

**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
JAMES M. AND VALERIE M. ROOT	)	DETERMINATION
_____	)	
	)	Water Right Claim 51

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 December 4, 1990, KURT GRUEN timely submitted a Statement and Proof of Claim (Claim 51) 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 51 was submitted for a total of 1.0 cfs of water from Agency Spring and Agency Creek, tributaries to Agency Lake, for irrigation of 38.9 acres and for livestock watering of 10-20 head. The claimed period of use is "April thru October." The claimed priority date is October 14, 1864.
3. KURT GRUEN signed Claim 51 attesting that the information contained in the claim is true.
4. On May 27, 1998, Claim 51 was amended adding claimed uses of grounds maintenance, livestock watering, commercial recreational purposes, and fish, and adding Agency Creek Canal as a source of claimed water.
5. On October 12, 1998, Claim 51 was amended increasing the irrigated acreage claimed from 38.9 acres to 75.8 acres,
6. 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.”

7. The property appurtenant to Claim 51 was transferred to FORT KLAMATH PROPERTIES LLC from KURT GRUEN / COLOMBO LAND AND FARM INC. *See* STATUTORY WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M00, PAGE 28196 (Aug. 1, 2000).
8. On May 3, 2000, Kurt Gruen, original claimant, timely filed Contest 1712 to the Preliminary Evaluation of Claim 51.
9. On May 5, 2000, James and Valerie Root timely filed Contest 2069 to the Preliminary Evaluation of Claim 51.
10. On May 8, 2000, the United States of America timely filed Contest 3795 to the Claim and/or Preliminary Evaluation of Claim 51.
11. On May 8, 2000, the Klamath Tribes timely filed Contest 4106 to the Claim and/or Preliminary Evaluation of Claim 51.
12. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 186.
13. On May 6, 2003, Claim 51 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.
14. 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.
15. 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 14, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
16. On July 16, 2004, the Klamath Tribes withdrew Contest 4106. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (Sept.14, 2004).
17. On September 14, 2004, James and Valerie Root withdrew Contest 2069. *See* JAMES AND VALERIE ROOT’S VOLUNTARY WITHDRAWAL OF CONTEST (Sept.14, 2004).
18. On October 14, 2004, the United States of America timely filed an amendment and supplement to their Contest 3795 to the Claim and/or Preliminary Evaluation of

Claim 51. *See* UNITED STATES' AMENDMENT AND SUPPLEMENT TO STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (Oct. 14, 2004).

19. On September 13, 2005 the claimants withdrew the fish and wildlife amended portion of Claim 51. *See* CLAIMANTS' NOTICE OF WITHDRAWAL OF FISH AND WILDLIFE CLAIMS.
20. On January 18, 2006, the United States of America timely filed a second amendment to their Contest 3795 to the Claim and/or Preliminary Evaluation of Claim 51. *See* AMENDMENT TO UNITED STATES' STATEMENT OF CONTEST OF CLAIM AND PRELIMINARY EVALUATION OF CLAIM (Jan. 18, 2006).
21. On April 17, 2006, Claim 51 was assigned to JAMES AND VALERIE ROOT (Claimants). *See* CHANGE OF OWNERSHIP FORM (April 17, 2006). In addition, the Claimants filed a motion to include on the record documentation of the transfer the property associated with Case 186, Claim 51 from the former claimant and contestant Kurt Gruen to Fort Klamath Properties, LLC, owned by James and Valerie Root. *See* CLAIMANTS' MOTION TO SUPPLEMENT RECORD (July 3, 2006). The motion was granted. *See* ORDER ON CLAIMANTS' MOTION TO SUPPLEMENT THE Record (July 5, 2006). The Claimants succeeded Kurt Gruen as the current contestants in Contest 1712.
22. On April 12, 2006, the Claimants and the United States of America executed a STIPULATION BETWEEN CLAIMANTS AND UNITED STATES TO RESOLVE UNITED STATES' CONTEST 3795 (Settlement Agreement 'A').
23. On July 21, 2006, the Claimants and OWRD executed a STIPULATION TO RESOLVE CLAIMANTS' CONTEST 1712 (Settlement Agreement 'B') thereby resolving the remaining contest to Claim 51.
24. On July 24, 2006, the Adjudicator withdrew Case 186 from the Office of Administrative Hearings.

## **B. DETERMINATION**

1. The Settlement Agreement 'A' executed between the Claimants and the United States of America is adopted and incorporated as if set forth fully herein.
2. The Settlement Agreement 'B' executed between the Claimants and OWRD is adopted and incorporated as if set forth fully herein.
3. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
4. Based on the file and record herein, IT IS ORDERED that Claim 51 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 51**  
FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 51 SETTLEMENT MAP (June 30, 2006)

**CLAIMANT:** JAMES M. AND VALERIE M. ROOT  
216 MARIPOSA TERRACE  
MEDFORD, OR 97504-9326

**SOURCE OF WATER:** AGENCY SPRING, tributary to AGENCY CREEK

**PURPOSE OR USE:**  
IRRIGATION OF 15.0 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 20 HEAD.

**RATE OF USE:**  
0.375 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 - OCTOBER 31

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

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

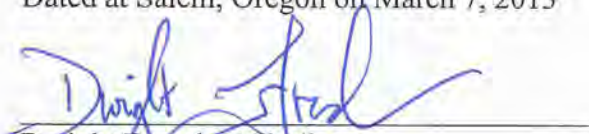
Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	18	SW SW	4	815 FEET EAST AND 1100 FEET NORTH FROM SW CORNER, SECTION 18

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

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	13	SE SE	15.0

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



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Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication