

**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)	CORRECTED PARTIAL ORDER OF
J. R. SIMPLOT, TRUSTEE FOR J. R.)	DETERMINATION
SIMPLOT SELF-DECLARATION OF)	
REVOCABLE TRUST)	
_____)	Water Right Claim 35

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 January 31, 1991, METROPOLITAN LIFE INSURANCE COMPANY, DBA ZX LAND AND CATTLE CO., timely submitted a Statement and Proof of Claim (Claim 35) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication based upon use of water beginning prior to February 24, 1909 (pre-1909 claim).
2. Claim 35 was submitted for a total 8.402 cubic feet per second (cfs) of water from the Sycan River, a tributary of the Sprague River, being 0.002 cfs for domestic use, 8.2 for irrigation of 187.3 acres, and 0.2 cfs for livestock watering of 6500 head of cattle and 100 horses. The claimed period of use is March 1 to October 31 for irrigation and March 1 to November 30 for livestock watering. The claimed priority date is October 8, 1879.
3. ROBERT M. MORRIS on behalf of METROPOLITAN LIFE INSURANCE COMPANY, DBA ZX LAND AND CATTLE CO. signed the Statement and Proof of Claim for Claim 35 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 35 was transferred to J. R. SIMPLOT, TRUSTEE FOR J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST (Claimant) from METROPOLITAN LIFE INSURANCE COMPANY, DBA ZX LAND AND CATTLE CO. See SPECIAL STATUTORY WARRANTY DEED, COUNTY OF LAKE RECORDS, RECORD OF DEEDS BOOK 224, PAGE 592 (Dec. 30, 1993) and LETTER requesting an ownership change (Sept. 3, 1996).
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 irrigation and livestock watering, but for a smaller quantity of water than claimed, and with a longer season of use for livestock watering than claimed.

6. On May 8, 2000, the Claimant timely filed Contest 2765 to the Preliminary Evaluation of Claim 35.
7. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3384: 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., 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 Pritchard, Don Vincent, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Reames Golf and Country Club, Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
8. On May 8, 2000, the United States of America timely filed Contest 3783 to the Claim and Preliminary Evaluation of Claim 35.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4091 to the Claim and Preliminary Evaluation of Claim 35.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 105.
11. On May 1, 2003 the Klamath Tribes filed an amendment to Contest 4091. *See* AMENDED STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (May 1, 2003).
12. On May 5, 2003 the United States of America filed an amendment to Contest 3783. *See* AMENDED STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (May 5, 2003).
13. On August 29, 2003, the Claimant and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 2765 AND 3384, AND ORDER THEREON thereby resolving these two contests to Claim 35.
14. On March 29, 2004, the Claimant, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091, AND ORDER THEREON (Settlement Agreement) thereby resolving all remaining contests to Claim 35.
15. On May 10, 2004, Administrative Law Judge Maurice L. Russell executed the order on the Settlement Agreement effectively vacating the contested case hearing. *See*

STIPULATION TO RESOLVE CONTESTS 2765, 3384, 3783, AND 4091, AND ORDER THEREON (May 10, 2004).

16. Based on the Claimant's map, OWRD finds the place of use is located within Section 21, Township 32 South, Range 14 East, W.M.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimant, OWRD, the United States of America, the Klamath Tribes, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with the following clarification: the place of use is located within Section 21, Township 32 South, Range 14 East, W.M.
2. The elements of a pre-1909 claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING PRE-1909 CLAIMS is incorporated as if set forth fully herein.
3. The livestock watering which is incidental to irrigation is limited to a maximum of 6,500 head of cattle and 100 horses, the number of head claimed by the Claimant.
4. Because there is no evidence on the record to the contrary, 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 35 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 35

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 32 S, R 14 E

CLAIMANT: J. R. SIMPLOT, TRUSTEE FOR J. R. SIMPLOT SELF-DECLARATION OF REVOCABLE TRUST
PO BOX 27
BOISE, ID 83707

SOURCE OF WATER: The SYCAN RIVER, tributary to the SPRAGUE RIVER

PURPOSE or USE:

IRRIGATION OF 170.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF UP TO 6,500 HEAD OF CATTLE AND 100 HORSES.

RATE OF USE:

4.25 CUBIC FEET PER SECOND MEASURED AT THE POINTS OF DIVERSION.

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	March 1 – October 31
Incidental Livestock Watering	April 1 - October 31

DATE OF PRIORITY: OCTOBER 8, 1879

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:


POD Name	Twp	Rng	Mer	Sec	Q-Q
POD 1	32 S	14 E	WM	21	SW NE
POD 2 (DECOSTA DITCH)	32 S	14 E	WM	21	SW SE

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING FROM POD 1 AND POD 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	14 E	WM	21	NW NE	32.0
32 S	14 E	WM	21	SW NE	7.0
32 S	14 E	WM	21	NE NW	32.5
32 S	14 E	WM	21	NW NW	31.0
32 S	14 E	WM	21	SW NW	36.5
32 S	14 E	WM	21	SE NW	18.0
32 S	14 E	WM	21	NW SW	12.0
32 S	14 E	WM	21	SW SW	1.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication