

**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
EDWARD D. TOMPKINS AND MERRIE)	DETERMINATION
L. TOMPKINS, AS TRUSTEES OF THE)	
DON AND MERRIE L. TOMPKINS)	
FAMILY REVOCABLE TRUST DATED)	
JULY 13, 1998; WILLIS STANLEY)	
TOMPKINS)	Water Right Claim 21

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

A. FINDINGS OF FACT

1. Claim 21 (Claimants: EDWARD D. TOMPKINS AND MERRIE L. TOMPKINS, AS TRUSTEES OF THE DON AND MERRIE L. TOMPKINS FAMILY REVOCABLE TRUST DATED JULY 13, 1998; WILLIS STANLEY TOMPKINS) and its associated contests (14, 15, 3723 and 4079) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 168.
2. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 21 on February 23, 2006.
3. Exceptions were filed to the Proposed Order within the exception filing deadline by Claimants' Edward D. Tompkins and Merrie L. Tompkins, as trustees of the Don and Merrie L. Tompkins Family Revocable Trust, and Willis Stanley Tompkins. Responses to the Claimants' Exceptions were filed by the United States of America within the response filing deadline.
4. On January 6, 2012, the Adjudicator issued an AMENDED PROPOSED ORDER (Amended Proposed Order) to modify certain portions of the Proposed Order. Except as modified, the Amended Proposed Order fully incorporated the 2006 Proposed Order.
5. Exceptions were jointly filed to the Amended Proposed Order within the exception filing deadline by the United States of America and the Klamath Tribes.

6. The exceptions filed to the Amended Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claim 21, and are found to be unpersuasive. Accordingly, changes were not made to the Amended Proposed Order to accommodate any exceptions.
7. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.

B. DETERMINATION

1. The Amended Proposed Order is adopted and incorporated in its entirety as if set forth fully herein.
2. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
3. The place of use set forth in the following Claim Description is subject to natural overflow. Beneficial use of the natural overflow from November 16 through March 14 is a privilege only and no priority date, rate or duty shall attach to such privilege. This privilege may not be transferred to any other property and may not be altered by the use of any physical means to modify the manner in which natural overflow occurs, to contain or further distribute water or to increase in any other way the consumption which takes place from natural irrigation. Any such alteration shall require the filing with OWRD of an application for a permit to appropriate water under ORS 537.150. The holder of this privilege cannot make a call on water appropriated under any other water rights. This privilege as described herein does not constitute a water right; as such, OWRD will not issue a water right certificate for natural overflow November 16 through March 14 as described in this paragraph.
4. Based on the file and record herein, IT IS ORDERED that Claim 21 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 21

FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAPS – T 30 S, R 8 E and T 31 S, R 8 E

CLAIMANTS:

EDWARD D. TOMPKINS AND MERRIE L. TOMPKINS,
AS TRUSTEES OF THE DON AND MERRIE L. TOMPKINS
FAMILY REVOCABLE TRUST DATED JULY 13, 1998
PO BOX 22
GUINDA, CA 95637

WILLIS STANLEY TOMPKINS
 HC 63 BOX 328
 CHILOQUIN, OR 97624

SOURCE OF WATER:

COW CREEK, tributary to BIG SPRINGS CREEK;
 BIG SPRINGS CREEK, tributary to the WILLIAMSON RIVER; and
 SIXTEEN UNNAMED SPRINGS, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

IRRIGATION OF 1964.6 ACRES FROM THE COMINGLED WATERS OF COW CREEK, BIG SPRINGS CREEK, AND SIXTEEN SPRINGS, ALL BY NATURAL OVERFLOW, WITH INCIDENTAL LIVESTOCK WATERING OF 750 HEAD

DATE OF PRIORITY: OCTOBER 14, 1864

THE SOURCES OF WATER ARE LOCATED AS FOLLOWS:

Source	Twp	Rng	Mer	Sec	Q-Q	Remarks
Cow Creek	30 S	8 E	WM			No specific point of diversion; Comingled water from all sources by natural overflow.
	31 S	8 E	WM			
Big Springs Creek	30 S	8 E	WM			
	31 S	8 E	WM			
Unnamed Spring	30 S	8 E	WM	27	SE SW	
Unnamed Spring	30 S	8 E	WM	28	SW NE	
Unnamed Spring	30 S	8 E	WM	29	NE NE	
Unnamed Spring	30 S	8 E	WM	29	NW NE	
Unnamed Spring	30 S	8 E	WM	32	SE SW	
Unnamed Spring	30 S	8 E	WM	32	NW SE	
Two Unnamed Springs	30 S	8 E	WM	33	SW NE	
Unnamed Spring	30 S	8 E	WM	34	SE NW	
Unnamed Spring	30 S	8 E	WM	34	NW SW	
Unnamed Spring	30 S	8 E	WM	34	SW SW	
Unnamed Spring	31 S	8 E	WM	4	SE NW	
Unnamed Spring	31 S	8 E	WM	4	SE SE	
Unnamed Spring	31 S	8 E	WM	5	NE NW	
Unnamed Spring	31 S	8 E	WM	5	NW SE	
Unnamed Spring	31 S	8 E	WM	8	NE NE	

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION BY NATURAL OVERFLOW WITH INCIDETNAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	8 E	WM	22	SW SW		1.8
30 S	8 E	WM	22	SE SW		38.4
30 S	8 E	WM	27	NE NW		40.0
30 S	8 E	WM	27	NW NW		33.6
30 S	8 E	WM	27	SW NW		40.0
30 S	8 E	WM	27	SE NW		40.0
30 S	8 E	WM	27	NE SW		40.0
30 S	8 E	WM	27	NW SW		40.0
30 S	8 E	WM	28	NE NE		8.8
30 S	8 E	WM	28	SW NE		18.4

IRRIGATION BY NATURAL OVERFLOW WITH INCIDETNAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
30 S	8 E	WM	28	SE NE		36.8
30 S	8 E	WM	28	SE NW		7.2
30 S	8 E	WM	28	NE SW		36.0
30 S	8 E	WM	28	NW SW		10.4
30 S	8 E	WM	28	SW SW		0.7
30 S	8 E	WM	28	SW SW	2	14.4
30 S	8 E	WM	28	NE SE		40.0
30 S	8 E	WM	28	NW SE		40.0
30 S	8 E	WM	28	SW SE		36.8
30 S	8 E	WM	28	SE SE		40.0
30 S	8 E	WM	33	NE NE		40.0
30 S	8 E	WM	33	NW NE		40.0
30 S	8 E	WM	33	NE NW	3	36.0
30 S	8 E	WM	33	NW NW	2	21.4
30 S	8 E	WM	33	NE SW		40.0
30 S	8 E	WM	33	NW SW		40.0
30 S	8 E	WM	33	SW SW	4	39.8
30 S	8 E	WM	33	SE SW	5	39.9
30 S	8 E	WM	34	NE NW		40.0
30 S	8 E	WM	34	NW NW		40.0
30 S	8 E	WM	34	SW NW		40.0
30 S	8 E	WM	34	SE NW		40.0
30 S	8 E	WM	34	NE SW		40.0
30 S	8 E	WM	34	NW SW		40.0
30 S	8 E	WM	34	SW SW	1	39.9
30 S	8 E	WM	34	SE SW	2	39.7
31 S	8 E	WM	4	NE NE	1	36.3
31 S	8 E	WM	4	NW NE	2	36.2
31 S	8 E	WM	4	SW NE		40.0
31 S	8 E	WM	4	SE NE		40.0
31 S	8 E	WM	4	NE NW	3	36.1
31 S	8 E	WM	4	NW NW	4	36.0
31 S	8 E	WM	4	SW NW		40.0
31 S	8 E	WM	4	SE NW		40.0
31 S	8 E	WM	4	NE SW		40.0
31 S	8 E	WM	4	NW SW		40.0
31 S	8 E	WM	4	SW SW		40.0
31 S	8 E	WM	4	SE SW		40.0
31 S	8 E	WM	4	NE SE		40.0
31 S	8 E	WM	4	NW SE		40.0
31 S	8 E	WM	4	SW SE		40.0
31 S	8 E	WM	4	SE SE		40.0
31 S	8 E	WM	5	NE SE		40.0
31 S	8 E	WM	5	NW SE		40.0
31 S	8 E	WM	5	SW SE		40.0
31 S	8 E	WM	5	SE SE		40.0

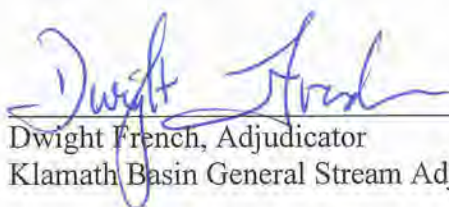
FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 3.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION. THE SEASON OF USE MAY NOT EXCEED MARCH 15 TO NOVEMBER 15.

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication