

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
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

United States of America; Ambrose W.
McAuliffe; Dwight Mebane; Elmore Nicholson;
Richard Nicholson; William Nicholson; Klamath
Irrigation District; Klamath Drainage District;
Tulelake Irrigation District; Klamath Basin
Improvement District; Ady District Improvement
Company; Enterprise Irrigation District; Malin
Irrigation District; Midland District
Improvement Co.; 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;
Randy Walthall; Inter-County Title Company;
Winema Hunting Lodge, Inc.; Van Brimmer
Ditch Company; Plevna District Improvement
Company; Collins Products, LLC;
Contestants

PROPOSED ORDER

Case No. 196

Claim: 64

Contests: 2755¹, 2836², 3102, 3462³,
3804, and 4117⁴

vs.

Owens & Hawkins;
Claimant/Contestant

¹ Dwight Mebane voluntarily withdrew from Contest 2755 by Voluntary Withdrawal of Contest by Dwight Mebane, dated May 16, 2003. Ambrose W. McAuliffe, Elmore Nicholson, Richard Nicholson and William Nicholson subsequently settled their Contest 2755 by Stipulated Agreement with Claimant filed September 23, 2003.

² WaterWatch of Oregon, Inc.'s Contest 2836 was dismissed. See ORDER DISMISSING WATERWATCH OF OREGON, INC.'S CONTESTS, May 20, 2003.

³ Don Vincent voluntarily withdrew from Contests 3462 on December 4, 2000. Berlva Pritchard voluntarily withdrew from contests 3462 on June 24, 2002. Klamath Hills District Improvement Company voluntarily withdrew from Contests 3462 on January 15, 2004.

⁴ The Klamath Tribes voluntarily withdrew Contest 4117. See KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST dated January 21, 2005.

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HISTORY OF THE CASE

This proceeding pursuant to ORS Chapter 539 is part of a general stream adjudication to determine the relative rights of the parties to the waters of the various streams and reaches within the Klamath River Basin.

Owens & Hawkins (Claimant) filed Claim 64 on January 18, 1991. Claimant made a *Walton*⁵ claim for water as a non-Indian successor to a Klamath Indian Allottee, claiming an amount of water sufficient to irrigate the allotment's share of the Tribe's "practically irrigable acreage" (PIA). This claim is for a total of 29.06 cubic feet per second (cfs) of water for irrigation of approximately 1,123.3 acres of land. Claimant subsequently voluntarily reduced the claim to 1,111.8 acres. The claimed sources of water are the Wood River and its tributaries, Fort Creek and Crooked Creek. The claimed period of use is April 1 through October 1, with a priority date of October 14, 1864.

On October 4, 1999, the OWRD Adjudicator issued the Preliminary Evaluation, denying this claim in its entirety on the basis that the claimed source had been previously adjudicated in the Wood River Adjudication.

Claimant (Jack Owens Ranches) filed Contest 3102. WaterWatch of Oregon, Inc. filed Contest 2836, which was subsequently dismissed. The Klamath Project Water Users⁶ (KPWU) filed Contest 3462. The United States of America (United States) filed Contest 3804. The Klamath Tribes filed Contest 4117, which was subsequently withdrawn.

Contest 2755 was filed by Ambrose McAuliffe, Dwight Mebane, Elmore Nicholson, Richard Nicholson, and William Nicholson. Their contest was resolved by stipulated agreement between the contestants to Contest 2755 and Claimant Jack Owens Ranches, filed September 23, 2003.

To resolve the issue of whether claims in the Klamath Basin Adjudication may be precluded by prior water rights adjudications in the Wood River and Sprague River systems, the claim involved in this case was consolidated with a number of other cases in Office of Administrative Hearings (OAH) Consolidated Case No. 900, pursuant to an Order to Consolidate dated April 29, 2003. On April 20, 2004, Administrative Law Judge William Young issued an Order Amending Rulings on Motions for Ruling on Legal Issues, which set forth the law of the

⁵ Claims for water rights of non-Indian successors to Indian water rights are commonly referred to as "*Walton*" rights, a term derived from the *Colville Confederated Tribes v. Walton* line of cases. *Colville Confederated Tribes v. Walton*, 460 F.Supp 1320 (ED Wash 1978) (*Walton I*); *Colville Confederated Tribes v. Walton*, 647 F2d 42 (9th Cir. 1981), *cert den* 454 US 1092 (1981) (*Walton II*); *Colville Confederated Tribes v. Walton*, 752 F2d 397 (9th Cir. 1985), *cert den* 475 US 1010 (1986) (*Walton III*).

⁶ 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 Co., 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, Don Vincent, Randy Walthall, Inter-County Title Company, Winema Hunting Lodge, Inc., Van Brimmer Ditch Company, Plevna District Improvement Company, and Collins Products, LLC are collectively referred to as the Klamath Project Water Users.

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case with respect to the consolidated cases and held that Klamath Basin Adjudication claims are precluded by prior adjudications under certain circumstances. On May 27, 2004, the consolidation order was vacated and individual cases were directed to proceed through the contested case process in the same manner as if they had not been consolidated, except the law of the case established by ALJ Young.

On March 14, 2005, the United States and the KPWU filed Motions for Ruling on Legal Issues. Both motions seek a ruling that, pursuant to the April 20, 2004 order of Administrative Law Judge William Young in Consolidated Case 900, part of the claim filed in this case is precluded by the previous adjudication of the Wood River and its tributaries. On April 13, 2005, Claimant filed responses to the motions of the United States and KPWU. On May 5, 2005, the United States filed a Reply. On May 6, 2005, OWRD and KPWU filed reply arguments.

On June 22, 2005, Administrative Law Judge Daina Upite issued an Order Granting Motions for Ruling on Legal Issues, holding that Claim 64 is precluded by a prior adjudication with respect to the following lands:

Township 34 South, Range 7.5 East, Willamette Meridian

- Section 1: N/2 SW/4, contained in Allotment 23 (42.2 acres)
- Section 10: NE/4NW/4, Lots 4 and 5, as contained in Allotment No. 596
- Section 11: N/2S/2, as contained in Allotment No. 485
- Section 11: NW/4, as contained in Allotment No. 541
- Section 11: Lot 2, as contained in Allotment No. 1387
- Section 12: N/2/NW/4NW/4, E/2NW/4, E/2NW/4SW/4, NE/4SW/4, as contained in Allotment No. 604.
- Section 12: S/2SW/4NW/4, S/2N/2SW/4NW/4, as contained in Allotment No. 1201
- Section 12: NW/4SE/4, as contained in Allotment No. 1447
- Section 12: W/2NW/4SW/4, as contained in Allotment No. 1619

The remaining lands (Non-Precluded Lands) in Claim 64 are subject to adjudication in this proceeding.

On March 15, 2006, Claimant and the United States entered into a stipulation to resolve the United States's Contest 3804. By order dated April 18, 2006, the stipulation has been admitted into the record. The Claimant and the United States stipulated, among other things, that the Non-Precluded Lands are approximately 401.0 acres and described as follows:

Township 34 South, Range 7.5 East, Willamette Meridian

- Section 2: All that part of the S/2NE/4SE/4, lying east and north of the Dalles California Highway (1.4 acres)
- Section 10: NE/4 (151.3 acres)
- Section 10: Lots 6 and 7 (56.0 acres)
- Section 11: NE/4 (160.7 acres)
- Section 12: S/2NW/4NW/4 (20.35 acres), N/2N/2SW/4NW/4 (10.15 acres), W/2NE/4 (1.1 acres)

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The Claimant and the United States further stipulated that Claim 64 shall be denied as to the remaining 142.0 acres included within the Non-Precluded Lands and described as follows:

Township 34 South, Range 7.5 East, Willamette Meridian

- Section 2: All that part of the S/2NE/4SE/4, lying east and north of the Dalles California Highway (1.4 acres)
Section 10: N/2NE/4 (73.5 acres)
Section 11: NW/4NE/4 (31.2 acres), SW/4NE/4 (34.8 acres)
Section 12: W/2NE/4 (1.1 acres)

The Claimant and the United States further stipulated that Crooked Creek shall not be a source for any water right adjudicated to any portion of the Non-Precluded Lands.

A telephone hearing was held in this matter on May 16, 2006, before Lawrence S. Smith, Administrative Law Judge for the Office of Administrative Hearings (OAH). Claimant was represented by Attorney Jeff Wheeler. KPWU was represented by Attorney Andrew Hitchings. Attorney Tom Snodgrass represented the United States. Jesse Ratcliffe, Assistant Attorney General, represented OWRD. No one testified at the hearing and only documentary evidence was offered. The record remained open for closing arguments. Claimant filed a closing argument by the deadline of June 16, 2006. KPWU responded by the deadline of July 21, 2006. Claimant replied by the deadline of August 18, 2006, and the record was closed.

EVIDENTIARY RULINGS

The following evidence was admitted without objection:

OWRD Ex. 1

Claimant Owens' Direct Testimony

Claimant Hawkins' Direct Testimony

Exhibits OH-1 through OH-75 in support of Claim 64

Stipulation between Claimant and the United States, dated March 15, 2006

ISSUE⁷

KPWU raised the following issue in Contest 3462 and its pre-hearing statement:

⁷ Issues related to the preclusive effect of the prior Wood River Adjudication are not listed here because they were previously resolved by the Order Granting Motion for Ruling on Legal Issues. Issues raised in Contests 2755 and 3804 are not listed here because they have been resolved by stipulations with Claimant.

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Whether Claimant has provided sufficient evidence to support the right claimed and establish the required elements for the claim, including rate, duty, actual use, priority of diversion and re-diversion, place of use, seasons of use, and/or acreage claimed.

FINDINGS OF FACT

(1) On January 18, 1991, Owens and Hawkins (Claimant) filed Claim 64 in the Klamath River Basin Adjudication with the Oregon Water Resources Department (OWRD), seeking a *Walton* water right⁸ for the irrigation of certain lands located in Klamath County, Oregon within the boundaries of the former Klamath Indian Reservation. The claimed sources of water are the Wood River and its tributaries, Fort Creek and Crooked Creek. All these sources were previously adjudicated in the Wood River, Crane Creek, Sevenmile Creek, and Fourmile Creek Adjudication (the "Wood River Adjudication"). (Stipulation of Claimant and the United States.⁹)

(2) The lands within Claim 64 were formerly part of the Klamath Indian Reservation. (Ex. OH 036 at 2.) The lands are generally shown on the Adjudication Claims Map for Owens and Hawkins (Exs. OH 004 and 005), and further described in the Stipulation between Claimant and the United States to Resolve the United States' Contest 3804 (Stipulation).

(3) Claim 64 lands were allotted as follows: Charlie Hill (allotment no. 151), Grace Hill (allotment no. 1387), and Rose Miller (allotment nos. 568 and 1284). (Exs. OH 034, 049, 051, 053, and 068; OWRD Ex. 1 at 22.) These allotments occurred under the General Allotment Act. The United States of America's Indian Irrigation Service identified Claim 64 lands as being within the Agency Irrigation Project in 1917 (Agency Project). (Exs. OH 036 and 050; OWRD Ex. 1 at 11.) The Agency Project was designed and built by the United States's Indian Irrigation Service for the benefit of lands within the Klamath Indian Reservation. The United States initiated development of the Agency Project on or before 1900 with the construction of the Crooked Creek Canal. (Exs. OH 036 and 050; OWRD Ex. 1, Page 11.)

(4) The United States continued to assert ownership and control of the Agency Project until termination of the Klamath Tribes and Klamath Indian Reservation at which time it was turned over to the landowners. While it was owned by the United States of America, the day-to-day management was by the Indian and non-Indian landowners. Claim 64 lands remained "in-trust" until they were conveyed to "non-Indians", Orville Elliott and J. Russell Elliott, by the

⁸ The claims of successors of Indian allottees are known as "*Walton*" claims because they were recognized in the case of *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 51 (9th Cir. 1981). *Walton* water rights originate in federal water rights that were implicitly reserved for the benefit of Indian tribes upon the establishment of Indian reservations by treaties with the United States. Upon the "allotment" of reservation lands pursuant to the General Allotment Act of 1887, 24 Stat. 388, such water rights were transferred to individual Indian allottees. Once these allotted lands were acquired by non-Indians, these rights were transformed into rights more in the nature of state water rights, subject to reasonable diligence and continuous use requirements. *Id.* *Walton* rights deriving from the Klamath Indian Reservation are entitled to a priority date corresponding to the date of establishment of that reservation, *i.e.*, October 14, 1864.

⁹ Besides Claimant, the remaining contestant is KPWU. In its closing argument, KPWU did not dispute any of the facts in the Stipulation.

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following instruments:

--Charlie Hill (allotment no. 151). The lands allotted to Charlie Hill passed from Indian to non-Indian ownership by a Patent dated May 9, 1958 to Orville Elliott and J. Russell Elliott (Ex. OH 056; OWRD Ex. 1, Page 21);

--Grace Hill (allotment no. 1387). The lands allotted to Grace Hill passed from Indian to non-Indian ownership by a Deed dated December 2, 1955 from Grace Hill McAllister to Orville Elliott (OWRD Ex. 1, Page 22);

--Rose Miller (allotment no. 568). These lands allotted to Rose Miller passed from Indian to non-Indian ownership by a Patent dated May 4, 1934 to Orville Elliott (Ex. OH 017; OWRD Ex. 1, Page 26); and

--Rose Miller (allotment no. 1284). The lands allotted to Rose Miller passed from Indian to non-Indian ownership by a Deed dated May 18, 1942 from Edna Vaughn Dillstrom to Orville Elliott and J. Russell Elliot (Ex. OH 071; OWRD Ex. 1, Page 23).

(5) Following these transfers to the Elliotts, additional transfers were made until Claimant came into title. (Exs. OH 006 - 032, 034, 044-049, 054, 056, 058, 060, 061, 065 and 071; OWRD Ex. 1, Pages 1- 43.) In regards to the specific part of Claim 64 lands for which Claimant and the United States have stipulated that Claimant has a water rights (outlined in finding (6) above), all transferees subsequent to the date that Claim 64 lands were first transferred from Indian to non-Indian owners have continued the diligent application of water to this part of Claim 64 lands. (Ex. OH 075; Direct Testimony of John Owens; Direct Testimony of Gerald H. Hawkins; OWRD Ex. 1, pages 1 through 11.)

(6) On October 4, 1999, OWRD's Adjudicator issued a "Summary – Preliminary Evaluation" of Claim No. 64 (Preliminary Evaluation). The Preliminary Evaluation denied Claim 64 in its entirety on the grounds that the claimed sources had previously been adjudicated in the Wood River Adjudication. Claimant, the United States, and KPWU, among others (see History of the Case above), filed Contests to Claim 64. (Stipulation of Claimant and the United States.)

(7) Claim 64 and 32 other claims were later consolidated into Case No. 900 by order dated May 6, 2003, for the purpose of determining the effect of the Wood River Adjudication on the present adjudication. The consolidated proceedings resulted in an Order Amending Rulings on Motions for Ruling on Legal Issues in Consolidated Case 900, dated April 20, 2004 (Preclusion Ruling), which set forth the legal standards for determining whether a claim in the Klamath River Basin Adjudication is precluded by a prior adjudication. (Stipulation of Claimant and the United States.)

(8) An Order Granting Motions for Ruling on Legal Issues (Legal Ruling) was issued by ALJ Upite on June 22, 2005. The Legal Ruling concluded that Claim 64 is precluded by a prior adjudication for certain lands within the claimed area (Precluded Lands), as follows:

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Section 1: N/2SW/4 (42.2 acres), as contained in Allotment No. 23
 Section 10: NE/4NW/4 (37.0 acres, Lots 4 and 5, as contained in Allotment No. 596
 Section 11: N/2S/2 (158.6 acres), as contained in Allotment No. 485
 Section 11: NW/4 (154.9 acres), as contained in Allotment No. 541
 Section 11: Lot 2 (34.4 acres), as contained in Allotment No. 1387
 Section 12: N/2/NW/4NW/4 (19.4 acres), E/2NW/4 (73.2 acres), NW/4SW/4 (40.0 acres), NE/4SW/4 (36.6 acres) as contained in Allotment No. 604; S/2N/2SW/4NW/4 (10.15 acres), as contained in Allotment No. 1201; and NW/4SE/4 (21.6 acres), as contained in Allotment No. 1447 (total = 710.8 acres).

Claimant and the United States agreed in their Stipulation that Claimant's Claim is denied as to these acres (Non-Precluded Lands). (Stipulation between Claimant and the United States at 3 and 5.)

(9) The Non-Precluded Lands in Claim 64 of about 401.0 acres¹⁰ are subject to this order and are described as follows:

Township 34 South, Range 7.5 East, Willamette Meridian

Section 2: All that part of the S/2NE/4SE/4, lying east and north of The Dalles California Highway (1.4 acres)
 Section 10: NE/4 (151.3 acres)
 Section 10: Lots 6 and 7 (56.0 acres)
 Section 11: NE/4 (160.7 acres)
 Section 12: S/2NW/4NW/4 (20.35 acres), N/2N/2SW/4NW/4 (10.15 acres), W/2NE/4 (1.1 acres)

(*Id.* at 3.)

(10) Claimant and the United States agreed in their Stipulation that Claimant has a water right to part of the Non-Precluded Lands and will limit the claimed rate, duty, and period of use and will conform the sources, points of diversion, and places of use in this part as follows:

a. Point of Diversion No. 1:

- i. Location: Lot 10 (SE/4NW/4), Section 3, Township 34 South, Range 7.5 East, W.M., at a point located 3090 feet North and 8760 feet West from the SE/4 Corner, Section 2, Township 34 South, Range 7.5 East, W.M.
- ii. Source: Wood River.

¹⁰ Claimant's Statement and Proof of Claim filed January 18, 1991 sought a water right for the irrigation of 1123.3 acres. See OWRD Exhibit 1 at page 3. However, Claimant subsequently reduced this amount voluntarily to 1111.8 acres, comprised of the 710.8 acres constituting the Precluded Lands and 401.0 acres constituting the Non-Precluded Lands. See, e.g., Revised Adjudication Claims Map for Owens & Hawkins, dated June 15, 1998 and included in OWRD Exhibit 1 at page 97.

- iii. Use: Irrigation of 133.8 acres
- iv. Diversion Rate: 2.68 cubic feet per second (cfs) for irrigation (133.8 acres x 1/50 cfs/acre).
- v. Duty: 535.2 acre-feet per year (4.0 acre-feet/acre/year x 133.8 acres)
- vi. Place of Use: SW/4NE/4 (39.0 acres), SE/4NE/4 (38.8 acres), Lot 6 (19.0 acres), Lot 7 (37.0 acres), Section 10, Township 34 South, Range 7.5 East, W.M.
- b. Point of Diversion No. 2:
 - i. Location: NW/4NW/4, Section 26, Township 33 South, Range 7.5 East, W.M., at a point located 940 feet South of the North section line and 960 feet East from the NW/4 Corner of said Section 26.
 - ii. Source: Fort Creek, tributary to the Wood River.
 - iii. Use: Irrigation of 125.2 acres
 - iv. Diversion Rate: 2.50 cfs for irrigation (125.2 acres x 1/50 cfs/acre).
 - v. Duty: 500.8 acre-feet per year (4.0 acre-feet/acre/year x 125.2 acres)
 - vi. Place of Use: NW/4NE/4 (8.0 acres), NE/4NE/4 (39.6 acres), SE/4NE/4 (40.4 acres), SW/4NE/4 (6.7 acres), Section 11, and S/2NW/4NW/4 (20.35 acres), N/2N/2SW/4NW/4 (10.15 acres), Section 12, all in Township 34 South, Range 7.5 East, W.M.
- c. PERIOD OF USE: April 1 to October 1
- d. PRIORITY DATE: October 14, 1864.

