

**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
G BAR W LAND AND CATTLE)	DETERMINATION
COMPANY)	
)	
_____)	Water Right Claim 12

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 19, 1990, DIANE TAYLOR OF BEHALF OF DENNIS RANCH timely submitted a Statement and Proof of Claim (Claim 12) 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 12 was submitted for a total of 17.9 cfs of water for irrigation of 1035.2 acres and 0.01 cfs for livestock watering for a maximum of 400 head. The claimed sources are Irving Creek and Jackson Creek, both tributaries of the Williamson River, and the Williamson River, tributary to Upper Klamath Lake. The claimed period of use is "Apr. 1 – Nov. 1." The claimed priority date is October 14, 1864.
3. DIANE F. TAYLOR signed Claim 12 attesting that the information contained in the claim is true.
4. The claim was subsequently transferred to the G BAR W LAND AND CATTLE COMPANY (Claimant). *See* LETTER, May 24, 1993 (Claim # 12, Pages 040-041).
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 for livestock watering and irrigation, but for fewer acres and a smaller quantity of water, and with longer seasons of use than claimed.
6. On December 18, 1998, the title to property appurtenant to Claim 12 within the NESW, NWSW, NESE, and NWSE of Section 13, and the NESE of Section 14, Township 30 South, Range 10 East, W.M. (partial listing) was transferred from G BAR W LAND AND CATTLE COMPANY to JEFF AND LYNDA HUNT, AND RICHARD AND JENNIFER

SANFORD. *See* COUNTY OF KLAMATH RECORDS, VOL. M98, PAGES 27738 - 27740 (May 11, 1998).

7. On May 4, 2000, the claimant, G BAR W LAND AND CATTLE COMPANY timely filed Contest 1789 to the Preliminary Evaluation of Claim 12.
8. On April 19, 2000, JEFF G. HUNT timely filed Contest 29 to the Preliminary Evaluation of Claim 12.
9. On May 4, 2000, Steven Lawrence, James B. Lawrence and John H. Lawrence timely filed Contest 1786 to the Claim and/or Preliminary Evaluation of Claim 12.
10. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3434: 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.
11. On May 8, 2000, the United States of America timely filed Contest 3718 to the Claim and/or Preliminary Evaluation of Claim 12.
12. On May 8, 2000, the Klamath Tribes timely filed Contest 4074 to the Claim and/or Preliminary Evaluation of Claim 12.
13. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2817 to the Claim and/or Preliminary Evaluation of Claim 12.
14. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 163.
15. On February 20, 2003, WaterWatch of Oregon, Inc. withdrew Contest 2817. *See* WATERWATCH'S VOLUNTARY WITHDRAWAL OF CONTEST 2817 (Feb. 20, 2003).
16. On February 25, 2003, Steven Lawrence, James B. Lawrence, John H. Lawrence withdrew Contest 1786. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY STEVEN LAWRENCE, JAMES B. LAWRENCE, AND JOHN H. LAWRENCE (Feb. 25, 2003).

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3434 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3434 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3434 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

17. On July 14, 2003, Claimant G Bar W Land and Cattle Company withdrew Contest 1789. *See* LETTER – RE: CASE NO. 163, CLAIM NO. 12 AND CONTEST OF PRELIMINARY EVALUATION (July 17, 2003).
18. On August 13, 2004, G Bar W Land and Cattle Company, Richard Sanford, Jennifer Sanford, Jeff Hunt, Lynda Hunt, OWRD, the Klamath Project Water Users, the United States of America, and the Klamath Tribes, executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving all the remaining contests to Claim 12.
19. On August 18, 2004, the Adjudicator withdrew Case 163 from the Office of Administrative Hearings.
20. The terms of the Settlement Agreement specify the water right claim is to be adjudicated to two separate ownership groups, being (1) G BAR W LAND AND CATTLE CO, and (2) JEFF AND LYNDA HUNT, AND RICHARD AND JENNIFER SANFORD. Therefore, OWRD finds it practical to bifurcate Claim 12; OWRD has retained the designation of Claim 12 for the portion of the claim pertaining to G BAR W LAND AND CATTLE COMPANY, and has designated the portion of the claim pertaining to JEFF AND LYNDA HUNT, AND RICHARD AND JENNIFER SANFORD as Claim 731.
21. Based on the Claimant’s map (Claim # 12, Page 63), OWRD’s 1979 Field Inspection Report (Claim # 12, WIP, Page 0032), and Final Proof Survey Map prepared for OWRD Water Right Permit S-50262 which shows the Irving Creek Diversion on Claimant’s property (Claim # 12, WIP, Page 0016), OWRD finds that the location of the point of diversion on Irving Creek listed in the in the Settlement Agreement within SESW, SECTION 24, TOWNSHIP 30 SOUTH, RANGE 11 EAST, W.M. is incorrect; the correct location of the point of diversion on Irving Creek is NWSW, SECTION 19, TOWNSHIP 30 SOUTH, RANGE 11 EAST, W.M.
22. 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 “April 1 - Nov.1.”

B. DETERMINATION

1. The Settlement Agreement executed between G Bar W Land and Cattle Company, Richard Sanford, Jennifer Sanford, Jeff Hunt, Lynda Hunt, OWRD, the Klamath Project Water Users, the United States of America, and the Klamath Tribes, is adopted and incorporated as if set forth fully herein, with two exceptions:
 - a. the listed location of the point of diversion for Irving Creek; as described in Finding 21, above, the location of the point of diversion for Irving Creek is corrected to the NWSW, SECTION 19, TOWNSHIP 30 SOUTH, RANGE 11 EAST, W.M.; and

- b. the season of use for livestock watering that was enlarged by the Settlement Agreement and constitutes an impermissible amendment as described in Finding 22, above; 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. Because there is no evidence on the record to the contrary, the standard rate of 12 gallons of water per head of livestock per day, measured at the place of use, as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION will apply.
4. Because there is no evidence on the record to the contrary, the standard duty for irrigation, being 3.5 acre-feet per acre, and 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.
5. Based on the file and record herein, IT IS ORDERED that Claim 12 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 12
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAPS – T 30 S, R 10 E and T 30 S, R 11 E; CLAIM # 12, PAGE 63

CLAIMANT: G BAR W LAND AND CATTLE COMPANY
1059 CREWS RD
MEDFORD, OR 97501

SOURCE OF WATER:
IRVING CREEK and JACKSON CREEK, tributaries of the WILLIAMSON RIVER

PURPOSE OR USE:
IRRIGATION OF 153.6 ACRES, BEING 144.2 ACRES FROM IRVING CREEK AND 9.4 ACRES FROM JACKSON CREEK; AND

LIVESTOCK WATERING OF 200 HEAD FROM IRVING CREEK AND/OR JACKSON CREEK.

RATE OF USE:
3.8237 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION AS FOLLOWS:

3.82 CFS FOR IRRIGATION, BEING 3.58 CFS FROM IRVING CREEK AND 0.24 CFS FROM JACKSON CREEK; AND

0.0037 CFS FOR LIVESTOCK WATERING NOT TO EXCEED 2400 GALLONS PER DAY FROM IRVING CREEK AND/OR JACKSON CREEK.

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:

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

PERIOD OF ALLOWED USE:

Use	Period
Irrigation	April 1 - October 31
Livestock	April 1 to November 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Irving Creek POD	30 S	11 E	WM	19	NW SW	10 FEET NORTH AND 60 FEET WEST, SE CORNER, NWSW, SECTION 19
Jackson Creek POD	30 S	11 E	WM	18	NE NW	20 FEET SOUTH AND 300 FEET WEST FROM N¼ CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION AND LIVESTOCK WATERING							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized Source
30 S	10 E	WM	24	NE NE		8.0	Irving Creek POD
30 S	10 E	WM	24	NW NE		28.0	
30 S	10 E	WM	24	SW NE		40.0	
30 S	10 E	WM	24	SE NE		37.6	
30 S	10 E	WM	24	NE SW		20.0	
30 S	10 E	WM	24	NW SW		1.2	
30 S	10 E	WM	24	SE SW		0.6	
30 S	11 E	WM	19	SW NW	2	8.8	
30 S	10 E	WM	24	NW NE		9.4	Jackson Creek POD

End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication