

**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
GARY L. GRIMES,)	DETERMINATION
KAREN BREITHAUPT, AND)	
EILEEN L. GRIMES)	
_____)	Water Right Claim 37

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 37 and its associated contests (2750, 3100, 3446, and 4093) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 256.
2. The property appurtenant to Claim 37 was ultimately transferred to GARY L. GRIMES (11990 HWY 140 E, KLAMATH FALLS, OR 97603), KAREN BREITHAUPT (3839 YALE WAY, LIVERMORE, CA 64550) AND EILEEN GRIMES (11990 HWY 140 E, KLAMATH FALLS, OR 97603) (Claimants) from the original claimant, JAMES G. GRIMES. (*See* OWRD Ex. 1 at 1, 9, 15, 16, 18, 19, 93–96).
3. On May 6, 2003, Claim 37 was consolidated with Case 900 “for the sole purpose of determining whether [this and other] claims for rights to water from the Wood River system . . . which have been previously adjudicated, bar the Claimants from participation in this adjudication.” *See* ORDER GRANTING MOTION TO CONSOLIDATE AND SCHEDULING PREHEARING CONFERENCE (May 6, 2003) at 3.
4. On April 20, 2004, an ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (April 20, 2004) was issued in Case 900, and is adopted and incorporated in its entirety as if set forth fully herein.

5. On May 27, 2004, the consolidation of claims and cases in Case 900 was reversed; the law of the case in each case is set out in the ORDER AMENDING RULINGS ON MOTIONS FOR RULING ON LEGAL ISSUES (referenced in Finding 4, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
6. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued an ORDER GRANTING MOTION FOR RULING ON LEGAL ISSUES; PROPOSED ORDER DENYING CLAIM on July 5, 2005 (Proposed Order).
7. Exceptions were filed to the Proposed Order within the exception filing deadline by claimants/contestants' Gary Grimes, Karen Breithaupt and Eileen Grimes.
8. The exceptions filed to the Proposed Order have been reviewed and considered in conjunction with the entire record for Claim 37, and are found to be unpersuasive. Accordingly, changes were not made to the Proposed Order to accommodate any exceptions.
9. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.10, below.
10. **Opinion.** The section titled "Opinion" of the Proposed Order is modified by adding the following footnote to the end of Paragraph 3 of Page 6 of the Proposed Order (the second-to-last paragraph of the "Opinion"):


The United States Supreme Court has held that publication notice is sufficient where a person's interest *or whereabouts* cannot reasonably be ascertained. *Mullane v. Central Hanover Bank Trust Co.*, 339 US 306, 316, 70 S Ct 652 (1950). As a matter of logic, a similar interpretation must be given to the "reasonably be ascertained" requirement in Section 13 of the 1909 Water Code. The existence of the fee patent to Henry Grimes does not establish that Henry Grimes' whereabouts were reasonably ascertainable. Absent additional evidence concerning Henry Grimes' whereabouts, the State Engineer's findings demonstrate that Mr. Grimes' whereabouts could not reasonably be determined at the time the notice was sent, and that he therefore was not due registered mail notice under Section 13 of the 1909 Water Code.

Reasons for modification: To provide additional detail concerning the statutory and constitutional notice requirements applicable to the Wood River Adjudication.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with the exception that the section titled "Opinion" is adopted with modifications, as set forth in Section A.10, above.
2. The lands described in Claim 37 were lawfully embraced in the previous Wood River Adjudication, and are therefore precluded from being claimed in the Klamath Basin General Stream Adjudication.
3. Based on the file and record herein, IT IS ORDERED that Claim 37 is denied and is of no force or effect.

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication