

**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
KENNETH L. AND KAREN L. TUTTLE,)	DETERMINATION
DBA DOUBLE K RANCH)	
_____)	
)	Water Right Claim 55

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 January 29, 1991, KENNETH L. AND KAREN L. TUTTLE, DBA DOUBLE K RANCH (Claimants) timely submitted a Statement and Proof of Claim (Claim 55) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as non-Indian successors 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 55 was submitted for a total of 7.91 cfs of water, being 3.55 cfs from Spring Creek, 2.87 from Spring 1, and 1.49 from Spring 2, all tributaries of the Williamson River, for irrigation of 316.4 acres. The claimed period of use is January 1 through December 31. The claimed priority date is "1864."
3. KENNETH L. AND KAREN L. TUTTLE signed Claim 55 attesting that the information contained in the claim is true.
4. On July 29, 1997, Claim 55 was amended to (1) increase the originally claimed acreage for irrigation from 316.4 acres to 378 acres, (2) increase the amount of water claimed for irrigation from 7.91 cfs to 9.46 cfs, (3) add a use of incidental livestock watering, and (4) clarify the claimed priority date to October 14, 1864.
5. 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 for irrigation was approved, but for a larger quantity of water and more irrigation acreage than originally claimed, and with a shorter irrigation season than originally claimed.
6. On May 8, 2000, the following parties, hereinafter collectively referred to as the "Klamath Project Water Users," filed Contest 3454: 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. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 258.
8. On May 5, 2003, Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTEST 3454 (Settlement Agreement) thereby resolving the only contest to Claim 55.
9. On May 12, 2003, the Adjudicator withdrew Case 258 from the Office of Administrative Hearings.
10. OWRD finds that the total place of use stipulated in the settlement agreement, 318.9 acres, is an impermissible amendment because it is an enlargement of the original claim; the Claimant originally claimed 316.4 acres. The 59.1 acres stipulated in the Settlement Agreement (Paragraph B.1.c) are reduced to 56.6 acres; specifically, the 5.8 acres located within the NE ¼ NE ¼, Section 22, Township 34 South, Range 7 East W.M. are reduced to 3.3 acres, which equals the 2.5 acres difference between the number of acres originally claimed and the enlargement in the stipulation.
11. OWRD finds that the rate of water use stipulated in the settlement agreement, 7.98 cfs, is an impermissible amendment because it is an enlargement of the original claim; the Claimants originally claimed 7.91 cfs. The 1.48 cfs from the commingled waters of Spring 1 and Spring 2 (POD 3) stipulated in the Settlement Agreement (Paragraph B.1.c) is reduced to 1.41 cfs, which equals the 0.07 cfs difference between the rate originally claimed and the enlargement in the stipulation.
12. OWRD finds that Spring Creek was claimed as a source of water for irrigation of 95.5 acres of identical lands under Claim 252 (Claimant: Leroy Jackson, Sr.) in the Klamath Basin Adjudication within Township 34 South, Range 7 East, W.M., being 0.7 acres in the NE¼ SW¼, 36.6 acres in the NW¼ SW¼, 20.4 acres in the SW¼ SW¼, 8.7 acres in the SE¼ SW¼, all in Section 15; 0.4 acres in the NE¼ SE¼, Section 16; and 14.4 acres in the NE¼ NW¼, 13.1 acres in the NW¼ NW¼, 0.1 acres in the SW¼ NW¼, 1.1 acres in the

¹ Klamath Hills District Improvement Co. voluntarily withdrew from Contest 3454 on January 20, 2004. *See* NOTICE OF WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY.

² Berlva Pritchard voluntarily withdrew from Contest 3454 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

³ Don Vincent voluntarily withdrew from Contest 3454 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

SE $\frac{1}{4}$ NW $\frac{1}{4}$, all in Section 22. Spring Creek (POD 1) is the stipulated source of water for irrigation of these acres at a rate equivalent to 1/40 of one cubic foot per second per acre.

- a. On November 16, 2011, OWRD sent identical letters to both sets of claimants at their most current addresses of record, outlining the conflict between the two claims. In the letter, OWRD requested that documentation showing proof of ownership for the lands in question be submitted to OWRD.
 - b. OWRD did not receive returned mail or responses from either of the claimants for Claim 55 or Claim 252.
 - c. On April 27, 2012, OWRD sent a second letter by Certified Mail, again to both sets of claimants at their most current addresses of record. In this letter, OWRD proposed to assign 66.4 acres within Tax Lot 1000 (within Section 15) and 0.4 acres within Tax Lot 500 (within Section 16) to Claim 55, thereby reducing Claim 252 by the same 66.8 acres; and to assign 28.7 acres within Tax Lot 200 (within Section 22) to Claim 252, thereby reducing Claim 55 by the same 28.7 acres. The proposed assignments were made by comparing claim maps to tax lot data using THE OREGON MAP at <http://www.ormap.net/>, and tax lot information from data made available from the Klamath County Assessor. The Department requested a response within 30 days of receipt of the letter, and stated that in the event that a timely response is not received that the overlapping acreage issue would be resolved as proposed in the letter.
 - d. The 'Return Receipt' signed by Claimant Jackson was received by OWRD. The 'Return Receipt' for Claimants, Kenneth and Karen Tuttle, dba Double K Ranch was returned to OWRD from the postal service as "Unclaimed." OWRD did not receive responses from either of the claimants for Claim 55 or Claim 252, thus the overlapping acreage issue will be resolved as described in Finding 12.c, above.
13. Based on OWRD's Investigation Map (T 34 S, R 7 E, W.M.), OWRD finds that the following place of use locations referenced in the Settlement Agreement are within certain Government Lots as listed below:
- a. 1.0 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15 is within Government Lot 9, and
 - b. 14.4 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22 is within Government Lot 2.
14. OWRD finds that the 15.6 acres listed within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22, Township 34 South, Range 7 East, W.M. are located within Government Lot 1; these acres were incorrectly identified as being within Government Lot 2.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, and the Klamath Project Water Users is adopted and incorporated as if set forth fully herein, with five exceptions:

- a. The place of use that was enlarged by the Settlement Agreement; the total acreage recognized herein is consistent the Claimant's original claim - only 3.3 acres are approved within the NE ¼ NE ¼, Section 22, Township 34 South, Range 7 East W.M. as described in Finding 10, above.
 - b. The rate of water use that was enlarged by the Settlement Agreement; the rate of water use recognized herein is consistent the Claimant's original claim - only 1.41 cfs is approved from POD 3, as described in Finding 11, above.
 - c. As described in Finding 12, above, the following acreages are assigned to Claim 252 thereby reducing Claim 55 by 28.7 acres: 14.4 acres in the NE¼ NW¼, 13.1 acres in the NW¼ NW¼, 0.1 acres in the SW¼ NW¼, and 1.1 acres in the SE¼ NW¼, Section 22.
 - d. Consistent with Finding 12, above, based on 28.7 acres being assigned to Claim 252, the rate of water from POD 1 is reduced by 0.72 cfs.
 - e. Government Lots are assigned or corrected as described in Findings 13 and 14, above.
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. The GENERAL CONCLUSIONS OF LAW CONCERNING AMENDMENT OF CLAIMS is incorporated as if set forth fully herein.
 4. Because there is no evidence on the record to the contrary, the standard duty for irrigation will apply, being 3.5 acre-feet per acre, and 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.
 5. Based on the file and record herein, IT IS ORDERED that Claim 55 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 55
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE:
OWRD INVESTIGATION MAP – T 34 S, R 7 E; and
CLAIM # 55 MYLAR MAP (Nov.16, 1998)

CLAIMANT: KENNETH L. AND KAREN L. TUTTLE,
DBA DOUBLE K RANCH
1696 COVE POINT RD
KLAMATH FALLS OR 97601

SOURCES OF WATER:

SPRING CREEK, SPRING 1, and SPRING 2, tributary to the WILLIAMSON RIVER

PURPOSE OR USE:

IRRIGATION OF 287.7 ACRES, BEING 113.6 ACRES FROM POD 1, 117.5 ACRES FROM POD 2, AND 56.6 ACRES FROM POD 3.

RATE OF USE:

7.19 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINT OF DIVERSION, BEING 2.84 CFS FROM POD 1, 2.94 CFS FROM POD 2, AND 1.41 FROM POD 3.

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: MARCH 1 - OCTOBER 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

POD Name	Source	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	Spring Creek	34 S	7 E	WM	9	NW NE	130 FEET SOUTH AND 160 FEET WEST FROM NE CORNER, NWNE, SECTION 9
POD 2	Spring 2	34 S	7 E	WM	11	SW SW	460 FEET NORTH AND 1260 FEET EAST FROM SW CORNER, SECTION 11
POD 3	Commingled Waters of Spring 1 and Spring 2	34 S	7 E	WM	14, 11	SW SW, SW SW	<u>SPRING 1</u> : 800 FEET NORTH AND 250 FEET EAST FROM SW CORNER, SECTION 14 <u>SPRING 2</u> : 460 FEET NORTH AND 1260 FEET EAST FROM SW CORNER, SECTION 11

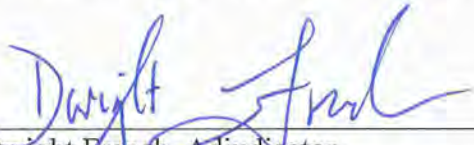
THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7 E	WM	15	NW NW	3	5.7	POD 1
34 S	7 E	WM	15	SW NW	4	17.8	
34 S	7 E	WM	15	NE SW	7	0.7	
34 S	7 E	WM	15	NW SW		36.6	
34 S	7 E	WM	15	SW SW		20.4	
34 S	7 E	WM	15	SE SW	8	10.3	
34 S	7 E	WM	16	NE NE		11.5	
34 S	7 E	WM	16	SE NE		10.2	
34 S	7 E	WM	16	NE SE		0.4	
34 S	7 E	WM	14	NW SW		17.7	POD 2
34 S	7 E	WM	14	SW SW		1.0	
34 S	7 E	WM	15	NE SW		1.9	
34 S	7 E	WM	15	SE SW		8.0	

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Authorized POD
34 S	7 E	WM	15	NE SE		19.8	POD 2
34 S	7 E	WM	15	NW SE		19.4	
34 S	7 E	WM	15	SW SE		27.0	
34 S	7 E	WM	15	SE SE		19.0	
34 S	7 E	WM	22	NW NE		0.7	
34 S	7 E	WM	22	NE NW		3.0	
34 S	7 E	WM	15	SE SW	9	1.0	POD 3
34 S	7 E	WM	15	SW SE		0.8	
34 S	7 E	WM	15	SE SE		4.9	
34 S	7 E	WM	22	NE NE		3.3	
34 S	7 E	WM	22	NW NE		31.0	
34 S	7 E	WM	22	NE NW	1	15.6	

End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013


 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication