

**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
SCOTT AND MARGIE RUNELS	)	DETERMINATION
	)	
_____	)	Water Right Claim 19

The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS  
TO THE PROPOSED ORDER**

1. Claim 19 (Claimants: SCOTT AND MARGIE RUNELS) and its associated contests (2787, 2819, 3437, and 4077) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 166.
2. The Office of Administrative Hearings conducted contested case proceedings and issued a PROPOSED ORDER for Claim 19 on November 18, 2004. The record was reopened at the request of OWRD to identify the points of diversion and the number of irrigated acres by quarter-quarter. An AMENDED PROPOSED ORDER (First Amended Proposed Order) was issued on February 22, 2005. Claimant Margie Runels filed exceptions to both orders within the exception filing deadlines.
3. On June 20, 2007, OWRD filed a second request to reopen the record to allow further testimony and cross examination. A second AMENDED PROPOSED ORDER (Second Proposed Order) was issued on August 14, 2008. The First Amended Proposed Order was adopted and incorporated by reference into the Second Amended Proposed Order. (Second Amended Proposed Order at 4.) No exceptions were filed to the Second Proposed Order.
4. The exceptions filed have been reviewed and considered in conjunction with the entire record for Claim 19. The exceptions are found to be persuasive in part. In response to the persuasive exceptions, modifications to the First Amended Proposed Order are made as described in Section A.7., A.8, and A.9, below.

## Note on Modifications

This Partial Order of Determination modifies certain parts of the Second Amended Proposed Order. This Partial Order of Determination also modifies certain parts of the First Amended Proposed Order. Modification of the First Amended Proposed Order is necessary because the Second Amended Proposed Order incorporates the First Amended Proposed Order by reference only. The Administrative Law Judge did not reprint the entirety of the First Amended Proposed Order in his Second Amended Proposed Order.

### Modifications to the First Amended Proposed Order

5. The First Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of the Case” is adopted in its entirety.
  - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.6, below.
  - c. The “Issues” is adopted in its entirety.
  - d. The “Findings of Fact,” is adopted with modifications, as set forth in Section A.7, below.
  - e. The “Opinion” is adopted with modifications, as set forth in Section A.8, below.
  - f. The section titled “Amended Proposed Order” is adopted with modifications, as set forth in Section A.9, below. Consistent with Sections A.7, A.8, and A.9, below, the outcome of the Order has been modified as to recognize a right for irrigation on an additional 177.8 acres.
6. **Evidentiary Rulings.** Within the section titled “Evidentiary Rulings” of the Proposed Order, the third to last sentence within the first Paragraph is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

The United States also moved to amend a reference in Exhibit 166 E 00040022 to read “R 9 7 E,” instead of “R ~~7~~ 9 E,” to correct a typographical error.

**Reason for Modification:** To correct a scrivener’s error.

7. **Findings of Fact.**
  - a. The Proposed Order’s Finding of Facts #2, 3, 4, 5, and 6 are modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):

(2) Allotment Nos. 11 and 13 were transferred to non-Indians in 1924 and 1920, respectively. (Clements Testimony at 52, ¶ 61.) ~~There was almost no irrigation of Allotments Nos. 11 or 13 prior to the mid-1970s. (Id.)~~ The first evidence of beneficial use of water on these two allotments is water right Permit S-37118 which was issued for irrigation from Sand Creek and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A photograph of Allotment 11 taken in 1976

shows approximately three acres of irrigation or spilling from the ditch along the western boundary of that allotment. (*Id.*) The first irrigation on Allotment 13 appears in photographs taken in 1974, 1976 and 1979, in which one to two acres received water. (*Id.*)

(3) Allotment No. 12 was transferred to the first non-Indian in 1918. There is no evidence of development of irrigation near the time of transfer, except a letter in which the owner requested water for use on a few acres of irrigable land in about 1919. (*Id.* at 53, ¶ 61) The issue in the letter is the landowner's improper maintenance of a flume. The flume was constructed to convey water to his land which crossed over onto his neighbors land. Leakage from the flume caused damage to his neighbor's crop. (Clements Direct Ex. 40032.) ~~There~~ Although this is no evidence that the requested water was delivered, the letter gives no indication as to the location of the land to which the flume was conveying water. and no evidence of any irrigation of Allotment No. 12 from 1918 to 1952. (*Id.*) The earliest evidence of irrigation on this allotment dates to sometime after 1930 when natural overflow from Sand Creek was spread across Sections 18 and 19 for irrigation using single plow furrow ditches, and continued into the 1940s and 1950s. (Runels Ex. S-3 [Affidavit of Lee Hunsaker].) Water right Permit S-37118 was issued for irrigation from Sand Creek covering lands within this allotment, and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A final proof survey map dated May 27, 1994, depicts the acreage under irrigation. (OWRD Ex. 1 at 85). Aerial photographs between 1952 and 1979 show different areas of between 8 and 23 acres receiving water. (~~*Id.*~~ Clements Testimony at 53, ¶ 61.) Photographs taken between 1987 and 1994 show no irrigation on Allotment No. 12. (*Id.*)

(4) Allotment Nos. 530 and 534 were transferred to non-Indian ownership in 1960-1961. (*Id.*) An aerial photograph from 1961 shows 14 acres and 41 acres being irrigated on Allotment Nos. 530 and 534, respectively. (*Id.*) Allotment No. 533 was transferred to the first non-Indian in 1921 and owned by that first non-Indian until 1928. There is no evidence of any irrigation of that allotment (533)

during that period of ownership. (*Id.*) ~~There is no evidence of any irrigation of Allotment No. 533 from 1928 to 1952. (*Id.*) Evidence shows a significant period of non-use of water on these three allotments, from 1976 to 1994 for Allotment No. 530, and at least 1979 to 1994 for Allotment Nos. 534 and 533. (*Id.* at 53-54, ¶ 61.)~~ The earliest evidence of irrigation on Allotment Nos. 530, 534 and 533 dates to sometime after 1930 when natural overflow from Sand Creek was spread across Sections 18 and 19 for irrigation using single plow furrow ditches, and continued into the 1940s and 1950s. (Runels Ex. S-3 [Affidavit of Lee Hunsaker].) Mr. Clements' testimony establishes that a 1952 aerial photograph indicates substantial portions of Allotment Nos. 530 and 534 were flooded that year, and that the channel of Sand Creek flows onto and through these allotments from which the high flows would spread over the lands adjacent to the stream channel. (Clements Testimony at 24, 25, 29 ) Water right Permit S-37118 was issued for irrigation from Sand Creek covering lands appurtenant to these three allotments, and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A final proof survey map dated May 27, 1994 shows irrigation on the lands claimed within these three allotments. (OWRD Ex. 1 at 85). Beneficial use of water did not occur for at least 9 years after transfer from Indian ownership on Allotment No. 533. Beneficial use of water from Sand Creek was made with reasonable diligence on 104.4 acres on Allotment No. 530 and 74.3 acres on Allotment No. 534.

(5) Allotment No. 1442 was transferred out of Indian ownership in 1918 and conveyed to the next owner in 1924. (*Id.* at 54, ¶ 61.) There is no evidence of water use on Allotment No. 1442 from 1918 to sometime after 1930. 1924, nor any evidence of irrigation on the parcel from 1924 to 1952. (*Id.*) The earliest evidence of irrigation this allotment dates to sometime after 1930 when natural overflow from Sand Creek was spread across Sections 18 and 19 for irrigation using single plow furrow ditches, and continued into the 1940s and 1950s. (Runels Ex. S-3 [Affidavit of Lee Hunsaker].) Aerial photographs show no irrigation of the land from 1976 to 1987. (*Id.* Clements Testimony at 54, ¶ 61.)

However, water right Permit S-37118 was issued for irrigation from Sand Creek covering lands appurtenant to this allotment, and has a priority date of 1973 (OWRD Ex. 1 at 80-84.) A final proof survey map dated May 27, 1994 shows irrigation on the lands claimed within this allotment. (OWRD Ex. 1 at 85). Beneficial use of water did not occur for at least twelve years after transfer from Indian ownership on Allotment No. 1442.

**Reasons for Modifications:** The Adjudicator has determined that certain of the ALJ's original findings were not supported by a preponderance of evidence in the record; to provide evidence from the record to substantiate beneficial use of water being made with reasonable diligence by non-Indian successors after transfer from Indian ownership; to provide evidence from the record to substantiate continued use of water by non-Indian successors after transfer from Indian ownership; to add clarification using evidence on the record.

(6) Allotment Nos. 120, 121, 208 and 1122 were transferred out of Indian ownership between 1920 and 1924. They were conveyed to the next owner between 1928 and 1936. (~~Id.~~ Clements Testimony at 54, ¶ 61.) All four allotments were within the boundaries of the Sand Creek Irrigation Project as it was initially completed in about 1920. (*Id.*) The lands within Allotment Nos. 120 and 121 were withdrawn from the project in 1939. (*Id.* at 54-55, ¶ 61.) Although the lands may have been irrigated under the project between 1920 and 1939, there is no evidence of ~~continuous~~ continued irrigation of the lands in Allotments 120 and 121 for a period of thirty-four years from 1939 to 1973, after they were withdrawn from the project in 1939. (*Id.* at 55, ¶ 61.) A letter dated 1955, from counsel of the current land owner (Dixon) protesting operation and maintenance assessments of irrigation of Sections 8, 18, 9 and 5, being the "old Woodruff property," states that "this property derives no beneficial use from the waters of the Sand Creek Project." (Clements Direct Ex. 40042.) Allotments 120 and 121 are located in Section 18. Aerial photographs of the allotments show that water uses since 1952 have consisted of minor ditch spillage, stock watering or sub-irrigation with long periods of non-use in between. (~~Id.~~ Clements Testimony at 55, ¶ 61.) Beneficial use of water resumed after 1973 as evidenced by water right

Permit S-37118 which was issued for irrigation from Sand Creek covering lands appurtenant to Allotment Nos. 120 and 121. (OWRD Ex. 1 at 80-84.)

**Reasons for Modification:** The ALJ's proposed finding of fact failed to fully set forth the evidence on the record; to add clarification using evidence on the record.

- b. The last sentence in Finding of Fact # 7 is replaced as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

~~Claimants presented no evidence that the period of use should be outside of March 1—October 31.~~ Although Claimants claimed a period of use March 15 through November 15 (OWRD Ex. 1 at 5), a season of use of March 1 through October 31 is a permissible amendment.

**Reasons for Modification:** The Adjudicator has determined that the ALJ's original finding was not supported by a preponderance of evidence in the record; to add clarification using evidence on the record. In addition, OWRD finds that the shift in the season of use irrigation from that which was originally claimed (March 15 through November 15), to March 1 through October 31, as proposed by the ALJ in the First Amended Proposed Order is a permissible amendment because (1) it is not an enlargement to the length of the irrigation season, (2) the ALJ relied on the same standard season of use as stated in the Preliminary Evaluation for Claim 19, whose publication preceded the October 1, 1999 deadline to make amendments that do not enlarge the original claim, and (3) no exceptions were filed against the March 1 though October 31 season of use proposed in the First Amended Proposed Order.

8. **Opinion.** The Proposed Order's "Opinion" section is modified as described herein.

OWRD removed the ALJ's discussions regarding the elements of a *Walton* Claim, including the first non-Indian purchaser rule as a basis for a *Walton* claim. The deleted paragraphs are noted below as "\*\*\*\*\*" In their place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

The remaining portions of the Opinion section of ALJ's Proposed Order have been labeled "Application of Walton Elements to the Modified Proposed Order Findings of Fact." Additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text.

## Application of Walton Elements to the Modified Proposed Order Findings of Fact

Claim 19 is a claim for water rights for lands purportedly within the boundaries of the former Klamath Indian Reservation. Claims for water rights of non-Indian successors to Indian water rights are commonly referred to as “*Walton*” water rights.<sup>1</sup>

\*\*\*\*\*

Claimants have the burden of proof to establish the claim by a preponderance of the evidence. ORS 539.110; ORS 183.450(2); *see also, Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is a preponderance of the evidence). Proof by a preponderance of the evidence means that the fact-finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). Claimants have failed to meet their burden.<sup>2</sup>

Claimants’ lands were within the boundaries of the former Klamath Indian Reservation. However, Claimants failed to prove the remaining elements for a *Walton* claim with respect to ~~each of the 11~~ Allotments 11, 12, 13, 533, 1442, 120 and 121. Claimants did not prove that irrigation was initiated by Indian predecessors or by ~~the first~~ non-Indian successors ~~owner of each allotment~~ with diligence within a reasonable period of time after transfer of the land ~~to the first non-Indian~~ from Indian ownership, and or that the land ~~has had been continued to be irrigated without long periods (34 years) of non-use. continuously.~~

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<sup>1</sup> A “*Walton*” right refers to a term derived from the *Colville Confederated Tribes v. Walton* line of cases that address the issue of a claim for a water right of non-Indian successors to Indian allottees. *Colville Confederated Tribes v. Walton*, 460 F Supp 1320 (ED Wash 1978) (*Walton I*); *Colville Confederated Tribes v. Walton*, 647 F2d 42 (9<sup>th</sup> Cir 1981), *cert den* 454 US 1092 (1981) (*Walton II*); *Colville Confederated Tribes v. Walton*, 752 F2d 397 (9<sup>th</sup> Cir 1985), *cert den* 475 US 1010 (1986) (*Walton III*). An Indian “allotment” is a parcel of land on an Indian reservation awarded to an individual member of an Indian tribe, *i.e.*, an allottee, pursuant to the General Allotment Act of 1887, 24 Stat. 388. *See, e.g., Walton II*, 647 F2d at 45.

<sup>2</sup> With the exception of 138 acres of Allotment No. 208 and 160 acres of Allotment No. 1122, to which the United States has stipulated that Claimants have established a *Walton* water right.

There was no evidence of any irrigation of Allotments 11 and 13, which were transferred to non-Indians in the 1920s, before the 1970s. There was no evidence of any irrigation of Allotment 12, which was transferred to the first non-Indian in 1918, until sometime after 1930. from 1918 to 1952. Although aerial photographs taken between 1952 and 1979 show some areas in Allotment 12 receiving water, photographs from 1987 to 1994 show no irrigation. Claimants have failed to meet the requirements for a *Walton* water claim for Allotments 11, 12 and 13.

Allotment Nos. 530 and 534 were transferred to non-Indian ownership in 1960 or 1961. Allotment No. 533 was transferred to the first non-Indian in 1921. There is no evidence of any irrigation on Allotment No 533 until sometime after 1930, from 1921 to 1928, the period nine years after the allotment was first owned by that non-Indian successors. , or from 1928 to 1952. Beneficial use of water on Allotment No. 533 was not made by the Indian owner prior to transfer, nor made with reasonable diligence by non-Indian successors. Claimants failed to establish a *Walton* water right for Allotment No. 533.

¶ There is sufficient evidence to show that Allotments 530 and 534 were irrigated during the 1930s, 1940 and 1950s by natural overflow from Sand Creek. The water was spread over the land using single plow furrow ditches. This is further substantiated in the earliest available aerial photograph, taken in 1952. Beneficial use of water was made prior to the transfer from Indian ownership to non-Indian successors. Although A 1961 aerial photograph shows 14 acres and 41 acres being irrigated on Allotment Nos. 530 and 534, respectively, that year, , there were long periods of non-use of water on Allotment Nos. 530, 533 and 534 between 1976 and 1994. Claimants failed to establish a *Walton* water right for Allotment Nos. 530, 533 and 534. Irrigation has continued on these two allotments as claimed, as evidenced by water right Permit S-37118 which has a priority date of 1973, and a corresponding final Proof Survey map dated 1974. A *Walton* water right for irrigation from Sand Creek has been established on 104.4 acres within Allotment No. 530, and for 74.3 acres within Allotment No. 534. The claimed point of diversion is located in Lot 4, SW ¼ SW ¼, Section 18, Township 31 South, Range 8 East, W.M.



Allotment No. ~~1142~~ 1442 was transferred to the first non-Indian in 1918, and transferred to the next owner in 1924. There is no evidence of irrigation on the land in this allotment until sometime after 1930, twelve years after transfer from Indian ownership. ~~from 1918 to 1924, from 1924 to 1952, or from 1976 to 1987.~~ Claimants failed to establish the elements of a *Walton* water right on Allotment No. 1442.

Allotment Nos. 120, 121, 208 and 1122 were transferred out of Indian ownership between 1920 and 1924, and conveyed to the next owner between 1928 and 1936. All four of these allotments were within the boundaries of the Sand Creek Irrigation Project, which was initially completed in about 1920. The lands within Allotment Nos. 120 and 121 were withdrawn from the project in 1939. While those lands may have been irrigated under the project between 1920 and 1939, there was no evidence of irrigation of these two allotments for a period of 34 years, being 1939 to 1973. ~~after 1939.~~ ~~Claimants failed to prove the elements of a *Walton* water right for Allotment Nos. 120 and 121.~~ To the extent that a *Walton* water right may have been established on these allotments, they were abandoned due to a 34-year period of nonuse. “As described in the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS, a *Walton* claimant need not establish continuous beneficial use of water following initial development of the right. Instead, a contestant has the burden to prove that a claimant has abandoned the right after development. Intent to abandon may be inferred through a sufficiently long enough period of non-use. See, e.g., *In the Matter of the Clark Fork River*, 902 P2d 1353 (Mont 1996). Under the facts in this case, 34 years is a sufficiently long period of time for an intent to abandon the water right on these allotments to be inferred.”

Based on the stipulation of the United States of irrigation of lands within Allotment Nos. 208 and 1122, Claimants have established the elements of a *Walton* water right for 138 acres for Allotment No. 208 and 160 acres for Allotment No. 1122, **the legal description for the irrigated acreage and points of diversion of which are specifically described in Finding of Fact No. 7, above.** The Preliminary Evaluation done by ~~ORWD~~ OWRD found an irrigation rate of 1/40<sup>th</sup> cfs/acre, a duty of 3.5 af/acre,

and a period of use of March 1 – October 31. ~~Claimants failed to establish a period of use outside of March 1 – October 31.~~

Claimants make a number of assertions in their written Closing Argument which warrant discussion.

Claimants contend that they have established a *Walton* water right for Claim 19 because of the determination made by the special water master in 1992, which was adopted by the Circuit Court. That determination established relative water rights between Claimants and Mosby, as a result of a civil lawsuit filed by Mosby against Claimants. However, the outcome of that lawsuit has no bearing on this proceeding. The determination states it is an interim resolution to the water use dispute only between Claimants and Mosby, pending final adjudication of the Klamath Basin. The purpose of this proceeding is to determine whether Claimants have presented evidence to establish a *Walton* water right. Moreover, the United States and the Klamath Tribes were not parties to the lawsuit filed in Circuit Court and are not bound by it. Claimants cannot establish a *Walton* water right in this proceeding based on the interim determination by the special water master.

Claimants also make assertions in their Closing Argument without any evidence in the record to support those assertions, or which while they may possibly be true, do nothing to establish the elements of a *Walton* water right.

~~Claimants' reliance on language in the 1992 Interim Order, that files of the OWRD show continuous irrigation activity on Mosby's and their property from at least the mid-1970s to the present, does nothing to establish the initiation of irrigation by the first non-Indian owner on any of the allotments, nor does it establish continuous irrigation on the allotments.~~

Claimants' assertions that maps or other evidence in the record show irrigation from Sand Creek, show irrigation on some sections of land, or that OWRD issued water

permits out of Sand Creek during the 1950s, '60s and '70s, do not establish the elements of a *Walton* water right for Claimants on the allotments. As discussed earlier in this decision, on certain allotments Claimants failed to establish irrigation by Indian predecessors or by ~~the first~~ non-Indian successors ~~owner~~ within a reasonable period of time after transfer of the land to the first non-Indian owner. And the evidence establishes that rights on certain allotments have been abandoned due to an extended period of non-use. ~~, and that the land has been irrigated continuously.~~

Claimants charge in their Closing Argument that, “whenever someone tried to claim an Indian right \* \* \* the neighbors would complain and the water master would try to shut them down.” (Claimants’ Closing at 1, ¶ 9.) There is no evidence in the record to support this assertion.<sup>3</sup>

**Reasons for Modifications:** To correct and clarify the elements of a *Walton* water right; to provide consistency with the above Modified Proposed Order Findings of Fact; to provide clarity of evidence on the record; to further substantiate approval of the claim; to apply the appropriate legal basis/bases to the proposed order’s modified findings of fact; to correct scrivener’s errors.

9. **Order.** Within the section titled “Amended Proposed Order,” Section (1) is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 19. Section (2) is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strike through~~” text):

(2) Claimants failed to establish the elements of a *Walton* right for the remaining allotments of Claim 19 (*i.e.*, Allotment Nos. 11, 12, 13, 120, 121, ~~530~~, 533, ~~534~~ and 1442). The claim for water rights on those allotments should be denied.

**Reason for Modifications:** To provide consistency with Findings of Facts A.8 and A.9.

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<sup>3</sup> The February 3, 2004 Scheduling Order informed all participants of the requirement that they file in writing their witnesses’ direct testimony no later than April 23, 2004. Claimants filed no written direct testimony.

## Modifications to the Second Amended Proposed Order

10. The Second Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the “Findings of Fact and Conclusions of Law” is adopted in its entirety except as modified under Finding of Fact A.11, below, and (2) the section titled “Amended Proposed Order” is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 19.

11. **Findings of Fact and Conclusions of Law.**

a. Section 3 pertaining to Exhibit S3 is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text.

*3. Exhibit S3, memoranda, pleadings, affidavits, and exhibits from Mosby v. Runels, 88-241CV, do not establish Walton rights on the claimed allotments.*

Claimants submitted a significant number of documents filed in a civil court proceeding brought against them by a neighboring land owner. Many of these documents constitute argument rather than evidence. However, the Affidavit of Lee Hunsaker provides evidence to establish beneficial use of naturally overflowing water on certain allotments within a reasonable time period following transfer from Indian ownership. ~~Ignoring for a moment that many of these documents constitute argument rather than evidence, I find that, even considering them in a light most favorable to Claimants, the proffered documents do not provide any information to establish Walton rights on the claimed lands. These court documents, many of which were in evidence at the time ALJ Betterton issued his Amended Proposed Order, do not establish irrigation of the claimed allotments by the first non-Indian owner or continuous irrigation thereafter.~~

b. The last paragraph in Section 6 pertaining to Exhibit S6 is modified as shown below. Additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text.

~~In conclusion, I find the newly submitted documents do not provide sufficient evidence to establish the claimed water rights on the claim 19 lands outside the stipulated acreage. Accordingly, I find no basis upon which to set aside or modify ALJ Betterton’s Amended Proposed Order issued February 22, 2005.~~ In conclusion, the Affidavit of Lee Hunsaker (part of the newly submitted S-3) is sufficient, in combination with other evidence in the record,

to establish water rights on Allotments 530 and 534. The newly submitted evidence is insufficient to establish the claimed water rights on the other allotments outside the stipulated acreage.

**Reason for Modifications:** To make the findings of fact and conclusions of law in the Second Amended Proposed Order consistent with the Adjudicator’s modifications to the First Amended Proposed Order.

## **B. DETERMINATION**

1. The First Amended Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The “History of the Case” is adopted in its entirety.
  - b. The “Evidentiary Rulings” is adopted with modifications, as set forth in Section A.6, above.
  - c. The “Issues” is adopted in its entirety.
  - d. The “Findings of Fact,” is adopted with modifications, as set forth in Section A.7, above.
  - e. The “Opinion” is adopted with modifications, as set forth in Section A.8, above.
  - f. The section titled “Amended Proposed Order” is adopted with modifications, as set forth in Section A.9, above. Consistent with Sections A.7, A.8, and A.9, above, the outcome of the Order has been modified as to recognize a right for irrigation on an additional 177.8 acres.
2. The Second Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the “Findings of Fact and Conclusions of Law” is adopted in its entirety except as modified under Finding of Fact A.11, above, and (2) the section titled “Amended Proposed Order” is replaced in its entirety by the Water Right Claim Description as set forth in this Partial Order of Determination for Claim 19.
3. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
4. The shift in the season of use from irrigation from the season originally claimed (March 15 through November 15), 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 19, 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.
5. Based on the file and record herein, IT IS ORDERED that Claim 19 is approved as set forth in the following Water Right Claim Description.

**CLAIM NO. 19**

**CLAIM MAP REFERENCE:** OWRD INVESTIGATION MAPS – T 31 S, R 7 E and T 31 S, R 8 E

**CLAIMANT:** SCOTT AND MARGIE RUNELS  
 PO BOX 39  
 FORT ROCK, OR 97735

**SOURCES OF WATER:**

SCOTT CREEK, tributary to SAND CREEK, and  
 SAND CREEK, tributary to the WILLIAMSON RIVER, and

**PURPOSE OR USE:**

IRRIGATION OF 476.7 ACRES AS FOLLOWS:

298.0 ACRES FROM COMMINGLED WATER FROM SCOTT CREEK (POD 1) AND UPPER SAND CREEK (POD 2), AND

178.7 ACRES FROM LOWER SAND CREEK (POD 3)

**RATE OF USE:**

11.9 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

7.4 CFS OF COMMINGLED WATER FROM SCOTT CREEK (POD 1) AND UPPER SAND CREEK (POD 2), MEASURED AT THE POINTS OF DIVERSION, AND

4.5 CFS FROM LOWER SAND CREEK (POD 3) MEASURED AT THE POINT OF DIVERSION, AND

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:** APRIL 1 - OCTOBER 31

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

**THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:**


POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	GLot	Remarks / Measured Distance
POD 1	Scott Creek	31 S	7 E	WM	16	NW SE		COMINGLED WATER FROM SAND CREEK AND SCOTT CREEK
POD 2	Upper Sand Creek	31 S	7 E	WM	28	NW NW		
POD 3	Lower Sand Creek	31 S	8 E	WM	18	SW SW	4	980 FEET NORTH & 360 FEET EAST FROM SW CORNER, SECTION 18

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

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
31 S	8 E	WM	7	NE SW		40.0	POD 1 and POD 2
31 S	8 E	WM	7	NW SW	3	28.2	
31 S	8 E	WM	7	SW SW	4	29.8	
31 S	8 E	WM	7	SE SW		40.0	
31 S	8 E	WM	7	NE SE		40.0	
31 S	8 E	WM	7	NW SE		40.0	
31 S	8 E	WM	7	SW SE		40.0	
31 S	8 E	WM	7	SE SE		40.0	
31 S	8 E	WM	18	NE NW		34.3	
31 S	8 E	WM	18	SW SW	4	10.6	
31 S	8 E	WM	19	NE NE		37.0	
31 S	8 E	WM	19	NW NE		37.3	
31 S	8 E	WM	19	NE NW		40.0	
31 S	8 E	WM	19	NW NW	1	19.5	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication