

**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
CARY AND MARLYS HAVIRD)	DETERMINATION
)	
_____)	Water Right Claim 71

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, CARY AND MARLYS HAVIRD (Claimant) timely submitted a Statement and Proof of Claim (Claim 71) to the Oregon Water Resources Department (OWRD) pursuant to ORS Chapter 539 in the Klamath Basin Adjudication, as a 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 71 was submitted for a total of 1.1 cfs of water from the Sprague River, a tributary of the Williamson River, for irrigation of 46.0 acres. The claimed period of use is July 1 to October 1. The claimed priority date is "1864."
3. CARY AND MARLYS HAVIRD signed Claim 71 attesting that the information contained in the claim is true.
4. 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 irrigation was approved, but with a longer irrigation season than claimed and fewer acres than claimed.
5. On May 8, 2000, the United States of America timely filed Contest 3741 to the Claim and/or Preliminary Evaluation of Claim 71.
6. On May 8, 2000, the Klamath Tribes timely filed Contest 4122 to the Claim and/or Preliminary Evaluation of Claim 71.
7. These matters were referred to the Office of Administrative Hearings for a contested case hearing which were designated as Case 201.

8. On December 19, 2003, the Claimants, OWRD, the United States of America, and the Klamath Tribes executed a STIPULATION TO RESOLVE CONTESTS (Settlement Agreement) thereby resolving the remaining contests to Claim 71.
9. On December 9, 2003, the Adjudicator withdrew Case 201 from the Office of Administrative Hearings.
10. OWRD finds that the location of the points of diversion for the portable pump as listed in the Settlement Agreement, being within the E½ NE¼, Section 23, Township 34 South, Range 8 East, W.M., is not sufficiently defined because the Sprague River is not coincidental with the NE¼ NE¼. OWRD finds the points of diversion are located only within the SE¼ NE¼, Section 23, Township 34 South, Range 8 East, W.M.

B. DETERMINATION

1. The Settlement Agreement executed between the Claimants, OWRD, the United States of America, and the Klamath Tribes is adopted and incorporated as if set forth fully herein, with the exception that the points of diversion for the portable pump are authorized only within the SE¼ NE¼, Section 23, Township 34 South, Range 8 East, W.M.
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 71 is approved as set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 71
FOR A VESTED WATER RIGHT

CLAIM MAP REFERENCE: CLAIM # 71 SETTLEMENT MAP (Dec. 24, 2003)

CLAIMANT: CARY AND MARLYS HAVIRD
PO BOX 498
CHILOQUIN, OR 97624

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

PURPOSE OR USE: IRRIGATION OF 30.0 ACRES.

RATE OF USE:

0.75 CUBIC FOOT PER SECOND MEASURED AT THE POINT OF DIVERSION.

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:

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

PERIOD OF ALLOWED USE: JULY 1 - OCTOBER 1

DATE OF PRIORITY: OCTOBER 14, 1864

THE POINTS OF DIVERSION ARE LOCATED AS FOLLOWS:


Twp	Rng	Mer	Sec	Q-Q	Remarks
34 S	8 E	WM	23	SE NE	Portable Pump

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	23	NE NE	7.85
34 S	8 E	WM	23	SE NE	20.03
34 S	8 E	WM	23	SE SE	2.12

[End of Water Right Claim Description]

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication