

**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
FRANCIS LOVING TRUST;	)	DETERMINATION
HILDA FRANCIS, TRUSTEE	)	
_____	)	
	)	Water Right Claim 70

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 December 5, 1990, JESS AND HILDA FRANCIS, (original claimants) timely submitted a Statement and Proof of Claim (Claim 70) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as Indian allottees on the former Klamath Reservation, claiming a vested Indian reserved water right (Allottee claim) under the Treaty of October 14, 1864, 16 Stat. 707.
2. The specifics of Oregon Water Right Certificate 42747 (Certificate 42747) were incorporated into Claim 70 by references made in the Statement and Proof of Claim.
3. Claim 70 was submitted for year around livestock watering of 100 pair, and for irrigation of 216 acres with a season of use April 1 to November 30. The claimed quantity of water was listed "as set forth in the attached certificates [42747]." Certificate 42747 lists the total quantity of water as 5.26 cubic feet per second (cfs) from the Sprague River, a tributary of the Williamson River. The duty listed on Certificate 42747 is 3.0 acre-feet per acre per year with a rate of 1/40 of one cubic foot per second per acre. The claimed priority date is 1864.
4. The original claimants did not include payment of fee required by ORS 539.081 for livestock use by the February 1, 1991 deadline for filing a Statement and Proof of Claim.
5. JESS FRANCIS signed the Statement and Proof of Claim for Claim 70 attesting that the information contained in the claim is true.

6. In 1986, an OWRD field inspection report was prepared describing the points of diversion substantially as stated in Claim 70 including its reference to Certificate 42747, and describing the use of water for irrigation (Claim # 70, WIP, Pages 00016 - 00017).
7. On May 17, 1990, the title to the property associated with Claim 70 was transferred from JESS AND HILDA FRANCIS to the FRANCIS LOVING TRUST, JESSE F. FRANCIS AND HILDA E. FRANCIS, TRUSTEES (Claimant). *See* COUNTY OF KLAMATH RECORDS, VOL. M90, PAGE 10029.
8. On October 5, 1998 OWRD sent a letter to Claimant, Hilda Francis, to request clarification of lands irrigated by specific points of diversion (POD) claimed in Claim 70, and for clarification as to whether or not the Claimant agreed with an enclosed copy of an OWRD Investigation Map. OWRD's letter included instructions to the Claimant to submit a map prepared by a Certified Water Right Examiner (CWRE) in the event they did not agree with OWRD's Investigation Map (Claim # 70, Pages 20 - 23).
9. In response to OWRD's October 5, 1998 letter, OWRD received letter on November 12, 1998, from a representative (Richard Francis) of the Claimant stating "[w]e do not totally agree with it [the map]. We agree that the acres shown in sections 23 & 26 are correct, but the map does not show the 2.4 acres in the NE4-SE4-S27, T34S, R 8 E, W.M. which is on the original[sic] watter[sic] certificate #4247 [sic]." The November 12, 1998 letter also included a tally of 210.4 irrigated acres listed by quarter-quarter assigned to a particular POD, being Pump #1, Pump #2 or Portable Pump #3 (Claim # 70, Pages 36-37). The tally of 210.4 acres is fewer than the 216 acres stated on the Statement and Proof of Claim, but consistent with Certificate 42747 which was incorporated by reference in the Claimant Statement and Proof of Claim for Claim 70.
10. The 2.4 acres identified in the Claimant's November 12, 1998 letter (located in the NESE, Section 27) were included in the Claimant's original claim by the Claimant's reference to Certificate 42747. The 2.4 acres are clearly shown on the Final Proof Survey Map that accompanies Certificate 42747. The OWRD Investigation Map does not show 2.4 acres in the NESE, Section 27, but OWRD assigns the Final Proof Survey map greater weight. The 2.4 acres irrigated from Pump #2 are approved in Claim 70.
11. The following findings are made pertaining to the location of 2.4 acres in various quarter-quarters irrigated by Portable Pump #3. These findings are based on the Claimant's Statement and Proof of Claim for Claim 70 including its reference to Certificate 42747, the Final Proof Survey Map Under Permit No. 32272 (Certificate 42747), OWRD's Investigation Map appurtenant to Claim 70 (Claim # 70, Page 12), and the Claimant's written response on November 12, 1998 that lists lands irrigated by specific points of diversion.

- a. Both Certificate 42747 and the OWRD Investigation Map show a total of 27.6 irrigated acres in the SWNW, Section 26. In the November 12, 1998 letter, the Claimant listed a total of 27.7 acres irrigated in the SWNW, Section 26, being 13.5 acres irrigated from Pump #2, and 14.2 acres irrigated from Portable Pump #3. This is an overage of 0.1 acre compared to Certificate 42747 and the OWRD Investigation Map. OWRD subtracts this 0.1 acre overage from acres irrigated by the Portable pump #3. Therefore, the 27.6 acres of irrigation are approved in the SWNW, Section 26, being 13.5 acres irrigated from Pump #2, but only 14.1 acres irrigated from Pump #3.
- b. Both Certificate 42747 and the OWRD Investigation Map show a total of 31.6 irrigated acres in the SENW, Section 26. In the November 12, 1998 letter, the Claimant listed a total of 33.5 acres irrigated in the SENW, Section 26, being 2.0 acres irrigated from Pump #1, 13.7 acres irrigated from Pump #2, and 17.8 acres irrigated from Portable Pump #3. This is an overage of 1.9 acres compared to Certificate 42747 and the OWRD Investigation Map. OWRD subtracts this 1.9 acre overage from acres irrigated by Portable Pump #3. Therefore, the 31.6 acres of irrigation are approved in the SENW, Section 26, being 2.0 acres irrigated from Pump #1, 13.7 acres irrigated from Pump #2, but only 15.9 acres irrigated from Portable Pump #3.
- c. Both Certificate 42747 and the OWRD Investigation Map show a total of 28.0 irrigated acres in the NENW, Section 26. In the November 12, 1998 letter, the Claimant listed a total of 28.4 acres irrigated in the NENW, Section 26, being 28.0 acres irrigated from Pump #1, and 0.4 acres irrigated from Portable Pump #3. This is an overage of 0.4 acre compared to Certificate 42747 and the OWRD Investigation Map. OWRD subtracts this 0.4 acre overage from acres irrigated by Portable Pump #3. Therefore, the 28.0 acres of irrigation are approved in the NENW, Section 26, being 28.0 acres irrigated from Pump #1, but no acres irrigated from Portable Pump #3.
- d. As outlined in Findings 11.a, 11.b, and 11.c, above, a total of 2.4 acres were subtracted from the total acreage irrigated by Portable Pump #3.
- e. Both Certificate 42747 and the OWRD Investigation Map show a total of 18.0 irrigated acres in the NWNW, Section 26. In the November 12, 1998 letter, the Claimant listed only a total of 15.6 acres irrigated in the NWNW, Section 26, being 12.0 acres irrigated from Pump #1, and 3.6 acres irrigated from Portable Pump #3. This is an underage of 2.4 acres compared to Certificate 42747 and the OWRD Investigation Map. OWRD adds this 2.4 acre overage to acres irrigated by Portable Pump #3. Therefore, 18.0 acres of irrigation are approved in the NWNW, Section 26, being 12.0 acres irrigated from Pump #1 and 6.0 acres irrigated from Pump #3.

- f. The adjustment to the location of 2.4 acres pumped by Portable Pump #3 does not alter the claimed total number of acres irrigated by the three different pumps; the acreages irrigated by the three different pumps remains consistent with Claimant's written response on November 12, 1998 that lists 66.8 acres irrigated from Pump #1, 107.6 acres irrigated from Pump #2, and 36.0 acres irrigated by Portable Pump #3.
12. 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 approved, but for fewer acres than claimed, being an approval of a total 208 acres.
13. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 70.
14. OWRD finds a rate for irrigation of 1/40 of one cubic foot per second per acre and a duty of 3.0 acre-feet per acre per year, as claimed.
15. Based on the sworn statements in Claim 70, along with the field inspection report, the following findings are made:
  - a. The land appurtenant to Claim 70 is part of the former Klamath Indian Reservation.
  - b. The Claimants are Klamath Indians.
  - c. The Claimants have applied water to beneficial use.
  - d. The land is arable.
  - e. The land appurtenant to Claim 70 has not had more than five successive years of non-Indian ownership.

## **B. DETERMINATION**

1. The elements of an Allottee claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING ALLOTTEE CLAIMS is incorporated as if set forth fully herein.
2. The duty for irrigation is 3.0 acre-feet per acre per year as claimed.
3. The rate for irrigation is 1/40 of one cubic foot per second per acre as claimed.
4. Claimant's claim for a separate right of use for livestock watering is denied, because the Claimant failed to timely submit fees for livestock use. ORS 539.210 provides that "it shall be the duty of all claimants . . . to appear and submit proof of their respective claims, *at the time and in the manner required by law.*" (Emphasis added) Otherwise they will be "barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings."

ORS 539.210. The payment of fees by a set deadline is required by law as a component of a claim in the Klamath Basin Adjudication; therefore, the scope of a claim can only extend to the amount of fees timely paid. *See* ORS 539.081; OAR 690-028-0028(1); OAR 690-028-0065(5). For Claimants, the deadline for the filing of claims, and therefore the deadline for payment of fees, was February 1, 1991. Because OWRD did not receive payment for a separate right of use for livestock watering by the deadline, this portion of Claimant's claim must be denied. Livestock watering approved under Claim 70 must be limited to incidental livestock watering during the irrigation season.

5. Based on the file and record herein, IT IS ORDERED that Claim 70 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

**CLAIM NO. 70**

**CLAIM MAP REFERENCE:**

FINAL PROOF SURVEY MAP UNDER OWRD PERMIT NO. 32272 (CERTIFICATE 42747)

**CLAIMANT:** FRANCIS LOVING TRUST  
HILDA FRANCIS, TRUSTEE  
PO BOX 213  
CHILOQUIN OR 97624

**SOURCE OF WATER:** The SPRAGUE RIVER, tributary to the WILLIAMSON RIVER

**PURPOSE or USE:**

IRRIGATION OF 210.4 ACRES WITH INCIDENTAL LIVESTOCK WATERING OF 200 HEAD.

**RATE OF USE:**

5.26 CUBIC FEET PER SECOND (CFS) MEASURED AT THE POINTS OF DIVERSION, BEING 1.67 CFS FROM PUMP #1, 2.69 CFS FROM PUMP #2, AND 0.90 CFS FROM PORTABLE PUMP #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:**

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

**PERIOD OF ALLOWED USE:** APRIL 1 - NOVEMBER 30

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

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

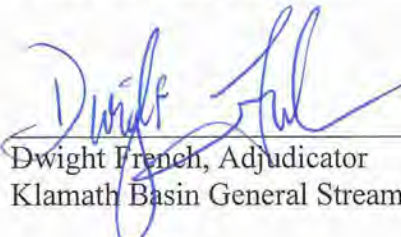
POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Pump 1	34 S	8 E	WM	23	SE SW	NORTH 85 DEGREES 22 MINUTES EAST, 2292 FEET FROM NW CORNER, SECTION 26
Pump 2	34 S	8 E	WM	26	SW SW	SOUTH 17 DEGREES 33 MINUTES EAST, 2187 FEET FROM NW CORNER, SECTION 26
Portable Pump 3	34 S	8 E	WM	26	SW NW	BETWEEN SOUTH 8 DEGREES 25 MINUTES EAST 2052 FEET FROM NW CORNER, SECTION 26 AND SOUTH 49 DEGREES 16 MINUTES EAST, 3233 FEET FROM NW CORNER, SECTION 26; ALSO SENW

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

Irrigation with Incidental Livestock Watering						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized Diversion
34 S	8 E	WM	23	NE SW	2.0	Pump 1
34 S	8 E	WM	23	SW SW	2.8	
34 S	8 E	WM	23	SE SW	20.0	
34 S	8 E	WM	26	NE NW	28.0	
34 S	8 E	WM	26	NW NW	12.0	
34 S	8 E	WM	26	SE NW	2.0	
34 S	8 E	WM	26	SW NW	13.5	Pump 2
34 S	8 E	WM	26	SE NW	13.7	
34 S	8 E	WM	26	NE SW	21.8	
34 S	8 E	WM	26	NW SW	36.0	
34 S	8 E	WM	26	SE SW	20.2	
34 S	8 E	WM	27	NE SE	2.4	
34 S	8 E	WM	26	NW NW	6.0	Portable Pump 3
34 S	8 E	WM	26	SW NW	14.1	
34 S	8 E	WM	26	SE NW	15.9	

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013

  
 Dwight French, Adjudicator  
 Klamath Basin General Stream Adjudication