

**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
STEPHEN S. AND MARY ANNA NAPIER	)	DETERMINATION
	)	
_____	)	Water Right Claim 66

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 24, 1991, JACK F. SIMINGTON timely submitted a Statement and Proof of Claim (Claim 66) 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 66 was submitted for a total of 0.225 cfs of water, being .025 cfs from Tecumsah Spring, tributary to Agency Lake, for domestic use for 2 houses and 2 shops, including irrigation of lawn and garden; and 0.2 cfs from Crooked Creek and Fort Creek, tributaries of Agency Lake, for irrigation of 15 acres and incidental livestock watering of 22 head. The claimed period of use is "year around" for domestic use, and "April/Nov." for irrigation and livestock watering. The claimed priority date is "1864."
3. JACK F. SIMINGTON signed Claim 66 attesting that the information contained in the claim is true.
4. The property appurtenant to Claim 66 was transferred to STEPHEN S. NAPIER AND MARY ANNA NAPIER (Claimants) from JACK F. SIMINGTON AND ERLENE G. SIMINGTON. *See* WARRANTY DEED, COUNTY OF KLAMATH RECORDS, VOL. M93, PAGE 17439 (July 15, 1993) (Claim # 66, Page 0132).
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 was denied because "the claim is for a source which has been previously adjudicated."
6. On May 8, 2000, the Claimants timely filed Contest 3103 to the Preliminary Evaluation of Claim 66.

7. On May 8, 2000, the following parties, hereinafter collectively referred to as the “Klamath Project Water Users,” filed Contest 3463: 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.<sup>1</sup>, 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 Pritchard<sup>2</sup>, Don Vincent<sup>3</sup>, Randy Walthall, Inter-County Title Co., Winema Hunting Lodge, Inc., Van Brimmer Ditch Co., Plevna District Improvement Co., and Collins Products, LLC.
8. On May 8, 2000, the United States of America timely filed Contest 3805 to the Claim and/or Preliminary Evaluation of Claim 66.
9. On May 8, 2000, the Klamath Tribes timely filed Contest 4118 to the Claim and/or Preliminary Evaluation of Claim 66.
10. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 197.
11. On May 6, 2003, Claim 66 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.
12. 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.
13. 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 12, above). *See* ORDER VACATING ORDER TO CONSOLIDATE (May 27, 2004).
14. On July 28, 2004, the Klamath Tribes voluntarily withdrew Contest 4118. *See* KLAMATH TRIBES’ VOLUNTARY WITHDRAWAL OF CONTEST (July 28, 2004).

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<sup>1</sup> Klamath Hills District Improvement Company voluntarily withdrew from Contest 3463 on January 16, 2004. *See* VOLUNTARY WITHDRAWAL OF CONTEST BY KLAMATH HILLS DISTRICT IMPROVEMENT COMPANY

<sup>2</sup> Berlva Pritchard voluntarily withdrew from Contest 3463 on June 24, 2002. *See* NOTICE OF WITHDRAWAL OF CLAIMANT.

<sup>3</sup> Don Vincent voluntarily withdrew from Contest 3463 on November 29, 2000. *See* NOTICE OF WITHDRAWAL OF CLAIMANTS.

15. On August 2, 2005, the United States of America voluntarily withdrew Contest 3805. *See* STIPULATION BETWEEN STEPHEN S. NAPIER, MARY ANNA NAPIER, AND THE UNITED STATES AND WITHDRAWAL [sic] OF CONTEST BY THE UNITED STATES (Aug. 2, 2005).
16. On May 2, 2006, the Claimants, OWRD, and the Klamath Project Water Users executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 66.
17. On May 2, 2006, the Adjudicator withdrew Case 197 from the Office of Administrative Hearings.

## **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.
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. Because there is no evidence on the record to the contrary, 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 will apply.
4. Based on the file and record herein, IT IS ORDERED that Claim 66 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 66**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 66, PAGE 25

**CLAIMANT:** STEVEN S. AND MARY ANNA NAPIER  
6415 CORSINI PLACE  
RANCHO PALOS VERDES, CA 90274

**SOURCE OF WATER:**

TECUMSEH SPRING, tributary to CROOKED CREEK; CROOKED CREEK and FORT CREEK, tributary of the WOOD RIVER

**PURPOSE OR USE:**

DOMESTIC FOR TWO HOUSEHOLDS AND TWO ANCILLARY SHOP BUILDINGS; IRRIGATION OF 4.9 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 22 HEAD, BEING 0.5 ACRES FROM CROOKED CREEK AND 4.4 ACRES FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION.

**RATE OF USE:**

0.1425 CUBIC FOOT PER SECOND (CFS) AS FOLLOWS:

0.02 CFS FROM TECUMSEH SPRING FOR DOMESTIC USE, MEASURED AT THE POINT OF DIVERSION;

UP TO 0.0125 CFS FROM CROOKED CREEK FOR IRRIGATION OF 0.5 ACRES WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION, LIMITED TO 0.006 CFS JULY 1 TO AUGUST 31; AND

UP TO 0.11 CFS FROM FORT CREEK VIA FORT CREEK CANAL REDIVERSION FOR IRRIGATION OF 4.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING, MEASURED AT THE POINT OF DIVERSION, LIMITED TO 0.055 CFS JULY 1 TO AUGUST 31.

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:**

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

**PERIOD OF ALLOWED USE:**

Use	Period
Domestic	January 1 - December 31
Irrigation with Incidental Livestock Watering	April 1 - October 15

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

**THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:**

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Remarks
Tecumseh Spring	34 S	7.5 E	WM	12	SW NE	460 FEET SOUTH AND 515 FEET WEST FROM NE CORNER, SWNE, SECTION 12	For Domestic Only
Crooked Creek	34 S	7.5 E	WM	12	SW NE	775 FEET SOUTH AND 750 FEET WEST FROM NE CORNER, SWNE, SECTION 12	
Fort Creek	33 S	7.5 E	WM	26	NW NW	950 FEET SOUTH AND 1100 FEET EAST FROM NW CORNER, SECTION 26	Point of Diversion into Canal
Fort Creek Canal Rediversion	34 S	7.5 E	WM	2	NE SW	NONE GIVEN	Point of Rediversion from Canal

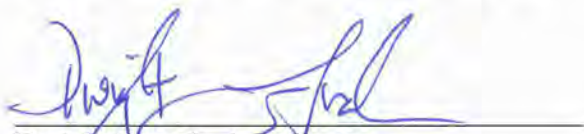
**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Authorized POD
34 S	7.5 E	WM	12	SW NE	Tecumseh Spring

IRRIGATION WITH INCIDENTAL LIVESTOCK WATERING						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized POD
34 S	7.5 E	WM	12	SW NE	0.5	Crooked Creek
34 S	7.5 E	WM	12	SW NE	4.4	Fort Creek Via Fort Creek Canal Rediversion

[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