

**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
PATRICK J. KENNEALLY,	)	DETERMINATION
PAULINE MARY KENNEALLY, AND	)	
CHRISTINE MARGARET KENNEALLY	)	
_____	)	
	)	Water Right Claim 39

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 39 (Claimants: PATRICK J. KENNEALLY, PAULINE MARY KENNEALLY, AND CHRISTINE MARGARET KENNEALLY) and its associated contests (3447 and 4094) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 257.
2. On May 6, 2003, Claim 39 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.
3. 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.
4. 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 3, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
5. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claim 39 on August 31, 2005.
6. No exceptions were filed to the Proposed Order.

7. The 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 in its entirety.
  - c. The “Issues” is adopted in its entirety.
  - d. The “Findings of Fact” is adopted in its entirety. In addition, Findings of Fact #14 and #15 are added as set forth in Section A.8, below.
  - e. The “Opinion” is adopted with modifications, as set forth in Section A.9, below.
  - f. The section titled “Proposed Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 39. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **Findings of Fact.** Proposed Order Findings of Fact #14, and #15 are added as follows (additions are shown in “underline” text):

14. The natural spring claimed as a source of water in Claim 39 is labeled on the OWRD Investigation Map as “Crooked Creek Spring Area” at the location of point of diversion within the NW¼ NE¼ , Section 26, T33S, R7.5E, W.M. Crooked Creek Ditch begins at an 80-foot long earth dam near the Crooked Creek Springs area, and the dam diverts the total flow of the spring stream into the ditch. (OWRD Ex. A1 at 1, 26, 27, 28, 29.)

15. Because there is no evidence on the record to the contrary, the standard duty is 3.5 acre-feet per acre and the standard rate for irrigation is 1/40 of one cubic foot per second per acre as outlined in the GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION. OWRD incorporates into this Finding of Fact #15 the portions of The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION pertaining to the standard duty and rate for irrigation. A duty of 3.5 acre-feet per acre, and a rate of 1/40 of one cubic foot per second per acre are consistent with OWRD’s standards as set forth in Appendix A of the Preliminary Evaluation.

**Reason for Addition of Proposed Order Finding of Fact #14:** Using evidence on the record, to further clarify the source of claimed water and the point of diversion; the facts in the ALJ’s Proposed Order failed to fully set forth the evidence on the record.

**Reason for Addition of Proposed Order Finding of Fact #15:** To include a finding regarding the standard duty, and the standard rate for irrigation based on the number of acres that should be irrigated with one cubic foot of water per second.

9. **Opinion.** Within the section titled “Opinion” of the Proposed Order, OWRD removed the ALJ’s discussion regarding the elements of a *Walton* Claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS.

**Reason for Modification:** To correct and clarify the elements of a Walton water right.

## B. DETERMINATION

1. The 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 in its entirety.
  - c. The “Issues” is adopted in its entirety.
  - d. The “Findings of Fact” is adopted in its entirety. In addition, Findings of Fact #14 and #15 are added as set forth in Section A.8, above.
  - e. The “Opinion” is adopted with modifications, as set forth in A.9, above.
  - f. The section titled “Proposed Order” is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claim 39. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
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. Diversion of stock water to the place of use is limited to that which has been historically diverted for beneficial use.
4. Based on the file and record herein, IT IS ORDERED that Claim 39 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 39**

**CLAIM MAP REFERENCE:** OWRD INVESTIGATION MAP – T 33 S, R 7.5 E

**CLAIMANT:** PATRICK J. KENNEALLY  
PAULINE MARY KENNEALLY  
CHRISTINE MARGARET KENNEALLY  
PO BOX 525  
FORT KLAMATH, OR 97626

**SOURCE OF WATER:** CROOKED CREEK SPRING AREA, tributary to CROOKED CREEK

**PURPOSE OR USE:**

IRRIGATION OF 26.4 ACRES AND LIVESTOCK WATERING OF 80 HEAD

**RATE OF USE:**

0.73 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

0.70 CFS FOR IRRIGATION MEASURED AT THE POINT OF DIVERSION, AND

0.03 CFS FOR LIVESTOCK MEASURED AT THE POINT OF DIVERSION

DIVERSION OF STOCK WATER TO THE PLACE OF USE IS LIMITED TO THAT WHICH HAS BEEN HISTORICALLY DIVERTED FOR BENEFICIAL USE

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 1
Livestock	January 1 - December 31

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

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


Twp	Rng	Mer	Sec	Q-Q
33 S	7.5 E	WM	26	NW NE

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

IRRIGATION and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	35	NW NE	0.8
33 S	7.5 E	WM	35	SW NE	9.7
33 S	7.5 E	WM	35	NE NW	2.2
33 S	7.5 E	WM	35	SE NW	13.7

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication