

**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
JERRY L. NEFF AND LINDA R. NEFF	)	DETERMINATION
	)	
	)	Water Right Claim 10
_____	)	

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 5, 1990, JESS FRANCIS AND IDA GIVAN timely submitted a Statement and Proof of Claim (Claim 10) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 10 was submitted for a total of 22.24 cfs of water for primary irrigation of 889.4 acres including livestock watering of 600 pair, being 2.22 cfs from an unnamed stream, and 20.02 cfs from Jackson Creek, both tributaries of the Williamson River. Of the 22.24 cfs of water, 6.87 cfs of water is also claimed from the Williamson River, tributary to Upper Klamath Lake, for supplemental irrigation of 274.7 acres. The duty and rate claimed are 3.0 acre-feet per acre per year and 1/40 of one cubic foot per second per acre, respectively. The claimed period of use is year-round for livestock watering, and April 1 through November 30 for irrigation. The claimed priority date is October 14, 1864.
3. IDA LEA GIVAN signed Claim 10 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 10 was transferred to non-Indian successors, KENNETH HUFFORD AND LESLIE HUFFORD on December 30, 1997. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL. M98, PAGE 104 (Dec. 30, 1997) (Claim # 5, Pages 022 – 023). A non-Indian successor to allotted Klamath Reservation lands may claim an Indian Reserved water right (Walton claim) under the Treaty of October 14 1864, 16 Stat. 707.

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, irrigation, and supplemental irrigation was approved, but with a shorter season of use for livestock watering than claimed and with a larger duty for irrigation than claimed.
6. On May 8, 2000, KENNETH. HUFFORD AND LESLIE HUFFORD timely filed Contest 3263 to the Preliminary Evaluation of Claim 10.
7. On May 8, 2000, the United States of America timely filed Contest 3716 to the Claim and/or Preliminary Evaluation of Claim 10.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4072 to the Claim and/or Preliminary Evaluation of Claim 10.
9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2816 to the Claim and/or Preliminary Evaluation of Claim 10.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 161.
11. On February 20, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2816. *See WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST NO. 2816 (Feb. 20, 2003).*
12. On April 6, 2004, Kenneth J. Hufford and Leslie Hufford, OWRD, the United States of America, and the Klamath Tribes, executed a STIPULATION TO RESOLVE CONTEST (Settlement Agreement) thereby resolving all remaining contests to Claim 10.
13. On April 8, 2004, the Adjudicator withdrew Case 161 from the Office of Administrative Hearings.
14. The claim was transferred to JERRY L. NEFF AND LINDA R. NEFF (Claimants) on November 4, 2004. [*See STATUTORY WARRANTY DEED, COUNTY OF KLAMATH, VOL. M04, PAGE 76350 (Nov. 4, 2004) and CHANGE OF OWNERSHIP FORM (Feb. 11, 2005)*].
15. OWRD finds a rate for irrigation of 1/40 of one cubic foot per second per acre and a duty of 3.0 acre-feet per acre per year, as claimed.
16. OWRD finds that the shift in the season of use for primary and supplemental irrigation from that which was originally claimed (April 1 through November 30), to March 1 through October 31, as stipulated in the Settlement Agreement is a permissible amendment because (1) it is not an enlargement to the length of the irrigation season, and (2) the Settlement Agreement relied on the same standard season of use as stated in the Preliminary Evaluation for Claim 10, whose publication preceded the October 1, 1999 deadline to timely amend a claim.

## B. DETERMINATION

1. The Settlement Agreement executed between Kenneth J. Hufford and Leslie Hufford, OWRD, the United States of America, and the Klamath Tribes, is adopted and incorporated as if set forth fully herein.
2. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
3. The shift in the season of use from irrigation from the season originally claimed (April 1 through November 30), to March 1 through October 31, constitutes a permissible amendment of the claim. The March 1 through October 31 season was first identified in the Preliminary Evaluation for Claim 10, which was issued prior to the beginning of open inspection in the Klamath Adjudication, and therefore complies with OAR 690-030-0085. In addition, the shifted season does not enlarge the overall length of the season of use, and therefore is not a “new” claim that would not be permitted pursuant to ORS 539.210.
4. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season.
5. The duty for irrigation is 3.0 acre-feet per acre per year as claimed.
6. The rate for irrigation is 1/40 of one cubic foot per second per acre as claimed.
7. Based on the file and record herein, IT IS ORDERED that Claim 10 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 10**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 10, PAGE 19

**CLAIMANT:** JERRY L. NEFF AND LINDA R. NEFF  
4118 HARBOR WALK DRIVE  
FORT COLLINS, CO 80525

**SOURCES OF WATER:**  
An UNNAMED STREAM, tributary to JACKSON CREEK;  
JACKSON CREEK, tributary to WILLIAMSON RIVER; and  
The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

**PURPOSE OR USE:**

PRIMARY IRRIGATION OF 889.4 ACRES FROM POD 1, POD 2 AND POD 3;  
SUPPLEMENTAL IRRIGATION OF 274.7 ACRES FROM POD 4; AND  
LIVESTOCK WATERING OF 600 PAIR FROM POD 1, POD 2, POD 3, AND/OR POD 4.

**RATE OF USE:**

22.2548 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

UP TO 22.24 CFS FOR PRIMARY IRRIGATION MEASURED AT THE POINTS OF DIVERSION, BEING A MAXIMUM OF 20.02 CFS FROM JACKSON CREEK (POD 1 AND POD 2), AND A MAXIMUM OF 2.22 CFS FROM AN UNNAMED STREAM (POD 3), AND

UP TO 6.87 CFS FOR SUPPLEMENTAL IRRIGATION FROM THE WILLIAMSON RIVER (POD 4) MEASURED AT THE POINT OF DIVERSION.

PRIMARY AND SUPPLEMENTAL IRRIGATION TOGETHER MUST NOT EXCEED 22.24 CUBIC FEET PER SECOND

0.0148 CFS FOR LIVESTOCK WATERING FROM AN UNNAMED STREAM INCLUDING ITS DITCHES, JACKSON CREEK INCLUDING ITS DITCHES, AND/OR THE WILLIAMSON RIVER INCLUDING ITS DITCHES, MEASURED AT THE PLACE OF USE, NOT TO EXCEED 9600 GALLONS PER DAY.

DIVERSION OF STOCK WATER TO THE PLACES OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE AND IS REASONABLY NECESSARY TO TRANSPORT THE WATER, AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON.

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:**

3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

**PERIOD OF ALLOWED USE:**

Use	Period
Irrigation	March 1 - October 31
Supplemental Irrigation	March 1 - October 31
Livestock	November 1 – February 29

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

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

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Jackson Creek	30 S	11 E	WM	18	NE NW	5 FEET SOUTH AND 640 FEET WEST FROM N¼ CORNER, SECTION 18
POD 2	Jackson Creek	30 S	11 E	WM	18	NE NW	40 FEET SOUTH AND 320 FEET WEST FROM N¼ CORNER, SECTION 18
POD 3	Unnamed Stream	30 S	11 E	WM	18	NE NW	5 FEET SOUTH AND 110 FEET WEST FROM N¼ CORNER, SECTION 18
POD 4	Williamson River	30 S	10 E	WM	14	SE NW	2090 FEET SOUTH AND 3710 FEET WEST FROM NE CORNER, SECTION 14


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

PRIMARY IRRIGATION FROM POD 1, POD 2 AND POD 3 and LIVESTOCK WATERING FROM POD 1, POD 2, POD 3 AND/OR POD 4						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	10 E	WM	11	NE SW		38.4
30 S	10 E	WM	11	NW SW		40.0
30 S	10 E	WM	11	SW SW		40.0
30 S	10 E	WM	11	SE SW		39.0
30 S	10 E	WM	11	NE SE		12.8
30 S	10 E	WM	11	NW SE		40.0
30 S	10 E	WM	11	SW SE		38.4
30 S	10 E	WM	11	SE SE		8.4
30 S	10 E	WM	13	NE NE		39.6
30 S	10 E	WM	13	NW NE		30.4
30 S	10 E	WM	13	SW NE		40.0
30 S	10 E	WM	13	SE NE		40.0
30 S	10 E	WM	13	NE NW		6.5
30 S	10 E	WM	13	NW NW		3.4
30 S	10 E	WM	13	SW NW		35.0
30 S	10 E	WM	13	SE NW		38.2
30 S	10 E	WM	14	NE NE		21.5
30 S	10 E	WM	14	NW NE		40.0
30 S	10 E	WM	14	SW NE		40.0
30 S	10 E	WM	14	SE NE		30.1
30 S	10 E	WM	14	NE NW		39.0
30 S	10 E	WM	14	NW NW		39.4
30 S	10 E	WM	14	SW NW		14.0
30 S	10 E	WM	14	SE NW		33.0
30 S	11 E	WM	18	NE NW		37.8
30 S	11 E	WM	18	NW NW	1	39.7
30 S	11 E	WM	18	SW NW	2	40.0
30 S	11 E	WM	18	SE NW		24.8

SUPPLEMENTAL IRRIGATION FROM THE WILLIAMSON RIVER (POD 4)					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	10 E	WM	11	NE SW	30.3
30 S	10 E	WM	11	NW SW	40.0
30 S	10 E	WM	11	SW SW	40.0
30 S	10 E	WM	11	SE SW	39.0
30 S	10 E	WM	14	NE NW	39.0
30 S	10 E	WM	14	NW NW	39.4
30 S	10 E	WM	14	SW NW	14.0
30 S	10 E	WM	14	SE NW	33.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication