

**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. ROOT, AND)	DETERMINATION
VALERIE ROOT)	
_____)	Water Right Claim 53

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 AMENDED PROPOSED ORDER**

1. Claim 53 (Claimants: JAMES M. ROOT AND VALERIE ROOT) and its associated contests (2067, 2752, 2793, 3453, 3796, and 4180) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 187.
2. On May 6, 2003, Claim 53 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 an AMENDED PROPOSED ORDER¹ (Amended Proposed Order) for Claim 53 on November 3, 2006.

¹ A Proposed Order was issued on October 18, 2006. On October 20, 2006, Claimants requested amendment of the Proposed Order to correct description basis of the water rights. On November 1, 2006, OWRD

6. No exceptions were filed to the Amended Proposed Order.
7. The Amended 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 “Issues” is adopted in its entirety.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.8. below.
 - e. The “Conclusions of Law” is adopted in its entirety.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.9, below.
 - g. The “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 53. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
8. **Findings of Fact.**
 - a. The Amended Proposed Order Finding of Facts #1 is modified as follows (additions are shown in “underline” text, deletions are shown in “~~strikethrough~~” text):
 - (1) On January 28, 1991, Ambrose and Susan McAuliffe filed a Statement and Proof of Claim (Claim 53) as non-Indian successors to unallotted Klamath Indian Reservation lands for their property that was irrigated from Agency Creek, which is part of the Klamath Basin. (Ex. C2-B.) The claimed priority date is October 14, 1864 (the date the Klamath Indian reservation was established). In 1995, James and Valerie Root (Claimants) purchased the property. The original claim was for 45.0 cubic feet per second (cfs) of water diverted from Agency Creek for the following uses: 20 cfs for irrigation of ~~340.0~~ 339.2 acres (Ex. C2 at 2), 5 cfs for livestock, and 20 cfs for fish and wildlife purposes. (OWRD Ex. 1 at 3, 6). On July 8, 2005, Claimants withdrew their fish and wildlife claim. ~~The claimed priority date is October 14, 1864 (the date the Klamath Indian reservation was established), as a non-Indian successor to a Klamath Indian Allottee.~~ The claimed period of use was April 1 through November ~~30~~ 1 for irrigation, and year-round for livestock (OWRD Ex. 1 at 4). Subsequently, on June 18,

re-referred this case to amend the Proposed Order. The Proposed Order was withdrawn and this Amended Order issued.

1998, the claim was amended to claim irrigation of ~~396.4~~ 335.5 acres (OWRD Ex. 1 at 146-147).

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record. In addition, the ALJ's finding with respect to the number of acres claimed, the number of acres the claim was amended to, and the claimed period of use are not supported by a preponderance of evidence on the record.

- b. The Amended Proposed Order Finding of Facts #4 is modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

(4) All the land included in this claim is was unallotted within the former boundaries of the Klamath Indian Reservation. (Ex. C3 at 3; Ex.C3-C) ~~All the land included in Claim 53 was allotted by the United States to members of the Klamath Tribes.~~ The irrigation system on the property was built during Indian ownership. (Ex. C2 at 2.) The location of the claim is detailed in Ex. C2-A. Ambrose and Susan McAuliffe were the first non-Indian purchasers of the property. (Ex. C2.) They have continued the irrigation system that operated during Indian ownership. (*Id.*)

Reason for Modification: To provide additional citations to the record; the ALJ's proposed finding of fact failed to fully set forth the evidence on the record. In addition, the statement that all the land included in Claim 53 was allotted by the United States to members of the Klamath Tribes was stricken because it is not supported by a preponderance of the evidence on the record; these lands were unallotted and transferred from the Klamath Tribes to a non-Indian purchaser pursuant to the express language of the Klamath Termination Act. (*See* Ex. C3-C).

- c. Proposed Order Finding of Fact #5 is added to the Amended Proposed Order as follows (additions are shown in "underline" text):

(5) As stipulated between the claimant, the United States of America, and Klamath Project Water Users, the incidental livestock watering between April 1 and October 15 is limited to a maximum of 400 head, and livestock watering between October 16 and March 31 is limited to a maximum of 200 head. (Ex. C1 at 7, STIPULATION TO RESOLVE CONTESTS 3453 AND 3796, (Feb. 21, 2006).)

Reason for Additional Finding of Fact: The ALJ's proposed findings of fact failed to fully set forth the evidence on the record.

9. **Opinion.** Within the section titled “Opinion” of the Amended Proposed Order, OWRD removed the ALJ’s discussion regarding the elements of a Klamath Termination Act claim. In its place, OWRD incorporates into the Opinion section the GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT CLAIMS.

Reason for Modifications: To correct and clarify the elements of a Klamath Termination Act water right.

B. DETERMINATION

1. The Amended 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 “Issues” is adopted in its entirety.
 - c. The “Evidentiary Rulings” is adopted in its entirety.
 - d. The “Findings of Fact” is adopted with modifications, as set forth in Section A.8, above.
 - e. The “Conclusions of Law” is adopted in its entirety.
 - f. The “Opinion” is adopted with modifications, as set forth in Section A.9, above.
 - g. The “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 53. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.
2. The Klamath Tribes Termination Act of August 13, 1954, 68 Stat. 718, 25 U.S.C. § 564 et seq. for an Indian reserved water right is a valid basis for this claim. The elements of a Klamath Termination Act claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING KLAMATH TERMINATION ACT 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 and is reasonably necessary to transport the water and to prevent the watercourse from being completely frozen when transporting water outside of the irrigation season, up to a maximum of 3.0 cfs measured at the point of diversion; further limited to a maximum of 2400 gallons per day, measured at the point of diversion, when flows into Agency Creek from Agency Spring are less than 11.0 cfs after diversion for livestock watering.
4. Based on the file and record herein, IT IS ORDERED that Claim 53 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 53

CLAIM MAP REFERENCE: CLAIM # 53 SETTLEMENT MAP (March 6, 2006)

CLAIMANT: JAMES M. ROOT
VALERIE ROOT
216 MARIPOSA TERRACE
MEDFORD, OR 97504

SOURCE OF WATER: AGENCY SPRING, tributary to AGENCY CREEK

PURPOSE OR USE:

IRRIGATION OF 335.5 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 400 HEAD; AND LIVESTOCK WATERING OF 200 HEAD OCTOBER 16 THROUGH MARCH 31

RATE OF USE DURING THE IRRIGATION SEASON:

FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING AS FOLLOWS:

APRIL 1 THROUGH AUGUST 31:

4.194 CFS MEASURED AT THE POINT OF DIVERSION, BEING 3.275 CFS FOR 262.0 ACRES AND 0.919 CFS FOR 73.5 ACRES.

SEPTEMBER 1 THROUGH OCTOBER 15:

6.71 CFS MEASURED AT THE POINT OF DIVERSION, BEING 5.24 CFS FOR 262.0 ACRES AND 1.47 CFS FOR 73.5 ACRES.

USE OF WATER FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING IS FURTHER LIMITED AS FOLLOWS:

APRIL 1 THROUGH AUGUST 31:

1/80 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

SEPTEMBER 1 THROUGH OCTOBER 15:

1/50 OF ONE CUBIC FOOT PER SECOND PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR.

DUTY:

4.0 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR FOR 262.0 ACRES

2.15 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR FOR 73.5 ACRES

VOLUME OF USE OUTSIDE OF THE IRRIGATION SEASON:

FOR LIVESTOCK WATERING AS FOLLOWS:

UP TO 1.24 ACRE-FEET (404,054 GALLONS TOTAL) OF WATER OCTOBER 16 THROUGH MARCH 31, MEASURED AT THE PLACE OF USE; FURTHER LIMITED TO A MAXIMUM OF 2400 GALLONS PER DAY, MEASURED AT THE PLACE OF USE.

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

NECESSARY TO TRANSPORT THE WATER AND TO PREVENT THE WATERCOURSE FROM BEING COMPLETELY FROZEN WHEN TRANSPORTING WATER OUTSIDE OF THE IRRIGATION SEASON, UP TO A MAXIMUM OF 3.0 CFS MEASURED AT THE POINT OF DIVERSION; FURTHER LIMITED TO A MAXIMUM OF 2400 GALLONS PER DAY, MEASURED AT THE POINT OF DIVERSION, WHEN FLOWS INTO AGENCY CREEK FROM AGENCY SPRING ARE LESS THAN 11 CFS AFTER DIVERSION FOR LIVESTOCK WATERING.

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 – October 15
Livestock Watering	October 16 – March 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	1100 FEET NORTH AND 815 FEET EAST FROM SW CORNER, SECTION 18

THE PLACE OF USE IS LOCATED AS FOLLOWS:

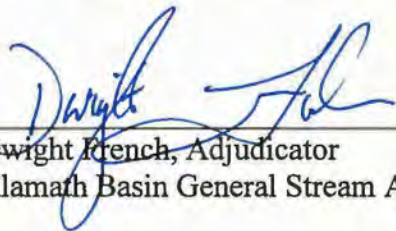
IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING WITH A DUTY OF 4.0 ACRE-FEET PER ACRE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7 E	WM	19	SW SW	4	9.3
34 S	7 E	WM	30	NE NW	5	3.0
34 S	7 E	WM	30	NW NW	1	36.2
34 S	7 E	WM	30	SW NW	2	39.4
34 S	7 E	WM	30	SE NW		13.0
34 S	7 E	WM	30	NW SW	3	32.2
34 S	7 E	WM	30	SW SW	4	37.0
34 S	7.5 E	WM	25	NE NE	12	20.7
34 S	7.5 E	WM	25	NE NE	13	11.5
34 S	7.5 E	WM	25	NW NE		3.4
34 S	7.5 E	WM	25	SE NE	15	18.7
34 S	7.5 E	WM	25	SE NE	14	13.5
34 S	7.5 E	WM	25	NE SE	16	4.0
34 S	7.5 E	WM	25	NE SE	17	16.0
34 S	7.5 E	WM	25	SE SE		4.1

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING WITH A DUTY OF 2.15 ACRE-FEET PER ACRE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	25	NE NE	13	1.1
34 S	7.5 E	WM	25	NW NE		26.6
34 S	7.5 E	WM	25	SW NE	9	22.0
34 S	7.5 E	WM	25	SE NE	14	7.8
34 S	7.5 E	WM	25	NE SE	17	16.0

LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	GLot
34 S	7 E	WM	30	NW SW	3
34 S	7 E	WM	30	SW SW	4
34 S	7.5 E	WM	25	NE SE	17
34 S	7.5 E	WM	25	SE SE	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


Dwight French, Adjudicator
Klamath Basin General Stream Adjudication