

**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
NBCC, LLC)	DETERMINATION
)	
_____)	Water Right Claim 46

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 February 1, 1991, RICHARD NICHOLSON, ROGER NICHOLSON and the DOROTHY NICHOLSON TRUST timely submitted a Statement and Proof of Claim (Claim 46) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a non-Indian successor to allotted Klamath Reservation lands, claiming a vested Indian reserved water right (Walton claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. Claim 46 was submitted for a total of 3 cfs of water from Fort Creek, a tributary of the Wood Creek [sic], being 1 cfs for fish and wildlife, 1 cfs for livestock watering of 10 head, and 1.0 cfs for irrigation of 1.0 acre with a duty of 5.0 acre-feet per acre. The claimed period of use is “year round” for fish and wildlife and livestock watering, and April 1 to November 1 for irrigation. The claimed priority date is October 14, 1864.
3. Counsel, DAVID C. MOON, signed Claim 46 attesting that the information contained in the claim is true.
4. 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 denied because “the claim is for a source which has been previously adjudicated.”
5. On May 8, 2000, the Claimant timely filed Contest 3272 to the Preliminary Evaluation of Claim 46.

6. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3450: 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.¹, 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 Pritchard², Don Vincent³, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
7. On May 8, 2000, the United States of America timely filed Contest 3791 to the Claim and/or Preliminary Evaluation of Claim 46.
8. On May 8, 2000, the Klamath Tribes timely filed Contest 4101 to the Claim and/or Preliminary Evaluation of Claim 46.
9. On May 8, 2000, WaterWatch of Oregon, Inc. filed Contest 2830 to the Claim and/or Preliminary Evaluation of Claim 46.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 182.
11. On May 20, 2003, WaterWatch’s Contest 2830 was dismissed. *See* ORDER DISMISSING WATERWATCH OF OREGON INC.’S CONTESTS NOS. 2820, *ET AL.* (May 20, 2003).
12. On May 6, 2003, Claim 46 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.
13. 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.
14. 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 13, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).

¹ Klamath Hills District Improvement Company voluntarily withdrew from Contest 3450 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

² Berlva Pritchard voluntarily withdrew from Contest 3450 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3450 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On January 19, 2005, the Klamath Tribes withdrew Contest 4101. *See* KLAMATH TRIBES' VOLUNTARY WITHDRAWAL OF CONTEST (Jan. 19, 2005).
16. On March 18, 2005, Richard Nicholson, Roger Nicholson and the Dorothy Nicholson Trust, OWRD, the United States of America, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 46.
17. On March 23, 2005, the Adjudicator withdrew Case 182 from the Office of Administrative Hearings.
18. The property appurtenant to Claim 46 was ultimately transferred to NBCC, LLC (Claimant). *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M04, PAGE 26211 (April 30, 2004) and CHANGE OF OWNERSHIP FORM (April 7, 2006).

B. DETERMINATION

1. The Settlement Agreement executed between the Richard Nicholson, Roger Nicholson and the Dorothy Nicholson Trust, OWRD, the United States of America, and the Klamath Project Water Users is adopted and incorporated 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. 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 46 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 46
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 46, PAGE 88

CLAIMANT: NBCC, LLC
PO BOX 458
FORT KLAMATH, OR 97626

SOURCE OF WATER: FORT CREEK, tributary to the WOOD RIVER

PURPOSE OR USE:
IRRIGATION OF 0.2 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 10 HEAD.

RATE OF USE:

0.005 CUBIC FOOT PER SECOND (CFS) MEASURED AT THE POINT 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: APRIL 1 - NOVEMBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

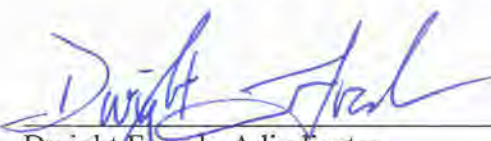
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7.5 E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM NW CORNER, SECTION 26

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	35	SE SW	0.2

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication