

**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 the	)	PARTIAL ORDER OF
UNITED STATES DEPARTMENT OF	)	DETERMINATION
INTERIOR, U.S. FISH AND WILDLIFE	)	
SERVICE	)	
	)	Water Right Claim 3

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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 December 13, 1990, MABEL A. SCHUMACHER timely submitted a Statement and Proof of Claim (Claim 3) 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 3 was submitted for a total of 0.19 cfs of water as follows: 0.10 cfs from Cole Creek, a tributary of the Williamson River, being 0.09 cfs for livestock watering and 0.01 cfs for domestic use; and 0.09 cfs from Three Creek, a tributary of the Williamson River, for livestock watering. The livestock watering claim is for 500 head. The claimed period of use is year-round for domestic use, and “May 1 to Jan. 1” for livestock watering. The claimed priority date is October 14, 1864.
3. MABEL A. SCHUMACHER signed Claim 3 attesting that the information contained in the claim is true.
4. The claim was ultimately transferred to the UNITED STATES DEPARTMENT OF INTERIOR, U. S. FISH AND WILDLIFE SERVICE (USFWS) (Claimant) on April 24, 1998. *See* WARRANTY DEED, COUNTY OF KLAMATH, VOL. M98, PAGE 16580 (April 24, 1998), (Claim # 3, Pages 007 – 010)].
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 approved, but for a smaller quantity of water and with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, Francis Loving Trust, Hilda Francis Trustee, timely filed Contest 2759 to the Claim and/or Preliminary Evaluation of Claim 3.
7. On May 8, 2000, Thomas William Mallams timely filed Contest 4945 to the Claim and/or Preliminary Evaluation of Claim 3.
8. On May 8, 2000, William J. Rust and Ethel J. Rust timely filed Contest 2760 to the Claim and/or Preliminary Evaluation of Claim 3.
9. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 156.
10. On August 9, 2004, OWRD, USFWS, and contestants Francis Loving Trust, Hilda Francis Trustee, Thomas William Mallams, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust, executed a STIPULATION TO RESOLVE CONTESTS 2759, 2760, AND 4945 (Settlement Agreement) thereby resolving all contests to Claim 3.
11. On August 11, 2004, the Adjudicator withdrew Case 156 from the Office of Administrative Hearings.
12. OWRD finds that the season of use for livestock watering, January 1 to December 31, as stipulated in the Settlement Agreement is an impermissible amendment because it is an enlargement of the original claim; the Claimant claimed a season of use "May 1 – Jan 1."
13. OWRD finds that livestock watering is limited to a total of 500 head as originally claimed.

## **B. DETERMINATION**

1. The Settlement Agreement executed between OWRD, USFWS, and contestants Francis Loving Trust, Hilda Francis Trustee, Thomas William Mallams, and David Cowan, successor in interest to William J. Rust and Ethel J. Rust, is adopted and incorporated as if set forth fully herein, with the exception of the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment; the season of use for livestock watering 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.
3. Livestock watering is limited to a total of 500 head as described in Finding 13, above.
4. Based on the file and record herein, IT IS ORDERED that Claim 3 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 3**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** OWRD INVESTIGATION MAP – T 29 S, R 9 E

**CLAIMANT:** UNITED STATES DEPARTMENT OF INTERIOR,  
U.S. FISH AND WILDLIFE SERVICE  
911 NE 11TH AVE  
PORTLAND OR 97232

**SOURCE OF WATER:**  
AN UNNAMED SPRING, tributary to COLE CREEK; and  
THREE CREEK, tributary to the WILLIAMSON RIVER

**PURPOSE OR USE:**  
DOMESTIC FOR ONE HOUSEHOLD FROM AN UNNAMED SPRING; AND  
LIVESTOCK WATERING AN UNNAMED SPRING AND THREE CREEK, LIMITED TO A  
TOTAL OF 500 HEAD

**RATE OF USE:**  
0.0286 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:  
  
0.01 CFS FROM AN UNNAMED SPRING FOR DOMESTIC USE, MEASURED AT THE  
POINT OF DIVERSION; AND  
  
0.0186 CFS FOR LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION,  
BEING 0.0093 FROM AN UNNAMED SPRING NOT TO EXCEED 6000 GALLONS PER  
DAY, AND 0.0093 CFS FROM THREE CREEK, NOT TO EXCEED 6000 GALLONS PER  
DAY.

**PERIOD OF ALLOWED USE:**

Use	Period
Domestic	January 1 - December 31
Livestock	May 1 – Jan 1

**DATE OF PRIORITY:** OCTOBER 14, 1864

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q	Remarks
Unnamed Spring	29 S	9 E	WM	15	NW NW	Domestic Use and Livestock Watering
Three Creek	29 S	9 E	WM	28	SW SW	Livestock Watering Only

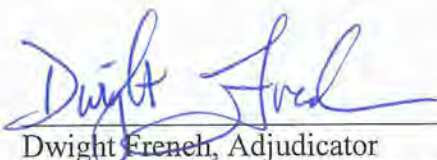
**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
29 S	9 E	WM	15	SE NW	Unnamed Spring

LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
29 S	9 E	WM	15	SE NE	Unnamed Spring
29 S	9 E	WM	28	SW SW	Three Creek

End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication