

**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 61

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 61 (Claimant: NBCC, LLC) and its associated contests (2833, 3274, 3459, 3801, and 4114) were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 193.
2. On May 6, 2003, Claim 61 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 61 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 61. 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 61. 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 61 is approved as set forth in the following Water Right Claim Description.

CLAIM NO. 61

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 86.6 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 185 HEAD; AND LIVESTOCK WATERING OF 185 HEAD OUTSIDE OF THE IRRIGATION SEASON.

RATE OF USE:

2.1034 CUBIC FEET PER SECOND (CFS) AS FOLLOWS:

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

0.0034 CFS FOR LIVESTOCK WATERING MEASURED AT THE PLACE OF USE, NOT TO EXCEED 2220 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:

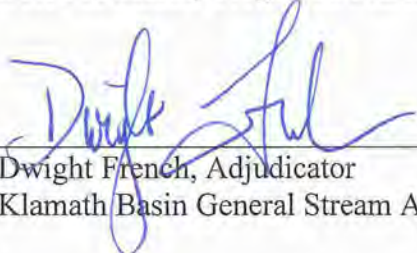
Twp	Rng	Mer	Sec	Q-Q
33 S	7.5 E	WM	26	NW NW

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING, and LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7.5 E	WM	3	NE SW	11	28.1
34 S	7.5 E	WM	3	SW SW	13	19.8
34 S	7.5 E	WM	3	SE SW	12	38.7

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication