

**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 57

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 57 (Claimant: NBCC, LLC) and its associated contests (2832, 3273, 3455, 3798, and 4111) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 190.
2. On May 6, 2003, Claim 57 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 57 on May 9, 2007.
6. No exceptions were filed to the Proposed Order.
7. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “Opinion” is adopted with modifications, as set forth in Section A.8, below, and (2) the section titled “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 57. The outcome of the Order is without modification; it is presented in a format standardized by OWRD.

8. **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 Modifications: To correct and clarify the elements of a Walton water right.

B. DETERMINATION

1. The Proposed Order is adopted and incorporated in its entirety as if set forth fully herein, with two exceptions: (1) the section titled “Opinion” is adopted with modifications, as set forth in Section A.8, above, and (2) the section titled “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 57. 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 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.
4. Based on the file and record herein, IT IS ORDERED that Claim 57 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 57

CLAIM MAP REFERENCE:

OWRD INVESTIGATION MAPS – T 33 S, R 7.5 E and T 34 S, R 7.5 E

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 41.2 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 82 HEAD; AND LIVESTOCK WATERING OF 82 HEAD OUTSIDE OF THE IRRIGATION SEASON.

RATE OF USE:

1.0315 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

1.03 CFS FOR IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING MEASURED AT THE POINT OF DIVERSION, AND

0.0015 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 984 GALLONS PER DAY.

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.

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:

4.3 ACRE-FEET PER ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR

PERIOD OF ALLOWED USE:

Use	Period
Irrigation with Incidental Livestock Watering	April 1 - November 1
Livestock Watering	November 2 - March 31

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINT OF DIVERSION IS LOCATED AS FOLLOWS:

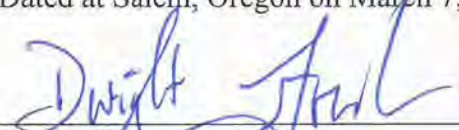
Twp	Rng	Mer	Sec	Q-Q
33 S	7.5 E	WM	26	NW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7.5 E	WM	3	NE NE	13.5
34 S	7.5 E	WM	3	SE NE	27.7

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



 Dwight French, Adjudicator
 Klamath Basin General Stream Adjudication