

**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
SHIRLEY M. NIGH)	DETERMINATION
)	
_____)	Water Right Claim 72

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 May 20, 1977, Walter J. Eggsman, filed a NOTICE OF INTENTION TO FILE A CLAIM (NOI 100) with OWRD for lands in the E ½ E ½, Section 21, Township 34 south, Range 8 West, W.M. Walter J. Eggsman is listed on the NOVEMBER 21, 1957 FEDERAL REGISTER FOR MEMBERS OF KLAMATH TRIBE INDIANS, Page 9309.
2. On November 29, 1990, SHIRLEY M. NIGH (Claimant) (PO BOX 682, CHILOQUIN, OR 97624) timely submitted a Statement and Proof of Claim (Claim 72) 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.
3. Claim 72 was submitted for irrigation of 7.5 acres by the method of natural overflow and flooding from the Sprague River, a tributary of the Williamson River, with a duty of 2.0 acre-feet per acre and a season of use “November – March”. The claimed priority date is October 14, 1864. The evidence in the record supports the claimed duty and season of use.
4. SHIRLEY M. NIGH signed the Statement and Proof of Claim for Claim 72 attesting that the information contained in the claim is true.
5. In 1986, an OWRD field inspection report was prepared, describing the present use of water on the property substantially as stated in Claim 72 (Claim # 72, WIP, Page 00011). The report also includes the statement, “[s]he [Mrs. Cloverine Eggsman] said that

overflow was the only mean of irrigation on any of the Eggsman Lands, including Parcel A [E ½ E ½, Section 21, Township 34 south, Range 8 West, W.M.].”

6. 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 a different season of use than claimed.
7. No contests were filed to the Claim and/or Preliminary Evaluation of Claim 72.
8. Based on the sworn statements in Claim 72, along with the field inspection report, the following findings are made:
 - a. The claimed water use is on former Klamath Indian Reservation Land.
 - b. The claimed water use is on land that was transferred from Indian ownership.
 - c. Beneficial use of water for the claimed purpose was established prior to transfer from Indian ownership.
 - d. Beneficial use of water by the method of natural overflow from the Sprague River for the claimed purpose on lands appurtenant to Claim 72 has been demonstrated.

B. DETERMINATION

1. The elements of a Walton claim are established. The GENERAL CONCLUSIONS OF LAW CONCERNING WALTON CLAIMS is incorporated as if set forth fully herein.
2. Beneficial use water by the method of natural overflow is established.
3. Based on the file and record herein, IT IS ORDERED that Claim 72 is approved as claimed and set forth in the following Water Right Claim Description.

[Beginning of Water Right Claim Description]

CLAIM NO. 72

CLAIM MAP REFERENCE: OWRD INVESTIGATION MAP – T 34 S, R 8 E

CLAIMANT: SHIRLEY M. NIGH
PO BOX 682
CHILOQUIN OR 97624

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

PURPOSE or USE: IRRIGATION OF 7.5 ACRES BY NATURAL OVERFLOW

DATE OF PRIORITY: OCTOBER 14, 1864

NO SPECIFIC POINT OF DIVERSION:

NATURAL OVERFLOW FROM THE SPRAGUE RIVER

THE PLACE OF USE IS LOCATED AS FOLLOWS:

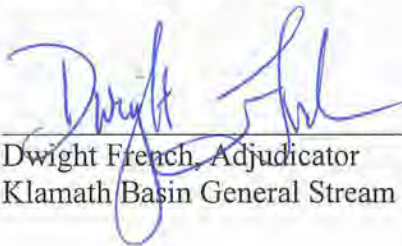
IRRIGATION BY NATURAL OVERFLOW					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	8 E	WM	21	SE NE	6.40
34 S	8 E	WM	21	NE SE	1.10

FURTHER LIMITATIONS TO THE RIGHT TO USE OF WATER BY NATURAL OVERFLOW:

BENEFICIAL USE OF WATER MADE FROM THE METHOD OF NATURAL OVERFLOW IS A PRIVILEGE ONLY. AS LONG AS BENEFICIAL USE OF WATER BY NATURAL OVERFLOW CONTINUES, THE HOLDER OF THIS VESTED WATER RIGHT CANNOT MAKE A CALL ON WATER APPROPRIATED UNDER ANY OTHER WATER RIGHTS.

ANY CONVERSION FROM BENEFICIAL USE OF WATER BY NATURAL OVERFLOW TO BENEFICIAL USE OF THE SAME WATER FROM A SYSTEM RELYING ON A POINT(S) OF DIVERSION WILL BE CONSIDERED A CHANGE IN POINT OF DIVERSION SUBJECT TO APPROVAL OF A TRANSFER OF WATER RIGHT IN COMPLIANCE WITH THE PROVISIONS OF ORS 540.505 TO 540-587. NOTWITHSTANDING APPROVAL OF A CHANGE IN POINT OF DIVERSION, THE FOLLOWING CONDITIONS WILL APPLY TO ANY APPROVED POINT OF DIVERSION TRANSFER: DUTY FOR IRRIGATION MAY NOT EXCEED 15.0 ACRE-FEET PER YEAR. THE SEASON OF USE MAY NOT EXCEED NOVEMBER 1 TO MARCH 1.

Dated at Salem, Oregon on March 7, 2013



Dwight French, Adjudicator
Klamath Basin General Stream Adjudication