembered her conversation with Tom Shook, but denied that she made any reference to nonuse of Diversion Point #4 prior to 1981. To the contrary, she stated that she did not know anything about that diversion point before she and her husband noticed it had washed out during an inspection of the property in 1981, after her father purchased it. She testified that, when she mentioned to Shook that she had reconditioned the diversion point in 1981 because it had been washed out, Shook said "Well, you know, in the late sixties or seventies there was a lot—a couple big floods that were down in that area." She testified that she knew that it was Shook who mention floods in the 60's or 70's because "there would be no way that I would know anything about floods in the sixties or seventies, because I didn't even live in Oregon." (Tr. 57, 58.)

Thus, so far as the record shows, Tom Shook's notes of the conversation are essentially hearsay that has been repudiated by the declarant.

The second statement was a hearsay statement from Frank Rumsey, who is said to have told Ms. Fugas that he had constructed Diversion Point 4 in 1981 with Gail Willey, the owner of the ranch at the time. This statement is contradicted by a statement addressed "to whom it may concern" signed by Frank Rumsey and dated 1/15/91, two days before Ms. Fugas said she spoke with him, in which Rumsey does not mention creating Diversion point 4 in 1981. Instead, Rumsey states "The main ditch off the West fork of Cottonwood Creek through the South part of Vincent property, that flows by the front door of our former house on the SQHR has also been utilized to irrigate the Southern section [sic] of approximately 10 acres for Young for all the years we have lived and been in the area. (18+ years)"

The record shows that Diversion Point 4 flows from the West fork of Cottonwood Creek, past the residence on the property, and is claimed to irrigate 10 acres of the property under claim 214, filed by Ms. Young. (57, 61)

As noted by contestants, this statement is hearsay, since it is unsworn, signed by a person who is not available for cross-examination. It is therefore to be accorded considerably less weight, if any at all, than a sworn statement or official record. However, in this case it is offered in contradiction to another hearsay statement relating at third hand an assertion by the same declarant. Again, it appears that the statement contained in OWRD's notes respecting Diversion Point 4 has been contradicted by the declarant, himself.

Under the circumstances, neither statement is entitled to much weight.

On the other hand, Italo Marin testified that he was told by Bill Bray, who acquired the property from the Cole estate in 1914 that the ditch configuration in place in the 1930s had always been in place, that he saw Diversion Point 4 in use in the 1930s when he first worked on the ranch, and

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that there has been water in the ditch running from that diversion point every year since. (Tr. 39, 45.)

Ed Lemos testified that Diversion Point 4 has been in use since he first saw the property in the early 1950s, and that he irrigated from Diversion Point 4 in the 1970s, when he and his father leased the property. (Tr. 22.)

Under the circumstances, it must be concluded that the decision by OWRD that Diversion Point 4 was either not used for more than five years, or was created in the 1980s is not supported in the record. Diversion Point 4 was part of the original water delivery system, and has been in continuous use since that system was first built.

The final question of fact to be discussed is the priority date. The evidence establishes that the Cole Brothers settled at least the core of the ranch in 1854, and that the ranch has been in continuous operation since that time. The evidence also establishes that there has been a continuing need for hay on the ranch since 1854, first for stables connected with a stage coach inn on the property, then to be sold, (Tr. 44.) as well as for cattle on the ranch, and that in 1891 a large hay-barn was built on the property. The witnesses testified that cultivation of hay at that location requires irrigation. As noted above, Italo Marin testified that he was told by Bill Bray, who bought the ranch in 1914 from the Cole estate, that the ditch system had always been the same. This is corroborated by a report by Don Knauer, in his Field Inspection Report in 1980 (232) of a conversation with Homer Grow, who said that the same fields had been irrigated for hay since he worked on the ranch in 1908.

It is clear from this testimony that the property has been irrigated, in approximately the same configuration, since at least the 1890s. While the evidence for an earlier development of the irrigation system is less satisfactory, a preponderance of the evidence that there is supports the date established by OWRD, in 1854.

Once these three questions have been decided, the remainder of the case is essentially determined. The evidence submitted by the claimants supports their contention that the acreage as claimed is correct. While the claimed acreage does not agree with the acreage allowed in the preliminary evaluations, the record does not disclose any clear foundation for the acreage stated in those evaluations. While OWRD notes in its closing argument that the file contains a note that "Aerial photo supports OWRD map." (Ex. 1 at 179, noted in OWRD's Closing Statement and Response to Claimant's Closing Argument, at 10.), the aerial photographs contained in the file do not support the OWRD map. (Ex. 101 at tabs 2, 3, 4, and 5.) It is clear from these photos, some of which go back to 1980, (Ex. 101 tab 2.) that substantial areas are under irrigation outside the boundaries noted in the map prepared by Don Knauer, the field inspector. (Ex. 1 at 230.) Moreover, given that Don Knauer's

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inspection resulted in the omission of Diversion Point 4, and the acreage irrigated from that diversion point, thereby significantly misstating the amount properly subject to claim, it cannot be said that the map Mr. Knauer prepared, and which is, apparently, the OWRD map referred-to, is especially reliable.

On the other hand, the testimony of the witnesses, the photographs and maps submitted, support the conclusion that the amount of acreage is as claimed. This is especially so when the additional acreage irrigated from Diversion Point 4 is added in.

ORDER

I propose that the Adjudicator issue the following order:

Claim 213:

The claim shall be as stated in the Preliminary Evaluation, except as follows:

POINT OF DIVERSION LOCATIONS:

Div. #4, NW 1/4 NW 1/4, Section 13, Township. 41 South, Range 1 East, W.M., and

Div. #6, NE 1/4 NW 1/4, Section 11, Township 41 South, Range 1, East W.M.

SOURCES:

Div. #4, West Fork, Cottonwood Creek, tributary to Klamath River

Div. #6, Mill Creek, tributary to Klamath River.

USE: Irrigation of 99.4 acres and livestock.

AMOUNT ACTUALLY BENEFICIALLY USED: 2.48 cubic feet per second for irrigation, and 4200 gallons per day for livestock, measured at the point of diversion.

PRIORITY DATE: December 31, 1854

PLACE OF USE:

Diversion Point 4-4.1 acres

2.7 acres, NE 1/4 NW 1/4

0.8 acres, NW 1/4 NW 1/4

0.6 acres SE 1/4 NW 1/4 Section 13, T 41 S, R 1 E. W.M.

Diversion Point 6-95.3 acres

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16.2 acres SE 1/4 SE 1/4 Section 11 T 41 S, R 1 E.W. M.

1.5 acres NW 1/4 SW 1/4

34.2 acres SW 1/4 SW 1/4 Section 12 T 41 S, R 1 E.W. M.

17.8 acres NE 1/4 NW 1/4

21.2 acres NW 1/4 NW 1/4 Section 13 T 41 S, R 1 E.W. M.

4.4 acres NE 1/4 NE 1/4 Section 14 T 41 S, R 1 E.W. M.

Claim 214:

The claim shall be as stated in the Preliminary Evaluation, except as follows:

POINT OF DIVERSION LOCATIONS:

Div. #4, NW 1/4 NW 1/4, Section 13, Township. 41 South, Range 1 East, W.M., and

Div. #5, NW 1/4 NE 1/4, Section 14, Township 41 South, Range 1 East, W.M.

SOURCES:

Div. #4, West Fork, Cottonwood Creek, tributary to Klamath River

Div. #5, West Fork, Cottonwood Creek, tributary to Klamath River.

USE: Irrigation of 41.6 acres and livestock.

AMOUNT ACTUALLY BENEFICIALLY USED: 0.91 cubic feet per second for irrigation, and 1200 gallons per day for livestock, measured at the point of diversion.

PRIORITY DATE: December 31, 1854.

PLACE OF USE:

Diversion Point 4-5.7 acres

0.1 acres NW 1/4 NE 1/4

4.6 acres Lot 2 (SW 1/4 NE 1/4)

1.0 acres NE 1/4 NW 1/4 Section 13 T 41 S, R 1 E.W. M.

Diversion Point 5-35.9 acres

1.6 acres NE 1/4 NW 1/4

10.8 acres NW 1/4 NW 1/4

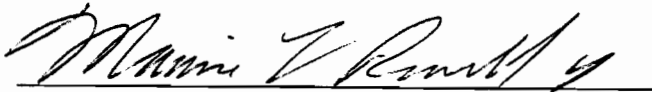
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4.2 acres SW 1/4 NW 1/4
10.5 acres SE 1/4 NW 1/4 Section 13 T 41 S, R 1 E.W. M.

8.2 acres NE 1/4 NE 1/4
0.6 acres SE 1/4 NE 1/4 Section 14 T 41 S, R 1 E.W. M.


Maurice L. Russell, II, Administrative Law Judge
Hearing Officer Panel

Date: October 16, 2002

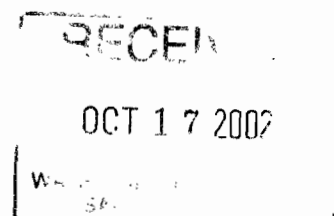
NOTICE TO THE PARTIES: If you are not satisfied with this Order you may:

EXCEPTIONS: Parties may file exceptions to this Order with the Adjudicator within 30 days of service of this Order. OAR 137-003-0650.

Exceptions may be made to any proposed finding of fact, conclusions of law, summary of evidence, or recommendations of the Hearing Officer. A copy of the exceptions shall also be delivered or mailed to all participants in this contested case.

Exceptions must be in writing and must clearly and concisely identify the portions of this Order excepted to and cite to appropriate portions of the record to which modifications are sought. Parties opposing these exceptions may file written arguments in opposition to the exceptions within 45 days of service of the Proposed Order. Any exceptions or arguments in opposition must be filed with the Adjudicator at the following address:

Dick Bailey
Klamath Basin Adjudication
Oregon Water Resources Dept
158 12th Street NE
Salem OR 97301



CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2002, I mailed a true copy of the following:
PROPOSED ORDER, by depositing the same in the U.S. Post Office, Salem, Oregon 97309,
with first class postage prepaid thereon, and addressed to:

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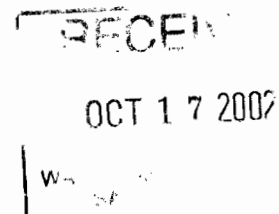
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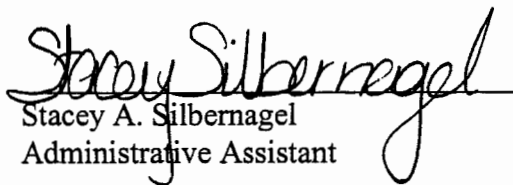
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RECEIVED

OCT 17 2007

W. S. P.