Claimant and the United States agree in their Stipulation that Claimant's Claim is denied for the remaining 142 acres in the Non-Precluded Lands not described in this Stipulation. These 142 acres are described as follows:

Township 34 South, Range 7.5 East, Willamette Meridian

- Section 2: All that part of the S/2NE/4SE/4, lying east and north of The Dalles California Highway (1.4 acres)
- Section 10: N/2NE/4 (73.5 acres)
- Section 11: NW/4NE/4 (31.2 acres), SW/4NE/4 (34.8 acres)
- Section 12: W/2NE/4 (1.1 acres)

Claimant and the United States further stipulated that Crooked Creek may not be adjudicated as a source for any water right adjudicated to any portion of the Non-Precluded Lands. The Stipulation did not prejudice Claimant's right to file timely exceptions with OWRD and seek judicial review of the Legal Ruling issued June 22, 2005, and the April 20, 2004 Preclusion Ruling. (*Id.* at 6.)

(11) In its Response to Claimant's Closing Memorandum filed on July 21, 2006, KPWU does not dispute the water rights granted to Claimant in Claimant's Stipulation with the United States, but argues only that Claimant's Claim 64 should be limited to the amount that Claimant agreed to in the Stipulation. Claimant replied that Claim 64 should be limited at this time to that amount, but Claimant reserves the right to enlarge its claim if ALJ's Upite's Legal Ruling issued June 22, 2005 and the April 20, 2004 Order Amending Rulings on Motions for Ruling on Legal Issues in Case 900 are set aside or modified.

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CONCLUSION OF LAW

Claimant has established a *Walton* claim for water rights as outlined in the stipulation between Claimant and the United States. Claimant has provided sufficient evidence to support the right claimed and establish the required elements for the claim, including rate, duty, actual use, priority of diversion and re-diversion, place of use, seasons of use, and/or acreage claimed.

OPINION

Claimants of water rights have the burden of establishing their contested claims, by a preponderance of the evidence. ORS 539.110. The burden of presenting evidence to support a particular fact or position in a contested case rests on the proponent of the fact or position. ORS 183.450.

Because Claimants are claiming water rights as non-Indian successors to a Klamath Indian Allottee, the water right is governed by the *Colville Confederated Tribes v. Walton* line of cases¹¹ and is commonly referred to as a *Walton* water right. The following elements must be proved to establish a *Walton* water right:

1. The claim is for water use on land formerly part of the Klamath Indian Reservation, and the land was allotted to a member of an Indian tribe;
2. The allotted land was transferred from the original allottee, or a direct Indian successor to the original allottee, to a non-Indian successor;
3. The amount of water claimed for irrigation is based on the number of acres under irrigation at the time of transfer from Indian ownership; except that:
4. The claim may include water use based on the Indian allottee's undeveloped irrigable land, to the extent that the additional water use was developed with reasonable diligence by the first purchaser of land from an Indian owner.
5. After initial development, the water claimed must have been continuously used by the first non-Indian successor and by all subsequent successors.

(OAH Case No. 272, Ruling on United States' Motion for Ruling on Legal Issues at 9 (August 4, 2003)).

This Proposed Order relies on and adopts ALJ Upite's Preclusion Ruling issued June 22, 2005. The Preclusion Ruling applied the test for preclusion set out in ALJ Young's Legal Ruling issued April 20, 2004 and held that part of Claim 64 is precluded by a prior adjudication. (See Finding (8) above.)

¹¹ *Colville Confederated Tribes v. Walton*, 460 F Supp 1320 (ED Wash 1978) (*Walton I*), *Colville Confederated Tribes v. Walton*, 647 F2d 42 (9th Cir 1981), *cert den* 454 US 1092 (1981) (*Walton II*), *Colville Confederated Tribes v. Walton*, 752 F2d 397 (9th Cir 1985), *cert den* 475 US 1010 (1986) (*Walton III*).

The Stipulation between Claimant and the United States is supported by a preponderance of the evidence in the record. The facts in the stipulation, incorporated above as findings, were not contradicted by KPWU, the remaining contestant besides Claimant. KPWU did not argue that Claimant's right described in the Stipulation should be limited or reduced, and Claimant did not establish a greater right than that granted in the Stipulation. Therefore, Claimant has established a *Walton* water right as described in the Stipulation (set out in the Order below).

ORDER

I propose that the Adjudicator for the Klamath Basin General Stream Adjudication enter a Final Order consistent with the Findings of Fact and Conclusions of Law stated herein, and as specifically set out below. The elements of a *Walton* water right are established for Claim 64 as follows:

POINT OF DIVERSION No. 1:

LOCATION: Lot 10 (SE/4NW/4), Section 3, Township 34 South, Range 7.5 East, W.M., at a point located 3090 feet North and 8760 feet West from the SE/4 Corner, Section 2, Township 34 South, Range 7.5 East, W.M.

SOURCE: Wood River.

USE: Irrigation of 133.8 acres

DIVERSION RATE: 2.68 cubic feet per second (cfs) for irrigation (133.8 acres x 1/50 cfs/acre).

DUTY: 535.2 acre-feet per year (4.0 acre-feet/acre/year x 133.8 acres)

PLACE OF USE: SW/4NE/4 (39.0 acres), SE/4NE/4 (38.8 acres), Lot 6 (19.0 acres), Lot 7 (37.0 acres), Section 10, Township 34 South, Range 7.5 East, W.M.

POINT OF DIVERSION No. 2:

LOCATION: NW/4NW/4, Section 26, Township 33 South, Range 7.5 East, W.M., at a point located 940 feet South of the North section line and 960 feet East from the NW/4 Corner of said Section 26.

SOURCE: Fort Creek, tributary to the Wood River.

USE: Irrigation of 125.2 acres

DIVERSION RATE: 2.50 cfs for irrigation (125.2 acres x 1/50 cfs/acre).

DUTY: 500.8 acre-feet per year (4.0 acre-feet/acre/year x 125.2 acres)

PLACE OF USE: NW/4NE/4 (8.0 acres), NE/4NE/4 (39.6 acres), SE/4NE/4 (40.4 acres), SW/4NE/4 (6.7 acres), Section 11, and S/2NW/4NW/4 (20.35 acres), N/2N/2SW/4NW/4 (10.15 acres), Section 12, all in Township 34 South, Range 7.5 East, W.M.


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For both points of diversion:

PERIOD OF USE: April 1 to October 1

PRIORITY DATE: October 14, 1864.



Lawrence S. Smith, Administrative Law Judge
Office of Administrative Hearings

Date: February 1, 2007

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:

Adjudicator
Klamath Basin Adjudication
Oregon Water Resources Dept
725 Summer Street N.E., Suite "A"
Salem OR 97301

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WATER RESOURCES DEPT
SALEM, OREGON

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2007, 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:

Dwight W. French / Teri Hranac
Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, OR 97301
dwight.w.french@wrд.state.or.us
teri.k.hranac@wrд.state.or.us

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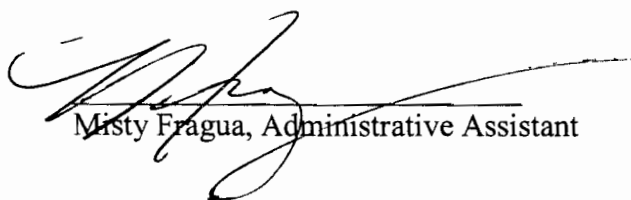
Jesse D. Ratcliffe /
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1162 Court St NE
Salem, OR 97310
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